

ORIGINAL

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

D. Garrison Hill, Circuit Court Judge
John C. Few, Circuit Court Judge

Appellate Case No. 2012-212137

The South Carolina Public Interest Foundation, and Edward D. Sloan, Jr., and
Robert M. Lloyd, individually and as taxpayers of the City of Greenville, South
Carolina, and on behalf of others similarly situated, .. Appellants/Respondents,

v.

City of Greenville, Mayor Knox H. White, and The Cliffs at Glassy, Inc.,
Defendants Of Whom City of Greenville and Mayor Knox H. White are the
Respondents/Appellants,.....Respondents/Appellants.

**RECORD ON APPEAL
VOL. II**

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SC COURT OF APPEALS

1 do this part of the argument because the motion
2 from the plaintiff for partial summary judgement
3 applies just to the Mayor and to the council.

4 (WHEREUPON, there is a pause.)

5 THE COURT: Uh, all right. I was just
6 looking through -- I never had heard of purpresture
7 before.

8 MR. CARPENTER: It was a new one on me too,
9 Your Honor.

10 THE COURT: I'm just thumbing through some
11 of the cases that had dealt with it.

12 MR. CARPENTER: His, uh, father had a case
13 on purpresture here in Greenville county in the
14 City of Greenville where a merchant wanted to build
15 a parking lot out over the, uh, right of way over
16 the city sidewalk and paving the street. And his
17 father, as a taxpayer, brought a cause of action to
18 stop the merchant from building out over the public
19 right of way. That case is cited in the Complaint
20 of Sloan versus City of Greenville.

21 THE COURT: We discussed that case before,
22 hadn't we, in some of these older cases? Where was
23 this?

24 MR. CARPENTER: It was here in Greenville.

25 THE COURT: The parking garage?

1 **MR. STILWELL:** That's where our building
2 sits now, Your Honor.

3 **THE COURT:** In some -- in some case that we
4 had years ago, I remember us discussing that case.
5 Maybe it was some other -- maybe it was not a Sloan
6 case, but I remember that case. I remember reading
7 and discussing that case in some hearing. But as a
8 -- on the first cause of action, is there a
9 challenge to the application of purpresture to this
10 situation?

11 **MRS. KEMPE:** Well, Your Honor, if I could
12 just pass up a copy of our Saluda watershed case so
13 we all have one.

14 **THE COURT:** Okay. So is there or is there
15 not?

16 **MRS. KEMPE:** It was an encroachment upon
17 property.

18 **THE COURT:** You'll have to bring it around.
19 Let me ask it this way, what is the basis of your
20 motion for summary judgement as to the first cause
21 of action?

22 **MRS. KEMPE:** Your Honor, uh, the City of
23 Greenville holds title to this property. It is
24 managed by the Water System. It is subject to a
25 conservation easement, uh, by nature of

1 conservancy. It is -- the north Saluda reservoir
2 is 19,300 acres of property. Uh, it was surveyed,
3 most of it, a long time ago. The last 15 years, I
4 have been dealing with property issues in that part
5 of the county. Deeds often refer to going from a
6 large rock to an oak tree.

7 The Water System has been managing this
8 property and it has what we call the water police
9 who go out there and monitor this property. They
10 have laced trails and --

11 **THE COURT:** Let's -- let's -- let me -- let
12 me try to understand what the issues are first.
13 What's the legal basis for your claim for summary
14 judgement on the first cause of action? Why should
15 there not be some relief to Mr. Sloan available,
16 uh, if I find that there has been an encroachment
17 by The Cliffs onto the city property with this
18 road?

19 **MRS. KEMPE:** The relief -- the City has many
20 encroachments upon its property. Counsel -- in the
21 case of disputed property lines, and that's what
22 this case is about, counsel decided in this case
23 that the encroachment was not on purpose, but there
24 was some need to get, uh, some compensation for the
25 encroachment.

1 **MR. STILWELL:** Your Honor, it's a moot point
2 now because what we have done is swap land for a
3 piece that the City had a fire tower sitting on a
4 piece of The Cliffs' land. And I've never seen
5 these 2000 deeds before. I heard that somebody
6 finally looked at one of these deeds in 2004. They
7 had this deal -- my understanding was this deal to
8 swap the land was in process before the suit
9 started.

10 The purpresture thing is that the City sitting
11 on its rights and not doing anything. Not only has
12 the City not sat on its right, the deal's already
13 been done. They got a fire tower, the City did,
14 sitting on a piece of our land and we swapped our
15 land for theirs and moved the fire tower. This
16 deal went down in June. So the mootness issue is
17 what the summary judgement is based on, both of our
18 summary judgements, as his first cause of action,
19 Your Honor. And we might as well go to the
20 exception of public importance.

21 **THE COURT:** Well, is there a cause of action
22 for purpresture brought by someone who does not
23 have a direct injury to their own property?

24 **MR. STILWELL:** Well, as much as I wish I
25 could say you don't have standing for that, Your

1 Honor, I think that's what Mr. Sloan's father's
2 suit actually did. He brought a very similar suit
3 against the City and said --

4 THE COURT: And called it purpresture?

5 MR. STILWELL: That's the only -- that's it,
6 Your Honor. He basically -- I don't know where he
7 got it. He must have gone back in the chancery
8 books and found it or something. That's the
9 purpresture case in South Carolina.

10 MRS. KEMPE: That dealt with city right of
11 way or public --

12 MR. CARPENTER: We've attached the June
13 survey to our motion for judgement on the
14 pleadings.

15 THE COURT: Okay. All right. Well, in just
16 the little bit that I've seen so far, purpresture
17 was not originally a civil right of action. It was
18 a criminal writ that the king could seek to keep
19 people from encroaching on his own land. And in
20 the Sloan versus City of Greenville case that y'all
21 are discussing, it sounds as though the remedy that
22 was granted was injunctive. Is that true?

23 MR. CARPENTER: I believe that's right.

24 MR. STILWELL: I can't remember --

25 THE COURT: Cut off half of the, uh, -- I

1 remember that. Cut off part of the parking lot or
2 something. But, uh, --

3 **MRS. KEMPE:** And state law now provides for
4 an abandonment process for the local government to
5 go through to, uh, handle this sort of situation.
6 It dealt with a right of --

7 **THE COURT:** Wait a minute though.

8 **MRS. KEMPE:** Yes.

9 **THE COURT:** What remedy do you seek for the
10 alleged purpresture?

11 **MR. CARPENTER:** Given the fact they -- well,
12 on the first cause of action, we filed a motion for
13 partial judgement on the pleadings. We ask that
14 they be required to put up a fence to stop the
15 continued trespass. We -- in the second and third
16 cause of action, we have argued that the conveyance
17 was illegal.

18 **THE COURT:** I know. I know that, but I want
19 to go one at a time. If they've sold the property,
20 there's no continued purpresture. There's no
21 continued trespass, at least.

22 **MR. CARPENTER:** Well, that's true.

23 **THE COURT:** What relief do you seek on the
24 first cause of action?

25 **MR. CARPENTER:** That's why I was getting

1 into the second and third.

2 THE COURT: You don't -- you don't -- well --

3 MR. CARPENTER: Can I -- it does rely -- I'm
4 trying to answer your question.

5 THE COURT: Okay.

6 MR. CARPENTER: If, under the second and
7 third cause of action, we get the conveyance
8 undone ---

9 THE COURT: Oh, I see.

10 MR. CARPENTER: --- then we want what we
11 asked for in the first cause of action.

12 THE COURT: So we need to go talk about the
13 second and third cause of action first. Okay.

14 MR. CARPENTER: That's my answer. But in
15 the first cause of action, I -- you know, if the
16 Court doesn't undue the conveyance, then what we
17 would get on the first cause of action would be the
18 declaratory judgement and --

19 THE COURT: Maybe some of that -- maybe some
20 of the parking garage that was cut off back in --
21 was it the '50s or so?

22 MR. CARPENTER: '59.

23 THE COURT: '59 could be used to barricade
24 the road now. That could save a little money.

25 MR. CARPENTER: What we asked for was a

1 fence along the property line.

2 THE COURT: Okay. Let's talk about -- okay
3 then. You have motions for summary judgement -- I
4 guess you're not really in the second and third
5 cause of action, are you?

6 MR. STILWELL: Well, the second and third
7 are the ones that -- I assumed that Your Honor
8 would accept those amendments so I actually moved
9 and agreed to those second and third causes of
10 action, Your Honor.

11 THE COURT: Okay. All right. Well, who
12 wants to go first?

13 MR. STILWELL: These are my motions. I'll
14 handle those, Your Honor. The, uh, -- we can start
15 with the third, the constitutional anti-donation
16 cause. It doesn't apply to municipalities, Your
17 Honor. I think that one is fairly easy to dispose
18 of. If you look at the McKinney versus City of
19 Greenville case we've cited as another chestnut of
20 the Greenville County Bar, in my place, I'm
21 standing with Mr. Ted Riley so I'm happy to fill
22 his shoes if I can. But in that case, someone
23 challenged the Donaldson Center setup in that case
24 and Supreme Court popped in the ruling of Judge
25 Eppes and said it doesn't apply to municipalities.

1 When it says the donation of state land, it means
2 state land. This is state land. That cause of
3 action --

4 **THE COURT:** All right. Mr. Carpenter?

5 **MR. CARPENTER:** I'm surprised to hear that
6 cause I don't think that was the holding of it. I
7 think, in the McKinney case, they wrestled with the
8 issues as though that constitutional provision
9 applied and ruled that it didn't apply to a city
10 particularly because the City was given the land of
11 the county and then the county was leasing it to a,
12 uh, corporation. Here, we don't have a lease. We
13 have a sale.

14 So the McKinney case, its significance, as I
15 recall it, would be that the court felt compelled
16 to at least wrestle with the constitutional issue.
17 And I don't recall a blatant -- a per say ruling
18 that the constitutional provisions didn't apply to
19 cities. Uh, there was discussion over the manner
20 in which the City owns the property, but there are
21 two other, uh, this case called Bobo, there's a
22 case from Charleston called Haesloop versus the
23 City Council of Charleston. Both of those wrestled
24 with the constitutional issue that we're talking
25 about here. Neither of those cases said, oh,

1 because these are cities, this doesn't apply. I
2 think that argument is unsupported.

3 **MR. STILWELL:** Your Honor, I can not
4 address the specific facts in the case of Haesloop
5 and Bobo other than it's a cite. The case itself,
6 McKinney, on page 679 where they cite both of those
7 cases in support of the proposition that it does
8 not apply to the City. So I don't know what Mr.
9 Carpenter thinks those cases say, but apparently,
10 Supreme Court agreed with Judge Eppes that they
11 supported the proposition that it only applies, the
12 constitutional provision only applies to lands
13 belonging to or under control of the state. In
14 that case, -- in the McCoy case, I mean, the
15 McKinney case, it says lands originally owned by
16 private citizens and purchased by the City. That's
17 what this is.

18 **THE COURT:** Okay. Let's talk about the
19 second cause of action for a minute then.

20 **MR. STILWELL:** The second cause of action,
21 Your Honor, is you saying the City has violated its
22 own ordinance because the ordinance says that the
23 city administrator may approve and execute the deed
24 at the same time or after he receives the deed.
25 Your Honor, approve and execute. What he's showing

1 you -- these documents showing he put his signature
2 on the deed on the 19th. However, there was a
3 closing of this where the money was wired into the
4 Horton Drawdy firm. And then the deed was given to
5 the Horton Drawdy firm in a regular real estate
6 transaction handled by Mr. Ward, David Ward, where
7 they were exchanged contemporaneously. So although
8 he says they were executed previously, that is
9 true. But the ordinance says they were approved
10 and executed. They weren't even delivered and
11 conveyed until the money was already in the trust
12 account, just like any regular real estate
13 transaction, Your Honor. I have the wire transfer
14 records and all kinds of things if Your Honor care
15 to look at them showing all this, how this closing
16 worked.

17 **THE COURT:** Why don't you explain to me why
18 the -- how the -- how the city ordinance is
19 violated.

20 **MR. CARPENTER:** All right. The Section 7
21 says the city manager shall be authorized to
22 approve and execute such deeds upon receipt of the
23 payment. He executed and approved the deeds on the
24 19th and there was no payment until the 24th. So
25 it's a five day -- five days early that they

1 approve and executed the deeds. It wasn't in
2 compliance with the city, uh, -- the city ordinance
3 as set up in Section 7. They were required to
4 receive the payment and then approve and execute
5 the deeds.

6 **THE COURT:** What's the purpose of that
7 ordinance?

8 **MR. CARPENTER:** To, uh, -- to -- it was to,
9 uh, -- the purpose of the ordinance was to have the
10 City convey the .29 acres of which the road --

11 **THE COURT:** Oh, it's a specific ordinance to
12 this --

13 **MR. CARPENTER:** Related to this piece of
14 property.

15 **THE COURT:** And so this specific ordinance
16 says the city --

17 **MR. CARPENTER:** Right.

18 **THE COURT:** Is it the city manager?

19 **MR. CARPENTER:** City manager, yes.

20 **THE COURT:** The city manager may execute the
21 deeds in -- upon receipt of --

22 **MR. CARPENTER:** Upon receipt of the payment.
23 This was the ordinance by which the City conveyed
24 the .29 acres and The Cliffs conveyed the .04
25 acres.

1 **THE COURT:** So really you're -- so the City
2 -- you bring this matter to their attention. They
3 decide to sell the property. And they do so or
4 they pass an ordinance in which to carry that
5 decision into effect. And you are saying that the
6 ordinance set forth the authority of the city
7 manager ---

8 **MR. CARPENTER:** Right.

9 **THE COURT:** --- and that the city manager
10 acted outside of his authority ---

11 **MR. CARPENTER:** Right.

12 **THE COURT:** --- and therefore the
13 transaction never occurred or it must be undone.

14 **MR. CARPENTER:** Right.

15 **THE COURT:** But --

16 **MR. STILWELL:** Your Honor, I'll stick with
17 the, uh, --

18 **THE COURT:** Well, let me ask this though. I
19 mean, what is the -- is there any practical
20 significance to the fact -- let's just say
21 everything you say is true. Let's say the
22 ordinance says what you say it says and that the
23 ordinance was violated because the deed was
24 prepared and executed and approved five days before
25 the money came in. What's the practical

1 significance of that to the City?

2 **MR. CARPENTER:** The City, I think, requires
3 an ordinance to convey real estate. It is a
4 technical violation.

5 **THE COURT:** Is there any practical
6 significance?

7 **MR. CARPENTER:** Uh, I think it's more of a
8 technical violation.

9 **THE COURT:** Well, all right. So, uh, what
10 would be the legal mechanism that I would use to
11 undo the transaction? I mean, is it automatic that
12 if there's some technical violation to the city's
13 ordinance authorizing the sale of this property
14 that the sale be undone? Or am I to look at this
15 practically and decide whether or not in my
16 discretion or under some other standard I should
17 grant the relief of undoing the transaction?

18 **MR. CARPENTER:** Can I have a minute, Your
19 Honor?

20 **THE COURT:** Sure. While you do that, I'm
21 going to step off the bench one second.

22 (WHEREUPON, a short recess is taken.)

23 **THE COURT:** Mr. Carpenter, whenever you are
24 ready.

25 **MR. CARPENTER:** I think there needs to be a

1 declaratory judgement that they did not comply with
2 the enabling ordinance when it came to conveying
3 the land. Therefore, it was conveyed without
4 proper authority.

5 **THE COURT:** Okay. And if I were to decide
6 that, what would be the remedy or what is the
7 standard by which I determine the remedy? Well,
8 let me ask you this way. Let's assume that if I
9 were -- if I decide that there's a violation of
10 the, uh, of the, uh, ordinance just as you say
11 there is and I also look at the five, what is
12 essentially a five-day delay in the transfer of
13 funds, and I say there is no significance to the
14 City in that delay because they could have just
15 delayed the closing five days. It's not like
16 there's any time value to the use of this property.
17 And so would I be required to undo the transaction
18 simply because it's a technical violation? Or
19 would there be some discretionary examination that
20 I would make in determining what remedy to grant?
21 And would I have it within my authority to say I'm
22 not going to grant the remedy for this technical
23 violation?

24 **MR. CARPENTER:** I -- I don't know where the
25 Court would find such authority. There's --

1 **THE COURT:** Well, I'm asking you. Do you
2 take the position that I'm required -- I mean,
3 you're asking me to say technical violation, undo
4 the transaction.

5 **MR. CARPENTER:** That's right. I think
6 that --

7 **THE COURT:** I'm asking you, what tells you
8 that I'm -- well, I'm asking you, do you take the
9 position that I'm required to undo it or do you
10 just take the position that I have it within my
11 discretion as to whether to undo it? I mean --

12 **MR. CARPENTER:** I take it you are required
13 to. I think that if there's some sort of
14 discretion that the Court can overlook any
15 violation of an enabling ordinance, then I think
16 that authority need to come from the other side.
17 We're saying this was the ordinance, it was not
18 complied with, therefore, it was an ultra vires act
19 to -- outside of the confines of the enabling
20 ordinance. They can go through a new transaction,
21 I suppose, and comply with a new enabling ordinance
22 and follow the technical requirements but I
23 wouldn't know of any authority the Court has to
24 overlook a violation.

25 **THE COURT:** Okay. All right. Hold on just a

1 second. (Pause.)

2 Okay.

3 MR. STILWELL: Your Honor, uh, --

4 THE COURT: I think that -- all right. I'm
5 going to -- I've read the McKinney case. I believe
6 that the no donation clause applies only to state
7 lands, not to city lands. So I'm going to grant
8 the motion for summary judgement by the defendants
9 as to the third cause of action.

10 As to the second cause of action, uh, I am
11 convinced that I must make some practical review of
12 the situation before I decide whether or not to
13 undo the transaction. So the motion for summary
14 judgement of the plaintiff will be denied -- is
15 denied because I'm not going to undo the
16 transaction in this summary proceeding.

17 MR. CARPENTER: We didn't move for summary
18 judgement on the second and third causes of action.

19 THE COURT: Oh, you didn't?

20 MR. CARPENTER: No, they did. We moved for
21 summary judgement, partial summary judgement on the
22 first cause of action.

23 THE COURT: Okay. Then I deny the motion
24 for summary judgement on the purpresture cause of
25 action because I'm, uh, not -- because in order to

1 grant it, I would have to undo the transaction
2 under the second cause of action. All right.

3 MR. CARPENTER: All right.

4 THE COURT: Okay. So that takes us back to
5 the defendant's motion for summary judgement on the
6 second cause of action. If I grant that motion,
7 then I must also grant the defendant's motion for
8 summary judgement on the purpresture cause of
9 action. Is that true, Mr. Carpenter? Because you
10 have no -- because that means that this property
11 has been sold.

12 MR. CARPENTER: That would be on the grounds
13 of mootness and then we would go into the exception
14 to the mootness. We asked for declaratory
15 judgement in our Amended Complaint.

16 THE COURT: Okay. All right. All right. I
17 got you. I got you. So the only -- yeah. You are
18 not asking for any kind of damages or anything like
19 that. You just want the transaction to be undone
20 and for me to issue declaratory relief and
21 injunctive relief forcing them to close the road.

22 MR. CARPENTER: Right.

23 THE COURT: Okay. Well, then let's real
24 quickly -- it shouldn't take long. Let's look at
25 the statute, I mean, the ordinance and see whether

1 or not I can say as a matter of law that it was
2 complied with.

3 **MR. CARPENTER:** Your Honor, this is attached
4 to our Amended Complaint.

5 **THE COURT:** The ordinance is attached to the
6 Amended Complaint. Okay. Got it.

7 **MR. CARPENTER:** September 8th. Uh, the
8 ordinance is Exhibit A and the section I'm arguing
9 about is Section 7 at the bottom of the second
10 page.

11 **THE COURT:** Okay. So the -- tell me what
12 you were saying again, Mr. Stilwell about the
13 timing of all this.

14 **MR. STILWELL:** Your Honor, I have here some
15 documents. You see how it says the city manager
16 shall be authorized to approve and execute the
17 deeds. The date on the deed is the 19th. The
18 thing was not recorded until the 24th. In the
19 interim, there was a closing. These are two emails
20 that I'll --

21 **THE COURT:** Just bring them around.

22 **MR. STILWELL:** -- I'll give Your Honor which
23 showed how this worked. The deeds were still
24 sitting in the hands of the city attorney. They
25 weren't delivered. He could not be considered to

1 approve them if he's still hanging on to them until
2 the money was already sitting in Mr. Ward's bank
3 account. So even in the realm of technicality,
4 Your Honor, nobody can say with a straight face
5 that this is anything but --

6 **THE COURT:** When did the transaction become
7 irreparable, Mr. Carpenter? When did the deed get
8 -- when did the property actually change hands?

9 **MR. CARPENTER:** The 24th.

10 **THE COURT:** Well, then --

11 **MR. CARPENTER:** It was recorded on the 24th,
12 but they executed the deeds on the 19th.

13 **THE COURT:** Is there some provision of law
14 that you would, uh, point me to that tells me that
15 the deeds were approved and executed on the 19th as
16 opposed to the 24th?

17 **MR. CARPENTER:** They are dated that way.

18 **THE COURT:** Okay. All right. Anything
19 further?

20 **MR. STILWELL:** Your Honor, I'll just say
21 this is contemporaneous exchange and consideration.
22 It's done in a licensed lawyer's office. There's
23 nothing about this transaction that's --

24 **THE COURT:** All right. Anything further,
25 Mr. Carpenter?

1 **MR. CARPENTER:** Your Honor, I would -- on
2 the third cause of action, I would invite the Court
3 to read the Haesloop case from Charleston which
4 wrestles with the constitutional issue. And in
5 that case, the City was conveying land. It wasn't
6 the state. And they wrestled the constitutional
7 issue implying that it applied.

8 In the Bobo versus Spartanburg case, it was
9 the City of Spartanburg that was conveying land
10 that wrestled with a constitutional issue. I would
11 respectfully suggest to the Court that the grounds
12 articulated for ruling against me are in error.

13 **THE COURT:** Well, all right. I will. I
14 will. I will read those. All right. But is there
15 anything else regarding the, uh, question of
16 whether or not there was a violation of the
17 ordinance?

18 **MR. CARPENTER:** No.

19 **THE COURT:** Okay. Well, all right. Well,
20 then unless I change my mind about what the
21 McKinney case says when I reread these -- reread
22 that case and read these other cases, then I'm
23 granting the motion of the defendants for summary
24 judgement. I'm not undoing the transaction, which
25 means that there is no, uh, purpresture and no

1 injunctive relief of duty. And, uh, you are not
2 seeking any damages for any kind of past trespass.

3 **MR. CARPENTER:** If we lose the second and
4 third cause of action, then the relief we're
5 seeking on the first cause of action is declaratory
6 judgement and then we would ask for costs and
7 attorney's fees.

8 **THE COURT:** Uh, well, all right. I'm
9 granting summary judgement as to the second and
10 third cause of action which renders the first cause
11 of action moot. Uh, and, uh, then I would have to
12 look at the attorney's fees, uh, statute but the
13 question is going to be whether or not they acted
14 -- I forgot a lot of it, but whether or not they
15 acted promptly, reasonably promptly in response to
16 your pointing this out, which -- this all happened
17 pretty quickly, right, or not?

18 **MR. STILWELL:** It did, Your Honor. That may
19 be a subject that could be dealt with in briefs
20 subsequent to this.

21 **THE COURT:** You might have to file a
22 separate motion on the attorney's fees if you want
23 to pursue that.

24 **MR. CARPENTER:** All right.

25 **THE COURT:** I'm not going to deny it right

1 now cause I haven't looked at the statute. I don't
2 really even think you've asked for it at this
3 point.

4 **MR. CARPENTER:** We've not made a motion for
5 attorney's fees but the point I was addressing is
6 on the first cause of action, we still have a
7 request for a declaratory judgement. That was a
8 purpresture, an unauthorized trespass, on publicly
9 owned property for private purposes. And, uh, it
10 existed that way for at least eight years. And I
11 think that under public importance, we would be
12 entitled to declaratory judgement that that was an
13 unauthorized purpresture and then we would be the
14 prevailing party and entitled to cost and
15 attorney's fees under 15-77-300. All of which we
16 pled for, but we have not made a separate motion
17 for.

18 **THE COURT:** Well, you're still a prevailing
19 party because you -- I forget exactly where the
20 definitions come in. You still got the relief you
21 were after in one sense because now there's no
22 trespass on city property.

23 **MR. CARPENTER:** Right.

24 **THE COURT:** Whether or not that qualifies
25 you for attorney's fees is yet to be determined.

1 But I'm not going to -- I don't think that -- I
2 believe that the request for a declaration by this
3 court that there was an unauthorized -- that there
4 was a purpresture is moot. I haven't even looked
5 at purpresture. But purpresture is more than just
6 accidentally building a road across somebody's
7 property. For one, there's probably a -- I mean, I
8 don't know. I'm kind of guessing. But it started
9 out as criminal writ, it probably has an element of
10 criminal intent. And so in my view, there's no
11 exception to the mootness doctrine that would
12 warrant me spending court time to getting the
13 answer in the question of whether or not this was
14 at one time a purpresture giving the fact that it
15 clearly at this time is not.

16 **MR. CARPENTER:** Your Honor, there -- an
17 analysis -- and this is more or less a different
18 issue, but it's related -- analysis of the surveys,
19 uh, shows that there may be a continuing violation,
20 continuing purpresture. Some of the surveys show
21 the property line well to the west of that curve in
22 the road. The survey that was used in conveying
23 the deed shows the property line right pretty much
24 on the western edge of the road. And there may be,
25 uh, a continuing violation even with the purchase

1 of .29 acres.

2 MR. STILWELL: Your Honor, that's an
3 amendment that hadn't even been requested or made.
4 He's amending an amendment at this point.

5 MR. CARPENTER: If I could show the Court
6 the exhibits.

7 MR. STILWELL: Your Honor, that may well be
8 his next suit. But I think instead investing
9 further court time in this, perhaps he should
10 digest some of this and state it in writing.

11 THE COURT: Tell me again now what is the
12 claim ongoing.

13 MR. CARPENTER: I could show you easier than
14 I could tell you, I think.

15 MR. STILWELL: I got to confess. Without
16 reading glasses, which I have yet to purchase, I
17 can't read that.

18 THE COURT: You're not old enough for
19 reading glasses. But if you need some, you can
20 borrow mine.

21 MR. STILWELL: I just felt the need coming
22 on in the last month.

23 MR. CARPENTER: Can I show you, Judge?

24 THE COURT: You can show me, but how am I
25 going to be able to make that determination in a

1 motion for summary judgement. You're saying
2 basically that the line --

3 **MR. CARPENTER:** Don't throw it out. That's
4 my point. Don't throw me completely out of court
5 because of a -- this line goes right along the
6 western edge of that curve. This is the line that
7 they used when they brought and sold the property.
8 This line, which is on the June 2000 survey, goes
9 well off of the road. That was the line that, uh,
10 that they surveyed in June of 2000. Compare that
11 to this line. And there may be a continuing
12 violation over that strip of property that may well
13 be in the watershed and unsold at this point
14 because they conveyed only a quarter of an acre.

15 And in our initial Complaint, we asked for a
16 survey and a fence so that the City would
17 definitively establish where the line was. That's
18 -- you know, we didn't -- we didn't get that yet.
19 But that was one of the things we asked for in the
20 initial Complaint to establish where the line is
21 and the extent of the encroachment.

22 **MR. STILWELL:** Your Honor, I would point out
23 that mootness arguments were joined by both the
24 defendants in response to the first cause of
25 action. He subsequently amended and didn't raise

1 any of this stuff. So in fairness, I can't see how
2 we can ask the court let the case survive after the
3 granting of the motions depending on stuff -- maybe
4 you can tell what those lines represent. He's
5 saying this may be. He's not even saying that this
6 is a purpresture. He hasn't said that in his
7 pleadings. He's saying it might be. That's not
8 something that can let the case continue.

9 **THE COURT:** How is it that you came to know
10 in the first place that the road went onto, uh,
11 city property?

12 **MR. CARPENTER:** I think there was an issue
13 raised by the Nature Conservancy. Native
14 Conservancy had an easement over this property.

15 **THE COURT:** How would you propose to go out
16 and now verify that it either does or does not as
17 the lines have been redrawn?

18 **MR. CARPENTER:** Well, what we asked for in
19 our initial Complaint was to require the City to
20 figure out how much of an encroachment there was.

21 **THE COURT:** The City now takes the position
22 that there is no encroachment.

23 **MR. CARPENTER:** There was a survey done by
24 The Cliffs but not by the City. And what we asked
25 for was the City do their own survey and see how

1 far the encroachment was. And based on these --

2 **THE COURT:** Does the survey shown by the,
3 uh, -- done by The Cliffs show any encroachment or
4 not? You're saying you --

5 **MR. CARPENTER:** Yes. Yes. I'm saying that
6 there were multiple surveys done by The Cliffs. In
7 2000, they showed the line well off of the road,
8 well to the left of the road. In the survey done
9 for the purchase, they showed the line right at the
10 edge of the road. There are multiple surveys all
11 done by The Cliffs' surveyor. What we have asked
12 is that the City do their own survey and
13 definitively establish where that property line is
14 and then they can, uh, -- that will establish, we
15 believe, based on the early surveys, a continuing
16 violation because they didn't -- The Cliffs didn't
17 buy enough.

18 **THE COURT:** All right. Well, uh, --

19 **MR. CARPENTER:** One of the other things we
20 asked for, in addition to the fence, was a marking
21 or a formal delineation of where the property line
22 was.

23 **MR. STILWELL:** I don't think there's any
24 authority in the law that requires the City to do
25 that, Your Honor, to require them to go out and do

1 a survey and mark a property at the behest of a
2 private citizen.

3 THE COURT: I think that, that when you
4 first filed the lawsuit claiming that there was an
5 encroachment, uh, if the City denies that, then you
6 are going to have to go out and prove that there is
7 an encroachment, right?

8 MR. CARPENTER: I think they admitted there
9 was an encroachment.

10 THE COURT: I know they did. But if they
11 had denied it, you'd have to prove it. You'd bear
12 the burden of proof.

13 MR. CARPENTER: Okay.

14 THE COURT: Right?

15 MR. CARPENTER: Yes.

16 THE COURT: I mean, I could require you in
17 the course of discovery to -- I mean, I could
18 require the City in the course of discovery to give
19 you everything they had, but I don't know that I
20 could require the City to go out and spend public
21 funds to do a survey when they claim that there's
22 no encroachment. So I think that as we stand here
23 now, if there's a disagreement based on facts as to
24 whether or not the encroachment of that road has
25 actually been fixed, then perhaps the -- perhaps

1 the motion for summary judgement on the, uh,
2 purpresture is to be denied at this time. But, uh,
3 but I don't think -- I don't think that I can even
4 now require the City to go out and bare the cost of
5 doing a survey, or The Cliffs. I think it's up to
6 you.

7 MR. STILWELL: Your Honor, to the extent
8 that you have generated a sensible fact controversy
9 regarding that, I would put forward that it's his
10 burden to now show some scintilla of proof
11 regarding a cause of action which you just read in
12 the last 10 minutes. And that document that he
13 gave you does not suffice for that. It does not
14 show an encroachment. If it would --

15 THE COURT: Okay. How long ago did this
16 trans -- this transaction is dated April of '08,
17 April 28th of 2008 is the date of the ordinance --

18 MR. CARPENTER: The first reading --

19 THE COURT: Huh?

20 MR. CARPENTER: That was the first reading
21 of the ordinance.

22 THE COURT: When was the transaction?

23 MR. CARPENTER: June 24th.

24 THE COURT: June 24th. Okay. So here's
25 what I'm going to do. I'm going to do what I said.

1 I'm going to grant the defendant's motion for
2 summary judgement. I'm ruling on the motion which
3 is right to be heard based on the evidence that is
4 before me. There's no evidence that this
5 encroachment -- I don't think the evidence in these
6 two maps that you've shown me is enough for me to
7 conclude that there's a disputed issue of material
8 fact regarding the encroachment.

9 Uh, and, uh, -- but if you want to go do a
10 survey, then you are free to do that. I'll allow
11 you to do it. And if I need to sign an order, I
12 will. Or if y'all can do it by agreement, that
13 would be fine. But it would be at the cost of the
14 plaintiff. And then if that survey shows that, uh,
15 there is, in fact, some encroachment, then you're
16 free to file a 59(e) motion to get the, uh, -- to
17 bring the question back before me. Okay. All
18 right. Anything else for today?

19 **MR. STILWELL:** No, sir, Your Honor.

20 **THE COURT:** Are we not going to do the
21 motion for fees in the Hospital System case?

22 **MR. CARPENTER:** I think that's on Monday.

23 **THE COURT:** Monday. Okay. All right then.
24 I'll see y'all Monday.

25 **MR. CARPENTER:** All right.

1 MR. STILWELL: Thank you, Your Honor.

2 THE COURT: What time we starting Monday?
3 You going to do an order?

4 MR. STILWELL: I will, Your Honor.

5 THE COURT: Or one of you. It doesn't have
6 to be a very long order, I don't think.

7 MR. STILWELL: All right.

8 THE COURT: Okay. Uh, if there is an
9 element in purpresture that includes some intent as
10 opposed to some accidental encroachment, then I
11 think that should be part of the -- I think that
12 should be addressed in the order.

13 MR. STILWELL: I'll look at that, Your
14 Honor.

15 (WHEREUPON, the proceedings conclude at
16 approximately 12:55 p.m.)

17
18
19
20

CERTIFICATE

43

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

I, the undersigned, Teresa B. Johnson, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of all the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas for Greenville, South Carolina, on this 30th day of September, 2012.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

COPY

Teresa B. Johnson
Circuit Court Reporter

STATE OF SOUTH CAROLINA	) COURT OF COMMON PLEAS
	)
COUNTY OF GREENVILLE	) Case No(s) : 2008CP2302255
	)
The South Carolina Public	)
Interest Foundation, and	)
Edward D. Sloan, Jr., and	)
Robert M. Lloyd, individually	)
and as taxpayers of the City	)
of Greenville, S.C., and on	)
behalf of all others similarly	)
situated,	)
	)
Plaintiff,	)
	)
-VS-	) TRANSCRIPT OF RECORD
	)
City of Greenville, Mayor Knox	)
H. White, and The Cliffs at	)
Glassy, Inc.	)
	)
Defendant.	)

COPY

December 17, 2008
Greenville, South Carolina

B E F O R E:

HONORABLE JOHN C. FEW, Judge.

A P P E A R A N C E S:

JAMES CARPENTER, Esquire
Attorney for Plaintiff

RIVERS STILWELL, Esquire
Attorney for Defendant

KATHLEEN KEMPE, Esquire
Attorney for Defendant

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EXHIBITS PAGE

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
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PLAINTIFF EXHIBITS

(No exhibits offered.)

DEFENSE EXHIBITS

(No exhibits offered.)

COURT EXHIBITS

(No exhibits offered.)

P R O C E E D I N G S

(WHEREUPON, the proceedings begin on the 17th day of December, 2008 at approximately 9:31 a.m.)

THE COURT: Mr. Carpenter.

MR. CARPENTER: Your Honor, at the end of the last hearing, we showed the Court some surveys that had been on file at the Register of Deeds Office prepared by the surveyor for The Cliffs. They seemed to show that the property line was to the west of, uh, -- earlier surveys showed the property line was to the west of the one used when they made a conveyance of the .29 acres. After we showed the Court and the defendants these surveys, the Court, uh, told us that the plaintiffs could, at their own expense, have the properties surveyed and if significant information existed, move the Court to address the matter further.

That's exactly what we did. We went out and hired Freeland's, uh, Jim Freeland's company to do the surveying of the property line. They did spend many hours out there on the property looking for indication to property lines and so on. They also reviewed a number of, uh, deeds and surveys that historically had been used in the surveying of this property. And what they found was that the primary

1 line, which is established by a surveyor named Mr.
2 Wiswall, uh, had been in existence since 1920
3 approximately and that deeds that referenced the
4 Wiswall survey, the Wiswall line to convey
5 property, uh, particularly the property in dispute
6 here.

7 Uh, the Wiswall line lies to the west, the one
8 used to convey the .29 acres. Uh, we found several
9 different lines, uh, marked by Mr. Lindsey, the
10 surveyor for The Cliffs. They used different
11 bearings. The Wiswall line starts at the crest of
12 Corbin Mountain and go south 20 degrees east.
13 Other lines used by Mr. Lindsey had variations onto
14 that. At least four different times, they came up
15 with four different variants, which is difficult to
16 understand. They range from 20 to 25 -- well, not
17 20. He ranged from like 22 to 25 degrees.
18 Somewhere in there. But four different variants,
19 meaning the directional angle that he went down off
20 of due south.

21 If the Wiswall line is accurate, and we
22 believe it is, then there are approximately a total
23 of three acres which belong to the city, which The
24 Cliffs claims belongs to them. The significance of
25 this is in addition to an ongoing purpresture over

1 -- of the roadway over city property beyond that,
2 which was conveyed a few months ago. There are
3 three lots which are also, had been sold by The
4 Cliffs and, uh, are within the city's boundary
5 lines. We have listed the owners to these
6 properties as additional defendants in our proposed
7 third supplemental complaint because I think their
8 property rights would be affected by this Court's
9 determination of where the property line is.

10 When Mr. Freeland's, uh, -- Mr. Freeland and
11 his associates went out there, they found this old
12 barbed wire fence that was down in some places, and
13 some places, it was embedded in the trees. And
14 it's shown on the survey that we attached to our
15 motion to supplement. It's small and may require
16 some sort of magnification. But, uh, the barbed
17 wire fence is in line with the Wiswall line down at
18 the bottom. Now, it curves off to the southwest,
19 but it basically follows the Wiswall line.

20 In addition, uh, Mr. Freeland and his people
21 found what they believe is a standing stone which
22 was commonly used to mark boundaries and corners
23 down in fairly close proximity to the southern end
24 of the Wiswall line. Another thing they found is
25 that the Wiswall line, uh, says that it's 66 chains

1 long -- 31 chains long. Each chain is 66 feet.
2 That makes 2,046 feet. Close to the end of this
3 2,046 feet is where the standing stone was found on
4 the mountain out there.

5 Dan Collins, when he went up and surveyed for
6 some timber companies, used the Wiswall line, used
7 the bearings in the Wiswall line and the deeds
8 which convey the property also relate to the
9 Wiswall survey. The Wiswall survey covered not
10 only this property but advanced regions of the
11 mountains up there in northern Greenville county.

12 The essence of our claim is that the quarter
13 acre or the .29 acres that was conveyed was only a
14 small part of the encroachment that The Cliffs had
15 made on city property. There's another three
16 acres, some of which covers the road, some of which
17 covers, uh, three, portions of three lots and some
18 of which covered a paved spur, which is either a
19 road or a driveway sort of between two of the lots.
20 There continued to be encroachments on city-owned
21 property, which the city has not, uh, taken action
22 to protect.

23 We have asked the Court to let us supplement
24 the complaint to bring these newly discovered facts
25 to the court, also to name the encroaching

1 defendants, which would be the three property
2 owners. And apparently if the Nature Conservancy,
3 which has a conservation easement over this doesn't
4 want to be voluntarily joined as a plaintiff, it
5 seems to me their interest is being trespassed on
6 by these continuing encroachments and they ought to
7 be named as an involuntary plaintiff as allowed by
8 the Rules of Civil Procedure which we cited in our
9 motion.

10 (WHEREUPON, there is a pause.)

11 THE COURT: So the complaint that you
12 propose as your second supplemental complaint has
13 -- the first three causes of action are the same
14 causes of action that I ruled on in The Cliffs
15 motion and the City's motion for summary judgement
16 whenever that was.

17 MR. CARPENTER: I believe that's right.

18 THE COURT: So the only addition is the
19 fourth cause of action. And what is that theory of
20 recovery?

21 MR. CARPENTER: It's the same as the
22 purpresture, uh, theory that The Cliffs has
23 encroached upon public property for its own use,
24 it's own private use and that the City has failed
25 to protect the City's property against encroachment

1 and purpresture both by road, by lots and by paved
2 spur off of the other road.

3 There's one other factual matter I would like
4 to address before I relinquish the floor.

5 **THE COURT:** All right. Hold on just a
6 minute. (Pause.)

7 Okay. Go ahead.

8 **MR. CARPENTER:** The -- I believe I submitted
9 a second supplemental complaint and a proposed
10 third supplemental complaint. The biggest
11 difference between the two is that in a third
12 supplemental complaint, we would purport the name
13 of the three live owners and the Nature Conservancy
14 as additional parties because their interest would
15 be affected by this.

16 The factual matter that I wanted to address
17 was the, uh, --

18 **THE COURT:** I don't -- you submitted a
19 third supplemental complaint?

20 **MR. CARPENTER:** Yes, I sent it by email like
21 a week or so after I sent the second supplemental.

22 **THE COURT:** Oh. All right.

23 **MR. CARPENTER:** I sent it to you and to all
24 the parties.

25 **THE COURT:** And it just adds the three

1 property owners. Otherwise, it's the same.

2 MR. CARPENTER: The three property owners
3 and the Nature Conservancy.

4 THE COURT: It adds the people who are
5 affected by the decision you hope I'll make.

6 MR. CARPENTER: Yes. Well, one of those
7 would be a lien holder on one of those lots.

8 THE COURT: Yeah. Anything else?

9 MR. CARPENTER: Uh, yes. The, uh, The
10 Cliffs have submitted an affidavit and a memorandum
11 in opposition of the motion. There is a, I think,
12 a significant distinction between what the
13 affidavit says and what the memorandum argues. And
14 it relates to a line of painted trees. Mr. Lindsey
15 in his affidavit just recites that people or agents
16 of the City went out there and painted those trees.
17 He says that was the line he was attempting to
18 follow. The memorandum argues that the city's
19 surveyors did that.

20 Our information is the people who painted and
21 hacked the trees were not surveyors. We have no
22 knowledge that the city ever had a survey of the
23 property. We believe that the assertion that this
24 was done by surveyors may not be accurate.

25 THE COURT: We're not going to litigate the

1 accuracy of the surveys in a motion to amend the
2 complaint.

3 MR. CARPENTER: Right.

4 THE COURT: But your point is that there's a
5 dispute, a legitimate dispute as to where the
6 property line is.

7 MR. CARPENTER: Yes.

8 THE COURT: Okay. All right.

9 Mrs. Kempe? Mr. Stilwell?

10 MR. STILWELL: Your Honor, I like, uh, Mr.
11 Carpenter's idea of ,like, let's just go around the
12 part we're proceeding under because we might get
13 stuck on that forever. So I'm going to go around
14 that part and not talk about what we're actually
15 doing as far as are we amending the complaint or
16 are we addressing the previous part. Your Honor is
17 correct in the first three causes of action that
18 he's amended in his fourth complaint.

19 There was a complaint. Then he supplemented
20 the complaint right before the last hearing. Then
21 one day, he dropped another complaint after the
22 last hearing. The next day, he dropped another.
23 So there are four complaints out there. The first
24 three causes of action in the fourth complaint are
25 the ones Your Honor already ruled on so we

1 shouldn't even be talking about those.

2 So he's coming in here and he's saying based
3 on this evidence, which is the same evidence he had
4 in his hand at the last hearing which did not come
5 out until Your Honor had already ruled, this same
6 evidence based on publically reported documents, he
7 said, you know, I think there's a question that
8 there's continuing purpresture here. Okay. I want
9 to talk about how there is no way in the world that
10 there's continuing purpresture based on the actions
11 between my client, the city and the Nature
12 Conservancy when they resolve this issue about the
13 .29 acres. Okay.

14 Everybody has added that the line was at least
15 where Mr. Lindsey put the line if not farther to
16 the east. Now, I don't want Your Honor to get
17 stuck on the siren song that they have accurately
18 represented the Wiswall line. Okay. That is the
19 holy grail apparently that everyone is chasing.

20 **THE COURT:** Boy, I'll tell you what, I
21 didn't realize I was going to be dealing with siren
22 songs and holy grails this morning. I thought I
23 was dealing with property lines up in the northern
24 part of the county, but this is making it more
25 interesting.

1 **MR. STILWELL:** This is the Wiswall survey.
2 That may indicate to Your Honor the reason why we
3 have a question about what this line up in this one
4 little circle part represents. Okay. This is the
5 top of Greenville county and Pickens county. And
6 it is a holy mess. It really is.

7 **THE COURT:** That's the survey?

8 **MR. STILWELL:** That's the Wiswall survey
9 that we are drilling down to one little teeny line.

10 **THE COURT:** Do I have a copy of that?

11 **MR. STILWELL:** Your Honor, apparently this
12 was thought to be lost, but it turns out I, uh, --
13 I can give you this copy. But my client actually
14 has the original linen copy. And, uh, Mr. Freeland
15 is the one who actually owns that. Not Mr.
16 Freeland, Mr. Lindsey.

17 **MR. CARPENTER:** That's a significant
18 reduction. The original goes 10 to 15 feet. It's
19 huge.

20 **THE COURT:** Wow.

21 **MR. STILWELL:** Your Honor, what Mr. Freeland
22 has given is not a survey. It's a survey of
23 surveys. If you look at his report, he basically
24 went out there with a GPS. He didn't go out there
25 with his surveying gear. He went out there with a

1 GPS and he looked at a bunch of stuff and he did a
2 document review of all these old things.

3 THE COURT: Well, we'll -- let's come back
4 to that. What if there is a legitimate dispute
5 about where the property line is?

6 MR. STILWELL: If there were a legitimate
7 dispute, Your Honor, the parties have acted -- the
8 city and the Nature Conservancy have acquiesced in
9 a line that's drawn on this map and they would be
10 estopped from claiming anything else, Your Honor.
11 Mr. Sloan's case can not be any better than what
12 the city and the Nature Conservancy would have
13 against The Cliffs, Your Honor. In that regard, I
14 would point out the ordinance by which we
15 transferred this property on the top of the
16 mountain and in this curve of the road. The
17 ordinance that city council passed in 2008 says --
18 one of the lines says, whereas city council desires
19 to bring finality to a boundary line separating the
20 north Saluda reservoir property from the property
21 from which The Cliffs at Glassy has deeds of title.

22 This is Exhibit A to the original complaint,
23 Your Honor, the city ordinance that transferred
24 this stuff that made the whole case moot. That's
25 exactly what they were doing when they relied upon

1 this line right here, which Mr. Lindsey drew.
2 While Mr., uh, Freeland has drawn all these lines
3 coming down here to another station down here and
4 he's relied on the drawing by another survey that
5 no one ever used to transfer property based on this
6 line, okay, Mr. Collins.

7 Mr. Collins was messing around with Mr.
8 Timmons trying to figure out where that fire tower
9 was on the top of the mountain. And he drew a line
10 down here. Nobody ever transferred property based
11 on Mr. Collins' line. And if you look at it, it's
12 so far east, it's hundreds of feet away from where
13 this triple mark tree is. Okay.

14 This line of trees was put in in the '50s. I
15 don't know if it matters if it was the city
16 surveyors or employees. It was during the time
17 that the city acquired this little piece of
18 property, Your Honor. They went out there and
19 marked that thing on the ground in the '50s.
20 Everybody who's acquired title since then on this
21 side of the line, that's The Cliffs and it's
22 people, relied on the line being at least out
23 there. You can't go 50 years and come back in and
24 say now there's a material issue of fact that we
25 own more of that property. Okay.

1 Mr. Lindsey's line was drawn by consent of all
2 the parties because somebody had to finally put a
3 rest to this. That's already been done. That deal
4 is done. And so they are trying to come in and say
5 this is a dispute that the city should continue to
6 pursue.

7 Your Honor, we didn't talk about standing in
8 the last hearing, but there's a very real standing
9 issue here. There's a very real standing issue on
10 a purpresture. If you look at the first Sloan
11 suit, the one that Mr. Sloan's father raised, the
12 city tried to raise standing at that hearing down
13 at Supreme Court. Supreme Court said, huh-uh, you
14 didn't raise that below so we're not going to talk
15 about it here.

16 If you look at other purpresture suits out
17 there, it says you've either got to be the city or
18 you've got to be somebody with special interest in
19 it. He doesn't have any special interest in this.
20 Okay. What he's asking you to do is to issue a
21 writ of mandamus to make the city do something
22 about this. Okay.

23 The clearly established case of South Carolina
24 -- I've got a cite for you here. It's Rockhill
25 versus Thompson, 563 S.C. 2d 101 -- is that if

1 you've got a legal right that is doubtful, then a
2 writ of mandamus would not proper issue.

3 Look at Mr. Freeland's report. You know what
4 he basically says? He doesn't say this is the
5 line, this is the right line. They ask him where
6 is the line, Mr. Freeland, and his answer was
7 clearly this, that's a good question. He
8 essentially said, you know, that's a doubtful
9 issue. Your Honor, take that, take that if he
10 raised a doubtful issue. That's not enough to
11 issue a writ of mandamus under the law of South
12 Carolina.

13 So this is a dispute that's trying to make
14 itself between two parties, three parties really.
15 It's more if you add the property owners who don't
16 even have any business with this at all. He's
17 trying to gym up a dispute where none exist, Your
18 Honor. Look at the City and the Nature Conservancy
19 came in here and was sitting on this side instead
20 of Mr. Carpenter and Mr. Sloan. That case would be
21 dead right out of the gate.

22 And so to get back, Your Honor, to where we
23 were about what procedural rule we're under, if
24 it's Rule 15, then I would say they have not shown
25 there's a futility argument there. They don't have

1 any cause of action if they were to proceed. If we
2 are pass Rule 15, then I'd make a motion for
3 summary judgement that there is, in fact, no issue
4 of material fact based on what he's put in here.
5 There's no issue. Even if there were, they're all
6 estopped and acquiesced. That's all I've got.

7 **THE COURT:** If I understood you correctly
8 and I probably missed one or more of your points,
9 your first point is that Mr. Sloan does not have --
10 neither Mr. Sloan nor any of the plaintiffs have
11 standing. Second point is there is no dispute
12 period as to where that property line was or is.
13 And third, even if there is a dispute, there's no
14 legal remedy available to the plaintiffs even if
15 they had standing to want to, to -- there's no
16 legal remedy available. And finally, I believe
17 your last argument is that the ordinance that was
18 attached to the plaintiffs' complaint as Exhibit A
19 resolved the dispute with finality when the
20 ordinance was passed.

21 **MR. STILWELL:** That's a good re -- better
22 restatement than my brief may have, Your Honor.
23 Also, there was one other point, which is somewhat
24 of a minor point, it's the issue about adding the
25 Nature Conservancy as an involuntary plan is

1 completely and procedurally improper. That's in
2 part E of our brief. You can't do that with an
3 involuntary plaintiff unless you've asked them and
4 unless they are not subject to jurisdiction and
5 they already are. So it's improper to add them in
6 there.

7 **THE COURT:** Well, if I don't allow -- the
8 points that you just made are all essentially
9 dispositive points like you would raise in a motion
10 for summary judgement. If I don't allow him to
11 amend the complaint, he's certainly free to just go
12 file another complaint.

13 **MR. STILWELL:** Well, Your Honor, I actually
14 tried to move the chest piece ahead that much. If
15 I could, if Your Honor is going to grant summary
16 judgement, then please amend the complaint. I
17 mean, I'm stuck in a rock and a hard place there.

18 **THE COURT:** Well, my, my, my, uh, -- I don't
19 think that it is -- that it is -- wait a minute.
20 (Pause.)

21 Let me ask you, Mr. Carpenter, to go to that
22 fourth point that I listed in summarizing Mr.
23 Stilwell's arguments that the ordinance of April
24 14th, 2008 resolved with finality any dispute that
25 involved the city as to what their property line

1 is. And why is it that that ordinance does not
2 answer the question that you raised by citing the
3 Freeland survey to me this morning? Why is it that
4 that ordinance -- that's Mr. Stilwell's argument.
5 And if that argument is true, I mean, if he is
6 correct -- he argues. I'm saying this -- his
7 argument is this, the ordinance, just like it did
8 for the .29 acres that we discussed when we were up
9 here the last time answers the question regarding
10 these three acres. And if there's no -- if the
11 ordinance resolves that property line dispute, then
12 there is no purpresture. And so the claim that you
13 raise in your fourth cause of action would then be
14 essentially the same as the claim that you raise in
15 whichever of the first three it was where you
16 allege that there was a purpresture. And the
17 answer, he contends, would be that since there is
18 no ongoing purpresture, there's no remedy available
19 because the only remedy available is in the way of
20 injunction. That's his argument.

21 And that is not so much a summary judgement
22 argument as it is an argument that we already dealt
23 with this in the previous summary judgement motion
24 and that you are amended the complaint -- that your
25 request to amend the complaint is really not an

1 amendment. It's really nothing different. Help me
2 understand that argument.

3 **MR. CARPENTER:** Well, I'd be happy to if I
4 could, Your Honor. This is a new argument that
5 he's just presented to me. But it seems to me that
6 this argument was based on a survey, on the same
7 survey that we are disputing. This ordinance was
8 based on the Lindsey survey, not on the Wiswall
9 line. The city never did its own survey. The city
10 never used proper self-health and diligence to see
11 where the property line is. They got hoodwinked by
12 agreeing to sell a quarter acre when the trespass
13 or purpresture was on more than three acres.

14 **THE COURT:** Well -- and I don't want to cut
15 you off, but I think that the starting point of
16 that argument is that everything that you just said
17 might be correct. The starting point of the
18 argument regarding the ordinance is that at some
19 point and at all points before April of 2008 that
20 property line was an absolute mess. Nobody knows
21 exactly where it is so we're going to fix it once
22 and for all right now in this ordinance. And we're
23 going to settle the property line so that we can
24 move on.

25 **MR. CARPENTER:** I don't think that's what

1 the ordinance did. The ordinance recited a lot of
2 things, but it did two things. It conveyed .29
3 acres one way and it purportedly conveyed .00 --
4 .04 acres the other way. There's a question in my
5 mind about who owned the .04 acres to begin with.
6 But the ordinance did two things. It conveyed two
7 pieces of property. It didn't --

8 **THE COURT:** Okay. Well, I'm going to make
9 sure -- you know how I am about finally figuring
10 out what the issue is. I want to figure out what
11 the issue is. Did I misstate -- I mean, the city
12 can't just come in as though there were some sort
13 of judicial body and say we deem that this is the
14 property line. If there's a dispute, that has to
15 be resolved through conveyance. Am I mistaken in
16 what you tell me that the city and The Cliffs
17 argues that this April 14, 2008 ordinance resolves
18 all outstanding issues regarding where that
19 property line is?

20 **MR. STILWELL:** Your Honor, that plus the
21 conveyance which resulted from. The reason we
22 convey .29 acres is because everyone agreed that's
23 all that was even in dispute. So, I mean, like I
24 said, Your Honor, if the city came in here and
25 said, oh, by the way, we know you conveyed .29 to

1 us but we now think the line is here, that's dead
2 out of the gate. There's no way they can make that
3 argument. They just conveyed to us based on
4 another survey.

5 **MR. CARPENTER:** The point we're arguing is
6 whether the city acted properly toward the
7 taxpayers in protecting the land that was there.
8 It's very clear that the city didn't do anything.
9 They relied on what the opposing party -- the
10 opposing party's surveyor who incidently had four
11 different bearings for that line which is -- to
12 have four different bearings for the same line --

13 **THE COURT:** Well, I think that -- I think
14 and I'm not saying I agree with it, but I think
15 that their point is that that's fine. Yeah, there
16 was a dispute about where the property line was,
17 but there's not any dispute anymore. This
18 ordinance sets the property line. They would
19 respond, I believe, to your argument by saying,
20 sure, maybe we made a mistake. Maybe we didn't get
21 as much money from The Cliffs as we could have for
22 the property that was conveyed, but that's a done
23 deal. That was a transaction that has already
24 occurred. The property line is set and is accurate
25 and is reflected in the public records. There's

1 nothing that Mr. Sloan or any other interested
2 citizen can do or say about it now.

3 MR. CARPENTER: I think that's a whole lot --

4 THE COURT: And your argument, I think,
5 depends on their being a current dispute as to
6 where that properly line is. All this historical
7 stuff is fine. But if it was cleared up in one
8 fashion or another at some point in the past so
9 that there is now no dispute and no encroachment,
10 then you're out, right? There's no purpresture.

11 MR. CARPENTER: There has to be a trespass.
12 Purpresture is a trespass. And we are saying that
13 the Wiswall line is the proper line. And if the
14 Wiswall line is the proper line, then three acres
15 that they're claiming actually belongs to the city.

16 THE COURT: So the Wiswall line was done
17 back in the '20s?

18 MR. CARPENTER: Right, but it's also the one
19 which they relied to get their property. When they
20 brought their property --

21 THE COURT: All right. When was that?

22 MR. CARPENTER: That's in our motion. It's
23 also, I think, in the surveyor's report. 1988,
24 filed December 20, 1988, timberlands conveyed to
25 Gap Creek, LP, a parcel to the west of the Wiswall

1 line by specific reference to the Wiswall plat
2 being denominated parcel 25, page 15 of the deed
3 and recorded on deed book, page book, so on.

4 **THE COURT:** That's the deed from whom to
5 whom?

6 **MR. CARPENTER:** From the predecessor
7 entitled to Gap Creek which I think still owns the
8 property that The Cliffs sells and manages, the
9 best we can tell. It's a predecessor and title,
10 current title owner of their property took the land
11 by the Wiswall line and recorded the deed in 1988.
12 Paragraph 2 of our motion.

13 **THE COURT:** Okay. And then what happened to
14 it? When did the city get it?

15 **MR. CARPENTER:** The city's got what's on the
16 other side of the line. The city had -- let me see
17 if I can tell you. (Pause.)

18 **MR. STILWELL:** I think that part on the
19 other side, the city got, Your Honor. That last
20 little piece up there at the top is what they took
21 in the 50's when they glazed those trees. There's
22 a last little knock out at the top of the line that
23 the city didn't own.

24 **MR. CARPENTER:** But the part we're talking
25 about is down at the bottom of the line. The

1 Wiswall line has always been the boundary between
2 those two pieces of property as far as we know, as
3 far as we can tell.

4 THE COURT: All right. And then the, uh,
5 city at some point, conveyed the property to The
6 Cliffs. Is that the next transaction?

7 MR. CARPENTER: The .29 acres. There is the
8 Wiswall line that went from the top of Corbin
9 Mountain 2000 feet south, 20 degrees east.

10 THE COURT: Okay.

11 MR. CARPENTER: That was the Wiswall line.

12 THE COURT: The city still owns everything
13 it originally owned.

14 MR. CARPENTER: Right.

15 THE COURT: The Gap Creek crowd conveyed
16 their property to The Cliffs.

17 MR. CARPENTER: Well, Gap Creek -- I'm not
18 sure. Does Gap Creek still own it? Either they
19 still own it and The Cliffs are selling it or --

20 THE COURT: Let me make sure I understand
21 the summary of the history of how these properties
22 were conveyed to their current owners.

23 MR. CARPENTER: Okay. Uh, when Gap Creek,
24 which is the last registered owner we could find
25 bought the property and acquired the deed in 1988,

1 they used the Wiswall line --

2 **THE COURT:** Which piece of property are you
3 talking about now?

4 **MR. CARPENTER:** The Cliffs' property.

5 **THE COURT:** Okay.

6 **MR. CARPENTER:** They used the Wiswall line
7 as their boundary. The city owned everything on
8 the other side of the Wiswall line, to the east of
9 the Wiswall line. Their surveyor comes along 15
10 years later and starts moving the Wiswall line.
11 Instead of south, 20 degrees east, he moves it over
12 22, 24, 25, which creates a long pie-shaped piece
13 which is in dispute. It's their surveyor's
14 movement of the bearings of that line which created
15 the problem. The Wiswall line is where it's always
16 been.

17 When our people went out there, they found a
18 standing stone fairly close to the southern
19 permanence of the Wiswall line which is over 2000
20 feet. The point they are looking at is like 1800
21 feet from the crest of the Corbin Mountain. But
22 the Wiswall line has always be 31 chains, which is
23 2086 feet. So the Wiswall line hasn't changed.
24 It's just that they tried to move the boundary and
25 ignore the Wiswall line. That's the dispute.

1 **THE COURT:** In what context did they move
2 the boundary?

3 **MR. CARPENTER:** They moved it by having Mr.
4 Lindsey go out there and make four different
5 surveys.

6 **THE COURT:** All right. Who is "they"?

7 **MR. CARPENTER:** Cliffs.

8 **THE COURT:** After they bought the property
9 from Gap Creek.

10 **MR. CARPENTER:** Right.

11 **THE COURT:** The deed that goes from Gap
12 Creek to The Cliffs --

13 **MR. CARPENTER:** Timberlands to Gap Creek. I
14 guess Gap Creek may still be the owner of the land
15 that The Cliffs is managing and selling and
16 marketing and so on. When The Cliffs or its
17 predecessor bought it, the deed referenced the
18 Wiswall line, the Wiswall survey, which is the
19 south 20 degrees east line, that's what they bought
20 and recorded their deed in 1988. When Mr. Lindsey
21 started surveying for them in the, uh, in the
22 2000's, he didn't follow that south 20 degrees east
23 bearing. He moved it over. He's had four
24 different bearings from the crest of Corbin
25 Mountain -- he's got four different bearings with

1 four different surveys, one of which is the one
2 they used in buying the .29 acres.

3 THE COURT: How much property is in the pie
4 that you are --

5 MR. CARPENTER: Three acres. And that --

6 THE COURT: You have all this on a map
7 that's --

8 MR. CARPENTER: Yes.

9 THE COURT: On a plat or map you can show?

10 MR. CARPENTER: It's, uh, -- I've got a
11 bigger one. There's one attached to my motion but
12 I've got a bigger one here.

13 THE COURT: Let me come down there and look
14 at it. (Steps down from the bench.)

15 Bring it over here.

16 MR. CARPENTER: This is the North Carolina/
17 South Carolina boundary. The deeds all talk about
18 being -- starting from the crest of Corbin
19 Mountain. The, uh, Wiswall line goes to the crest
20 of Corbin Mountain south 20 degrees east through a
21 Station 114 and terminates right here. That's the
22 end of the 2096 feet or whatever that 31 chains is.
23 The standing stone is right here.

24 This terrain is unbelievably difficult. This
25 is -- from here at the top of Corbin Mountain is a

1 very steep, wooded, rocky, very difficult terrain.
2 There is, uh, another -- the ridge line comes down
3 and around like this. This part of the property is
4 very steep as well. That's why they built the road
5 like this and continues going on down steep there..
6 They didn't want to build a bridge here, so they
7 built the road over here. There is old --

8 **THE COURT:** So this side is the City's
9 property?

10 **MR. CARPENTER:** Yes.

11 **THE COURT:** And this is The Cliffs'
12 property.

13 **MR. CARPENTER:** Right. And The Cliffs or
14 Gap Creek bought this property, they used the
15 Wiswall line at the top of Corbin Mountain south 20
16 degrees as the boundary for the property line. Mr.
17 Lindsey's surveys all go to the east of this line.
18 Some of them, the final one, which is the, uh, the
19 2004 line is this one here. This one is the, as I
20 recall, the western most of the four lines.

21 It also seems to be the, uh, -- these are the
22 three lines, 9, 10 and 11. The Wiswall line
23 crosses line 9 down the middle, takes out most of
24 lot 10, takes out a portion of lot 11, crosses over
25 a paved spur which is like a driveway or something

1 paved right in there. When, uh, our surveyors were
2 up there, they found old barbed-wire fence which
3 goes back along this way, comes around and goes
4 pretty much down the Wiswall line. This barbed-
5 wire --

6 **THE COURT:** All right. Well, let's --
7 let's, uh, -- let's stop right here.

8 **MR. CARPENTER:** All right.

9 **THE COURT:** All right. So the, uh, The
10 Cliffs, does The Cliffs own the property?

11 **MR. STILWELL:** Your Honor, there's a couple
12 of lots down there. There's probably people that
13 already bought those lots.

14 **THE COURT:** Well, before it was developed,
15 did The Cliffs buy this large piece of property?

16 **MR. STILWELL:** Yes, sir.

17 **THE COURT:** And when did that occur?

18 **MR. STILWELL:** Did that occur in the '80s,
19 is that correct? It occurred in either the late
20 '80s or the 1990s.

21 **MR. CARPENTER:** Who is Gap Creek?

22 **MR. STILWELL:** Gap Creek, uh, -- I think it
23 was kind of like an acquiring company for The
24 Cliffs.

25 **THE COURT:** Okay. And so, uh, the deed that

1 The Cliffs has shows what line, Mr. Carpenter?

2 **MR. CARPENTER:** It references the Wiswall
3 line. They bought a lot of property, but one of
4 the lines is the Wiswall line or the Wiswall
5 survey.

6 **THE COURT:** Do y'all agree with that?

7 **MR. STILWELL:** Yes, Your Honor. This is
8 what we disagree with, the whole dispute we're
9 talking about, where is the daggone Wiswall line.
10 He's sitting here pointing to the Wiswall line like
11 it's accurate. This isn't the Wiswall line.
12 There's a bunch of meets and bounds and no physical
13 line. This part. See?

14 This chalk up here in the corner is this piece
15 right here that the city acquired in the '50s.
16 That's when they went out and marked all these
17 trees trying to figure out when the city got this
18 little teeny piece. The city owned all of that.
19 This is what The Cliffs own now. That little teeny
20 piece. And this is the line we're talking about.
21 Somebody had to figure out where is the Wiswall
22 line.

23 Now, there's barbed-wire all over the
24 mountain. Everywhere you look. But there ain't no
25 line of trees going right up here except right in

1 there. That's what those dots show, these trees
2 all the way out there. The issue -- look at the
3 way this thing is down here. If this is the
4 Wiswall line, this is the line for the watershed
5 right here. This thing is standing out here where
6 nobody ever said the end of the line was. This is
7 an academic discussion.

8 **THE COURT:** Well, I like academic
9 discussions.

10 **MR. STILWELL:** What I'm saying it's already
11 been resolved, Your Honor. The issue about where
12 the Wiswall line --

13 **THE COURT:** I'm trying to get to the point
14 of figuring out whether or not that's already been
15 resolved. That's what --

16 **MR. STILWELL:** This question about what the
17 Wiswall line is is what everybody decided when they
18 did the ordinance.

19 **THE COURT:** Well, hold on a minute. All
20 right. So the City, the city's involvement with
21 the Wiswall line. Uh, which by the way is W-I-S-
22 W-A-L-L, right?

23 **MR. CARPENTER:** Right.

24 **MR. STILWELL:** Yes, sir.

25 **THE COURT:** The record needs to be clear on

1 that. The city's involvement with the Wiswall line
2 was when the city acquired this piece of property
3 that you are referring to in the '50s.

4 **MR. STILWELL:** Right.

5 **THE COURT:** From that point until today, the
6 city has had no interaction with the question of
7 where the Wiswall line is until this ordinance came
8 up, is that correct?

9 **MR. STILWELL:** Okay. The only thing that I
10 could think that could have come in there was -- I
11 don't know how the Nature Conservancy got its
12 easement. That might have addressed it. But the
13 city has not changed any --

14 **THE COURT:** Because the way that, the way
15 that, uh, The Cliffs acquired their property, at
16 least as far this particular dispute is concerned
17 had nothing to do with the city. They got it from
18 some other property.

19 **MR. STILWELL:** Some timber company.

20 **THE COURT:** Okay.

21 **MR. CARPENTER:** This, uh, -- this map does
22 have the north 20 degrees, uh, west which is the
23 same thing as south 20 degrees --

24 **THE COURT:** All right. Let me take a moment
25 to read this ordinance again. I'm going to go back

1 in my office. I'll be right back.

2 (WHEREUPON, a short recess is taken.)

3 THE COURT: Y'all be seated. This, uh,
4 ordinance calls for deeds to be executed and filed,
5 right?

6 MR. STILWELL: Yes, sir.

7 THE COURT: Where are those deeds? And how
8 do the lines that are described in those deeds
9 relate to the lines on these surveys?

10 Mr. Carpenter, what happened to your --

11 MR. CARPENTER: Oh, we folded it up.

12 MR. STILWELL: Your Honor, if I may.

13 THE COURT: Sure.

14 MR. STILWELL: This is the one from the
15 city. Do you have the one that's filed in North
16 Carolina for the top of Corbin Mountain? The line
17 is described as the common property line that's the
18 one relies upon the Lindsey survey citing the
19 variance as 22 degrees.

20 THE COURT: Okay.

21 MR. CARPENTER: That's at variance with
22 the --

23 THE COURT: All right. What is it not at
24 variance with on your survey?

25 MR. CARPENTER: This line right here, the

1 Lindsey line.

2 THE COURT: All right. So this deed --
3 well, all right. Let me read this deed. Where did
4 I put the other one? Right here? (Pause.)

5 Do you all have a copy of the plat that is
6 referenced in the, uh, deed as being in plat book
7 1069 page 58?

8 MR. STILWELL: Yes, Your Honor. This is it
9 right here.

10 (WHEREUPON, there is a pause.)

11 THE COURT: All right. So this, uh, -- Mr.
12 Carpenter, let me ask you this question. This deed
13 is dated June the 19th, 2008, actually filed in
14 Greenville county June the 4th, 2008, shows the
15 piece of property that you have on your survey,
16 which we will mark as an exhibit from Freeland
17 Surveyors and Engineers dated October 28th, 2008 is
18 this shaded in piece of property to the east of
19 what you have referred to as the Lindsey line.

20 MR. CARPENTER: Right, that's the Lindsey
21 2004 line.

22 THE COURT: Okay. So the piece of property
23 is roughly shown on this survey ---

24 MR. CARPENTER: Right.

25 THE COURT: --- as that little portion of

1 the edge of a circle that is to the east of that
2 Lindsey line?

3 MR. CARPENTER: Correct.

4 (WHEREUPON, there is a pause.)

5 THE COURT: Okay. Section 5 of the
6 ordinance of June the -- I'm sorry -- April the
7 14th, which is actually ratified April the 28th,
8 Section 5 says that the city and The Cliffs shall
9 execute mutual releases of claims. Was that done?

10 MRS. KEMPE: Not yet, Your Honor.

11 MR. STILWELL: Your Honor, we checked
12 before. Apparently, nobody knows if they're done
13 or not, but they will be done tomorrow.

14 THE COURT: Mr. Carpenter, if -- all right.
15 So the city and The Cliffs sit down to resolve
16 whatever dispute that they are sitting down to
17 resolve. And in doing so, they apparently mutually
18 acknowledge that this shaded piece of property,
19 what I just asked you about is the piece that's in
20 dispute. And it operates off of the Lindsey line.
21 And when the deed -- I'm sorry -- yeah, when the
22 deed says beginning at a point on the common
23 property line of the grantor and the grantee, which
24 is located on a tie line north 22-24-20 west
25 730.59, that's the Lindsey line? That's referring

1 to what you have called the Lindsey line?

2 MR. CARPENTER: That's my understanding,
3 yes.

4 THE COURT: Let's verify that. When this
5 deed says -- somebody -- I am absolutely
6 incompetent at interpreting a deed. So I don't
7 know what these number 7 -- uh, 22-24-20 and 730.59
8 mean. Where are they shown on this plat?

9 MR. CARPENTER: 730.59 is a foot measurement
10 from a 5/8ths inch rebar.

11 MR. STILWELL: I think they are trying to
12 call out these numbers on this line. Two points
13 determine a line. There can't be any dispute
14 about --

15 MR. CARPENTER: That's a varying number as I
16 understand it.

17 THE COURT: The 22-20-20 -- 24-20?

18 MR. CARPENTER: Yes, north 22, 24 and 20
19 west. 22 degrees, 24 something -- minutes and --

20 MR. STILWELL: That's longitude and latitude
21 points on the earth.

22 MR. CARPENTER: It's a varying from this
23 5/8ths inch rebar.

24 THE COURT: Oh, so it comes from here?

25 MR. CARPENTER: Yes.

1 **THE COURT:** Wait a minute now. The record
2 is going to look like a disaster. Right at this
3 point in time, we're going to clear it up. When
4 you say it comes from this point, we're looking at
5 your October 8th, 2008 Freeland survey. We're in
6 the lower right-hand corner at the bottom of this
7 darkest line which you have referred to as the
8 Lindsey line. Uh, and it is -- you are pointing to
9 the point that says IPF 5/8ths inch rebar.

10 **MR. CARPENTER:** Which is near station 115
11 which might be the easier way to acknowledge it.

12 **THE COURT:** And you are telling me that this
13 -- that this -- the point in the deed between the
14 city and The Cliffs from June 24th where it says
15 north 22-24-20 ---

16 **MR. CARPENTER:** West.

17 **THE COURT:** --- west. Okay. So the line is
18 referred to by north 22-24-20 west?

19 **MR. CARPENTER:** Right.

20 **THE COURT:** And that line is this darkest
21 line that proceeds up toward the top of Corbin
22 Mountain.

23 **MR. CARPENTER:** Right. And the reason is
24 that --

25 **THE COURT:** And it goes 730.59 feet from the

1 rebar to the beginning point of the conveyance that
2 is specifically listed in the deed.

3 MR. CARPENTER: Right.

4 MR. STILWELL: And Your Honor, I would just
5 like to point out, they are calling out from where
6 we say the line is.

7 THE COURT: I know.

8 MR. CARPENTER: The reason they are doing
9 that is they are relying on his survey and not the
10 Wiswall one.

11 MR. STILWELL: They are agreeing to it, Your
12 Honor.

13 THE COURT: All right. That --

14 MR. CARPENTER: What that's clarifying --

15 THE COURT: So that gets us back to this
16 question that I was asking you a while ago. I
17 think that the City's argument and The Cliffs'
18 argument is that there were at least one -- there
19 was at least one matter in dispute in early 2008,
20 at least one. And that is that little piece of a
21 semi-circle that is specifically referred to in the
22 deed, specifically granted in the deed of June the
23 24th. It's marked on your survey of October 28th
24 with this sort of shaded in piece of the edge of a
25 circle. That's at least at one point one piece of

1 property that was in dispute. There may have been
2 more property that was in dispute. You, in fact,
3 say yes, there absolutely was more property in
4 dispute because the City and The Cliffs are using
5 the wrong property line when they start trying to
6 figure out how much this road encroaches onto city
7 property.

8 MR. CARPENTER: Right. And when --

9 THE COURT: You are saying they should be
10 using the Wiswall line and they are using the wrong
11 one..

12 MR. CARPENTER: Right.

13 THE COURT: So the city -- The Cliffs and
14 the City's argument is okay, fine, that may be
15 true. Maybe we are uncertain about what our
16 property line is, so let's resolve this. And they
17 say in a publicly recorded document reflecting, uh,
18 a contract for which certainly consideration was
19 paid, all that -- I'm sorry. Beginning at a point
20 on the common property line of the grantor and the
21 grantee which is located on a tie line north 22-24-
22 20 west, the City's argument and The Cliffs'
23 argument is that that is a mutual acknowledgment
24 between these two parties that the common property
25 line is the Lindsey line. You come back and say,

1 no, they shouldn't have agreed to that because the
2 common property line -- because there's a really
3 good argument that the common property line is the
4 Wiswall line, not the Lindsey line. And they say
5 maybe we could have done it that way but that's not
6 the way we did it.

7 Now, we're looking at a publicly recorded
8 document that reflects a mutual acknowledgment of
9 where the property line is. It reflects the fact
10 that there is an encroachment over that property
11 line for we have now been paid 100 grand to resolve
12 that dispute by conveying a piece of property to
13 The Cliffs.

14 So that gets us -- if I buy that argument,
15 that carries me right back to where I was in --
16 whenever we argued this the last time, that there
17 is no remaining dispute about an encroachment or a
18 trespass and therefore, there can be no
19 purpresture. Which Mr. Stilwell and Mrs. Kempe
20 argue means that what we're dealing with right now
21 in this fourth amended complaint or third amended
22 complaint, or whatever it is, is a restatement of
23 the exact same issue that I asked Mr. Stilwell to
24 draw an order on the last time we had a hearing and
25 that there's no need to amend the complaint because

1 it's not actually an amendment, it's a different
2 way of stating the same thing.

3 **MR. CARPENTER:** Your Honor, I -- there's a
4 fact that I think the Court hasn't considered,
5 which is this agreement between two defendants
6 happened after the plaintiff filed suit disputing
7 the encroachment. I think it -- I think it's
8 fundamentally inequitable for two defendants to
9 make an agreement that cuts the plaintiff out in
10 the middle of the lawsuit. We said there's a
11 purpresture going on here.

12 So the two defendants get together and say we
13 will convey a small part of the purpresture and we
14 will call it even. Whereas Mr. Sloan, who is
15 representing the interest of the taxpayers and
16 residents of the city, says no, the purpresture is
17 a whole lot bigger than that and you can't -- you
18 can't, you know, shove this thing under the rug by
19 conveying .29 acres when the real encroachment is
20 three acres and we are in the middle of a
21 litigation about this stuff. They haven't executed
22 any mutual releases or mutual acknowledgment of the
23 boundary line.

24 Uh, on that basis, I move the court for a
25 temporary -- preliminary and temporary injunction

1 to stop him from executing the mutual releases
2 until we can resolve where the boundary line really
3 is, which is, I think, the thing that ought to
4 happen. And we ought to establish in this
5 litigation, which started before the agreement ever
6 took place, but establish in this litigation what
7 is the proper boundary line.

8 The case has not been resolved. It's ongoing
9 litigation and there's no reason to close it down
10 when there's good reason to believe that the
11 property line is other than what The Cliffs have
12 contended, particularly when there's this dispute
13 over the three acres, the three lots and further
14 encroachment on this, uh, roadway.

15 **THE COURT:** Okay. Uh, I am going to deny
16 the motion to file a supplemental complaint on the
17 grounds that the supplemental complaint alleges
18 nothing different from what the previous complaint
19 alleged which is what I ruled on when I granted the
20 motion for, uh, I think it was summary judgement,
21 when I told Mr. Stilwell to draw an order granting
22 the motion for summary judgement. And you are
23 going to have to revise the order to explain that.

24 I've already pretty much explained my
25 reasoning but several points that are made by Mr.

1 Carpenter right there, I'm going to respond to.
2 Uh, Mr. Sloan does, in fact, purport to represent
3 and does adequately and very, uh, commendably
4 represent the interest of city taxpayers. But Mr.
5 Sloan is not the only person who represents the
6 interest of city taxpayers. In the first place, it
7 is the city council that represents those
8 interests.

9 And when the -- the point that was valid that
10 Mr. Sloan made was that city council has not
11 addressed the interest of city taxpayers in
12 riveting this encroachment by The Cliffs on the
13 city property. The city then -- you characterized
14 it as coming along and pulling the rug out from
15 under the plaintiff in the middle of a lawsuit, but
16 the way I characterize it is the city did exactly
17 what you said they hadn't done, the city council
18 did, and that is they addressed the encroachment by
19 this private landowner on city property.

20 Now, you say the city didn't do that the way I
21 wanted them to do it. They didn't do it correctly.
22 They didn't do it the way I would have done it.
23 That is a good example of where courts have to draw
24 the line between their role as courts and the role
25 of executive and legislative entities such as city

1 council.

2 I am not permitted, nor is Mr. Sloan, uh,
3 entitled to get inside the city council's
4 deliberations and say, you know, you really
5 shouldn't have agreed with The Cliffs that the
6 starting point to resolve this encroachment was the
7 Lindsey line because it should have been that the
8 starting point for the encroachment was the Wiswall
9 line. And the city -- if I'm asked to consider the
10 decision by city council to resolve this dispute in
11 exchange for \$100,000, then I'm saying, well, you
12 got to -- the first thing you have to do is figure
13 out the starting point of the encroachment. That
14 starting point is in dispute. Eliminate that
15 dispute. Bring it down to certainty and let's
16 start with a known property line.

17 Getting \$100,000 for this piece of property
18 that you describe in your explanation is almost
19 impassible, seems to me to be a unquestionably
20 reasonable action taken by an executive and
21 legislative entity. I'm not sticking my nose into
22 whether or not the city made the right decision in
23 using the Lindsey line as the starting point to
24 resolve the dispute. That is a decision that is
25 beyond judicial scrutiny.

1 The thing that this court can do is look at
2 whether or not there is actually an encroachment.
3 There was. You pointed it out. The city acted to
4 resolve it. There's no longer an encroachment.
5 There's no longer a purpresture. There's nothing
6 for this court to do. So everything that I said in
7 the order that Mr. Stilwell drafted before remains
8 true. With the explanation of how we get from that
9 point through the end of this hearing added to the
10 order, it will be ready to be signed. So ordered.

11 **MR. CARPENTER:** At some point, at the
12 previous hearing, uh, the court said that -- it was
13 either the previous hearing -- at some point during
14 a hearing of this case, the Court said that Mr.
15 Sloan ought to have his attorney's fees covered for
16 bringing this to the City's attention and for the
17 City responding and selling the property in the
18 course of the ligation. I understand probably by
19 this point, which we did not prevail, the court
20 might not be inclined to grant relief. But is the
21 Court --

22 **THE COURT:** I think what I said -- I don't
23 believe I would have said it exactly the way you
24 just described because the issue was not before me
25 at the time. As you will recall from so many times

1 before me in the past, I am very careful not to
2 decide questions that are not before me. I think
3 what I said was if you make a motion for attorney's
4 fees, then perhaps you are entitled to them and
5 we'll answer that question at the appropriate time.

6 MR. CARPENTER: So I'm still free to make a
7 motion?

8 THE COURT: You are free to do anything you
9 want. By the way, when I said in the previous
10 hearing that you could go out and do a survey, I
11 didn't grant you any kind of official permission to
12 do that. Any citizen is entitled to do anything
13 they want to that is consistent with the law.

14 If Mr. Sloan wants to do a survey of my
15 property where I live, he's welcome to do come do
16 it. I'll grant him permission to come out there
17 and do a survey of it. If he wants to do a survey
18 of the Table Rock State Park, he can go do that. I
19 did not grant him permission to do that. You asked
20 me if he could do it and I acknowledged his
21 preexisting right to do so in the course of
22 conversation.

23 I am not telling you that you are entitled to
24 file a motion for attorney's fees. You either have
25 that right or you don't have that right under

1 preexisting law and I'm not saying or doing
2 anything to change it. So if you file it, we'll
3 deal with it.

4 MR. CARPENTER: All right.

5 THE COURT: All right.

6 (WHEREUPON, the proceedings conclude at
7 approximately 10:49 a.m.)
8
9
10
11

CERTIFICATE

50

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

I, the undersigned, Teresa B. Johnson, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of all the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas for Greenville, South Carolina, on this 3rd day of January, 2012.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

COPY

Teresa B. Johnson
Circuit Court Reporter

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

COURT OF COMMON PLEAS
2008-CP-23-02255

THE SOUTH CAROLINA PUBLIC)
INTEREST FOUNDATION, AND)
EDWARD D. SLOAN, JR., AND)
ROBERT M. LLOYD, INDIVIDUALLY)
AND AS TAXPAYERS OF THE CITY)
OF GREENVILLE, SOUTH CAROLINA,)
AND ON BEHALF OF ALL OTHERS)
SIMILARLY SITUATED,)
PLAINTIFFS,)

vs.)

TRANSCRIPT OF RECORD

CITY OF GREENVILLE, MAYOR)
KNOX H. WHITE, AND THE CLIFFS)
AT GLASSY, INC.,)
DEFENDANTS.)

ORIGINAL

October 26, 2011
Greenville, South Carolina

B E F O R E:

THE HONORABLE D. GARRISON HILL, JUDGE.

A P P E A R A N C E S:

JAMES G. CARPENTER, ESQ.
Attorney for the Plaintiffs

KATHLEEN G. KEMPE, ESQ.
Attorney for the Defendants

HOLLIE M. JENKINS
Circuit Court Reporter

I N D E X

(There were no witnesses called.)

E X H I B I T S

(There were no exhibits introduced.)

P R O C E E D I N G S

THE COURT: All right. Good morning.

This is a number of cases brought by the South Carolina Public Interest Foundation and Edward D. Sloan, Jr., Individually and as Taxpayer of the City of Greenville and on behalf of all others similarly situated. They include case #07-6008, #07 -- excuse me, #06-7322, #06-7324, #06-7323, #05-4358, #08-CP-23-2255. And there's a case from 2000, I think, #2000-2958, which the Clerk's Office is still trying to round up.

So did I correctly state all the cases?

MR. CARPENTER: I don't have my list. But I do have my list back in my briefcase, but --

MS. KEMPE: If I may approach.

THE COURT: Sure.

MS. KEMPE: I have a list here.

And it's my understanding that some of those cases were not on the docket for today, but they did involve the City of Greenville.

MR. CARPENTER: Your Honor, we've had discussions with the city, and we've agreed to resolve all of them except the one that is for argument today, which is commonly called the Cliffs case.

THE COURT: Yes, sir.

MR. CARPENTER: And we have drafted stipulations of

1 dismissal. Mr. Sloan and I want to go over them and make
2 sure they say what we think they say, and so on. And we
3 anticipate signing those. Therefore, we ask that the
4 argument today be only on the 2008-2255 case, which is
5 commonly called the Cliffs case.

6 THE COURT: All right, sir.

7 Is that suitable?

8 MS. KEMPE: Yes, Your Honor.

9 THE COURT: Thank you, Ms. Kempe.

10 Whenever you're ready to proceed.

11 MR. CARPENTER: Thank you, Your Honor.

12 This is one of the more interesting cases. Of
13 course, they're all interesting, but this is one of the
14 most interesting of the interesting cases.

15 Factually, it starts in 2003, when the Cliffs
16 development built a road on property owned by the city.
17 They -- the Cliffs bought property adjacent to land owned
18 by the city for use as the watershed area for the water
19 system. And there is a valley up there. And the Cliffs
20 simply decided to build a road around that valley, instead
21 of building a bridge across it. And the historical line
22 starts at the top of Corbin Mountain and runs south 20
23 degrees east. And we've called that the Wizwall [phonetic]
24 line.

25 But, in 2003, the city became aware that the Cliffs

1 had built a road across land owned by the city as part of
2 the watershed area. Now, it is not a part of the
3 geographic watershed. It's on the other side of the crest
4 of the mountain. But it's still owned by the city as part
5 of the watershed.

6 The city submitted an affidavit recently to
7 Mr. McKinney saying that they began discussions with the
8 Cliffs in 2003 or shortly thereafter, maybe 2004. But
9 they talked to him for five years. And Mr. Sloan learned
10 of the purpresture. And it's an old common law term for a
11 continuous invasion of public property by private
12 interests.

13 He learned of the purpresture and he --

14 THE COURT: Wait a minute. Hold on a second.

15 Can you spell that?

16 MR. CARPENTER: P-U-R-P-R-E-S-T-U-R-E.

17 THE COURT: And, just for my own benefit, orient me,
18 Mr. Carpenter. If I'm driving up from Greenville towards
19 Saluda on that road and the watershed lake is on my right,
20 where are you talking about?

21 MR. CARPENTER: All right. The way I can tell you
22 how to get there is if you were going up 25, and then you
23 go in -- you pass Panther Mountain. If you go into
24 Panther Mountain, then you go winding back all the way
25 back in there, which is now the Cliffs at Panther

1 Mountain.

2 THE COURT: Okay.

3 MR. CARPENTER: Anyway, you get back in there. But
4 if you're going up 25, it's off to the right.

5 THE COURT: Okay.

6 MR. CARPENTER: And the watershed is beyond that.
7 And the crest of the mountain is such that it's just to
8 the east of where this land is.

9 THE COURT: Okay.

10 MR. CARPENTER: The watershed owns the crest and some
11 acreage on the western side of the crest, the western and
12 northern side of the crest. So that this piece of land
13 that has the road on it comes around the valley and back
14 like a horse shoe turn.

15 THE COURT: Okay.

16 MR. CARPENTER: And the property line runs to the
17 west of where that road makes the big horse shoe turn. So
18 their road trespassed -- or was a purpresture on land
19 owned by the city.

20 Now, it would have been expensive for them to build a
21 bridge across that gully -- it's a steep place, it's a
22 gully -- to make sure they stayed on their own property.
23 I wasn't there and don't know what the thinking process
24 was. But, rather than do that, they simply built a road
25 across land owned by the city.

1 Now, the city discovered that in 2003. And they were
2 talking to them for five years. Mr. Sloan filed suit in
3 2008, and said he wanted the court to have the city figure
4 out where the boundary line was, put up two markers, and
5 put up a fence to establish their ownership of that
6 property. And he wanted -- we sued the Cliffs, too, to
7 say you can no longer trespass here. You can't, you know,
8 invade this property owned by the city. So that's what we
9 asked for. And we filed suit in March.

10 In April, they cut a deal. And the deal was the
11 Cliffs would convey .29 acres to the city -- I'm sorry,
12 the city would convey .29 acres to the Cliffs. The Cliffs
13 would convey .05 acres where a fire tower was up on the
14 mountain. And there would be some cash exchanged,
15 \$100,000 to the city. And then the Nature Conservancy had
16 been given an easement on all property owned by the city
17 for the watershed 10 or 15 years earlier. And the Nature
18 Conservancy got a certain sum of money as well as part of
19 this deal.

20 So we went forward. We had a hearing in October.
21 And, in the hearing, we started looking at all of the maps
22 that were drawn by the surveyor for the Cliffs, a man
23 named Mr. Lindsay. And we looked at different maps that
24 had been recorded. And different maps drew the same line
25 several different ways at several different angles,

1 several different locations, and several different
2 geographic bearings. And they were all recorded in the
3 Register of Deeds Office, and all purporting to be the
4 same boundary line.

5 And one of those showed that the .29 acres that was
6 part of the deal in June was only a small part of the
7 entire purpresture. And we pointed this out to Judge Few
8 at the end of the hearing. And he said, well, I'll tell
9 you what, you go get your factual information, and you
10 bring it back to me, but I'm inclined to say the case is
11 moot. They've conveyed the .29 acres. They've -- you
12 know, they've made a deal. They've paid the money. I'm
13 inclined to say it's moot. But if you go get factual
14 information, you can bring it back to me and then we'll
15 deal with it at that time.

16 So Mr. Sloan went and hired a surveyor who was
17 experienced in surveying up in the rough and rural areas
18 of the mountains. And we all went up there and we
19 traipsed around the property. And we looked for
20 geographic markers on the ground. And I say "we," the
21 surveyors did it and I went along for the ride, basically.

22 They found .155, which was the historical geographic
23 crest of Corbin Mountain that was part of a survey in
24 2000. And they took a bearing south 20 degrees east. And
25 they found a rock, which was probably the standing stone.

1 They found old maps, one of them called the Wizwall map by
2 Mr. Wizwall 75, 80 years ago. And that was his bearing
3 for this property line. And they found subsequent maps,
4 and subsequent surveys, all of which used the bearing that
5 was on the Wizwall map, which we call the Wizwall line.

6 So we found all this stuff. We found where the line
7 was supposed to be. They found barbed wire, which was
8 along the line that was -- they said was manufactured in
9 the 1800s. Other evidence -- you know, there was evidence
10 of a barbed wire fence that shows the historical property
11 line. So they found all of these records on maps and on
12 the ground that said the Wizwall line was the appropriate
13 line. And, therefore, the several different lines drawn
14 by Mr. Lindsay were wrong.

15 THE COURT: Who is this surveyor?

16 MR. CARPENTER: This is the Cliffs surveyor.

17 THE COURT: What's his name?

18 MR. CARPENTER: Lindsay.

19 THE COURT: No, no. The one you -- Mr. Sloan hired.

20 MR. CARPENTER: Wizwall -- oh --

21 Who was it we hired? It's the guy out on Stone
22 Avenue.

23 THE COURT: Freeland?

24 MR. EDWARD SLOAN: Freeland.

25 MR. CARPENTER: Yes, Freeland.

1 THE COURT: Okay.

2 MR. CARPENTER: So we found the physical markings on
3 the ground, the point at the top of the mountain, the rock
4 down at the other end of the line, barbed wire along where
5 the line was supposed to be, and other surveys that made
6 reference to that rock at the end of the line. And we
7 found good evidence that that was the appropriate line.
8 And the ones Mr. Lindsay had drawn were wrong. And they
9 did the calculations and came up with the conclusion that
10 an additional 3.2 acres made up the difference between the
11 line drawn by Mr. Lindsay and the Wizwall line. He had
12 kind of a pie-shaped piece of property there.

13 THE COURT: How many acres?

14 MR. CARPENTER: Sir?

15 THE COURT: How many acres did you say?

16 MR. CARPENTER: 3.2 additional.

17 THE COURT: Okay.

18 MR. CARPENTER: On top of the .29. So roughly three
19 and a half acres, instead of .29.

20 So one of the complicating factors was that the
21 Cliffs had sold some of this property for residential
22 lots. So we presented this information to the Court in
23 the form of a surveyor's report. And the Defendants
24 drafted an order for the judge to sign. The Judge signed
25 it sometime in January. We made a motion -- we made a

1 Rule 59 objection to the order setting out all of the
2 factual problems between the order, as signed by Judge
3 Few, and the facts found on the ground and in the other
4 survey by Mr. Freeland.

5 So, a few days after that, the city and the Cliffs
6 entered into another agreement, which was a -- they called
7 it a boundary line agreement, quit claim, and release.
8 And they did that on February 13, 2009. So after they had
9 entered into the second agreement, which in effect
10 conveyed the other 3.2 acres to the Cliffs for no
11 additional consideration, we, basically, came to the
12 conclusion that that resolved the purpresture, the ongoing
13 trespass. Eventually, we entered into a consent order
14 that said the order entered into in January -- the order
15 signed by the judge in January is revoked, and the case is
16 dismissed on the ground of mootness. The purpresture had
17 been resolved.

18 So we made a motion for attorney's fees. And we
19 cited a couple of cases. To get attorney's fees, there
20 are three elements under 15-77-300, South Carolina Code
21 annotated 15-77-300. First, the non-governmental party
22 has to be the prevailing party. Number two, the
23 Governmental entity lacks substantial justification in
24 their defense of the case. And, three, no other
25 circumstances would make the award of an attorney's fee

1 unjust. So those three elements.

2 As to the first element, did we prevail? In our
3 first motion, we cited some cases from Montana and
4 Washington state that said if you're in litigation and you
5 caused the governmental entity to do what you were asking
6 them to do and they do it and thereby moot your
7 litigation, you are a prevailing party. We had no South
8 Carolina case law to support that theory. But, in the
9 months after that, the Supreme Court decided the case
10 about Sloan v. Friends of the Hunley, which dealt with
11 that issue. And the facts of that case is -- are that --
12 and I've got a copy of it here. I'll pass it up to the
13 Court, if you like.

14 The facts of Sloan v. Friends of the Hunley were that
15 Mr. Sloan brought a FOIA action against the Friends of the
16 Hunley. They said, we're not subject to the FOIA Act.
17 We're not going to give you any documents. So he sued
18 them. And then they said, well, I'll tell you what, we're
19 still not subject to the FOIA Act, but here are your
20 documents. And then other people would ask for documents
21 from Friends of the Hunley. And they'd say we're not
22 subject to the FOIA and we're not giving you the
23 documents. When we would ask for subsequent documents,
24 they'd say, we're still not subject to FOIA, but here are
25 your documents. We're doing this as a matter of

1 cooperation.

2 So they maintained this posture that we're not
3 subject to FOIA all the way to the Supreme Court. And a
4 day or two before the oral argument, their attorney sent a
5 letter to the Supreme Court and said, well, all this
6 position about whether we're subject to FOIA or not, we
7 don't want to fight about that any more. And we got there
8 to oral argument.

9 And Justice Pleicones pressed him and said, look, you
10 say you don't want to fight about this anymore, are you
11 conceding that you're subject to FOIA? And the other
12 attorney stammered a while and hemmed and hawed, and,
13 finally, said, well, yes, I think probably, at this point,
14 we are subject to FOIA. And the Supreme Court said, well,
15 there's nothing here for us to decide. The case is
16 dismissed. This is moot.

17 So we went back to the trial court and we made a
18 motion for attorney's fees and said, look, we won this
19 case. And the trial court agreed and awarded us 100 --
20 just under \$140,000 in attorney's fees. Well, that didn't
21 sit well.

22 So the Friends of the Hunley appealed the award of
23 attorney's fees. Again, it went all the way back to the
24 Supreme Court. And the Supreme Court said, well, we don't
25 think there's any real difference between giving you --

1 the Friends of the Hunley said, well, we think that the
2 most we ought to have to pay them is their attorney's fees
3 that they spent getting to the point where we, actually,
4 gave them the documents the first time, and not all these
5 subsequent fees.

6 And the Supreme Court in argument said, look, what
7 consensual difference is there between your giving them
8 the documents, and then three years later -- three or four
9 years later conceding that Friends is subject to FOIA.
10 And there was no consensual difference. But because they
11 had dismissed the earlier action on grounds of mootness,
12 they said that was the law of the case.

13 So they gave us -- they ruled that when we had to sue
14 them under FOIA to get the documents they should have
15 given us in the first place, we were entitled to our
16 attorney's fees up until the point we got the documents.
17 So that was a new precedence that you don't have to have a
18 judicial ruling to be a prevailing party. Incidentally,
19 we've made another motion for attorney's fees for that
20 appeal, and that's going to be heard next week. And the
21 other side is not very happy with us, but that doesn't
22 matter.

23 But the Friends of the Hunley case established the
24 ruling that if you, through litigation, get the other side
25 to do what they should have done in the first place, then

1 you are a prevailing party for attorney's fees purposes.
2 So, element number one, when we got the city to define and
3 defend their boundary like they should have done in the
4 first place, we were a prevailing party, even though the
5 case, ultimately, was dismissed on grounds of mootness
6 because they went ahead and took care of it under the
7 pressure of litigation.

8 Number two element of attorney's fees is lack of
9 substantial justification. The lack of substantial
10 justification, I think, is that in all those years of
11 discussing -- those five years of discussing this matter
12 with the Cliffs, they never went out and found out where
13 the boundary line was. They never hired anybody to say it
14 is here. And that's valuable land. 100 years ago, it was
15 just mountain property and nobody cared. But, now, these
16 are home sites for million dollar homes. This is valuable
17 property. And they never went up there and said, where is
18 this line? What are you doing selling our property to
19 these homeowners? And, you know, you're selling our
20 watershed owned land to these homeowners to build houses
21 on it. They've never established where the line was. And
22 they never kicked them out until we sued them.

23 And even after we sued them, they still didn't go
24 figure out where the boundary line was. They were content
25 to cut a deal with the Cliffs using the Cliffs surveyor

1 who had recorded, at least, three different bearings of
2 that property line. They never hired their own surveyor
3 and did it. We had to do that when we saw that he was
4 drawing a line at three different places.

5 So they were not substantially justified in how they
6 defended this lawsuit. And they didn't, ultimately,
7 resolve it until February 13, 2009, when they entered into
8 the second agreement with the Cliffs for no additional
9 consideration. But they were not substantially
10 justified.

11 And, number three, there are no circumstances that
12 would make an award of attorney's fees unjust. We've
13 cited in our motion several cases where the Courts have
14 said these kind of cases are beneficial to society, but
15 beneficial to the city, and the Government. And when a
16 man puts his own money on the line and brings a benefit to
17 the city, or the county, or whoever, then he ought to be
18 reimbursed. And these kind of suits ought to be
19 encouraged to make sure the Government does what they're
20 supposed to do in protecting the taxpayers money and
21 following the law.

22 So we submit that we've met all three elements for
23 the award of attorney's fees under 15-77-300. The city
24 got \$100,000 out of this as a settlement. And they only
25 got it after we filed suit after they had been talking to

1 them for five years.

2 So, Your Honor, we ask that our attorney's fees and
3 costs, which I think are -- we've got an affidavit and
4 submitted it in the -- they're in the range of \$50,000,
5 counting the \$8,000 or so that we spent on the surveyor.
6 These would be the -- there's an affidavit attached to our
7 initial motion and then a supplemental affidavit with a
8 supplemental -- I'm sorry, supplemental motion and
9 supplemental affidavit. And the total in the supplemental
10 motion is just over \$50,000, as set out in the
11 affidavit. And we ask that that be awarded to us under
12 15-77-300.

13 THE COURT: How would the surveyors cost be a cost
14 recoverable under the act?

15 MR. CARPENTER: It was a necessary expense in
16 litigation. If it weren't for that, we wouldn't have
17 established where the true Wizwall line was. They
18 wouldn't have found the standing stone. We wouldn't have
19 found .155 at the top of the mountain. We wouldn't have
20 found the barbed wire. It was necessary to prove. It's
21 like an expert's fee, I guess.

22 THE COURT: So is the category of costs recoverable
23 under 15-77-300 different than what you can recover under
24 Rule 54?

25 MR. CARPENTER: It's not clarified in the statute,

1 Your Honor.

2 THE COURT: Okay. Thank you.

3 Thank you for your argument, Mr. Carpenter.

4 Ms. Kempe.

5 MS. KEMPE: Thank you.

6 It was not until the year 2005 -- and I am going to
7 be using the statement provided by Mr. Ron McKinney.
8 Mr. McKinney was the city attorney -- is the city attorney
9 for the City of Greenville. And he was in that position
10 at all times relevant to this dispute and to negotiations
11 that resulted from the encroachment upon watershed
12 property.

13 In 2005, a settlement was presented to the city from
14 the water system, who does not own the land but manages
15 the land, and from the Nature Conservancy that has a
16 conservation easement over this property. This was the
17 first time that the city learned of this encroachment.
18 The watershed is far more active in the day-to-day
19 management of that property. They, actually, have
20 employees who -- I believe the term is water police who
21 are involved on that property every day.

22 The settlement presented to the city was this, that
23 the water system had settled on this encroachment for
24 \$5,000, and the removal of a fire tower from land that
25 was, clearly, the Cliffs property to property that was in

1 the watershed. Nature Conservancy agreed to accept
2 \$50,000, and forwarded these documents to the city as the
3 fee owner of the property. We have to approve of any
4 transfer of property.

5 Ron McKinney then began to look into this matter for
6 the first time. And he learned that the boundary line was
7 not, clearly, identifiable, that there was, indeed, a
8 genuine issue of fact as to whether there had been any
9 encroachment at all. As stated, the terrain is very
10 steep. And the deed descriptions come to us from the
11 1950s when they were surveyed for more or less timber
12 rights where the exact lines were not as important as they
13 are today for million dollar homes, as Mr. Carpenter has
14 stated.

15 Ron McKinney met with the water system personnel, and
16 studied the documents related to the transfer of the
17 property. And over the next couple of months then,
18 indeed, years, on more than one occasion, he met with
19 personnel, met with the surveyor, met with Jim Anthony,
20 who, by the way, had entered into a settlement with the
21 water system and Nature Conservancy and thought he was
22 finished. Okay. He didn't know he had to deal with
23 the cities interest. We, also, dealt with
24 environmental groups who expressed concern about this
25 encroachment.

1 The Nature Conservancy presented the city with
2 information that they had -- a study they had done on the
3 property, which showed that to remove that road would
4 create more environmental damage than to leave it. And
5 that was part of the thinking of Nature Conservancy's
6 settlement to allow the encroachment.

7 Mr. McKinney was, also -- had to deal with a division
8 amongst his council members as to what would be the
9 appropriate settlement in this case. And that ranged from
10 tearing up the road to let's get a million dollars, and
11 everything in between. For anything to pass city council,
12 you, obviously, have to have a majority vote. And deeding
13 of property would require a majority vote. So
14 Mr. McKinney was sent over and over back to Jim Anthony to
15 negotiate. And then he met in executive session and
16 negotiated with his council as they were, also, trying to
17 come together on what would be the best way.

18 They were dealing with a -- not only their own
19 feelings, but, as we said, environmental groups were very
20 active. If Your Honor remembers years ago when Mayor
21 Workman was the mayor, and there was the watershed issue.
22 A group was formed called water watch, and they were very
23 protective of the watershed property. And this group in
24 various forms came back and contacted their council
25 members with concerns with what was happening.

1 The city attorneys's office, also, at that time,
2 retained the services of Mark Ratchford, who is a
3 certified MI -- MAI appraiser to advise on the value of
4 that property. And Mr. Ratchford reached the conclusion
5 that that property as it related to the whole of the
6 watershed property -- and as Mr. Carpenter said, it wasn't
7 strictly watershed property, it is owned by the city as
8 part of the watershed -- had little or no value to the
9 watershed.

10 The city attorney, nevertheless, armed with the fact
11 that he was, perhaps, dealing with property that had
12 little value still pressed forward with negotiations. And
13 at the same time that these negotiations were coming to a
14 head, at the same time that council was being briefed, at
15 the same time that items were being prepared for the
16 agenda, Mr. Sloan filed his lawsuit. He filed his lawsuit
17 in March of 2008. The city's first reading of the
18 ordinance, which, of course, had to be posted before April
19 14th, and which had to be negotiated with the city manager
20 and council before it appeared on that agenda, was on the
21 agenda and voted on April 14th, approximately two weeks
22 after Mr. Sloan filed his lawsuit.

23 At that council meeting, there were many groups in
24 attendance. Mr. Sloan was -- I don't believe was there.
25 I do not recall seeing him. But there were many groups

1 there all watching what council would do. Diane Smock
2 made a statement at that meeting. And Mr. Sloan and his
3 attorney were given a copy of the minutes from that
4 meeting. Of course, if they had been there, they would
5 have heard it where Diane Smock thanked Mr. McKinney for
6 his many, many long, long efforts at coming to a
7 negotiated settlement of \$100,000. And he not only worked
8 that out with Mr. Anthony, but allowed council to come
9 together, a very divided council.

10 At the second reading, the language of the ordinance
11 was amended again. Again, I think this just showed the
12 pressure on all the folks to reach an agreement to add or
13 to beef up the language that required the money to go to
14 preserving or -- and strengthening the boundary lines,
15 which we know are based on very old, old deeds. I think
16 it would be preposterous to assume that from the filing of
17 a complaint that it was that complaint that triggered a
18 settlement, that by the statement of Mr. McKinney and just
19 the amount of work that needed to be done was in anyway
20 influenced by this complaint that was filed.

21 It is, also, important to note that although
22 Mr. Sloan talks about this boundary line and his efforts
23 to establish that boundary line, in the ordinance that was
24 passed, there is a provision -- and I have attached the
25 ordinance, I believe, to my memorandum -- that

1 acknowledged not only would a deed have to be exchanged,
2 but that the city and the Cliffs would execute mutual
3 releases of claims against each other and acknowledge the
4 boundary line. This approach that the city has done with
5 boundary line agreements is one we have used two other
6 times that I am aware of.

7 Boundary lines up there are difficult to assert. And
8 so we have entered into various parties what's called
9 boundary line agreements. And section five of that
10 ordinance realizing that there were, according to
11 Mr. McKinney's research, a real issue of fact as to what
12 was the exact -- in today's surveying world, what was the
13 exact line. So we entered into that as provided by the
14 ordinance. It was several months later, but it was
15 provided for on April the 28th, the second reading of the
16 ordinance.

17 Mr. Sloan references cases that are FOIA cases. And
18 they are all cases in which the Government, for whatever
19 reason refused, to turn over information or acknowledge
20 that it was -- had a duty to do so until the eleventh
21 hour, and then miraculously decided that it needed to
22 release that information. In this case, it really is the
23 Plaintiff who has shown up at the eleventh hour in a very
24 long negotiation, and has asked that the city not allow
25 this encroachment to continue.

1 The surveyor -- and I want to make this point -- that
2 was hired, Freeland, did not submit a sealed plat of that
3 survey line. It was his opinion, as everyone who has
4 looked at this is, there is real dispute as to what is or
5 what was that line. And that's why the city chose in its
6 ordinance to go with a boundary line agreement where the
7 two parties have just agreed what that line is.

8 We do not consider Mr. Sloan as the prevailing party
9 in this matter. The settlement was for money. And it was
10 long negotiated before this lawsuit. Unlike the other
11 cases where the Government acted without justification, we
12 had genuine concerns about that boundary line and, also, a
13 real desire to negotiate a settlement that would help us
14 moving forward to resolve some of the issues associated
15 with the property up in north Saluda. For that reason, I
16 would request that no attorney's fees be awarded to
17 Mr. Sloan in this particular case.

18 Thank you.

19 THE COURT: Thank you, ma'am.

20 Any response?

21 MR. CARPENTER: Briefly.

22 Opposing counsel suggested it was preposterous on the
23 issue of causation that Mr. Sloan's lawsuit brought about
24 the settlement. I don't think it is. Number one, as soon
25 as -- the Cliffs probably knows who Mr. Sloan is. When he

1 filed suit, he filed suit not only against the city, but,
2 also, against the Cliffs. And the Cliffs thought they
3 were going to lose their road. And they, also, thought --
4 or they knew they had sold property they didn't own to
5 people who probably had the resources to turn around and
6 sue them. These are wealthy people. So they knew they
7 had some serious problems. And they knew they had them
8 when Mr. Sloan filed suit against them.

9 And I don't think it's preposterous Mr. Sloan getting
10 into the picture and saying put a fence across that road,
11 establish the boundary, and that will establish that
12 you've sold lots -- or portions of three different lots
13 that you didn't own. So I don't think it's preposterous
14 that the lawsuit brought about the resolution,
15 particularly maybe they hadn't been negotiating for five
16 years, maybe they had only been negotiating for three
17 years. But, for whatever reason, they were messing with
18 this thing for years until Mr. Sloan's lawsuit came into
19 the picture. And then it suddenly got resolved.

20 THE COURT: Thank you.

21 All right. Well, I thank you all for your arguments.

22 I'm going to review the file in light of what I've
23 heard here today and let you know my decision, hopefully,
24 in the next two weeks.

25 Thank you.



AGENDA
FORMAL MEETING OF CITY COUNCIL
COUNCIL CHAMBERS - CITY HALL
SEPTEMBER 10, 2007
5:30 P.M.



1. Call to Order
2. Invocation – Councilman Diane Smock
3. Pledge of Allegiance
4. Roll Call
5. Approval of the Minutes – August 27, 2007 and September 4, 2007
6. Communications/Announcements from the Mayor and Council
7. Citizens Wishing to Address Council
8. Presentation: SC Forestry Commission "25th Year - Tree City USA" Award
9. **PUBLIC HEARING**
 - a. To hear comments regarding the proposed abandonment of a portion of right-of-way located on Woodland Way.

CONSENT AGENDA

~~There will be no discussion of these items unless a Councilmember so requests in which event the item in question will be considered separately.~~

10. **UNFINISHED BUSINESS – (Ordinances - Second and Final Reading)**
 - a. Ordinance to grant a no build easement at the edge of Cleveland Park to Richard K. and Gwendolyn D. Hausel, owners of abutting property on Cleveland Street near the Reedy River in consideration of their providing payment for the construction of public access to the River Trail on the opposite side of the river.
(Roll Call)
 - b. Ordinance to appropriate \$240,000 in Sunday Alcohol Permits Revenues, \$100,000 in anticipated SC Department of Transportation Enhancement Fund Proceeds and \$54,334 in anticipated Parks and Recreation Development Fund Proceeds for the construction of the Riverwalk to Greenville Tech Project.
(Roll Call)

Formal Agenda
September 10, 2007
Page 2

- c. Ordinance to transfer title to Real Property to the Conestee Foundation, Inc., in the form of a sale of approximately 11.828 acres, and a donation of approximately 69 acres at a location along the Reedy River and bordering the Lake Conestee Preserve.
(Roll Call)

11. **NEW BUSINESS – (Ordinances – First Reading)**

None.

12. **NEW BUSINESS – (Resolutions - First and Final Reading)**

None.

REGULAR AGENDA

13. **UNFINISHED BUSINESS – (Ordinances - Second and Final Reading)**

- a. Ordinance to approve an agreement among the City of Greenville, the Water System, the Cliffs at Glassy INC, and the Nature Conservancy of South Carolina to amend the Conservation Easement held by the Nature Conservancy by removing approximately 0.29 acres if property.
(Roll Call) (REVISED) /

14. **NEW BUSINESS – (Ordinances – First Reading)**

- a. Ordinance to appropriate \$496,528 in 2006 Central Business District Tax Increment Bond Funds and \$243,189 in Forward Delivery Agreement Funds from the 2001 and 2004 Certificates of Participation for the RiverPlace Phase I Project.
(Roll Call)
- b. Ordinance to appropriate \$182,714 in 2006 Central Business District Tax Increment Bond Funds, \$52,075 in 2003 Central Business District Tax Increment Bond Funds, and \$111,314 in Parking Funds for the RiverPlace Phase II Project.
(Roll Call)

15. **NEW BUSINESS – (Resolutions - First and Final Reading)**

None.

Formal Agenda
September 10, 2007
Page 3

16. **CITY MANAGER'S REPORT**

17. Adjourn.



AGENDA - ADDENDUM
FORMAL MEETING OF CITY COUNCIL
COUNCIL CHAMBERS - CITY HALL
SEPTEMBER 10, 2007
5:30 P.M.

REGULAR AGENDA

13. **UNFINISHED BUSINESS - (Ordinances - Second and Final Reading)**
- b. Ordinance to recognize a revised boundary line between property at the North Saluda Reservoir titled in the name of the City of Greenville and abutting property titled in the name of the Cliffs at Glassy, to approve the transfer of the title from the City of Greenville to the Cliffs at Glassy, INC. for 0.29 acres of Real Property, and to accept title from the Cliffs at Glassy, INC. for .04 acres at another location.
(Roll Call)
14. c. Ordinance to appropriate \$275,000 in proceeds from the sale of City Hall Plaza for costs related to renovating City facilities in order to relocate functions formerly housed in City Hall Plaza.
(Roll Call)

REVISED
Sept. 10-2007

	Request for Council Action The City of Greenville, S.C. To: Honorable Mayor and Members of City Council From: James M. Bourey City Manager	Agenda Item No. 130 Nature of Item: ☐ Zoning/Use Perm. ☒ Contract ☐ Transfer/Appropriation ☐ Other <u>x</u>
	☐ Formal Approval (first reading) ☒ Formal Approval (second reading) ☐ To be received as information	
AGENDA DATE REQUESTED: September 10, 2007 ORDINANCE CAPTION: TO APPROVE AN AGREEMENT AMONG THE CITY OF GREENVILLE, THE GREENVILLE WATER SYSTEM, AND THE NATURE CONSERVANCY OF SOUTH CAROLINA TO AMEND THE CONSERVATION EASEMENT HELD BY THE NATURE CONSERVANCY ON NORTH SALUDA RESERVOIR PROPERTY BY REMOVING FROM THE EASEMENT APPROXIMATELY 0.29 ACRES ON CORBIN MOUNTAIN BACKGROUND: Title to property at the North Saluda Reservoir is in the name of the City of Greenville and managed by the Greenville Water System. A portion of the property is subject to a Conservation Easement held by the Nature Conservancy of South Carolina. The Cliffs of Glassy Inc. owns and manages property abutting reservoir property. The Cliffs at Glassy constructed a road near the boundary on land that appeared at the time to be on The Cliffs own property. A survey of the boundary establishes that 0.29 acres of road right of way encroaches on the North Saluda Reservoir property at a location affecting the easement. The easement needs to be amended to exclude the encroachment area to be in compliance with state IMPACT IF DENIED: The Nature Conservancy faces challenges in being able to comply with state law regulating conservation easements. In the alternative the road could be relocated but an environmental firm hired by the Nature Conservancy has said that the environmental impact of doing so would be worse than allowing the road to stay. IMPACT IF APPROVED: The Nature Conservancy will be in compliance with applicable law on conservation easements, and it would no longer involve in the encroachment resolution being addressed by the other three parties. FINANCIAL IMPACT: The Cliffs at Glassy, Inc will receive \$75,000. The City does not own the easement and its compensation, if any, would not be addressed in releasing the 0.29 acres from coverage by the Conservation Easement.		

REQUIRED SIGNATURES

Department Director _____

Finance Director _____

City Attorney _____

City Manager _____

(Certification of Availability of Funds)

[Signature]

[Signature]

REVISED 09-10-07

Ordinance No. 2007 - _____
Page 1

AN ORDINANCE

TO APPROVE AN AGREEMENT AMONG THE CITY OF GREENVILLE, THE WATER SYSTEM, THE CLIFFS AT GLASSY INC, AND THE NATURE CONSERVANCY OF SOUTH CAROLINA TO AMEND THE CONSERVATION EASEMENT HELD BY THE NATURE CONSERVANCY BY REMOVING APPROXIMATELY 0.29 ACRES OF PROPERTY.

WHEREAS, property at the North Saluda Reservoir in northern Greenville County is titled in the name of the City of Greenville, is managed by the City of Greenville Commissioners of Public Works (the "Water System") for purposes of securing the public's drinking water, and a portion is subject to the Nature Conservancy of South Carolina's conservation easement; and

WHEREAS, the Cliffs at Glassy holds title to a large tract of adjacent property for development for residential and recreational purposes;

WHEREAS, the Cliffs at Glassy, Inc., has constructed a road which as a consequence of a survey of the boundary has been found to encroach upon part of the property on Corbin Mountain, and on which the Nature Conservancy has a conservation easement; and

WHEREAS, the Nature Conservancy after securing the services of an environmental engineering firm, concluded that the economic waste and adverse environmental impact of removing the road encroachment and reconstructing the road entirely on property owned by the Cliffs at Glassy outweigh the benefits of securing full compliance by the Cliffs at Glassy to build solely on its own property; and

WHEREAS, W.C. Lindsay Jr., a professionally certified surveyor familiar with topographical conditions and property holdings in the area has prepared a survey to delineate the appropriate boundary, which had not previously been surveyed by any party; and

WHEREAS, as a result of the newly delineated line and its impact on existing improvements, the parties anticipate the Cliffs at Glassy acquiring property from the City of Greenville and the City of Greenville acquiring property from the Cliffs at Glassy in a transaction not involving the Nature Conservancy but nonetheless involving removal of a portion of the property from the Conservation Easement; and

WHEREAS, City Council has agreed to amend the easement in order to accommodate the request of the Nature Conservancy and Commissioners of Public Works and to assure that the integrity of the Conservation Easement is not violated by a road encroachment; and

WHEREAS, The City Council on first reading of this ordinance addressed the amendment to the easement and the real property transaction which if completed will affect the title in fee simple held in the name of the Cliffs of Glassy and the City of Greenville;

REVISED 09-10-07

Ordinance No. 2007 - _____
Page 2

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE
CITY OF GREENVILLE, SOUTH CAROLINA:

Section 1. The City Council approves the Agreement among the City of Greenville, the Greenville Water System, the Nature Conservancy of South Carolina, the Cliffs at Glassy, Inc providing for removal of approximately 0.29 acres of real property labeled at "Tract B" on a plat prepared by W. C. Lindsey Jr., dated November 5, 2004. More specifically the City Council approves the "Second Amendment to Conservation Easement" attached hereto and incorporated herein by reference.

Section 2. Nothing in this Ordinance shall be construed to apply to any legal or equitable interest held by the City of Greenville, the Greenville Water System, or the Cliffs at Glassy in the same or related property. The sole purpose is to release the easement interest of the Nature Conservancy as provided for herein.

Section 3. The City Manager is further authorized to execute any other appropriate documents and on such other incidental terms which the City Manager and the City Attorney shall deem appropriate, provided no document so executed constitutes a material change in the terms and conditions authorized by this Ordinance. In particular any clarification to the document's recitals establishing with greater particularity the dates of prior actions and recorded filings is approved.

Section 4. The Ordinance shall become effective upon the date of passage and the execution by all parties to the agreement providing for the conveyance.

DONE, RATIFY AND PASSED THIS THE _____ DAY OF _____, 2007.

MAYOR

ATTEST:

CITY CLERK

APPROVED AS TO FORM:

CITY ATTORNEY

REVIEWED:

CITY MANAGER

ORDINANCE EXHIBIT

**SECOND AMENDMENT TO
CONSERVATION EASEMENT**

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE) SECOND AMENDMENT TO
 CONSERVATION EASEMENT

This Second Amendment to a Grant of Conservation Easement ("Conservation Easement") is made on this ____ day of _____ 2006, by the City of Greenville, a South Carolina municipal corporation (City) and the Commissioners of Public Works of the City of Greenville (Commissioners) an agency created pursuant to the laws of the State of South Carolina, , and THE NATURE CONSERVANCY, a non-profit corporation organized and existing under the laws of the District of Columbia, with a local address of South Carolina Field Office, The Nature Conservancy, P.O. Box 5475, Columbia, South Carolina 29250 ("Conservancy").

RECITALS:

A. City and Commissioners conveyed to Conservancy a Conservation Easement by instrument dated May 24, 1993 (the "Conservation Easement") and recorded in the Office of Register of Deeds for Greenville County, South Carolina in Deed Book 1516, Page 503, over two properties owned by City and Commissioners, one comprised of approximately 19,300 acres and the other comprised of approximately 9,800 acres, more or less, located primarily in Greenville County, State of South Carolina with portions also located in Pickens County, South Carolina and Henderson County and Polk County, North Carolina (the "Property").

B. City and Commissioners and Conservancy amended the Conservation Easement by instrument dated June 20, 2003 and recorded in the Office of Register of Deeds for Greenville County, South Carolina in Deed Book 2043, Page 1725 (hereinafter "First Amendment").

C. As a result of a property line which was not clearly defined, an adjacent property owner constructed a road which encroaches onto approximately 0.29 acres of the Property. This 0.29 acre portion is more particularly described in the attached Exhibit "A". The adjacent property owner subsequently discovered the encroachment of the road onto the Property and notified City and Commissioners.

D. City and Commissioners have requested that the Conservation Easement be amended to delete the 0.29 acres from the coverage of the Conservation Easement.

E. Conservancy hired an environmental consulting firm to review the monetary and ecological costs of removing the road and restoring the affected land to its pre-construction condition. It was the opinion of the consulting firm that restoration of the affected land would result in additional ecological damage. Therefore, Conservancy decided not to pursue a remedy of having the adjacent property owner remove the road and restore the impact to the affected land. Conservancy further decided that it did not serve any purpose to amend the Conservation Easement to allow the road. Conservancy has agreed to join the City and the Commissioners to release and remove the 0.29 acres from the coverage of the Conservation Easement.

F. The adjacent land owner has agreed to pay and Conservancy has agreed to accept the sum of seventy-five thousand dollars (\$75,000.00) as compensation for the damage caused to Conservancy's interest in the Conservation Easement. The Conservancy will place these funds in a separate endowment account to provide funds to apply against the costs of monitoring the Conservation Easement.

G. City and Commissioners will make separate arrangements with the adjacent land owner to secure compensation for the damage caused to their interest in the Property.

NOW, THEREFORE, City and Commissioners and Conservancy, in consideration of the premises, hereby amend the Conservation Easement as follows:

The 0.29 acres, as described in Exhibit "A" attached hereto, is hereby released and removed from the Conservation Easement and is no longer subject to the terms, restrictions and covenants contained therein.

All other provisions of the Conservation Easement and the First Amendment shall remain in full force and effect.

IN WITNESS WHEREOF, City and Commissioners and Conservancy, intending to legally bind themselves, have caused this instrument to be executed by their duly authorized representatives on the date first written above.

Witnesses:

Witnesses:

THE CITY OF GREENVILLE,
A municipal corporation

By: _____

Its: _____

COMMISSIONERS OF PUBLIC WORKS
OF THE CITY OF GREENVILLE

By: _____

Its: _____

Witnesses:

THE NATURE CONSERVANCY

By: _____

Its: _____

STATE OF SOUTH CAROLINA)
) ACKNOWLEDGMENT FOR THE CITY
COUNTY OF GREENVILLE) OF GREENVILLE

I, _____, a Notary Public for South Carolina, do hereby certify
that _____, the _____ of the City of Greenville, personally
appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this _____ day of _____, 2006.

NOTARY PUBLIC for State of _____
My commission expires: _____

STATE OF SOUTH CAROLINA)
) ACKNOWLEDGMENT FOR
COUNTY OF GREENVILLE) COMMISSIONERS OF PUBLIC WORKS

I, _____, a Notary Public for South Carolina, do hereby certify
that _____, the _____ of the Commissioners of Public
Works for the City of Greenville, personally appeared before me this day and acknowledged the due
execution of the foregoing instrument.

Witness my hand and official seal this _____ day of _____, 2006.

Notary Public for South Carolina
My commission expires: _____

STATE OF NORTH CAROLINA)

COUNTY OF DURHAM)

ACKNOWLEDGMENT FOR THE
NATURE CONSERVANCY

I, _____, do hereby certify that The Nature Conservancy, by
_____, its _____, personally appeared before me this day and acknowledged
the due execution of the foregoing instrument.

Witness my hand and official seal this _____ day of _____, 2006.

Notary Public for North Carolina
My commission expires:

EXHIBIT A

Legal Description

REVISED
Sept. 10, 2007

	Request for Council Action The City of Greenville, S.C. To: Honorable Mayor and Members of City Council From: James M. Bourey City Manager	Agenda Item No. 13b Nature of Item: ☐ Zoning/Use Permit ☐ Contract ☐ Transfer/Appropriation ☐ Other _____
☐ Formal Approval (first reading) ☒ Formal Approval (second reading) ☐ To be received as information AGENDA DATE REQUESTED: September 10, 2007 ORDINANCE/RESOLUTION CAPTION: TO RECOGNIZE A REVISED BOUNDARY LINE BETWEEN PROPERTY AT THE NORTH SALUDA RESERVOIR TITLED IN THE NAME OF THE CITY OF GREENVILLE AND ABUTTING PROPERTY TITLED IN THE NAME OF THE CITY OF GREENVILLE AND ABUTTING PROPERTY TITLED IN THE NAME OF THE CLIFFS AT GLASSY, INC., TO APPROVE THE TRANSFER OF TITLE FROM THE CITY OF GREENVILLE TO THE CLIFFS AT GLASSY, INC. FOR 0.29 ACRES OF REAL PROPERTY, AND TO ACCEPT TITLE FROM THE CLIFFS AT GLASSY, INC. FOR 0.04 ACRES AT ANOTHER LOCATION. BACKGROUND: Some time after the year 2000 the Cliffs at Glassy constructed a road on its property adjacent to the North Saluda Reservoir. The contractor attempted to keep the road on the Cliffs' side of the in of trees containing red paint and hatch marks placed by the Water System to mark the boundary of fervor property. In 2004 the boundary line was surveyed for the first time by any party, and 0.29 acres of road right of way encroached upon the North Saluda property. A little to the north of the property a fire tower previously transferred to the Water System and used by the Water System was discovered to be on Cliffs' property. The 0.04 acre at the top of the mountain is being transferred to the City to house the fire tower. IMPACT IF DENIED: There will be a continuation of a road encroachment and the fire tower will continue to be on land owned by the Cliffs. IMPACT IF APPROVED: There will be no encroachment and the Water system will have no legally recognized right to have use of the fire tower FINANCIAL IMPACT: At the time of this form's preparation, the Greenville Water System will receive \$5,000 in cash and save several more thousand in the cost of relocating the fire tower.		

REQUIRED SIGNATURES

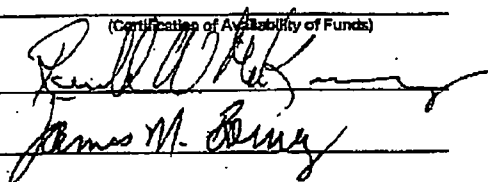
Department Director _____

Finance Director _____

City Attorney _____

City Manager _____

(Certification of Availability of Funds)



REVISED 09-10-07

Ordinance No. 2007 - _____
Page 1

AN ORDINANCE

TO RECOGNIZE A REVISED BOUNDARY LINE BETWEEN PROPERTY AT THE NORTH SALUDA RESERVOIR TITLED IN THE NAME OF THE CITY OF GREENVILLE AND ABUTTING PROPERTY TITLED IN THE NAME OF THE CLIFFS AT GLASSY, TO APPROVE THE TRANSFER OF TITLE FROM THE CITY OF GREENVILLE TO THE CLIFFS AT GLASSY, INC. FOR 0.29 ACRES OF REAL PROPERTY, AND TO ACCEPT TITLE FROM THE CLIFFS AT GLASSY, INC. FOR .04 ACRES AT ANOTHER LOCATION.

WHEREAS, title to property at the North Saluda Reservoir in northern Greenville County is held in the name of the City of Greenville and managed by the City of Greenville Commissioners of Public Works (the "Greenville Water system") for purposes of securing the public's drinking water; and

WHEREAS, the Cliffs at Glassy, Inc. holds title to a large tract of adjacent property for development for residential and recreational purposes;

WHEREAS, the Cliffs at Glassy, Inc., has constructed a road which has been determined by a boundary survey conducted in 2004 to encroach upon the North Saluda Reservoir property titled in the name of the City of Greenville City, at a location on Corbin Mountain; and

WHEREAS, the parties are agreed that the economic waste and adverse environmental impact of removing the road encroachment and reconstructing the road entirely on property of The Cliffs at Glassy outweigh the benefit of protecting the municipal holding by insisting upon the road's removal; and

WHEREAS, a survey prepared by W.C. Lindsey, Jr., a professionally certified surveyor familiar with topographical conditions and property holdings in the area now delineates the property boundary which has not previously benefited from a survey showing metes and bounds with bearings and distances; and

WHEREAS, the survey reveals that a road right of way is now shown to encroach upon the North Saluda property with an encroachment of 0.29 acres, and the Water System for property management purposes desires to secure possession and control over approximately 0.04 acres at the top of Corbin Mountain and the Cliffs At Glassy, Inc. has removed from its side of the established property line a fire tower, which has been used for some years by the Water System, and moved the tower to the 0.04 acres at the top of Corbin Mountain for use by the Water System.

WHEREAS, the first reading of this ordinance on March 26, 2007, also addressed an amendment to the Conservation Easement on the property, and that matter has been dealt with separately and matters in reference to it have been deleted;

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF GREENVILLE, SOUTH CAROLINA:

Section 1. The City Council approves the transfer of good marketable title in fee simple to the Cliffs at Glassy, Inc. of 0.29 acres of real property on Corbin Mountain, being the same 0.29 acres shown as Tract B on a plat prepared by W.C. Lindsey, Jr. and dated November 5, 2004.

REVISED 09-10-07

Ordinance No. 2007 - _____

Page 2

Section 2. The City Council accepts good marketable title in fee simple from the Cliffs at Glassy, Inc. for 0.04 acres of real property, with improvements, on the top of Corbin Mountain to be incorporated into the North Saluda Reservoir property.

Section 3. Consideration of the transactions in the shall consist of five thousand (\$5,000) in cash payable to the Water System and delivery to the 0.04 acre parcel a fire tower previously located on property which becomes or has become property owned by the Cliffs at Glassy.

Section 4. The transactions provided for here shall be consummated by a boundary line agreement using the boundary established by the referenced survey of W.C. Lindsey, Jr., deeds in fee simple; and such other or alternative documents as the City Attorney finds lawful and appropriate to consummate the provisions approved by this ordinance.

Section 5. The City Manager is authorized to execute any deed, boundary line agreement, acknowledgment of acceptance, or other appropriate documents and on such other incidental terms which the City Manager and the City Attorney shall deem appropriate, provided no document so executed constitutes a material change in the terms and conditions authorized by this Ordinance.

Section 4. The Ordinance shall become effective upon the date of passage and the execution of all documents by the parties.

DONE, RATIFY AND PASSED THIS THE ____ DAY OF _____, 2007.

MAYOR

ATTEST:

CITY CLERK

APPROVED AS TO FORM:

CITY ATTORNEY

REVIEWED:

CITY MANAGER

MINUTES

See 13



FORMAL MEETING OF CITY COUNCIL

COUNCIL CHAMBERS - CITY HALL

September 10, 2007

5:30 P.M.

1. Call to Order. Mayor White called the meeting to order.
2. Invocation Councilman Diane Smock
3. Pledge of Allegiance All
4. Roll Call Mayor White, Lillian Flemming, Diane Smock, Michelle Shain, Chandra Dillard, David Sudduth and Deb Sofield.
5. Approval of the Minutes – August 27, 2007 and September 4, 2007 approved as submitted.
6. Communications/Announcements from the Mayor and Council
7. Citizens Wishing to Address Council:
 - a. Trev Fouche, 231 Batesview Drive, was concerned that 1/3 of an acre was encroached upon when Mountain Summit was built a few years ago with 1/3 acre under a conservation easement. Mr. Fouche added that Council may or may not know that the property connects a piece of the Cliffs at Glassy that was far north to the main part of the cliff which was the golf course and club house and without a private access road being built the citizens that buy in the northern part would have to leave the Cliffs property and travel down 25 to enter into the main entrance of the Cliffs.

Mr. Fouche stated that it was not the City of Greenville tax payers responsibility to build a private access road for non citizens and that it was the City's watershed, and the Nature Conservancy's responsibility to maintain the easement. Mr. Fouche stated that as far as precedence setting was concerned, he felt that if the City accepted the \$80,000 that was originally proposed at the last City Council meeting, that it would allow other developers to encroach upon easement properties and City properties with only a slap on the risk, and basically ask for forgiveness instead of permission. Mr. Fouche added that the only way to prevent a precedence from being set was to have a significant and that the penalties needed to be more severe than an \$80,000 slap on the wrist.

Formal Minutes
September 10, 2007
Page 2

- b. Mr. Clarence Thornton stated to Councilman Shain that the last time he spoke to her it was during her husband's ordeal and that she had been in his thoughts and prayers and mentioned that she was a great and proud representative of the City.

Mr. Thornton added that he had addressed Council to make them aware of the hunger problem in the nation and at that time the City was number 2 in the nation. Mr. Thornton expressed that came to Council meeting to speak about a letter he received from Senator Ralph Anderson which stated that out of 171 metropolitan areas, Greenville was number 10 and Charleston, SC was number 2. Mr. Thornton added that there were problems with equality and economic development within the City and that he was familiar with the community development program. Mr. Thornton invited Council to meet at County Square along with Senator Anderson to speak on those issues on September 20, 2007 at 6 p.m. to help bridge the gap of equality and justice in Greenville. Mr. Thornton added that those issues could no longer be ignored.

Mayor White questioned whether Council had any questions concerning the issue. Councilman Dillard thanked Mr. Thornton for coming to speak to Council about the matter and that she had spoken with the City's Community Development Director. Councilman Dillard noted that the issue had implications for first time home buyers and those who were trying to get into homes within the City and therefore the City needed to be vigilant by making sure they had real affordable homes and help for people to stay in them.

Mayor White stated that Mr. Thornton's information was based on a report by the Federal Reserve that came out a few months ago and then thanked Mr. Thornton for coming.

8. Presentation: SC Forestry Commission "25th Year - Tree City USA" Award.

Mr. Jimmy Walters, representative for the SC Forestry Commission expressed that it was a pleasure to be back in his home town to present the 25th consecutive Tree City USA Award. Mr. Walters stated that Tree City USA was a community improvement program of the National Arbor Day Foundation and cosponsored by the USDA Forest Service, the US Conference of Mayors, the National Association of State Forestry in SC and the SC Forestry Commission. Mr. Walters added that the award recognized communities who met a minimum standard for caring for public trees, those who had an ordinance that protected trees, cities with a public department or tree board that oversaw the management of the trees, cities that spend \$2 per capita on tree management every year and an annual Arbor Day celebration with a proclamation signed by the Mayor or other City Official. Mr. Walters commented that the City of Greenville had done all of that and had set a wonderful example in the downtown area for their management of trees. Mr. Thornton thanked the City for their efforts and challenged them to keep up the great work and to expand their efforts to keep Greenville clean, beautiful, and attractive. Mr. Thornton presented a decal that would go on the sign and gave Mayor White a lapel pin so that he could brag about Tree City USA.

Formal Minutes
September 10, 2007
Page 3

Mayor White stated that he appreciated the award and that there was nothing that the City took more serious than "keeping the City green in Greenville" and that it was their number one over arching priority in which they carried out in many ways, and tree planting was just one of the many ways. Mayor White thanked the SC Forestry Commission for the recognition and stated that he appreciates the fine efforts that Paul Ellis makes in the Parks Department for leading this effort.

9. PUBLIC HEARING

- a. To hear comments regarding the proposed abandonment of a portion of right-of-way located on Woodland Way.

Phil Lindsay discussed the abandonment of a portion of right-of-way along Woodland Way which focuses on the Cleveland Park Animal Hospital. Mr. Lindsay stated that on August 1, 2007 the City received a valid petition from Dr. Phillips, one of the property owners, and his partners. Mr. Lindsay added that the City went through the traditional process of sending out public notices and getting input from the utilities. Mr. Lindsay stated that Duke Energy was the only utility company to respond and that they have an overhead power easement in place. Mr. Lindsay added that Duke Energy was not opposed to the abandonment of the Right of Way, but they would like to keep the easement in place until such time that the overhead power line could be relocated. Mr. Lindsay added that Duke expressed their willingness to work with Dr. Phillips and his partners and that the purpose of the abandonment was to facilitate improvements to the animal hospital.

Mr. Lindsay presented exhibits of why the Right-of-Way was needed and added that the Right-of-Way was being sold by the City to Dr. Phillips at a rate of 49 cents per square foot which was close to what the City paid to acquire a Right-of-Way for a trail system in that area. Mr. Lindsay stated that it would take in 5,048 square feet and that there would not be an impact to future sidewalk construction in that area.

Mr. Lindsay stated that on August 27, 2007, he had expressed that the City approve the request to have the public hearing and since that time they have received telephone calls from concerned citizens about future sidewalk and compensation for the Right-of-Way being given up. Mr. Lindsay added that other than the citizens no other City departments or person had any issues with the proposed abandonment.

Mr. Lindsay stated that a public notice was presented to Legal Aid via the Greenville News on Sunday, September 2, 2007 and that there were no other controversies other than the Duke power overhead easement being retained.

Mr. Lindsay presented exhibits on the overhead projector relative to the abandonment which displayed the 5,048 square feet of abandonment that was being requested, the existing conditions of the area and the proposed additional parking improvements to the animal hospital. Mr. Lindsay recommended that Council approve the request and schedule the first reading for September 24, 2007 with a second reading tentatively scheduled for October 15.

Formal Minutes
September 10, 2007
Page 4

Councilman Flemming stated that ordinance did not mention anything about Duke Power maintaining access until it could be agreed upon and wanted to know whether anything needed to be in the petition that they needed to work with or include.

Mr. Lindsay stated that it was within the staff report and that he would refer to Mr. McKinney to see if it needed to be incorporated in the ordinance.

Council Sudduth questioned whether the proposed abandonment area would have sanitary sewer water under that area. Mr. Lindsay in response stated that there was not.

There being no other citizens to speak in favor or in opposition, this concluded the hearing on the proposed abandonment of a portion of right-of-way located on Woodland Way.

CONSENT AGENDA

~~There will be no discussion of these items unless a Council member so requests in which event the item in question will be considered separately.~~

10. UNFINISHED BUSINESS – (Ordinances - Second and Final Reading)

Councilman Smock moved, seconded by Councilman Sudduth, to approve agenda items 10a, 10b, and 10c for second and final reading. The motion carried unanimously.

- a. Ordinance to grant a no build easement at the edge of Cleveland Park to Richard K. and Gwendolyn D. Heusel, owners of abutting property on Cleveland Street near the Reedy River in consideration of their providing payment for the construction of public access to the River Trail on the opposite side of the river.
- b. Ordinance to appropriate \$240,000 in Sunday Alcohol Permits Revenues, \$100,000 in anticipated SC Department of Transportation Enhancement Fund Proceeds and \$54,334 in anticipated Parks and Recreation Development Fund Proceeds for the construction of the Riverwalk to Greenville Tech Project.
- c. Ordinance to transfer title to Real Property to the Conestee Foundation, Inc., in the form of a sale of approximately 11.828 acres, and a donation of approximately 69 acres at a location along the Reedy River and bordering the Lake Conestee Preserve.

Mayor White noted that Jeff Beecham of the Conestee Foundation was present and that the City was making a sizeable donation to the Foundation.

11. NEW BUSINESS – (Ordinances – First Reading)

None.

Formal Minutes
September 10, 2007
Page 5

12. **NEW BUSINESS – (Resolutions - First and Final Reading)**

None.

REGULAR AGENDA

UNFINISHED BUSINESS – (Ordinances - Second and Final Reading)

13. a. Ordinance to approve an agreement among the City of Greenville, the Water System, the Cliffs at Glassy INC, and the Nature Conservancy of South Carolina to amend the Conservation Easement held by the Nature Conservancy by removing approximately 0.29 acres if property. (REVISED)

Mayor White commented that he was not present at the workshop and requested clarification on any type of changes that were made. Councilman Sudduth stated that items 13a and 13b were revised.

City Attorney Ron McKinney, commented that there was a difference in the agendas. Mr. McKinney provided background information to the public about the 1st reading of the ordinance that Council passed that had addressed an encroachment of a road at the Cliffs at Glassy on an easement on water system reservoir property at the North Saluda Reservoir. Mr. McKinney went on to state that at that time two issues were contained in the same ordinance, one released land from an easement held by the Nature Conservancy and the second addressed what compensation would be coming from the Cliffs at Glassy to the municipal entities involved. Mr. McKinney stated that since that time they had recommended that those items be separated and recommended that council proceed with the approval of the second amendment to the conservation easement which would allow the Nature Conservancy to be compensated in their interest in the matter and to reserve further review of issues related to any transfer of title or boundary adjustment and the light.

Councilman Shain stated that she and Mr. McKinney had spoken earlier about the language in the ordinance, and went on to state that on page one of the ordinance in the 5th paragraph that begins "WHEREAS, W.C. Lindsay Jr.....", a clarification should be placed around that stating that Mr. Lindsay was the surveyor under employment of the Cliffs community because they nor the water system, did not engage Mr. Lindsay and that he was a employee of the Cliffs community.

Mr. McKinney stated that it was in the recital rather than in the therefore part and suggested that after the word surveyor they place retained by the Cliffs at Glassy for clarity.

Councilman Smock stated to Mr. McKinney that Council had first reading on this matter some time ago and wanted to know whether it was common to divide an ordinance. Mr. McKinney replied that it was not done commonly, but it has been done before to divide a single ordinance out.

Formal Minutes
September 10, 2007
Page 6

Councilman Sudduth commented that Council should table item 13b and address item 13a to make sure that other than the change to the financial impact stating the Nature Conservancy was getting the money instead of Cliffs at Glassy.

Mayor White commented that the Nature Conservancy intended for Council to do exactly what Councilman Sudduth suggested.

Councilman Shain stated that she had another conversation with Mr. McKinney about wording and questioned if the wording could be changed in the background, from "Cliffs of Glassy owns and manages property abutting reservoir property" to "Cliffs of Glassy owns and manages property abutting the conservation easement." Councilman Shain commented that it should be changed because the wording is confusing.

Mr. McKinney stated that for purposes of the ordinance, the important thing was that he understood their point that it abuts the conservation easement. Mayor White stated that he respects the recommendation of the Nature Conservancy and speaking of precedence it was an extremely important precedent to take that when issues come up the Nature Conservancy make the call, not Commissions or Council and that precedence needs to be set at all times.

After further discussion Councilman Smock moved, seconded my Councilman Flemming to approve the amendment of item 13a.

- b. Ordinance to recognize a revised boundary line between property at the North Saluda Reservoir titled in the name of the City of Greenville and abutting property titled in the name of the Cliffs at Glassy, to approve the transfer of the title from the City of Greenville to the Cliffs at Glassy, INC. for 0.29 acres of Real Property, and to accept title from the Cliffs at Glassy, INC. for .04 acres at another location.

Councilman Flemming moved, seconded by Councilman Shain, to defer the item to a later date. The motion carried unanimously.

14. **NEW BUSINESS – (Ordinances – First Reading)**

- a. Ordinance to appropriate \$496,528 in 2006 Central Business District Tax Increment Bond Funds and \$243,189 in Forward Delivery Agreement Funds from the 2001 and 2004 Certificates of Participation for the RiverPlace Phase I Project

Councilman Dillard moved, seconded by Councilman Sofield, to approve first reading.

Councilman Smock suggested that staff review the information so that all can have a clearer understanding.

Mr. Bourey stated that the project was very complex and had been under construction for a while. Mr. Bourey went on to state that there had been change orders totaling 10% of the project cost and that there was a design bill with items determined under and after

Formal Minutes
September 10, 2007
Page 7

construction, that was the City's responsibility although they were never envisioned to be the City's responsibilities. Mr. Bourey stated that there was also some additional items such as additional power supply, lighting changes, and changes in walk ways, that needed to be added to the project for it to be completed.

Councilman Smock commented that she hoped the Council would soon adopt a policy regarding the type of thing going forward, so that they would have prior knowledge of change orders to keep them from being in a position to approve expenditures after they are already obligated.

Councilman Shain stated staff change orders that encumbrance them into something greater than they intended in the beginning makes it harder for them to pull off other projects that were waiting therefore they need to approve as they go and watch over the dollars and pennies on every project because it really does ripple into next one.

Mr. Bourey commented that Councilman's Smock and Shain's point have been well taken and that some procedures had been changed since this happened and that some of the difficulty was getting cost and bringing it forward. Mr. Bourey apologized for the time that it took to bring the information together.

Councilman Flemming suggested that every quarter Council get an update so that they can keep things open and too get a level of comfort on what's going forward.

After discussion, the motion carried unanimously.

- b. Ordinance to appropriate \$182,714 in 2006 Central Business District Tax Increment Bond Funds, \$52,075 in 2003 Central Business District Tax Increment Bond Funds, and \$111,314 in Parking Funds for the RiverPlace Phase II Project.

Councilman Sudduth moved, seconded by Councilman Dillard, to approve first reading.

Councilman Shain stated that it was important for Council to maintain clear physical deliberation. Councilman Shain went on to state that as they got new changes and orders that shifting dollars from one pot to another was also important to know. Councilman Shain commented that there had to be some kind of confidence for Council as well as developers that projects they discussed all have a genuine budget life and that those funds are kept in tact.

Mayor White stated that when you had Tift funds, under IRS rules, you had 3 years to spend those funds and that it is moving close to that period for those funds to be spent.

After discussion, the motion carried unanimously.

- c. Ordinance to appropriate \$275,000 in proceeds from the sale of City Hall Plaza for costs related to renovating City facilities in order to relocate functions formerly housed in City Hall Plaza.

Councilman Flemming moved, seconded by Councilman Sudduth, to approve first

page 8 missing

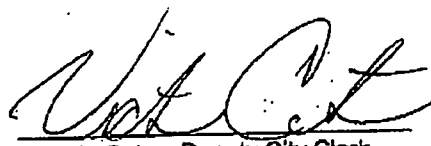
Formal Minutes
September 10, 2007
Page 9

- ▶ **USA Pro Bicycling Championship**- The event was a huge success and estimated that around 85,000 people watched it throughout the community. Sunday night there was a national broadcast on Versus network of Greenville where the city was mentioned a number of times on how well the championship went here. Councilman Sudduth made a presentation on the versus network as well.
- ▶ **Palmetto Peloton**- An event held to raise money for cancer was wonderful. Next year he may get the City team to ride. The event raised \$86,000 for cancer research. Over a 100 officers were involved and there were no hang ups associated with that. Angela Prosser and her staff did an excellent job to help orchestrate that event.
- ▶ **Police Promotion Ceremony**- Thanked Councilman Smock and Sudduth for attending the ceremony. Stated that it was a nice event and thanked Chief Terri Wilfong for helping to orchestrate the event.
- ▶ **Minority Development Institute**- Invitation to attend a dinner with the Institute on September 14, 2007 at the Carolina First Center. It is a new institute were S.T. Peden is the director.

Councilman Shain stated that employees in the City of San Francisco eliminated their use of water bottles and saved around \$500,000 in their budget, therefore questioned if the City to look into and drink tap water to save the City money.

17... Adjourn - There being no further business, the meeting adjourned at 6:21 p.m.


Knox H. White, Mayor


Victoria Catoe, Deputy City Clerk

MEETING NOTICE POSTED AND MEDIA NOTIFIED: September 21, 2007



Request for Council Action

The City of Greenville, S.C.

To: Honorable Mayor and Members of City Council

From: James M. Bourey
City Manager

Agenda Item No.

14a

Nature of Item:

- ☐ Zoning/Use Permit
☐ Contract
☐ Transfer/Appropriation
☐ Other _____

☒ Formal Approval (first reading)

☐ Formal Approval (second reading)

☐ To be received as information

AGENDA DATE REQUESTED: April 14, 2008

ORDINANCE/RESOLUTION CAPTION: TO TRANSFER TITLE TO 0.29 ACRE OF PROPERTY TO THE CLIFFS AT GLASSY, INC. ON MOUNTAIN SUMMIT ROAD IN CONSIDERATION OF \$100,000 AND TO ACQUIRE CLEAR TITLE TO 0.04 ACRE AT THE TOP OF CORBIN MOUNTAIN AS A SETTLEMENT.

BACKGROUND: Some time ago The Cliffs at Glassy, Inc., constructed Mountain Summit Road, a private road benefiting The Cliffs at Glassy, Inc., along the boundary of the North Saluda Reservoir Property, which is titled in the name of the City of Greenville and managed by the Greenville Water System. The road as constructed has been determined to constitute an encroachment upon the North Saluda Reservoir Property, and a fire tower acquired by the Water System to use in its management activity has been determined to encroach upon The Cliffs at Glassy on the top of Corbin Mountain as described on a plat prepared by Lindsey and Associates and dated November 5, 2004. City Council desires to bring finality to a boundary line separating the North Saluda Reservoir Property from property for which the Cliffs at Glassy, Inc., has deeds of title and also desires not to disturb substantively any agreement previously reached by the Water System and the Nature Conservancy. City Council also desires to dedicate all proceeds from the settlement being approved to an account maintained for the sole purpose of protecting municipal reservoir property to which the City of Greenville holds title.

IMPACT IF DENIED: A long time dispute will continue.

IMPACT IF APPROVED: The City can resolve a dispute and move forward toward environmental planning for properties which do not all have clear boundaries and which force an increasing likelihood of development in abutting properties.

FINANCIAL IMPACT: The City will have seed money of \$100,000.00 to fund an environmental protection fund.

REQUIRED SIGNATURES

Department Director _____

Finance Director _____

City Attorney _____

City Manager _____

AN ORDINANCE

TO TRANSFER TITLE TO 0.29 ACRE OF PROPERTY TO THE CLIFFS AT GLASSY, INC. ON MOUNTAIN SUMMIT ROAD IN CONSIDERATION OF \$100,000 AND TO ACQUIRE CLEAR TITLE TO 0.04 ACRE AT THE TOP OF CORBIN MOUNTAIN AS A SETTLEMENT.

WHEREAS, some time ago The Cliffs at Glassy, Inc., constructed Mountain Summit Road, a private road benefiting The Cliffs at Glassy, Inc., along the boundary of the North Saluda Reservoir Property, which is titled in the name of the City of Greenville and managed by the Greenville Water System; and

WHEREAS, the road as constructed has been determined to constitute an encroachment upon the North Saluda Reservoir Property, and a fire tower acquired by the Water System to use in its management activity has been determined to encroach upon property of The Cliffs at Glassy, Inc., at the top of Corbin Mountain; these locations are referenced on a plat prepared by Lindsey and Associates and dated November 5, 2004; and

WHEREAS, The Cliffs at Glassy, Inc., has previously reached a settlement with the Water System involving the relocation of the fire tower to its present location, and the acceptance from The Cliffs at Glassy, Inc., certain access easements across property for which the Cliffs has a deed of title; and

WHEREAS, The Cliffs at Glassy, Inc., has also reached agreement with the Nature Conservancy of South Carolina for an encroachment upon its conservation easement, since amended, which had the same boundaries as the North Saluda Reservoir Property; and

WHEREAS, City Council desires to bring finality to a boundary line separating the North Saluda Reservoir Property from property for which the Cliffs at Glassy, Inc., has deeds of title; and

WHEREAS, Council desires not to disturb substantively any agreement previously reached by the Water System and the Nature Conservancy, and City Council also desires to dedicate all proceeds from the settlement being approved to an account maintained for the sole purpose of protecting municipal reservoir property to which the City of Greenville holds title.

NOW THEREFORE BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF GREENVILLE THAT:

SECTION 1. Title in fee simple to approximately 0.04 acre of real property at the top of Corbin Mountain shall be accepted from the Cliffs at Glassy, Inc. The property so accepted shall be incorporated into the North Saluda Reservoir property managed by the Water System to the same extent it is otherwise authorized to maintain the remained of the North Saluda Reservoir property.

SECTION 2. The City shall convey its interest in fee simple to approximately 0.29 acre of real property on Mountain Summit Road, a private road, to The Cliffs at Glassy, Inc.

SECTION 3. The title conveyance by The City to The Cliffs at Glassy, Inc., shall be in consideration of a payment from the Cliffs at Glassy, Inc., in the amount of one hundred thousand (\$100,000) dollars payable to the City of Greenville.

SECTION 4. The proceeds of the payment from The Cliffs at Glassy, Inc., shall be used exclusively to enhance and protect the environmental conditions of reservoir property titled in the name of the City of Greenville. Such actions will be exercised in deference to the Nature Conservancy and the Greenville Water System in the exercise of their rights, duties, and obligations under existing agreements and statutory authority. Council shall be authorized to act by resolution to implement such measures or to direct the City Manager or the City Attorney, or both to achieve the objectives of this Section 4.

SECTION 5. As a condition of the transfers identified in Section 1 and Section 2 of this Ordinance, the City and The Cliffs at Glassy, Inc., shall execute mutual releases of claims against one another and mutual acknowledgment of the boundary separating the properties respectively titled in their names. The parties shall covenant to act in good faith to forego future incursions, encroachments, or trespass upon the property titled in the name of the other and to notify promptly one another, as well as the Water System and the Nature Conservancy, of activity that might be or appear to be an actual or pending encroachment when they have knowledge of such circumstances.

SECTION 6. Nothing contained in this Ordinance shall be deemed to compromise or impede the agreements separately reached by the Water System and the Nature Conservancy in settlement of claims arising from the same set of circumstances giving rise to the City's settlement and release of claims.

SECTION 7. The City Manager shall be authorized to approve and execute such deeds, acceptances, and agreements as are herein provided for, as well as other documents reasonably appropriate for the transaction, upon receipt of the payment described in Section 3 above, provided such documents assure the implementation of the terms of this Ordinance. The identification of the locations of these property transfers and recognition of the mutual boundary shall be based upon the same plats and legal descriptions as have been accepted and agreed to by the Nature Conservancy and the Water System in their separate agreements with The Cliffs at Glassy, Inc.

DONE, RATIFIED AND PASSED THIS THE _____ DAY OF _____, 2008.

MAYOR

ATTEST:

CITY CLERK

APPROVED AS TO FORM:

CITY ATTORNEY

REVIEWED:

CITY MANAGER



MINUTES
FORMAL MEETING OF CITY COUNCIL
COUNCIL CHAMBERS – CITY HALL
April 14, 2008
5:30 P.M.

1. Call to Order Mayor Knox White called the meeting to order.
2. Invocation Councilman Dillard
3. Pledge of Allegiance All
4. Roll Call
The following members of Council were in attendance:
Mayor White, David Sudduth, Amy Ryberg Doyle,
Chandra Dillard, Susan Reynolds, and Diane Smock.

Absent: Lillian Brock Flemming
5. Approval of the Minutes March 24, 2008; Approved as Submitted
6. Communications / Announcements from the Mayor and Council.
7. Citizens Wishing to Address Council

Sylvia Palmer, 5 Roosevelt Avenue, spoke regarding concerns in the Nicholtown community. Ms. Palmer shared her concerns for 128 Nichol Street, known as the Nicholtown Grocery, and 18 Nichol Street, which is a residence. Ms. Palmer referred to information presented to Council providing photographs and locations of the properties. Ms. Palmer commented on loitering around the store, the attraction of unlicensed vendors to the store's parking lot, and gang graffiti located on the buildings. Ms. Palmer also commented on street signs being destroyed and shoes being hung on the power lines. Ms. Palmer requested that the City purchase the property and alleviate the problems at that location.

Carrie Mingo, 246 Alameda Street, spoke regarding concerns in the Nicholtown community. Ms. Mingo stated that she is the Chairperson of Nicholtown Neighborhood Association Environmental Beautification Team and President of the Glenn Road Club. Ms. Mingo advised that the neighborhood is facing negative factors which are impeding their efforts to improve living conditions in their neighborhood. Ms. Mingo commented on Council being aware of the problems in the neighborhood and requested that Council make funds available to rid Nicholtown of those problems including loitering, littering, drinking, and illegal activities. Ms. Mingo thanked the community patrol officers for their participation and commented on the positive changes taking place in the City. Ms. Mingo requested that Council provide the resources needed to protect the investments already made.

Margaret McJunkin, 23 Palm Street, spoke regarding concerns in the Nicholtown community. Ms. McJunkin commented on the aesthetic beauty taking place in the neighborhood and the need to beautify the lives of the people. Ms. McJunkin stated that the lives of people cannot be beautified as long as the store located on the corner of Nichol

Street is providing a resource for people who are already weak. Ms. McJunkin also stated that the neighborhood wants to attract people who are achieving. Ms. McJunkin informed Council that neighborhood leaders have contacted the property owner and have offered to assist in cleaning up the area. Ms. McJunkin requested that the City clear the corner to use it for future development.

Councilman Dillard thanked the neighborhood for coming to the meeting and commented that the neighborhood is on target. Councilman Dillard acknowledged the Police Chief and Community Services Officers for their assistance and requested that the City look into the concerns shared and requests made.

Mayor White asked for an overview of the current neighborhood situation from Deputy City Manager John Castile. Mr. Castile referred to changes taking place in the neighborhood and credited the neighborhood leadership for working with the City through those changes. Mr. Castile commented on the intersection being a sore spot in the community and the business being a magnet to a lot of pedestrian activity. Mr. Castile also commented on the reduction of activity when police officers are present and the need for finding a more permanent solution to the problems. Mr. Castile referred to some meetings being scheduled with Community Development staff to discuss solutions and strategies for the neighborhood.

Mayor White raised questions regarding the business licenses involved, and Mr. Bourey responded that the City is working through the proper procedures in placing those businesses on notice of the issues that exist. Councilman Smock questioned how the neighborhood issue has impacted the City's investment in Evergreen Place. Mr. Castile responded that the intersection is vital to the entrance of the neighborhood, and while changes have taken place, the impression of the intersection still provides a negative impact of the old neighborhood which the leaders are interested in changing.

Councilman Dillard stated that the Greenville Housing Authority would have concurred with the comments made by the residents if they had been in attendance. Councilman Dillard referred to emails she forwarded to Council last year making them aware of the transactions taking place in the area. Councilman Dillard requested Mr. Bourey return to Council with a redevelopment plan for the intersection within 30 days.

Councilman Sudduth questioned the criteria needed for the business to qualify as a nuisance business and to be closed. Mr. Castile responded that there are criteria considered in determining a business to be a nuisance including the number of calls for service for that location and the amount of activity taking place in the vicinity. Mr. Castile added that the City does have a process in place in reviewing business license revocations and confirming evidence to support the need for a revocation.

Councilman Dillard stated that in preparing a recommendation, Council and staff need to look at the root causes and what will change the behavior of the intersection and protect the investment already made. Councilman Reynolds questioned how long the owners have owned the property, and an audience member responded since the 1950's.

Bob Lloyd, 14 Pinckney Street, spoke regarding concerns for the Capital Improvement Program and procedures related to public participation and input. Mr. Lloyd referred to his appearance before Council last year regarding public hearings and recognized the public hearing held this year for the CIP. Mr. Lloyd commented on the proposed CIP and pointed out funding issues with established corridors, newly acquired areas, and the downtown district. Mr. Lloyd referred to an ordinance passed by Council relating to the 2008-2009 action plan for Community Development and provided information regarding the actions taken by the City for public input. Mr. Lloyd presented a handout referring to state provisions on public hearing requirements and a copy of a letter from Governor Mark Sanford regarding an article written by Mr. Lloyd on public budgets and expenditures. Mayor White responded to Mr. Lloyd informing him of scheduled meetings and opportunities made available for public input prior to passage of the Ordinance.

Mary Duckett, 201 Pinckney Street, spoke regarding funding for repair work on Hudson Street and the bridge on Hudson Street. Ms. Duckett stated that she was aware of work taking place on Hudson Street, but the work performed was not adequate. Ms. Duckett commented on her research regarding the use of TIF funds in the area. Mr. Bourey responded that some money has been allocated to the Kroc Center because of the development's value to the West End TIF. Office of Management and Budget Director Phil Robey responded that the eastern portion of the Kroc Center property is in the West End TIF which allows for funding in the TIF District.

Ms. Duckett questioned if the TIF District could be expanded to include A.J. Whittenburg School, and Mayor White responded that he believed that the TIF District could be expanded, however, the City would need the support of the School District. Councilman Smock referred to two items on the Agenda regarding TIF funding outside two different TIF Districts and suggested that Ms. Duckett look into how the TIF District can directly benefit Hudson Street. Councilman Smock shared her concerns regarding the quality of work taking place on Hudson Street by the Water System.

Councilman Sudduth reminded Council that when TIF money is applied, it is placed in reserve and not available for use in the general fund for the period of time of the TIF. Councilman Sudduth shared his concern of the general fund revenue and the amount of money being taken out for reserve in TIF Districts. Councilman Sudduth agreed with the attention needed on Hudson Street, but commented on the need for the School District to provide funding for sidewalks related to the schools.

Councilman Dillard agreed with Councilman Sudduth regarding the need for the School District's help and commented on the challenge of Hudson Street being a state road. Responding to Ms. Duckett, Councilman Dillard stated that TIFs were created to revitalize blighted areas and that it is hard to explain using TIF funds for one reason over another. Councilman Dillard proposed adopting a resolution in the future to look at the possibility of expanding the Central Business District TIF for the use of revitalizing the Hudson Street area or to review the matter in a Council Work Session. Mayor White suggested assistance from legal counsel in determining if the TIF District could be expanded and if development in the Hudson Street area would benefit the TIF District.

Cassandra Phillips, 25 Mauldin Street, appeared as an appointed member of the South Carolina Governor's Council on Physical Fitness to present a Letter of Endorsement from the Governor's Council recognizing the City for the comprehensive approach with its Greenways and Trails Master Plan.

Tim St. Clair, 200 E. Broad Street, appeared as President of the Greenville Spinner's Bicycle Club to thank Council for funding bicycle lanes and greenways and trails improvements. Mr. St. Clair recognized members present at the meeting from various cycling clubs in the community.

Steve Baker, 202 Blue Ridge Drive, appeared on behalf of George Hincapie, Hincapie Sportswear, Sunshine Cycle Shop, Carolina Triathlon, Great Escape, and other cycling and outdoor businesses in Greenville to thank Council for the funding of bicycling and pedestrian infrastructure in the City and to commend Council on their consideration of alternative modes of transportation.

Ty Houck, 9 Tall Tree Lane, Taylors, appeared on behalf of the Greenville County Recreation District to thank Council for their efforts and support of the bike lanes and greenway system. Mr. Houck commented that the City's participation in the system will allow for more opportunities to become available in linking with the county.

8. Presentation:

NONE

9. Public Hearing

NONE

CONSENT AGENDA

~~There will be no discussion of these items unless a Council member so requests in which event the item in question will be considered separately.~~

Councilman Smock requested that Items 12b and 12c be removed from the Consent Agenda for discussion. Councilman Sudduth moved, seconded by Councilman Smock, to approve second and final reading of agenda items **10a, 10b, 10c, and 10d**, and first and final reading of agenda item **12a** of the Consent Agenda. The motion carried unanimously.

10. **UNFINISHED BUSINESS – (Ordinances – Second and Final Reading)**

- a. Ordinance to annex approximately 3.62 acres of real property located on Woodruff Road and to provide the zoning designation of C-3, Regional Commercial. (Tax Map Number 0545010101702) (AX-1-2008)
(Roll Call)

- b. Ordinance to annex approximately 0.18 acre of real property located on Arlington Avenue and to provide the zoning designation of RM-2, Single and Multi-Family Residential. (Tax Map Number 0113000200600) (AX-2-2008)
(Roll Call)
- c. Ordinance to annex approximately 1.68 acres of real property located on Pelham Road and to provide the zoning designation of PD, Planned Development. (Tax Map Number 0278000200401) (AX-3-2008)
(Roll Call)
- d. Ordinance to rezone approximately 0.5 acre of real property located on the corner of Lloyd Street and Hampton Avenue from R-6, Single Family Residential, to RM-1, Single and Multi-Family Residential. (Tax Map Number 0022000100101) (Z-4-2008)
(Roll Call)

11. NEW BUSINESS -- (Ordinances -- First Reading)

NONE

12. NEW BUSINESS -- (Resolutions -- First and Final Reading)

- a. Resolution to approve the bylaws of the Arts in Public Places Commission.
- b. Resolution to determine that the East Broad Street Improvements Project is a suitable use of Central Business District Tax Increment Funds.

Councilman Sudduth moved, seconded by Councilman Doyle, to approve first and final reading. Councilman Smock requested clarity regarding the purpose of funding the project through TIFs as opposed to the use of N-Step funds. Mr. Bourey responded that no additional funding is available through N-Step for the project and that Broad Street leads into the Central Business District which would benefit people coming into the CBD. After discussions, the motion carried unanimously.

- c. Resolution to determine that the Riverplace IIB Property is a suitable use of West End Tax Increment Funds.

Councilman Sudduth moved, seconded by Councilman Doyle, to approve first and final reading. Councilman Dillard raised questions regarding the project being previously discussed by Council. Mr. Bourey responded that Council had recently discussed the project, however, the original proposal had other funding which would not use TIF funds. Mr. Bourey stated that the Resolution allows for the offset of funds which could be used for other purposes not covered under the TIF. Mr. Bourey added that the project would benefit the West End TIF. Councilman Dillard questioned if the funding would be for partial funding only, and Mr. Bourey responded that there are other sources of funding previously discussed by Council. Mr. Bourey stated that if the project did not move forward, staff would recommend the funds be reallocated to other uses.

Councilman Smock requested an understanding of the phases in the Riverplace Project. Mr. Bourey responded that project consists of Phase I, Phase IIA which is being completed with office buildings and condominiums, and Phase IIB consisting of property from the end of the current construction point to River Street. Councilman Smock questioned if a development agreement was being prepared for the property and the time frame for use of the money. Mr. Bourey responded that he did not know the time frame, but advised that there is active discussions taking place and that it could happen before July 1. Councilman Doyle requested confirmation that no money has been allocated, but that the Resolution identifies it in the TIF, and Mr. Bourey responded affirmatively.

After discussions, the motion carried unanimously.

REGULAR AGENDA

13. UNFINISHED BUSINESS – (Ordinances – Second and Final Reading)

- a. Third Supplemental Ordinance providing for the issuance and sale of a City of Greenville, South Carolina, Sewer System Revenue Bond, Series 2008, in the principal amount of not exceeding \$1,990,000; and other matters relating thereto. (Roll Call)

Councilman Sudduth moved, seconded by Councilman Doyle, to approve second and final reading. The motion carried unanimously.

- b. Ordinance to appropriate \$9,384,863 for the fiscal year 2008-09 Capital Budget of the Fiscal Year 2008-09 to Fiscal Year 2012-13 Capital Improvement Program. (Roll Call)

Councilman Sudduth moved, seconded by Councilman Doyle, to approve second and final reading.

Councilman Smock presented comments regarding her concerns in overly relying on hospitality taxes, the lack of funding for all corridors, and the need for funding the Hudson Street area. Councilman Doyle questioned how the City handles overage amounts from projects, and Mr. Bourey explained that each project has a contingency to accommodate for project increases. Mr. Bourey also explained that the City does not mix funds between projects. Councilman Dillard reiterated her request for staff to provide a redevelopment plan for the Nicholtown neighborhood and requested an opportunity to reserve the right to amend the budget if the City determines through the plan that it can assist the area sooner. Mr. Bourey responded that Council can amend the budget at any time. Mr. Bourey also added that the City could be aggressive through business licenses in terms of getting something done quickly and cost effectively.

Councilman Sudduth stated that he would like to enforce the business license fee and those policies first and expressed his concern of addressing the problem by going in and buying out property. Councilman Sudduth also stated that he is comfortable with the growth rate of the hospitality taxes in the CIP. Councilman Smock commented that she was not as concerned with this year's hospitality tax revenue but was concerned with the hospitality taxes anticipated for next year and how Council expresses expectations to the public. In addressing Councilman Sudduth's comments, Councilman Dillard referred to city projects in the past that have changed the physical landscape of an area and the different approaches considered. Councilman Sudduth responded that he wanted to make sure the fundamental problem was being addressed and that the appropriate parties were being held accountable.

Mr. Robey stated that the City is on target in meeting the fiscal year revenue budget for hospitality tax and that the City estimated a very conservative growth rate. Councilman Smock questioned if the City would have \$5.5 million dollars next year based on flat line expectations. Mr. Robey responded that the \$5 million dollars is debt that is pledged to be repaid from hospitality tax and not money coming out of the hospitality tax fund at one time.

Mayor White presented comments from Councilman Flemming, who was not able to attend the meeting, reiterating her interest in the Hudson Street project and addressing the sidewalk issue.

After discussion, the motion carried 5 -1, with Councilman Smock dissenting.

14. NEW BUSINESS – (Ordinances – First Reading)

- a. Ordinance to transfer title to 0.29 acre of property to the Cliffs at Glassy, Inc., on Mountain Summit Road in consideration of \$100,000 and to acquire clear title to 0.04 acre at the top of Corbin Mountain as a settlement.
(Roll Call)

Councilman Sudduth moved, seconded by Councilman Doyle, to approve second and final reading.

Councilman Smock stated that this is a settlement that has been negotiated over a long period of time and that if passed, the money would be used to enhance and protect the environmental conditions of the reservoir and to establish, maintain, and protect the property lines of the reservoir titled in the name of the City of Greenville. Councilman Dillard thanked City Attorney Ron McKinney for his work and assistance in settling the matter.

After discussion, the motion carried unanimously.

15. NEW BUSINESS – (Resolution – First and Final Reading)

- a. Resolution to adopt the Capital Improvement Program for the fiscal years 2008-09 through 2012-13.

Councilman Dillard moved, seconded by Councilman Sudduth, to approve first and final reading. The motion carried 5 -1, with Councilman Smock dissenting.

- b. Resolution to authorize the City Manager to enter into a Development Agreement with Trowbridge Partners, LLC, for the development of property along Harvley Street in the Viola Neighborhood to include the sale of property and right-of-way.

Councilman Smock moved, seconded by Councilman Dillard, to approve first and final reading. The motion carried unanimously.

16. APPOINTMENTS – Boards and Commissions

- a. Planning Commission
Councilman Dillard nominated Tripp Muldrow to fill a full term ending March 31, 2012. There being no further nominations, Mr. Muldrow was nominated by unanimous consent.

- b. Arts in Public Places Commission
Councilman Doyle nominated Hillary Jernigan to fill a full term ending April 30, 2011. There being no further nominations, Ms. Jernigan was nominated by unanimous consent.

Councilman Smock nominated Carlton Owens to fill a full term ending April 30, 2011. There being no further nominations, Mr. Owens was nominated by unanimous consent.

Councilman Smock nominated Bill Pelham to fill a full term ending April 30, 2011. There being no further nominations, Mr. Pelham was nominated by unanimous consent.

- c. Firemen's Pension Fund Board of Trustees
Councilman Smock nominated Edward Toledano to fill an unexpired term ending December 31, 2008. There being no further nominations, Mr. Toledano was nominated by unanimous consent.

17. CITY MANAGER'S REPORT.

Mr. Bourey presented the following reports:

- Mr. Bourey recognized Ed Marr who will be receiving an honor from the American Public Works Association as Professional Manager of the Year in Solid Waste.

Formal Agenda
April 14, 2008
Page 9

- ▶ Mr. Bourey informed Council of proposed state legislation that would discontinue the City's ability to collect business license fees for businesses located outside the City limits but doing business in the City. Mr. Bourey also informed Council of proposed state legislation that would require the Department of Revenue to collect local hospitality taxes and to retain a 1% administration fee.

18. **ADJOURN.** There being no further business, the meeting adjourned at 6:58 p.m.

KNOX H. WHITE, MAYOR

CAMILLA G. PITMAN, INTERIM CITY CLERK

MEETING NOTICE POSTED AND MEDIA NOTIFIED ON APRIL 11, 2008.



AGENDA

FORMAL MEETING OF CITY COUNCIL

COUNCIL CHAMBERS – CITY HALL

May 12, 2008

5:30 p.m.

-
1. Call to Order
 2. Invocation – Councilman Reynolds
 3. Pledge of Allegiance
 4. Roll Call
 5. Approval of the Minutes – April 28, 2008
 6. Communications/Announcements from the Mayor and Council
 7. Citizens Wishing to Address Council
 8. Presentation
NONE
 9. Public Hearing
 - a. Proposed abandonment of a portion of public right-of-way located at the southwest corner of East McBee Avenue and Falls Street.

CONSENT AGENDA

~~There will be no discussion of the consent agenda items by Council members. Requests to withdraw the consent agenda items will be considered separately.~~

10. UNFINISHED BUSINESS -- (Ordinances -- Second and Final Reading)
 - a. Ordinance to make a permanent zoning designation of S-1, Service District, for property on Rocky Slope Road which had a temporary zoning designation of S-1, Service, at the time of its Annexation (Tax Map No. 260-1-15.8 and 15.9). (Z-6-2008)
(Roll Call)
 - b. Ordinance to appropriate \$25,000 from the United Way of Greenville County to the General Fund for the Child and Youth Master Plan.
(Roll Call)

Formal Agenda
May 12, 2008
Page 2

11. NEW BUSINESS -- (Ordinances -- First Reading)

- a. Ordinance to abandon a portion of public right-of-way located at the southwest corner of East McBee Avenue and Falls Street. (AB-2-2008)
(Roll Call)
- b. Ordinance to transfer title to real property to the Conestee Foundation, Inc., in the form of a sale of approximately 11.828 acres, and a donation of approximately 69 acres at a location along the Reedy River and bordering the Lake Conestee Preserve. (Tax Map Numbers 0390.00-01-001.13, 0390.00-01-001.02, and M014.01-01-003.00)
(Roll Call)

12. NEW BUSINESS -- (Resolutions -- First and Final Reading)

- a. Resolution to approve an increase in the maximum allowed rate per mile, airport flat rate and the drop rate charged by public vehicle services.
- b. Resolution to grant an encroachment easement for a portion of the City's right-of-way located at West Broad Street and South Laurens Street (City Hall Plaza).
- c. Resolution to accept from Broad Street Hospitality, LLC, a recordable encroachment formally authorizing the placement of foundation footers now located there.

REGULAR AGENDA

13. UNFINISHED BUSINESS -- (Ordinances -- Second and Final Reading)

- a. Ordinance to approve a Development Agreement with the Peacock Hotel and Spa, LLC, a South Carolina limited liability corporation, that includes the sale of 242 square feet of public right of way located at the corner of East McBee Avenue and Spring Street, footings easements, encroachments for balcony and sign overhangs, and streetscape improvements to be funded by the City.
(Roll Call)

14. NEW BUSINESS -- (Ordinances -- First Reading)

- a. Ordinance to extend the term of the Duke Energy Corporation Municipal Right-of-Way Agreement, to adjust the fee charged to Duke Energy Corporation, and to use the new revenue generated to fund assistance needed to negotiate a new agreement with Duke Energy, and to fund a program to convert utility lines from overhead to underground.
(Roll Call)

Formal Agenda
May 12, 2008
Page 3

15. NEW BUSINESS - (Resolutions - First and Final Reading)

NONE

16. APPOINTMENTS - Boards and Commissions

NONE

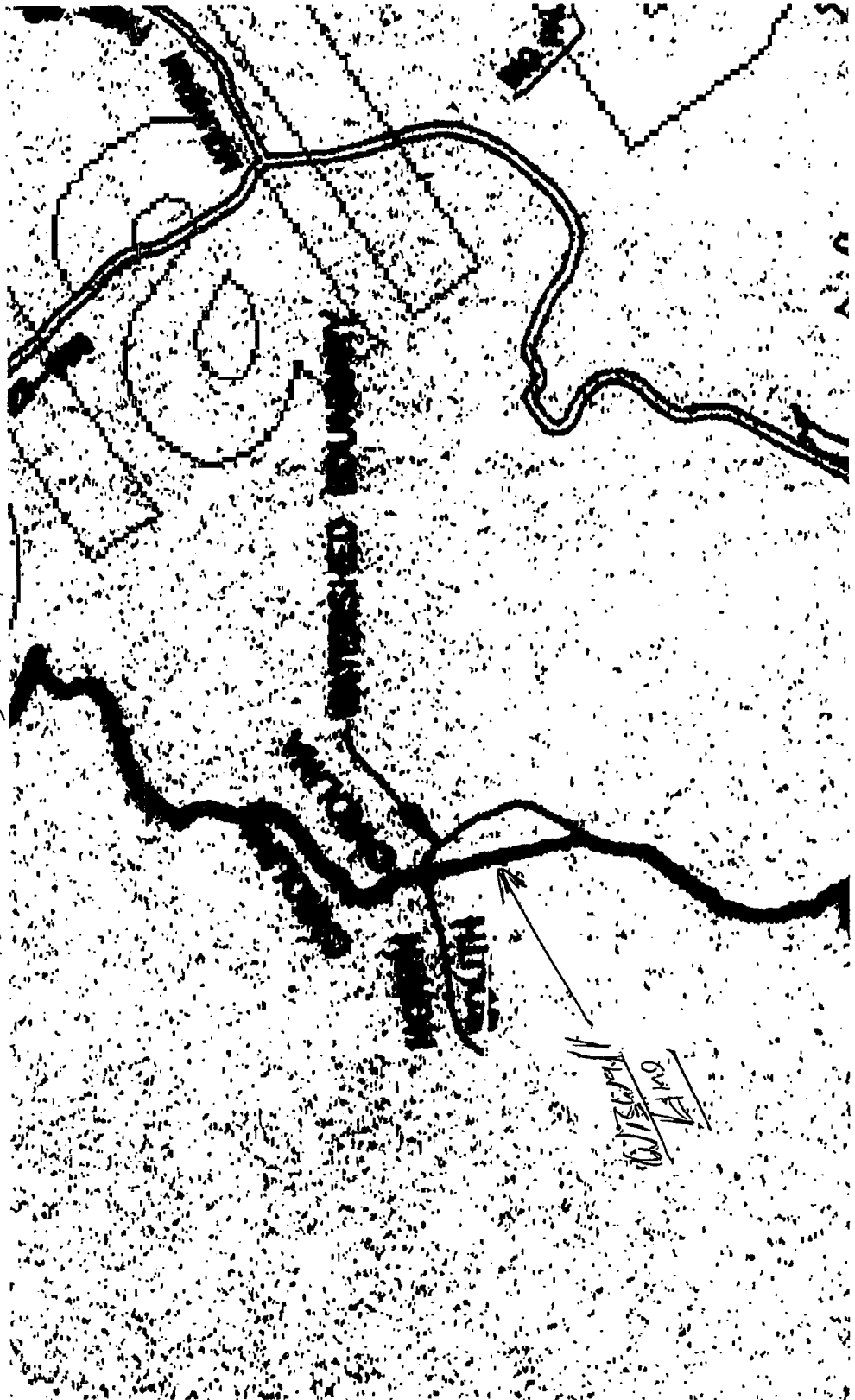
17. CITY MANAGER'S REPORT

18. ADJOURN





NATURE CONSERVANCY EASTMENT BOUNDARY



Not what we are looking for.

TITLE TO REAL ESTATE - Law Offices of Thomas H. Bunn, Jr., P. A., Greenville, South Carolina
GREENVILLE CO. S.C. Vol. 1033 Page 556
STATE OF SOUTH CAROLINA }
COUNTY OF GREENVILLE }
KNOW ALL MEN BY THESE PRESENTS, that WE, Bob E. Wheeler and Brenda D. Wheeler

in consideration of Twenty-Two Thousand and No/100-----(\$22,000.00)----- Dollars,
the receipt of which is hereby acknowledged, have granted, bargained, sold, and released, and by these presents do grant, bargain, sell and release
unto William R. Davis, Jr. and Marlene L. Davis, their heirs and assigns forever;
All that piece, parcel or lot of land in the County of Greenville, State of South Carolina,
Austin Township, near the Town of Simpsonville, situate, lying and being on the north
side of Seminole Drive, and being shown as Lot No. 48 on plat of Section 1 of WESTWOOD
Subdivision recorded in the RMC Office for Greenville County in Plat Book 4-F at Page
21 and having such metes and bounds as shown thereon, reference to said plat being
made for a more complete description.

This conveyance is subject to all restrictions, setback lines, roadways, zoning ordinances,
easements and rights-of-way appearing on the property and/or of record.

This is the same property as that conveyed to the Grantors herein by deed recorded in
the RMC Office for Greenville County in Deed Book 987 at Page 178.



together with all and singular the rights, members, hereditaments and appurtenances to said premises belonging or in any wise incident or apper-
taining to have and to hold all and singular the premises before mentioned unto the grantees, and the grantees' heirs or successors and assigns
forever. And the grantees do hereby bind the grantees and the grantees' heirs or successors, executors and administrators to warrant and
defend unto all and singular the grantees and the grantees' heirs or successors and assigns every person whomsoever law-
fully claiming or to claim the same or any part thereof.

WITNESS the grantees' hands and seals this 19th day of March, 1976.

SIGNED, sealed and delivered in the presence of:
Thomas H. Bunn, Jr. (SEAL)
Ruth H. Bunn (SEAL)
Bob E. Wheeler (SEAL)
Brenda D. Wheeler (SEAL)

STATE OF SOUTH CAROLINA } PROBATE
COUNTY OF GREENVILLE }
I, the undersigned Notary Public, do hereby certify that I have seen the within named grantees
sign, seal and as the grantees' act and deed deliver the within written deed and that I have with the other witnesses subscribed above witnessed the
execution thereof.
SWORN to before me this 19th day of March, 1976.
Thomas H. Bunn, Jr. (SEAL)
Notary Public for South Carolina.
My Commission Expires 4/7/79.

STATE OF SOUTH CAROLINA } RENUNCIATION OF DOWER
COUNTY OF GREENVILLE }
I, the undersigned Notary Public, do hereby certify unto all whom it may concern, that the undersigned
wife (wives) of the above named grantor(s) respectively, did this day appear before me, and each, upon being severally and separately questioned by
me, did declare that she does freely, voluntarily, and without any compulsion or fear of any person whomsoever, renounce, release and forever re-
linquish unto the grantees and the grantees' heirs or successors and assigns, all her interest and estate, and all her right and claim of dower of,
in and to all and singular the premises within mentioned and released.
GIVEN under my hand and seal this 19th day of March, 1976.
Brenda D. Wheeler (SEAL)
Brenda D. Wheeler
Notary Public for South Carolina.
My Commission Expires 4/7/79
RECORDED this 23 day of March, 1976. 1:50 P.M. No. 24167

1516 PAGE 503 ✓

STATE OF SOUTH CAROLINA FILED
COUNTY OF GREENVILLE
MAY 28 12 04 PM '93

THIS GRANT OF CONSERVATION EASEMENT made this 24th day of May, 1993 by the City of Greenville, a South Carolina municipal corporation, and the Commissioners of Public Works of the City of Greenville, an agency created pursuant to the laws of the state of South Carolina (hereinafter collectively referred to as "Grantor") and in favor of THE NATURE CONSERVANCY, a non-profit corporation organized and existing under the laws of the District of Columbia (hereinafter referred to as "Grantee").

WHEREAS, Grantor owns, manages and operates as a source of water for distribution and sale in and around Greenville County, South Carolina, certain real estate described as follows, to wit:

A. The North Saluda Reservoir properties:

All those certain pieces, parcels and tracts of land with all buildings and improvements thereon, which land consists of approximately 19,300 acres, more or less, primarily located in the County of Greenville, State of South Carolina, but with smaller parcels located in Henderson County and in Polk County, State of North Carolina, generally as shown on map thereof marked Exhibit A and attached hereto and made a part of this document.

B. Table Rock Reservoir properties:

All those pieces, parcels and tracts of land with all buildings and improvements thereon, which land consists of approximately 9,800 acres, more or less, and located in Greenville County and Pickens County, State of South Carolina and generally shown on map labeled Table Rock Reservoir Properties attached hereto and marked Exhibit B and made a part of this agreement.

WHEREAS, Grantor is desirous of conveying to Grantee a Conservation Easement pursuant to the terms of the South Carolina Conservation Easement Act of 1991 (Sections 27-8-10, et seq.); and

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4328 1021

BOOK 1516 PAGE 504

WHEREAS, Grantee is a qualified "holder" within the meaning of said Act [Section 27-8-20(2)(b)] and is otherwise empowered to hold a Conservation Easement for the purposes herein stated; and

WHEREAS, Grantor has submitted to the Advisory Board of the Heritage Trust Program a proposal to convey a Conservation Easement (substantially in the form of this easement) to Grantee; and

WHEREAS, said Advisory Board has conducted within sixty days of receiving such proposal a public hearing as required by said Act [Section 27-8-30(E)(3)]; and

WHEREAS, within thirty days after such hearing, said Advisory Board, by due and proper action, approved the proposal based on the testimony, public comment and other information presented at the hearing; and

WHEREAS, not less than thirty days and not more than sixty days after said approval by said Advisory Board, Grantor conducted a public hearing at which the Conservation Easement was explained and public comment received; and

WHEREAS, following such public hearing conducted by Grantor, at least two-thirds of the Commissioners of Public Works of the City of Greenville, SC (including those members serving ex-officio by reason of being members of the Greenville City Council duly elected to City Council) and at least two-thirds of the members of City Council of the City of Greenville, SC at meetings duly held approved the proposed Conservation Easement; and

WHEREAS, Grantee, by accepting this Conservation Easement, has committed to honor and defend the conservation purposes thereof in perpetuity for the benefit of the citizens of South

1516 505

Carolina and, in particular, those citizens presently living and future generations living in the vicinity of the real estate referred to herein;

NOW, THEREFORE, in consideration of the premises, Grantor does hereby grant, bargain and convey unto Grantee, its successors and assigns forever, a Conservation Easement ("Easement") in perpetuity over the real estate herein described and of the nature and character and to the extent hereinafter set forth, to-wit:

1. The real estate described herein shall be owned, exclusively controlled, and maintained as far as practicable in its pristine and natural state in perpetuity, subject only to the use of the premises as a source of public water supply and activities incidental thereto.
2. No commercial structure shall be erected for any use including, but not limited to, occupancy by humans or storage of equipment or materials not directly related to the operation and maintenance of said property as a source of public water supply and activities incidental thereto.
3. No timber or other wood or plant product shall be cut for commercial sale or use, provided trees or plants may be cut and/or removed as necessary for protection against fire or disease and for operation and maintenance of Grantor's public water supply.
4. There shall be no mining, quarrying, or exploration for mineral resources upon the premises.
5. Roads, travel ways and utilities may be constructed and maintained for the purpose of furnishing access to and upon the property by Grantor for the purpose of fire protection, removal of diseased trees or plants, inspection and security, and such other activity as good husbandry and operation of an appropriate public water supply dictates.
6. The Grantor expressly reserves all rights incident to ownership of all the property described in this easement, including the sole right to occupy, manage

1816-305 1/2

and control the same. This easement shall not limit nor restrict in any way said Commissioners' of Public Works current practices and uses of the described property, nor shall this easement limit or restrict in any way any future use of the described property as or in conjunction with a water reservoir or source of public water supply deemed appropriate by the said Commissioners.

Grantee shall have the right to enter the property on an annual basis upon thirty (30) days prior notice for the purposes of inspecting the property to determine if the Grantor is complying with the covenants and purposes of this Conservation Easement. In addition, Grantee shall have the right to request periodic visitation for the purpose of making scientific and educational observations and studies and taking samples in such a manner as will not disturb the quiet enjoyment of the property by the Grantor, provided that the time and manner of such visitations shall be approved in advance by Grantor, such approval not to be unreasonably withheld or delayed.

If a breach of these restrictions by the Grantor or a third party comes to the attention of the Grantee, the Grantee shall notify the Grantor in writing of the breach. The Grantor shall have thirty (30) days after receipt of such notice to take actions that are reasonably calculated to correct the conditions constituting such a breach. If the Grantor fails to take such corrective action, the Grantee may undertake such actions in its discretion, including appropriate legal or equitable proceedings, as are reasonably necessary to require and compel the Grantor to correct such conditions.

The within easement may not be amended, modified nor res-

1516 506

cinded except upon written consent of the parties to this easement. The Grantor shall evidence authority to execute any such consent by adoption of a resolution or ordinance after due notice and upon the respective votes of both the City Council of the City of Greenville, S.C. and the Commissioners of Public Works of the City of Greenville, S.C. or their successors who may be elected from time to time.

This easement may not be assigned or transferred in any manner by Grantee without the written consent of Grantor, which consent shall not be unreasonably withheld.

TO HAVE AND TO HOLD this Conservation Easement together with all and singular the appurtenances and privileges belonging or in any way pertaining thereto for the proper use of the Grantee, its successors and assigns as allowed hereunder, forever.

IN WITNESS WHEREOF, the Grantor has caused these presents to be subscribed by its duly authorized officer(s) this 24th day of May, 1993.

IN THE PRESENCE OF:

Lillian B. Fleming

THE CITY OF GREENVILLE,
a municipal corporation

By: Robert T. Waller City Manager

1516 PAGE 507

COMMISSIONERS OF PUBLIC WORKS
OF THE CITY OF GREENVILLE

L. T. Truitt
By: James R. Z...
Chairman

Attest: L. O. Lovell ACTING SECRETARY

ACCEPTED:

James R. Z...
By: Charles C. G...
THE NATURE CONSERVANCY, a not for
profit corporation

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE) PROBATE FOR THE CITY OF GREENVILLE

PERSONALLY appeared the undersigned witness and made oath
that (s)he saw the within named Grantor by its duly authorized
officer(s) sign, seal and as the Grantor's act and deed, deliver
the within written Conservation Easement and that (s)he, with the
other witness subscribed above, witnessed the execution thereof.

SWORN TO BEFORE ME this
24 day of May, 1993.

Ch... (SEAL)
Notary Public for South Carolina
My commission expires: 12/31/97

(CONTINUED ON NEXT PAGE)

1516 PAGE 508

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE) PROBATE FOR COMMISSIONERS
OF PUBLIC WORKS

PERSONALLY appeared the undersigned witness and made oath that (s)he saw the within named Grantor by its duly authorized officer(s) sign, seal and as the Grantor's act and deed, deliver the within written Conservation Easement and that (s)he, with the other witness subscribed above, witnessed the execution thereof.

SHORN TO BEFORE ME this
24 day of May, 1993.

Charles (SEAL)
Notary Public for South Carolina
My commission expires: 12/31/97

STATE OF NORTH CAROLINA)
COUNTY OF ORANGE) PROBATE FOR THE NATURE CONSERVANCY

PERSONALLY appeared the undersigned witness and made oath that (s)he saw the within named Grantee by its duly authorized officer(s) sign, seal and as the Grantee's act and deed, accept the within written Conservation Easement and that (s)he, with the other witness subscribed above, witnessed the execution thereof.

SHORN TO BEFORE ME this
24 day of May, 1993.

Deborah S. Johnston (SEAL)
Notary Public for North Carolina
My commission expires: 9/24/97

(CONTINUED ON NEXT PAGE)

BOOK 1516 PAGE 509

STATE OF NORTH CAROLINA
COUNTY OF ORANGE

PROBATE FOR THE NATURE CONSERVANCY

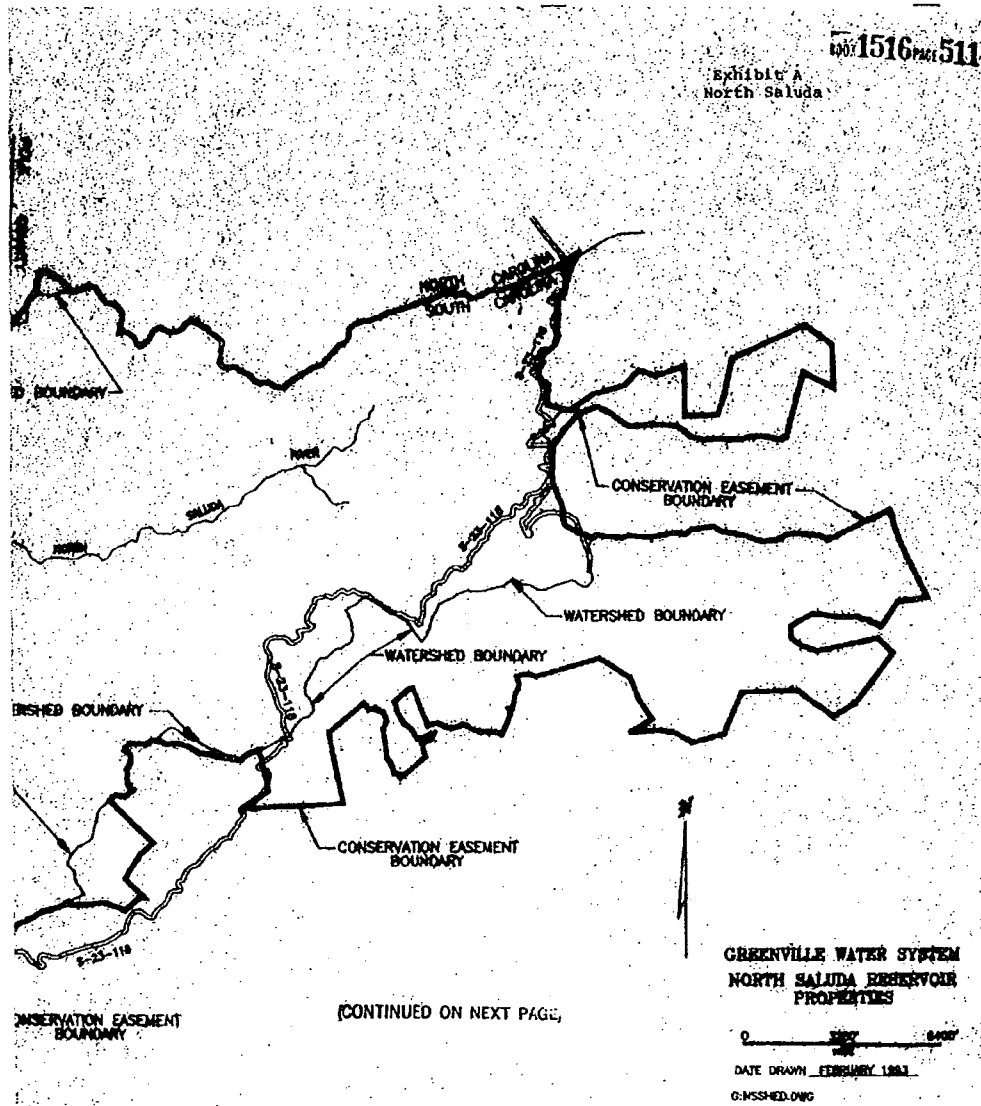
I, Deborah S. Feldstein, Notary Public for said County and State, do hereby certify that JAMES L. DESMOND personally came before me this day and acknowledged that he is the Assistant Secretary of THE NATURE CONSERVANCY, a corporation, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its Vice President, sealed with its corporate seal, and attested by himself as its Assistant Secretary.

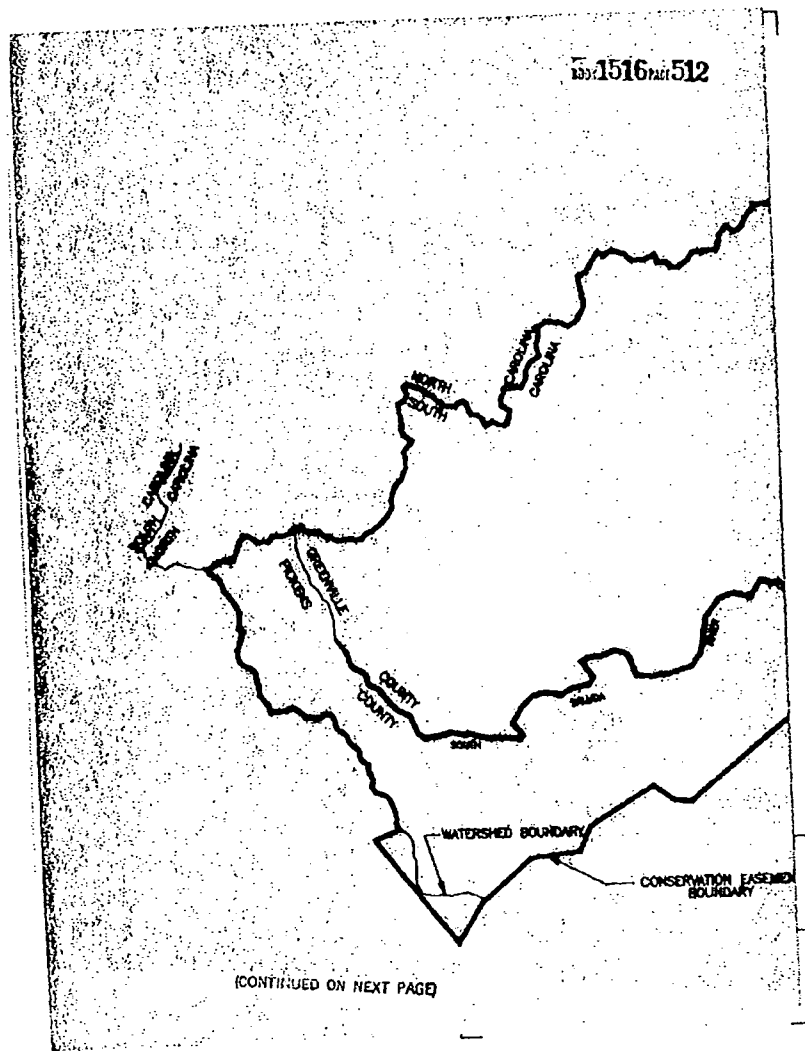
WITNESS my hand and official seal, this the 28th day of May, 1978

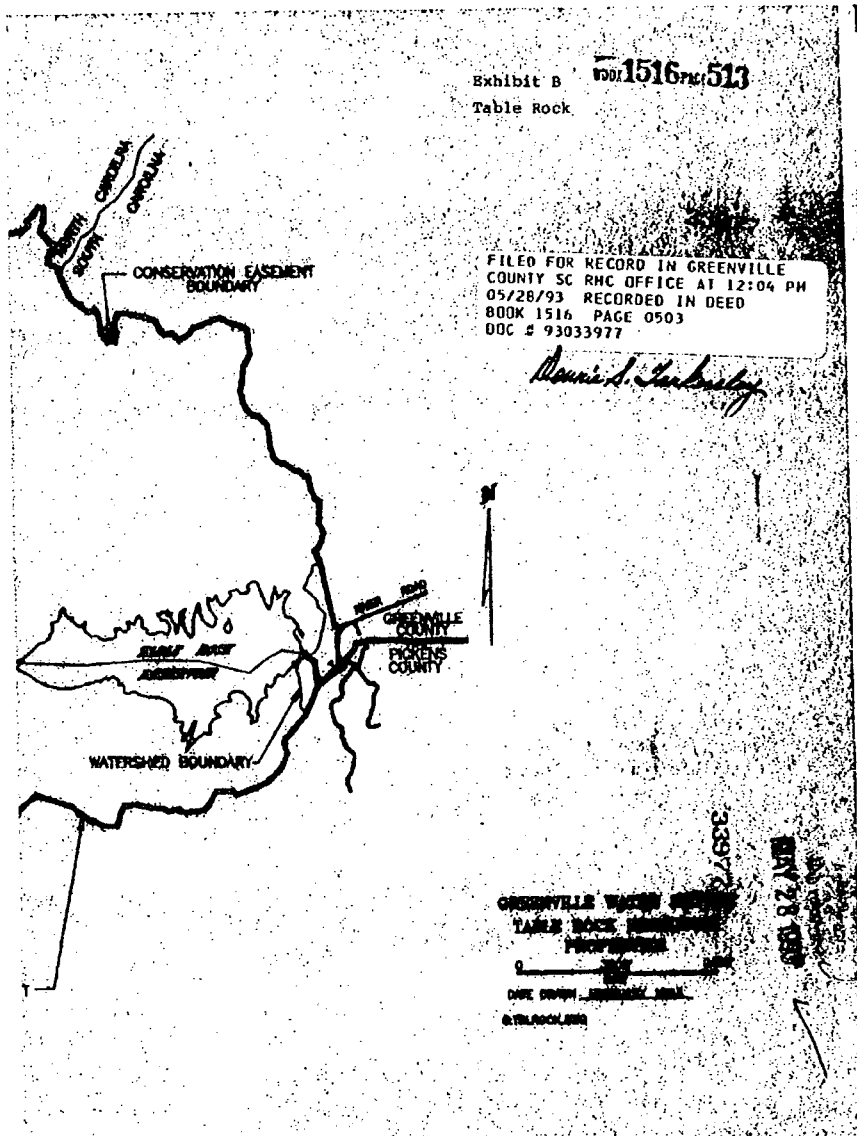
Deborah S. Feldstein (SEAL)
NOTARY PUBLIC

My commission expires:
9/24/87

(CONTINUED ON NEXT PAGE)







MEMORY TRANSMISSION REPORT

TIME : 07-30-'12 10:41
FAX NO.1 : 8643313058
NAME : Law Offices

FILE NO. : 819
DATE : 07.30 10:32
TO : 84517290
DOCUMENT PAGES : 12
START TIME : 07.30 10:32
END TIME : 07.30 10:41
PAGES SENT : 12
STATUS : OK

*** SUCCESSFUL TX NOTICE ***

(Page 1 of 12)

STATE OF SOUTH CAROLINA FILED
COUNTY OF GREENVILLE
MAY 20 12 ON PM '93

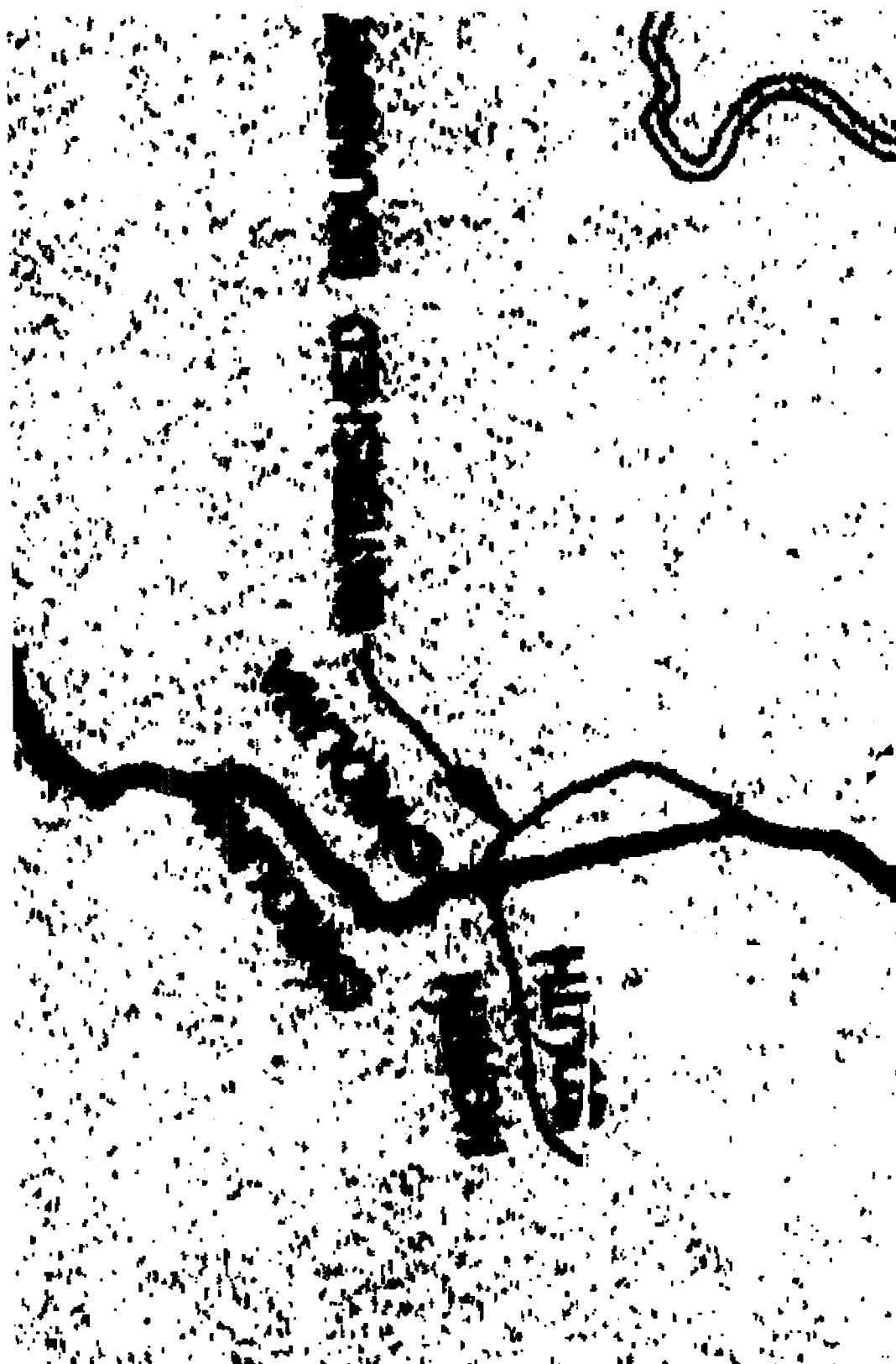
THIS GRANT OF CONSERVATION EASEMENT made this 20th day of May, 1993 by the City of Greenville, a South Carolina municipal corporation, and the Commissioners of Public Works of the City of Greenville, an agency created pursuant to the laws of the state of South Carolina (hereinafter collectively referred to as "Grantor") and in favor of THE NATURAL CONSERVANCY, a non-profit corporation organized and existing under the laws of the District of Columbia (hereinafter referred to as "Grantee").

WHEREAS, Grantor owns, manages and operates as a source of water for distribution and sale in and around Greenville County, South Carolina, certain real estate described as follows, to wit:

A. The North Saluda Reservoir properties:
All those certain pieces, parcels and tracts of land with all buildings and improvements thereon, which land consists of approximately 19,200 acres, more or less, and is located in the County of Greenville, State of South Carolina, and in Pickens County, State of South Carolina, generally as shown on map thereof marked Exhibit A and attached hereto and made a part of this document.

B. Table Rock Reservoir properties:
All those pieces, parcels and tracts of land with all buildings and improvements thereon, which land consists of approximately 3,800 acres, more or less, and is located in Greenville County and Pickens County, State of South Carolina, and generally shown on map thereof marked Table Rock Reservoir Properties attached hereto and marked Exhibit B and made a part of this document.

WHEREAS, Grantor is desirous of conveying to Grantee a Conservation Easement pursuant to the terms of the South Carolina Conservation Easement Act of 1991 (Sections 27-8-10, et seq.), and



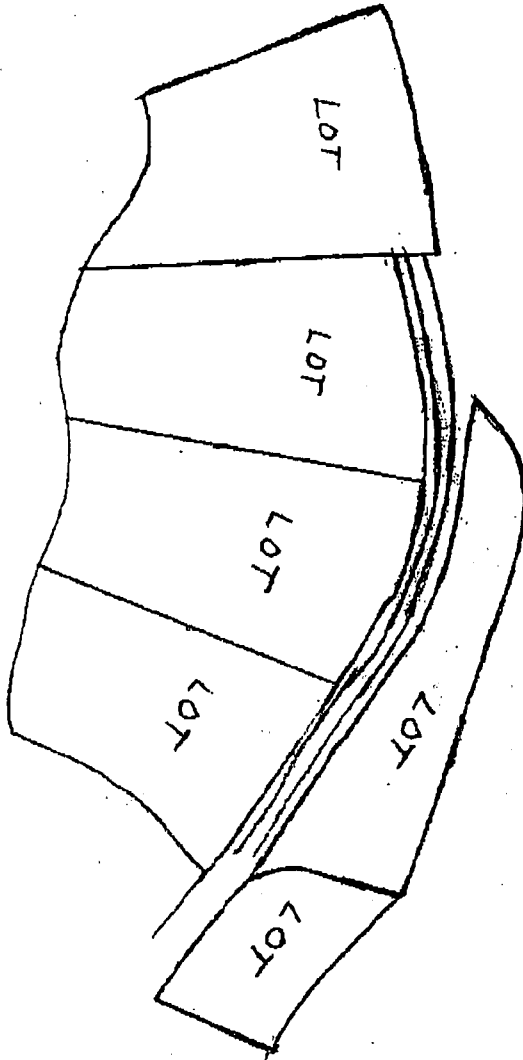
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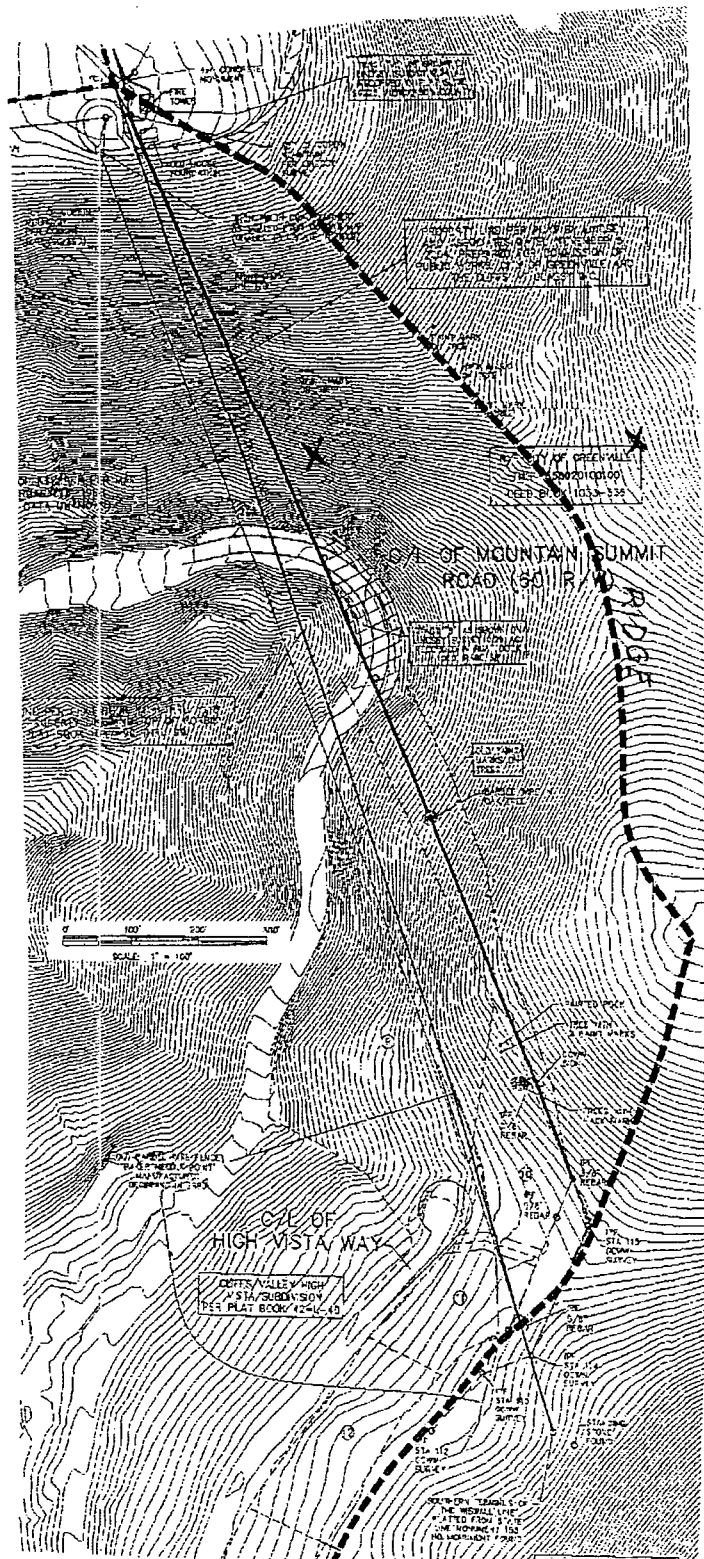
Fax Confirmation Report

HP LASERJET FAXCarpenter
8643313083
Jul-30-2012 9:40PM

Job	Date	Time	Type	Identification	Duration	Pages	Result
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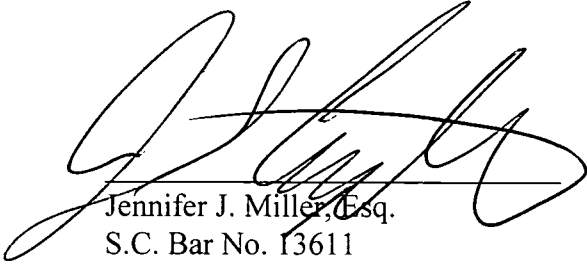






Certificate of Counsel

Appellant/Respondent certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

A handwritten signature in black ink, appearing to read 'J. Miller', is written over a horizontal line.

Jennifer J. Miller, Esq.

S.C. Bar No. 13611

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(864) 235-1269

Attorney for Appellant/Respondent

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

D. Garrison Hill, Circuit Court Judge
John C. Few, Circuit Court Judge

Appellate Case No. 2012-212137

The South Carolina Public Interest Foundation, and Edward D. Sloan, Jr., and
Robert M. Lloyd, individually and as taxpayers of the City of Greenville, South
Carolina, and on behalf of others similarly situated, .. Appellants/Respondents,

v.

City of Greenville, Mayor Knox H. White, and The Cliffs at Glassy, Inc.,
Defendants, Of Whom City of Greenville and Mayor Knox H. White are the
Respondents/Appellants,.....Respondents/Appellants.

AMENDED PROOF OF SERVICE

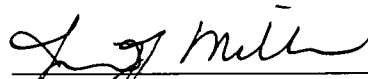
The undersigned attorney hereby certifies that she caused to be served the Record on Appeal
upon counsel for the Respondents by US Mail, postage prepaid this Wednesday, May 22, 2013,
addressed as follows:

Kathleen Kempe
City Attorney's Office
P.O. Box 2207
Greenville, SC 29602
February 11, 2013

DECE

28 2013

Appeal



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