THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENWOOD COUNTY
Court of Common Pleas

Frank R. Addy, Circuit Court Judge

Case No. 2011-CP-01-242

Danny Hozey and Terry Richey, Appellants,

v.

Abbeville County School Board, Respondent.

BRIEF OF RESPONDENT

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STATEMENT OF THE CASE

This is an appeal from the circuit court's grant of summary judgment to the Respondent, Abbeville County School Board ("the Board"), on March 5, 2012. The Appellants, Danny Hozey and Terry Richey, filed suit against the Board on September 21, 2011, complaining that the Board closed Calhoun Falls High School ("CFHS" or "the School") and entered into an agreement to charge fees to a third party, Calhoun Falls Charter School, for Charter School students attending classes at the Abbeville County Career Center "without following proper procedure or policy," referring to alleged discussions by the Board of items in executive session that were closed to the public and to an alleged failure to provide notice to the public of its meetings. (R. p. 13, Complaint at ¶ 9). Appellants sought declaratory and injunctive relief, specifically an order declaring the acts of the Board null and void, declaring the fees charged for students at the Charter School to be unlawful, rescinding the Board's decision to close CFHS, and directing the Board to re-open CFHS. (R. pp. 13-14, Complaint at ¶¶ 12-14 and prayer for relief).

The Board accepted service of the Complaint on October 3, 2011 and moved for dismissal of the Complaint pursuant to Rule 12(b)(6), SCRCP, or , in the alternative, for summary judgment pursuant to Rule 56, SCRCP, on October 20, 2011. The Board sought dismissal of the case on the grounds that the Appellants lacked standing and that the Complaint failed to state facts sufficient to constitute a cause of action. The Board's alternative motion for summary judgment was based on the grounds that the action is barred by the one-year statute of limitations under the South Carolina Freedom of Information Act ("FOIA"), laches, and estoppel. In support of and contemporaneously

with its Motion for Summary Judgment, the Board filed and served the Affidavit of Ivan Randolph, Ph.D. on October 20, 2011.

The circuit court held a hearing on the Board's Motion on January 10, 2012. Appellants served no affidavits prior to the hearing, but subsequently, on or about February 13, 2012, filed three affidavits along with a Memorandum of Law. In response, on February 20, 2012, the Board filed the Affidavit of Ivan Randolph, Ph.D. in Reply to Plaintiff's Memorandum in Opposition to Defendant's Motion for Summary Judgment.

The circuit court denied the Board's Motion to Dismiss, but granted its Motion for Summary Judgment. The circuit court's formal Order, issued on March 5, 2012, dismissed the Complaint on the grounds that it was barred by the statute of limitations, that Appellants lacked standing to complain of the charging of fees for Charter School students, and that the court had no justifiable reason to substitute its judgment for the legislative decision of the Board, a publicly-elected body, to close CFHS. (R. pp. 1-8, Order).

Appellants filed a Motion for Reconsideration on March 16, 2012. The circuit court denied the Motion for Reconsideration by Order filed on April 25, 2012, which was received by Appellants on April 26, 2012. Appellants filed a Notice of Appeal on May 25, 2012. On May 31, 2012, counsel for the Board received the Notice of Appeal, which was served by U.S. Mail in an envelope postmarked on May 30, 2012.

STATEMENT OF FACTS

The Board is the governing body of the Abbeville County School District ("the School District"), which operates the public schools in Abbeville County, South Carolina. CFHS was one of the schools operated by the School District until its closure following

the 2007-2008 school year. (R. p. 18, Randolph Aff. at ¶ 4). Calhoun Falls Charter School ("the Charter School") opened in August 2008 in the former CFHS building; the Charter School is not operated by the School District. *Id.* at ¶ 5. The Appellants, Danny Hozey and Terry Richey, are citizens and taxpayers of Abbeville County. Neither Appellant has children enrolled in the School District's public schools or in the Charter School. *Id.* at ¶¶ 7 and 8.

The Board voted to close CFHS in a public meeting on December 14, 2007. (R. p. 17, Randolph Aff. at ¶ 2). This meeting was a special called meeting and followed several weeks of public discussion by the Board and others concerning whether to close CFHS. *Id.* Prior to the meeting, the Board posted an agenda that included, as items for discussion and action, the status of CFHS; a possible recommendation from the Superintendent; and action by the Board "deemed necessary and appropriate as a result of this discussion." (R. pp. 73-74, Randolph Aff. at ¶ 2; R. p. 79, Exh. A). At the meeting, the Board discussed, in a public session, whether to close CFHS and, following the discussion, voted in public to close the school. R. p. 74, Randolph Aff. at ¶ 3; R. pp. 81-97, Exh. B).

For subsequent public meetings, the Board posted agenda items notifying the public of further discussions of the decision to close CFHS; plans to transition CFHS students to other schools within the School District; transfer of the CFHS property to the Town of Calhoun Falls; and the plans of the Town to operate a charter school using the former CFHS building and property as its physical facility. (R. pp. 74-76, Randolph Aff. at ¶¶ 4, 6, 8, 10, 12; R. pp. 99-100, Exh. C; R. p. 130, Exh. E; R. p. 135, Exh. G; R. p. 146, Exh. I; R. p. 155, Exh. K). Following the public discussions and meetings, the

Board formally deeded the CFHS property to the Town and, at its public meeting on June 24, 2008, delivered a deed and the keys of the school to the Town. (R. p. 77, Randolph Aff. at ¶ 13; R. p. 159, Exh. L). The School District reassigned the students who formerly attended CFHS to other public high schools operated by the District. (R. pp. 74-75, Randolph Aff. at ¶ 5; R. pp. 119-21, Exh. D).

The Charter School received its charter from the South Carolina Charter School District and opened for operations in August 2008, in the building formerly used for CFHS. On August 29, 2008, the School District and the Charter School entered into a Memorandum of Agreement whereby the Charter School agreed to pay the School District a stated amount for each Charter School student who enrolled in classes at the Abbeville County Career Center, which is operated by the School District. (R. p. 18, Randolph Aff. at ¶ 6).

ARGUMENT

I. Standard of Review

An order of summary judgment under Rule 56, SCRCP, is proper when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Harris Teeter, Inc. v. Moore & Van Allen, PLLC*, 390 S.C. 275, 701 S.E.2d 742 (2010); *Gause v. Smithers*, 384 S.C. 130, 681 S.E.2d 607 (Ct. App. 2009). "Summary judgment is proper when plain, palpable, and indisputable facts exist on which reasonable minds cannot differ." *Byerly v. Connor,* 307 S. C. 441, 445, 415 S.E.2d 796, 799 (1992). A party opposing a motion for summary judgment may not rest on the mere allegations of his pleadings, but must set forth specific facts showing that there is a genuine issue of

material fact to be considered by a jury. *Thomas v. Waters*, 315 S.C. 534, 445 S.E.2d 659 (Ct. App. 1994).

II. The Circuit Court Properly Granted Summary Judgment to the Respondent.

A. This action is barred by the one-year statute of limitation in the South Carolina Freedom of Information Act.

1. This action alleges violations of the South Carolina Freedom of Information Act.

The South Carolina Freedom of Information Act ("FOIA"), found at S.C. Code Ann. §§ 30-4-10, et seq. (2007 and Supp. 2011), requires public entities to comply with particular notice and disclosure requirements in conducting meetings and taking certain actions. Appellants used typical FOIA language in their Complaint when they alleged that the Board did not provide "proper notice to the community of issues to be heard by the School Board" and that it also failed to follow proper procedures in conducting their meetings and in discussing items in closed or executive sessions. (R. p. 13, Complaint at ¶ 9). Although Appellants do not expressly allege FOIA as the basis for their action, the circuit court found that their claims were based on FOIA and any redress they may obtain would be that available through FOIA. (R. pp. 4-5, Order at § I). Appellants did not appeal the ruling that FOIA applied to this case and seem to have conceded in their brief to this Court that this is a FOIA action. (*See* Appellants' Brief at p. 4).

2. The one-year statute of limitation in the South Carolina Freedom of Information Act bars this action.

Lawsuits asserting FOIA violations must be filed in circuit court "no later than one year following the date on which the alleged violation occurs or one year after a public vote in public session, whichever comes later." S.C. Code Ann. § 30-4-100 (2007). Appellants filed their Complaint on September 21, 2011, well beyond one year

after the alleged violations of FOIA and the public vote by the Board to close CFHS. This action is, therefore, barred by the statute of limitation contained within FOIA.

The Board voted to close CFHS at a public meeting on December 14, 2007, a matter which is substantiated by the affidavit of Dr. Ivan Randolph, District Superintendent, filed with the Respondent's motion. (R. p. 17, Randolph Aff. at ¶ 2). Dr. Randolph's affidavit also established that the Charter School entered into a contract with the School District on August 29, 2008, in which it agreed to pay fees for each of its students who enrolled in classes at the Abbeville County Career Center, operated by the School District. (R. p. 18, Randolph Aff. at ¶ 6). The Appellants filed this action with the Abbeville County Clerk of Court on September 21, 2011, and the Board accepted service on October 3, 2011, more than three years after the Board voted to close CFHS and the Charter School agreed to pay fees for its students to attend the Career Center. Clearly, Appellants' Complaint is barred by the one-year limitations period set out in § 30-4-100.

3. The discovery rule does not apply to the FOIA statute of limitations so as to allow Appellants more than one year to sue after the deliberations and public vote to close Calhoun Falls High School.

Appellants argue that their claims are not barred by the FOIA statute of limitations because the "discovery rule" applies to their claims, giving them additional time within which to sue. They allege that the Board acted "secretly and . . . out of sight" and that Appellants were unaware that they may have a cause of action against the Board's action. (Appellants' Brief at p. 4). They argue that "[t]o dismiss the Appellants' claim due to their lack of knowledge of the Respondent's wrongdoing would be to award [sic] the Respondent for effectively hiding their actions." *Id.*

The FOIA statute of limitation is clearly expressed at S.C. Code Ann. 30-4-100 (2007):

> Any citizen of the State may apply to the circuit court for either or both a declaratory judgment and injunctive relief to enforce the provisions of this chapter in appropriate cases as long as such application is made no later than one year following the date on which the alleged violation occurs or one year after a public vote in public session, whichever comes later.

The statute is unambiguous and required that Appellants file suit no later than one year from the date of the alleged FOIA violation or one year after a public vote in public session. The pertinent facts are not in dispute: Appellants filed their suit more than one year after the public deliberations on the closing of CFHS and more than one year after the vote in public session to close CFHS. Their case is clearly barred by the operation of the FOIA statute of limitations.

In an effort to avoid the application of the one-year statute in FOIA, Appellants cite to two tort cases in which the discovery rule was applied to the statute of limitations applicable in those cases: *Bayle v. S.C. Dep't. of Transp.*, 344 S.C. 115 542 S.E.2d 736 (Ct. App. 2001), which applied the Tort Claims Act statute of limitations at S.C. Code Ann. § 15-78-110, and *Moriarty v. Garden Sanctuary Church of God*, 341 S.C. 320, 534 S.E. 2d 672 (2000), which applied the personal injury statute of limitations set out in S.C. Code Ann. §§ 15-3-530 and -535. However, both of those statutes of limitations expressly incorporate the discovery rule. The FOIA statute of limitations does not. The discovery rule simply is not applicable to this or any other FOIA cases.

4. This action was not timely commenced, even if the discovery rule applied to the statute of limitations in the South Carolina Freedom of Information Act, which it does not.

Even if the discovery rule applied to this case, the record clearly establishes that three to four years prior to commencing their lawsuit, Appellants knew or should have

known of the issues on which they base their Complaint. Appellants allege what constitutes FOIA violations occurring in connection with the deliberations leading to the closing of CFHS and the actual vote to close the School. The deliberations and the vote to close CFHS occurred in 2007, almost four years before Appellants commenced this lawsuit. These actions were anticipated in the public agenda and memorialized in the minutes of the meetings. (R. pp. 73-74, Randolph Aff. at ¶¶ 2 and 3; R. pp. 78-92, Exhs. A and B). Following the vote and over three years before Appellants commenced their lawsuit, CFHS was closed, the real estate was transferred to a third party, and a charter school opened in the same building. (R. pp. 17-18, Randolph Aff. at ¶¶ 3, 4, and 5). Appellants reasonably had notice of these occurrences but took no action. Furthermore, the agreement whereby the Charter School agreed to pay fees to the School District for Charter School students who enrolled in courses at the District's Career Center was entered into on August 29, 2008, and was reported to the Board and the public through a posted agenda item and discussion at a public meeting on September 23, 2008. (R. p. 77 & Supp.R. p. 217, Randolph Aff. at ¶¶ 15 and 16; R. p. 163, Exh. M; R. p. 167, Exh. N).

Appellants cannot credibly claim they were unaware of these actions: they were the subjects of posted agendas, public discussions, public vote, and the actual closing of CFHS and transfer of its students to other schools before the one-year FOIA statute of limitations expired. None of these actions were taken in secret, and the purpose of FOIA was served. FOIA is designed to ensure that "public business be performed in an open and public manner," making it possible for "citizens, or their representatives, to learn and report fully the activities of their public officials." S.C. Code Ann. § 30-4-15 (2007). As this Court of Appeals has noted, an agenda that "represents the impactful actions and

business the paper memorializes," *Lambries v. Saluda County Council*, 398 S.C. 501, 504, 728 S.E.2d 488, 490 (Ct. App. 2012), is what FOIA requires. Certainly, the meeting agendas and minutes of the Board's actions relating to the closing of CFHS provided proper advance notice and memorialized these actions. Those meeting agendas and minutes, both of which are public records, establish that, even if the Appellants did not somehow have actual knowledge of the Board's actions and business decisions, they should have discovered their existence through the exercise of reasonable diligence in 2007. Thus, even the application of the discovery rule to this case would not save Appellants' case because it was not commenced until almost four years had passed after a reasonably diligent claimant would have discovered the underlying facts.

5. Affidavits and argument by the Appellants that the Board subsequently violated FOIA, thereby extending the statute of limitations, are both irrelevant and improper and should be stricken.

Appellants also complained, in affidavits filed after the hearing on the Board's Motion for Summary Judgment, about other unspecified FOIA violations which they asserted continued, presumably thereby extending the statute of limitations. However, the alleged FOIA violations on which their Complaint and prayer for relief are based are, as asserted, those that occurred in 2007 and resulted in the vote to close CFHS. Allegations that the Board may have violated FOIA at other times in connection with other discussions and votes are unspecified and irrelevant. That the Board allegedly violated FOIA on other, unidentified occasions, apparently unrelated to the actions complained of, is of no moment. "Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary

judgment. Factual disputes that are irrelevant or unnecessary will not be counted." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247 (1986).

Moreover, the affidavits and documents Appellants presented to the circuit court on this point should have been stricken or disregarded. The Board filed a Motion to Strike with a supporting Memorandum of Law asking that the affidavits and exhibits be stricken from the record. (*See* R. pp. 169-75). The Board objected to the use or consideration of these affidavits and documents as untimely and improper because (a) they were filed 34 days after the hearing on the Motion for Summary Judgment, with no showing of good cause for failing to file them at least two days prior to the hearing as required by Rule 56, SCRCP; and (b) they consisted almost entirely of conclusory allegations of wrongdoing unsupported by any admissible facts or documentation. Although the circuit court issued no express ruling on the Motion to Strike, the March 5, 2012 Order granting summary judgment to the Board correctly appears to ignore these affidavits and exhibits. The Board submits that this Court should also disregard the affidavits and documents submitted by Appellants after the circuit court hearing.

6. The Appellants are not entitled to conduct discovery when the material facts are plain, palpable, and indisputable that the statute of limitations bars this case.

The Appellants argue that they should be allowed to conduct "full discovery" into their suspicions that the Board acted improperly in closing CFHS and charging fees for Charter School students attending District-provided classes. However, Appellants offer no argument or potential evidence requiring that discovery be permitted. They cannot and do not dispute the facts that the Board posted agendas for public meetings, or that it held open meetings, discussions, and votes resulting in the closure of the School, the

transfer of the real property, and the reassignment of students to other schools, all as outlined in the affidavits and exhibits submitted by the Board. Summary judgment is intended to put an end to cases, and the time and expense they consume, when the evidence presented "is so one-sided that one party must prevail as a matter of law." *Anderson v. Liberty Lobby, Inc.,* 477 U.S. at 252. This is just such a case.

The clear bar of the statute of limitations by itself is determinative of this case. "Statutes of limitation are . . . fundamental to our judicial system." *Hooper v. Ebenezer Senior Services and Rehab. Ctr.*, 377 S.C. 217, 659 S.E.2d 213 (Ct. App. 2008), quoting *Carolina Marine Handling, Inc. v. Lasch,* 363 S.C. 169, 175-76, 609 S.E.2d 548, 552 (Ct. App. 2005). They give finality to litigation and promote a settled state of public affairs. *Hooper,* 377 S.C. at 227, 659 S.E.2d at 218. They are not mere technicalities, but important to the administration of our judicial system. *Id.* In those cases where there is no question that the case was not commenced within the applicable limitations period, dismissal as a matter of law is appropriate. This is such a case, and the Board respectfully requests that the Court of Appeals affirm the circuit court's decision granting it summary judgment.

B. Appellants' action is barred by the operation of the doctrine of laches.

Although the circuit court did not rule on this issue, the Board argued that the Appellants' case should be dismissed because it was barred by the doctrine of laches. The Board now urges the doctrine of laches as an additional ground upon which to affirm the circuit court's dismissal of this case.

Appellants were aware of the Board's decisions and actions, but delayed an unreasonable time before asserting their alleged rights in this lawsuit. If the circuit court

had invalidated the Board's actions as the Appellants desired, the Board and the School District would have been prejudiced and damaged. The doctrine of laches does not permit such a result.

The doctrine of laches is well-established in South Carolina law. "[I]f a party, knowing his rights, does not seasonably assert them, but by unreasonable delay causes his adversary to incur expenses or enter into obligations or otherwise detrimentally change his position, then equity will ordinarily refuse to enforce those rights." *Chambers of S.C., Inc. v. Cnty. Council for Lee Cnty.*, 315 S.C. 418, 421, 434 S.E.2d 279, 280 (1993), citing *Rabon v. Mali,* 289 S.C. 37, 344 S.E.2d 608 (1986) and *Mack v. Edens,* 306 S.C. 433, 412 S.E.2d 431 (Ct. App. 1991). "Laches is the neglect for an unreasonable and unexplained amount of time, under circumstances permitting diligence, to do what in law should have been done." *Mid-State Trust, II v. Wright,* 474 S.E. 2d 421, 323 S.C. 303, 307 (1996). The court is vested with wide discretion in determining what is an unreasonable delay. *Ham v. Flowers,* 214 S.C. 212, 51 S.E.2d 753 (1949).

In this case, Appellants waited an undue length of time – almost four years after the Board voted to close CFHS – before filing their lawsuit. In the meantime, the Board acted and changed its position; specifically, the Board closed CFHS, transferred the School's students to other public schools operated by the School District, and conveyed the CFHS building and real property to the Town of Calhoun Falls which proceeded to open another school (the Charter School) in the same space. (R. pp. 17-18, Randolph Aff. at ¶¶ 3, 4, and 5). The School District subsequently entered into a contract with the Charter School in which the Charter School agreed to pay fees for the participation of its students in programs at the School District's Career Center. *Id.* at ¶ 6. Appellants

disagreed with the Board's actions, but slept on their rights to object to them. Clearly, Appellants' delay "worked injury, prejudice, or disadvantage," *Privette v. Garrison,* 235 S.C. 119, 110 S.E.2d 17 (1959), to the Board which proceeded to manage its schools as it believed appropriate. To order an un-doing of those actions would obviously be unjustifiably prejudicial to the Board. The doctrine of laches should be applied to bar Appellants' lawsuit.

C. Appellants have no personal stake in whether the Board charges fees for Charter School students and, therefore, lack standing to assert that claim.

The circuit court also granted summary judgment to the Board on the Appellants' claim that the Board wrongfully charged fees for Charter School students to attend the District's Career Center because the Appellants lacked standing to assert that claim. In order to have standing to proceed with this claim, the Appellants must have a personal stake in it or, in other words, be real parties in interest to the litigation about it. They must allege and establish that they have "a real, material, or substantial interest in the outcome" of the claim. *Hill v. S. C. Dep't. of Health & Envtl. Control*, 389 S.C. 1, 22, 698 S.E.2d 612, 623 (2010); *Sloan v. Friends of the Hunley, Inc.,* 369 S.C. 20, 28, 630 S.E.2d 474, 479 (2006). A nominal or technical interest in the issue is not sufficient. *Charleston Cnty. Sch. Dist. v. Charleston Cnty. Election Comm'n,* 336 S.C. 174, 519 S.E.2d 567 (1999). Instead, they must have sustained, or be in immediate danger of sustaining, prejudice from an executive or legislative action. Such imminent prejudice must be of a personal nature to the party laying claim to standing and not merely of general interest common to all members of the public. *Sea Pines Ass'n for Prot. of Wildlife, Inc. v. S. C. Dep't. of Natural Res.,* 345 S.C. 594, 550 S.E.2d 287 (2001); *Baird*

v. Charleston Cnty., 333 S.C. 519, 511 S.E.2d 69 (1999) (citing *Citizens for Lee County, Inc. v. Lee Cnty.*, 308 S.C. 23, 416 S.E.2d 641 (1992)).

Neither Appellant is the parent or natural guardian of a child enrolled in the Charter School or, for that matter, in a school operated by the School District. (R. p. 18, Randolph Aff. at ¶¶ 7 and 8). They do not pay fees for any students to attend the Abbeville County Career Center. They, therefore, have no personal stake in this issue and consequently, have no standing to raise it in a lawsuit.

The Appellants argue that they have standing as taxpayers to complain about the charging of student fees to the Charter School for its students. This is not sufficient to establish a personal stake in the controversy on the charging of student fees. Taxpayers have standing to assert FOIA violations, and the Board did not contest Appellants' standing to assert their claims relating to the alleged FOIA violations in connection with the Board's deliberations and votes. However, taxpayers do not have standing to contest in court, and courts do not have authority to review, every decision made on the operations of local schools. *See Sloan v. Greenville Cnty.*, 356 S.C. 531, 555, 590 S.E.2d 338, 351 (Ct. App. 2003) (discretionary decisions of elected bodies should not be disturbed unless arbitrary, unreasonable, in obvious abuse of discretion or in excess of lawfully delegated power, and courts are cautioned to be "loath to substitute their judgment for that of elected representatives"). The charging of fees to persons other than Appellants is not a question that can or should be addressed in this case.

Although they may be taxpayers of Abbeville County, the Appellants have no personal stake in the charging of fees for Charter School students. The circuit court

correctly granted summary judgment to the Board on the ground that Appellants failed to allege or establish that they have standing to proceed with that claim.

D. The circuit court correctly declined to invalidate the legislative decisions of the Board to close Calhoun Falls High School and to charge fees for students from outside the School District's schools.

Appellants sought an order from the circuit court invalidating the decisions of the Board, made several years ago, to close CFHS and to charge fees for students from outside the School District's schools to participate in programs offered by the District. While FOIA allows a court to order any equitable remedy it deems appropriate given the facts of each case, such a remedy would clearly not be appropriate in this case. Appellants do not allege that the Board's public vote was unauthorized or improper in any substantive way. No court has ever invalidated a public entity's public action solely on the basis of a FOIA defect, in the absence of other improprieties. *See* Op. S.C. Atty Gen., 2001 WL 957743 (July 18, 2001) (stating that invalidating an entity's public vote solely because of a violation of FOIA during the entity's discussions of the issue would probably not succeed).

Moreover, South Carolina law is clear on this point: discretionary decisions of legislative bodies, such as the decisions by the Board to close CFHS and to charge fees to the Charter School for its students' participation in School District programs, should not be disturbed unless they are "arbitrary, unreasonable, in obvious abuse of discretion, or in excess of lawfully delegated power." *Sloan v. Greenville Cnty.,* 356 S.C. 531, 555, 590 S.E.2d 338, 351 (Ct. App. 2003) (quoting *Smith v. Georgetown County Council*, 292 S.C. 235, 238-39, 355 S.E.2d 864, 866 (Ct. App. 1987) (citing *Bob Jones Univ. v. City of Greenville,* 243 S.C. 351, 133 S.E.2d 843 (1963)). Courts have been and should remain

"loath to substitute their judgment for that of elected representatives." *Id.* Appellants make no allegations in their Complaint and no argument in this appeal that the Board's vote to close the school or its decision to charge fees was arbitrary, unreasonable, an obvious abuse of discretion, or in excess of its lawfully delegated power. The circuit court, therefore, properly declined to disturb those decisions by the Board.

CONCLUSION

The material facts of this case remain undisputed:

1. The Board voted in a public meeting to close Calhoun Falls High School in December 2007;

2. Proper notice to the public of the possible action was provided through an agenda posted in advance of the meeting, in accordance with FOIA;

3. The Board closed Calhoun Falls High School at the end of the 2007-2008 school year and it remains closed;

4. Students at the former Calhoun Falls High School were transferred to other schools at the end of the 2007-2008 school year;

5. The Board transferred ownership of the school building and property to a third party;

6. Neither Appellant pays any fees to the Board or to the School District to enable a child to attend classes at the Abbeville County Career Center;

7. Appellants commenced this case more than one year after the deliberations and public vote by the Board to close Calhoun Falls High School and more than one year after its public agreement with the Charter School on fees.

The circuit court correctly ruled, based on these undisputed material facts, that the Board was entitled to judgment as a matter of law because Appellants' claims are cognizable under FOIA; FOIA's statute of limitations bars the claims; Appellants lack standing to complain of the charging of fees to a third party (the Charter School) for its students to participate in classes at the Abbeville County Career Center; and the court

lacked a legally justifiable reason to set aside the legislative decisions of the publicly-elected Board. Prolonging the case to allow Appellants the opportunity to engage in discovery, as they request, is not warranted in this case where the Board is clearly entitled to summary judgment. The Board requests that the Court of Appeals affirm the grant of summary judgment on the grounds stated by the circuit court and on the further grounds that the doctrine of laches bars Appellants' claims.

Respectfully Submitted:

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CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief complies with Rule 211(b), SCACR.

January 30, 2012

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PROOF OF SERVICE

I certify that I have served the final Brief of Respondent on Danny Hozey and Terry Richey by depositing a copy of it in the United States Mail, postage prepaid, on January 30, 2013, addressed to their attorney of record, C. Lance Sheek, 1201 Cambridge Avenue East, Greenwood, SC 29646.

January 30, 2013

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