

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

RECEIVED

John D. McLeod, Administrative Law Judge

JUN 07 2018

Case No. 09-ALJ-07-0069-CC

SC Court of Appeals

Town of Arcadia Lakes, Robert L. Jackson, Linda Z. Jackson, Robert E. Williams, Barbara S. Williams, Elizabeth M. Walker, Louis E. Spradlin, Mary Helen Spradlin, Thomas Hutto Utsey, Tony Sinclair, Aaron Small, Bette Small, Gene F. Starr, M.D., Elaine J. Starr, Sanford T. Marcus, Ruth L. Marcus, and Steven Brown.Petitioners,

Of Which Town of Arcadia Lakes is. Appellant/Respondent,

v.

South Carolina Department of Health and Environmental Control. Respondent,

and

Roper Pond, LLC Respondent/Appellant.

APPENDIX TO RECORD ON APPEAL

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Department of Health and Environmental Control

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**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW JUDGE DIVISION**

Town of Arcadia Lakes, Robert L. Jackson,
Linda Z. Jackson, Robert E. Williams, Barbara
S. Williams, Elizabeth M. Walker, Louis E.
Spradlin, Mary Helen Spradlin, Thomas Hutto
Utsey, Tony Sinclair, Aaron Small, Bette
Small, Gene F. Starr, M.D., Elaine J. Starr,
Sanford T. Marcus, Ruth L. Marcus, and
Steven Brown,

Petitioners,

vs.

South Carolina Department of Health and
Environmental Control and Roper Pond, LLC,

Respondents.

Docket No. 09-ALC-07-0069-CC

**SUPPLEMENTAL BRIEF IN SUPPORT
OF RESPONDENT ROPER POND,
LLC'S THIRD AMENDED PETITION
FOR FEES, COSTS AND SANCTIONS**

COPY

Respondent Roper Pond, LLC ("Roper Pond") respectfully submits this supplemental brief in support of Roper Pond, LLC's Third Amended Petition for Fees, Costs and Sanctions ("Roper Pond's Third Amended Petition"). By order dated August 3, 2015, the issues for determination on Roper Pond's Petition were bifurcated with the first phase to determine whether Roper Pond is entitled to fees and costs under S.C. CODE ANN. § 15-77-300 and sanctions under Rule 72, SCRPAALC, and the second phase to determine the amount of any award of fees and costs and/or sanctions granted in the first phase. Roper Pond hereby incorporates the arguments set forth in its May 25, 2015 Memorandum of Law. On September 1, 2016, this Court issued an Order on Respondent's Petition for Attorneys' Fees and Costs and for Sanctions. By Order filed on March 15, 2017, the Court vacated the September 1, 2016 Order and re-issued the ruling on Roper Pond's Third Amended Petition. Both the vacated September 1, 2016 Order and the March 15, 2017 Order found that Roper Pond was entitled to attorneys' fees and costs pursuant to

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SC ADMIN. LAW COURT

S.C. CODE ANN. § 15-77-300 and sanctions pursuant to Rule 72, SCR PALC. Roper Pond submits this brief in further support of the determination of the amount of fees and costs and sanction to be awarded to Roper Pond.

I. **S.C. CODE ANN. § 15-77-300 ESTABLISHES THE FACTORS TO BE CONSIDERED IN DETERMINING THE AMOUNT OF FEES AND COSTS.**

In 2010 the General Assembly amended S.C. CODE ANN. § 15-77-300 to establish factors to be considered in making a determination of reasonable attorneys' fees under the state. Section 15-77-300(B) sets forth the following factors to be applied in making this determination:

- (1) the nature, extent, and difficulty of the case;
- (2) the time devoted;
- (3) the professional standing of counsel;
- (4) the beneficial results obtained; and
- (5) the customary legal fees for similar services.

S.C. CODE ANN. § 15-77-300(B). This provision of the statute further provides that the Court "must make specific written findings regarding each factor listed above in making the award of attorney's fees." *Id.* Prior to the 2010 amendment, the South Carolina Supreme Court held that an award of attorneys' fees based on a percentage of plaintiffs' recovery in the action was improper. In *Layman v. State*, 376 S.C. 434, 658 S.E.2d 320 (2008), the Court held that an award of \$8.66 million in a class action suit against the State and the South Carolina Retirement System was unreasonable. *Id.* at 451, 658 S.E.2d at 329. The Court held that "the lodestar analysis is the proper method for determining an award of 'reasonable' attorneys' fees under the state action statute." *Id.* at 457, 658 S.E.2d at 332. The Court identified the six common law factors which the South Carolina courts have historically relied on in determining reasonableness of attorneys'

fees. *Id.* at 458, 658 S.E.2d at 333. Five of those factors are codified in Section 15-77-300(B) and will be analyzed below.¹

A. The nature, extent, and difficulty of the case.

Although this contested case was brought to challenge a basic South Carolina Department of Health and Environmental Control (“DHEC”) authorization under the state general permit for storm water discharges associated with construction activities, Petitioners raised numerous legal theories in this contested case, many of which Roper Pond argued were outside of the subject matter jurisdiction of this Court. Petitioners’ Request for Contested Case Hearing, filed on February 16, 2009, included more than five pages of grounds for appeal of authorization at issue in this contested case. (Petitioners’ Request for Contested Case Hearing dated February 16, 2009). Petitioners raised numerous grounds for appeal, including alleged violations of South Carolina Regulations 61-9, 61-68, and 61-101. Petitioners also argued that an individual permit under Section 404 of the Clean Water Act was required.

Roper Pond filed a motion to dismiss Petitioners’ claims related to the 401 water quality certification and authorization under a United States Corps of Engineers (“Corps”) Nationwide Permit. (Respondent Roper Pond, LLC’s Motion to Dismiss dated April 6, 2009). On June 17, 2009, the Court issued a Consent Order on Roper Pond, LLC’s Motion to Dismiss, dismissing claim challenging the 401 water quality certification and Corps authorization under Nationwide Permit No. 39. However, numerous legal theories were advanced by Petitioners throughout the contested case. Moreover, counsel for the Town acknowledged that certain of those legal theories were “somewhat novel.” (Email attached to Affidavit of W. Thomas Lavender, Jr., dated

¹ The Layman court applied a multiplier as allowed under the lodestar method to increase the award attorneys’ fees over the calculation of fees based on hours and reasonable rates of plaintiffs’ attorneys. However, Section 15-77-300 expressly limits the award to the fees the prevailing party has contracted to pay in the litigation. S.C. Code Ann. § 15-77-300(B).

April 27, 2017). At the conclusion of the hearing on the merits, the Court requested that Petitioners provide a post-hearing filing outlining the issues presented at the hearing on the merits. On October 9, 2009, Petitioners filed this outline of issues which detailed more than six pages of issues to be determined by the Court.

This Court issued a 29-page Final Order and Decision in this matter. Although the authorization challenged by Petitioners is governed by DHEC regulations, Petitioners' claims in this contested case include authorizations under programs administered by DHEC and the Corps. While those claims were found to be without merit, the issues raised by Petitioners involved the complex interplay of state and federal statutes and regulations. The hourly rates for counsel for Roper Pond in this litigation are:

W. Thomas Lavender, Jr.	\$370 - \$440 per hour
Henry W. Brown	\$300 per hour
Joan Hartley	\$220 - \$310 per hour

Given the nature and difficulty of the issues raised by Petitioners in this matter, these hourly rates are reasonable. Additionally, as discussed more fully below, these rates are based on the experience of the attorneys and the customary rates for attorneys in South Carolina who litigate matters on this nature.

B. The time devoted.

During the contested case before this Court, Nexsen Pruet billed Roper Pond a total of 397.4 hours for time expended through the filing of the Notice of Appeal to the Court of Appeals. Approximately 73 percent of this total time was billed by Joan Hartley at a substantially lower hourly rate based on her years of practice. The parties conducted substantial discovery in this matter, including written discovery and Petitioner's request for entry upon land. Petitioners noticed four depositions. Roper Pond noticed two depositions, including the deposition of

Petitioners' expert. Throughout this litigation, counsel for Roper Pond worked with Roper Pond's engineer and wetlands consultant to address Petitioners' claims. Counsel for Roper Pond also coordinated with counsel for South Carolina Department of Health and Environmental Control on matters related to discovery and in preparation for the hearing on the merits. (Affidavit of W. Thomas Lavender, Jr., attached hereto as **Exhibit A**, ¶¶ 5, 6). The parties identified more than 50 proposed exhibits prior to the hearing on the merits. (Hrg. Tr., pp. 4-7). Preparation for the hearing on the merits required preparation for testimony of not only those witnesses who testified, but others who had been identified as potential witnesses by the parties. Counsel for Roper Pond also drafted a proposed order following the hearing on the merits and responded to a motion for reconsideration and for a stay following the Court's issuance of the Final Order and Decision on January 21, 2010.

During the appeal to the Court of Appeal and the Supreme Court, Nexsen Pruet billed Roper Pond a total of 304.7 hours. Again, approximately 72 percent of this time was billed for Joan Hartley at the lower hourly rate. Although the Supreme Court dismissed the grant of certiorari in this matter as moot, this dismissal was issued following oral argument. Therefore, Nexsen Pruet's representation of Roper Pond on appeal included a brief to the Court of Appeals, oral arguments before the Court of Appeals, a return to Petitioner's motion for rehearing to the Court of Appeals, return to Petitioner's petition for writ of certiorari to the Supreme Court, return to the *amicus curiae* brief of the South Carolina Wildlife Federation, respondents' brief to the Supreme Court, and oral arguments before the Supreme Court.

Roper Pond has provided the Court with a list of the daily time worked by each Nexsen Pruet attorney on this litigation. (Affidavit of Joan W. Hartley dated July 16, 2015). In *Laymen*, the Supreme Court adjusted the actual time expended by the attorneys in that class action by 3%;

however, this adjustment was made “[o]nly in an abundance of caution” because the claims of a group within the class had been remanded. *Layman*, 376 S.C. at 359-60, 658 S.E.2d at 333-34. No such adjustment is warranted in this case. In fact, the value of the time actually expended on this matter totals \$217,048.50. (Affidavit of Joan W. Hartley dated July 16, 2015, Exhibit 1). However, Nexsen Pruet provided Roper Pond with discounts totaling \$21,980.50 on the billing in this matter. Therefore, the value of actual time expended in this litigation has already been adjusted by ten percent. Given that adjustment, Roper Pond is entitled to the total time actually billed by Nexsen Pruet in this matter.

C. The professional standing of counsel.

W. Thomas Lavender, Jr., has had primary responsibility for this litigation. Mr. Lavender received his juris doctorate from the University of South Carolina Law in 1976 and has been licensed to practice law in South Carolina since 1976. He is admitted to practice before all South Carolina Courts, the Federal Court for the District of South Carolina, the Fourth Court of Appeals and the United States Supreme Court. His practice has primarily focused on environmental and regulatory matters, including litigation in state and federal court and before the South Carolina Administrative Law Court. (Exhibit A, Affidavit of W. Thomas Lavender, Jr., ¶ 3). Mr. Lavender has regularly appeared before the South Carolina Administrative Law Court since its creation. This Court is familiar with his work product, preparation, and general ability in representing clients in matters of this nature.

Joan Hartley has practiced under Mr. Lavender’s supervision for more than ten years. Ms. Hartley received her juris doctorate from the University of South Carolina Law School in 2004. She has been licensed to practice law in South Carolina since 2004 and in North Carolina since 2007. She is admitted to practice before all South Carolina Courts, all North Carolina Courts, the Federal Court for the District of South Carolina, and the Federal Court for the Eastern

District of North Carolina. (Exhibit A, Affidavit of W. Thomas Lavender, Jr., ¶ 4). This Court is also familiar with her work product, preparation, and general ability in representing clients in matters of this nature.

Additionally, attached as Exhibit B is the Affidavit of Karen A. Crawford. Ms. Crawford attests that the fees charged by Nexsen Pruet in this matter are “within the range of hourly rates charges by other lawyers with comparable experience for matters of this nature.” (Affidavit of Karen A. Crawford, attached hereto as **Exhibit B**). Among other consideration, this statement is based on Ms. Crawford’s “experience working with Mr. Lavender and Ms. Hartley on various matters over the years having provided an understanding of their capabilities in such matters.”

Finally, Estates, Inc. (“Estates”), provided development and marketing services for the Roper Pond project. Since 1997 Nexsen Pruet has represented Estates in more than 100 matters, including real estate transactions and financing, employment matters, environmental matters, contract and construction disputes, and related litigation. Faced with a challenge to the DHEC authorization at issue in this contested case, Estates engaged Nexsen Pruet to represent Roper Pond based on their long-standing relationship with Nexsen Pruet and the prior services provided by the firm attorneys, including Mr. Lavender. The professional standing of the attorneys representing Roper Pond supports an award of the total hours billed at the hourly rates billed by Nexsen Pruet in this matter.

D. The beneficial results obtained.

Nexsen Pruet successfully defended the DHEC authorization in this Court and in the appellate courts. Given the defensive posture of Roper Pond in this action, this successful defense is the only “beneficial result” which Roper Pond could obtain in this matter.

E. The customer legal fees for similar services.

As noted above, Karen A. Crawford attests that the hourly rates billed by Nexsen Pruet are consistent with the legal market for matters of this nature in South Carolina. Specifically, Ms. Crawford attests:

Based on my experience in litigating challenges to authorizations and permits issued by SCDHEC, my experience working with Mr. Lavender and Ms. Hartley on various matters over the years having provided an understanding of their capabilities in such matter, and my knowledge of the legal market in South Carolina, the fees charged by Nexsen Pruet, LLC in this contested case and appeal are within the range of hourly rates charged by other lawyers with comparable experience for matters of this nature.

(Exhibit B, Affidavit of Karen A. Crawford). Ms. Crawford further attested that her “current hourly rate on matters of this nature is at least \$485 per hour.” *Id.* Ms. Crawford’s rate is more than that of Mr. Lavender even though he has practiced law five years longer than she.

Additionally, Estates is an institutional client of Nexsen Pruet and pays the standard rates for services provided by the firm. The hourly rates charged for this litigation are consistent with those charged to Estates for attorneys of comparable experience in other matters handled by the firm.

Applying the factors set forth at Section 15-77-300(B), Roper Pond is entitled to an award of attorney’s fees in amount of \$195,068, the amount billed by Nexsen Pruet at its standard hourly rate for the time expended in this matter. Roper Pond is further entitled to costs in the amount of \$10,215.84, the amount billed by Nexsen Pruet for costs in this matter.

II. THE DETERMINATION OF AMOUNT OF SANCTIONS.

In the March 15, 2017 Amended Order Vacating Order on Respondent’s Petition for Attorneys’ Fees and Costs and for Sanctions dated September 1, 2016, the Court held that “sanctions for delay of the Proposed Project are proper.” (March 15, 2017 Order, p. 38). Additionally, in the Order issued March 24, 2017, the Court held that the determination of the

amount of sanctions will be made in accordance with rule 72, SCR PALC, which provides that “the judge may impose such sanctions as the circumstances of the case and discouragement of like conduct in the future may require.” (March 24, 2017 Order, p. 6). To assist the Court in making that determination, Roper Pond provides a copy of the Basic Financial Statements and Supplementary Information for the year ending December 31, 2014 (“2014 Financial Statement”). (Exhibit 1, Affidavit of Joan W. Hartley dated April 3, 2017, attached hereto as **Exhibit C**). The 2014 Financial Statement is available on the Town’s website. The financial statements for other years were not available. However, the October 6, 2016 Council Meeting Minutes included a section entitled “FINANCIAL.” This section reads as follows:

Mr. Chesney said he had reviewed the audit report of McGregor & Company for the Year 2015, and had summarized the figures for the past five years, showing where finances are. He said he had made a break-down of the town’s income, which showed the franchise fees should be going up. Mayor Huguley said there had been three exceptional good years in terms of surplus.

(Exhibit 2, Affidavit of Joan W. Hartley dated April 3, 2017). Based on this statement, it may be presumed that the financial surplus reported in the 2014 Financial Statement is representative of the current surplus held by the Town.

The 2014 Financial Statement indicates that the Town has an unrestricted net assets in the amount of \$1,059,203. (2014 Financial Statement, p. 7). The 2014 Financial Statement further states as follows:

The assets of the Town exceeded its liabilities and deferred inflows by \$1,082,166 (\$1,062,544) (net position). Of this amount, \$1,059,203 (\$1,039,011) (unrestricted net position) may be used to meet the Town’s ongoing obligations to citizens and creditors. The other components of net position are \$3,502 (\$3,595) net investment in capital assets and \$19,461 (\$19,938) of restricted hospitality tax funds.

(2014 Financial Statement, p. 3) (noting that the parenthetical amounts refer to 2013 position).

According to the 2014 Financial Statement, the total assets of the Town are increasing and the

total amount of unrestricted funds which may be used to pay the Town's creditors was \$1,059,203 at the end of calendar year 2014. Moreover, the 2014 Financial Statement identifies \$1,093,433 in "Cash and Cash Equivalents." (2014 Financial Statement, p. 9). The 2014 Financial Statement further states:

The Town considers all highly liquid investments with a maturity of three (3) months or less when purchased to be cash equivalents. Cash and cash equivalents include all amounts in demand deposit accounts as well as short-term investments with a maturity date within three (3) months of the date acquired by the government.

(2014 Financial Statement, p. 15). Finally, the 2014 Financial Statement identifies Roper Pond's Third Amended Petition in this contested case as a contingent liability, concluding that "[t]he amount of costs or damages, if any, that may result from the settlement of this case, cannot presently be determined." (2014 Financial Statement, p. 20).

In determining the amount of sanctions "as the circumstances of the case and discouragement of like conduct in the future may require," Roper Pond requests that the Court make such determination in light of the fact that the Town has more than \$1 million in liquid assets which are unrestricted. Moreover, based on the limited available information, this amount has remained relatively constant or is increasing. In the March 15, 2015 Order, this Court found that "Roper Pond incurred increased costs as a result of the delay in the construction of the Proposed Project." (March 15, 2015 Order, p. 16). With respect to the request for sanctions, the Court found that "Roper Pond has presented evidence to demonstrate that the Town availed itself of the contested case procedures established under S.C. CODE ANN. § 44-1-60 and the APA, S.C. CODE ANN. §§ 1-23-10 *et seq.*, for the purpose of stopping or delaying the Proposed Project." (March 15, 2015 Order, p. 37). The Court further held: "The objective of discouraging like conduct in the future is appropriately achieved by imposing a Rule 72 sanction against the Town. Otherwise, the Town has achieved its stated and improper objective of delaying the Proposed

Project by preventing the commencement of construction for not less than thirteen.” (March 15, 2015 Order, pp. 37-38). As such, the amount of sanctions should be based on an amount necessary for “discouragement of like conduct” of bringing an action solely for the purpose of delay and the amount of such sanctions should be determined based on the fact that the Town has more than \$1 million in unrestricted liquid assets.



W. Thomas Lavender, Jr. (SC Bar No. 3143)
Joan W. Hartley (SC Bar No. 72735)
NEXSEN PRUET, LLC
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803.771.8900

Attorneys for Respondent
Roper Pond, LLC

April 3, 2017
Columbia, South Carolina

Exhibit A

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW JUDGE DIVISION

Town of Arcadia Lakes, Robert L. Jackson,
Linda Z. Jackson, Robert E. Williams, Barbara
S. Williams, Elizabeth M. Walker, Louis E.
Spradlin, Mary Helen Spradlin, Thomas Hutto
Utsey, Tony Sinclair, Aaron Small, Bette
Small, Gene F. Starr, M.D., Elaine J. Starr,
Sanford T. Marcus, Ruth L. Marcus, and
Steven Brown,

Petitioners,

vs.

South Carolina Department of Health and
Environmental Control and Roper Pond, LLC,

Respondents.

Docket No.: 09-ALC-07-0069-CC

**AFFIDAVIT OF
W. THOMAS LAVENDER, JR.**

PERSONALLY APPEARED BEFORE ME, W. Thomas Lavender, Jr., who, being duly sworn, swears and deposes that if he were called as a witness in the above-entitled action he would truthfully and accurately testify as follows:

1. I am a member in the law firm of Nexsen Pruet, LLC (hereafter "the Firm"), 1230 Main Street, Suite 700, Columbia, South Carolina 29201.

2. The Firm represents Respondent Roper Pond, LLC ("Roper Pond"), in the above-captioned contested case. Roper Pond, a South Carolina limited liability company, is the owner of the property at issue in this contested case. Estates, Inc. provided development and marketing services for the Roper Pond project. Since 1997 the Firm has represented Estates, Inc. in more than 100 matters, including real estate transactions and financing, employment matters, environmental matters, contract and construction disputes, and related litigation. The hourly

rates charged in this litigation are consistent with those charged to Estates for attorneys of comparable experience in other matters handled by the firm.

3. I received my juris doctorate from the University of South Carolina Law in 1976 and have been licensed to practice law in South Carolina since 1976. I am admitted to practice before all South Carolina Courts, the Federal Court for the District of South Carolina, the Fourth Court of Appeals and the United States Supreme Court. My practice has primarily focused on environmental and regulatory matters, including litigation in state and federal court and before the South Carolina Administrative Law Court.

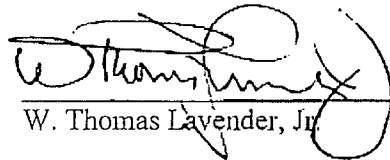
4. I have had primary responsibility for this litigation with the assistance of Joan Hartley. Ms. Hartley received her juris doctorate from the University of South Carolina Law School in 2004 and has practiced under my supervision for more than ten years. She has been licensed to practice law in South Carolina since 2004 and in North Carolina since 2007. She is admitted to practice before all South Carolina Courts, all North Carolina Courts, the Federal Court for the District of South Carolina, and the Federal Court for the Eastern District of North Carolina.

5. The parties conducted substantial discovery in this matter, including written discovery and Petitioner's request for entry upon land. Petitioners noticed four depositions. Roper Pond noticed two depositions, including the deposition of Petitioners' expert.

6. Throughout this litigation, Nexsen Pruet attorneys worked with Roper Pond's engineers and wetlands consultants to address Petitioners' claims. They also coordinated with counsel for South Carolina Department of Health and Environmental Control on matters related to discovery and in preparation for the hearing on the merits.

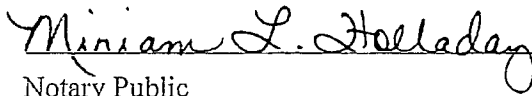
7. I have reviewed the summary and detail of time expenditures offered in the Affidavit of Joan W. Hartley dated July 16, 2015, and confirmed that those time expenditures were time necessarily devoted to Roper Pond's defense of the DHEC authorization at issue in this contested case and the subsequent appeal.

FURTHER AFFIANT SAYETH NOT.


W. Thomas Lavender, Jr.

SWORN and subscribed to before me

this 3rd day of April, 2017

 (L.S.)

Notary Public

My commission expires _____ My Commission Expires
May 8, 2018

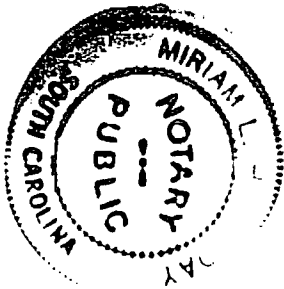


Exhibit B

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW JUDGE DIVISION**

Town of Arcadia Lakes, Robert L. Jackson,
Linda Z. Jackson, Robert E. Williams, Barbara
S. Williams, Elizabeth M. Walker, Louis E.
Spradlin, Mary Helen Spradlin, Thomas Hutto
Utsey, Tony Sinclair, Aaron Small, Bette
Small, Gene F. Starr, M.D., Elaine J. Starr,
Sanford T. Marcus, Ruth L. Marcus, and
Steven Brown,

Petitioners,

vs.

South Carolina Department of Health and
Environmental Control and Roper Pond, LLC,

Respondents.

Docket No.: 09-ALC-07-0069-CC

**AFFIDAVIT OF KAREN A.
CRAWFORD**

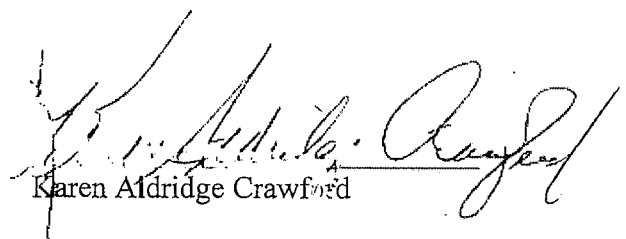
PERSONALLY APPEARED BEFORE ME, Karen A. Crawford, who, being duly sworn, swears and deposes that if she were called as a witness in the above-entitled action she would truthfully and accurately testify as follows:

1. I am a partner in the law firm of Nelson Mullins Riley & Scarborough, 1230 Main Street, Meridan, 17th Floor, Columbia, South Carolina 29201. I received my juris doctorate from Delaware Law School and have been licensed to practice law in Pennsylvania since 1981, and in South Carolina since 1986. I practice in the areas of environmental law and litigation, toxic torts, and product liability. I have litigated contested cases in the South Carolina Administrative Law Court challenging authorizations and permits issued by the South Carolina Department of Health and Environmental Control ("SCDHEC").

2. I have been informed that Nexsen Pruet, LLC represents Respondent Roper Pond, LLC in this contested case and subsequent appeal and that W. Thomas Lavender, Jr. and Joan Hartley of Nexsen Pruet have primary responsibility for litigating this matter. I have been further informed that the hourly rate charged for Mr. Lavender's time ranged from \$370 in 2009 to \$440 in 2015 and the hourly rate charged for Ms. Hartley's time ranged from \$220 in 2009 to \$310 in 2015. I am further informed that Mr. Lavender has been licensed to practice law since 1976, and Ms. Hartley has been licensed to practice law since 2004.

3. Based on my experience in litigating challenges to authorizations and permits issued by SCDHEC, my experience working with Mr. Lavender and Ms. Hartley on various matters over the years having provided an understanding of their capabilities in such matters, and my knowledge of the legal market in South Carolina, the fees charged by Nexsen Pruet, LLC in this contested case and appeal are within the range of hourly rates charged by other lawyers with comparable experience for matters of this nature. My current hourly rate on new matters of this nature is at least \$485 per hour.

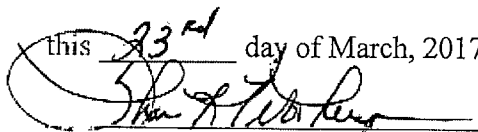
FURTHER AFFIANT SAYETH NOT.



Karen Aldridge Crawford

S'WORN and subscribed to before me

this 23rd day of March, 2017



(L.S.)

Notary Public

My commission expires April 19, 2023

Exhibit C

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW JUDGE DIVISION**

Town of Arcadia Lakes, Robert L. Jackson,
Linda Z. Jackson, Robert E. Williams, Barbara
S. Williams, Elizabeth M. Walker, Louis E.
Spradlin, Mary Helen Spradlin, Thomas Hutto
Utsey, Tony Sinclair, Aaron Small, Bette
Small, Gene F. Starr, M.D., Elaine J. Starr,
Sanford T. Marcus, Ruth L. Marcus, and
Steven Brown,

Petitioners,

vs.

South Carolina Department of Health and
Environmental Control and Roper Pond, LLC,

Respondents.

Docket No.: 09-ALC-07-0069-CC

AFFIDAVIT OF JOAN W. HARTLEY

PERSONALLY APPEARED BEFORE ME, Joan W. Hartley, who, being duly sworn, swears and deposes that if he were called as a witness in the above-entitled action she would truthfully and accurately testify as follows:

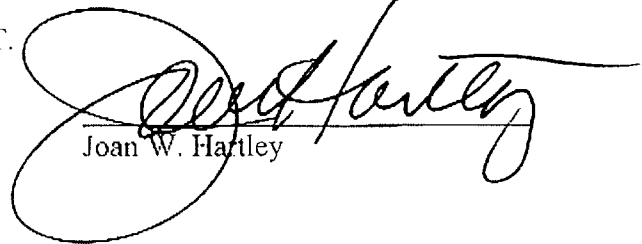
1. I am special counsel in the law firm of Nexsen Pruet, LLC, 1230 Main Street, Suite 700, Columbia, South Carolina 29201. I am an attorney of record in the above-captioned case, and I submit this affidavit in support of Respondent Roper Pond, LLC's Third Amended Petition for Attorneys' Fees and Costs and for Sanctions Pursuant to Rule 72, SCR PALC, in this matter.
2. Attached is a true and accurate copies of the following documents which are available on the Town of Arcadia Lakes website page at <http://www.arcadialakes.net/government/town-council-meeting-minutes/>:

Exhibit 1: Town of Arcadia Lakes, South Carolina, Basic Financial Statements
and Supplementary Information, December 31, 2014;

Exhibit 2: October 6, 2016 Council Meeting Minutes

The financial statements for other years were not provided on this website page.

FURTHER AFFIANT SAYETH NOT.



Joan W. Hartley

SWORN and subscribed to before me

this 3rd day of April, 2017

Karen M Thorell (L.S.)
Notary Public for South Carolina

My commission expires 3/25/24

Exhibit 1

TOWN OF ARCADIA LAKES, SOUTH CAROLINA
BASIC FINANCIAL STATEMENTS AND
SUPPLEMENTARY INFORMATION
DECEMBER 31, 2014

TOWN OF ARCADIA LAKES, SOUTH CAROLINA

BASIC FINANCIAL STATEMENTS AND

SUPPLEMENTARY INFORMATION

DECEMBER 31, 2014

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TOWN OF ARCADIA LAKES, SOUTH CAROLINA

PRINCIPAL OFFICIALS

DECEMBER 31, 2014

Mayor	Mark W. Huguley
Mayor Pro Tem	Donald R. Davis
Town Council	Peter F. Chesney Linda Z. Jackson W. Rusty Onley
Town Clerk	Christine Murphy

McGregor & COMPANY, LLP

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	W.W. Francis, CPA	L.B. Salley, CPA		C.D. Hinchee, CPA	F.C. Gillan, CPA	

INDEPENDENT AUDITORS' REPORT

Honorable Mayor and Members of the
Town Council
Town of Arcadia Lakes, South Carolina

We have audited the accompanying financial statements of the governmental activities and each major fund of the Town of Arcadia Lakes, South Carolina, as of and for the year ended December 31, 2014, and the related notes to the financial statements, which collectively comprise the Town of Arcadia Lakes' basic financial statements as listed in the table of contents.

Management's Responsibility for the Financial Statements

Management is responsible for the preparation and fair presentation of these financial statements in accordance with accounting principles generally accepted in the United States of America; this includes the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.

Auditor's Responsibility

Our responsibility is to express opinions on these financial statements based on our audit. We conducted our audit in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free from material misstatement.

An audit includes performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditor's judgment, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the entity's preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. Accordingly, we express no such opinion. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the financial statements.

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101 N MAIN STREET | SUITE 1510
GREENVILLE, SC 29601
(864) 751-6556 | FAX (864) 751-6557

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinions.

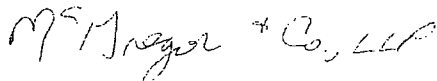
Opinions

In our opinion, the financial statements referred to above present fairly, in all material respects, the respective financial position of the governmental activities and each major fund of the Town of Arcadia Lakes, South Carolina, as of December 31, 2014, and the respective changes in financial position for the year then ended in accordance with accounting principles generally accepted in the United States of America.

Other Matters

Required Supplementary Information

Accounting principles generally accepted in the United States of America require that the management's discussion and analysis and budgetary comparison information on pages 3-6 and pages 21 and 22, respectively, be presented to supplement the basic financial statements. Such information, although not a part of the basic financial statements, is required by the Governmental Accounting Standards Board, who considers it to be an essential part of financial reporting for placing the basic financial statements in an appropriate operational, economic, or historical context. We have applied certain limited procedures to the required supplementary information in accordance with auditing standards generally accepted in the United States of America, which consisted of inquiries of management about the methods of preparing the information and comparing the information for consistency with management's responses to our inquiries, the basic financial statements, and other knowledge we obtained during our audit of the basic financial statements. We do not express an opinion or provide any assurance on the information because the limited procedures do not provide us with sufficient evidence to express an opinion or provide any assurance.



Columbia, South Carolina
October 1, 2015

TOWN OF ARCADIA LAKES, SOUTH CAROLINA

MANAGEMENT'S DISCUSSION AND ANALYSIS

YEAR ENDED DECEMBER 31, 2014

As management of the Town of Arcadia Lakes, we offer readers of the Town's financial statements this narrative overview and analysis of the financial activities of the Town for the fiscal year ended December 31, 2014. We encourage readers to consider the information presented here in conjunction with the financial statements and related notes, which can be found on pages 7-20 of this report.

OVERVIEW OF THE FINANCIAL STATEMENTS

This discussion and analysis is intended to serve as an introduction to the Town's basic financial statements. The Town's basic financial statements are comprised of two components: 1) basic financial statements, and 2) notes to the financial statements.

Basic Financial Statements. The basic financial statements are designed to provide readers with a broad overview of the Town of Arcadia Lakes' finances, in a manner similar to a private-sector business.

The statement of net position presents information on all of the Town of Arcadia Lakes' assets, liabilities and deferral inflows of resources, with the difference between the three reported as net position. Over time, increases and decreases in the net position may serve as a useful indicator of whether the financial position of the Town is improving or deteriorating.

The statement of activities presents information showing how the government's net position changed during the most recent fiscal year. All changes in net position are reported as soon as the underlying event giving rise to the change occurs, regardless of the timing of related cash flows. Thus, revenues and expenses are reported in this statement for some items that will only result in cash flows in future fiscal periods (e.g., earned but unused compensated absences).

Notes to the Financial Statements. The notes provide additional information that is essential to a full understanding of the data provided in the basic financial statements. The notes to the financial statements can be found on pages 13-20 of this report.

The basic financial statements include only the Town itself (known as the primary government) because the Town of Arcadia Lakes has no component units. The basic financial statements can be found on pages 7-12 of this report.

FINANCIAL HIGHLIGHTS

Key financial highlights for 2014 are as follows (with 2013 amounts shown in parentheses):

1. Total assets at year-end equaled \$1,126,749 (\$1,104,967), including \$3,502 (\$3,595) of capital assets, net of accumulated depreciation.
2. Total liabilities equaled \$2,145 (\$1,895).
3. Deferred inflows equaled \$42,438 (\$40,528).
4. The assets of the Town exceeded its liabilities and deferred inflows by \$1,082,166 (\$1,062,544) (net position). Of this amount, \$1,059,203 (\$1,039,011) (unrestricted net position) may be used to meet the Town's ongoing obligations to citizens and creditors. The other components of net position are \$3,502 (\$3,595) net investment in capital assets and \$19,461 (\$19,938) of restricted hospitality tax funds.

TOWN OF ARCADIA LAKES, SOUTH CAROLINA

MANAGEMENT'S DISCUSSION AND ANALYSIS

YEAR ENDED DECEMBER 31, 2014

FINANCIAL HIGHLIGHTS (Continued)

5. Total revenues equaled \$298,940 (\$284,750) and consisted entirely of general revenues. The major sources of the general revenues were \$146,449 (\$144,010) of licenses, permits, and franchise fees, \$103,512 (\$99,091) of local option sales tax revenue, \$20,976 (\$15,953) of state aid to local subdivisions, and \$26,202 (\$23,431) of hospitality tax revenues.
6. Total expenses equaled \$279,318 (\$178,443) and consisted entirely of general government expenditures. The Town's most significant expenses were \$126,444 (\$35,075) of solid waste management services and \$39,688 (\$38,885) of payroll expenses.
7. During 2014, net position increased \$19,622 to \$1,082,166, compared with an increase of \$106,307 during 2013 to \$1,062,544.

Category	Year End Balance		% of Total	
	2014	2013	2014	2013
Net Investment in Capital Assets	\$ 3,502	\$ 3,595	0%	0%
Restricted	19,461	19,938	2%	2%
Unrestricted	<u>1,059,203</u>	<u>1,039,011</u>	<u>98%</u>	<u>98%</u>
Totals	<u>1,082,166</u>	<u>1,062,544</u>	<u>100%</u>	<u>100%</u>

The Town uses its capital assets to provide services to citizens; consequently, these assets are not available for future spending. The category of restricted net position represents resources that are subject to restrictions imposed by state law, which requires that these assets be used for tourism-related activities. The balance of unrestricted net position may be used to meet the Town's ongoing obligations to citizens and creditors.

Regarding revenues for 2014, the most significant changes were the \$5,023 increase in state aid, the \$4,421 increase in local option sales tax, and the \$2,771 increase in hospitality tax, which were the main causes of the overall increase in the Town's total revenues of \$14,190. Regarding 2014 expenses, the most significant change was the increase in solid waste management expenses of \$91,369; which was the main cause of the increase in total expenses of \$100,875.

Government-Wide Financial Analysis

Net position may serve over time as a useful indicator of a government's financial position. In the case of the Town of Arcadia Lakes, assets exceeded liabilities and deferred inflows by \$1,082,166 an increase of \$19,622 or 2% from the prior year. Net position is reported in the three categories noted above: net investment in capital assets, restricted net position, and unrestricted net position.

TOWN OF ARCADIA LAKES, SOUTH CAROLINA
MANAGEMENT'S DISCUSSION AND ANALYSIS
YEAR ENDED DECEMBER 31, 2014

Financial Analysis of the Government's Funds

The Town of Arcadia Lakes, like other state and local governments, uses fund accounting to ensure and demonstrate compliance with finance-related legal requirements. The Town's two funds - both governmental funds - are the general fund and the special revenue fund. The focus of the Town's governmental funds is to provide information on near-term inflows, outflows, and balances of spendable resources. Such information is useful in assessing the Town's financing requirements, in particular unassigned fund balance may serve as a useful measure of a government's net resources available for spending at the end of the year.

As of the end of the current year, the Town's governmental funds reported combined ending fund balance of \$1,078,664 (\$1,058,949). The Town's general fund balance of \$1,059,203 (\$1,039,011) amounts to 98% (98%) of the total ending fund balance of the Town's governmental funds.

The general fund is the chief operating fund of the Town of Arcadia Lakes. At the end of 2014, the unassigned fund balance of the general fund was \$1,059,203 (\$1,039,011). As a measure of the general fund's liquidity, it may be useful to compare both unassigned fund balance and total fund balance to total fund expenditures. Unassigned fund balance represents 419% (657%) of total general fund expenditures, while total fund balance represents 386% (594%) of total expenditures.

The unassigned fund balance of the Town's general fund increased by \$20,192 (\$103,232) during 2014 which was higher than the budgeted change by \$20,192 (\$120,687). Overall general fund revenues were 4% over budget (28% over budget), while general fund expenditures were 4% under budget (29% under budget).

General Fund Budgetary Highlights

There were no changes between the original and final budgets of 2014 and 2013. The differences in budgeted and actual amounts referenced above were primarily caused by the following:

2014

- Business licenses and building permits revenue exceeded the budget by \$3,756 or 25%.
- Local option sales tax revenue exceeded the budget by \$3,112 or 3%.
- Contingency and miscellaneous expenditures were less than the budget by \$36,334 or 83%.
- Town Manager expenditures were less than the budget by \$12,500 or 100%.

TOWN OF ARCADIA LAKES, SOUTH CAROLINA

MANAGEMENT'S DISCUSSION AND ANALYSIS

YEAR ENDED DECEMBER 31, 2014

2013

- Local option sales tax revenues exceeded the budget by \$26,091 or 36%.
- Franchise license fee revenues exceeded the budget by \$17,850 or 39%.
- Solid waste management services expenditures were less than the budget by \$26,925 or 43%.

REQUESTS FOR INFORMATION

The financial report is designed to provide a general overview of the Town of Arcadia Lakes' finances for all those with interest in the government's finances. Questions concerning any of the information provided in this report or requests for additional financial information should be addressed to the Town Clerk, Town of Arcadia Lakes, 6911 North Trenholm Road, Suite 2, Columbia, South Carolina 29206.

TOWN OF ARCADIA LAKES, SOUTH CAROLINA

STATEMENT OF NET POSITION

DECEMBER 31, 2014

	<u>Governmental Activities</u>
Assets	
Current Assets	
Cash and Investments	\$ 1,093,433
Franchise Fees Receivable	<u>10,353</u>
Total Current Assets	<u>1,103,786</u>
Other Assets	
Restricted Cash	19,461
Capital Assets	
Nondepreciable	3,502
Furniture, Fixtures and Equipment Depreciable, Net of Accumulated Depreciation	<u>-</u>
Total Other Assets	<u>22,963</u>
Total Assets	<u>1,126,749</u>
Liabilities	
Current Liabilities	
Accrued Liabilities	<u>2,145</u>
Total Current Liabilities	<u>2,145</u>
Total Liabilities	<u>2,145</u>
Deferred Inflows of Resources	
Unearned Revenue	<u>42,438</u>
Net Position	
Net Investment in Capital Assets	3,502
Restricted For:	
Special Revenue (Tourism)	19,461
Unrestricted	<u>1,059,203</u>
Total Net Position	<u><u>1,082,166</u></u>

The accompanying notes to the financial statements are an integral part of this statement.

TOWN OF ARCADIA LAKES, SOUTH CAROLINA

STATEMENT OF ACTIVITIES

FOR THE YEAR ENDED DECEMBER 31, 2014

Activities:	Expenses	Program Revenues			Net (Expense) Revenue and Changes in Net Position Governmental Activities
		Fines, Fees and Charges for Services	Operating Grants and Contributions	Capital Grants and Contributions	
Governmental:					
General Government	\$ 279,318	\$ -	\$ -	\$ -	\$ (279,318)
Total Governmental Activities	279,318	-	-	-	(279,318)
General Revenues:					
					103,512
					26,202
					146,449
					20,976
					1,696
					105
Total General Revenues					298,940
Change in Net Position					19,622
Net Position, Beginning of Year					1,062,544
Net Position, End of Year					1,082,166

The accompanying notes to the financial statements are an integral part of this statement.

TOWN OF ARCADIA LAKES, SOUTH CAROLINA

BALANCE SHEET - GOVERNMENTAL FUNDS

DECEMBER 31, 2014

	Major Funds		Totals
	General	Special Revenue	
Assets			
Cash and Cash Equivalents	\$ 1,093,433		\$ 1,093,433
Restricted Cash		\$ 19,461	19,461
Franchise Fees Receivable	10,353		10,353
Total Assets	<u>1,103,786</u>	<u>19,461</u>	<u>1,123,247</u>
Liabilities and Fund Balances			
Liabilities			
Accrued Liabilities	2,145		2,145
Total Liabilities	<u>2,145</u>	<u>-</u>	<u>2,145</u>
Deferred Inflows of Resources			
Unearned Revenue	42,438		42,438
Fund Balances			
Restricted			
Special Revenue (Tourism)		19,461	19,461
Unassigned	1,059,203		1,059,203
Total Fund Balances	<u>1,059,203</u>	<u>19,461</u>	<u>1,078,664</u>
Total Liabilities, Deferred Inflows of Resources and Fund Balances	<u>1,103,786</u>	<u>19,461</u>	<u>1,123,247</u>

The accompanying notes to the financial statements are an integral part of this statement.

TOWN OF ARCADIA LAKES, SOUTH CAROLINA
RECONCILIATION OF THE GOVERNMENTAL FUNDS BALANCE SHEET
TO THE STATEMENT OF NET POSITION

DECEMBER 31, 2014

Total Fund Balances - Governmental Funds	\$1,078,664
Total net position reported for governmental activities in the Statement of Net Position is different because:	
Capital assets used in governmental activities are not financial resources and therefore are not reported in the governmental funds.	
Total Cost of Capital Assets	7,593
Total Accumulated Depreciation	<u>(4,091)</u>
Total Net Position - Governmental Activities	<u>1,082,166</u>

The accompanying notes to the financial statements are an integral part of this statement.

TOWN OF ARCADIA LAKES, SOUTH CAROLINA
 STATEMENT OF REVENUES, EXPENDITURES AND CHANGES IN FUND BALANCES -
 GOVERNMENTAL FUNDS
 FOR THE YEAR ENDED DECEMBER 31, 2014

	Major Funds		Total Governmental Funds
	General Fund	Special Revenue Fund	
Revenues			
State Aid	\$ 20,976		\$ 20,976
Local Option Sales Tax	103,512		103,512
Interest Income	1,696		1,696
Business Licenses and Building Permits	18,756		18,756
Franchise License Fees	63,590		63,590
MASC Tax	64,103		64,103
Hospitality Tax		\$ 26,202	26,202
Miscellaneous	105		105
Total Revenues	<u>272,738</u>	<u>26,202</u>	<u>298,940</u>
Expenditures			
General Government	252,546	26,679	279,225
Total Expenditures	<u>252,546</u>	<u>26,679</u>	<u>279,225</u>
Excess (Deficiency) of Revenues Over (Under) Expenditures	20,192	(477)	19,715
Fund Balances, Beginning of Year	<u>1,039,011</u>	<u>19,938</u>	<u>1,058,949</u>
Fund Balances, End of Year	<u>1,059,203</u>	<u>19,461</u>	<u>1,078,664</u>

The accompanying notes to the financial statements are an integral part of this statement.

TOWN OF ARCADIA LAKES, SOUTH CAROLINA
RECONCILIATION OF THE STATEMENT OF REVENUES, EXPENDITURES
AND CHANGES IN FUND BALANCES OF GOVERNMENTAL FUNDS TO THE STATEMENT OF ACTIVITIES
FOR THE YEAR ENDED DECEMBER 31, 2014

Net Change in Fund Balances - Total Governmental Funds \$ 19,715

The change in net position reported for governmental activities in the Statement of Activities is different because:

In the statement of activities the cost of depreciable assets is allocated over their estimated useful lives and reported as depreciation expense. This is the amount by which depreciation expense of \$93 exceeded capital outlay of \$0 in the current period.

(93)

Change in Net Position of Governmental Activities

19,622

The accompanying notes to the financial statements are an integral part of this statement.

TOWN OF ARCADIA LAKES, SOUTH CAROLINA

NOTES TO THE FINANCIAL STATEMENTS

Note 1 Summary of Significant Accounting Policies

Arcadia Lakes is a charter town in which citizens elect the mayor and council members at large. The Town operates under a Council form of government and provides the following services as authorized by its charter: public improvements, planning and zoning, and general and administrative services.

The financial statements of the Town of Arcadia Lakes, South Carolina are prepared in accordance with U. S. generally accepted accounting principles (GAAP). The Town's reporting entity applies all relevant Governmental Accounting Standards Board (GASB) pronouncements.

The accounting and reporting framework and the more significant accounting principles and practices are discussed in subsequent sections of this Note. The remainder of the Notes are organized to provide explanations, including required disclosures, of the Town's financial activities for the calendar year ended December 31, 2014.

Reporting Entity

In evaluating how to define the Town for financial reporting purposes, management has considered all potential component units. The decision to include a potential component unit in the reporting entity is made by applying the criteria set forth in GAAP, the primary criterion of which is financial accountability. The specific criteria used in determining potential component units include separately elected governing bodies, legally separate entity status, and fiscal independence. Based upon the application of these criteria, there are no component unit organizations that should be included in the financial reporting entity.

Basis of Presentation

Government-wide Financial Statements:

The government-wide financial statements (i.e., the statement of net position and statement of activities) report information on all of the activities of the Town.

The statement of activities demonstrates the degree to which the direct expenses of a given function or segment are offset by program revenues. Direct expenses are those that are clearly identifiable with a specific function or segment. Program revenues include: 1) charges to customers or applicants who purchase, use or directly benefit from goods, services, or privileges provided by a given function or segment and 2) grants and contributions that are restricted to meeting the operational or capital requirements of a particular function or segment. The Town had no program revenues during 2014.

Note 1 Summary of Significant Accounting Policies (Continued)

Basis of Presentation (Continued)

Taxes and other items not properly included among program revenues are reported instead as general revenues.

Fund Financial Statements:

The Town uses funds to maintain its financial records during the year. Fund accounting is designed to demonstrate legal compliance and to aid management by segmenting transactions related to certain Town functions or activities. A fund is defined as a fiscal and accounting entity with a self-balancing set of accounts. Major individual governmental funds are reported as separate columns in the fund financial statements.

The Town reported the following major governmental funds:

The general fund is the Town's primary operating fund. It accounts for all financial resources of the general government, except those required to be accounted for in another fund.

The special revenue fund is used to account for the transactions of the two percent (2%) local hospitality tax assessed by the Town.

Measurement Focus and Basis of Accounting

The government-wide financial statements are reported using the economic resources measurement focus and the accrual basis of accounting. Revenues are recorded when earned, and expenses are recorded at the time liabilities are incurred, regardless of the timing of related cash flows. Non-exchange transactions in which the Town receives value without giving equal value in return, include entitlements and donations. Revenue from entitlements and donations is recognized in the fiscal year in which all eligibility requirements have been satisfied.

Governmental fund financial statements are reported using the current financial resources measurement focus and the modified accrual basis of accounting. Revenues are recognized as soon as they are both measurable and available. The Town considers all revenues reported in the governmental funds to be available if the revenues are collected within sixty days after year-end. Expenditures are recorded when the related fund liability is incurred. General capital asset acquisitions are reported as expenditures in the governmental funds.

Note 1 Summary of Significant Accounting Policies (Continued)

Cash and Investments

The Town considers all highly liquid investments with a maturity of three (3) months or less when purchased to be cash equivalents. Cash and cash equivalents include all amounts in demand deposit accounts as well as short-term investments with a maturity date within three (3) months of the date acquired by the government.

Accounts Receivable

Accounts receivable are recorded net of an amount for doubtful accounts based on management's assessment of collection. For the current year, all accounts receivable are considered collectible.

Capital Assets

Capital assets, which include property and equipment, are reported in the government-wide financial statements. Capital assets are defined by the Town as assets with an initial, individual cost greater than or equal to \$1,000 and have an estimated useful life in excess of three years. Management has elected to include certain homogeneous asset categories with individual assets less than \$1,000 as composite groups for financial reporting purposes. Donated capital assets are recorded at estimated fair market value at the date of donation.

The costs of normal maintenance and repairs that do not add to the value of the asset or materially extend the asset's useful life are not capitalized.

Capital assets are depreciated using the straight-line method over the following estimated useful lives:

Assets	Years
Equipment	5-20

Budgets

The Town Council legally adopts an annual budget for General Fund revenues and expenditures prior to the beginning of each calendar year. The Town Clerk is authorized to transfer budgeted amounts between line items within any fund; however, any revisions that alter the total expenditures of any fund must be approved by Town Council.

Deferred Outflows/Inflows of Resources

In addition to assets, the statement of net position and/or balance sheet will sometimes report a separate section for deferred outflows of resources. This separate financial statement element, deferred outflows of resources, represents a consumption of net position that applies to a future period(s) and so will not be recognized as an outflow of resources (expense/expenditure) until then. Currently, the Town has no items that qualify for reporting in this category.

Note 1 Summary of Significant Accounting Policies (Continued)

Deferred Outflows/Inflows of Resources (Continued)

In addition to liabilities, the statement of net position and/or balance sheet will sometimes report a separate section for deferred inflows of resources. This separate financial statement element, deferred inflows of resources, represents an acquisition of net position that applies to a future period(s) and so will not be recognized as an inflow or resources (revenue) until that time. The Town has one item that qualifies for reporting in this category; unearned revenue. These amounts are recognized as an inflow of resources in the period that the amounts become available. Refer to the note on unearned revenue.

Net Position

The net position of the Town is the difference between assets plus any deferred outflows of resources and liabilities plus any deferred inflows or resources. The three categories of the net position presented in the government-wide statement of net position are:

Net Investment in Capital Assets, consists of capital assets, net of accumulated depreciation, reduced by the outstanding balances of any borrowings and unamortized premiums related to the acquisition of those assets.

Restricted Net Position represents resources restricted externally by creditors, grantors or laws or regulations of other governments or restrictions imposed by law through constitutional provisions or enabling legislation.

Unrestricted Net Position represents the remaining resources of the Town in government-wide activities.

It is the Town's policy to apply restricted resources when an expense is incurred for purposes for which both restricted and unrestricted resources are available.

Fund Equity

In the fund financial statements, governmental funds report aggregate amounts for five classifications of fund balances based on the constraints imposed on the use of these resources.

Nonspendable Fund Balance includes amounts that cannot be spent because they are either (a) not in spendable form - prepaid items or inventories; or (b) legally or contractually required to be maintained intact.

Restricted Fund Balance reflects balances that can only be used for specific purposes stipulated by constitution, external resource providers or enabling legislation.

Note 1 Summary of Significant Accounting Policies (Continued)

Fund Equity (Continued)

Committed Fund Balances reflects balances that can only be used for specific purposes pursuant to constraints imposed by formal resolutions or ordinances adopted by the Town Council - the government's highest level of decision-making authority. Those committed amounts cannot be used for any other purpose unless the Town Council removes the specified use by taking the same type of action that created the commitment. - This classification also includes contractual obligations to the extent that existing resources in the fund have been specifically committed for use in satisfying those contractual requirements.

Assigned Fund Balance reflects the amounts constrained by the Town's "intent" to be used for specific purposes, but are neither restricted nor committed.

Unassigned Fund Balance is the residual classification for the General Fund. It is also used to report negative fund balances in other governmental funds.

When both restricted and unrestricted fund balances are available for use, it is the Town's policy to use externally restricted fund balances first, then unrestricted fund balance - committed, assigned, and unassigned - in order as needed.

Use of Estimates

The preparation of financial statements in conformity with U. S. generally accepted accounting principles requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenditures during the reporting period. Actual results could differ from those estimates.

Note 2 Custodial Credit Risk

Cash

Custodial credit risk is the risk that in the event of a bank failure, account deposits in excess of FDIC insurance, may not be returned to the Town. As of December 31, 2014, the carrying amount of the Town's bank deposits was \$407,330 and the respective bank balances totaled \$416,022. The total bank balance, \$416,022 was insured through the Federal Depository Insurance Corporation (FDIC).

Investments

Custodial Credit Risk of investments is the risk that in the event of a failure of the counterparty, the Town may not be able to recover the value of its investments or collateral securities that are in the possession of an outside party. As of December 31, 2014, none of the Town's investments were exposed to custodial credit risk. There were no deposit or investment transactions during the year that were in violation of either the state statutes or the policy of the Town.

Note 2 Custodial Credit Risk (Continued)

Investments (Continued)

The Town has \$705,564 in funds invested with the South Carolina State Treasurer's Office which established the South Carolina Local Government Investment Pool (the Pool) pursuant to Section 6-6-10 of the South Carolina Code. The Pool is an investment trust fund, in which public monies in excess of current needs under the custody of any county treasurer or any governing body or political subdivision of the State may be deposited. Funds invested in South Carolina Local Government Investment Pool are fully collateralized by securities of the United States, obligations of the State of South Carolina or any of its political subdivisions.

Note 3 Capital Assets

Capital asset activity for the year ended December 31, 2014, was as follows:

	Beginning Balance	Increases	Decreases	Ending Balance
Governmental Activities:				
<i>Capital Assets Not Being Depreciated:</i>				
Land	\$3,502	-	-	\$3,502
<i>Capital Assets Being Depreciated:</i>				
Furniture, Fixtures and Equipment	4,091	-	-	4,091
Less Accumulated Depreciation for:				
Furniture, Fixtures and Equipment	(3,998)	\$(93)	-	4,091
Total Capital Assets Being Depreciated, Net	93	(93)	-	-
Governmental Activities Capital Assets, Net	<u>3,595</u>	<u>(93)</u>	-	<u>3,502</u>

Depreciation expense was charged to functions
as follows:

General Government \$93

Note 4 Unearned Revenue

The Town has signed franchise agreements with providers for the following utility services: electricity & gas, telecommunications, and cable television. The contracts with the electricity and gas and cable television providers call for annual payments of a certain percentage of gross sales revenue during the preceding calendar year. Payments received from the electricity and gas provider give that company the right to provide its services in the Town the succeeding calendar year. This amount is reported as deferred inflows of resources on the statement of net position and balance sheet. The following comprises the Town's unearned franchise fees:

Note 4 Unearned Revenue (Continued)

	Balance 1/1/14	Receipts	Revenues	Balance 12/31/14
SCE&G - Electricity and Gas Franchise Fees	\$40,528	\$42,438	\$40,528	\$42,438

Note 5 Hospitality Tax Revenues

On June 5, 2003, the Town Council adopted an ordinance providing for a local hospitality tax. Effective July 1, 2003, the ordinance requires the collection of a two percent (2%) tax on the gross proceeds of sales of prepared meals and beverages sold in establishments within the Town of Arcadia Lakes.

Payment is remitted to the Town on a monthly basis. Proceeds of the hospitality tax are temporarily restricted under the South Carolina Code of Laws Section 6-1-730 which requires that the funds be spent for tourism-related improvements, activities, and promotions. The hospitality tax funds are accounted for in the Town's Special Revenue Fund.

Note 6 Contingency

In February of 2009, the Town along with a number of its resident individuals ("individual petitioners"), filed a request in Administrative Law Court ("ALC") for review of a decision of the South Carolina Department of Health and Environmental Control ("SCDHEC") to issue a stormwater permit to Roper Pond, LLC in connection with a proposed development ("the development") adjacent to the Town, which included filling in some wetlands and excavating what is referred to as the "lily pad pond." On January 21, 2010 the ALC upheld SCDHEC's granting of the permit. On April 20, 2010, the Town and individual petitioners filed an appeal of the ALC decision in the South Carolina Court of Appeals ("Court of Appeals"). On March 6, 2013, the Court of Appeals issued an opinion affirming the ALC's order which held that the Town and individual petitioners lacked standing to maintain the action and that SCDHEC's permitting of the development was proper. On March 6, 2013, the Town and individual petitioners requested reconsideration by the Court of Appeals. On June 12, 2013, the Court of Appeals withdrew its order of March 6, and substituted a new opinion which similarly affirmed the ALC's order. The Town's attorney of record on the case has noted that the Court of Appeals' opinion applied an erroneous standing standard, affecting standing of the Town and individual petitioners. On July 11, 2013, the Town and individual petitioners filed a request for the Court of Appeals' decision to be reviewed by the South Carolina Supreme Court (a *writ of certiorari*) which was granted on August 22, 2014. The Supreme Court heard arguments on March 18, 2015 and issued an order dismissing the appeal as moot on April 9, 2015. Roper Pond, LLC filed a motion for costs in the Supreme Court, which was denied on June 17, 2015. Prior to the Town's appeal of the case, Roper Pond, LLC filed a motion in the ALC for attorneys' fees, costs, and sanctions. This motion was amended after the Supreme Court decision, and the Town filed a response on August 24, 2015. Roper Pond's petition consisted of a declaration that it is entitled to attorneys' fees and costs because it claims victory; however, Roper Pond failed to meet the essential element of being the prevailing party. The Supreme Court did not affirm the lower court opinions, instead concluding that because Roper Pond had proceeded with and completed the

Note 6 Contingency (Continued)

challenged construction during the pendency of the appeal, the case was moot because it was "impossible for this Court to grant any redress in the context of the issues framed and litigated below." The Town's response asserted that Roper Pond failed to show that it was the prevailing party or that the case was frivolous, brought solely for the purpose of delay, or brought without substantial justification. The inquiry of frivolity turns on whether the attorney had a reasonable basis for filing the case, which raises the question of what a reasonable attorney in the same situation would do. In support of these arguments, counsel for the Town attached the affidavits of three attorneys who were consulted prior to filing the case, while the case was pending in the Court of Appeals and after the final decision from the Supreme Court. The affidavits all opined that the Town acted with substantial justification in pursuing this case, and that the Town has a reasonable basis in fact and law for pressing their claims against Roper Pond and SCDHEC. No decision has been made on this motion to date. The amount of costs or damages, if any, that may result from the settlement of this case, cannot presently be determined.

Note 7 Subsequent Events

Management evaluated the effects subsequent events would have on the financial statements through the date of the auditors' report, which is the date the financial statements were available for issuance.

TOWN OF ARCADIA LAKES, SOUTH CAROLINA

SCHEDULE OF REVENUES, EXPENDITURES AND CHANGES IN FUND BALANCE -
BUDGET AND ACTUAL - GENERAL FUND

FOR THE YEAR ENDED DECEMBER 31, 2014

	Original Budget	Actual	Variance Favorable (Unfavorable)
Revenues			
State Aid	\$ 18,500	\$ 20,976	\$ 2,476
Local Option Sales Tax	100,400	103,512	3,112
Interest	3,050	1,696	(1,354)
Business Licenses and Building Permits	15,000	18,756	3,756
Franchise License Fees	62,000	63,590	1,590
MASC Tax	64,000	64,103	103
Miscellaneous	-	105	105
Total Revenues	<u>262,950</u>	<u>272,738</u>	<u>9,788</u>
Expenditures - General Government			
Advertising	200	153	47
Association Dues	500	300	200
Accounting and Audit	8,000	6,250	1,750
Legal	10,000	12,096	(2,096)
Automobile	2,800	2,800	-
Building Inspections	2,000	2,740	(740)
Equipment Repairs	2,000	1,885	115
Clerk's Salary	20,800	20,800	-
Clerk's and Bookkeeper's Bonuses	750	750	-
Contingency and Miscellaneous	44,000	7,666	36,334
Council Compensation	14,500	15,200	(700)
Election	700	-	700
Payroll Taxes	3,000	2,938	62
Insurance	10,000	5,269	4,731
Seminars, Meetings, and Planning	5,000	725	4,275
Memorials and Gifts	200	-	200
Office Supplies, Postage, and Printing	4,000	5,560	(1,560)
Part-Time Bookkeeper	6,000	8,812	(2,812)
Project Beautification and Signs	2,000	843	1,157
Solid Waste Management Services	80,500	126,444	(45,944)
NPDES	2,000	-	2,000
Utilities, Rent, and Other Town Hall Expenses	19,000	17,735	1,265
Town Manager	12,500	-	12,500
Law Enforcement	12,500	13,580	(1,080)
Total Expenditures - General Government	<u>262,950</u>	<u>252,546</u>	<u>10,404</u>
Excess of Revenues Over Expenditures	<u>-</u>	<u>20,192</u>	<u>20,192</u>
Fund Balance, January 1, 2014		<u>1,039,011</u>	
Fund Balance, December 31, 2014		<u>1,059,203</u>	

TOWN OF ARCADIA LAKES, SOUTH CAROLINA

SCHEDULE OF REVENUES, EXPENDITURES AND CHANGES IN FUND BALANCE -
BUDGET AND ACTUAL - SPECIAL REVENUE FUND

FOR THE YEAR ENDED DECEMBER 31, 2014

	Original Budget	Actual	Variance Favorable (Unfavorable)
Revenues			
Hospitality Tax	\$ 24,500	\$ 26,202	\$ 1,702
Total Revenues	<u>24,500</u>	<u>26,202</u>	<u>1,702</u>
Expenditures			
Annual Picnic and Other Social Events	3,900	3,834	66
Street Maintenance and Litter Pick Up	3,500	2,754	746
Office Supplies, Postage, and Printing	-	215	(215)
Project Beautification and Signs	2,600	3,220	(620)
Street Lights	14,500	16,656	(2,156)
Total Expenditures	<u>24,500</u>	<u>26,679</u>	<u>(2,179)</u>
Excess (Deficiency) of Revenues Over Expenditures	<u>-</u>	<u>(477)</u>	<u>(477)</u>
Fund Balance, January 1, 2014		<u>19,938</u>	
Fund Balance, December 31, 2014		<u><u>19,461</u></u>	

Exhibit 2

TOWN OF ARCADIA LAKES
COUNCIL MEETING
OCTOBER 6, 2016

Town Council of Arcadia Lakes met Thursday, October 6, 2016 in the Town Hall Conference Room at 6:00 PM.

Mayor Huguley opened the meeting with the Pledge of Allegiance.

ATTENDING were Mayor Huguley, Council members: Peter Chesney, Linda Jackson and Michael Smith. Also attending were Attorney Charles Cook, Town Clerk Christine Murphy; Town residents: Peggy Smith.

DEPUTY'S REPORT: Richland County Deputy Kim Marcus reported a Burglary at 800 Arcadia Lakes Drive on September 16. He reminded residents to lock doors, turn lights on, and report any suspicious person or activities to 911 if emergency, or 576-3000 for non-emergencies. No one should be walking around after 10 PM, and most break-ins occur between 12:00 and 4 :00 AM, he said. Deputy Marcus reminded everyone to keep vehicles locked at all times, and to remove all valuables.

RABID FOX: Mayor Huguley , who found out the hard way by trapping a Rabid fox, that DNR might trap one, or an individual might have to, like He and Sally had to do. Animal Control handles cats and dogs; DHEC is only responsible for testing for rabies, and will not go out and trap them. Town resident Frank Lee had already been bitten by the fox on Cary Lane.

SEPTEMBER MINUTES: Mayor Huguley asked if there were any corrections or additions to the September minutes. Ms. Jackson said that Officer Alea's name was misspelled. It should be Alia. Mr. Smith said he had seconded the minutes and said that as soon as any action or information is taken on LC property, that it should be dispersed to council members immediately and not wait until the next meeting. Mr. Peter Chesney said that the Beautification figure should be changed to \$4,300, left to finish the job rather than \$1,500.00. The flower bed with ground cover is \$8,000 rather than \$4,800.00. The water meter was installed for \$2,800, which included a battery powered sprinkler. Mr. Smith moved that the minutes be approved, with corrections. Mayor Huguley seconded the motion which was approved.

FIRST CITIZENS RESERVE ACCOUNT: After discussion, Mayor Huguley moved that council approve tonight the addition of his signature and Linda Jackson's signature to the list of persons authorized to sign checks on the First Citizens Account, for the purpose of being able to access the money in an emergency, or otherwise approved by council. Christine is already authorized to sign. It will be a requirement of council for two signatures on each check written on that account. Ms. Jackson seconded the motion which was approved. Mr. Smith said the signature cards and resolution need to be ratified at the next meeting.

FINANCIAL: Mr. Chesney said he had reviewed the audit report from McGregor & Company for the Year 2015, and had summarized the figures for the past five years, showing where finances are. He said he had made a break-down of the town's income, which showed that franchise fees should be going up. Mayor Huguley said there had been three exceptional good years in terms of surplus.

DONATION TO SHERIFF'S DEPARTMENT: Christine reported that she had received a call from the Sheriff's Department, requesting support of the calendar/poster being made up. For only \$125 Donation, we would get a calendar/poster/ made up with donor's names. Mayor Huguley moved That council contribute \$125.00 donation to the Richland County Sheriff's Department, which was approved.

LC USED CAR LOT :- Attorney Cook said he had visited the AVF Auto Center on Two Notch , and told the owner that the old cars parked at the back fence need to be stored more orderly; Water needs to be drained better towards the street, and the back fence needs to be repaired. Mr. Cook said he asked the owner to present him with a plan, showing that he plans to continue to abide by the light commercial zoning regulations of Arcadia Lakes. Mayor Huguley suggested to Mr. Cook that he draft a letter to AVF Auto Center, over Christine Murphy's signature as Zoning Administrator.

STREET LIGHTING: Street Lighting was deferred, due to Don Davis's absence, who is in charge of Lighting.

BEAUTIFICATION: Mr. Chesney reported that the flower bed on the corner of Trenholm and Arcadia Lakes Drive is in the process of eventually becoming a gateway to Arcadia Lakes, along with the Cary Lane flower bed. He had Daryl Harper take out a small tree, for \$150.00. Mr. Chesney said he plans to have a small retaining wall built around the corner. He presented a flower planting plan from "The Grounds Guys of Columbia." , that will be finalized with Columbia Green, who gave the town a \$3,000 Grant. Mr. Chesney said there is only \$4300.00 left in the Beautification budget, which leaves a shortfall of \$2400.00, if council will allow that to be taken out of the Town's Reserve Fund. Mayor Huguley said council could form a two person committee to meet with Auditor Phil Betette to look for an appropriate way to handle the addition of a shortfall , based on anticipated charges. When it is determined, council will be notified. If necessary, a special meeting will be held to address the topic, Mayor Huguley said.

CARY LAKE HOMEOWNER'S ASSOCIATION : Mr. Chesney reported that the president of Cary Lake Homeowner's Association had received a letter from the Small Business Administration that provides the money from FEMA, stating that Cary Lake had been approved for a loan. Tax notices should come out the end of the month. An additional \$1500 per year should be added to the homeowners ' taxes to help pay off the loan. Mr. Chesney said that DHEC, RC Storm Water Department and DOT had accepted that a dam will not be built but an Ogee is acceptable.

TOWN PICNIC: Christine reported that the Town picnic notices have been distributed. It will be Sunday, October 9th from 3:00 'til 6:00, inside if it is raining. Christine said she will be there around 1:00 when the tables, chairs, and tents, if the weather permits, arrive. . Linda Jackson said she had three musicians lined up to play, and said she will be there around 1:00 to help set up.

There being no further business, the meeting was adjourned.

Christine Murphy, Town Clerk

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Town of Arcadia Lakes, Robert L. Jackson,
Linda Z. Jackson, Robert E. Williams, Barbara
S. Williams, Elizabeth M. Walker, Louis E.
Spradlin, Mary Helen Spradlin, Thomas Hutto
Utsey, Tony Sinclair, Aaron Small, Bette
Small, Gene F. Starr, M.D., Elaine J. Starr,
Sanford T. Marcus, Ruth L. Marcus, and
Steven Brown,

Petitioners,

vs.

South Carolina Department of Health and
Environmental Control and Roper Pond, LLC,

Respondents.

Docket No. 09-ALC-07-0069-CC

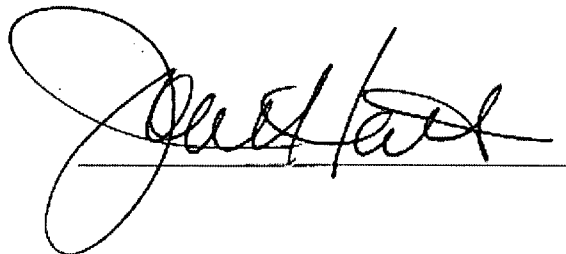
CERTIFICATE OF SERVICE

COPY

This is to certify that **Supplemental Brief in Support of Respondent Roper Pond, LLC's Third Amended Petition for Fees, Costs, and Sanctions** has been served on counsel of record by placing the same in the United States mail, first class postage prepaid, addressed to the following as shown below this 3rd day of April, 2017:

Stephen P. Hightower, Esquire
South Carolina Department of
Health and Environmental Control
2600 Bull Street
Columbia, SC 29201

Amy E. Armstrong, Esquire
S.C. Environmental Law Project
P.O. Box 1380
Pawleys Island, SC 29585



FILED

APR 03 2017

SC ADMIN. LAW COURT

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED

APPEAL FROM THE ADMINISTRATIVE LAW COURT

JUN 07 2018

John D. McLeod, Administrative Law Judge

SC Court of Appeals

Case No. 09-ALJ-07-0069-CC

Town of Arcadia Lakes, Robert L. Jackson, Linda Z. Jackson, Robert E. Williams, Barbara S. Williams, Elizabeth M. Walker, Louis E. Spradlin, Mary Helen Spradlin, Thomas Hutto Utsey, Tony Sinclair, Aaron Small, Bette Small, Gene F. Starr, M.D., Elaine J. Starr, Sanford T. Marcus, Ruth L. Marcus, and Steven Brown. Petitioners,

Of Which Town of Arcadia Lakes is Appellant/Respondent,

v.

South Carolina Department of Health and Environmental Control. Respondent,

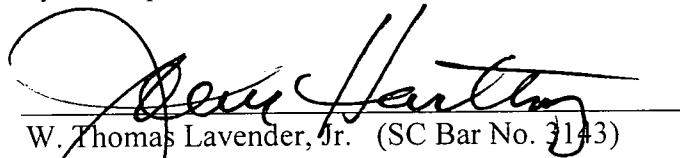
and

Roper Pond, LLC Respondent/Appellant.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Appendix to Record on Appeal contains all materials proposed to be included by any of the parties and not any other material.

June 7, 2018



W. Thomas Lavender, Jr. (SC Bar No. 3143)

Joan W. Hartley (SC Bar No. 72735)

NEXSEN PRUET, LLC

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