

ORIGINAL

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM RICHLAND COUNTY

Court of Common Pleas

L. Casey Manning, Circuit Court Judge

Case No. 2012-CP-40-1560

South Carolina Public Interest Foundation and Edward D. Sloan, Jr., individually, and on behalf of all others similarly situated, ... Appellant,

v.

South Carolina Department of Transportation, and John V. Walsh, Deputy Secretary of Transportation for Engineering, ... Respondents.

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE CIRCUIT COURT
C.A. No. 2012-CP-40-1560

South Carolina Public Interest Foundation and
Edward D. Sloan, individually, and on behalf
of all others similarly situated,

Plaintiffs,

v.

South Carolina Department of Transportation,
and John V. Walsh, Deputy Secretary of
Transportation for Engineering,

Defendants.

ORDER

RICHLAND COUNTY
FILED
2012 NOV 21 PM 2:33
JEANETTE W. McBRIDE
C.C.P. & G.S.

This matter came before me on September 19, 2012, on oral argument on the parties cross-motions for summary judgment. Present were James G. Carpenter, Esquire, representing the plaintiffs, Edward D. Sloan, and Beacham O. Brooker, Jr., Esquire, representing the defendants.

Plaintiffs have sued under the Uniform Declaratory Judgments Act, S.C. Code Ann. §§15-53-10, *et seq.*, seeking a declaration that the Department's and defendant John V. Walsh's ("Walsh") actions in dispatching a three-man bridge inspection crew to inspect and report on the condition of three privately-owned bridges in the Woodside Plantation subdivision in Aiken at the request of a city councilman was contrary to certain provisions of the South Carolina Constitution requiring that public funds be spent only for public purposes and that the full faith and credit of the State not be pledged for the benefit of a private individual, company, association, or corporation.¹

The Department's position is that the city's investigation of the bridges was a legitimate exercise of a municipality's delegated police power to insure the health, safety, and welfare of

¹ S.C. Code Ann., Const. art. X, §§5, 11 (Rev. 2009).

SCANNED

persons within its boundaries as well as its power to abate public nuisances; and that SCDOT is authorized to assist local governments in these activities within areas of its expertise under its primary enabling statute. S.C. Code Ann., §57-3-110(7) (Rev. 2006).

The exercise of these powers by the governmental entities involved were not arbitrary or unreasonable and should not be interfered with by the courts. S.C. Code, Const., art. VIII, §17 (Rev. 2009); Main v. Thomason, 342 S.C. 79, 535 S.E.2d 918 (2000). Finally, defendants assert that plaintiffs lack standing to pursue their suit.

For the reasons stated below, the Court agrees with defendants that the case should be dismissed.

Background Facts

There does not appear to be any serious dispute between the parties regarding the underlying facts which are contained in the affidavits each have submitted and the attachments thereto.

An Aiken City Councilman, Reggie Ebner, became concerned that the bridges within the Woodside Plantation subdivision, being wooden, were unsafe and posed a potential hazard to the public. Ebner was a resident of Woodside Plantation and presumably represented that district on City Council. His email to State Representative Tom Young, who represented the district that contained the subdivision, requesting assistance, was forwarded by Rep. Young to Walsh, SCDOT's Deputy Secretary for Engineering. Senator Greg Ryberg, who also represents the area, communicated his support for the request. The city code contained no specifications for bridges but referred to State specifications for roads, nor did the city retain a standing bridge inspector or department for that purpose. Therefore, councilman Young, through the State representatives sought the help of SCDOT.

Thereafter, Walsh dispatched a three-man bridge inspection crew based in Orangeburg to inspect the bridges and issue a report that Walsh subsequently forwarded to Ebner, Young, and Ryberg. The cost to the Department, representing the inspectors' time, has been estimated at \$1,400.

Discussion

Standing and Mootness.

Defendants argue that plaintiffs lack standing due to the *de minimis* degree of the impact upon them from defendants' actions and the fact that the events complained of have been completed and, therefore, all issues raised are moot. I agree.

Plaintiff Edward D. Sloan, claims standing as a taxpayer and elector in South Carolina. No justification for the standing of the South Carolina Public Interest Foundation is set forth in the Complaint. Both plaintiffs lack standing to bring this suit. A taxpayer is not entitled to sue on that basis alone where he suffers in some indefinite way in common with people generally. Freemantle v. Preston, 398 S.C. 186, 193, 728 S.E.2d 40, 43 (2012). A private person may not invoke judicial power to determine the validity of executive or legislative action unless he has sustained, or is in immediate danger of sustaining, prejudice therefrom. Baird v. Charleston County, 333 S.C. 519, 530, 511 S.E.2d 69, 75 (1999). To establish constitutional standing, plaintiff must first show he has suffered an "injury in fact which is (a) concrete and particularized, and (b) actual or imminent, not conjectural or hypothetical." ATC South, Inc. v. Charleston Cnty., 380 S.C. 191, 195, 669 S.E.2d 337, 339 (2008) (quoting Lujan v. Defenders of Wildlife, 504 U.S. 555, 560-61, 112 S.Ct. 2130, 119 L.Ed.2d 351 (1992).) An exception is where the issue raised is of such public importance as to its resolution for future guidance. Baird, 728 S.E.2d at 44.

Mr. Sloan is a resident and taxpayer in Greenville County. His suit involves decisions made in Columbia concerning real property in Aiken. His standing as a taxpayer could only be based upon his share of the 16 cents per gallon gas tax that contributed to the \$1,400 cost of the Department's employees' wages spent inspecting the bridges and preparing a report. I weigh this infinitesimal amount and interest against the relief he requests which would involve this Court's inserting itself into routine decisions of the State Highway Engineer as to when and where to provide assistance to local governments in areas of the Department's particularized expertise. I find this balance weighs toward declining judicial involvement.

Regarding the public importance exception, plaintiffs have neither alleged nor shown any facts or instances demonstrating any ongoing pattern or practice of the Department to use State resources to improve or benefit private property nor even to provide inspection services to privately-owned bridges. In fact, the affidavit of Mr. Walsh indicates that only one other such instance was an inspection of the bridge to Fripp Island upon the request of the county council that it take the bridge into the State system for maintenance purposes. The Department asserts that it has no interest in using its inspectors to inspect private bridges outside the occasional event that another governmental agency may request its assistance in doing so for a legitimate public purpose. Given the lack of evidence that this is an ongoing problem, this Court is reluctant to insert itself into decisions that the General Assembly has expressly delegated to the Department of Transportation's discretion. S.C. Code Ann., §57-3-110(7) (Rev. 2006).

A related doctrine is that a court should not confer standing where the issue in the suit is moot and thus academic and there remains no actual controversy. Sloan v. Dep't. of Transp., 379 S.C. 160, 167, 666 S.E.2d 236, 240 (2008). Exception to the mootness doctrine allow consideration where the issue is raised and is capable of repetition but generally will evade

review, raises questions of manifest urgency, or would affect future events or have collateral consequences for the parties. Id., 379 S.C. at 68. It is plain that this matter is moot. The bridge inspections were made and a report issued in August of 2011. That is the only act complained of and any order of this Court would have no effect in reversing it. The first reason for an exception is rejected for the same reasons set forth in the previous paragraph regarding public importance. There is obviously no urgency because the inspections are over and done. That the inspections could have collateral consequences between plaintiffs and defendants has clearly not been demonstrated.

I find that plaintiffs lack standing to maintain the present suit.

Plaintiffs' constitutional claims.

Although my opinion is that the complaint should be dismissed for the lack of standing of the plaintiffs to pursue it, I discuss the merits of the Complaint in order to make a full record herein.

A. Benefit to a private party.

Plaintiffs' argument is that, because the bridges in Woodside Plantation are owned by the homeowners' association and not a governmental entity, the use of State resources to inspect them was an unconstitutional act under the constitution's prohibitions against using public funds for the benefit of private interests. Defendants argue that plaintiffs are incorrect in directing the Court to focus on the ownership of the bridges. I agree. As set forth in Section B. below, the inspection of the bridges was legitimately within the City's police power and the decision by Walsh to assist it was well within the Department's enumerated powers to assist other governmental entities in areas of its expertise. S.C. Code Ann. §57-3-110.

Addressing plaintiffs' constitutional argument directly, the city's and the Department's actions were not for the "benefit" of the homeowners of Woodside Plantation. Rather, they were in furtherance of the government's responsibilities to insure the health, safety, and welfare of the public at large and to abate a potential public nuisance. The government often enters private property for this purpose. See, S.C. Code Ann. §31-15-20 (Municipalities may enter and demolish unsafe buildings); Richards v. City of Columbia, 227 S.C. 538, 88 S.E.2d 683 (1955); Main v. Thomason, *supra*. (Statute authorizing neighboring property owners to enter adjoining property to repair their buildings not unconstitutional.) All municipalities in South Carolina are given the authority to abate nuisances. S.C. Code Ann. §5-7-30 (Rev. 2004). It is difficult to see any "benefit" to the bridge owners flowing from the actions of the two governmental entities involved. The city, upon a finding that the bridges were unsafe and presented a hazard to the travelling public, would be within its powers to close them, condemn them, or cause the homeowners and their association to replace them at their expense.

The foregoing is sufficient to distinguish the factual situation in this case from those underlying the two Attorney General opinions plaintiffs cite in their memoranda. In his Aughtry opinion², the Attorney General opined that the constitution would be violated by the use of county funds to scrape private roads or driveways. In the Ramsey opinion³, the removal of a storm drain to accommodate the construction of a new building by a church implicated the unconstitutional expenditure of public funds for a private benefit. Here, the motivation was the general safety and welfare of the public, not to benefit or improve private property.

² C. Dennis Aughtry, Esquire, 190 WL 599297 (June 4, 1990)

³ The Honorable Wayne C. Ramsey, 2005 WL 469070 (Feb. 3, 2005)

B. Authority for the governments' actions.

The City of Aiken has adopted a subdivision ordinance pursuant to the South Carolina Local Government Comprehensive Planning Act of 1994. S.C. Code Ann. §§ 6-29-310, *et seq.* The statement of legislative intent for the Land Planning – Land Development article of that enabling Act, § 6-29-1120, cites among the purposes of the regulation (2) to assure the timely provision of required streets, utilities, and other facilities and services to new land developments; and (3) to assure the adequate provision of safe and convenient traffic access and circulation, both vehicular and pedestrian, in and through new land developments.

Additionally, Section 5-7-30 of the S.C. Code of Laws contains the general grant of powers to municipalities in South Carolina. The language of that statute authorizes municipalities to exercise powers with in relation to, *inter alia*, roads, streets, and any other subject necessary for the “security, general welfare, and convenience of the municipality or for preserving the health, peace order, and good government in it ...” This broad grant of power to municipalities is only limited by the constitution or general law of the State. Hospitality Ass’n. of South Carolina, Inc. v. County of Charleston, 320 S.C. 219, 464 S.E.2d 113 (1995). As mentioned in the foregoing Section, the constitution declares that such laws be liberally construed.⁴

The land development statute and the municipal powers statute are delegations of the State’s police power to municipalities to regulate for the health, safety and general welfare of the public. Courts will not interfere with the enforcement of regulations designed for the protection of health, welfare and safety of citizens unless they are determined to be unreasonable. Main v.

⁴ The provisions of this Constitution and all laws concerning local government shall be liberally construed in their favor. Powers, duties, and responsibilities granted local government subdivisions by this Constitution and by law shall include those fairly implied and not prohibited by this Constitution. S.C. Code Ann., Const., art. VIII, §17 (Rev. 2009).

Thomason, supra. Moreover, the municipal powers act enables cities and towns to abate nuisances. A dangerous bridge certainly qualifies for that category. Even in the absence of such express delegation, some governmental entity--if only the General Assembly itself--would be able to abate the public nuisance of an unsafe private bridge. Morison v. Rawlinson, 193 S.C. 25, 7 S.E.2d 635 (1940).

Regarding the Department, the General Assembly has included among the statutory powers and duties conferred on the Department of Transportation:

(7) instruct, assist, and cooperate with the agencies and departments, and bodies politic, and legally constituted agencies of the State in street, highway, traffic, and mass transit matters when requested to do so, and, if requested by such government authorities, supervise or furnish engineering supervision for the construction and improvement of roads and bridges, provided such duties do not impair the attention to be given the highways in the state highway system;

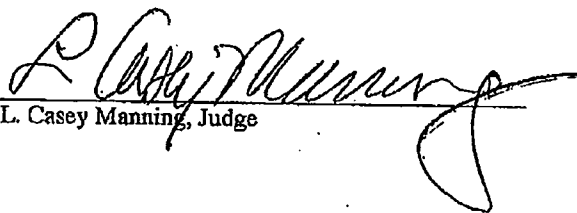
S.C. Code Ann. § 57-3-110. Through the forgoing statute, the legislature has conferred discretion upon the Department as to when it will assist local governments. Absent a clear abuse of discretion, the courts should defer to those decisions. Gamble v. Williamsburg Co. Sch. Dist., 305 S.C. 288, 290, 408 S.E.2d 217, 218 (1991). Many governmental functions in the State are centralized. That is the reason for the existence of the State Department of Education. S.C. Code Ann. §59-5-10 (Rev. 2004). It would make little sense for each of the 278 municipalities in South Carolina to each retain its own bridge inspection crew. Here, the Department properly responded to a request from City of Aiken officials and representatives for assistance in an area of the Department's expertise. The City had authority to make the request and the Department had authority to respond to it.

Conclusion

I find that plaintiffs lack standing under the Declaratory Judgments Act to maintain a suit the subject matter of which they lack any direct personal interest. The exceptions to our rules of

taxpayer standing and to the doctrine of mootness have not been demonstrated by plaintiffs. In any event, I find that the actions of the defendants were not ultra vires or unconstitutional under those proscriptions against using public funds for private benefit but were with the delegated powers of both the Department and the City of Aiken. Plaintiffs' motion for summary judgment is denied. Defendants' cross-motion is granted. The complaint herein shall be dismissed.

AND IT IS SO ORDERED.


L. Casey Manning, Judge

Columbia, S.C.
October 4, 2012

WCH, 2012

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

South Carolina Public Interest Foundation
and Edward D. Sloan, Jr., individually,
and on behalf of all others similarly si-
tuated,
Plaintiffs,

v.

South Carolina Department of Transporta-
tion, and John V. Walsh, Deputy Secretary
of Transportation for Engineering,
Defendants.

IN THE CIRCUIT COURT
C.A. NO. 2012-CP-40-_____

**COMPLAINT FOR
DECLARATORY JUDGMENT**

RICHLAND COUNTY
FILED
2012 FEB 24 PM 1:39
JEANETTE W. McBRIDE
C.C.P. & G.S.

NOW COME the Plaintiffs, by their undersigned attorney, and as a cause of
action against the Defendants, would show unto the Court:

1. Plaintiff South Carolina Public Interest Foundation is a not for profit corporation organized and existing under the laws of the State of South Carolina and dedicat-
ed to the public interest, including the upholding and proper application of the
South Carolina Constitution.
2. Plaintiff Edward D. Sloan, Jr., is a citizen, resident, taxpayer, and registered elec-
tor of the State of South Carolina. He has paid taxes that fund the Department of
Transportation. He brings this action individually on his behalf and on behalf of
all others similarly situated.
3. Defendant South Carolina Department of Transportation ("SCDOT") is a De-
partment of the State.
4. Defendant John V. Walsh, is Deputy Secretary of Transportation for Engineering
in the SCDOT, and is named as Defendant in his official capacity.

5. This Court possesses jurisdiction under the South Carolina Constitution Article X, §§ 5 and 11; S.C. Code Ann. §15-53-10 *et seq.*, known as the Uniform Declaratory Judgment Act; and the following decisions: *American Petroleum Institute v. S.C. Dep't of Revenue*, 382 S.C. 572, 677 S.E.2d 16 (2009), *South Carolina Public Interest Foundation v. Harrell*, 378 S.C. 441, 663 S.E.2d 52 (2008), *Sloan v. Department of Transportation*, 379 S.C. 160, 666 S.E.2d 236 (2008), *Sloan v. Hardee*, 357 S.C. 495, 640 S.E.2d 457 (2007); *Cornelius v Oconee County*, 369 S.C. 531, 633 S.E.2d 492 (2006); *Sloan v. Department of Transportation*, 365 S.C. 299, 618 S.E.2d 876 (2005), *Sloan v. Wilkins*, 362 S.C. 430, 608 S.E.2d 579 (2005); *Sloan v. Sanford*, 357 S.C. 431, 593 S.E.2d 470 (2004); *Sloan v. Greenville County*, 356 S.C. 531, 590 S.E.2d 338 (Ct. App. 2003), *Sloan v. School District of Greenville County*, 342 S.C. 515, 537 S.E.2d 299 (Ct. App. 2000), *Baird v. Charleston County*, 333 S.C. 519, 511 S.E.2d 69 (1999), *Newman v. Richland County Historic Preservation Commission*, 325 S.C. 79, 480 S.E.2d 72 (1997).
6. Article X, Section 5 of the State Constitution requires that taxes (public funds) be spent for public purposes.
7. Article X, Section 11 of the State Constitution provides that:

(t)he credit of neither the State nor of any of its political subdivisions shall be pledged or loaned for the benefit of any individual, company, association, corporation, or any religious or private education institution except as permitted by Section 3, Article XI of this Constitution.
8. Article X, Section 11 of the State Constitution proscribes the expenditure of public funds “for the primary benefit of private parties.” *State ex rel. McLeod v. Riley*, 276 S.C. 323, 329, 278 S.E.2d 612 (1981).

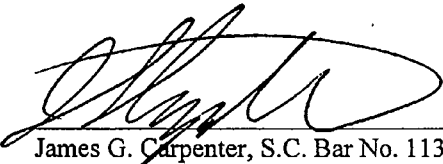
9. The term “credit” has been construed as any “pecuniary liability” or “pecuniary involvement.” *Elliott v. McNair*, 250 S.C. 75, 156 S.E.2d 421 (1967).
10. An individual member of City Council of Aiken—not the City itself—requested that the SCDOT expend public funds to inspect privately built, privately owned bridges, in a private, gated community.
11. In addition, a single state representative and a single state senator—not the entire General Assembly—endorsed the request.
12. Defendants SCDOT and Walsh ordered SCDOT inspectors to inspect three privately built, privately owned bridges on private property in a private, gated community in Aiken County, in violation of Article X, §§ 5 and 11 of the South Carolina Constitution. Plaintiffs attach to this Complaint a copy of the SCDOT reports of these inspections.
13. Although federal law may require states to inspect “all highway bridges on *public* roads” (23 USC § 151; 23 CFR § 650.307 emphasis added), federal law does not require such inspections of *private* bridges on private property, nor does South Carolina law authorize such inspections.
14. Defendants are reported and quoted in the news media as asserting as a justification for the inspections of the private bridges that the public school busses for the School District of Aiken County traverse the bridges, and therefore inspections fulfill a public purpose.
15. Upon information and belief, based upon the approved bus routes, published on the official website for the School District of Aiken County, no public school busses on any official routes traverse the three private bridges at issue.

16. Furthermore, even if public school busses did traverse the bridges, the inspection of these private bridges would not serve a public purpose, sufficient to justify the use of public funds to perform services on private property.

WHEREFORE, Plaintiffs pray the Court:

1. To declare that the SCDOT's inspection of three privately built, privately owned bridges on private property in a private, gated community violates Article X, §§ 5 and 11 of the South Carolina Constitution;
2. To grant Plaintiffs their costs and attorneys' fees under S.C. Code Ann. § 15-77-300 ff.; and
3. To grant such other and further relief as the Court deems just and proper.

Respectfully submitted,
THE CARPENTER LAW FIRM, P.C.



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Attorney for the Plaintiffs

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

South Carolina Public Interest Foundation and
Edward D. Sloan, individually, and on behalf
of all others similarly situated,

Plaintiffs,

v.

South Carolina Department of Transportation,
and John V. Walsh, Deputy Secretary of
Transportation for Engineering,

Defendants.

IN THE CIRCUIT COURT

C.A. No. 2012-CP-40-1560

ANSWER

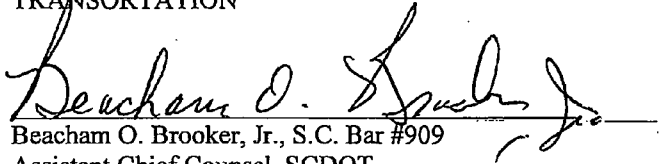
Come now the defendants, the South Carolina Department of Transportation and John V. Walsh and, for their answer to the complaint, admit, deny, and aver as follows:

1. They are without information sufficient to form a belief concerning the truth of the allegations in paragraphs 1 and 2 of the complaint. Accordingly, they deny the same.
2. Admit the allegations contained in paragraphs 3 and 4 of the complaint.
3. The allegations contained in paragraphs 5, 6, 7, 8, and 9 constitute conclusions of law and are therefore denied.
4. Deny the allegations contained in paragraph 10 of the complaint.
5. Admit the allegations contained in paragraph 11 of the complaint.
6. The allegations contained in paragraphs 12 and 13 of the complaint constitute conclusions of law and are therefore denied.
7. They are without information sufficient to form a belief concerning the truth of the allegations in paragraph 14 and 15 of the complaint. Accordingly, they deny the same.
8. Deny the allegations contained in paragraph 16 of the complaint.

9. Deny that plaintiffs are entitled to the relief demanded in their WHEREFORE clause or any relief arising from the allegations of the complaint.

WHEREFORE, defendants pray that the complaint be dismissed and that they be awarded their costs of defending this action.

SOUTH CAROLINA DEPARTMENT OF
TRANSPORTATION



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Columbia, S.C.
March 16, 2012

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

South Carolina Public Interest Foundation and
Edward D. Sloan, individually, and on behalf
of all others similarly situated,

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South Carolina Department of Transportation,
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Defendants.

IN THE CIRCUIT COURT

C.A. No. 2012-CP-40-1560

CERTIFICATE OF SERVICE

I certify that I have caused a copy of the below-mentioned documents to be served upon the following parties by depositing same in the United States mail, with postage prepaid and affixed thereto, addressed as follows, this 16th day of March, 2012.

Pleadings Served:

ANSWER

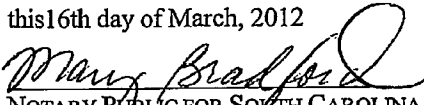
Parties Served:

James G. Carpenter, Esquire
Jennifer J. Miller, Esquire
819 E. North Street
Greenville, SC 29601

ATTORNEYS FOR PLAINTIFFS


Janet M. Tucker, Paralegal

SWORN TO BEFORE ME
this 16th day of March, 2012


NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission Expires: 2/16/2016

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

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and on behalf of all others similarly situated,

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IN THE CIRCUIT COURT

C.A. NO. 2012-CP-40-1560

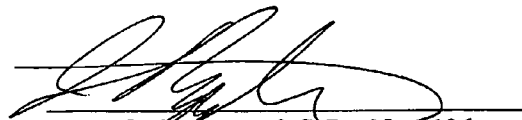
Motion for
Summary Judgment

RICHLAND COUNTY
FILED
2012 AUG 21 AM 11:53
JEANETTE W. MCBRIDE
Clerk of Court & G.S.

NOW COME the Plaintiffs, South Carolina Public Interest Foundation and Edward D. Sloan, Jr., by their undersigned attorney, and move the Court pursuant to SCRPC 56 for Summary Judgment, and in support of the Motion would show to the Court that there is no genuine issue of material fact and Plaintiffs are entitled to judgment as a matter of law. A Memorandum of Law accompanies this Motion.

August 14, 2012

Respectfully submitted,
THE CARPENTER LAW FIRM, P.C.



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STATE OF SOUTH CAROLINA

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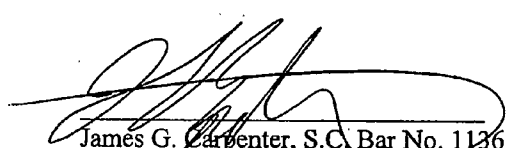
C.A. NO. 2012-CP-40-1560

Certificate of Service

RICHLAND COUNTY
FILED
2012 AUG 21 AM 11:58
JEANETTE W. McBRIDE
C.C.P. & G.S.

The undersigned attorney hereby certifies that he has served a copy of the foregoing Plaintiffs' Motion to for Summary Judgment and Memorandum of Law on counsel for Defendants by first class mail postage prepaid this Tuesday, August 14, 2012, addressed as follows

Beacham O. Brooker, Jr.
Post Office Box 191
Columbia, SC 29201-0191


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Defendants.

IN THE CIRCUIT COURT
C.A. NO. 2012-CP-40-1560

Memorandum of Law in
Support of Motion for
Summary Judgment

JEANETTE W. McBRIDE
CLERK, P. & G.S.

2012 AUG 21 AM 11:53

RICHLAND COUNTY
FILED

NOW COME the Plaintiffs, South Carolina Public Interest Foundation and Edward D. Sloan, Jr., by their undersigned attorney, and submit this Memorandum of Law in Support of their Motion for Summary Judgment. In support of the Motion, Plaintiffs would show to the Court that there is no genuine issue of material fact, and Plaintiffs are entitled to judgment as a matter of law.

STATEMENT OF THE CASE

Plaintiff South Carolina Public Interest Foundation is a not for profit corporation organized and existing under the laws of the State of South Carolina and dedicated to the public interest, including the upholding and proper application of the South Carolina Constitution. Plaintiff Edward D. Sloan, Jr. is a citizen, resident, taxpayer, and registered elector of the State of South Carolina. He has paid taxes that fund the Department of Transportation. He brings this action individually on his behalf and on behalf of all others similarly situated.

Defendant South Carolina Department of Transportation (“SCDOT”) is a Department of the State. Defendant John V. Walsh is Deputy Secretary of Transportation for Engineering in the SCDOT.

This Court possesses jurisdiction under the South Carolina Constitution Article X, §§ 5 and 11; S.C. Code Ann. §15-53-10 *et seq.*, known as the Uniform Declaratory Judgment Act; and the following decisions: *American Petroleum Institute v. S.C. Dep’t of Revenue*, 382 S.C. 572, 677 S.E.2d 16 (2009), *South Carolina Public Interest Foundation v. Harrell*, 378 S.C. 441, 663 S.E.2d 52 (2008), *Sloan v. Department of Transportation*, 379 S.C. 160, 666 S.E.2d 236 (2008), *Sloan v. Hardee*, 357 S.C. 495, 640 S.E.2d 457 (2007); *Cornelius v Oconee County*, 369 S.C. 531, 633 S.E.2d 492 (2006); *Sloan v. Department of Transportation*, 365 S.C. 299, 618 S.E.2d 876 (2005), *Sloan v. Wilkins*, 362 S.C. 430, 608 S.E.2d 579 (2005); *Sloan v. Sanford*, 357 S.C. 431, 593 S.E.2d 470 (2004); *Sloan v. Greenville County*, 356 S.C. 531, 590 S.E.2d 338 (Ct. App. 2003), *Sloan v. School District of Greenville County*, 342 S.C. 515, 537 S.E.2d 299 (Ct. App. 2000), *Baird v. Charleston County*, 333 S.C. 519, 511 S.E.2d 69 (1999), *Newman v. Richland County Historic Preservation Commission*, 325 S.C. 79, 480 S.E.2d 72 (1997).

STATEMENT OF FACTS

From the documents provided by the South Carolina Department of Transportation, the following facts emerge. For “several years, a number of citizens in [Woodside Plantation, a private gated community in Aiken, South Carolina] have worked with the City of Aiken, Developer and Property Owners Association to achieve safe, dependable roadways, but have not achieved success” (**Exhibit A**, E-mail letter from Reggie Ebner, to John Walsh and Representative Tom Young dated July 13, 2011 (“July 13 email”)).

Mr. Ebner states that he is the City of Aiken Councilman for District 4, lives in Woodside Plantation, and is a Professional Engineer licensed in the State of Texas. *Id.* Apparently, Ebner had found some old drawings for Woodside Plantation, Phase III that called for metal culverts where streams went under the roads. However, the Developer had substituted wooden bridges for the metal culverts (**Exhibit A**, Attachment D-1). Ebner concluded that the wooden bridges failed to comply with the design and violated State requirements (**Exhibit A**, Attachment E-1).

Ebner wrote to the Aiken city officials requesting information related to the streets in Woodside Plantation and a copy of the letter relating to or approving the design change from metal culverts to wooden bridges (**Exhibit A**, Attachments C-1 and C-2). He was also concerned about a concrete bridge and a roadway that formed a dam for a lake in Woodside Plantation. *Id.*

City officials told Ebner that they did not have engineers to certify any of the structures but did produce some e-mails related to the change from metal culverts to bridges (**Exhibit A**, Attachment C-4).

When he failed to get satisfaction or help from the City of Aiken, Ebner then enlisted the support of his State Representative. Ebner asked, "Who is responsible for the design approval, construction inspection, safety requirements and final approval for bridges" (**Exhibit A**, Attachment B-1). Ebner forecast "future legal proceedings."

City officials replied to Ebner that Woodside Plantation Property Owners Association, Inc. was the responsible party (**Exhibit A**, Attachment C-1). Ebner stated, "It is my personal understanding that the City of Aiken is responsible for infrastructure installation in Woodside Plantation" (July 13, 2011, email, par. I. 9). Ebner believed that the

wooden bridges needed either to be inspected and declared safe or to be replaced with metal culverts, as called for in the original plans.

Instead of engaging a structural engineer, Ebner decided to enlist the help of his Representative and Senator to pressure the SCDOT into inspect the wooden bridges, even though they are on private property and in a gated community. Ebner requested, "If SCDOT approval and quality control of the wooden bridges cannot be established, request roads be installed as designed with culverts" (Exhibit A, July 13, 2011 email). He further requested, "If SCDOT has approved the installation and quality control of the wooden bridges, request is to verify installation meets SCDOT bridge specifications and safety requirements." *Id.*

Finally, as to a concrete bridge in Woodside Plantation, Ebner requested, "SCDOT will need to determine if concrete bridge can be certified for use. If concrete bridge is certified, verify safety requirements for use and construction of bridge approaches are to specification." *Id.*

He further requested, "Once your review is complete, I propose a meeting to discuss the findings and any corrections that need to be made with the appropriate parties." *Id.*

In summary, Ebner was asking the public to pay for the inspection and evaluation of these privately owned bridges. *Id.* If they failed the publicly financed inspection, he planned to use legal or political pressure to require the Developer or the City to replace the wooden bridges with metal culverts and to repair the concrete bridge and its approaches (Exhibit A, July 13, 2011 email). His Representative and Senator endorsed his request to the SCDOT for the publicly financed inspection, generated the false justifica-

tion that school buses passed over these bridges, and put political pressure on the SCDOT to inspect these privately owned bridges, at public expense. Plaintiffs attach an affidavit of Edward D. Sloan, Jr. and a copy of the SCDOT reports of these inspections (Sloan Affidavit and **Exhibit B**, Bridge Inspection Report).

Defendants' Office of the Chief Internal Auditor ("OCIA") issued an Aiken Bridge Inspection Investigation Report dated October 12, 2011 ("Bridge Inspection Report") (**Exhibit B**, Bridge Inspection Report). The investigation stemmed from concerns of employees who warned Chief Engineer for Operations Clem Watson that the inspection of these bridges in a private gated community was wrong. The Department acknowledged that "these bridges were not on the state's system. Inspection staff also had to create fake bridge ID numbers because the bridges were off system" (**Exhibit B**, Bridge Inspection Report).

OCIA researched the law and confirmed with SCDOT's Chief Legal Counsel "that SCDOT has no obligation to inspect bridges on private property" (**Exhibit B**, Bridge Inspection Report). OCIA interviewed various personnel under the Chief Engineer for operations. "Without any reservation, all personnel were certain the activity was wrong, stated that they expressed reluctance to their supervisor, and knew it would later resurface because it was against established policy" (**Exhibit B**, Bridge Inspection Report). Nevertheless, the Defendants ordered the investigation to proceed. The report concludes that Defendants decided to go forward with the inspection because school buses used the roads (**Exhibit B**, Bridge Inspection Report).

OCIA determined that the request for inspection "came from a city councilman but not from the City of Aiken. Furthermore, [OCIA] found that the councilman [Ebner]

is a resident of Woodside Plantation” (**Exhibit B**, Bridge Inspection Report). OCIA also determined that “no bus driver or citizen had complained to the school district about the bridges” (**Exhibit B**, Bridge Inspection Report). OCIA further determined that the Defendants did not seek SCDOT legal department’s clarification on the issue (**Exhibit B**, Bridge Inspection Report). Finally, OCIA stated, “There is also the possibility that SCDOT could be called as an expert witness for the plaintiff without any compensation if the property owners Association decides to sue the developer of the private gated community” (**Exhibit B**, Bridge Inspection Report).

Essentially, this inspection at public expense arose out of a dispute among certain homeowners in a private gated community and the property owners association and the developer of the community. Plaintiffs contend that such inspections were illegal and an improper use of public resources with complete disregard for the public interest.

LEGAL DISCUSSION

The South Carolina Constitution Article X, § 5 requires that taxes (public funds) be spent for public purposes. Article X, § 11 proscribes the expenditure of public funds “for the primary benefit of private parties.” *State ex rel. McLeod v. Riley*, 276 S.C. 323, 329, 278 S.E.2d 612 (1981). S.C. Constitution, Article X, § 11 provides:

(t)he credit of neither the State nor of any of its political subdivisions shall be pledged or loaned for the benefit of any individual, **company, association, corporation**, or any religious or private education institution except as permitted by Section 3, Article XI of this Constitution.

Id. (emphasis added). The term “credit” has been construed as any “pecuniary liability” or “pecuniary involvement.” *Elliott v. McNair*, 250 S.C. 75, 156 S.E.2d 421 (1967).

"[A]ll legislative action *must serve a public* rather than a private *purpose*." *State ex rel McLeod v. Riley* 276 S. C. 323, 328, 278 S.E. 2d 612, 615 (1981) (emphasis added).

The South Carolina Attorney General has issued two opinions that such expenditures for primarily private purposes are illegal. C. Dennis Aughtry, Esquire, 1990 WL 599297 (June 4 1990); The Honorable Wayne C. Ramsey, 2005 WL 469070 (Feb. 3, 2005). In the Aughtry opinion, the issue was whether the Richland County Council could expend public monies for the scraping of private roads or driveways, where such scraping is primarily for private purposes. C. Dennis Aughtry, Esquire, 1990 WL 599297 (June 4 1990). The Attorney General concluded that such use would be illegal pursuant to South Carolina Constitution in Article X, § 5 and various State Supreme Court opinions. *Id.*

In the Ramsey opinion, the issue was whether the City of Gaffney could move a storm drain that was located on church property, and which drained only the church property. The Honorable Wayne C. Ramsey, 2005 WL 469070 (Feb. 3, 2005). The church wanted the drain moved to build a new building. Again, the Attorney General issued an opinion that such an expenditure must be primarily for public use, and in those circumstances, the expenditure would be primarily for private benefit. *Id.* Thus, the Attorney General concluded that the expenditure would be unconstitutional. Accordingly, the critical inquiry in determining constitutionality under Art. X, § 5 is whether an expenditure primarily serves a *public purpose*.

A legislative determination of a public purpose is entitled to some deference. A court will not overrule that judgment absent the clearest of evidence. In this case, there is no legislative determination that the inspection of private bridges fulfills a public purpose. This inspection contravened the standard practices of the DOT, which presumably

fulfill the legislative intent. Absent some legislative determination, the language of the Constitution would control: "The credit of . . . the State . . . shall [not] be pledged . . . for the benefit of any . . . association." S.C. Constitution, Art. X, § 11. Similarly, Art. X, § 5 states that any tax "shall distinctly state the *public* purpose."

The factual record establishes that the bridge inspections in the case at bar were *not for a public purpose*, even though the public might have benefited incidentally. Art. X, § 5 requires that the main benefit be public, rather than for some private entity. An individual member of City Council of Aiken (who lived in the private gated community)—not the City itself—requested that the SCDOT spend public funds to inspect privately built, privately owned bridges, in his own private, gated community (**Exhibit A**). In addition, only a single State Representative and a single State Senator—not the entire General Assembly—endorsed the request.

In response to this political pressure, Defendants SCDOT and Walsh ordered SCDOT inspectors to inspect three privately built, privately owned bridges on private property in a private, gated community in Aiken County, in violation of Article X, §§ 5 and 11 of the South Carolina Constitution (**Exhibit B**).

Defendants asserted as a justification for the inspections of the private bridges that the public school busses for the School District of Aiken County traverse the bridges, and therefore inspections fulfill a public purpose. Upon information and belief, based upon the approved bus routes published on the official website for the School District of Aiken County, no public school busses on any official routes traverse the three private bridges at issue (Affidavit of Edward D. Sloan Jr.; **Exhibit C**, Published Bus Routes).

Although federal law may require states to inspect "all highway bridges on *public* roads" (23 USC § 151; 23 CFR § 650.307 emphasis added), federal law does not require such inspections of *private* bridges on private property, nor does South Carolina law authorize such inspections.

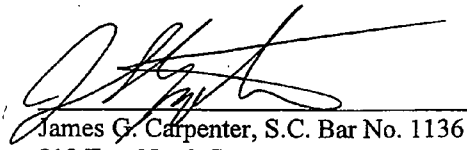
Because the inspection of these private bridges did not serve a public purpose, sufficient to justify the use of public funds to perform services on private property, the inspection and expenditures were illegal and unconstitutional.

WHEREFORE, Plaintiffs pray the Court:

1. To declare that the SCDOT's inspection of three privately built, privately owned bridges on private property in a private, gated community violates South Carolina Constitution Article X, §§ 5 and 11;
2. To grant Plaintiffs their costs and attorneys' fees under S.C. Code Ann. § 15-77-300 ff.; and
3. To grant such other and further relief as the Court deems just and proper.

August 14, 2012

Respectfully submitted,
THE CARPENTER LAW FIRM, P.C.



James G. Carpenter, S.C. Bar No. 1136
819 East North Street
Greenville, SC 29601
Tel. (864) 235-1269
Fax (864) 331-3083
Attorney for the Plaintiffs

THE STATE OF SOUTH CAROLINA
In The Supreme Court

South Carolina Public Interest Foundation and Edward D. Sloan, Jr., individually, and on behalf
of all others similarly situated, Petitioners,

v.

South Carolina Department of Transportation, and John V. Walsh, Deputy Secretary of
Transportation for Engineering, Respondents.

**AFFIDAVIT OF EDWARD D. SLOAN, JR.
IN SUPPORT OF THE
PETITION FOR ORIGINAL JURISDICTION**

Petitioners submit this Affidavit in support of their Petition for this Court to take original
jurisdiction of the matters alleged in the attached Complaint.

January 10, 2012

THE CARPENTER LAW FIRM, PC

James G. Carpenter, Esq.
S.C. Bar No. 1136

819 East North Street
Greenville, South Carolina 29601
(864) 235-1269 Tel.
(864) 331-3083 Fax.

Attorneys for Petitioners

The undersigned, being first duly sworn on oath, deposes and states as follows:

1. My name is Edward D. Sloan, Jr. I am a citizen, resident, taxpayer, and registered elector of the State of South Carolina. For many years, I have paid South Carolina income taxes, property taxes, and Motor Fuel User Fees that fund the Department of Transportation, and I believe I possess standing on that basis.
2. I am a Petitioner in this action, and I petition the Court to take this action in its original jurisdiction. I submit this affidavit pursuant to Rule 245 of the South Carolina Rules of Appellate Practice.
3. Article X, Section 5 of the State Constitution requires that taxes (public funds) be spent for public purposes. Likewise, Article X, Section 11 of the State Constitution provides that:

(t)he credit of neither the State nor of any of its political subdivisions shall be pledged or loaned for the benefit of any individual, company, association, corporation, or any religious or private education institution except as permitted by Section 3, Article XI of this Constitution.
4. Article X, Section 11 of the State Constitution proscribes the expenditure of public funds "for the primary benefit of private parties." *State ex rel. McLeod v. Riley*, 276 S.C. 323, 329, 278 S.E.2d 612 (1981).
5. The term "credit" has been construed as any "pecuniary liability" or "pecuniary involvement." *Elliott v. McNair*, 250 S.C. 75, 156 S.E.2d 421 (1967).
6. Respondents SCDOT and Walsh ordered the inspection—at public expense—of three privately built, privately owned bridges on private property in a private, gated community in Aiken County, in violation of Article X, §§ 5 and 11 of the South Carolina Constitution.

7. Petitioners attach to this Affidavit a copy of the SCDOT reports of these inspections, received in response to a FOIA request of the undersigned affiant.
8. Defendants are reported and quoted in the news media as asserting as a justification for the inspections of the private bridges that the public school busses for the School District of Aiken County traverse the bridges, and therefore inspections fulfill a public purpose.
9. The undersigned performed a study of the approved bus routes for the School District of Aiken County published on the official website for the School District of Aiken County. Upon information and belief, based upon the approved published bus routes, no public school busses on any official routes traverse the three private bridges at issue.
10. Furthermore, even if public school busses did traverse the bridges, the inspection of these private bridges would not serve a public purpose, sufficient to justify the use of public funds to perform services on private property.
11. The taxpayers, citizens, and electors of South Carolina are entitled to have their government abide by the South Carolina Constitution.
12. If this matter were heard in the Circuit Court, the normal time of the trial process would likely extend for several years, including appeals, during which time ongoing and additional Constitutional violation would likely occur.
13. The South Carolina Department of Transportation expends millions of dollars of public funds annually.
14. During the course of a normal trial and appeal, much or all of the public funds will be expended and difficult or impossible to recoup.
15. I anticipate that Respondents will not dispute these allegations, nor the authenticity of the attachments to this affidavit.

16. I anticipate that this case will raise no factual issues, but will simply require the interpretation and application of the South Carolina Constitution to the activities and expenditures in question.

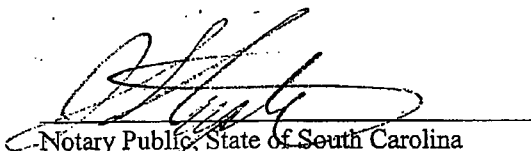
17. I respectfully submit that this case involves strong public interest and presents special grounds of emergency, and that the Supreme Court should exercise its original jurisdiction.

Further the Affiant saith naught.



Edward D. Sloan, Jr., Petitioner

Subscribed and sworn to before me
this 14 day of January, 2012.



Notary Public, State of South Carolina
My commission expires _____

EXHIBIT A

JULY 13, 2011 E-MAIL

Watson, Clem

From: Walsh, John
Sent: Tuesday, July 19, 2011 5:17 PM
To: Watson, Clem (WatsonJC@dot.state.sc.us)
Subject: FW: Woodside Road Issues-Bridges
Attachments: WS Road Issue-Bridges 7-12-11.pdf

Follow Up Flag: Follow up
Due By: Wednesday, July 20, 2011 8:30 AM
Flag Status: Completed

Please discuss this with me. I need to get some bridges reviewed for safety /loading purposes.

Thanks

John Walsh, PE
Deputy Secretary for Engineering
SCDOT

Telephone 803.737.7900
Fax 803.737.5053
walshjv@scdot.org

From: Tom Young [mailto:tyoung@tomyounglaw.com]
Sent: Wednesday, July 13, 2011 11:56 AM
To: Walsh, John
Cc: reggieebner@bellsouth.net
Subject: FW: Woodside Road Issues-Bridges

John:

My constituent Reggie Ebner tried to send this and thinks it came back. He asked me to forward. Thank you.

Tom Young

From: Reggie Ebner
To: Tom Young Jr.
Sent: Wed Jul 13 08:36:01 2011
Subject: Fw: Woodside Road Issues-Bridges
Tom,

Please forward to John Walsh. I get a failed delivery message.

Reggie

From: Reggie Ebner
Sent: Wednesday, July 13, 2011 8:19 AM
To: Walsh John
Subject: Fw: Woodside Road Issues-Bridges

-----Resend due to delivery failure-----

From: Reggie Ebner
Sent: Wednesday, July 13, 2011 8:03 AM
To: Walsh John
Cc: Young Tom
Subject: Woodside Road Issues-Bridges

Mr. John Walsh,

As you are aware, Representative Tom Young and I have been working together to resolve road issues in Woodside Plantation Development in Aiken SC. Woodside Plantation currently has approximately 4000 residents and will grow to approximately 8000 residents. Over the last several years, a number of citizens in this community have worked with the City of Aiken, Developer and Property Owners Association to achieve safe, dependable roadways, but have not achieved success.

The following information is for SCDOT to review and advise a path forward for bridges located in this development.

Attachments A, B, C, D and E are attached for background information.

I. Wooden Bridges

1. Attachment A-2, item A- states the developer/contractor is responsible to the City for infrastructure.
2. Attachment B-2, item 1-states that SCDOT is wholly responsible for bridges in the state system. (Note that bridges are in the City and the City does not have a bridge department nor standards for bridges)
3. Attachment D-1 requires culverts vs. wooden bridges.
4. Attachment B-4 states-REG 49-207(C)(4) states "Additions, deletions, or other revisions to sealed documents shall not be made unless such changes are sealed, dated and signed by the licensee who made the revisions or under whose directions and control said revisions are made." (Note that proper documentation has not be brought forth for the change from culverts to wooden bridges.)
5. Attachment E-1 is a picture of one of the wooden bridges and culverts installed in the roads.
6. Attachment C-1 item A and C-3 item A state that "We could find no documents for compaction". Wooden bridges are located on Steeplechase and Grassy Creek lane. Attachment E-2 shows a typical road cross section over a sewer line. Compaction test were not performed on bridge approaches nor any road ways since the late 1990's.
7. Attachment A-2, item C implies that the property owners association are required to follow city ordinances and state statutes.
8. Infrastructure in Woodside is use by all government agencies to provide services to citizens.
9. It is my personal understanding the City of Aiken and is responsible for infrastructure installation in Woodside Plantation.
10. Path forward:
 - 7 If SCDOT approval and quality control of the wooden bridges cannot be established, request roads be installed as designed with culverts.
 - 7 If SCDOT has approved the installation and quality control of the wooden bridges, request is to verify installation meets SCDOT bridge specifications and safety requirements.

II. Concrete Bridge

1. Concrete bridge installed on Spaulding Bridge Road in Woodside phase III, section 8, Crescent Point as shown on site drawings.
2. Design for bridge is on drawings S-1 thru S-5, by Moore and Associates, dated 7/7/06, M&A Job 060045.
3. No approvals from any government agency on these construction drawings
4. Personal request to review quality report, pile driving test reports, concrete test and compaction reports for installation have not been granted.
5. Path Forward:
 - ? SCDOT will need to determine if concrete bridge can be certified for use.
 - ? If concrete bridge is certified, verify safety requirements for use and construction of bridge approaches are to specification.

Please contact me if you need more information or to set up a meeting.

Once your review is complete, I propose a meeting to discuss the findings and any corrections that need to be made with the appropriate parties.

Thanks in advance for your assistance,

Reggie Ebner
PE TX#36726

City of Aiken Councilman for District 4
165 Foxhound Run
Aiken, SC 29803
803-642-6787
reggieebner@bellsouth.net

ATT: A-1

September 8, 2010

To: Roger LeDuc

From: Reggie Ebner
165 Foxhound Run
Aiken, SC 29803
Tele-803-642-6787

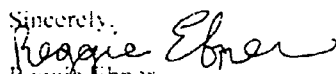
Subject: Woodside Road Issues-SC Freedom of Information Request #2

Dear Roger,

This is a SC Freedom of Information Request in relation to infrastructure installed in Woodside.

- A. What government entity is the Developer contractor responsible to for infrastructure installation with the exception of common areas?
- B. What government entity is responsible for the installation of dams and repair of dams?
- C. What government entity is the Woodside Property Owners Association responsible to for the well being of citizens?

Sincerely,


Reggie Ebner

Reggie Ebner

From: "Roger LeDuc" <RLeDuc@CityofAikenSC.gov>
To: "Reggie Ebner" <reggieebner@bellsouth.net>
Sent: Thursday, September 23, 2010 8:45 AM
Subject: FW: Reggie Ebner FOIA Request
 Reggie.

In response to your request of September 8, 2010.

- A. The developer/contractor is responsible to the City for infrastructure installation such as water, sewer and storm drainage.
- B. The State of South Carolina is responsible for dam approval and inspection.
- C. See below

Roger

From: Ben Moore
Sent: Wednesday, September 22, 2010 5:21 PM
To: Roger LeDuc
Cc: Gary Smith; Richard Pearce; Larry Morris
Subject: FW: Reggie Ebner FOIA Request

Roger,

Below for your review is my proposed answer to question C of Reggie Ebner's FOIA request. The question was "What government entity is the Woodside Property Owners Association responsible to for the well being of citizens?" My response is based on my research and Gary's suggested response.

Let me know your thoughts. I can send this separately or we can send along with our answers to A and B. My understanding is that we already knew what our response would be to the first two questions.

Thanks,

Ben

Dear Mr. Ebner,

According to the below link from the South Carolina Secretary of State, Woodside Plantation Property Owners' Association, Inc. is a South Carolina nonprofit corporation. Typically, a nonprofit corporation is responsible to its shareholders, not to a governmental entity. A nonprofit corporation may be subject to regulation by state agencies if it engages in certain activities. The Official Comment to §33-31-301 states, "Many nonprofit corporations are subject to regulation as a result of the nature of their activities. Hospitals, colleges, secondary schools and health maintenance organizations, for example, are subject to extensive regulation."

You or your attorney should request an opportunity to review a copy of this corporation's Bylaws in order to better understand the organizational structure of this corporation. The City of Aiken does not have any authority to review the actions taken by this corporation unless there is a violation of city ordinance or a state statute that the city is authorized to enforce.

9/27/2010

A-3

Thank you for your request and we hope this adequately answers your question.

<http://www.sesos.com/index.asp?n=18&p=4&s=18&corporateid=9852>

Thank you.

This e-mail and any files transmitted with it are confidential. They are intended only for the individual or entity to whom they are addressed and, as such, may contain information that is privileged, confidential or otherwise exempt from public release under applicable law. If you have received this e-mail in error, you should not disseminate, distribute or copy this e-mail. Please notify the sender immediately by e-mail if you have received this e-mail by mistake and delete this e-mail from your system. If you are not the named addressee you should not disseminate, distribute or copy this e-mail.

9/27/2010

Reggie Ebner

From: "Reggie Ebner" <reggieebner@bellsouth.net>
To: "Young, Tom" <tyoung@attorneyssc.com>
Sent: Monday, September 06, 2010 11:38 PM
Subject: Woodside Infrastructure Issues-Bridges
Tom,

Need some guidance on how to find out who is responsible for the design approval, construction inspection, safety requirements and final approval for bridges in the City of Aiken.

The City has advised me in writing they are not responsible for bridges since they do not have an approved inspector; however they have allowed three wooden bridges and one concrete bridge to be installed in Woodside. It appears that the Developer got the Woodside Property Owners Association to agree to install the wooden bridges

Key questions are

- 1 What governmental agency is responsible for design approval, construction inspection, safety requirements and final approval for bridges located in South Carolina?
2. Does the SCDOT allow construction of new wooden bridges on streets that are in constant use by citizens and government vehicles in cities?
3. Based on the fact that the original road design approved by the City of Aiken was to be culverts, can a non-governmental agency such as the Woodside Property Owners Association, make a change to an Engineer of Record stamped design?

Please advise what is the proper procedure to get technical answers to these questions that will could be used in future legal proceedings?

I will be glad to send a SC Freedom of Information letter if needed

It would be helpful to have the answers in hand by September 14th if possible

Thanks,

Reggie

9/27/2010

Reggie Ebner

From: "Tom Young" <tyoung@tomyounglaw.com>
To: "Reggie Ebner" <reggieebner@bellsouth.net>
Sent: Tuesday, September 14, 2010 8:19 AM
Subject: your questions -- follow up

Here is what I received last night from SCDOT in response to your questions. I am attempting to contact someone at FLR this morning for number 3:

1. What governmental agency is responsible for design approval, construction inspection, safety requirements and final approval for bridges located in South Carolina?

For bridges on the state highway system, SCDOT would be wholly responsible, however, in this instance, the bridges in question are NOT on the state system. We believe these streets in the subdivision belong to the City of Aiken. SCDOT does inspect locally owned bridges 20-ft. or greater in length but the Department is not responsible for maintaining these structures.

2. Does the SCDOT allow construction of new wooden bridges on streets that are in constant use by citizens and government vehicles in cities?

For bridges located on the state highway system, SCDOT's current practice does not permit new highway bridges to be constructed using timber. SCDOT does however have bridges in the existing state highway system inventory that contain timber components. Locally owned bridges such as these could be timber depending on the requirements of the City.

3. Based on the fact that the original road design approved by the City of Aiken was to be culverts, can a non-governmental agency such as the Woodside Property Owners Association, make a change to an Engineer of Record stamped design?

We recommend that this question be directed to the South Carolina Department of Labor, Licensing and Regulation.

See LAST Page

Representative Tom Young
 South Carolina House District 81
 Aiken County
 P.O. Box 651
 Aiken, South Carolina 29802
 Tel: (803) 649-0000
 Fax: (803) 649-7005

www.reptomyoung.com

**** See Tom's website for weekly legislative updates ****

Confidentiality Notice

9/27/2010

B-3

Page 2 of 2

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9-27-2010

B-4

Reggie Ebner

From: "Tom Young" <tyoung@tomyounglaw.com>
To: "Reggie Ebner" <reggieebner@bellsouth.net>
Sent: Tuesday, September 14, 2010 10:35 AM
Subject: answer to number 3 of your questions
 Reggie:

I LR sent me the below as an answer to number 3:

I believe the following Regulation applies to the situation outlined by Mr. Young:

Reg. 49-207(C)(4): "Additions, deletions, or other revisions to sealed documents shall not be made, unless such changes are sealed, dated and signed by the licensee who made the revisions or under whose directions and control said revisions were made."

Representative Tom Young
 South Carolina House District 81
 Aiken County
 P.O. Box 651
 Aiken, South Carolina 29802
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www.reptomyoung.com

**** See Tom's website for weekly legislative updates ****

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9/27/2010

C-1

July 26, 2010

To: Roger Leduc
City Manager
City of Aiken

From: Reggie Ebner
165 Foxhound Run
Aiken, SC 29803
Tele-803-642-6787

Subject: Woodside Road Issues-SC Freedom of Information Request

Dear Roger,

This is a SC Freedom of Information Request for infrastructure installed in Woodside. All information is in the public domain and required to meet specifications. Request is for either review of documents at the appropriate City Office or a copy for the following:

A. Documents for review- required for compaction by City of Aiken Design Specifications: #7.36, 7.37, 9.33, 9.34, 20.2 and 26.3 for the infrastructure on the following streets:

1. West Pleasant Colony
2. Steeplechase
3. Grassy Creek Lane
4. Sea Grass Lane
5. Pink Dogwood Circle
6. Three Runs Creek Way
7. Highland Reserve Court
8. Foxhound Run
9. Spaulding Bridge Road
10. Common Wealth Way
11. Mockernut Circle

B. Copy of letter verifying change of design from culverts to wooden bridges on Grassy Creek Lane and Steeplechase. If have been approved, provide for review all testing documents for piles, abutments and bridge certification of use.

C. Copy of letter verifying design for repair of "Big Dig" on Foxhound Run was approved by appropriate government entity. Provide for review compaction documents as required by City of Aiken Design Standards as listed in "A". Also provide for review documentation for embankment construction in the roadway per section 19 of design specification.

C-2

- D. Copy of letter verifying approval of concrete bridge on Spaulding Bridge Road. If have approved, provide for review all documents for testing of piles, abutments and bridge certification of use.
- E. Provide statement of certification that asphalt used on the streets named in "A" meet or exceed state specifications.
- F. Provide statement of certification that the lake formed by the roadway dam located at the intersection of Plantation and West Pleasant Colony was approved for installation and dam is constructed per appropriate engineering standards.
- G. Provide statement verifying what entity is responsible for installation and inspection of code and ordinances per city, state and federal codes and specifications in common areas.
- H. Provide statement verifying what entity is responsible for installation and inspection of American Disabilities Act in relation to walkways/pathways.

Sincerely,

Reggie Ebner

Memorandum—City of Aiken

To: Roger LeDuc
From: Larry G. Morris, Public Works Director 
Date: August 27, 2010
Re: Final FOIA Request Woodside Roads

Due to the voluminous files on the Woodside Projects, it has required several days to go through all of the files listed in the letter dated 7-26-2010. The following are our findings:

- A) We could find no documents for compaction.
- B) An email to Al, then president of the WPPOA, and Melanie, director of the WPPOA, was sent on 12/14/2006 stating that I had no problem with the use of wooden bridges however recommending that the WPPOA have their engineer certify the weight limit on the bridge. A copy of the email is attached.
- C) The City did not certify the Fox Hound Run repair. The Woodside Development Company was instructed to obtain the services of an engineer to design and certify the repair. The City did not inspect the repair but again instructed the Development Company to obtain the services of an Engineer for the project.
- D) The City of Aiken does not have the engineering expertise to certify any type of structure. It is the responsibility of the Development Company to have their structural engineer inspect and certify any bridge construction.
- E) Asphalt tests are not in the file. No certification can be provided.
- F) The lake referenced was shown on the development plans. The City again does not have the expertise to inspect or certify structures such as dams.
- G) Work in the common areas does not fall under public works observation.
- H) Work on walkways on private roads does not fall under public works observation.

C-4 Ted
File ~

Larry Morris

From: Larry Morris
Sent: Thursday, December 14, 2006 5:15 PM
To: Maine99@aol.com; mockernut@bellsouth.net
Cc: melanie@wppoa.com
Subject: RE: Wooden Bridges

Good Afternoon Al

I have no problem with their use. They will look better than concrete. The one on a slant will be an interesting design and installation. They do need to be designed for the concrete truck weight as we discussed earlier this week. My recommendation to the POA is require Woodside to have their engineer certify the weight limit so there are no problems with concrete trucks or moving vans in the future.

Larry

From: Maine99@aol.com [mailto:Maine99@aol.com]
Sent: Thursday, December 14, 2006 9:51 AM
To: Larry Morris; mockernut@bellsouth.net
Cc: melanie@wppoa.com
Subject: Wooden Bridges

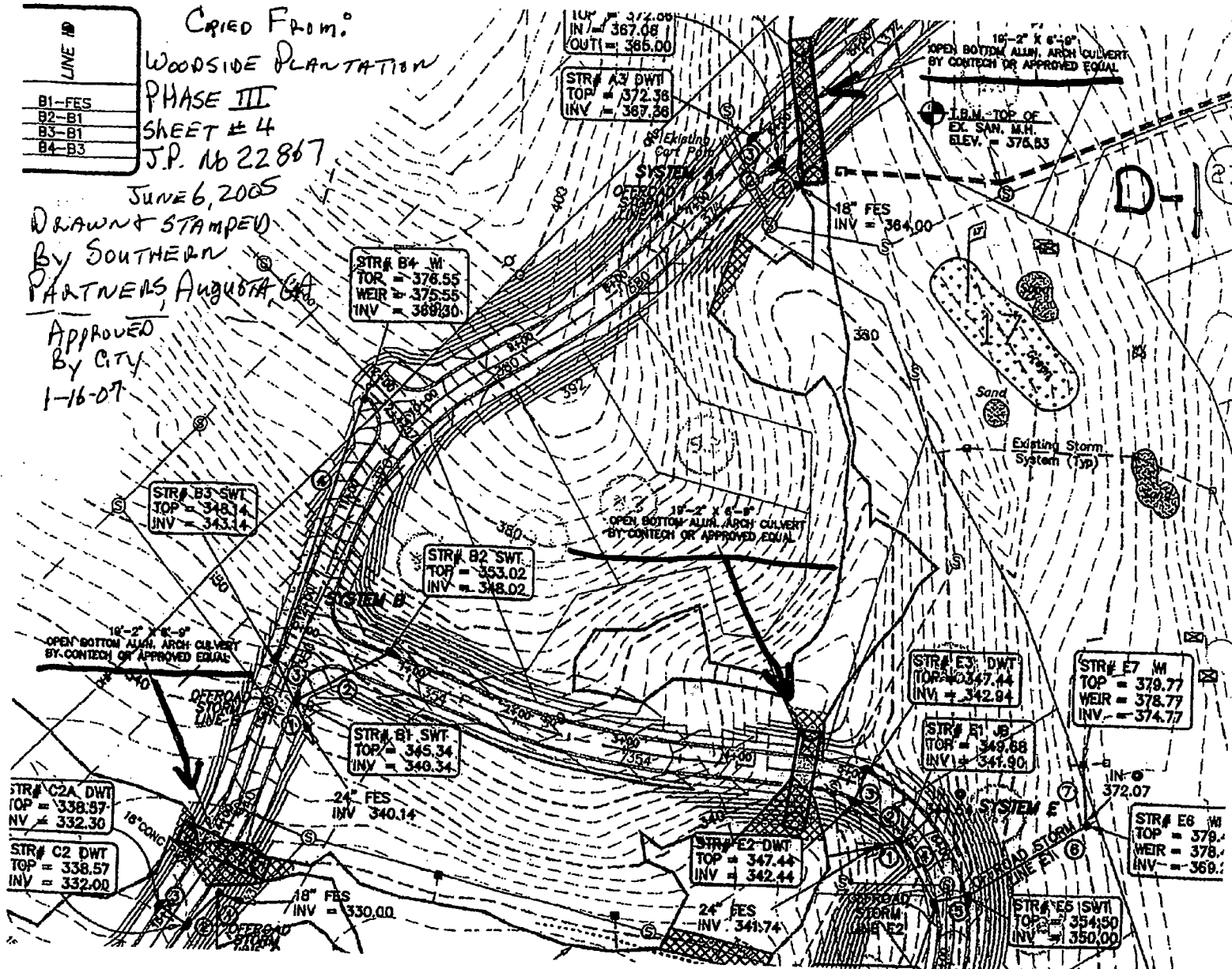
Larry,
Good morning, Kent Baldwin would like to move forward on placing contracts for the 3 bridges that we discussed. Knowing you will be leaving to visit your parents shortly for the holidays I would like to know if, at this time, you recommend the use of these wooden bridges or hold off?
Thanks,
Al

12/16/2006

LINE ID
B1-FES
B2-B1
B3-B1
B4-B3

CRIED FROM:
 WOODSIDE PLANTATION
 PHASE III
 SHEET # 4
 J.P. No 22867

JUNE 6, 2005
 DRAWN & STAMPED
 BY SOUTHERN
 PARTNERS, AUGUSTA, GA
 APPROVED
 BY CITY
 1-16-07



WOODEN BRIDGES NOT PER DESIGN
AND NOT ALLOWED PER STATE

ATT

4-23-10

E-1



SHOULD BE CULVERTS AS PER DESIGN



ATTACH:

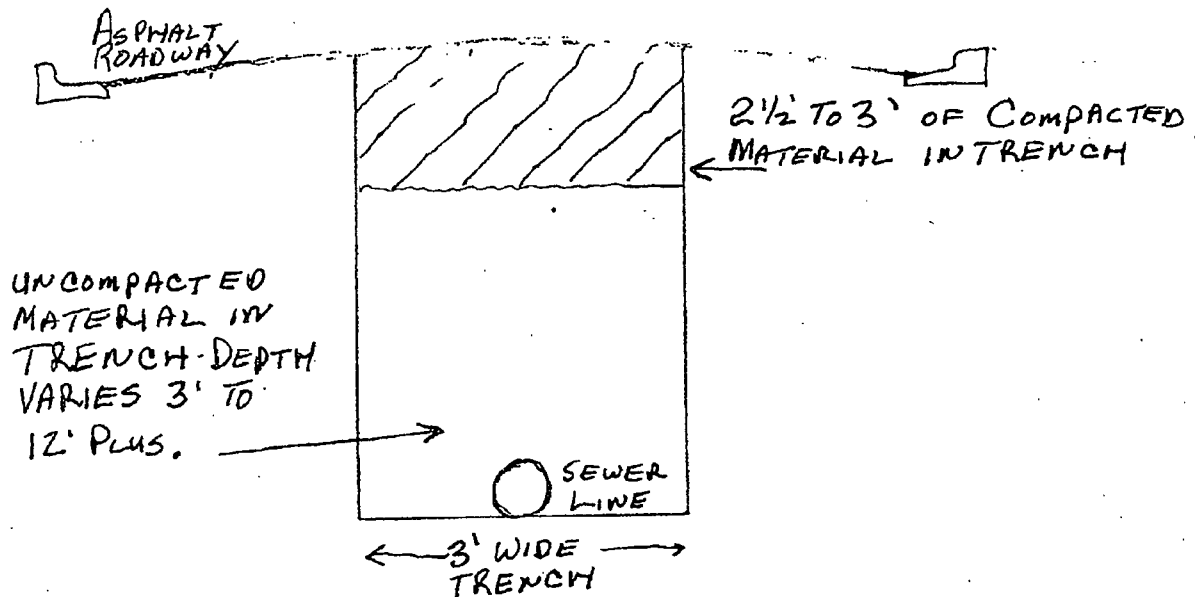
E-2

WOODSIDE ROAD ISSUES

TYPICAL ROAD SKETCH
ON
FOXHOUND RUN

THIS SKETCH BASED ON SOIL BORING AND COMPACTION TEST MADE
ON FOXHOUND RUN IN 2007 AFTER ROAD FAILURE OVER SEWER.

NOTE: BY OBSERVING OTHER STREETS CONSTRUCTED IN WOODSIDE,
BEGINNING IN 1999/2000, THIS TYPICAL ROAD SKETCH MAY APPLY TO
THE BASE AND SUBBASE OF THESE ROADS.



End of document
March 5, 2008
RDE

EXHIBIT B



South Carolina
Department of Transportation

September 13, 2011

The Honorable Greg W. Ryberg
The Honorable Thomas R. Young, Jr.
Post Office Box 142
Columbia, South Carolina 29202

Re: Woodside Plantation Bridge Inspection in Aiken County

Dear Senator Ryberg and Representative Young:

As a follow up to our discussions, I have requested that our bridge inspection crews inspect the wooden bridge structures inside the Woodside Plantation. Enclosed is a summary and result of their inspection. The report is the format that SCDOT uses to inspect all of our bridges and utilizes the reporting criteria established by FHWA.

The bridges are all timber and are in good condition with just some minor problems noted in the reports. Timber is a very decorative and resilient material under controlled environmental and loading conditions. However, the ability to absorb impact from overweight vehicles which exceed the design loading will diminish this property as the loading cycles continue. Our staff did not identify any weight restrictions signs for the bridges. If the bridges have not been load rated, it is recommended that the appropriate owner of the bridges have them rated and post appropriate signage for vehicles using the bridges.

It should also be noted that the safety rails in place are essentially decorative and provide no significant ability to redirect traffic from a collision or to provide protection to pedestrians.

I hope that you find the enclosed material beneficial for your constituents.

Sincerely,

John V. Walsh, P.E.
Deputy Secretary for Engineering

JVW:mbw
Enclosure

cc: J. C. Watson, Chief Engineer for Operations
Jim Feda, Director of Maintenance
Jo Ann Woodrum, District Engineering Administrator
File: DSE/JCW



FD-350 (Rev. 10-22-94)
U.S. DEPARTMENT OF JUSTICE

AN EQUAL OPPORTUNITY
AFFIRMATIVE ACTION EMPLOYER

Woodside Plantation Bridge Inspection Summary and Critical Coding Legend

Summary

The bridges are all timber and are in good condition with just some minor problems noted in the reports. Timber is a very decorative and resilient material under controlled environmental and loading conditions. However, the ability to absorb impact from overweight vehicles which exceed the design loading will diminish this property as the loading cycles continue. No plans, foundation data or specifications are currently available.

It should be noted that the safety rails in place are essentially decorative and provide no significant ability to redirect traffic from a collision or to provide protection to pedestrians.

General Data

This report is what SCDOT uses to inspect all of our bridges and utilizes the reporting criteria established by FHWA. To further define the information provided in the General Data section of the report, the following can be used as a reference:

- Superstructure Mat'l: 7 – indicates this portion of the bridge is made of wood.
- Superstructure Des.: 2 – indicates the design is of beam type.
- Substructure Mat'l: 7 – indicates this portion of the bridge is made of wood
- Historical: 5 – indicates the structure is not eligible for the national historical register.
- Type Service On: 1 – indicates highway traffic uses the bridge
- Type Service Under: 5 – Indicates the crossing is water

Conditional, Appraisal, and Rating Data

The most critical coding for the Condition Coding Legend for the Deck, Superstructure, Substructure and Culvert comes from the FHWA Coding Guide of which a portion is shown below. These codes are shown in the bottom of the first page of each bridge report. The Appraisal Codes are as explained.



South Carolina
Department of Transportation

August 24, 2011

To: J.H. Woodrum, District 7 Engineer Administrator,
From: G.W. Bonnette, District 7 Bridge Inspector
Subject: Woodside Plantation Bridges

Please see the attached bridge inspection reports, maps of location, pictures and sketch of the Bridges located in the Private Subdivision of Woodside Plantation.


G.W. Bonnette

File: JHW, GB

RECEIVED

AUG 25 2011

CHIEF ENGINEER FOR OPERATIONS

Received in interoffice
mail from JoAnn.

uw

Orangeburg Construction
Post Office Box 1086
Orangeburg, South Carolina 29116 1086

Phone (803) 531-6677
Fax (803) 531-6656

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AFFIRMATIVE ACTION EMPLOYER

Code	Description
N	NOT APPLICABLE
9	EXCELLENT CONDITION
8	VERY GOOD CONDITION - no problems noted.
7	GOOD CONDITION - some minor problems.
6	SATISFACTORY CONDITION - structural elements show some minor deterioration.
5	FAIR CONDITION - all primary structural elements are sound but may have minor section loss, cracking, spalling or scour.
4	POOR CONDITION - advanced section loss, deterioration, spalling or scour.
3	SERIOUS CONDITION - loss of section, deterioration, spalling or scour have seriously affected primary structural components. Local failures are possible. Fatigue cracks in steel or shear cracks in concrete may be present.
2	CRITICAL CONDITION - advanced deterioration of primary structural elements. Fatigue cracks in steel or shear cracks in concrete may be present or scour may have removed substructure support. Unless closely monitored it may be necessary to close the bridge until corrective action is taken.
1	"IMMINENT" FAILURE CONDITION - major deterioration or section loss present in critical structural components or obvious vertical or horizontal movement affecting structure stability. Bridge is closed to traffic but corrective action may put back in light service.
0	FAILED CONDITION - out of service - beyond corrective action.

Appraisal Codes

Channel Code of 5: means "bank protection is being eroded and that trees and brush restrict the flow".

Waterway Adequacy Code of 6: means "bridge deck above roadway approaches with occasional overtopping possible of roadway with insignificant traffic delays".

Approach Roadway Alignment of 7: means "alignment is satisfactory for the road and speed".

Underclearance Appraisal does not apply.

Appraisal Codes for Structure Evaluation and Deck Geometry: requires an ADT check but should be rated good.

Safety Features

Railing Codes of 0's: indicate that they do not meet current highway standards.

National Bridge Inspection Data

Bridge ID: 02-9-00001-0-01-00

23 Aug-2011

General Data



	<u>Original Main</u>	<u>Original Approach</u>	<u>Deck Construction</u>
Year Built:	Superstructure Mat'l: 7	Superstructure Mat'l:	Type: 8
Design Load:	Superstructure Des: 02	Superstructure Des:	Surface: 7 M'brane: 0
Year Rebuilt:	Substructure Mat'l: 7	Substructure Mat'l:	Protect: 0

	<u>Reconstructed Main</u>	<u>Reconstructed Approach</u>	<u>Railings and Medians</u>
Historical: 5	Superstructure Mat'l:	Superstructure Mat'l:	Railing: 0
Type Service On: 1	Superstructure Des:	Superstructure Des:	Transition: 0
Type Service Under: 5	Substructure Mat'l:	Substructure Mat'l:	Approach Railing: 0
Traffic Status: A	No. Main Spans: 2	No. Appr. Spans: 0	Approach Ends: 0
	Max. Span Length: 9	Appr. Span Length: 0	Bridge Median: 0

Geometric Data

<u>General</u>	<u>Horizontal Clearances On Inv. Route</u>	<u>Vertical Clearances On Inv. Route</u>	<u>Navigational Data</u>
Appr. Rd'way Width: 23	Roadway Width: 25.7	Greatest Minimum: 99 99	Nav. Control: 0
Lanes On: 02	Horizontal: 25.7	Minimum: 99 99	Nav. Vert. Clr.: 0
Lanes Under: 00	Deck Width: 27.0		Nav. Hor. Clr.: 0
Right Curb/Sidewalk: 0			Pier Protection:
Left Curb/Sidewalk: 10.0			

	<u>Lateral Underclearances</u>	<u>Vertical Underclearances</u>
Structure Flared: 0	Total Right: 0	Greatest Minimum Right: 99 99
Skew: 0	Total Left: 0	Greatest Minimum Left: 99 99
Length: 18		
	Control Reference: N	Control Reference: N
	Right (shoulder): 99.9	Minimum: 99 99
	Left (median): 99.9	

Condition , Appraisal, and Rating Data

Deck: 7	Structure Evaluation:	Operating Truck Type:
Superstructure: 7	Deck Geometry:	Operating Load (Tons):
Substructure: 7	Underclearances:	Inventory Truck Type:
Culvert: N	Waterway Adequacy: 6	Inventory Load (Tons):
Channel: 5	Approach Alignment: 7	Restriction Level:

Bridge Element Group Textual Data

Bridge ID: 02-9-00001-0-01-00

23 Aug-2011

Abutments and/or Headwalls:

TT BULKHEAD BOARDS / GOOD

Bents and/or Piers:

7: 5 TT PILES PER BENT SPACED AT 9' WITH 12"X12" TT CAP /

Bearings:

N/A

Girders/Floor Beams/Stringers and/or Beams:

7: 6"X12" TT BEAMS SPACED AT 12"; 27 BEAMS ON SPANS 1; 26 BEAMS ON SPAN 2 /

Truss Members:

N/A

Expansion Joints:

N/A

Decks and/or Slabs:

7- 4"x12" TT DECK WITH 0" SPACING; 3"x8" TT WEARING SURFACE /

Curbs:

8"x8" TT CURB ACROSS BRIDGE ON BOTH SIDES; SIDEWALK AREA NOT ATTACHED TO BRIDGE LEFT C/L, ALL TT STRUCTURE: 2"x6"x10' WIDE (8.5' CURB TO CURB) 6- 3"x12" BEAMS SPACED AT 20" RESTING ON 8"x8" CAPS SUPPORTED BY 2 PILES SPACED AT 6'; 2 UTILITIES UNDER SIDEWALK LEFT OF C/L /

Bridge Railing/Parapets and/or Median Barriers:

5- 8"x8" TT POSTS SPACED AT 43" WITH 6"x8" TT TOP RAILING 38" HIGH ON BOTH SIDES/ GOOD

Paint System(s):

N/A

Waterway and Scour:

5: FAIR / DUE TO TREES AND DEBRIS IN STREAM

Fender System:

N/A

Roadway Alignment:

GOOD

Traffic Signs:

NONE

Encroachments:

1 UTILITY 12" PIPE UNDER BRIDGE RIGHT OF C/L

Miscellaneous Notes:

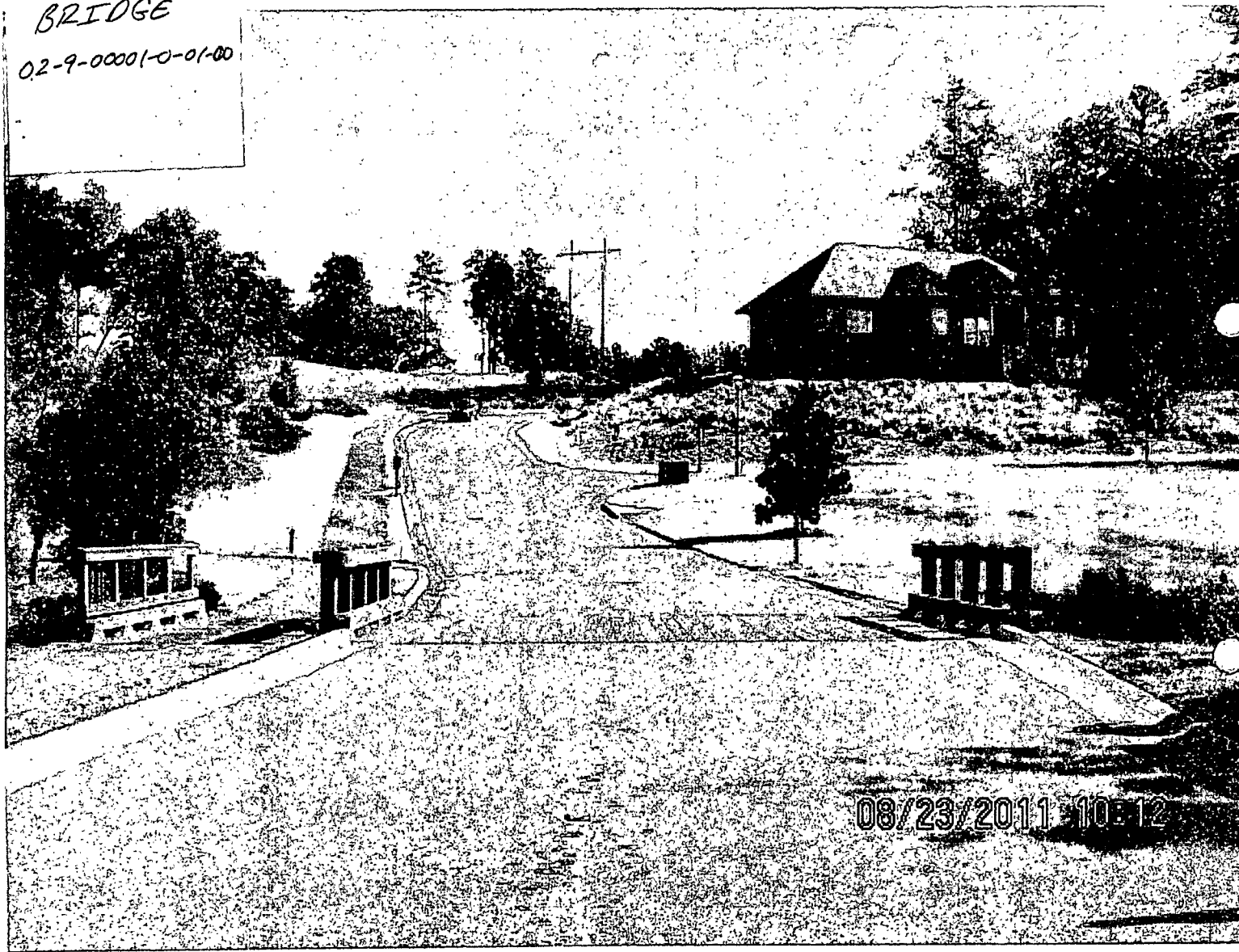
LAT: N 33 28'51.50
LONG: W 81 44'39.06

THIS BRIDGE IS LOCATED IN A PRIVATE GATED SUBDIVISION NAMED
WOODSIDE PLANTAION.

BRIDGE INSPECTION STREAM / GROUND PROFILE				BRIDGE NUMBER: 02-9-00001-0-01-00				
				ROAD NUMBER: STEEPLECHASE RD				
COMMENTS:				CROSSING: TRIB. TO BURDENS DEEP POND				
				TOP OF WATER TO TOP OF RAIL				
BRIDGE LOCATED IN WOODSIDE PLANTATION, A				HORIZONTAL BLOCKAGE (%) TO				
PRIVATE GATED SUBDIVISION				VERTICAL BLOCKAGE (%)				
TOP OF WATER = 12.8' BETWEEN BENTS #1 & 2								
				8/23/11	NORTH / SOUTH EAST / WEST LEFT ABUTMENT	8/23/11		
				10.2'	3	11.9'		
				12.0'	2	12.6'		
				11.0'	1	11.3'		
UPSTREAM				RIGHT ABUTMENT NORTH / SOUTH EAST / WEST		DOWNSTREAM		
G.B. & D.V. & R.J.				8/23/2011		9:00		
MEASUREMENT BY				DATE MEASURED		TIME		
MEASUREMENTS ARE FROM TOP OF RAIL TO GROUND LINE								



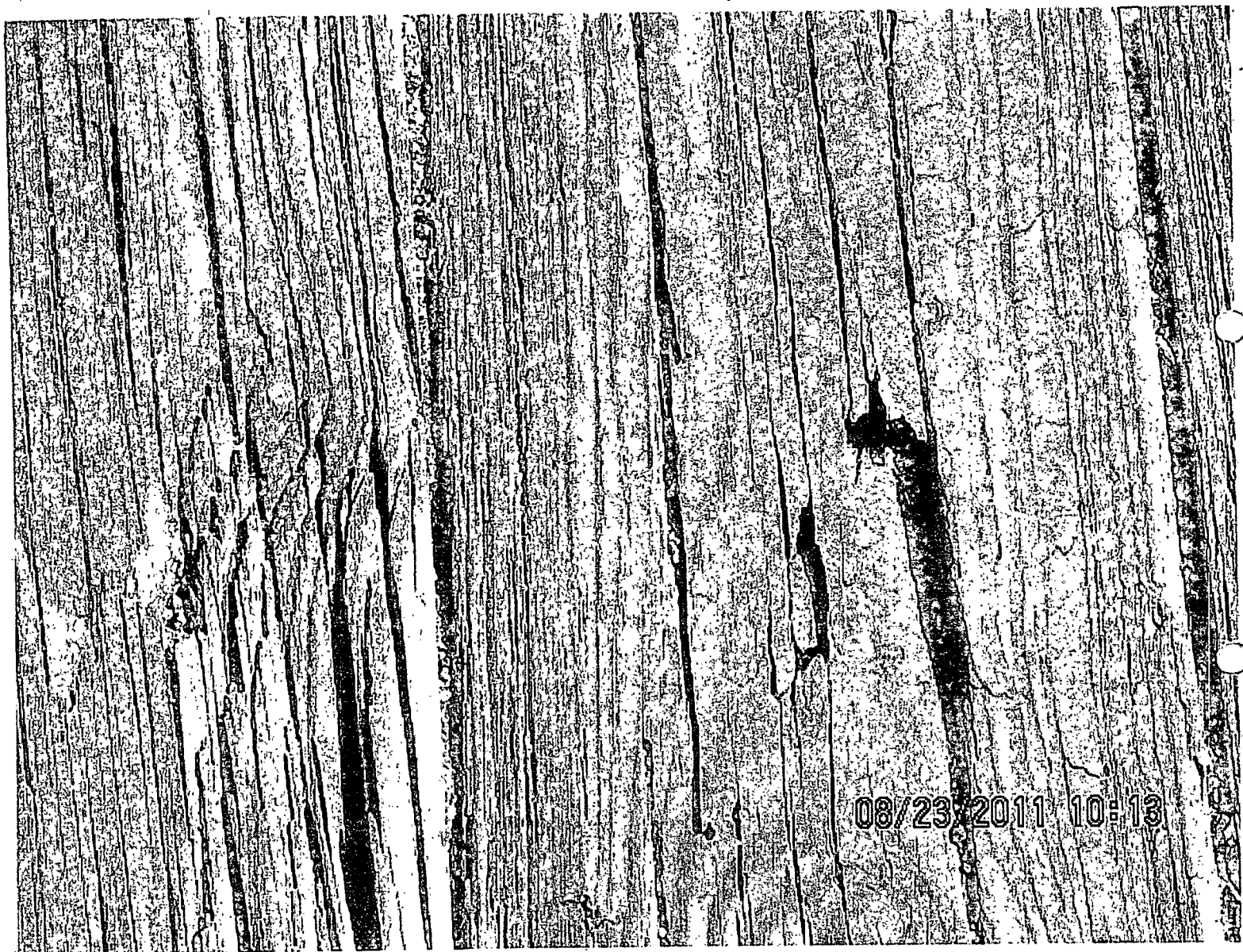
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02-9-00001-0-01-00

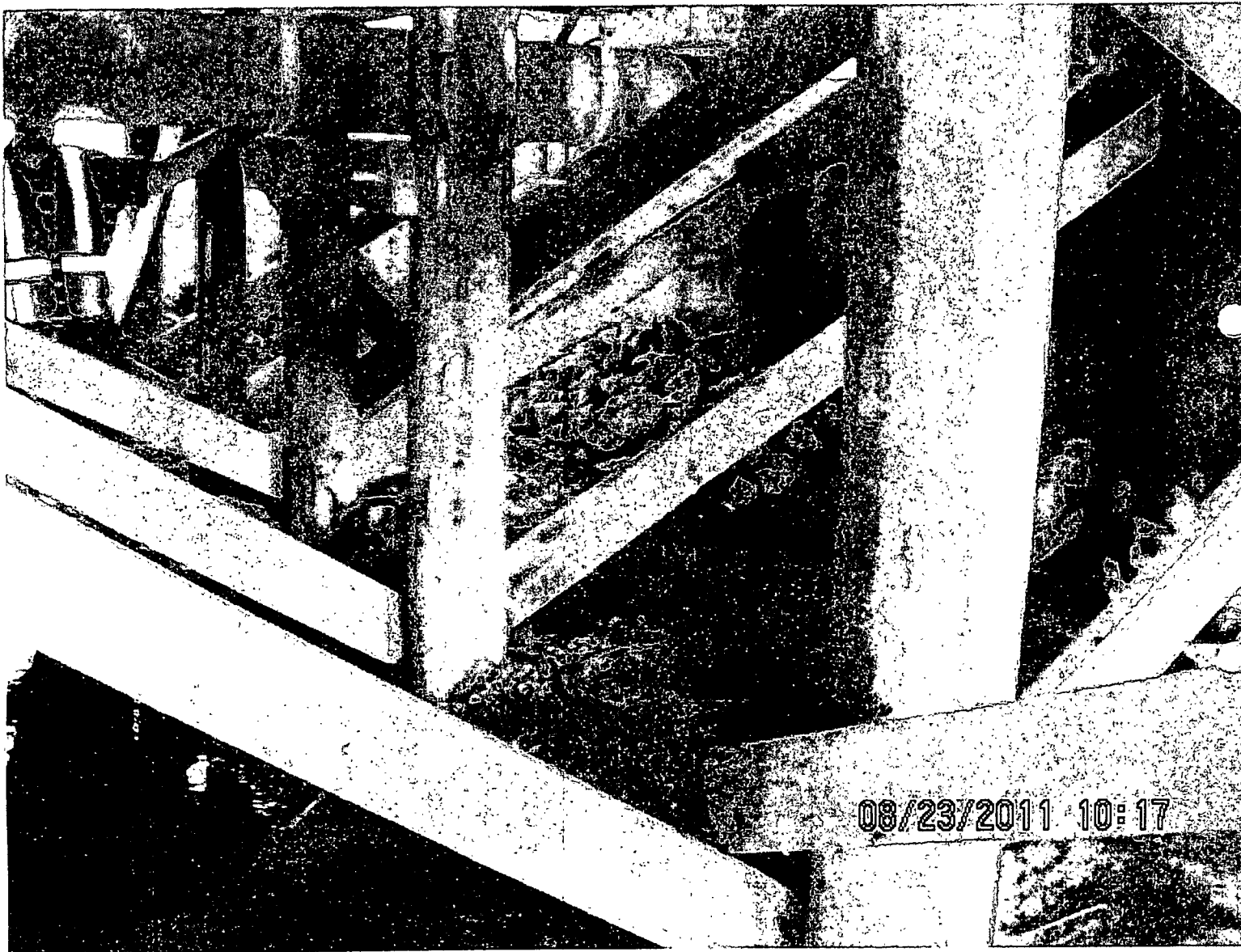


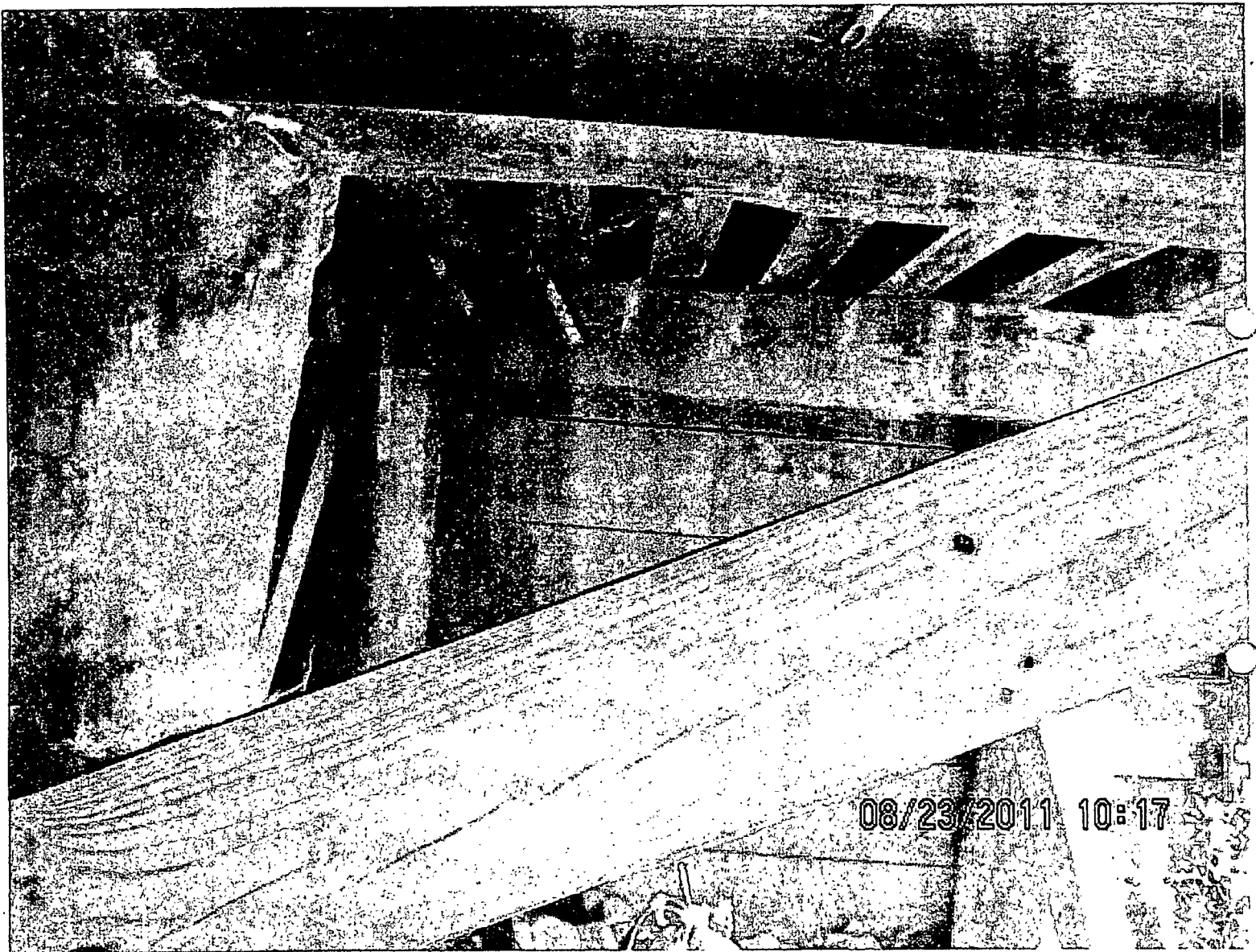
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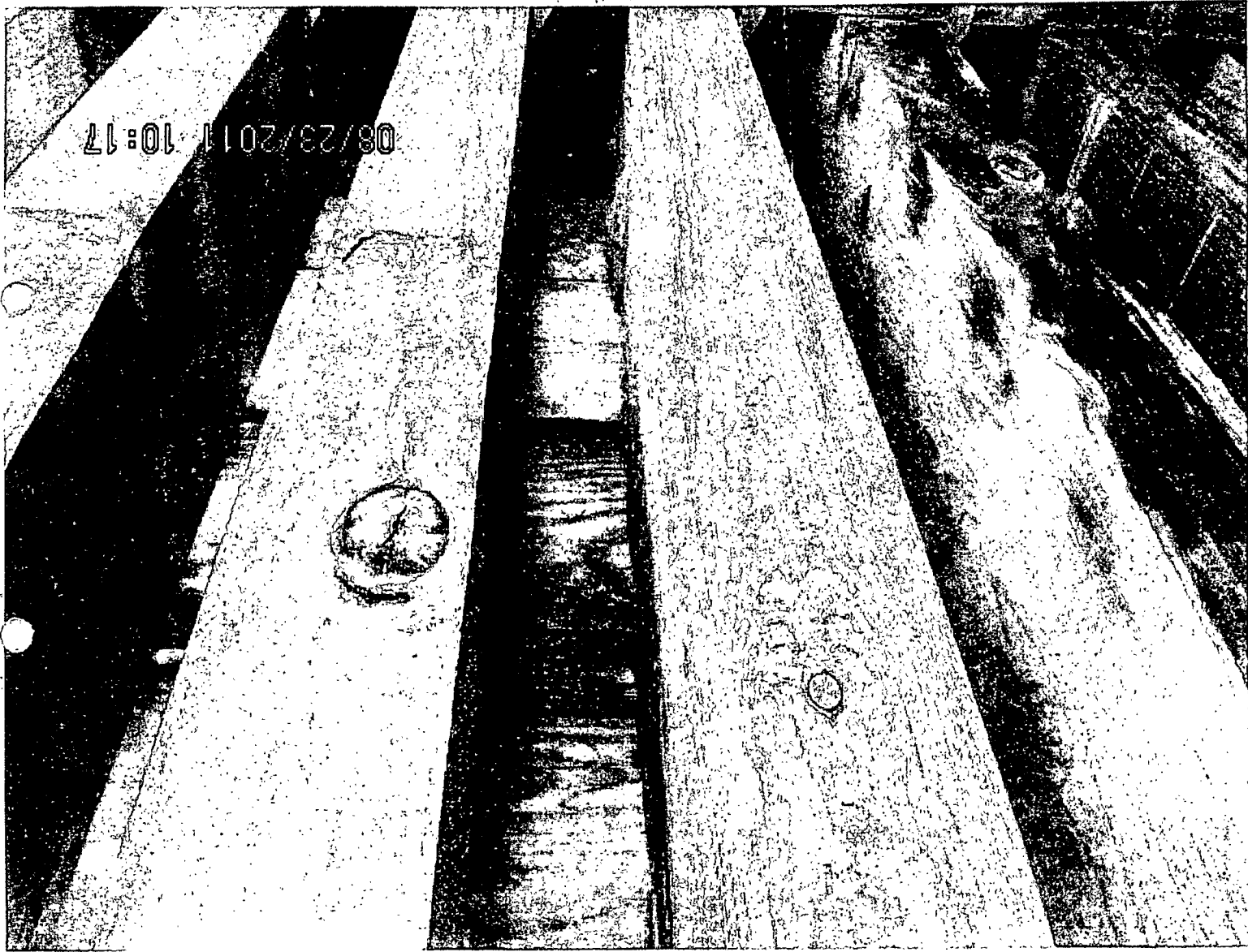


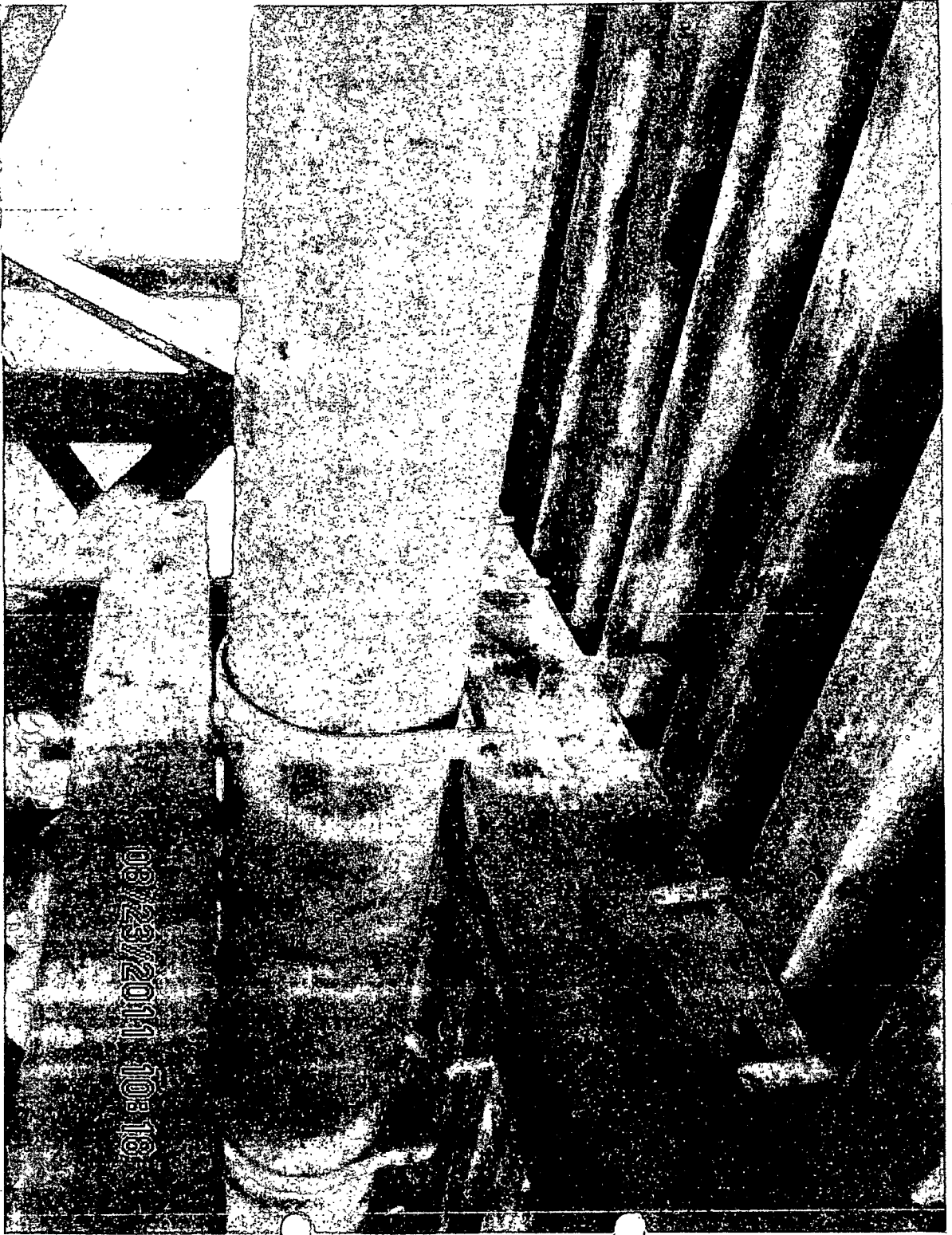




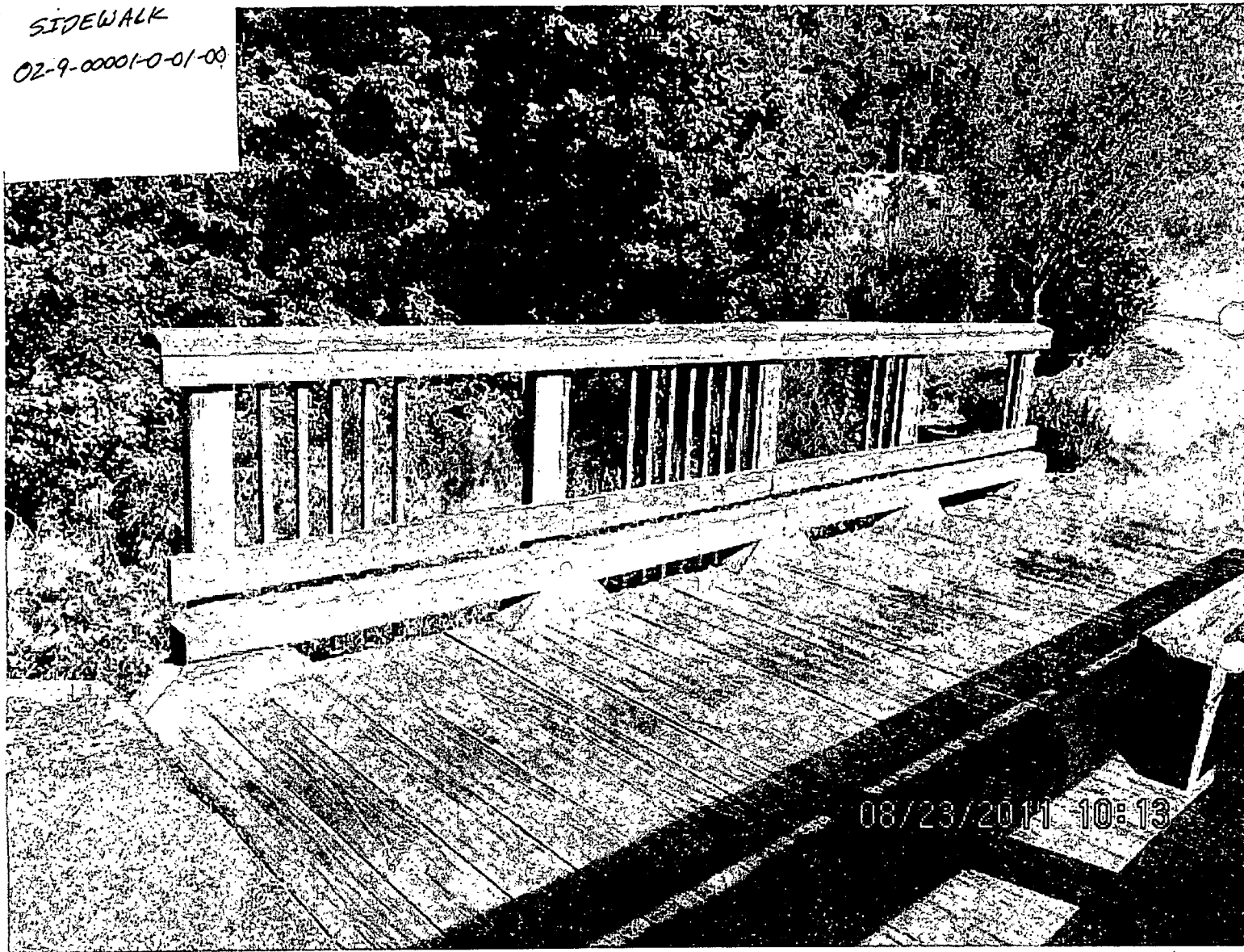


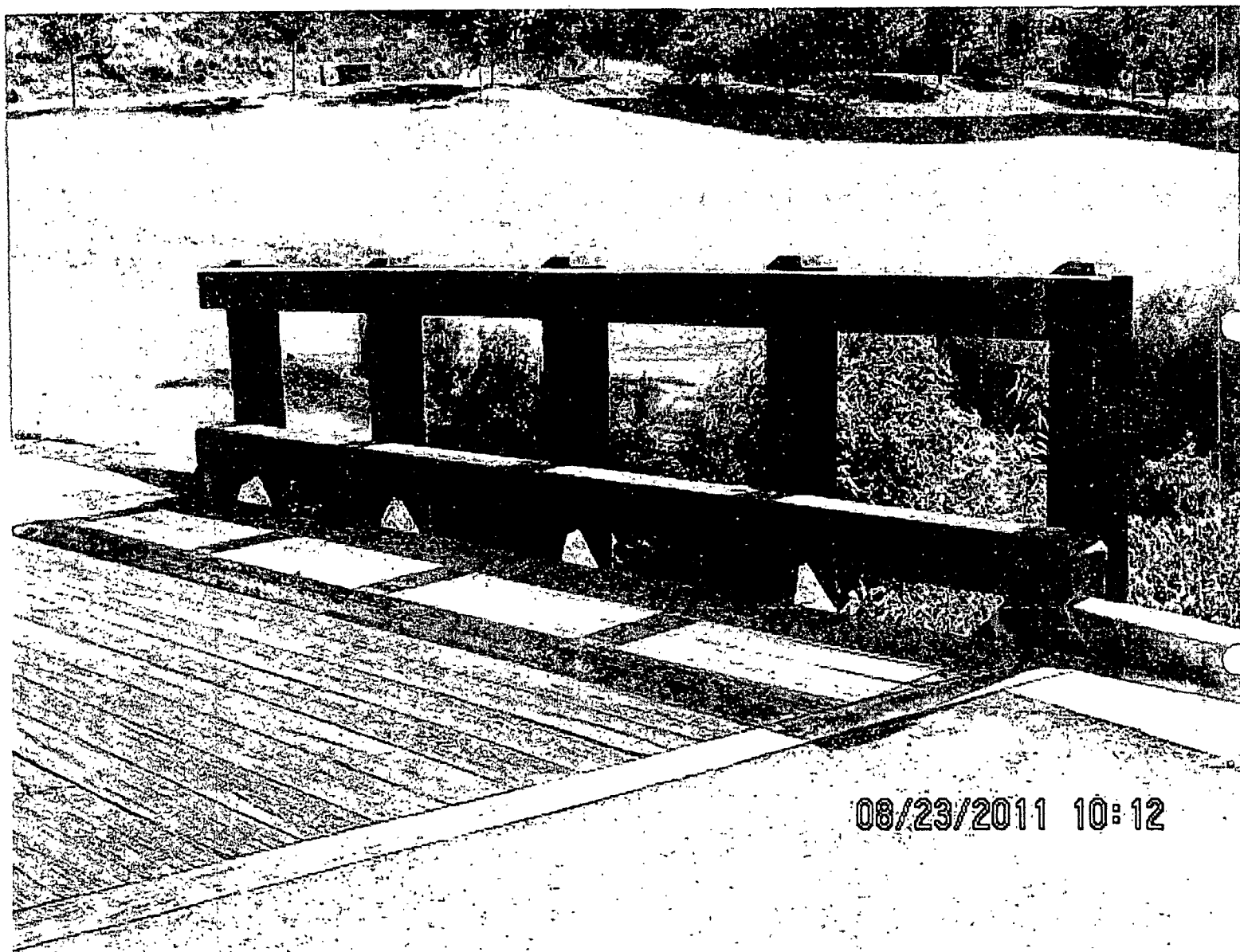






SIDEWALK
02-9-00001-0-01-00

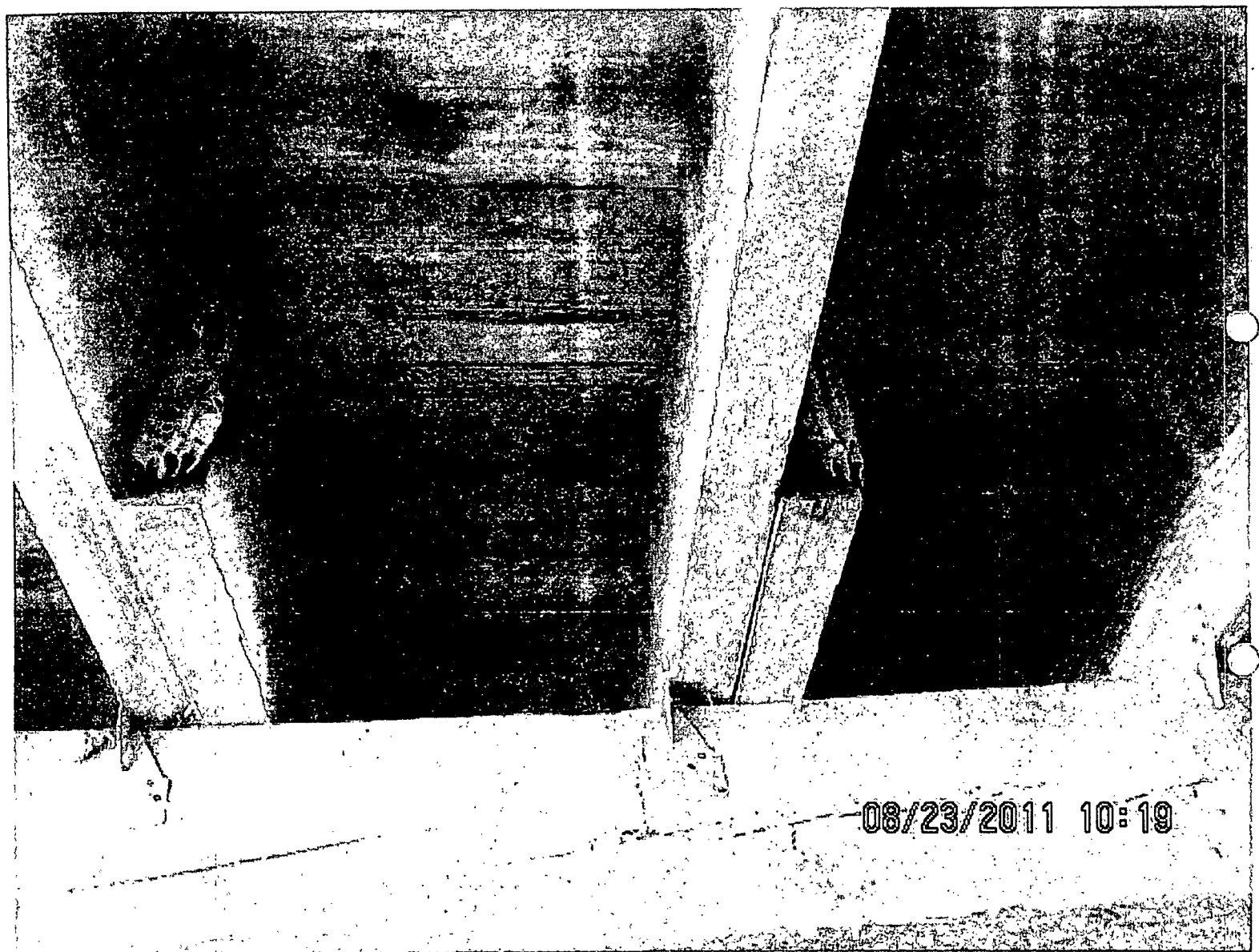




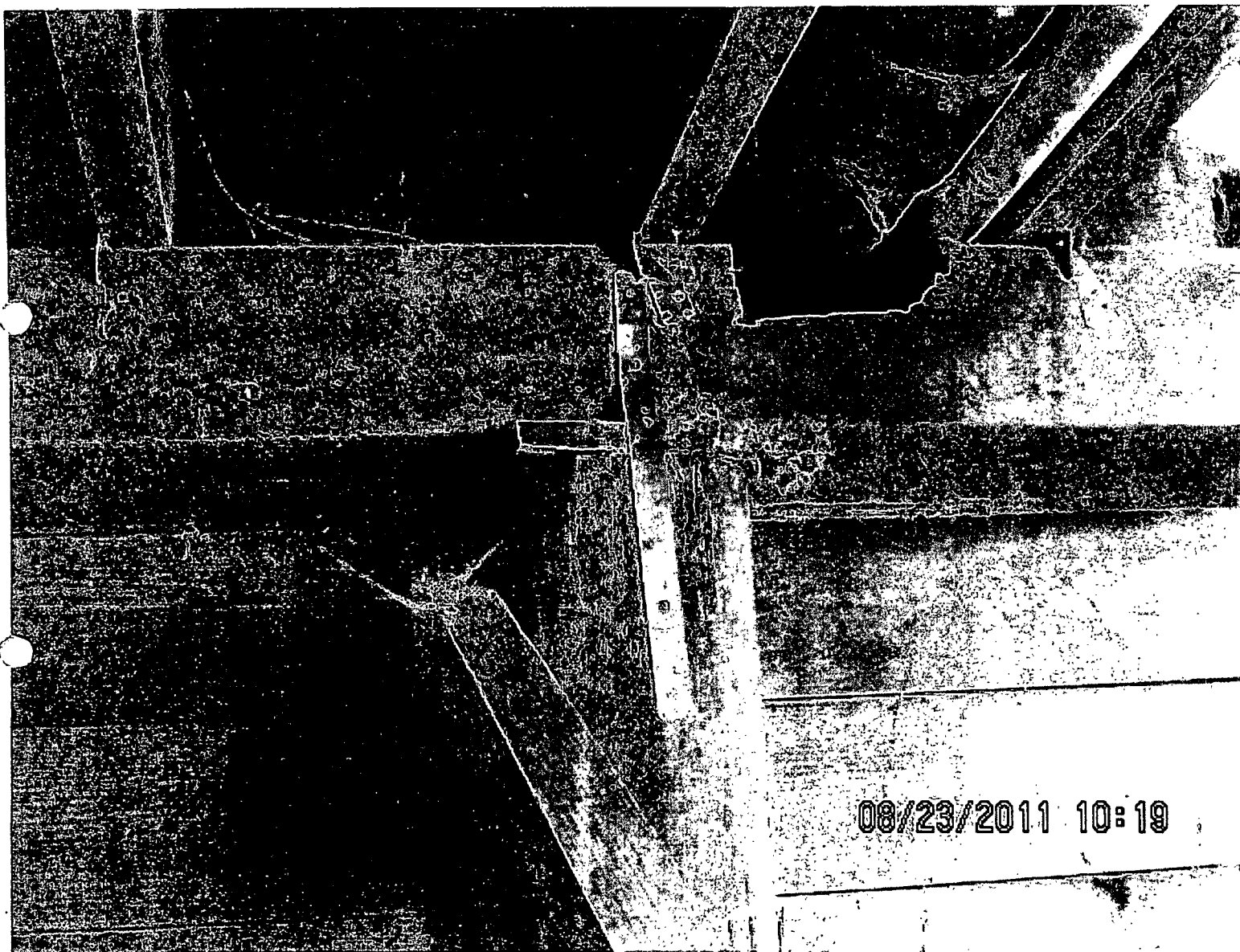
08/23/2011 10:12



08/23/2011 10:19







08/23/2011 10:19

National Bridge Inspection Data

Bridge ID: 02-9-00001-0-02-00

23 Aug-2011

General Data

Sherold W. Bennett

Original Main

Original Approach

Deck Construction

Year Built:	Superstructure Mat'l: 7	Superstructure Mat'l:	Type: 8
Design Load:	Superstructure Des: 02	Superstructure Des:	Surface: 7 M'brane: 0
Year Rebuilt:	Substructure Mat'l: 7	Substructure Mat'l:	Protect: 0

Reconstructed Main

Reconstructed Approach

Railings and Medians

Historical: 5	Superstructure Mat'l:	Superstructure Mat'l:	Railing: 0
Type Service On: 1	Superstructure Des:	Superstructure Des:	Transition: 0
Type Service Under: 5	Substructure Mat'l:	Substructure Mat'l:	Approach Railing: 0
Traffic Status: A	No. Main Spans: 6	No. Appr. Spans: 0	Approach Ends: 0
	Max. Span Length: 9	Appr. Span Length: 0	Bridge Median: 0

Geometric Data

General

Horizontal Clearances On Inv. Route

Vertical Clearances On Inv. Route

Navigational Data

Appr. Rd'way Width: 23	Roadway Width: 25.1	Greatest Minimum: 99 99	Nav. Control: 0
Lanes On: 02	Horizontal: 25.1	Minimum: 99 99	Nav. Vert. Clr.: 0
Lanes Under: 00	Deck Width: 26.3		Nav. Hor. Clr.: 0
Right Curb/Sidewalk: 0			Pier Protection:

Left Curb/Sidewalk: 6.0

Structure Flared: 0

Lateral Underclearances

Vertical Underclearances

Skew: 0

Total Right: 0

Greatest Minimum Right: 99 99

Length: 54

Total Left: 0

Greatest Minimum Left: 99 99

Control Reference: N

Control Reference: N

Right (shoulder): 99.9

Minimum: 99 99

Left (median): 0

Condition, Appraisal, and Rating Data

Deck: 7	Structure Evaluation:	Operating Truck Type:
Superstructure: 7	Deck Geometry:	Operating Load (Tons):
Substructure: 7	Underclearances:	Inventory Truck Type:
Culvert: N	Waterway Adequacy: 6	Inventory Load (Tons):
Channel: 5	Approach Alignment: 7	Restriction Level:

Bridge Element Group Textual Data

Bridge ID: 02-9-00001-0-02-00

23 Aug-2011



Abutments and/or Headwalls:

TT BULKHEAD BOARDS / GOOD

Bents and/or Piers:

7: 5 TT PILES PER BENT SPACED AT 5'6" WITH 12"X12" TT CAPS /

Bearings:

N/A

Girders/Floor Beams/Stringers and/or Beams:

7: 6"X12" TT BEAMS PER BENT SPACED AT 12"; 27 BEAMS ON SPANS #2,3,4 & 6 AND 28 BEAMS ON SPANS #1 & 5/

Truss Members:

N/A

Expansion Joints:

N/A

Decks and/or Slabs:

7. 4"x12" TT DECK WITH 0" SPACING; 3"x8" TT WEARING SURFACE /

Curbs:

8"x8" TT CURB ACROSS BRIDGE ON BOTH SIDES; SIDEWALK LEFT OF C/L NOT ATTACHED TO BRIDGE, ALL TT STRUCTURE: 2"x6"x6' DECK WITH 4-2"x12" BOARDS SPACED AT 16" RESTING ON 8"x8" TT CAPS WITH 2 TT PILES SPACED 2.3'

Bridge Railing/Parapets and/or Median Barriers:

12- 8"x8" TT POSTS SPACED AT 59" WITH A 6"x8" TT TOP RAILING 38" HIGH / GOOD

Paint System(s):

N/A

Waterway and Scour:

5. FAIR / DUE TO TREES AND DEBRIS IN STREAM

Fender System:

N/A

Roadway Alignment:

GOOD

Traffic Signs:

NONE

Encroachments:

1 UTILITY 12" PIPE UNDER BRIDGE RIGHT OF C/L

Miscellaneous Notes:

LAT: N 33 28' 57.95

LONG: W 81 44' 33.11

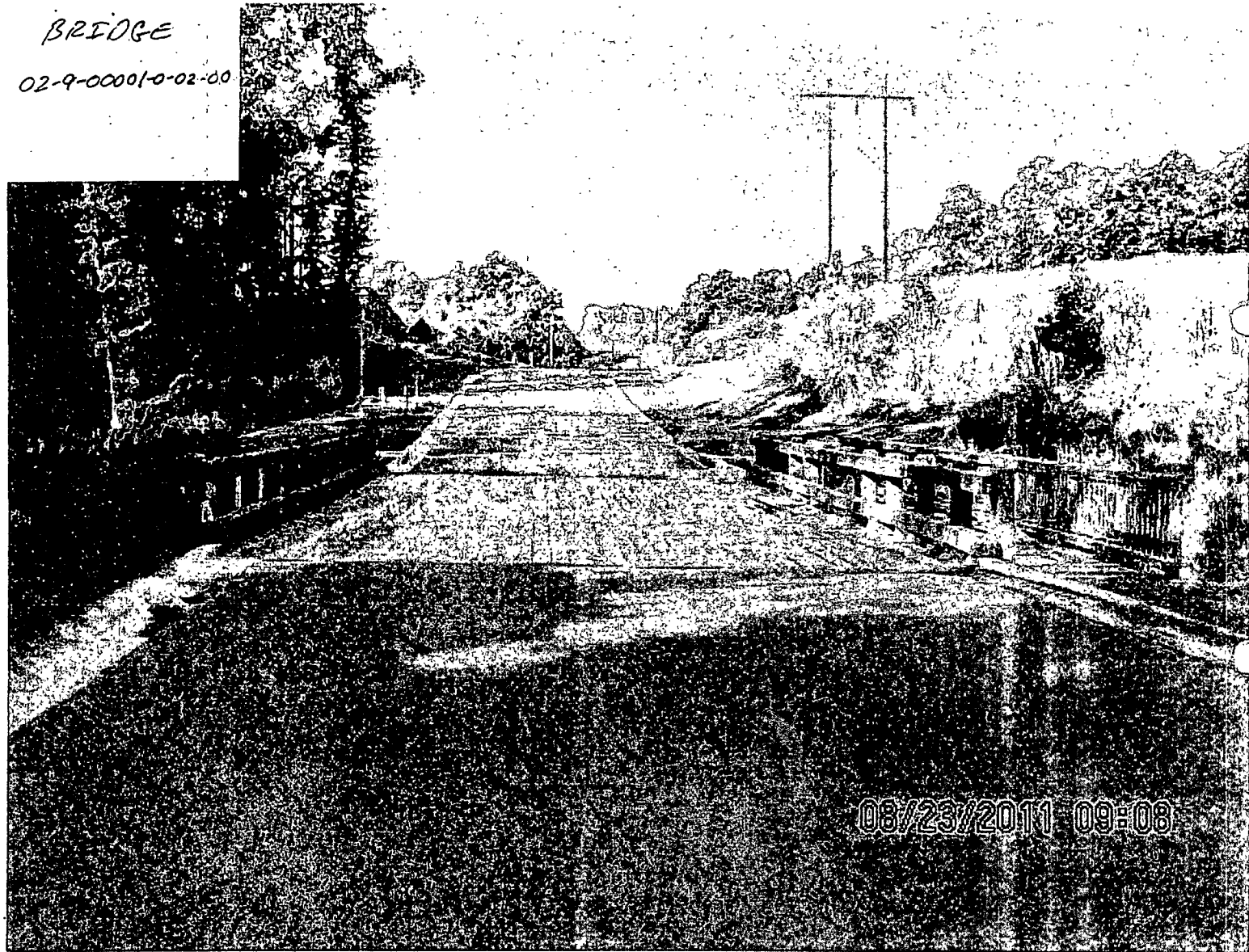
THIS BRIDGE IS LOCATED IN A PRIVATE GATED SUBDIVISION NAMED
WOODSIDE PLANTATION.

BRIDGE INSPECTION STREAM / GROUND PROFILE				BRIDGE NUMBER: 02-9-00001-0-02-00				
				ROAD NUMBER: STEEPLECHASE RD				
				CROSSING: GRASSY CREEK				
COMMENTS:				TOP OF WATER TO TOP OF RAIL				
BRIDGE LOCATED IN WOODSIDE PLANTATION, A				HORIZONTAL BLOCKAGE (%) TO				
PRIVATE GATED SUBDIVISION				VERTICAL BLOCKAGE (%)				
TOP OF WATER = NO WATER AT BENT # 6								
				8/23/11	NORTH / SOUTH EAST / WEST LEFT ABUTMENT	8/23/11		
				10.3'	7	8.9'		
				12.3'	6	9.9'	↑ 7'	
				11.2'	5	9.2'	↑ 14'	
				10.4'	4	11.1'		
				10.1'	3	11.6'		
				7.2'	2	11.3'		
				5.6'	1	10.3'		
UPSTREAM				RIGHT ABUTMENT NORTH / SOUTH EAST / WEST		DOWNSTREAM		
G.B. & D.V. & R.J.				8/23/2011		8:00		
MEASUREMENT BY				DATE MEASURED		TIME		
MEASUREMENTS ARE FROM TOP OF RAIL TO GROUND LINE								

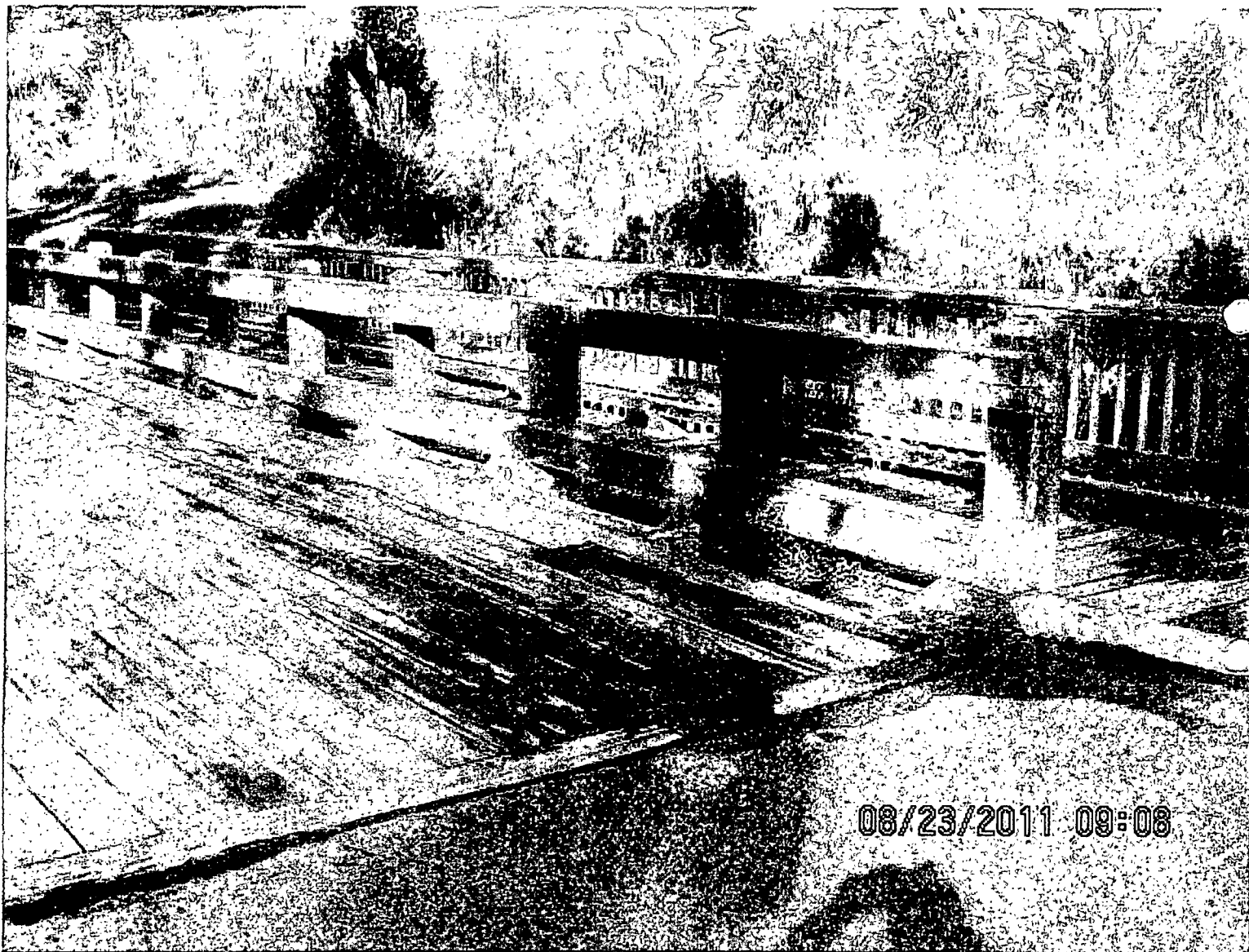


BRIDGE

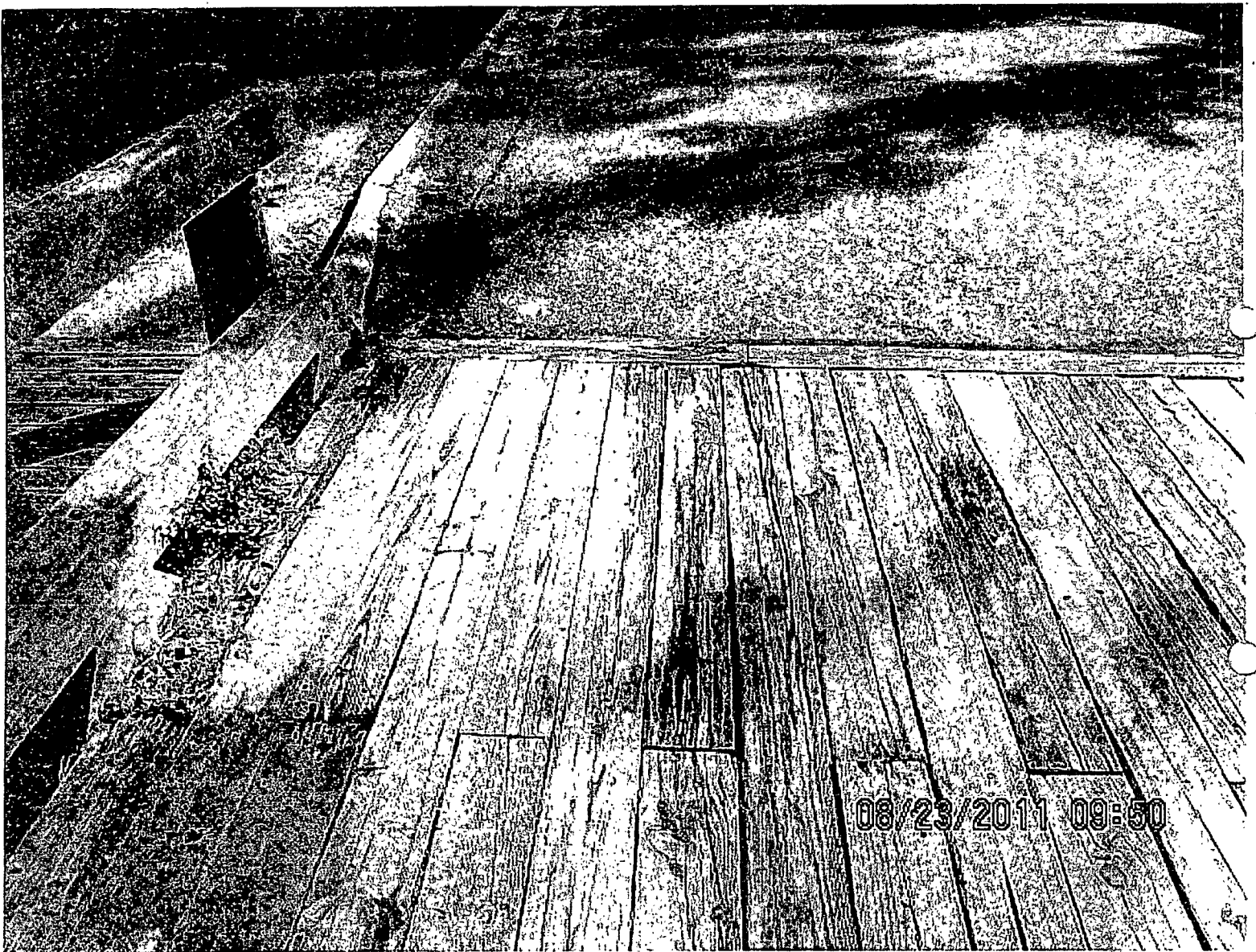
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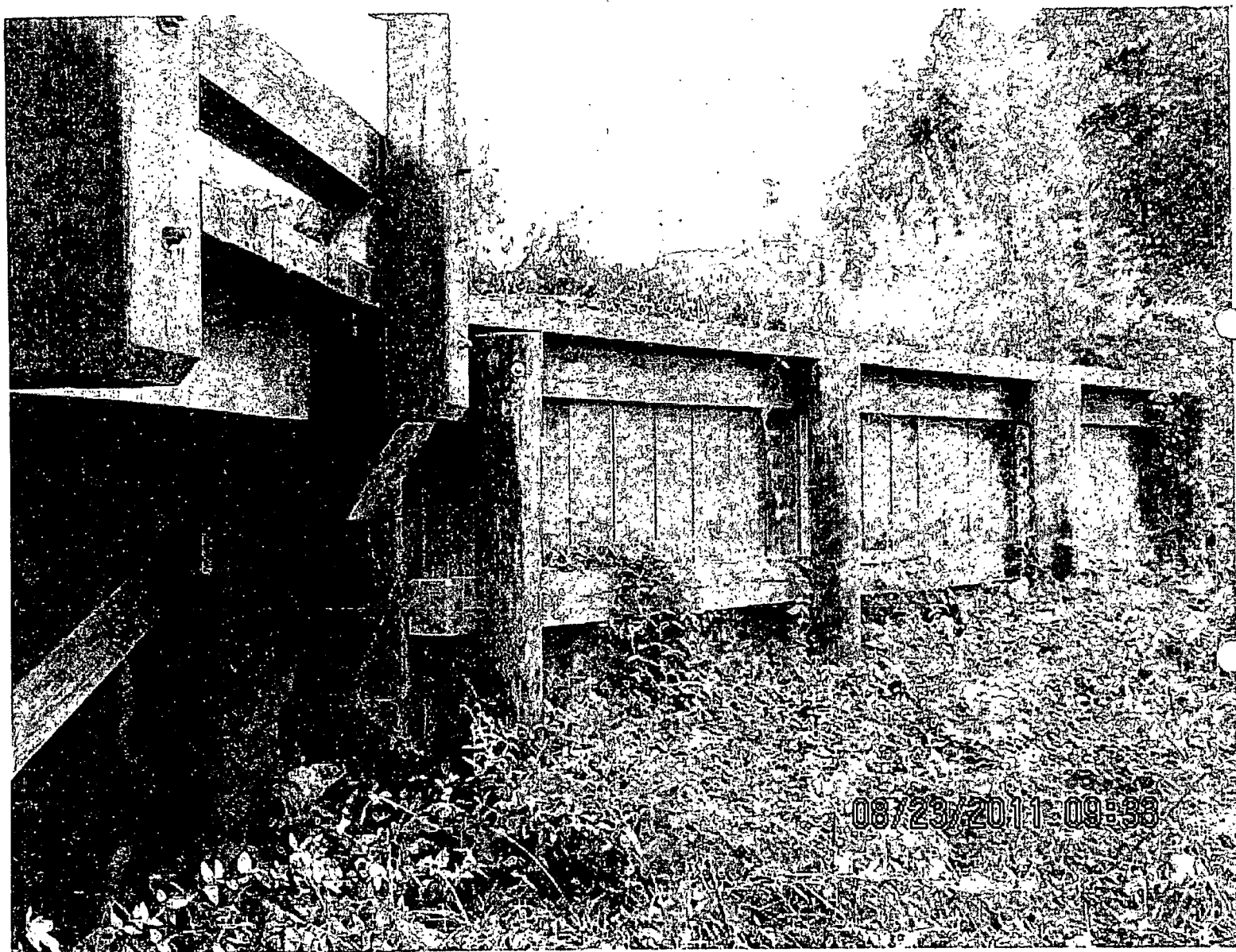
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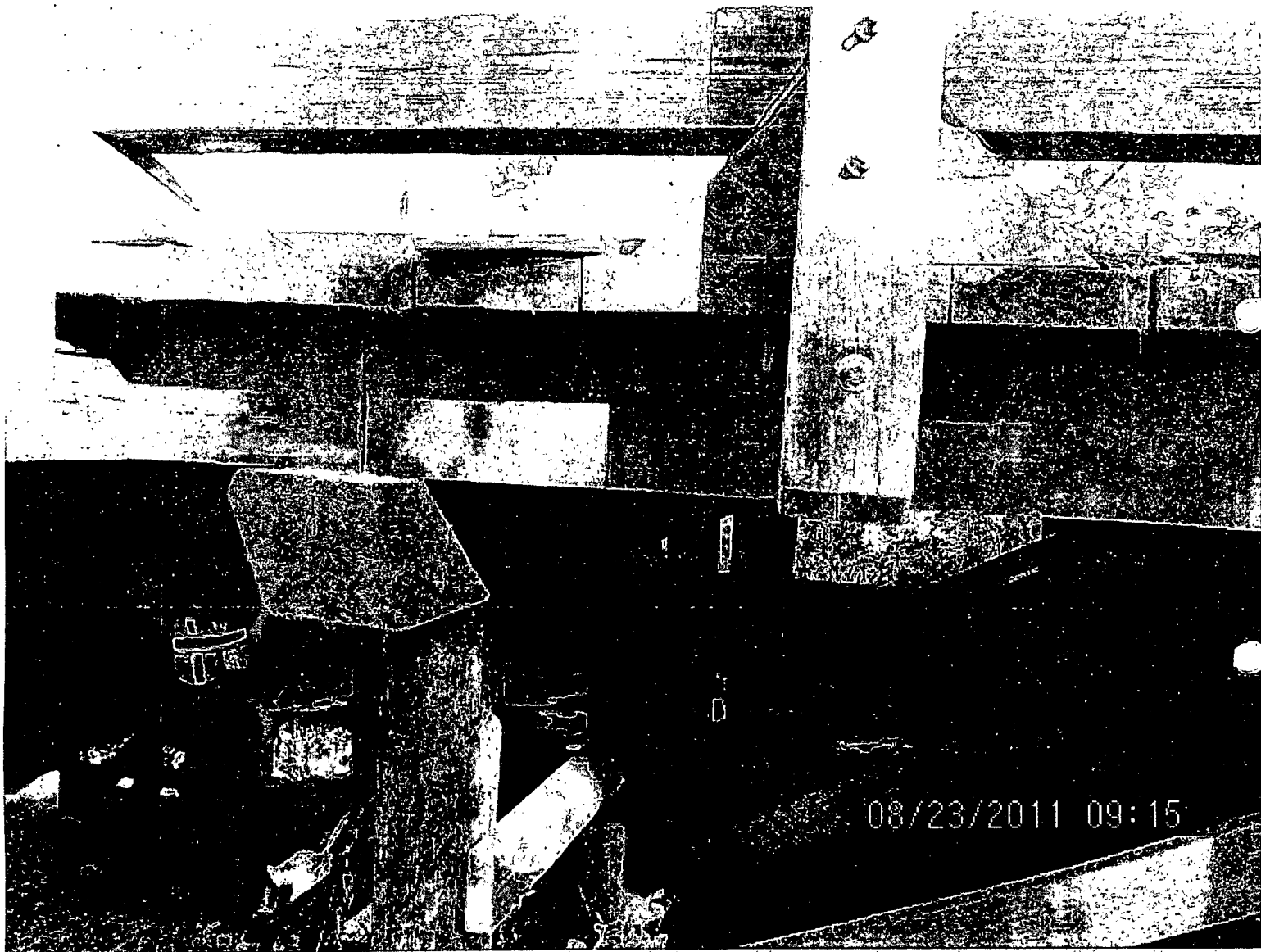


08/23/2011 09:08

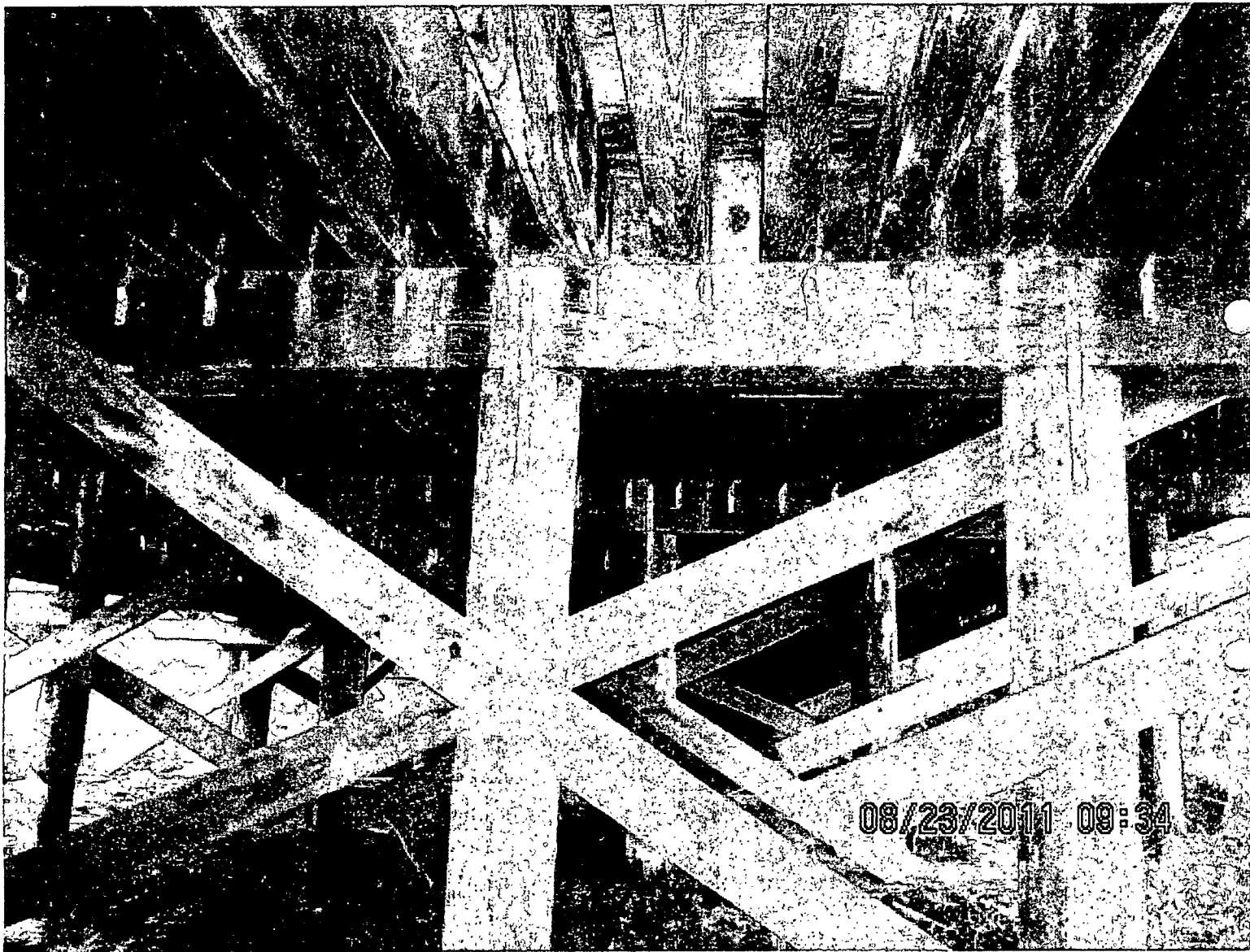


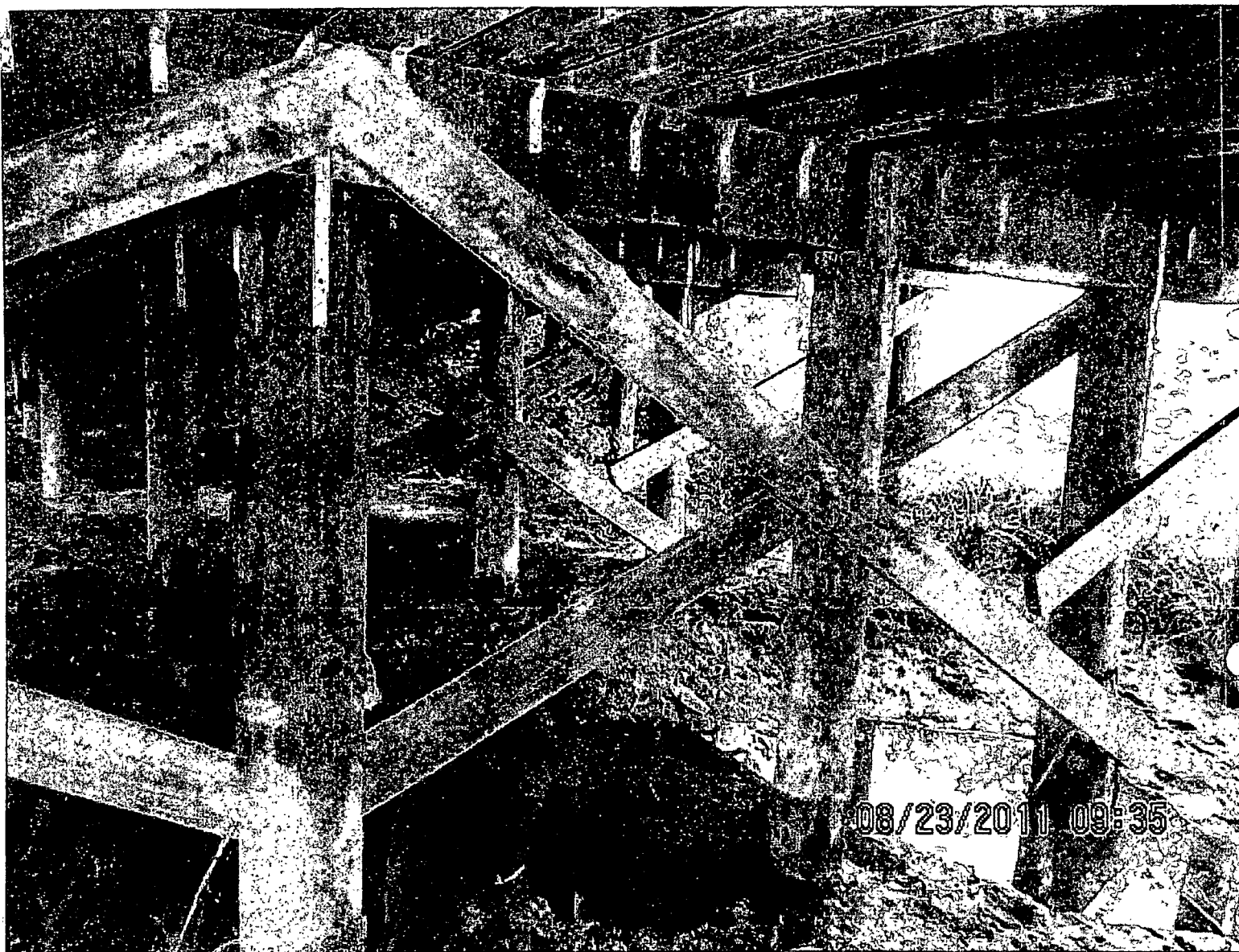






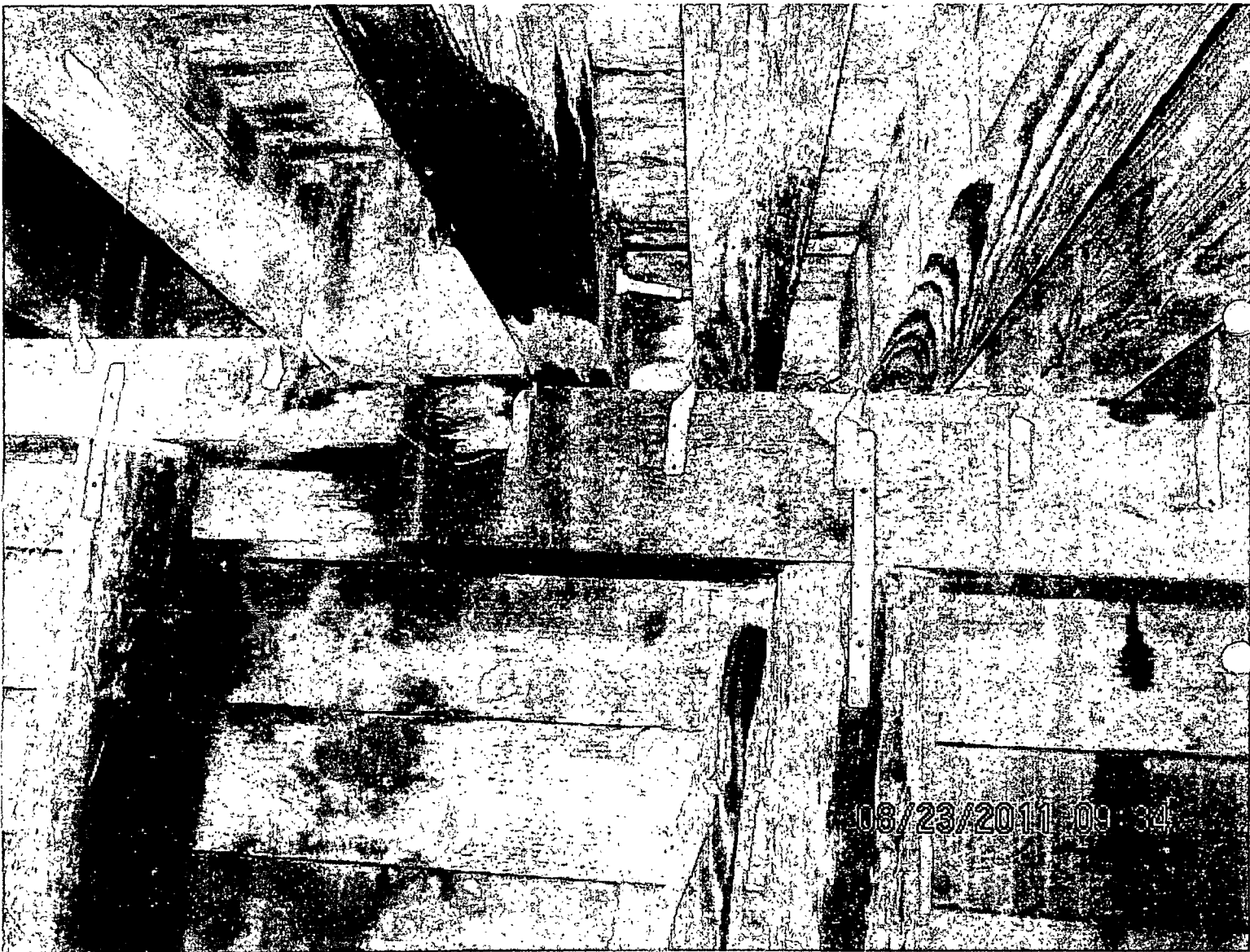




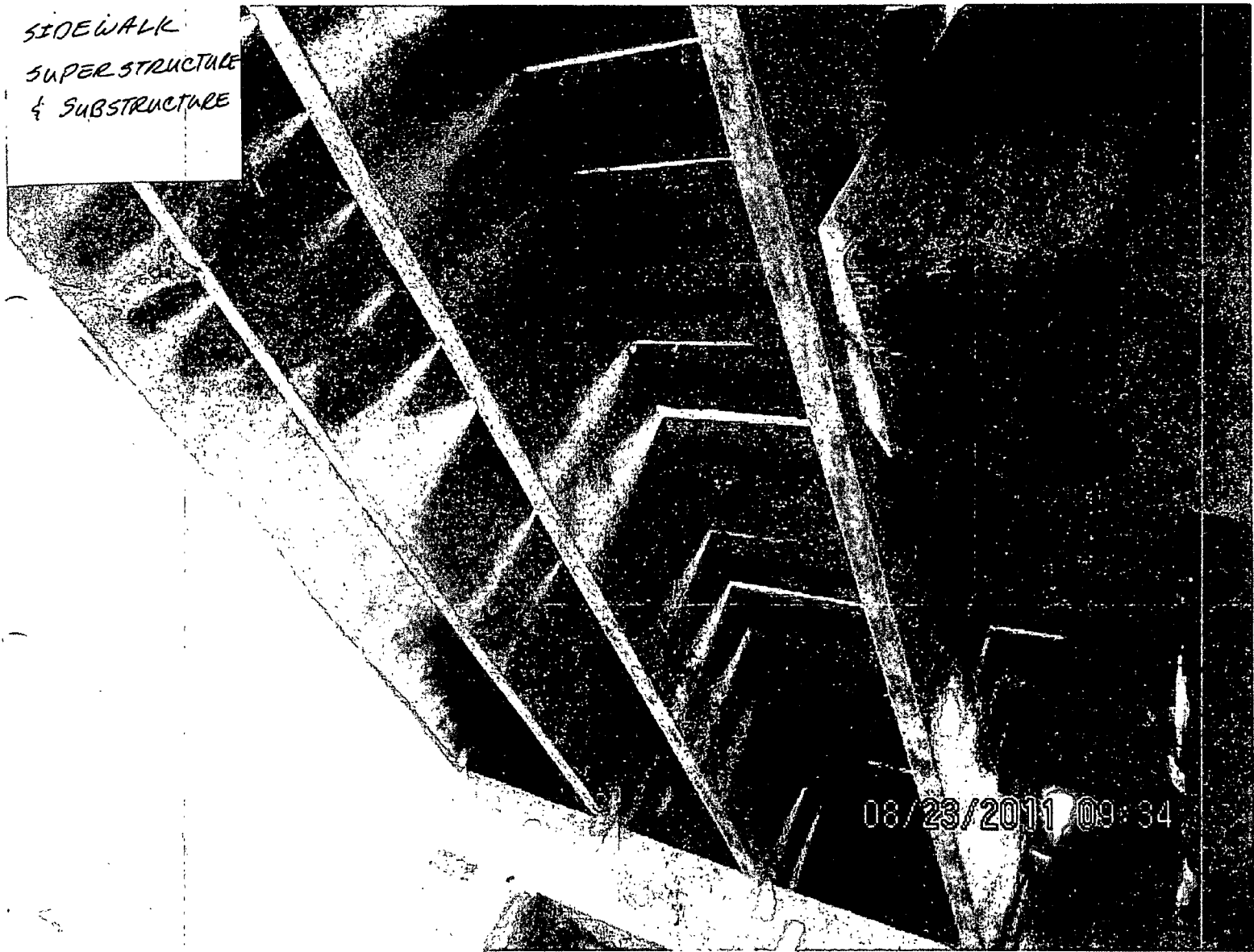








SIDEWALK
SUPERSTRUCTURE
& SUBSTRUCTURE



08/23/2011 09:34

National Bridge Inspection Data

Bridge ID: 02-9-00002-0-01-00

23 Aug-2011

General Data

A. W. Bonetto

	<u>Original Main</u>	<u>Original Approach</u>	<u>Deck Construction</u>
Year Built:	Superstructure Mat'l: 7	Superstructure Mat'l:	Type: 8
Design Load:	Superstructure Des: 02	Superstructure Des:	Surface: 7 M'brane: 0
Year Rebuilt:	Substructure Mat'l: 7	Substructure Mat'l:	Protect: 0

	<u>Reconstructed Main</u>	<u>Reconstructed Approach</u>	<u>Railings and Medians</u>
Historical: 5	Superstructure Mat'l:	Superstructure Mat'l:	Railing: 0
Type Service On: 1	Superstructure Des:	Superstructure Des:	Transition: 0
Type Service Under: 5	Substructure Mat'l:	Substructure Mat'l:	Approach Railing: 0
Traffic Status: A	No. Main Spans: 2	No. Appr. Spans:	Approach Ends: 0
	Max. Span Length: 9	Appr. Span Length:	Bridge Median: 0

Geometric Data

<u>General</u>	<u>Horizontal Clearances On Inv. Route</u>	<u>Vertical Clearances On Inv. Route</u>	<u>Navigational Data</u>
Appr. Rd'way Width: 21	Roadway Width: 22.8	Greatest Minimum: 99 99	Nav. Control: 0
Lanes On: 02	Horizontal: 22.8	Minimum: 99 99	Nav. Vert. Clr.: 0
Lanes Under: 00	Deck Width: 24.0		Nav. Hor. Clr.: 0
Right Curb/Sidewalk: 0			Pier Protection:
Left Curb/Sidewalk: 0			
Structure Flared: 0	<u>Lateral Underclearances</u>	<u>Vertical Underclearances</u>	
Skew: 0	Total Right: 0	Greatest Minimum Right: 99 99	
Length: 18	Total Left: 0	Greatest Minimum Left: 99 99	
	Control Reference: N	Control Reference: N	
	Right (shoulder): 99	Minimum: 99 99	
	Left (median): 99		

Condition, Appraisal, and Rating Data

Deck: 7	Structure Evaluation:	Operating Truck Type:
Superstructure: 7	Deck Geometry:	Operating Load (Tons):
Substructure: 7	Underclearances:	Inventory Truck Type:
Culvert: N	Waterway Adequacy: 6	Inventory Load (Tons):
Channel: 5	Approach Alignment: 7	Restriction Level:

Bridge Element Group Textual Data

Bridge ID: 02-9-00002-0-01-00

23 Aug-2011

Abutments and/or Headwalls:

TT BULKHEAD BOARDS / GOOD

Bents and/or Piers:

7: 5-TT PILES PER BENT SPACED AT 5' WITH 12"X12" TT CAPS /

Bearings:

N/A

Girders/Floor Beams/Stringers and/or Beams:

7: 24- 6"X12" TT BEAMS PER SPAN SPACED AT 12" /

Truss Members:

N/A

Expansion Joints:

N/A

Decks and/or Slabs:

7- 4"x12" TT DECK BOARD WITH 0" SPACING; 3"x8" TT WEARING SURFACE; 2 SPANS AT 9' /

Curbs:

8"x8" TT CURB ACROSS BRIDGE ON BOTH SIDES / GOOD

Bridge Railing/Parapets and/or Median Barriers:

5- 8"x8" TT POSTS SPACED AT 43" WITH A 6"x8" TT TOP RAILING 38" HIGH ON BOTH SIDES / GOOD

Paint System(s):

N/A

Waterway and Scour:

5: FAIR/ DUE TO TREES AND DEBRIS IN STREAM

Fender System:

N/A

Roadway Alignment:

GOOD

Traffic Signs:

N/A

Encroachments:

NONE

Miscellaneous Notes:

LAT: N 33 28'52.35

LONG: W 81 44'32.95

THIS BRIDGE IS LOCATED IN A PRIVATE GATED SUBDIVISION NAMED
WOODSIDE PLANTATION.

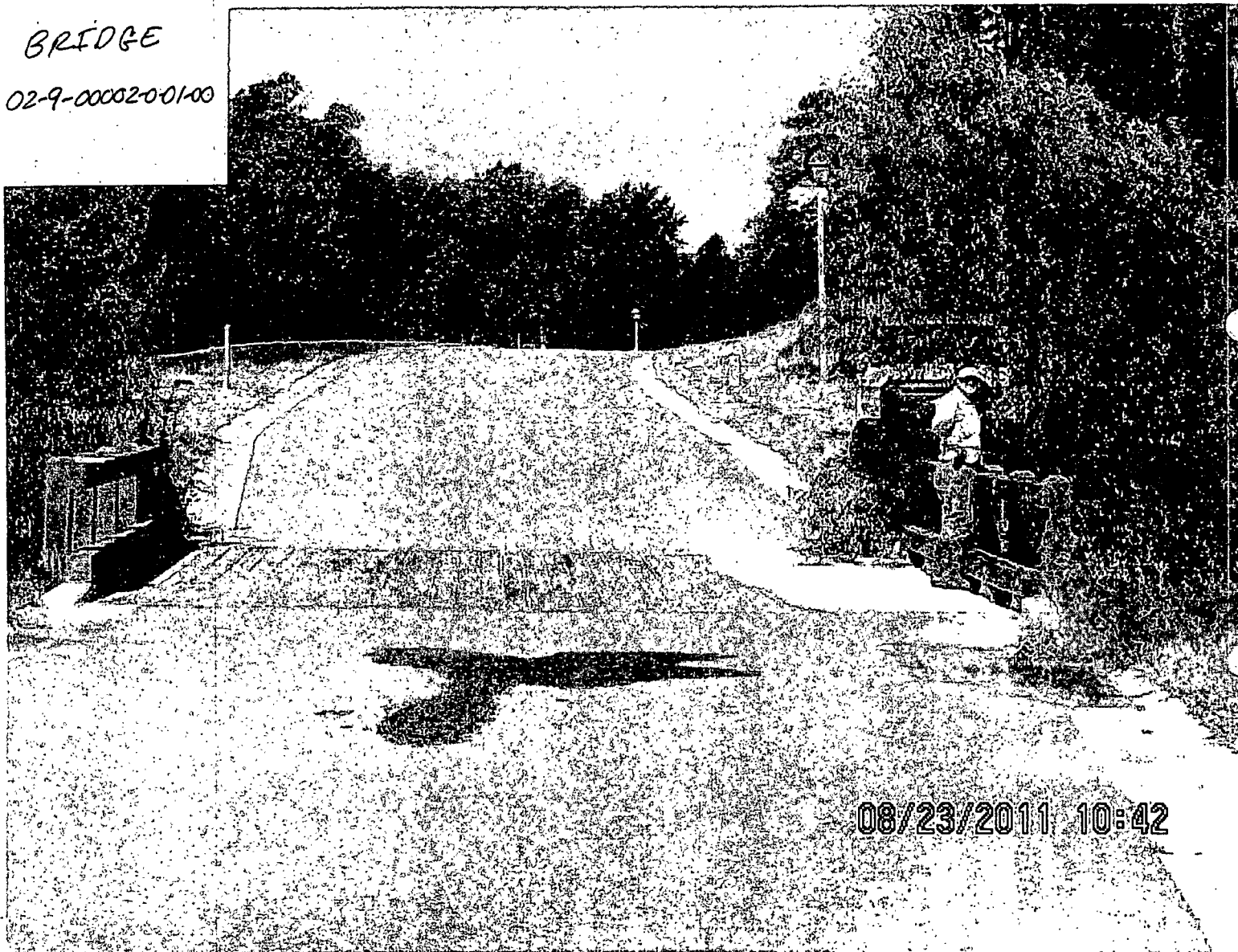
BRIDGE INSPECTION STREAM / GROUND PROFILE				BRIDGE NUMBER: 02-9-00002-0-01-00							
				ROAD NUMBER: GRASSY CREEK LANE							
COMMENTS: BRIDGE LOCATED IN WOODSIDE PLANTATION, A PRIVATE GATED SUBDIVISION TOP OF WATER = 12.0' BETWEEN BENTS # 1 & 2				CROSSING: GRASSY CREEK							
				TOP OF WATER TO TOP OF RAIL							
				HORIZONTAL BLOCKAGE (%) TO							
				VERTICAL BLOCKAGE (%)							
8/23/11 NORTH / SOUTH EAST / WEST LEFT ABUTMENT				8/23/11							
10.4'				10.3'							
12.3' 2				13.2'							
								12'			
								15'			
11.1'				10.5'							
UPSTREAM				DOWNSTREAM							
RIGHT ABUTMENT NORTH / SOUTH EAST / WEST											
G.B. & D.V. & R.J. MEASUREMENT BY				8/23/2011 DATE MEASURED							
				10:00 TIME							
MEASUREMENTS ARE FROM TOP OF RAIL TO GROUND LINE											



BRIDGE

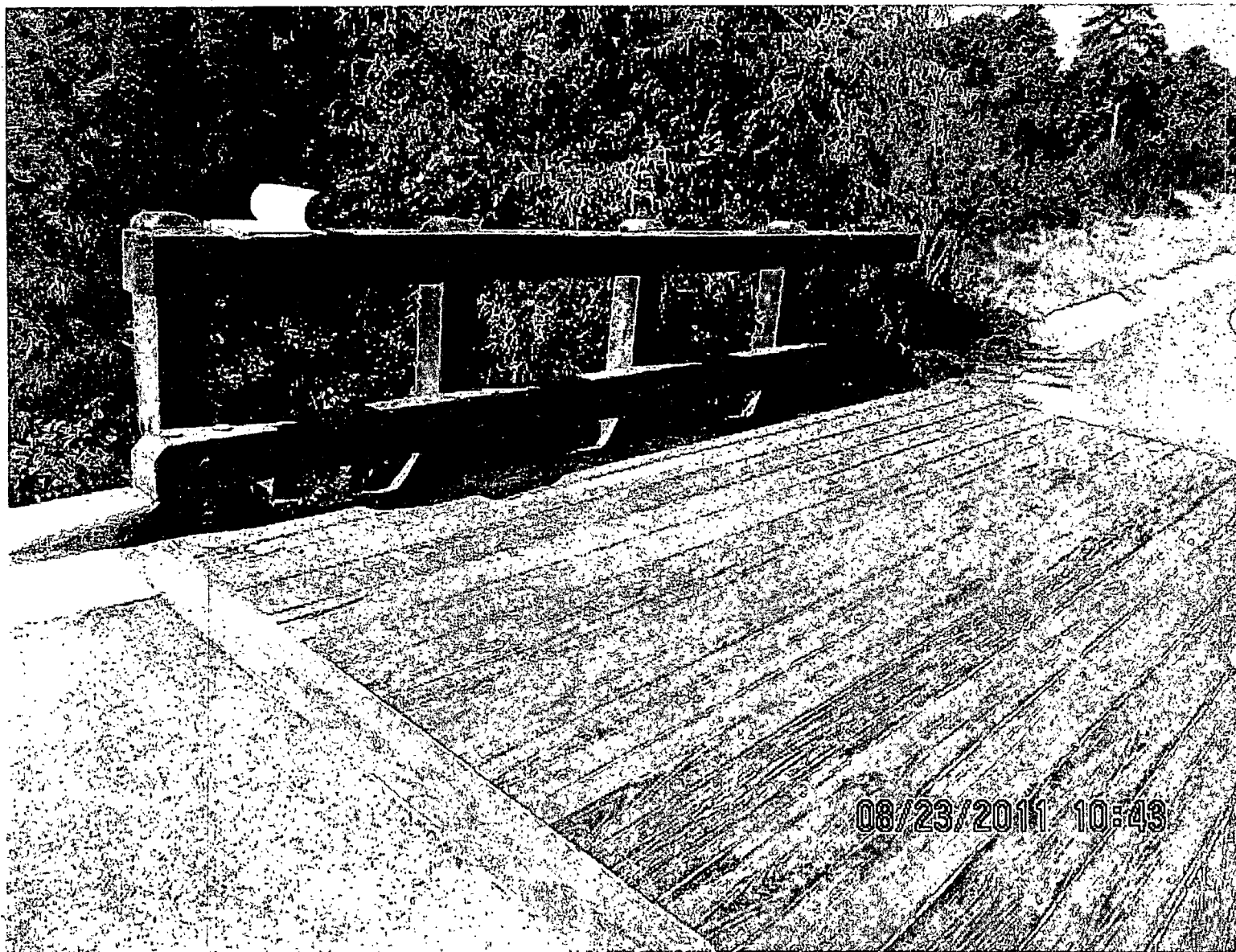
02-9-00002-0-01-00

105



08/23/2011 10:42





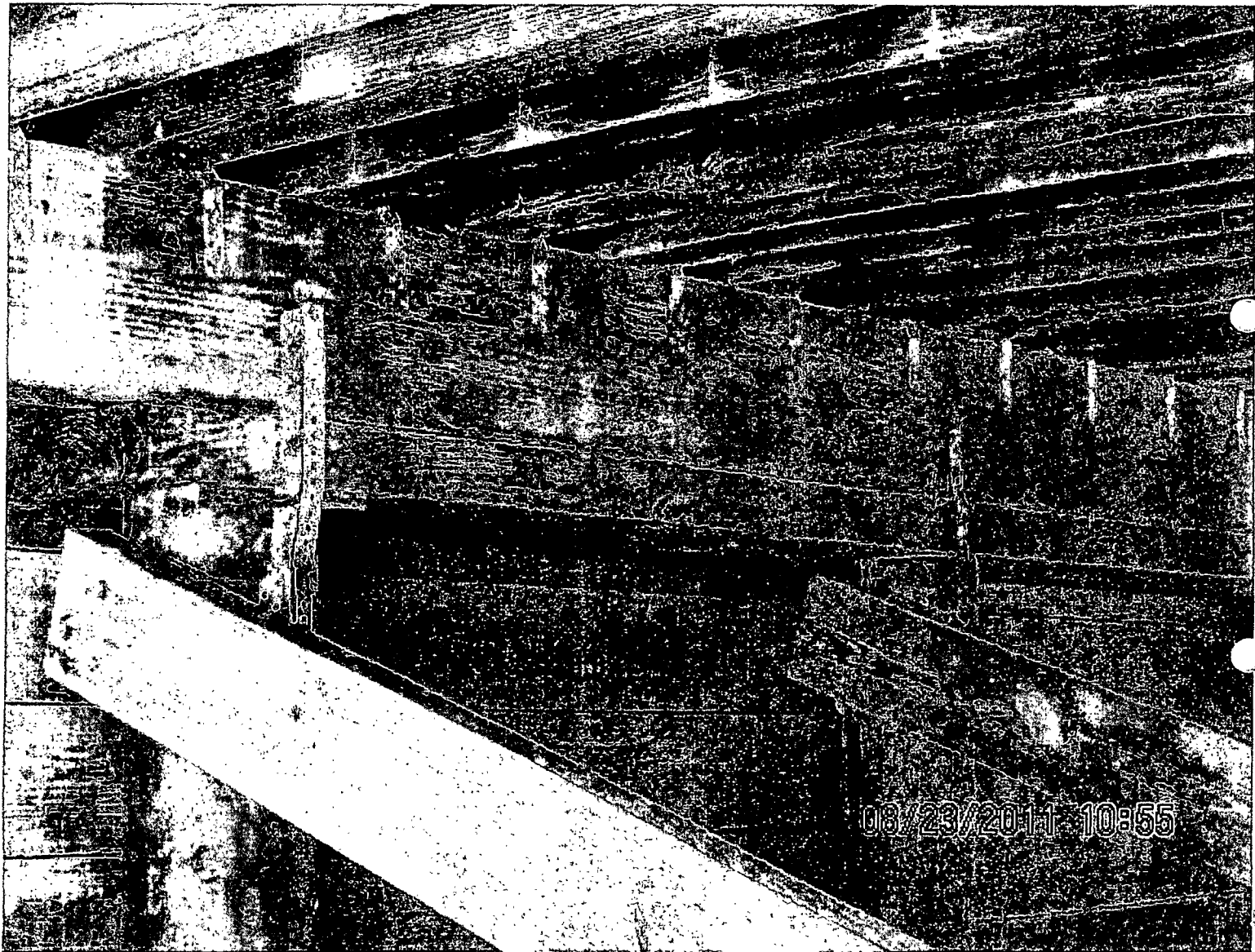
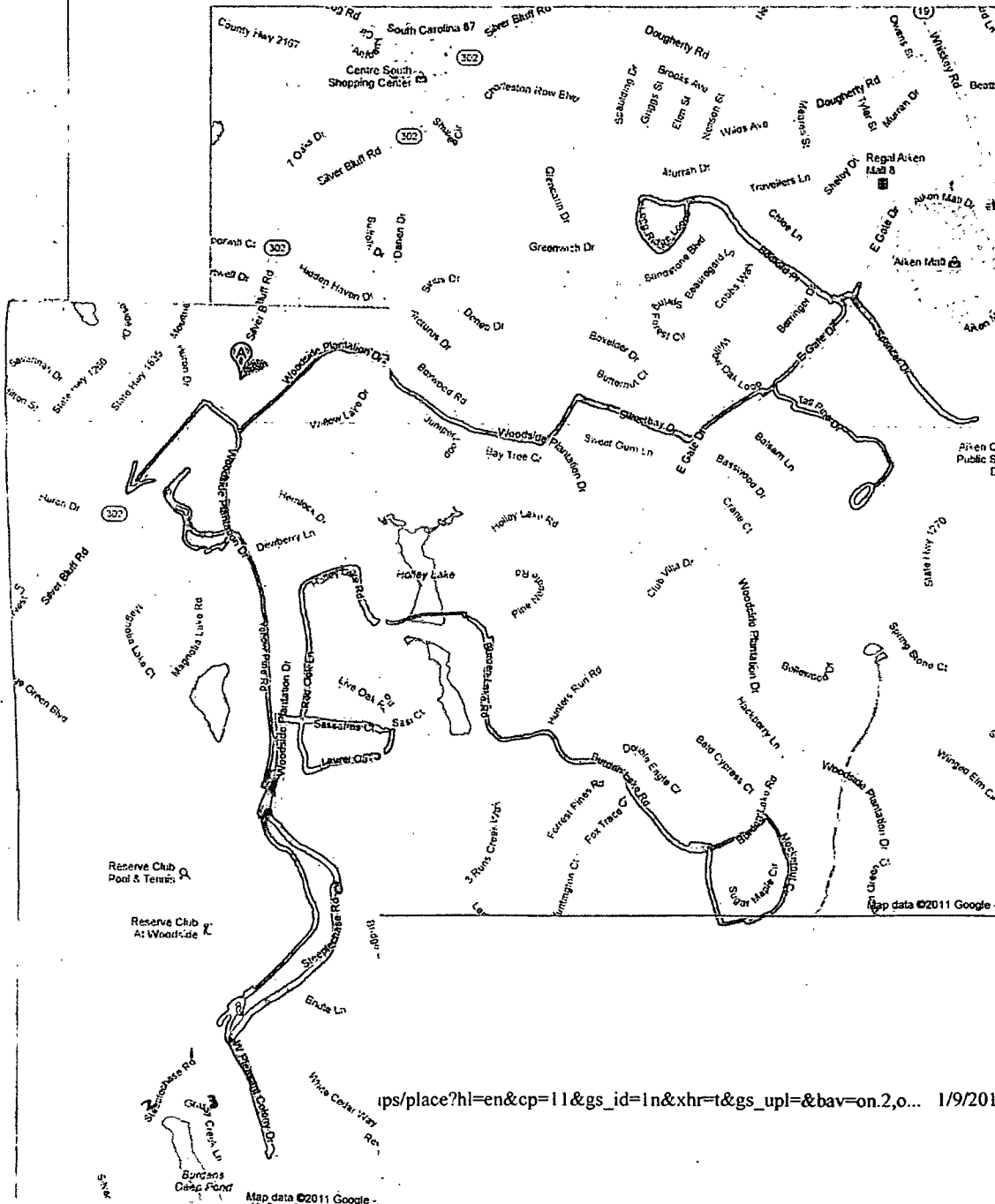


EXHIBIT C

Google *Pt. 24*

To see all the details that are visible on the screen, use the "Print" link next to the map.





Route # 24

Tommy Holloway

KMS/ SAHS

Route Starts @ AHS, Turn (Rt) On Dupont Dr, Turn (Lt) On Teague St, Straight On Chesterfield St, Straight On Whiskey Rd, Turn (Rt) On Brookhaven Dr, Turn (Rt) On Spencer Dr, Turn (Rt) On East Gate Dr, Turn (Rt) On Bedford Pl, Turn (Lt) On Longridge Loop, Straight On Bedford Pl, Turn (Rt) On East Gate Dr, Turn (Lt) Tall Pine Dr, Turnabout In Cul-De-Sac, Turn (Lt) On East Gate, Turn (Rt) On Sweetbay, Turn (Lt) On Cypress, Turn (Lt) On Woodside Plantation Dr, Turn (Rt) On Holley Lake Cir, Turn (Lt) On Burden Lake, Turnabout @ Mockernut Cir, Turn (Lt) On Holley Lake, Turn (Lt) On Red Oak, Turn (Lt) On Laurel Oak Turn (Lt) On Live Oak, Turn (Lt) On Sassafras Rd, Turn (Lt) On Woodside Plantation Dr, Turn (Lt) On Steeplechase, Turn (Lt) On Foxhound Run, Turnabout In Cul-De-Sac, Turn (Lt) On Steeplechase, Turn (Lt) On West Pleasant Collen, Turnabout In Cul-De-Sac, Turn (Rt) On Steeplechase, Turn (Rt) On Woodside Plantation Dr, Turn (Lt) On Magnolia Lake Ln, Turn (Rt) On Magnolia Lake Rd, Turnabout In Cul-De-Sac, Turn (Lt) On Magnolia Lake Ln, Turn (Lt) On Woodside Plantation Dr, Turn (Lt) On Main Gate, Turn (Lt) On Silver Bluff Rd, Turn (Rt) On Savannah Dr, Turn (Rt) On Moultrie Dr, Turn (Lt) On Huron Dr, Turn (Rt) On Moultrie Dr, Turn (Lt) On Lakeside Dr, Turn (Lt) On Hartwell Dr, Turn (Lt) On Silver Bluff Rd, Turn (Rt) On Hidden Haven Dr, Turnabout @ Arcturus Dr, Turn (Rt) On Silver Bluff Rd, Turn (Lt) On Town Creek Rd, Turn (Lt) On Plantation Dr, Turn (Lt) On Huckleberry Dr, Turn (Lt) On Town Creek Rd, Turn (Lt) On Partridge Rd, Turn (Rt) On Casaba, Turn (Rt) On Alpine Dr, Turn (Rt) On Central South, Turn (Rt) On Silver Bluff Rd, Turn (Rt) On Darien Dr, Turn (Lt) On Suffolk Dr, Turn (Rt) On Greenwich Dr, Turn (Rt) On Greenwich Dr Again, Turn (Lt) On Darien Dr, Turn (Rt) On Silver Bluff Rd, Turn (Rt) On East Pine Log Rd, Turn (Rt) On South Aiken Blvd, Turn (Rt) Into Kms, Turn (Rt) On South Aiken Blvd Into South Aiken High, Turn (Rt) On East Pine Log Rd, Straight On Rudy Mason Pkwy, Straight On Rutland Dr, Turn (Lt) On Dupont Dr, Turn (Rt) Into AHS!!

* CORNER OF SPENCER DR & HILLSBORO DR	6:50
* CORNER OF SPENCER DR & DOUBLE TREE	6:53
* CORNER OF BEDFORD PL & TRAVELLERS PL	7:00
* CORNER OF LONGRIDGE RD & BEDFORD PL	7:02
* CORNER OF BEDFORD PL & BERRINGER PL	7:04
* 157 TALL PINE RD	7:06
* CORNER OF EAST GATE DR & SWEETBAY CT	7:09
* CORNER OF CYPRESS ST & SWEET GUM LN	7:11
* 771 BURDEN LAKE RD	7:13
* CORNER OF BURDEN LAKE RD & MOCKERNUT CT	7:15
* CORNER OF HOLLEY LAKE RD &	7:17
* 204 RED OAK DR	7:19
* 109 LAUREL OAK DR	7:22
* 22 SASSAFRAS RD	7:24
* 187 FOXHOUND RUN	7:30
* 131 WEST PLEASANT	7:37
* 209 MAGNOLIA LAKE RD	7:40

* CORNER OF WOODSIDE	7:42
* CORNER OF SAVANNAH DR &	7:44
* 1177 MOULTRIE DR	7:46
* CORNER OF HIDDEN HAVEN DR &	7:48
* CORNER OF HICKLEBERRY DR &	7:50
* 1631 PARTRIDGE RD	7:52
* 1759 PARTRIDGE RD	7:54
* 1820 ALPINE DR	7:56
* CORNER OF GREENWICH DR &	8:00
* 58 SUFFOLK DR	8:02

ROUTE #25

ADDIE NEWKIRKCHUKKER CREEK ELEMENTARY

ROUTE STARTS @ AHS, Turn (Rt) On Dupont Dr, Turn (Lt) On Columbia Ave,
Turn (Rt) On York St, Turn (Rt) On Richland Ave, Turn (Lt) On Chesterfield St,
Straight Onto Whiskey Rd, Turn (Rt) On Pine Log Rd, Straight Onto Silver
Bluff Rd, Turn (Lt) On Hidden Haven Dr, Turnabout @ Arcturus Dr, Turn (Lt)
On Silver Bluff Rd, Turn (Lt) On Adams Rd, Turnabout @ Bransome Blvd,
Turn (Lt) On Silver Bluff Rd, Turn (Rt) On Good Hope Farms Rd, Turnabout @
319 Good Hope Farms, Turn (Lt) On Silver Bluff Rd, Turn (Rt) On Anderson
Pond Rd, Turnabout, Turn (Rt) On Silver Bluff Rd, Turn (Rt) On Woodside
Plantation Dr, Turn Magnolia Lake Ln, Turn (Rt) On Magnolia Lake Rd,
Turnabout @ Magnolia Lake Ct, Turn (Lt) On Magnolia Lake Ln, Turn (Lt) On
Woodside Plantation Dr, Turn (Lt) On East Gate Dr, Turn (Rt) On Tall Pine Dr,
Turnabout In Cul-De-Sac, Turn (Lt) On East Gate Dr, Turn (Lt) On Basswood Dr,
Turn (Lt) On Woodside Plantation Dr, Turn (Rt) On Burden Lake Rd, Turnabout
@ Bald Cypress Ct, Turn (Rt) On Burden Lake Rd, Turn (Rt) On Woodside
Plantation Dr, Turn (Lt) On South Gate Dr, Turn (Lt) On Chukker Creek Rd,
Turn (Lt) Into Chukker Creek School!!

* CORNER OF HIDDEN HAVEN DR &	6:15
* 396 ADAMS RD	6:20
* CORNER OF ADAMS RD & EVE ST	6:25
* 319 GOOD HOPE FARMS RD	6:34
* CORNER OF MAGNOLIA LAKE RD &	6:38
* CORNER OF WOODSIDE DR &	6:40
* 157 TALL PINE DR	6:45
* CORNER OF BASSWOOD DR &	6:50
* CORNER OF BURDEN LAKE RD &	6:55

AREA 1 BUS ROUTES
2011-2012

Transportation Supervisor: Sharon Harris
Routing Coordinator: Dottie Reames

641-2507
593-7202

SCHOOLS SERVED...

ELEMENTARY SCHOOLS

Aiken Elementary	Chukker Creek Elementary
East Aiken Elementary	J D Lever Elementary
Millbrooke Elementary	North Aiken Elementary
Oakwood Windsor Elementary	

MIDDLE SCHOOL & HIGH SCHOOLS

Aiken Middle	Aiken High
Kennedy Middle	South Aiken High
Schofield Middle	

Routes and times are subject to change!!

AIKEN ELEMENTARY

ROUTE # 10

TAMMY BLAKELY

AIKEN ELEMENTARY

ROUTE STARTS @ AHS, TURN (RT) ON DUPONT DR, TURN (RT) ON TEAGUE ST, STRAIGHT ON CHESTERFIELD ST, STRAIGHT ON WHISKEY RD, TURN (RT) ON SILVER BLUFF RD, TURN (RT) ON HITCHCOCK PKWY, TURN (RT) ON HICKORY RIDGE RD, TURN (RT) ON ABERDEEN RD, TURN (LT) ON HICKORY RIDGE RD, STRAIGHT ON ORIOLE ST, TURN (RT) ON CARDINAL DR, TURN (LT) ON WINGED FOOT, TURN (RT) ON PINE LOG RD, TURN (LT) ON ALPHA DR, TURN (RT) ON ALPINE DR, TURN (RT) ON HIGHLAND FOREST DR, TURN (LT) ON PINE LOG RD, TURN (LT) ON TOWN CREEK RD, TURN (RT) ON SILVER BLUFF RD, TURN (RT) ON HARTWELL DR, TURN (LT) ON MOULTRIE DR, TURN (RT) ON SAVANNAH DR, TURN (LT) ON LAKESIDE DR, TURNABOUT @ HILTON ST, TURN (RT) ON SAVANNAH DR, TURN (RT) ON SILVER BLUFF RD, TURN (RT) ON RICHARDSON'S LAKE RD, TURN (RT) ON WOODLAKE RD, TURNABOUT IN CUL-DE-SAC, TURN (RT) ON RICHARDSON'S LAKE RD, TURN (RT) ON TRAIL POINT, TURNABOUT IN CUL-DE-SAC, TURN (RT) ON RICHARDSON'S LAKE RD, TURN (RT) ON PINE LOG RD, TURN (LT) ON HUNTSMAN DR, TURN (LT) ON DEERWOOD DR INTO AIKEN ELEM, TURN (LT) ON HUNTSMAN DR, TURN (RT) ON HITCHCOCK PKWY, TURN (LT) ON HICKORY RIDGE RD, TURN (RT) ON ABERDEEN DR, TURN (RT) ON HICKORY RIDGE RD, TURN (RT) ON NORTHWOOD DR, TURN (RT) ON WOODBINE DR, TURN (RT) ON BRIDLEWOOD DR, TURN (LT) ON GLENN PL, TURN (RT) ON LONGWOOD, TURN (RT) ON WILLIAMS DR, TURN (RT) ON ROSEMARY DR, TURN (LT) ON JANET DR, TURN (RT) ON ROSLYN CIR, TURN (LT) ON MAGNOLIA DR, TURN (LT) ON SILVER BLUFF RD, TURN (RT) ON THOMAS ST, TURN (LT) ON TAYLOR ST, TURN (LT) ON SMALL RIDGE RD, TURN (RT) ON GYLES RD, TURN (RT) ON HITCHCOCK PKWY, STRAIGHT ON UNIVERSITY PKWY, STRAIGHT ON KING GRANT DR, TURN (LT) ON COLONY PKWY, TURN (RT) ON WHISKEY RD, TURN (RT) ON BRANDY RD, TURN (LT) ON TWO NOTCH RD, TURN (LT) ON BARNARD ST, TURN (RT) ON MAGNOLIA ST, TURN (LT) ON KNOX AVE, TURN (RT) ON WHISKEY RD, TURN (RT) ON PARK AVE, TURN (LT) ON HERRY ST INTO SMS, TURN (RT) ON BARNWELL AVE, CROSS YORK ST, TURN (RT) ON COLUMBIA AVE, TURN (RT) ON TEAGUE ST, TURN (RT) ON DUPONT DR, TURN (LT) INTO AHS!!

* 3103 WESTMONT DR	6:23
* CORNER OF WESTMONT DR & ROSEMONT DR	6:25
* 3422 WESTMONT DR	6:27
* CORNER OF WESTMONT DR & GREGG AVE	6:28
* 3519 TROLLEY LINE RD	6:30
* CORNER OF TROLLEY LINE RD & FRANKEL ST	6:31
* 3013 VAUCLUSE RD	6:34
* CORNER OF VICTORIA DR & LEANN CT	6:38
* 15 IROQUOIS ST	6:43
* 120 KENMONT ST	6:45
* 4104 TROLLEY LINE RD	6:48
* 102 HUDSON RD	6:49
* SUMMIT DR	6:53
* 1707 RIDGECREST AVE	6:56

CHUKKER CREEK ELEMENTARY

ROUTE # 22 CONSTANCE PAULING CHUKKER CREEK ELEMENTARY

ROUTE STARTS @ AHS, TURN (RT) ON DUPONT DR, TURN (LT) ON TEAGUE ST, STRAIGHT ON CHESTERFIELD AVE, TURN (RT) ON HAMPTON AVE, TURN (LT) ON GREENVILLE AVE, STRAIGHT ON ABBEVILLE AVE, TURN (RT) ON LAURENS ST, TURN (RT) ON RICHLAND AVE, TURN (RT) ON GREENVILLE AVE, TURN (RT) ON EDGEFIELD AVE, TURN (LT) ON NEWBERRY AVE, TURN (RT) ON ABBEVILLE AVE, STRAIGHT ON FAIRFIELD AVE, TURN (LT) ON BARNWELL AVE, TURN (LT) ON SUMTER AVE, TURN (LT) ON BARNWELL AVE, TURN (RT) ON KERSHAW ST, TURN (RT) ON ABBEVILLE AVE, TURN (RT) ON WILLIAMSBURG AVE, TURN (LT) ON SOUTH BOUNDARY AVE, TURN (RT) ON MARLBORO ST, STRAIGHT ON GRACE AVE, TURN (RT) ON TWO NOTCH RD, TURN (RT) ON BOARDMAN RD, TURN (LT) ON WHISKEY RD, TURN (LT) ON COLONY PL, TURN (RT) ON PRICE, TURN (LT) ON WHISKEY RD, TURN (RT) ON EAST GATE, TURN (RT) ON BEDFORD PL, TURN (LT) ON LONG RIDGE PL, TURN (RT) ON BEDFORD PL, TURN (RT) ON EAST GATE, ROUNDABOUT, TURN (RT) ON WHISKEY RD, TURN (RT) ON CHUKKER CREEK RD, TURN (RT) INTO CHUKKER CREEK ELEM!!!

* CORNER OF GREENVILLE AVE & ABBEVILLE AVE	5:58
* 130 GREENVILLE AVE	6:01
* CORNER OF EDGEFIELD AVE & PENDLETON AVE	6:03
* CORNER OF NEWBERRY AVE & ABBEVILLE AVE	6:06
* CORNER OF ABBEVILLE AVE & YORK ST	6:08
* CORNER OF ABBEVILLE AVE & FAIRFIELD AVE	6:10
* CORNER OF FAIRFIELD AVE & BARNWELL AVE	6:12
* CORNER OF BARNWELL AVE & UNION ST	6:14
* CORNER OF BARNWELL AVE & SUMTER ST	6:16
* CORNER OF KERSHAW ST & ABBEVILLE AVE	6:20
* CORNER OF ABBEVILLE AVE & HORRY ST	6:22
* 219 WILLIAMSBURG ST	6:24
* 604 PARK AVE	6:27
* CORNER OF WILLIAMSBURG ST & COLLETON ST	6:29
* CORNER OF MARION ST & MEAD AVE	6:31
* CORNER OF MARLBORO ST & GAYLE AVE	6:32
* COLONY PL @ SOUTH PARK	6:37
* CORNER OF BEDFORD PL & TRAVELLERS PL	6:47
* CORNER OF BEDFORD PL & BERRINGER PL	6:50

ROUTE # 23 GERALDINE BRYANT CHUKKER CREEK ELEMENTAR

ROUTE STARTS @ AHS, TURN (LT) ON DUPONT DR, TURN (RT) ON RUTLAND DR, STRAIGHT ON RUDY MASON PKWY, STRAIGHT ON E. PINE LOG RD, TURN (LT) ON BANKS MILL RD, TURN (RT) ON TALATHA CHURCH RD, TURN (RT) ON CROSSROAD PARK DR, TURN (LT) ON BREWSTERS WAY, TURN (RT) ON CROSSROAD PARK DR, TURN (RT) ON TALATHA CHURCH RD, TURN (RT) ON CINNAMON DR, TURN (RT) ON LAVENDER LN, TURN (LT) ON CINNAMON DR, TURN (RT) ON TALATHA CHURCH RD, TURN (RT) ON BRASHUM DR, TURN (RT) ON SYCAMORE DR, TURN (LT) ON PINE HOLLOW DR, TURN (LT) ON BRASHUM DR, TURN (RT) ON TALATHA CHURCH RD, TURN (RT) ON WHISKEY RD, TURN (LT) ON DOMINION DR, TURNABOUT IN CUL-DE-SAC, TURN (LT) ON WHISKEY RD, TURN (RT) ON SOUTH MEADOWS DR, TURN (LT) ON LONG CREEK RD, TURN (LT) ON SOUTH MEADOWS DR, TURN (RT) ON BAINBRIDGE DR, TURN (RT) ON HUNTER'S GLEN DR, TURN (RT) ON OLD DOMINION DR, TURN (LT) ON SHAKERAG RD, TURN (RT) ON ROLLING ROCK RD, TURNABOUT IN CUL-DE-SAC, TURN (LT) ON CHELTENHAM DR, TURN (LT) ON CITADEL DR, TURN (LT) ON RAMBLEWOOD DR, TURN (RT) ON DEEP RUN RD, TURN (LT) ON OLD

DOMINION RD, TURN (RT) ON HUNTER'S GLEN RD, STRAIGHT ONTO CHUKKER CREEK RD, TURN (RT) INTO CHUKKER CREEK ELEM, TURN (LT) ON CHUKKER CREEK RD, TURN (LT) ON WHISKEY RD, TURN (RT) ON E. PINE LOG RD, TURN (RT) ON SOUTH AIKEN BLVD, TURN (RT) INTO KMS, TURN (RT) ON SOUTH AIKEN BLVD INTO SAHS, TURN (RT) ON E. PINE LOG RD, STRAIGHT ON RUDY MASON PKWY, STARIGHT ON RUTLAND DR, TURN (LT) ON DUPONT DR, TURN (RT) INTO AHS!!

* 515 TALATHA CHURCH RD	6:05
* 157 BREWSTER'S WAY	6:20
* 250 BREWSTER'S WAY	6:22
* 764 CROSSROAD PARK DR	6:25
* 653 CROSSROAD PARK DR	6:30
* 324 TALATHA CHURCH RD	6:33
* CORNER OF CINNAMON DR & LAVENDER LN	6:34
* 2075 LAVENDER LN	6:36
* 1120 CINNAMON DR	6:40
* 1070 BRASHUM DR	6:43
* CORNER OF TALATHA CHURCH RD & VINE DR	6:44
* 171 DOMINION DR	6:45
* CORNER OF SOUTH MEADOWS BLVD & BERYL DR	6:47
* CORNER OF LONG CREEK RD & FLOWER BREAK RD	6:49
* CORNER OF SOUTH MEADOWS & EMERALD RIDGE RD	6:51
* CORNER OF BAINBRIDGE DR & WEYANOKE DR	6:52
* CORNER OF BAINBRIDGE DR & SUSSEX CT	6:55
* 322 SHAKERAGE DR	7:00
* 170 ROLLING ROCK RD	7:03
* 111 ROLLING ROCK RD	7:06
* CORNER OF OLD DOMINION RD & DEEP RUN RD	7:10

ROUTE # 25

ADDIE NEWKIRK

CHUKKER CREEK ELEMENTARY

ROUTE STARTS @ AHS, TURN (RT) ON DUPONT DR, TURN (LT) ON COLUMBIA AVE, TURN (RT) ON YORK ST, TURN (RT) ON RICHLAND AVE, TURN (LT) ON CHESTERFIELD ST, STRAIGHT ONTO WHISKEY RD, TURN (RT) ON PINE LOG RD, STRAIGHT ONTO SILVER BLUFF RD, TURN (LT) ON HIDDEN HAVEN DR, TURNABOUT @ ARCTURUS DR, TURN (LT) ON SILVER BLUFF RD, TURN (LT) ON ADAMS RD, TURNABOUT @ BRANSOME BLVD, TURN (LT) ON SILVER BLUFF RD, TURN (RT) ON GOOD HOPE FARMS RD, TURNABOUT @ 319 GOOD HOPE FARMS, TURN (LT) ON SILVER BLUFF RD, TURN (RT) ON ANDERSON POND RD, TURNABOUT, TURN (RT) ON SILVER BLUFF RD, TURN (RT) ON WOODSIDE PLANTATION DR, TURN MAGNOLIA LAKE LN, TURN (RT) ON MAGNOLIA LAKE RD, TURNABOUT @ MAGNOLIA LAKE CT, TURN (LT) ON MAGNOLIA LAKE LN, TURN (LT) ON WOODSIDE PLANTATION DR, TURN (LT) ON EAST GATE DR, TURN (RT) ON TALL PINE DR, TURNABOUT IN CUL-DE-SAC, TURN (LT) ON EAST GATE DR, TURN (LT) ON BASSWOOD DR, TURN (LT) ON WOODSIDE PLANTATION DR, TURN (RT) ON BURDEN LAKE RD, TURNABOUT @ BALD CYPRESS CT, TURN (RT) ON BURDEN LAKE RD, TURN (RT) ON WOODSIDE PLANTATION DR, TURN (LT) ON SOUTH GATE DR, TURN (LT) ON CHUKKER CREEK RD, TURN (LT) INTO CHUKKER CREEK SCHOOL!!

* CORNER OF HIDDEN HAVEN DR & ARCTURUS DR	6:15
* 396 ADAMS RD	6:20
* CORNER OF ADAMS RD & EVE ST	6:25
* 319 GOOD HOPE FARMS RD	6:34
* CORNER OF MAGNOLIA LAKE RD & MAGNOLIA LAKE CT	6:38
* CORNER OF WOODSIDE DR & JUNIPER LN	6:40
* 157 TALL PINE DR	6:45
* CORNER OF BASSWOOD DR & BALSAM LN	6:50
* CORNER OF BURDEN LAKE RD & CYPRESS CT	6:55

EAST AIKEN ELEMENTARY

ROUTE # 26

CARRIE RICHARDSON

EAST AIKEN ELEMENTARY

ROUTE STARTS @ AHS, TURN (RT) ON DUPONT DR, TURN (LT) ON TEAGUE ST, TURN (LT) ON COLUMBIA AVE, TURN (LT) ON YORK ST, TURN (RT) ON RUTLAND DR, STRAIGHT ONTO EAST PINE LOG RD, TURN (LT) ON POWDERHOUSE RD, TURN (LT) ON WHISKEY RD, TURN (LT) ON CITADEL DR, TURN (LT) ON CLEMSON DR, TURN (LT) ON FURMAN DR, TURN (LT) ON POWDERHOUSE RD, TURN (RT) ON WHISKEY RD, TURN (RT) ON OAK GROVE RD, TURNABOUT @ ATHOL AVE, TURN (RT) ON WHISKEY RD, STRAIGHT ONTO CHESTERFIELD ST, TURN (LT) ON COLUMBIA AVE, TURN (RT) ON LAURENS ST, TURN (LT) ON PLUNKETT AVE, TURN (LT) ON HAMPTON AVE, STRAIGHT ONTO CAMELLIA ST, STRAIGHT ONTO WIRE RD, TURN (RT) ON RUDY MASON PKWY, TURN (LT) ON MOSELEY RD, TURN (LT) INTO EAST AIKEN ELEMENTARY!!

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TURN (RT) ON SOUTH MEADOWS DR, TURN (LT) ON LONG CREEK RD, TURN (LT) ON SOUTH MEADOWS DR; TURN (RT) ON BAINBRIDGE DR, TURN (RT) ON HUNTER'S GLEN DR, TURN (RT) ON OLD DOMINION DR, TURN (LT) ON SHAKERAG RD, TURN (RT) ON ROLLING ROCK RD, TURNABOUT IN CUL-DE-SAC, TURN (LT) ON CHELTENHAM DR, TURN (LT) ON CITADEL DR, TURN (LT) ON RAMBLEWOOD DR, TURN (RT) ON DEEP RUN RD, TURN (LT) ON OLD DOMINION RD, TURN (RT) ON HUNTER'S GLEN RD, STRAIGHT ONTO CHUKKER CREEK RD, TURN (RT) INTO CHUKKER CREEK ELEM, TURN (LT) ON CHUKKER CREEK RD, TURN (LT) ON WHISKEY RD, TURN (RT) ON E. PINE LOG RD, TURN (RT) ON SOUTH AIKEN BLVD, TURN (RT) INTO KMS, TURN (RT) ON SOUTH AIKEN BLVD INTO SAHS, TURN (RT) ON E. PINE LOG RD, STRAIGHT ON RUDY MASON PKWY, STRAIGHT ON RUTLAND DR, TURN (LT) ON DUPONT DR, TURN (RT) INTO AHS!!

* 515 TALATHA CHURCH RD	6:05
* 157 BREWSTER'S WAY	6:20
* 250 BREWSTER'S WAY	6:22
* 764 CROSSROAD PARK DR	6:25
* 653 CROSSROAD PARK DR	6:30
* 324 TALATHA CHURCH RD	6:33
* CORNER OF CINNAMON DR & LAVENDER LN	6:34
* 2075 LAVENDER LN	6:36
* 1120 CINNAMON DR	6:40
* 1070 BRASHUM DR	6:43
* CORNER OF TALATHA CHURCH RD & VINE DR	6:44
* 171 DOMINION DR	6:45
* CORNER OF SOUTH MEADOWS BLVD & BERYL DR	6:47
* CORNER OF LONG CREEK RD & FLOWER BREAK RD	6:49
* CORNER OF SOUTH MEADOWS & EMERALD RIDGE RD	6:51
* CORNER OF BAINBRIDGE DR & WEYANOKA DR	6:52
* CORNER OF BAINBRIDGE DR & SUSSEX CT	6:55
* 322 SHAKERAGE DR	7:00
* 170 ROLLING ROCK RD	7:03
* 111 ROLLING ROCK RD	7:06
* CORNER OF OLD DOMINION RD & DEEP RUN RD	7:10

ROUTE # 24

TOMMY HOLLOWAY

KMS/ SAHS

ROUTE STARTS @ AHS, TURN (RT) ON DUPONT DR, TURN (LT) ON TEAGUE ST, STRAIGHT ON CHESTERFIELD ST, STRAIGHT ON WHISKEY RD, TURN (RT) ON BROOKHAVEN DR, TURN (RT) ON SPENCER DR, TURN (RT) ON EAST GATE DR, TURN (RT) ON BEDFORD PL, TURN (LT) ON LONGRIDGE LOOP, STRAIGHT ON BEDFORD PL, TURN (RT) ON EAST GATE DR, TURN (LT) TALL PINE DR, TURNABOUT IN CUL-DE-SAC, TURN (LT) ON EAST GATE, TURN (RT) ON SWEETBAY, TURN (LT) ON CYPRESS, TURN (LT) ON WOODSIDE PLANTATION DR, TURN (RT) ON HOLLEY LAKE CIR, TURN (LT) ON BURDEN LAKE, TURNABOUT @ MOCKERNUT CIR, TURN (LT) ON HOLLEY LAKE, TURN (LT) ON RED OAK, TURN (LT) ON LAUREL OAK TURN (LT) ON LIVE OAK, TURN (LT) ON SASSAFRAS RD, TURN (LT) ON WOODSIDE PLANTATION DR, TURN (LT) ON STEEPLECHASE, TURN (LT) ON FOXHOUND RUN, TURNABOUT IN CUL-DE-SAC, TURN (LT) ON STEEPLECHASE, TURN (LT) ON WEST PLEASANT COLLEN, TURNABOUT IN CUL-DE-SAC, TURN (RT) ON STEEPLECHASE, TURN (RT) ON WOODSIDE PLANTATION DR, TURN (LT) ON MAGNOLIA LAKE LN, TURN (RT) ON MAGNOLIA LAKE RD, TURNABOUT IN CUL-DE-SAC, TURN (LT) ON MAGNOLIA LAKE LN, TURN (LT) ON WOODSIDE PLANTATION DR, TURN (LT) ON MAIN GATE, TURN (LT) ON SILVER BLUFF RD, TURN (RT) ON SAVANNAH DR, TURN (RT) ON MOULTRIE DR, TURN (LT) ON HURON DR, TURN (RT) ON MOULTRIE DR, TURN (LT) ON LAKESIDE DR, TURN (LT) ON HARTWELL DR, TURN (LT) ON SILVER BLUFF RD, TURN (RT) ON HIDDEN HAVEN DR, TURNABOUT @ ARCTURUS DR, TURN (RT) ON SILVER BLUFF RD, TURN (LT) ON TOWN CREEK RD, TURN (LT) ON PLANTATION DR, TURN (LT) ON HUCKLEBERRY DR, TURN (LT) ON TOWN CREEK RD, TURN (LT) ON PARTRIDGE RD, TURN (RT) ON CASABA, TURN (RT) ON ALPINE DR, TURN (RT) ON CENTRAL SOUTH, TURN (RT) ON SILVER BLUFF RD, TURN (RT) ON DARIEN DR, TURN (LT) ON SUFFOLK DR, TURN (RT) ON GREENWICH DR, TURN (RT) ON GREENWICH DR AGAIN, TURN (LT) ON DARIEN DR, TURN (RT) ON SILVER BLUFF RD, TURN (RT) ON EAST PINE LOG RD, TURN (RT) ON SOUTH AIKEN BLVD, TURN (RT) INTO KMS, TURN (RT) ON SOUTH AIKEN BLVD INTO SOUTH AIKEN HIGH, TURN (RT) ON EAST PINE LOG RD, STRAIGHT ON RUDY MASON PKWY, STRAIGHT ON RUTLAND DR, TURN (LT) ON DUPONT DR, TURN (RT) INTO AHS!!

* CORNER OF SPENCER DR & HILLSBORO DR	6:50
* CORNER OF SPENCER DR & DOUBLE TREE	6:53
* CORNER OF BEDFORD PL & TRAVELLERS PL	7:00
* CORNER OF LONGRIDGE RD & BEDFORD PL	7:02
* CORNER OF BEDFORD PL & BERRINGER PL	7:04
* 157 TALL PINE RD	7:06
* CORNER OF EAST GATE DR & SWEETBAY CT	7:09
* CORNER OF CYPRESS ST & SWEET GUM LN	7:11
* 771 BURDEN LAKE RD	7:13
* CORNER OF BURDEN LAKE RD & MOCKERNUT CT	7:15

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* CORNER OF HOLLEY LAKE RD & HEMLOCK DR	7:17
* 204 RED OAK DR	7:19
* 109 LAUREL OAK DR	7:22
* 22 SASSAFRAS RD	7:24
* 187 FOXHOUND RUN	7:30
* 131 WEST PLEASANT	7:37
* 209 MAGNOLIA LAKE RD	7:40
* CORNER OF WOODSIDE PLANTATION DR & HEMLOCK DR	7:42
* CORNER OF SAVANNAH DR & MOULTRIE DR	7:44
* 1177 MOULTRIE DR	7:46
* CORNER OF HIDDEN HAVEN DR & ARCTURUS DR	7:48
* CORNER OF HUCKLEBERRY DR & BRANCHWATER RD	7:50
* 1631 PARTRIDGE RD	7:52
* 1759 PARTRIDGE RD	7:54
* 1820 ALPINE DR	7:56
* CORNER OF GREENWICH DR & GREENWICH DR	8:00
* 58 SUFFOLK DR	8:02

ROUTE # 25

ADDIE NEWKIRK

KMS/ SAHS

ROUTE STARTS @ CCE, TURN (RT) ON CHUKKER CREEK DR, TURN (RT) ON EQUINOX LOOP, TURN (RT) ON BIRD IN HAND, TURNABOUT IN CUL-DE-SAC, TURN (LT) ON EQUINOX LOOP, TURN (LT) ON CHUKKER CREEK RD, TURN (RT) ON WHISKEY RD, TURN (RT) ON DOMINION DR, CIRCLE AROUND, TURN (RT) ON MIDWAY CIR, TURN (RT) ON WHISKEY RD, TURN (LT) ON CROSBY RD, TURN (LT) ON TALATHA CHURCH RD, TURN (RT) ON CROSSROAD PARK DR, TURN (LT) ON BREWSTERS WAY, TURN (RT) ON CROSSROAD PARK DR, TURN (RT) ON TALATHA CHURCH RD, TURN (RT) ON CINNAMON DR, TURN (RT) ON LAVENDER LN, TURN (LT) ON WATSONIA DR, TURN (RT) ON TALATHA CHURCH RD, TURN (RT) ON BRASHUM DR, TURN (RT) ON SYCAMORE DR, STRAIGHT ONTO PINE HOLLOW DR, TURN (LT) ON BRASHUM DR, TURN (RT) ON TALATHA CHURCH RD, TURN (RT) ON WHISKEY RD, TURN (RT) ON EAST PINE LOG RD, TURN (RT) ON SOUTH AIKEN BLVD, TURN (RT) INTO KMS, TURN (RT) ON SOUTH AIKEN BLVD INTO SAHS, TURN (RT) ON E. PINE LOG RD, STRAIGHT ONTO RUDY MASON PKWY, STRAIGHT ONTO RUTLAND DR, TURN (LT) ON DUPONT DR, TURN (RT) INTO AHS!

* CORNER OF CHUKKER CREEK RD & ASHEPOO DR (1 ST)	7:09
* CORNER OF CHUKKER CREEK RD & ASHEPOO DR (2 ND)	7:10
* 116 BIRD IN HAND	7:12
* 1941A CHUKKER CREEK RD	7:14
* 171 DOMINION DR	7:16
* 168 MIDWAY CIR	7:18
* 128 MIDWAY CIR	7:20
* 383 TALATHA CHURCH RD	7:23
* 144 BRUSTER WAY	7:26
* 246 BRUSTER WAY	7:28
* 787 CROSSROADS DR	7:30
* 654 CROSSROADS DR	7:32
* CORNER OF CINNAMON DR & TALATHA CHURCH RD	7:36
* CORNER OF LAVENDER DR & CAMELLIE D	7:38
* CORNER OF LAVENDER DR & WATSONIA DR	7:40
* 1242 WATSONIA DR	7:42
* CORNER OF BRASHUM DR & WESSON DR	7:45
* 1070 WESSON DR	7:48
* CORNER OF TALATHA CURCH RD & VINE ST	7:50

ROUTE # 27

STEVEN LYNN

KMS/ SAHS

ROUTE STARTS @ EAE, TURN (RT) ON MOSELY RD, TURN (LT) ON OLD WAGENER RD, TURN (RT) ON REDDS BRANCH RD, TURN (LT) ON WAGENER RD, TURN (LT) ON MAIN DR, TURN (RT) ON KINTE AVE, TURN (RT) ON PINE, TURN (LT) ON MAIN DR, TURN (RT) ON WAGENER RD, STRAIGHT ON RICHLAND AVE, TURN (RT) ON YORK ST, TURN (LT) ON HAMPTON AVE, TURN (LT) ON NORTH CAROLINA AVE, TURN (LT) ON VAUCLUSE RD, TURN (LT) ON BARNWELL AVE, TURN (RT) ON MORGAN ST, TURN (LT) ON RICHLAND AVE, TURN (RT) ON CHESTERFIELD ST, STRAIGHT ON WHISKEY RD, TURN (LT) ON E. PINE LOG RD, TURN (RT) ON SOUTH AIKEN BLVD, TURN (RT) INTO KMS, TURN (RT) ON SOUTH AIKEN BLVD INTO SAHS, TURN (RT) ON E. PINE LOG RD, STRAIGHT ON RUDY MASON PKWY, STRAIGHT ON RUTLAND DR, TURN (LT) ON DUPONT DR, TURN (RT) INTO AHS!!

* CORNER OF MAIN DR & NICHOLSON DR	7:10
* CORNER OF MAIN DR & KINTE AVE	7:12
* CORNER OF HAMPTON AVE & ALLISON ST	7:25







http://maps.google.com/maps/place?hl=en&cp=11&gs_id=ln&xhr=t&gs_upl=&bav=on.2,or:r_gc.r_pw.,cf.osb&biw=1280&bih=... 1/9/2012

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

South Carolina Public Interest Foundation and
Edward D. Sloan, individually, and on behalf
of all others similarly situated,

Plaintiffs,

v.

South Carolina Department of Transportation,
and John V. Walsh, Deputy Secretary of
Transportation for Engineering,

Defendants.

IN THE CIRCUIT COURT

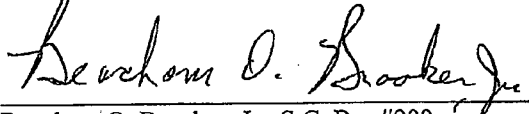
C.A. No. 2012-CP-40-1560

**DEFENDANT'S RETURN TO
PLAINTIFFS' MOTION FOR SUMMARY
JUDGMENT AND DEFENDANT'S
CROSS-MOTION FOR SUMMARY
JUDGMENT**

Defendant, the South Carolina Department of Transportation ("SCDOT" or the
"Department") respectfully submits this Return to Plaintiffs' Motion for Summary Judgment and
moves the Court, pursuant to Rule 56, SCRPC, for judgment in its favor dismissing the
Complaint.

Respectfully submitted,

SOUTH CAROLINA DEPARTMENT OF
TRANSPORTATION



Beacham O. Brooker, Jr., S.C. Bar #909

Assistant Chief Counsel

P. O. Box 191

Columbia, South Carolina 29202-0191

(803) 737-1347

brookerbo@scdot.org

Columbia, S.C.
August 31, 2012

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE CIRCUIT COURT
C.A. No. 2012-CP-40-1560

South Carolina Public Interest Foundation and
Edward D. Sloan, individually, and on behalf
of all others similarly situated,

Plaintiffs,

v.

South Carolina Department of Transportation,
and John V. Walsh, Deputy Secretary of
Transportation for Engineering,

Defendants.

**MEMORANDUM IN SUPPORT OF
DEFENDANT'S RETURN TO
PLAINTIFFS' MOTION FOR SUMMARY
JUDGMENT AND DEFENDANT'S
CROSS-MOTION FOR SUMMARY
JUDGMENT**

Defendant, the South Carolina Department of Transportation ("SCDOT" or the "Department") respectfully submits this memorandum in support of its return to plaintiffs' motion for summary judgment and in support of its cross-motion for summary judgment seeking dismissal of the complaint for failure to state facts constituting a cause of action. In support of its return and motion, defendant relies on the documents attached to plaintiffs' memorandum, the attached affidavit of John V. Walsh, and this brief.

NATURE OF THE CASE

Plaintiffs' have sued under the Uniform Declaratory Judgments Act, S.C. Code Ann. §§15-53-10, *et seq.*, for a determination that the Department's and defendant John V. Walsh's ("Walsh") actions in dispatching a three-man bridge inspection crew to inspect and report on the condition of three privately-owned bridges in the Woodside Plantation subdivision in Aiken at the request of a city councilman was contrary to certain provisions of the South Carolina Constitution requiring that public funds be spent only for public purposes and that the full faith

and credit of the State not be pledged for the benefit of a private individual, company, association, or corporation.¹

The Department's position is that the city's investigation of the bridges was a legitimate exercise of a municipality's plenary police power to insure the health, safety, and welfare of persons within its boundaries as well as its power to abate public nuisances; and that SCDOT is authorized to assist local governments in these activities within areas of its expertise under its primary enabling statute.² The exercise of these powers by the governmental entities involved were not arbitrary or unreasonable and should not be interfered with by the courts. S.C. Code, Const., art. VIII, §17 (Rev. 2009); Main v. Thomason, 342 S.C. 79, 535 S.E.2d 918 (2000).

Plaintiffs petitioned the Supreme Court for original jurisdiction in this case on the grounds that the matter was of great public importance and that early resolution was urgent to prevent the Department from continuing to expend public funds for private purposes during the pendency of a trial and appeals. The Supreme Court denied the petition on February 8, 2012. Thereafter the complaint was refiled in this Court.

STATEMENT OF FACTS

Defendant has no objection to plaintiffs' exposition of the background facts in this matter except to state that much of it is irrelevant and unnecessary to support a proper application of the governing law herein.

An Aiken City Councilman, Reggie Ebner, became concerned that the bridges within the Woodside Plantation subdivision, being wooden, were unsafe and posed a potential hazard to the public. (Exhibit A to plaintiffs' memorandum.) His email to Representative Tom Young, who

¹ S.C. Code Ann., Const. art. X, §§5, 11 (Rev. 2009).

² S.C. Code Ann., §57-3-110(7) (Rev. 2006)

represented the district that contained the subdivision, requesting assistance, was forwarded by Rep. Young to Walsh, SCDOT's Deputy Secretary for Engineering. (Id.) Senator Greg Ryberg, who also represents the area, communicated his support for the request. The city code contained no specifications for bridges but referred to State specifications for roads, nor did the city retain a standing bridge inspector or department for that purpose. Therefore, councilman Young, through the State representatives sought the help of SCDOT.

Thereafter, Walsh dispatched a three-man bridge inspection crew based in Orangeburg to inspect the bridges and issue a report that Walsh subsequently forwarded to Ebner, Young, and Ryberg. (Plaintiffs' Exhibit B.) The cost to the Department, representing the inspectors' time, has been estimated at \$1,400.

ARGUMENT

I. Plaintiffs lack standing.

Plaintiff, Edward D. Sloan, claims standing as a taxpayer and elector in South Carolina. No justification for the standing of the South Carolina Public Interest Foundation is set forth. Both plaintiffs lack standing to bring this suit. A taxpayer is not entitled to sue on that basis alone where he suffers in some indefinite way in common with people generally. Freemantle v. Preston, 398 S.C. 186, 193, 728 S.E.2d 40, 43 (2012). A private person may not invoke judicial power to determine the validity of executive or legislative action unless he has sustained, or is in immediate danger of sustaining, prejudice therefrom. Baird v. Charleston County, 333 S.C. 519, 530, 511 S.E.2d 69, 75 (1999). An exception is where the issue raised is of such public importance as to its resolution for future guidance. Id., 728 S.E.2d at 44. Moreover, a court should not confer standing where the issue in the suit is moot and thus academic and there remains no actual controversy. Sloan v. Dep't. of Transp., 379 S.C. 160, 167, 666 S.E.2d 236,

240 (2008). An exception to the mootness doctrine allows consideration where the issue is raised and is capable of repetition but generally will evade review. *Id.*, 379 S.C. at 68.

Here, Mr. Sloan's interest as a taxpayer with regard to the \$1,400 in wages of SCDOT's bridge crew is *de minimis*. See, Walsh affidavit, ¶ 4. He, nor the Foundation, have shown any personal prejudice. Moreover, plaintiffs have set forth no facts that the Department routinely expends public resources to benefit or improve private land. The Department has no interest or motivation in doing so, having minimal resources available to manage its own system. As stated by Mr. Walsh in his affidavit, only two inspections of non-publicly-owned bridges have occurred in the past 10 years. Both were at the request of local government officials. Walsh affidavit, ¶ 6. As set forth in our arguments in the ensuing sections, there is no statutory or constitutional infirmity in assisting local governments and responding to legitimate requests. If, in the future, SCDOT makes a decision to directly benefit a private landowner with public resources, such action may be enjoined at that time by a taxpayer suit or otherwise. The present issue is moot and academic and, in any event, presents no illegal act capable of repetition.

Finally, identical arguments of public importance and urgency were made to the Supreme Court in plaintiffs' petition for original jurisdiction. The Court's rejection of that petition indicates its disagreement with these arguments. See, SCACR Rule 245(a).

II. Plaintiffs' summary judgment motion should be denied because neither the Department nor Walsh engaged in any ultra vires act.

Plaintiffs' argument is that, because the bridges in Woodside Plantation are owned by the homeowners' association and not a governmental entity, the use of State resources to inspect them was an unconstitutional act under the constitution's prohibitions against using public funds for the benefit of private interests. Plaintiffs are incorrect in directing the Court to focus on the ownership of the bridges. Rather, as set forth in Section II. below, the inspection of the bridges

was legitimately within the City's police power and the decision by Walsh to assist it was well within the Department's enumerated powers to assist other governmental entities in areas of its expertise. S.C. Code Ann. §57-3-110.

Addressing plaintiffs' constitutional argument directly, the city's and the Department's actions were not for the "benefit" of the homeowners of Woodside Plantation. Rather, they were in furtherance of the government's responsibilities to insure the health, safety, and welfare of the public at large and to abate a potential public nuisance. The government often enters private property for this purpose. See, S.C. Code Ann. §31-15-20 (Municipalities may enter and demolish unsafe buildings); Richards v. City of Columbia, 227 S.C. 538, 88 S.E.2d 683 (1955); Main v. Thomason, supra. (Statute authorizing neighboring property owners to enter adjoining property to repair their buildings not unconstitutional.) All municipalities in South Carolina are given the authority to abate nuisances. S.C. Code Ann. §5-7-30 (Rev. 2004). It is difficult to see any "benefit" to the bridge owners flowing from the actions of the two governmental entities involved. The city, upon a finding that the bridges were unsafe and presented a hazard to the travelling public, would be within its powers to close them, condemn them, or cause the homeowners and their association to replace them at their expense.

The foregoing is sufficient to distinguish the factual situation in this case from those underlying the two Attorney General opinions plaintiffs cite in their memorandum. In his Aughtry opinion³, the Attorney General opined that the constitution would be violated by the use of county funds to scrape private roads or driveways. In the Ramsey opinion⁴, the removal of a storm drain to accommodate the construction of a new building by a church implicated the

³ C. Dennis Aughtry, Esquire, 190 WL 599297 (June 4, 1990)

⁴ The Honorable Wayne C. Ramsey, 2005 WL 469070 (Feb. 3, 2005)

unconstitutional expenditure of public funds for a private benefit. Here, the motivation was the general safety and welfare of the public, not to benefit or improve private property.

III. The complaint should be dismissed because the actions of the City and of the Department were within the confines of their respective enabling statutes and neither abused its discretion.

The City of Aiken has adopted a subdivision ordinance pursuant to the South Carolina Local Government Comprehensive Planning Act of 1994. S.C. Code Ann. §§ 6-29-310, *et seq.* The statement of legislative intent for the Land Planning – Land Development article of that enabling Act, § 6-29-1120, cites among the purposes of the regulation (2) to assure the timely provision of required streets, utilities, and other facilities and services to new land developments; and (3) to assure the adequate provision of safe and convenient traffic access and circulation, both vehicular and pedestrian, in and through new land developments.

Additionally, Section 5-7-30 of the S.C. Code of Laws contains the general grant of powers to municipalities in South Carolina. The language of that statute authorizes municipalities to exercise powers with in relation to, *inter alia*, roads, streets, and any other subject necessary for the “security, general welfare, and convenience of the municipality or for preserving the health, peace order, and good government in it ...” This broad grant of power to municipalities is only limited by the constitution or general law of the State. Hospitality Ass’n. of South Carolina, Inc. v. County of Charleston, 320 S.C. 219, 464 S.E.2d 113 (1995). As mentioned in the foregoing Section, the constitution declares that such laws be liberally construed.⁵

⁵ The provisions of this Constitution and all laws concerning local government shall be liberally construed in their favor. Powers, duties, and responsibilities granted local government subdivisions by this Constitution and by law shall include those fairly implied and not prohibited by this Constitution. S.C. Code Ann., Const., art. VIII, §17 (Rev. 2009).

The land development statute and the municipal powers statute are delegations of the State's police power to municipalities to regulate for the health, safety and general welfare of the public. Courts will not interfere with the enforcement of regulations designed for the protection of health, welfare and safety of citizens unless they are determined to be unreasonable. Main v. Thomason, *supra*. Moreover, the municipal powers act enables cities and towns to abate nuisances. A dangerous bridge certainly qualifies for that category. Even in the absence of such express delegation, some governmental entity--if only the General Assembly itself--would be able to abate a public nuisance. Morison v. Rawlinson, 193 S.C. 25, 7 S.E.2d 635 (1940).

Regarding the Department, the General Assembly has included among the statutory powers and duties conferred on the Department of Transportation:

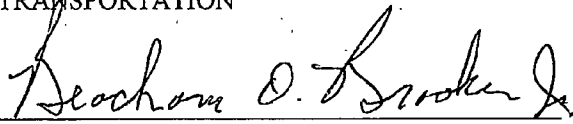
(7) instruct, assist, and cooperate with the agencies and departments, and bodies politic, and legally constituted agencies of the State in street, highway, traffic, and mass transit matters when requested to do so, and, if requested by such government authorities, supervise or furnish engineering supervision for the construction and improvement of roads and bridges, provided such duties do not impair the attention to be given the highways in the state highway system;

S.C. Code Ann. § 57-3-110. Through the forgoing statute, the legislature has conferred discretion upon the Department as to when it will assist local governments. Absent a clear abuse of discretion, the courts should defer to those decisions. Gamble v. Williamsburg Co. Sch. Dist., 305 S.C. 288, 290, 408 S.E.2d 217, 218 (1991). Many governmental functions in the State are centralized. That is the reason for the existence of the State Department of Education. S.C. Code Ann. §59-5-10 (Rev. 2004). It would make little sense for each of the 278 municipalities in South Carolina to each retain its own bridge inspection crew. Here, the Department properly responded to a request from City of Aiken officials and representatives for assistance in an area of the Department's expertise. The City had authority to make the request and the Department had authority to respond to it.

CONCLUSION

The Court should deny plaintiffs standing to sue because neither have a particularized interest in the subject matter. The acts of both the City and the Department were pursuant to their duly delegated powers. They were taken for a legitimate public purpose and did not represent the expenditure of public funds for the benefit of a private person or entity. Absent a capricious or arbitrary exercise of the discretionary power by the Department (which plaintiffs' have not shown), the Court should not interfere with the exercise of discretion in a non-judicial field by an appropriate government agency. Cole v. Manning, 240 S.C. 260, 125 S.E.2d 621 (1962). The Court should deny plaintiffs' motion for summary judgment, grant the Department's motion for the same and dismiss the complaint.

SOUTH CAROLINA DEPARTMENT OF
TRANSPORTATION



Beacham O. Brooker, Jr., S.C. Bar #909

Assistant Chief Counsel

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brookerbo@scdot.org

Columbia, S.C.
August 31, 2012

THE STATE OF SOUTH CAROLINA,
In The Supreme Court

South Carolina Public Interest Foundation and Edward D. Sloan, Jr., individually, and on behalf
of all others similarly situated, Petitioners,

v.

South Carolina Department of Transportation, and John V. Walsh, Deputy Secretary of
Transportation for Engineering, Respondents.

Case No.

AFFIDAVIT OF JOHN V. WALSH

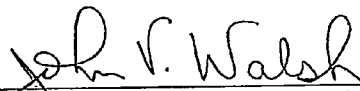
John V. Walsh, being first duly sworn, deposes and states as follows:

1. I am the Deputy Secretary for Engineering for the South Carolina Department of Transportation.
2. On July 13, 2011, Representative Tom Young forwarded me an email from Reggie Ebner, City of Aiken Council, wherein Mr. Ebner requested the Department's assistance in reviewing certain bridges in the Woodside Plantation Development in Aiken. Exhibit 1. Mr. Ebner noted that the bridges are in the City and that the City did not have a bridge department nor standards for bridges.
3. Thereafter, at my instruction, the bridge inspection crew from the Department's District 7 which encompasses Aiken County conducted an inspection and issued a report on three bridges in the subdivision on the Department's standard form. I forwarded copies of the inspectors' report to Messrs. Ebner and Young as well as to Senator Greg Ryberg who had also expressed an interest in the matter. Exhibit 2 and Exhibit to the Affidavit of Edward D. Sloan, Jr.
4. We have estimated the cost to the Department of this service to be \$1,400 which represents the employee costs of the three-man crew that conducted the inspection.

Affidavit of John V. Walsh
January 20, 2012

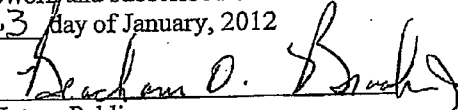
5. The Department conducts bridge inspections on a two-year cycle both of bridges on the State Highway System and other publicly-maintained bridges. In the last cycle, we inspected 10,234 bridges on the State system and 1,194 bridges maintained by local governments.
6. To my knowledge, in the past 10 years, the Department has conducted two inspections of bridges that were not owned and maintained by public authorities. The first was a 2006 inspection of the bridge to Fripp Island that local authorities had requested the Department accept into its system for maintenance. We declined to accept the bridge. The second instance was the request that is the subject of the petition herein.

Further affiant saith naught.



John V. Walsh, Deputy Secretary for Engineering,
SCDOT

Sworn and subscribed before me this
23 day of January, 2012



Notary Public
My commission expires: Dec. 31, 2021

Watson, Clem

From: Walsh, John
Sent: Tuesday, July 19, 2011 5:17 PM
To: Watson, Clem (WatsonJC@dot.state.sc.us)
Subject: FW: Woodside Road Issues-Bridges
Attachments: WS Road Issue-Bridges 7-12-11.pdf

Please discuss this with me. I need to get some bridges reviewed for safety /loading purposes.

Thanks

John Walsh, PE
Deputy Secretary for Engineering
SCDOT

Telephone 803.737.7900
Fax 803.737.5053
walshjv@scdot.org

*CHECK LOAD
SAFETY (G-RAX)*

*COMMUNICATE W/ EBNER
CC: Tom Young*

From: Tom Young [mailto:tyoung@tomyounglaw.com]
Sent: Wednesday, July 13, 2011 11:56 AM
To: Walsh, John
Cc: reggieebner@bellsouth.net
Subject: FW: Woodside Road Issues-Bridges

☐ - GO FORWARD - ONE TIME ONLY

John:

My constituent Reggie Ebner tried to send this and thinks it came back. He asked me to forward. Thank you.

Tom Young

From: Reggie Ebner
To: Tom Young Jr.
Sent: Wed Jul 13 08:36:01 2011
Subject: Fw: Woodside Road Issues-Bridges
Tom,

Please forward to John Walsh. I get a failed delivery message.

Reggie

From: Reggie Ebner
Sent: Wednesday, July 13, 2011 8:19 AM
To: Walsh John
Subject: Fw: Woodside Road Issues-Bridges

Resend due to delivery failure-

From: Reggie Ebner
Sent: Wednesday, July 13, 2011 8:03 AM
To: Walsh John
Cc: Young Tom
Subject: Woodside Road Issues-Bridges

Mr. John Walsh,

As you are aware, Representative Tom Young and I have been working together to resolve road issues in Woodside Plantation Development in Aiken SC. Woodside Plantation currently has approximately 4000 residents and will grow to approximately 8000 residents. Over the last several years, a number of citizens in this community have worked with the City of Aiken, Developer and Property Owners Association to achieve safe, dependable roadways, but have not achieved success.

The following information is for SCDOT to review and advise a path forward for bridges located in this development.

Attachments A, B, C, D and E are attached for background information.

I. Wooden Bridges

1. Attachment A-2, item A- states the developer/contractor is responsible to the City for infrastructure.
2. Attachment B-2, item 1-states that SCDOT is wholly responsible for bridges in the state system. (Note that bridges are in the City and the City does not have a bridge department nor standards for bridges)
3. Attachment D-1 requires culverts vs. wooden bridges.
4. Attachment B-4 states-REG 49-207(C)(4) states "Additions, deletions, or other revisions to sealed documents shall not be made unless such changes are sealed, dated and signed by the licensee who made the revisions or under whose directions and control said revisions are made." (Note that proper documentation has not be brought forth for the change from culverts to wooden bridges.)
5. Attachment E-1 is a picture of one of the wooden bridges and culverts installed in the roads.
6. Attachment C-1 item A and C-3 item A state that "We could find no documents for compaction". Wooden bridges are located on Steeplechase and Grassy Creek lane. Attachment E-2 shows a typical road cross section over a sewer line. Compaction test were not performed on bridge approaches nor any road ways since the late 1990's.
7. Attachment A-2, item C implies that the property owners association are required to follow city ordinances and state statues.
8. Infrastructure in Woodside is use by all government agencies to provide services to citizens.
9. It is my personal understanding the City of Aiken and is responsible for infrastructure installation in Woodside Plantation.
10. Path forward:
 - 7 If SCDOT approval and quality control of the wooden bridges cannot be established, request roads be installed as designed with culverts.
 - 7 If SCDOT has approved the installation and quality control of the wooden bridges, request is to verify installation meets SCDOT bridge specifications and safety requirements.

II. Concrete Bridge

-
1. Concrete bridge installed on Spaulding Bridge Road in Woodside phase III, section 8, Crescent Point as shown on site drawings.
 2. Design for bridge is on drawings S-1 thru S-5, by Moore and Associates, dated 7/7/06, M&A Job 060045.
 3. No approvals from any government agency on these construction drawings
 4. Personal request to review quality report, pile driving test reports, concrete test and compaction reports for installation have not been granted.
 5. Path Forward:
 - 7 SCDOT will need to determine if concrete bridge can be certified for use.
 - 7 If concrete bridge is certified, verify safety requirements for use and construction of bridge approaches are to specification.

Please contact me if you need more information or to set up a meeting.

Once your review is complete, I propose a meeting to discuss the findings and any corrections that need to be made with the appropriate parties.

Thanks in advance for your assistance,

Reggie Ebner
PE TX#36726

City of Aiken Councilman for District 4
165 Foxhound Run
Aiken, SC 29803
803-642-6787
reggieebner@bellsouth.net



South Carolina
Department of Transportation

September 22, 2011

The Honorable Reggie Ebner
City of Aiken Councilman
165 Foxhound Run
Aiken, South Carolina 29803

Re: Woodside Plantation Bridge Inspection in Aiken County

Dear Councilman Ebner:

As a follow up to your request, our bridge inspection crews inspected the wooden bridge structures inside the Woodside Plantation. Enclosed is a summary and result of their inspection. The report is the format that SCDOT uses to inspect all of our bridges and utilizes the reporting criteria established by FHWA.

The bridges are all timber and are in good condition with just some minor problems noted in the reports. Timber is a very decorative and resilient material under controlled environmental and loading conditions. However, the ability to absorb impact from overweight vehicles which exceed the design loading will diminish this property as the loading cycles continue. Our staff did not identify any weight restrictions signs for the bridges. If the bridges have not been load rated, it is recommended that the appropriate owner of the bridges have them rated and post appropriate signage for vehicles using the bridges.

It should also be noted that the safety rails in place are essentially decorative and provide no significant ability to redirect traffic from a collision or to provide protection to pedestrians.

I hope that you find the enclosed material beneficial for your constituents.

Sincerely,

John V. Walsh, P.E.
Deputy Secretary for Engineering

JVW:mbw

Enclosure

cc: J. C. Watson, Chief Engineer for Operations
Jim Feda, Director of Maintenance
Jo Ann Woodrum, District Engineering Administrator
File: DSE/JCW



Post Office Box 191
Columbia, South Carolina 29202 0191

Phone: (803) 737-2314
TTY: (803) 737-3870

AN EQUAL OPPORTUNITY
AFFIRMATIVE ACTION EMPLOYER
EXHIBIT 2

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

South Carolina Public Interest Foundation
and Edward D. Sloan, Jr., individually,
and on behalf of all others similarly situated,

Plaintiffs,

v.

South Carolina Department of Transportation,
and John V. Walsh, Deputy Secretary
of Transportation for Engineering,
Defendants.

IN THE CIRCUIT COURT

C.A. NO. 2012-CP-40-1560

**Plaintiff's Reply Memorandum
in Support of Motion for
Summary Judgment and in
Opposition to Defendants'
Cross Motion for Summary Judgment**

NOW COME the Plaintiffs, South Carolina Public Interest Foundation and Edward D. Sloan, Jr., by their undersigned attorney, and submit this Reply Memorandum in Support of Motion for Summary Judgment and in Opposition to Defendants' Cross Motion for Summary Judgment.

Plaintiffs first would show to the Court that Plaintiffs possess standing as taxpayers. Second, the SCDOT's dedication of public resources to private endeavors of private entities a matter of great public importance that warrants this Court's granting of public importance standing to the Plaintiffs.

Third, Plaintiff attaches an Aiken Bridge Inspection Investigation Report dated October 12, 2011 from the DOT's Office of the Chief Internal Auditor ("OCIA") ("Auditor's Report") to demonstrate further that there is no genuine issue of material fact, and Plaintiffs are entitled to judgment as a matter of law.

STATEMENT OF FACTS

On July 13, 2011, Reggie Ebner, a resident Woodside Plantation, in Aiken, SC sent an email to John Walsh, Deputy Secretary for Engineering at SCDOT, requesting DOT's assistance in a disagreement and potential legal dispute between Ebner and other members of the Home Owners Association of Woodside Plantation, on the one hand and developers of Woodside Plantation on the other (July 13 e-mail). Plaintiffs attach to this memo a better copy of Ebner's email and its attachments.

Ebner appears to have had two motives for his July 13 e-mail: (1) to obtain free engineering evidence (without having to engage the services of a private sector engineer who would have charged a fee) to support a claim against the developer and designer of Woodside Plantation for damages, and (2) to obtain SCDOT's commitment to repair and maintain their three private wooden bridges with State funds.

The July 13 e-mail alleged three engineering or construction flaws related to bridges in this private, gated community: (1) the unauthorized substitution of wooden bridges for specified concrete bridges requiring expensive maintenance by the HOA of Woodside Plantation; (2) the road failure over the sewer pipe, requiring expensive repairs by the HOA; and (3) defects in a concrete bridge requiring expensive repairs by the HOA. (See July 13 e-mail, Attachments A, B, C, D, and E). Ebner made the request to SCDOT without any evident knowledge or involvement of the Aiken City Council. SCDOT, contrary to its own long-standing policy, provided a professional engineering inspection and report to Ebner for his private dispute, without any cost or fee whatsoever.

As a matter of background, Ebner, a City Councilman for the City of Aiken, had earlier written to the City of Aiken asking, "What government entity is the Woodside

Property Owners Association responsible to for the well being of its citizens?" (July 13 e-mail, Attachment A-1). City officials replied to Ebner that Woodside Plantation Property Owners Association, Inc. was "responsible to its shareholders, not a governmental entity" (July 13 e-mail, Attachment A-2).

Ebner also sent questions to his State Representative, Tom Young about these issues. He said he wanted answers that "could be used in future legal proceedings" (July 13 e-mail, Attachment B-1). He asked, "What government agency is responsible for design approval, construction inspection, safety requirements and final approval for bridges in located in South Carolina?" (July 13 e-mail, Attachment B-1).

Representative Young told Ebner that the "bridges in question are NOT on the state system" (capitalization in original), and "the Department is not responsible for maintaining these structures" (July 13 e-mail, Attachment B-2).

Instead of engaging a private sector structural engineer, and Ebner, ignoring the answers he had received, attempted to enlist the help of his Representative and Senator to pressure the SCDOT into inspecting and reporting on the wooden bridges, even though they are on private property in a gated community. Ebner requested, "If SCDOT approval and quality control of the wooden bridges cannot be established, request roads be installed as designed with culverts" (July 13 email). He further requested, "If SCDOT has approved the installation and quality control of the wooden bridges, request is to verify installation meets SCDOT bridge specifications and safety requirements." *Id.*

Finally, as to a concrete bridge in Woodside Plantation, Ebner requested, "SCDOT will need to determine if concrete bridge can be certified for use. If concrete

bridge is certified, verify safety requirements for use and construction of bridge approaches are to specification.” *Id.*

He further requested, “Once your review is complete, I propose a meeting to discuss the findings and any corrections that need to be made with the appropriate parties.”

Id.

In summary, Ebner was asking the State to pay for the inspection and evaluation of these privately owned bridges. If the evaluation indicated a problem, he planned to use legal or political pressure to require the Developer or the City to replace the wooden bridges with metal culverts and to repair the concrete bridge and its approaches (July 13 email). He was trying to use the SCDOT as his unpaid expert witness.

His Representative and Senator passed along his request and appeared to endorsed his request to the SCDOT for the publicly financed inspection and report, and put political pressure on the SCDOT to inspect and report on these privately owned bridges, at public expense under the false suggestion that public school buses passed over these bridges. The affidavit of Edward D. Sloan, Jr., attached to Plaintiffs earlier memo, established that school buses did not pass over these bridges (Sloan Affidavit and exhibits).

After the SCDOT completed its inspection and made its report to Ebner and the legislators, the Commission of the DOT’s Office of the Chief Internal Auditor (“OCIA”) investigated the propriety of SCDOT’s actions in using public funds for inspection of privately owned bridges. The Auditor issued an Aiken Bridge Inspection Investigation Report dated October 12, 2011 (“Auditor’s Report”) (attached). The investigation stemmed from concerns of SCDOT employees who warned Chief Engineer for Operations Clem Watson that the inspection of these bridges in a private gated community was

wrong. The Department acknowledged, “These bridges were not on the state’s system. Inspection staff also had to *create fake bridge ID numbers* because the bridges were off system” (Auditor’s Report) (emphasis added).

OCIA researched the law and confirmed with SCDOT’s Chief Legal Counsel “that SCDOT has no obligation to inspect bridges on private property” (Auditor’s Report). OCIA interviewed various SCDOT personnel under the Chief Engineer for operations. “Without any reservation, *all personnel were certain the activity was wrong*, stated that they *expressed reluctance to their supervisor*, and knew it would later resurface because it was *against established policy*” (Auditor’s Report) (emphasis added). Nevertheless, the Defendants ordered the investigation to proceed. The report concludes that Defendants decided to go forward with the inspection because school buses used the roads (Auditor’s Report).

OCIA determined that the request for inspection “came from a city councilman but *not from the City of Aiken*” (Auditor’s Report) (emphasis added). Furthermore, [OCIA] found that the councilman [Ebner] is a resident of Woodside Plantation” (Auditor’s Report). OCIA also determined that “no bus driver or citizen had complained to the school district about the bridges” (Auditor’s Report). OCIA further determined that the Defendants did not seek SCDOT legal department’s clarification on the issue (Auditor’s Report). Finally, OCIA stated, “There is also the possibility that SCDOT could be called as an expert witness for the plaintiff without any compensation if the property owners Association decides to sue the developer of the private gated community” (Auditor’s Report).

LEGAL DISCUSSION

I. PLAINTIFFS POSSESS STANDING.

Defendants argue at some length that Plaintiffs do not possess taxpayer standing to address illegal expenditures by the SCDOT. On the contrary, South Carolina courts have long recognized the right of a taxpayer to bring an action to contest an illegal government expenditure of taxpayer funds.

Perhaps the most analogous case is *Sloan v. School District of Greenville County*, 342 S.C. 515, 537 S.E.2d 299 (Ct. App. 2000). In that case, Mr. Sloan challenged the school district's unlawful expenditure of taxpayer funds to build three schools, without competitive sealed bidding as the School District Procurement Code required. The Circuit Court dismissed the case for lack of standing. Mr. Sloan appealed, and the Court of Appeals reversed. In doing so, the Court of Appeals reviewed the history of taxpayer standing in South Carolina at great length. In light of the Defendants' arguments against taxpayer standing in the case at bar, Plaintiffs respectfully suggest that the Court of Appeals' extended discussion is especially appropriate. The Court ruled as follows:

Sloan argues the trial court erred in holding he lacked standing to challenge the District's award of the contracts.

A fundamental prerequisite to institute an action is the requirement that the plaintiff have standing. *Blandon v. Coleman*, 285 S.C. 472, 330 S.E.2d 298 (1985). "Standing is 'a personal stake in the subject matter of a lawsuit.'" *Newman v. Richland County Hist. Preserv. Com'n*, 325 S.C. 79, 82, 480 S.E.2d 72, 74 (1997) (quoting *Bailey v. Bailey*, 312 S.C. 454, 458, 441 S.E.2d 325, 327 (1994)). In *Florence Morning News, Inc. v. Building Comm'n*, 265 S.C. 389, 218 S.E.2d 881 (1975), the South Carolina Supreme Court held:

A private person may not invoke the judicial power to determine the validity of executive or legislative action unless he has sustained, or is in danger of sustaining, prejudice therefrom. "(I)t is

not sufficient that he has merely a general interest common to all members of the public.’

Id. at 398, 218 S.E.2d at 884-85 (emphasis added) (quoting *Ex parte Levitt*, 302 U.S. 633, 634, 58 S.Ct. 1, 82 L.Ed. 493 (1937)). Deciding the plaintiffs in *Florence Morning News* lacked standing, the Supreme Court specifically noted they did not “sue as taxpayers.” *Id.* at 398, 218 S.E.2d at 885.

In the case at bar, Sloan is not maintaining this action as a “private person,” nor is he maintaining it merely as a “member of the public.” Sloan has pursued this action as a taxpayer of Greenville County.

In *Mauldin v. City Council*, 33 S.C. 1, 11 S.E. 434 (1890), the South Carolina Supreme Court examined the issue of taxpayer standing. [FN2] In *Mauldin*, taxpayers challenged the purchase of an electric plant by the city council as *ultra vires*, claiming the purchase increased their tax burden. *Id.* at 15, 11 S.E. at 434. The Court explained how taxpayers differ from other members of the general public and how taxpayers suffer harm from *ultra vires* acts. *Id.* at 18-21, 11 S.E. at 435-36. The *Mauldin* court stated:

FN2. In *Mauldin*, the Supreme Court held that operation of certain utilities by cities and towns would be *ultra vires*. After *Mauldin*, the South Carolina Constitution was amended to allow cities and towns to operate water systems. See *Berry v. Weeks*, 279 S.C. 543, 309 S.E.2d 744 (1983) (explaining history of constitutional provisions relating to waterworks).

The injury charged as the result of the acts complained of is a private injury in which the tax-payers of the county . . . are the individual sufferers, rather than the public. The people out of the county bear no part of the burden; nor do the people within the county, except the tax-payers, bear any part of it. It is therefore an injury peculiar to one class of persons, namely the tax-payers of the county

Id. at 20, 11 S.E. at 436 (quoting *Newmeyer v. Missouri & Miss. R.R. Co.*, 52 Mo. 81 (1873)). The Court held the taxpayers were “not the whole public, but comparatively a small part of it.” *Id.* at 18, 11 S.E. at 435. The taxpayers “constitute a class specially damaged by the alleged unlawful act,” and therefore have “a special interest in the subject-matter of the suit, distinct from that of the general public.” *Id.* at 19, 11 S.E. at 436 (quoting *Mayor and City Council of Baltimore v. Gill*, 31 Md. 375, 394 (1869)).

A taxpayer’s standing to challenge unauthorized or illegal governmental acts has been repeatedly recognized in South Carolina. In *Sligh v. Bowers*, 62 S.C. 409, 40 S.E. 885 (1902), taxpayers of a school district challenged

the school district's plan to relocate a school building. The taxpayers alleged "all expenditures of the public money [on the new school] are without lawful authority." *Id.* at 411, 40 S.E. at 886. The taxpayers' standing to challenge the allegedly illegal expenditures was not in question, but the South Carolina Supreme Court, quoting the United States Supreme Court, held:

This is an unlawful use of the public funds, which the court, in the exercise of its equitable powers, will enjoin. In *Crampton v. Zabriskie*, Mr. Justice Field used this language: "Of the right of resident taxpayers to invoke the interposition of a court of equity to prevent an illegal disposition of the moneys of the county ... there is at this day no serious question."

Id. at 413, 40 S.E. at 887 (citation omitted) (quoting *Crampton v. Zabriskie*, 101 U.S. 601, 609, 25 L.Ed. 1070 (1879) [FN3]).

FN3. Recently, in *United States v. City of New York*, 972 F.2d 464 (2nd Cir.1992), the court stated, "[M]unicipal taxpayer standing has ancient roots in our jurisprudence." *Id.* at 470 (citing *Crampton*, 101 U.S. at 609).

In *Kirk v. Clark*, 191 S.C. 205, 4 S.E.2d 13 (1939), a bondholder sued the County Board of Commissioners and the Treasurer of Chesterfield County to enjoin the misapplication and diversion of tax funds collected for the payment of his bonds. Although the plaintiff had standing as a bondholder, the South Carolina Supreme Court stated, "The principle is firmly settled in this State that a taxpayer may maintain an action in equity, on behalf of himself and all other taxpayers, to restrain public officers from paying out public money for purposes unauthorized by law." *Id.* at 210, 4 S.E.2d at 15.

In *Brown v. Wingard*, 285 S.C. 478, 330 S.E.2d 301 (1985), the plaintiff taxpayers sued the Mayor and City Council of Greenwood for illegally reimbursing expenses incurred at a convention. The defendants questioned the taxpayers' standing to bring the action. Holding the taxpayers had standing, the Supreme Court confirmed that taxpayers "have an interest in seeing that city officials disburse funds in a lawful manner." *Id.* at 480, 330 S.E.2d at 302.

Sloan v. School District of Greenville County, 342 S.C. 515, 518-21, 537 S.E.2d 299, 301-02 (Ct. App. 2000).

In the last fifteen years, the Supreme Court's jurisprudence of public importance standing and the standing of a South Carolinian to challenge unconstitutional actions by State officers has developed and expanded and been recognized repeatedly. *South Carolina Public Interest Foundation v. Harrell*, 378 S.C. 441, 663 S.E.2d 52 (2008); *Sloan v. Department of Transportation*, 379 S.C. 160, 666 S.E.2d 236 (2008); *Sloan v. Hardee*, 357 S.C. 495, 640 S.E.2d 457 (2007); *Cornelius v Oconee County*, 369 S.C. 531, 633 S.E.2d 492 (2006); *Sloan v. Department of Transportation*, 365 S.C. 299, 618 S.E.2d 876 (2005), *Sloan v. Wilkins*, 362 S.C. 430, 608 S.E.2d 579 (2005); *Sloan v. Sanford*, 357 S.C. 431, 593 S.E.2d 470 (2004); *Sloan v. Greenville County*, 356 S.C. 531, 590 S.E.2d 338 (Ct. App. 2003); *Sloan v. School District of Greenville County*, 342 S.C. 515, 537 S.E.2d 299 (Ct. App. 2000); *Baird v. Charleston County*, 333 S.C. 519, 511 S.E.2d 69 (1999); *Newman v. Richland County Historic Preservation Commission*, 325 S.C. 79, 480 S.E.2d 72 (1997).

Although Plaintiff cited all these cases in the Complaint, paragraph 6, Defendants mention *only one case* in this long line of recent cases (Defendants Return, pp. 3-4). No Respondent has made a motion to argue against precedent, and they have given the Court no reason to depart from this strong line of precedent, upon which this Court can properly grant standing to Plaintiffs.

Defendants quote *Freemantle v. Preston*, a case where a citizen brought an action seeking to invalidate a severance agreement between a county and its former county administrator, contending the approval of the severance agreement violated the common law and South Carolina's Freedom of Information Act (FOIA). *Id.* at 398 S.C. 186, 193, 728 S.E.2d 40, 43 (2012). This challenge to the SCDOT's dedication of public funds to

private endeavors is entirely distinguishable from *Freemantle*. In *Freemantle*, the Supreme Court ruled that the citizen lacked standing pursuant to the public importance exception to the general standing requirements to challenge the validity of a severance agreement between a county and its former county administrator. The Court ruled that because citizen sought monetary damages for himself in his common law causes of action, while claiming to represent the taxpayers of the county, his case directly conflicted with the purpose and spirit of the public importance exception; and the personnel choices of the county, even in the face of a seemingly excessive severance package, did not necessitate further guidance. *Freemantle* involved the disapproval of an individual citizen with the details of one former employee's private personnel matters.

This nexus between the public importance exception and the need for future guidance from the Court is invariably linked to a need for and entitlement to injunctive relief. That Appellant sought monetary damages for himself in his common law causes of action, while claiming to represent the taxpayers of Anderson County, directly conflicts with the purpose and spirit of the public importance exception. Moreover, the personnel choices of Anderson County, even in the face of a seemingly excessive severance package, do not necessitate further guidance. Thus, we affirm the circuit court's finding that this action does not warrant invocation of the public importance exception.

Id. at 192, fn.14).

In contrast, in the case at bar, neither Plaintiff is seeking monetary damages, and the matter at stake is far more important than the amount of an individual's severance contract. In this case, the SCDOT has violated the S.C. Constitution's prohibition against using public funds and resources for private purposes. Defendants provided a private individual and homeowner's association with professional engineering services to gather evidence to support their private legal claims although the evidence demonstrates that

they knew the illegality of their actions. The citizens of this State have a strong public interest in ensuring that State government does not violate the Constitution.

Defendants argue that because the Supreme Court denied Plaintiff's Petition for Original Jurisdiction, it ruled that Plaintiffs' claims are not of sufficient public importance to merit an exception to standing requirements. Yet, a ruling declining to consider a case in original jurisdiction at the Supreme Court does not indicate that it is not of sufficient public importance for purposes of standing. It indicates that the Supreme Court in its discretion did not wish to fast track that particular case. The standard for public importance standing includes (1) a need for future guidance on the subject matter; (2) and a benefit to all the citizens of the State or local government whose actions are being challenged. *Freemantle* at 197.

The Supreme Court recently rejected an argument similar to the Defendants' argument, based upon Article III, § 11 in *Anderson v. South Carolina Election Commission*, 397 S.C. 551, 725 S.E.2d 704 (2012). The Republican Party argued that the Supreme Court lacked jurisdiction to address the legal requirement that a candidate for the General Assembly file a Statement of Economic Interest. The Supreme Court disagreed.

The Republican Party claims this Court lacks subject matter jurisdiction over the legislative races because the General Assembly has exclusive authority over disputes involving legislative elections. South Carolina Const. Art. III, § 11 provides, "Each house shall judge of the election returns and qualifications of its own members." Accordingly, this Court has declined to opine on issues where the Constitution delegates authority to the General Assembly. *South Carolina Public Interest Found. v. Judicial Merit Selection Comm'n*, 369 S.C. 139, 632 S.E.2d 277 (2006). Here we are not asked to judge a disputed legislative election but rather to interpret a statute. ***The construction of a statute is a judicial function and responsibility.*** *JRS Builders, Inc. v. Neunsinger*, 364 S.C. 596, 614 S.E.2d 629 (2005). Accordingly, we reject the argument that this Court lacks subject matter jurisdiction in this case.

Id. 397 S.C. 551, 555, 725 S.E.2d 704, 706 (emphasis added).

Just as “the construction of a statute is a judicial function and responsibility,” so too, is the construction of a section of the Constitution. Just as the Supreme Court ruled that the plaintiffs in *Anderson* properly possessed standing and the Court possessed jurisdiction to interpret and apply the statute to members of the General Assembly, so also in the case at bar, this Court possesses jurisdiction to interpret the Constitutional prohibition on dual office holding and to apply it to members of the General Assembly.

The South Carolina Constitution Article X, § 5 requires that taxes (public funds) be spent for public purposes. Article X, § 11 proscribes the expenditure of public funds “for the primary benefit of private parties.” *State ex rel. McLeod v. Riley*, 276 S.C. 323, 329, 278 S.E.2d 612 (1981). S.C. Constitution, Article X, § 11 provides:

(t)he credit of neither the State nor of any of its political subdivisions shall be pledged or loaned for the benefit of any individual, *company, association, corporation*, or any religious or private education institution except as permitted by Section 3, Article XI of this Constitution.

Id. (emphasis added). The term “credit” has been construed as any “pecuniary liability” or “pecuniary involvement.” *Elliott v. McNair*, 250 S.C. 75, 156 S.E.2d 421 (1967). “[A]ll legislative action *must serve a public* rather than a private *purpose*.” *State ex rel. McLeod v. Riley* 276 S. C. 323, 328, 278 S.E. 2d 612, 615 (1981) (emphasis added).

The South Carolina Attorney General has issued two opinions that such expenditures for primarily private purposes are illegal. C. Dennis Aughtry, Esquire, 1990 WL 599297 (June 4 1990) (attached); The Honorable Wayne C. Ramsey, 2005 WL 469070 (Feb. 3, 2005) (attached). In the Aughtry opinion, the issue was whether the Richland County Council could expend public monies for the scraping of private roads or drive-

ways, where such scraping is primarily for private purposes. C. Dennis Aughtry, Esquire, 1990 WL 599297 (June 4 1990). The Attorney General concluded that such use would be illegal pursuant to South Carolina Constitution in Article X, § 5 and various State Supreme Court opinions. *Id.*

In the Ramsey opinion, the issue was whether the City of Gaffney could move a storm drain that was located on church property, and which drained only the church property. The Honorable Wayne C. Ramsey, 2005 WL 469070 (Feb. 3, 2005). The church wanted the drain moved to build a new building. Again, the Attorney General issued an opinion that such an expenditure must be primarily for public use, and in those circumstances, the expenditure would be primarily for private benefit. *Id.* Thus, the Attorney General concluded that the expenditure would be unconstitutional. Accordingly, the critical inquiry in determining constitutionality under Art. X, § 5 is whether an expenditure primarily serves a *public purpose*.

A legislative determination of a public purpose is entitled to some deference. A court will not overrule that judgment absent the clearest of evidence. In this case, there is no legislative determination that the inspection of private bridges fulfills a public purpose. This inspection contravened the standard practices of the DOT, which presumably fulfill the legislative intent. Absent some legislative determination, the language of the Constitution would control: "The credit of . . . the State . . . shall [not] be pledged . . . for the benefit of any . . . association." S.C. Constitution, Art. X, § 11. Similarly, Art. X, § 5 states that any tax "shall distinctly state the *public purpose*."

The factual record establishes that the bridge inspections in the case at bar were *not for a public purpose*, even though the public might have benefited incidentally. Art.

X, § 5 requires that the main benefit be public, rather than for some private entity. An individual member of City Council of Aiken (who lived in the private gated community)—not the City itself—requested that the SCDOT spend public funds to inspect privately built, privately owned bridges, in his own private, gated community (**Exhibit A**). In addition, only a single State Representative and a single State Senator—not the entire General Assembly—endorsed the request.

In response to this political pressure, Defendants SCDOT and Walsh ordered SCDOT inspectors to inspect three privately built, privately owned bridges on private property in a private, gated community in Aiken County, in violation of Article X, §§ 5 and 11 of the South Carolina Constitution (Auditor's Report).

Defendants asserted as a justification for the inspections of the private bridges that the public school busses for the School District of Aiken County traverse the bridges, and therefore inspections fulfill a public purpose. The approved bus routes published on the official website for the School District of Aiken County demonstrate that no public school bus on any official route traverses the three private bridges at issue (Affidavit of Edward D. Sloan Jr., Exhibit C, Published Bus Routes).

Although federal law may require states to inspect "all highway bridges on *public* roads" (23 USC § 151; 23 CFR § 650.307 emphasis added), federal law does not require such inspections of *private* bridges on private property, nor does South Carolina law authorize such inspections.

CONCLUSION

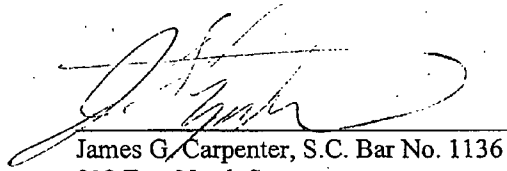
Because the inspection of these private bridges did not serve a public purpose, sufficient to justify the use of public funds to perform services on private property, the inspection and expenditures were illegal and unconstitutional.

WHEREFORE, Plaintiffs pray the Court:

1. To declare that the SCDOT's inspection and reports on of three privately built, privately owned bridges on private property in a private, gated community violates South Carolina Constitution Article X, §§ 5 and 11;
2. To grant Plaintiffs their costs and attorneys' fees under S.C. Code Ann. § 15-77-300 ff.; and
3. To grant such other and further relief as the Court deems just and proper.

September 16, 2012

Respectfully submitted,
THE CARPENTER LAW FIRM, P.C.



James G. Carpenter, S.C. Bar No. 1136
819 East North Street
Greenville, SC 29601
Tel. (864) 235-1269
Fax (864) 331-3083
Attorney for the Plaintiffs

JULY 13, 2011 E-MAIL

Watson, Clem

From: Walsh, John
Sent: Tuesday, July 19, 2011 5:17 PM
To: Watson, Clem (WatsonJC@dot.state.sc.us)
Subject: FW: Woodside Road Issues-Bridges
Attachments: WS Road Issue-Bridges 7-12-11.pdf

Follow Up Flag: Follow up
Due By: Wednesday, July 20, 2011 8:30 AM
Flag Status: Completed

Please discuss this with me. I need to get some bridges reviewed for safety /loading purposes.

Thanks

John Walsh, PE
Deputy Secretary for Engineering
SCDOT

Telephone 803.737.7900
Fax 803.737.5053
walshjv@scdot.org

From: Tom Young [mailto:tyoung@tomyounglaw.com]
Sent: Wednesday, July 13, 2011 11:56 AM
To: Walsh, John
Cc: reggleebner@bellsouth.net
Subject: FW: Woodside Road Issues-Bridges

John:

My constituent Reggie Ebner tried to send this and thinks it came back. He asked me to forward. Thank you.

Tom Young

From: Reggie Ebner
To: Tom Young Jr.
Sent: Wed Jul 13 08:36:01 2011
Subject: Fw: Woodside Road Issues-Bridges
Tom,

Please forward to John Walsh. I get a failed delivery message.

Reggie

From: [Reggie Ebner](#)
Sent: Wednesday, July 13, 2011 8:19 AM
To: [Walsh John](#)
Subject: Fw: Woodside Road Issues-Bridges

-----Resend due to delivery failure-----

From: Reggie Ebner
Sent: Wednesday, July 13, 2011 8:03 AM
To: Walsh, John
Cc: Young, Tom
Subject: Woodside Road Issues-Bridges

Mr. John Walsh,

As you are aware, Representative Tom Young and I have been working together to resolve road issues in Woodside Plantation Development in Aiken SC. Woodside Plantation currently has approximately 4000 residents and will grow to approximately 8000 residents. Over the last several years, a number of citizens in this community have worked with the City of Aiken, Developer and Property Owners Association to achieve safe, dependable roadways, but have not achieved success.

The following information is for SCDOT to review and advise a path forward for bridges located in this development.

Attachments A, B, C, D and E are attached for background information.

I: Wooden Bridges-----

1. Attachment A-2, item A- states the developer/contractor is responsible to the City for infrastructure.
2. Attachment B-2, item 1-states that SCDOT is wholly responsible for bridges in the state system. (Note that bridges are in the City and the City does not have a bridge department nor standards for bridges)
3. Attachment D-1 requires culverts vs. wooden bridges.
4. Attachment B-4 states-REG 49-207(C)(4) states "Additions, deletions, or other revisions to sealed documents shall not be made unless such changes are sealed, dated and signed by the licensee who made the revisions or under whose directions and control said revisions are made." (Note that proper documentation has not be brought forth for the change from culverts to wooden bridges.)
5. Attachment E-1 is a picture of one of the wooden bridges and culverts installed in the roads.
6. Attachment C-1 Item A and C-3 item A state that "We could find no documents for compaction". Wooden bridges are located on Steeplechase and Grassy Creek lane. Attachment E-2 shows a typical road cross section over a sewer line. Compaction test were not performed on bridge approaches nor any road ways since the late 1990's.
7. Attachment A-2, item C implies that the property owners association are required to follow city ordinances and state statues.
8. Infrastructure in Woodside is use by all government agencies to provide services to citizens.
9. It is my personal understanding the City of Aiken and is responsible for infrastructure installation in Woodside Plantation.
10. Path forward:
 - 7 If SCDOT approval and quality control of the wooden bridges cannot be established, request roads be installed as designed with culverts.
 - 7 If SCDOT has approved the installation and quality control of the wooden bridges, request is to verify installation meets SCDOT bridge specifications and safety requirements.

II. Concrete Bridge

1. Concrete bridge installed on Spaulding Bridge Road in Woodside phase III, section 8, Crescent Point as shown on site drawings.
2. Design for bridge is on drawings S-1 thru S-5, by Moore and Associates, dated 7/7/06, M&A Job 060045.
3. No approvals from any government agency on these construction drawings
4. Personal request to review quality report, pile driving test reports, concrete test and compaction reports for installation have not been granted.
5. Path Forward:
 - ? SCDOT will need to determine if concrete bridge can be certified for use.
 - ? If concrete bridge is certified, verify safety requirements for use and construction of bridge approaches are to specification.

Please contact me if you need more information or to set up a meeting.

Once your review is complete, I propose a meeting to discuss the findings and any corrections that need to be made with the appropriate parties.

Thanks in advance for your assistance,

Reggie Ebner
PE TX#36726

City of Aiken Councilman for District 4
165 Foxhound Run
Aiken, SC 29803
803-642-6787
reggieebner@bellsouth.net

ATT: A-1

September 8, 2010

To: Roger LeDuc

From: Reggie Ebner
165 Foxhound Run
Aiken, SC 29803
Tele-803-642-6787

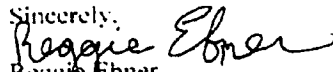
Subject: Woodside Road Issues-SC Freedom of Information Request #2

Dear Roger,

This is a SC Freedom of Information Request in relation to infrastructure installed in Woodside.

- A. What government entity is the Developer/contractor responsible to for infrastructure installation with the exception of common areas?
- B. What government entity is responsible for the installation of dams and repair of dams?
- C. What government entity is the Woodside Property Owners Association responsible to for the well being of citizens?

Sincerely,


Reggie Ebner

Reggie Ebner

From: "Roger LeDuc" <RLeDuc@CityofAikenSC.gov>
To: "Reggie Ebner" <reggieebner@bellsouth.net>
Sent: Thursday, September 23, 2010 8:45 AM
Subject: FW: Reggie Ebner FOIA Request
Reggie,

In response to your request of September 8, 2010.

- A. The developer/contractor is responsible to the City for infrastructure installation such as water, sewer and storm drainage.
- B. The State of South Carolina is responsible for dam approval and inspection.
- C. See below

Roger

From: Ben Moore
Sent: Wednesday, September 22, 2010 5:21 PM
To: Roger LeDuc
Cc: Gary Smith; Richard Pearce; Larry Morris
Subject: FW: Reggie Ebner FOIA Request

Roger,

Below for your review is my proposed answer to question C of Reggie Ebner's FOIA request. The question was "What government entity is the Woodside Property Owner's Association responsible to for the well being of citizens?" My response is based on my research and Gary's suggested response.

Let me know your thoughts. I can send this separately or we can send along with our answers to A and B. My understanding is that we already knew what our response would to the first two questions.

Thanks,

Ben

Dear Mr. Ebner,

According to the below link from the South Carolina Secretary of State, Woodside Plantation Property Owners' Association, Inc. is a South Carolina nonprofit corporation. [Typically, a nonprofit corporation is responsible to its shareholders, not to a governmental entity. A nonprofit corporation may be subject to regulation by state agencies if it engages in certain activities. The Official Comment to §33-31-301 states, "Many nonprofit corporations are subject to regulation as a result of the nature of their activities. Hospitals, colleges, secondary schools and health maintenance organizations, for example, are subject to extensive regulation."

You or your attorney should request an opportunity to review a copy of this corporation's Bylaws in order to better understand the organizational structure of this corporation. The City of Aiken does not have any authority to review the actions taken by this corporation unless there is a violation of city ordinance or a state statute that the city is authorized to enforce.

9/27/2010

A-3

Thank you for your request and we hope this adequately answers your question.

<http://www.scsos.com/index.asp?n=18&p=4&s=18&corporateid=9852>

Thank you.

This copy of Arken e-mail message including any file attachments is intended for the use of the individual or entity to which it is addressed and may contain information that is privileged and/or confidential. If you are not the intended recipient, any dissemination, distribution, or copying of this communication is strictly prohibited. If you have received this communication in error, please notify the sender immediately by reply e-mail and delete or destroy all copies of this message and any file attachments. Thank you.

9/27/2010

Reggie Ebner

From: "Reggie Ebner" <reggieebner@bellsouth.net>
To: "Young, Tom" <tyoung@attorneyssc.com>
Sent: Monday, September 06, 2010 11:38 PM
Subject: Woodside Infrastructure Issues-Bridges
Tom,

Need some guidance on how to find out who is responsible for the design approval, construction inspection, safety requirements and final approval for bridges in the City of Aiken.

The City has advised me in writing they are not responsible for bridges since they do not have an approved inspector; however they have allowed three wooden bridges and one concrete bridge to be installed in Woodside. It appears that the Developer got the Woodside Property Owners Association to agree to install the wooden bridges

Key questions are

- 1 What governmental agency is responsible for design approval, construction inspection, safety requirements and final approval for bridges located in South Carolina?
- 2 Does the SCDOT allow construction of new wooden bridges on streets that are in constant use by citizens and government vehicles in cities?
3. Based on the fact that the original road design approved by the City of Aiken was to be culverts, can a non-governmental agency such as the Woodside Property Owners Association, make a change to an Engineer of Record stamped design?

Please advise what is the proper procedure to get technical answers to these questions that will could be used in future legal proceedings?

I will be glad to send a SC Freedom of Information letter if needed

It would be helpful to have the answers in hand by September 14th if possible

Thanks.

Reggie

9/27/2010

Reggie Ebner

From: "Tom Young" <tyoung@tomyounglaw.com>
To: "Reggie Ebner" <reggieebner@bellsouth.net>
Sent: Tuesday, September 14, 2010 8:19 AM
Subject: your questions -- follow up

Here is what I received last night from SCDOT in response to your questions.
I am attempting to contact someone at LLR this morning for number 3:

1. What governmental agency is responsible for design approval, construction inspection, safety requirements and final approval for bridges located in South Carolina?

For bridges on the state highway system, SCDOT would be wholly responsible, however, in this instance, the bridges in question are NOT on the state system. We believe these streets in the subdivision belong to the City of Aiken. SCDOT does inspect locally owned bridges 20-ft. or greater in length but the Department is not responsible for maintaining these structures.

2. Does the SCDOT allow construction of new wooden bridges on streets that are in constant use by citizens and government vehicles in cities?

For bridges located on the state highway system, SCDOT's current practice does not permit new highway bridges to be constructed using timber. SCDOT does however have bridges in the existing state highway system inventory that contain timber components. Locally owned bridges such as these could be timber depending on the requirements of the City.

3. Based on the fact that the original road design approved by the City of Aiken was to be culverts, can a non-governmental agency such as the Woodside Property Owners Association, make a change to an Engineer of Record stamped design?

We recommend that this question be directed to the South Carolina Department of Labor, Licensing and Regulation.

See LAST Page

Representative Tom Young
South Carolina House District 81
Aiken County
P.O. Box 651
Aiken, South Carolina 29802
Tel: (803) 649-0000
Fax: (803) 649-7005

www.reptomyoung.com

**** See Tom's website for weekly legislative updates ****

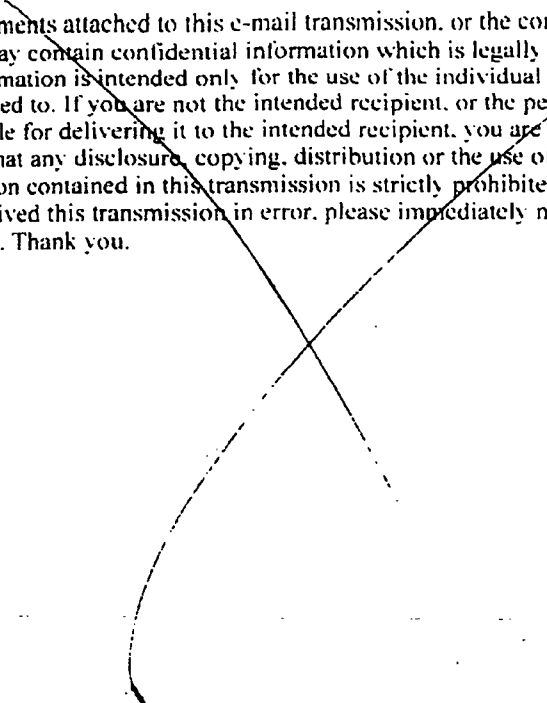
Confidentiality Notice

9/27/2010

B-3

Page 2 of 2

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9/27/2010

B-4

Reggie Ebner

From: "Tom Young" <tyoung@tomyounglaw.com>
To: "Reggie Ebner" <reggieebner@bellsouth.net>
Sent: Tuesday, September 14, 2010 10:35 AM
Subject: answer to number 3 of your questions
Reggie:

L.L.R sent me the below as an answer to number 3:

I believe the following Regulation applies to the situation outlined by Mr. Young:

Reg. 49-207(C)(4): "Additions, deletions, or other revisions to sealed documents shall not be made, unless such changes are sealed, dated and signed by the licensee who made the revisions or under whose directions and control said revisions were made."

Representative Tom Young
South Carolina House District 81
Aiken County
P.O. Box 651
Aiken, South Carolina 29802
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9/27/2010

C-1

July 26, 2010

To: Roger Leduc
City Manager
City of Aiken

From: Reggie Ebner
165 Foxhound Run
Aiken, SC 29803
Tele-803-642-6787

Subject: Woodside Road Issues-SC Freedom of Information Request

Dear Roger,

This is a SC Freedom of Information Request for infrastructure installed in Woodside. All information is in the public domain and required to meet specifications. Request is for either review of documents at the appropriate City Office or a copy for the following:

A. Documents for review required for compaction by City of Aiken Design Specifications: #7.36, 7.37, 9.33, 9.34, 20.2 and 26.3 for the infrastructure on the following streets:

1. West Pleasant Colony
2. Steeplechase
3. Grassy Creek Lane
4. Sea Grass Lane
5. Pink Dogwood Circle
6. Three Runs Creek Way
7. Highland Reserve Court
8. Foxhound Run
9. Spaulding Bridge Road
10. Common Wealth Way
11. Mockernut Circle

B. Copy of letter verifying change of design from culverts to wooden bridges on Grassy Creek Lane and Steeplechase. If have been approved, provide for review all testing documents for piles, abutments and bridge certification of use.

C. Copy of letter verifying design for repair of "Big Dig" on Foxhound Run was approved by appropriate government entity. Provide for review compaction documents as required by City of Aiken Design Standards as listed in "A". Also provide for review documentation for embankment construction in the roadway per section 19 of design specification.

C-2

- D. Copy of letter verifying approval of concrete bridge on Spaulding Bridge Road. If have approved, provide for review all documents for testing of piles, abutments and bridge certification of use.
- E. Provide statement of certification that asphalt used on the streets named in "A" meet or exceed state specifications.
- F. Provide statement of certification that the lake formed by the roadway dam located at the intersection of Plantation and West Pleasant Colony was approved for installation and dam is constructed per appropriate engineering standards.
- G. Provide statement verifying what entity is responsible for installation and inspection of code and ordinances per city, state and federal codes and specifications in common areas.
- H. Provide statement verifying what entity is responsible for installation and inspection of American Disabilities Act in relation to walkways/pathways.

Sincerely,

Reggie Ebner

Memorandum—City of Aiken

To: Roger LeDuc
From: Larry G. Morris, Public Works Director 
Date: August 27, 2010
Re: Ebner FOIA Request Woodside Roads

Due to the voluminous files on the Woodside Projects, it has required several days to go through all of the files listed in the letter dated 7-26-2010. The following are our findings:

- A) We could find no documents for compaction.
- B) An email to Al, then president of the WPPOA, and Melanie, director of the WPPOA, was sent on 12/14/2006 stating that I had no problem with the use of wooden bridges however recommending that the WPPOA have their engineer certify the weight limit on the bridge. A copy of the email is attached.
- C) The City did not certify the Fox Hound Run repair. The Woodside Development Company was instructed to obtain the services of an engineer to design and certify the repair. The City did not inspect the repair but again instructed the Development Company to obtain the services of an Engineer for the project.
- D) The City of Aiken does not have the engineering expertise to certify any type of structure. It is the responsibility of the Development Company to have their structural engineer inspect and certify any bridge construction.
- E) Asphalt tests are no in the file. No certification can be provided.
- F) The lake referenced was shown on the development plans. The City again does not have the expertise to inspect or certify structures such as dams.
- G) Work in the common areas does not fall under public works observation.
- H) Work on walkways on private roads does not fall under public works observation.

C-4 Jedd
Fila

Larry Morris

From: Larry Morris
Sent: Thursday, December 14, 2006 5:15 PM
To: Maine99@aol.com; mockernut@bellsouth.net
Cc: melanie@wppoa.com
Subject: RE: Wooden Bridges

Good Afternoon Al

I have no problem with their use. They will look better than concrete. The one on a slant will be an interesting design and installation. They do need to be designed for the concrete truck weight as we discussed earlier this week. My recommendation to the POA is require Woodside to have their engineer certify the weight limit so there are no problems with concrete trucks or moving vans in the future.

Larry

From: Maine99@aol.com [mailto:Maine99@aol.com]
Sent: Thursday, December 14, 2006 9:51 AM
To: Larry Morris; mockernut@bellsouth.net
Cc: melanie@wppoa.com
Subject: Wooden Bridges

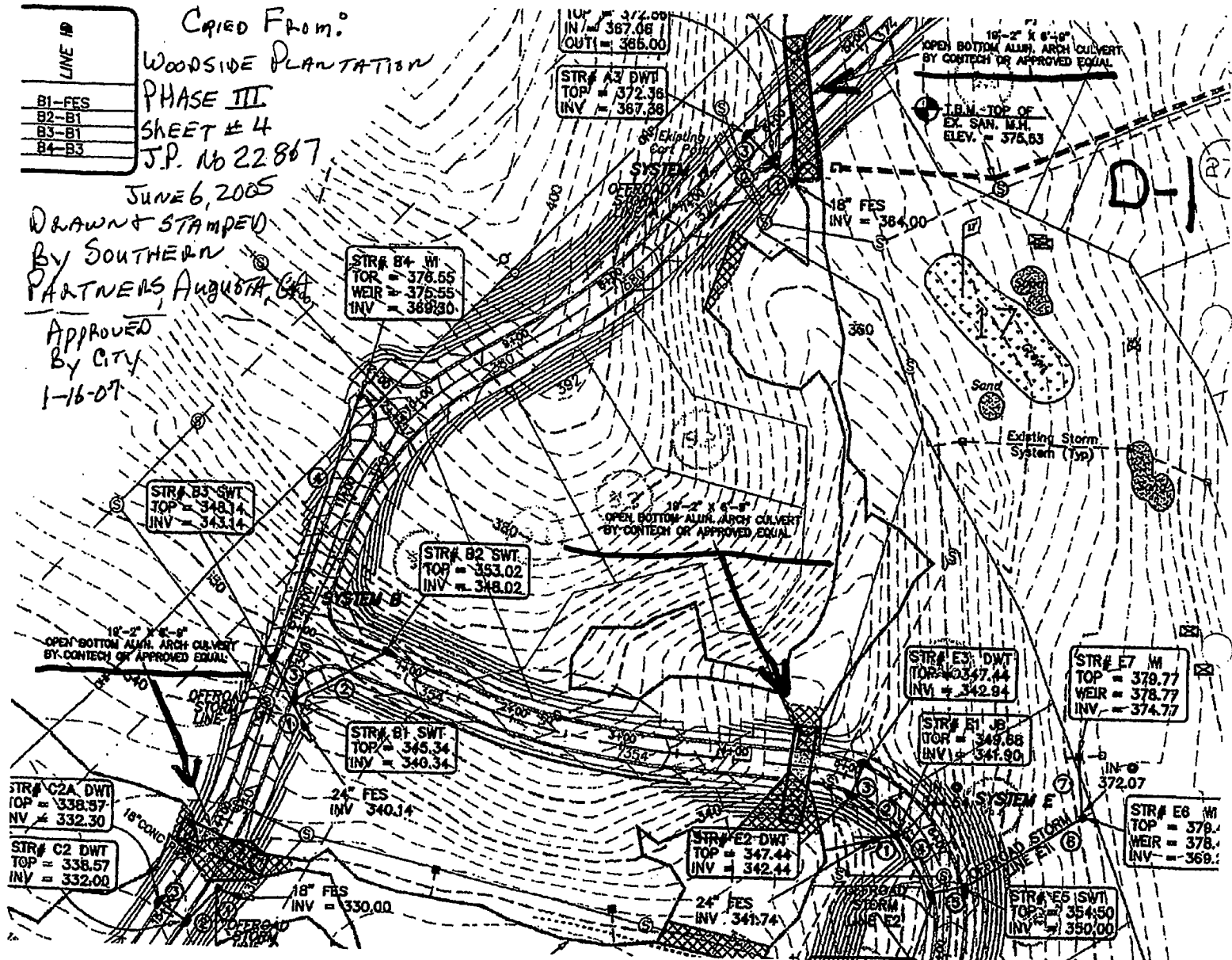
Larry,
Good morning, Kent Baldwin would like to move forward on placing contracts for the 3 bridges that we discussed. Knowing you will be leaving to visit your parents shortly for the holidays I would like to know if, at this time, you recommend the use of these wooden bridges or hold off?
Thanks,
Al

12/16/2006

LINE ID
B1-FES
B2-B1
B3-B1
B4-B3

CRIED FROM:
 WOODSIDE PLANTATION
 PHASE III
 SHEET # 4
 J.P. No 22867

JUNE 6, 2005
 DRAWN & STAMPED
 BY SOUTHERN
 PARTNERS, AUGUSTA, GA
 APPROVED
 BY CITY
 1-16-07



WOODEN BRIDGES NOT PER DESIGN
AND NOT ALLOWED PER STATE

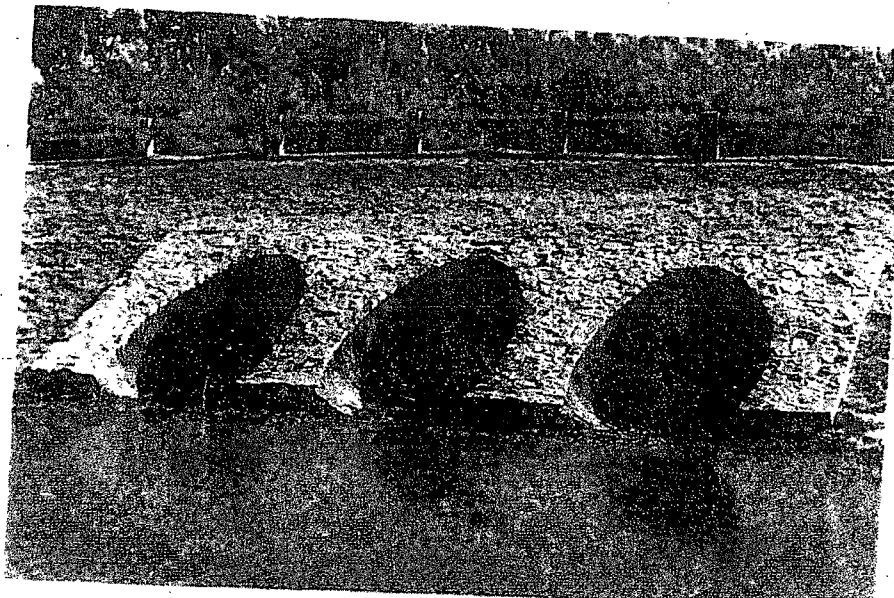
ATT

4-23-10

E-1



SHOULD BE CULVERTS AS PER DESIGN



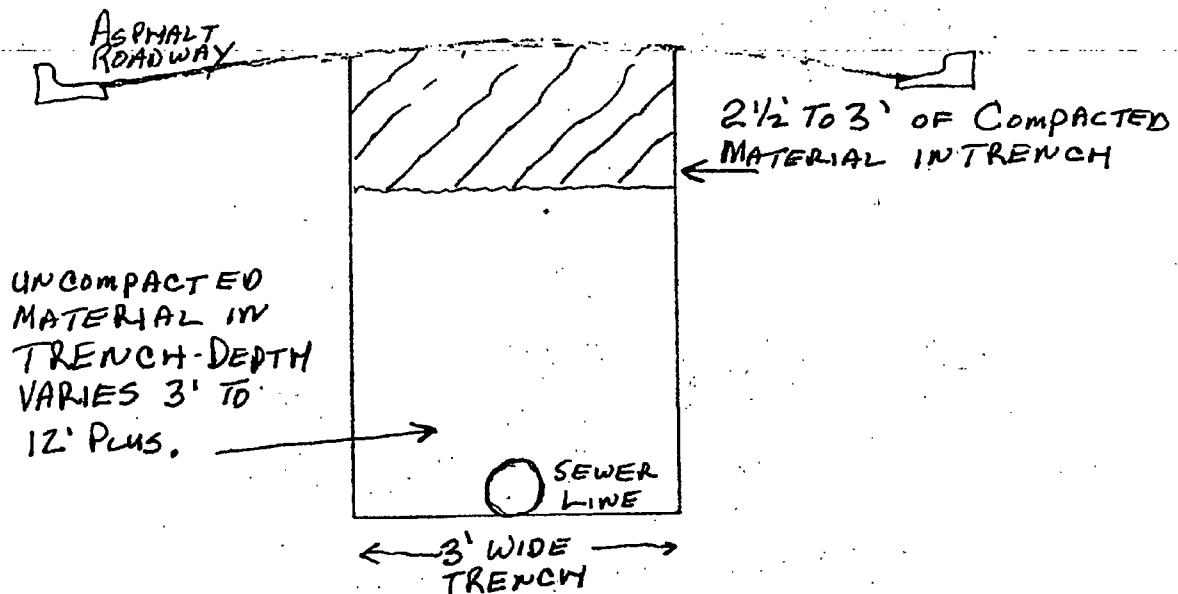
ATTACH: E-2

WOODSIDE ROAD ISSUES

TYPICAL ROAD SKETCH ON FOXHOUND RUN

THIS SKETCH BASED ON SOIL BORING AND COMPACTION TEST MADE
ON FOXHOUND RUN IN 2007 AFTER ROAD FAILURE OVER SEWER.

NOTE: BY OBSERVING OTHER STREETS CONSTRUCTED IN WOODSIDE,
BEGINNING IN 1999/2000, THIS TYPICAL ROAD SKETCH MAY APPLY TO
THE BASE AND SUBASE OF THESE ROADS.



End of document
March 5, 2008
RDE



Commission

Office of the Chief Internal Auditor

MEMORANDUM

To: SCDOT Commission Audit Committee
From: Robin Wilkes, Chief Internal Auditor *RW*
Date: October 20, 2011
Subject: Aiken Bridge Inspection Investigative Report

Attached is a report prepared after a thorough investigation of an issue reported to us by employees at the district level. This report has been provided to Secretary St. Onge for his use in determining if further action should be taken by him.

This report is considered confidential by us because it involves personnel issues and would only be provided to higher authorities who have a legal right to access such documents.

We will be glad to discuss our findings with you in executive session at the October 20 Audit Committee meeting.



Commission

OFFICE OF THE CHIEF INTERNAL AUDITOR

To: Secretary Robert St. Onge, Secretary of Transportation

From: Paul Townes, CPA- Deputy Chief Internal Auditor

Re: Aiken Bridge Inspection Investigation

Date October 12, 2011

On September 20, 2011, OCIA was informed of some issues that concerned an employee. One of these issues was the use of SCDOT employees to perform bridge inspection work on private property. Based upon this information, OCIA conducted an investigation, which included interviews of appropriate personnel and reviews of relevant documents. We found the following:

On August 18, 2011 Chief Engineer for Operations Clem Watson sent a request via email to District 7 DEA Jo-Ann Woodrum to coordinate the inspection of three bridges located in Woodside Plantation, a private gated community in Aiken, SC. These inspections were conducted and reports dated August 23, 2011 were sent to Deputy Secretary John Walsh. Prior to the emailed request from Mr. Watson, several conversations about the inspections occurred and some employees warned Mr. Watson that it was wrong to inspect privately owned bridges. Some employees indicated that they have received requests to do work on private property before and informed the requesting party that it was against policy. Mr. Watson discussed the concerns with Mr. Walsh but Mr. Walsh directed the inspections take place.

Since the bridges were off system, employees expressed confusion over which allotment code to use for recording the inspections. They were instructed to not use the federal charge code as these bridges were not on the state's system. Inspection staff also had to create fake bridge ID numbers because the bridges were off system.

OCIA researched applicable laws to determine if the inspections were proper. According to 23 CFR 650, SCDOT must inspect all highway bridges located on public roads. 23 USC 101 defines a public road as any road or street under the jurisdiction and maintained by a public authority and open to the public. We confirmed our interpretation of the law with SCDOT's Chief Legal Counsel, who stated that SCDOT has no obligation to inspect bridges on private property.

OCIA interviewed various personnel under the Chief Engineer for operations. Without any reservation, all personnel were certain the activity was wrong, stated that they expressed reluctance to their supervisor, and knew it would later resurface because it was against established policy. Both Mr. Watson and Mr. Walsh maintained there was a grey area.

Mr. Watson indicated that the request for the inspections came from a local politician who utilized SC Representative Tom Young to assist him in obtaining services from SCDOT on private property. Mr. Watson stated that Mr. Walsh determined from Representative Young that the bridges were located on private property but that the roads were used by school buses. Since buses were using the roads in a private development, Mr. Walsh and Mr. Watson concluded that the roads were public and that the inspections would be proper.

Mr. Walsh stated that he was contacted by a city councilman from Aiken via email in addition to Representative Young to determine who is responsible for ensuring infrastructure safety. Mr. Walsh assumed the City of Aiken was interested in taking over the roads within this private development and his impression was that the city wanted to know the condition of the bridges before a possible takeover. He stated that he considered the request for the inspections as one coming from a governmental entity. Also, he stated that safety of the children on the school buses was the reason he used his judgment to make the decision. He stated that he would probably do the same thing tomorrow.

OCIA investigated the request and found that it came from a city councilman but not from the City of Aiken. Furthermore, we found that the councilman is a resident of Woodside Plantation. OCIA contacted the City of Aiken and verified that the City of Aiken does not maintain or own the roads in Woodside Plantation. We found that on July 26, 2011 SCDOT personnel made a direct inquiry to the City of Aiken and verified that the roads and bridges were not city owned but private property. We also contacted the Engineering Department of the City of Aiken and inquired if there was any discussion of acquiring the roads. We were told there has been no discussion.

OCIA reviewed the website for Woodside Plantation and it clearly states under the safety tab that it is a gated community. The people we spoke to from the City of Aiken emphasized that if they acquired the roads, the gates would have to come down. Mr. Watson expressed some reservations once he became aware that the community was gated. Neither Mr. Watson nor Mr. Walsh checked with SCDOT Aiken Maintenance to get an understanding of the Woodside Plantation community before accepting the request.

OCIA contacted the Aiken County Public Schools and spoke with the bus transportation section. Both employees that we spoke to stated that no bus driver or citizen had complained to the school district about the bridges. In fact, the district has a protocol for suspending bus service if the route has safety issues. The district sends one representative with a representative from the SC Department of Education to inspect the safety issue. If an unsafe condition exists, the bus is withdrawn from the route. Therefore, the primary responsibility for the safety of buses is the school district not SCDOT.

During our discussions with Mr. Watson and Mr. Walsh, they both indicated that these inspections were in a grey area. They both indicated that the request and subsequent action by SCDOT were outside of the norm. We did not find where they sought the legal department's clarification on the grey area. Additionally, SCDOT has not verified with legal counsel whether liability exists to SCDOT. By issuing an inspection report, SCDOT may have incurred an exposure to a lawsuit as a defendant if something happens in the future even though the bridges are outside of its jurisdiction. There is also the possibility

that SCDOT could be called as an expert witness for the plaintiff without any compensation if the property owners association decides to sue the developer of the private gated community.

As stated earlier, we were informed during several interviews that employees did not want to perform the inspections because they felt it was wrong to inspect private property. They however complied with this request because it came from executive level management. Deviations from federal and state regulations must be avoided. Any deviations from standard department operations should be clearly justified to the employees performing the function to avoid SCDOT creating an ethical conflict for these employees.

1990 WL 599297 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

June 4, 1990

*1 1. Public funds may not be expended for private purposes, but may only be expended for public purposes. Thus, Richland County Council may not enact an ordinance which expends public funds primarily for a private purpose and may not provide for the scraping of private roads or driveways with public funds where such is primarily for a private purpose.

2. Our Supreme Court has concluded that the determination of what constitutes a public purpose is a decision for the legislative branch, in this instance, Richland County Council. Thus, Richland County Council must conclude that a particular expenditure of public funds is for a public purpose before such funds may be spent.

3. With respect to private road maintenance, an opinion issued during the administration of former Attorney General Daniel R. McLeod indicates that where a landowner reserves a right to revoke his dedication of road property to the public, the maintenance of such a road at public expense is unconstitutional because such would primarily serve a private purpose. Implicitly, this opinion also concluded that any such dedication should be irrevocable, in order for constitutional standards to be met.

4. Therefore, where driveways or roads are being scraped with the use of public funds, such must be for a public, not a private, purpose. Cases in other jurisdictions indicate that one way such may be done constitutionally is where the road property has previously been conveyed irrevocably by deed from the landowner to the county in the form of a dedication for public use. See, *Wine v. Boyar*, 33 Cal. Rptr. 787 (1963).

5. While we have not found any authorities rendered by our Supreme Court directly addressing the kind of ordinance being considered here, we have located an Order issued by the Honorable Jonathan McKown, dated October 22, 1984, which substantially deals with this question. Judge McKown held that roads should neither be built, nor maintained, on private property at public expense, unless certain stringent guidelines are followed, namely that there has been an irrevocable conveyance of such property by the landowner for public use; that such instrument is recorded in the county courthouse; and that there is a determination by the county that "the public benefit and use [is] substantial...." Judge McKown also held that roads should not be built "except in exceptional circumstances or [on a] bona fide emergency basis."

6. The Ordinance in question here appears to require a deed from the landowner to the county, together with certain other conditions, primarily that any scraping must be done as a means for allowing emergency and other county vehicles to get through. Of course, we would presume that if such a proposal is implemented, the county would insure that a particular property owner conveying property for public use, possessed title sufficient to grant such a conveyance.

7. Our research also indicates that there is authority in other jurisdictions which concludes that public safety alone represents a legitimate public purpose, and that where an ordinance designed to promote public safety provides for the maintenance of private roads or streets, such is valid. *Klink v. Monroe Tp.*, 436 A.2d 545 (1981). See also, 18 McQuillin, *Municipal Corporations*, § 53.44 at 246. Therefore, it could be argued that because Richland County, in this Ordinance, requires that scraping be done on roadways only for emergency vehicle passage, such a finding is sufficient to meet the public purpose in that it promotes public safety.

*2 We decline to follow these cases however, because, consistent with Judge McKown's Order referenced above, other authority suggests that a much stricter standard is preferable where the maintenance of roadways at public expense is involved. These cases in other jurisdictions suggest that in the enactment of an ordinance such as here, there must not only be a determination of a need to promote public safety, but that there also must be an irrevocable dedication of the private property to the public, before an ordinance meets the public purpose test. Here, Richland County, in its ordinance, requires both a determination of necessity for emergency vehicle passage, as well as a public dedication before a road may be scraped. Because both requirements are contained in the ordinance, a court would probably conclude that Richland County's determination of public purpose is constitutionally valid on its face. Moreover, based on Judge McKown's ruling, if Richland County, in its

acceptance of the dedication of a particular roadway, concludes that the public benefit in that instance is substantial, then the proposed ordinance would also be constitutional as applied in a given situation.

8. As is our policy, this Office comments upon the legal issues relevant here. Whether or not Richland County wishes to adopt the ordinance under consideration, as a matter of public policy, is entirely a matter for council to consider.

C. Dennis Aughtry, Esquire
Richland County Attorney

QUESTIONS:

May public funds be constitutionally expended by Richland County Council for the maintenance of private roads or driveways? Is the enclosed ordinance constitutional?

DISCUSSION AND CONCLUSION:

PROPOSED ORDINANCE

The proposed ordinance provides for the dedication of roads for scraping; the proposal states:

No work may be performed on any road not already maintained by the County unless such road be dedicated by recorded instrument to the public, and the following conditions are satisfied:

- 1) Such road is the only access for one or more property owners or residents and at least one of the properties to be accessed is used as a primary residence;
- 2) Emergency medical services, sheriff's department vehicles and other county vehicles cannot, in the lawful performance of their duties, gain full and immediate access to a residence unless road scraping is performed.

When such roads are dedicated and the above-cited conditions are noted, the Richland County Public Works department may perform only such work necessary to allow full and immediate access to the affected residences by emergency medical service, sheriff's department vehicles and other county vehicles.

Such proposal would amend Section 21-7 of the present Richland County Code.

Attached to the proposed ordinance were copies of forms proposed to be utilized in the dedication process. The first is entitled "Dedication of Roadway and Hold Harmless Agreement." The form would set forth the legal description of the property to be dedicated "unto the public for public use." The habendum clause states that Richland County would hold the dedicated roadway "for the benefit of the public" subject to specified terms and conditions. The form would be dated and signed by the property owner and chairman of county council and also by two witnesses each for the property owner and the county. Two probate forms, to be signed by witnesses to the parties' signatures and notarized, were also attached. Upon execution these documents would presumably be filed with the Richland County Register of Mesne Conveyances.

Constitutional Concern

*3 Article X, Section 5 of the Constitution of the State of South Carolina provides in relevant part that "[a]ny tax which shall be levied shall distinctly state the public purpose to which the proceeds of the tax shall be applied." This Office has opined on numerous occasions that use of county equipment on private property, within the context of Article X of the State Constitution, is generally prohibited. See Ops. Atty. Gen. dated September 30, 1987; June 11, 1975; January 9, 1976; October 26, 1977; February 10, 1975; September 12, 1975; December 9, 1975; March 12, 1979; and January 31, 1980.

Public Purpose

To determine what constitutes a public purpose, the reasoning found in *Anderson v. Baehr*, 265 S.C. 153, 217 S.E.2d 43 (1975), is relevant:

As a general rule a public purpose has for its objective the promotion of the public health, safety, morals, general welfare, security, prosperity, and contentment of all the inhabitants or residents, or at least a substantial part thereof. ...

Id., 265 S.C. at 162. To be a public purpose, the advantage to the public must be direct, not merely indirect or remote. *Caldwell v. McMillan*, 224 S.C. 150, 77 S.E.2d 798 (1953). The court in *Anderson* stated that each case must be determined on its own

merits, considering each situation.

This Office has never squarely addressed the situation where a property owner actually conveys by deed a piece of property for the public use. Thus, the situation is novel from a legal standpoint. To determine whether a public purpose exists in the situation you have referenced, it is necessary to examine the concept of dedication, who benefits, and the duty or responsibility of the political subdivision accepting the dedication. While I present the legal considerations as follows, I stress that it is ultimately a matter for Richland County Council to consider and determine that a public purpose exists and that road maintenance should be undertaken in a given situation. As our Supreme Court has stated, "[i]t is uniformly held by courts throughout the land that the determination of public purpose is one for the legislative branch." *Nichols v. South Carolina Research Authority*, 290 S.C. 415, 426, 315 S.E.2d 155 (1986). "The question of whether an Act [or in this instance an ordinance] is for a public purpose is primarily one for the legislature." *Park v. Greenwood County*, 174 S.C. 35, 41, 176 S.E. 870, 872 (1934).

Dedication

As stated in *Derby Heights, Inc. v. Gantt Water and Sewer District*, 237 S.C. 144, 116 S.E.2d 13 (1960),

Dedication is the intentional appropriation of land, or of an easement therein, for some proper public purpose. ... It is not a unilateral transaction; for its completion there must be acceptance by the public, of the property, for the particular purpose.

Id., 237 S.C. at 149-150. Furthermore,

"The essence of dedication is that it shall be for the use of the public at large. *** Properly speaking, there can be no dedication to private uses, nor for a purpose bearing an interest or profit in the land, as distinguished from general public uses. ..."

*4 "There is no such thing as a dedication between the owner and individuals. The public must be a party to every dedication. *** In short, the dedication must be made to the use of the public exclusively, and not merely to the use of the public in connection with a user by the owners in such measure as they may desire."

Safety Building & Loan Company v. Lyles, 131 S.C. 542, 544-45, 128 S.E. 724 (1922). A dedication for street purposes is a dedication to the public at large. *Chapman v. Greenville Chamber of Commerce*, 127 S.C. 173, 120 S.E. 584 (1923).

How dedication may be effectuated was discussed in *Anderson v. Town of Hemingway*, 269 S.C. 351, 237 S.E.2d 489 (1977):

[D]edication involves not only an offer to dedicate, but an acceptance thereof, either express or implied, by a public authority having power to pass upon the matter.

It is generally accepted that to constitute a valid dedication, there must not only be an intention on the part of the owner to dedicate a property to the public use, but that such intention must be manifested in a positive and unmistakable manner. It need not be made by deed or other writing, but may be effectually and validly made by acts or verbal declarations. It may also be implied from long use by the public of the land claimed to be dedicated.

Id., 269 S.C. at 353-54. Our court's statements appear to be in accord with the common law doctrine that "no particular formality is necessary to effect a dedication." 23 Am.Jur.2d Dedication § 27.

Examining the above-described documents in light of the foregoing general law as to dedication, it would appear on the face of the documents that the roadways subject of the dedication documents are being turned over by the landowner to the County for the benefit of the public. (Of course, in a given factual situation, it might be shown that such roadway was not open to the public, notwithstanding the documents to the contrary. Other questions would then arise in conjunction with that roadway which are not considered herein.) Such intent would be readily inferred from the plain, clear language in the documents. It is beyond argument that maintenance of a public road constitutes a public purpose for which public resources (funds, equipment, personnel, etc.) may be expended. I would also note that the ordinance under consideration requires that any scraping must be done for the passage of certain emergency vehicles.

Once a political subdivision has accepted a dedication of land for use as a street or roadway, that political subdivision has a duty to keep the street or roadway open, to maintain it in good repair. 26 C.J.S. Dedication § 55; *Harshbarger v. County of Jerome*, 107 Idaho 805, 693 P.2d 451 (1984); *United States Bung Mfg. Co. v. City of Cincinnati*, 73 Ohio. App. 80, 54 N.E.2d 432 (1943); *Sarty v. Millburn Township*, 28 N.J.Super. 199, 100 A.2d 309 (1953); *Miller v. Fowle*, 92 Cal. App. 2d 409, 206 P.2d

1106 (1949). Failure to do so could subject the political subdivision to liability. 26 C.J.S. Dedication § 55. The political subdivision would exercise its discretion as to the nature and extent of necessary repairs or maintenance.

Previous Opinion and Other Law

*5 In a previously-rendered opinion of this Office dated June 20, 1972, this Office examined the constitutionality of Florence County's use of public resources to maintain a dirt road leading to a chicken farm. The owner gave the county a revocable easement over this land for the purpose of maintaining the road for public use. The opinion stated:

Two methods of acquiring property for public roads are eminent domain and dedication. It has been stated, however, that the reservation of the right to revoke defeats the dedication. See McQuillin, *The Law of Municipal Corporations*, Dedication, Section 33.10 at page 658 (1964). Were it otherwise the property owner would receive the benefit of county maintenance since he may revoke the easement at will. It is the opinion of this office that such would be inconsistent with the constitutional prohibition against the use of public funds on private property.

This prior opinion only underscores more definitely the need for some action to be taken by the property owner which will leave no question that the road is being irrevocably conveyed by the landowner to the county for public use if public funds or resources are to be used for the maintenance thereof. See also Op. Atty. Gen. dated August 1, 1986 (public funds may be expended to pave a roadway leading to an industrial park, with agreement by the current property owner that the property will be dedicated to the public, in this case the State of South Carolina; essential to the conclusion of this opinion was the fact that industrial development clearly meets the public purpose test as stated in cases such as *Nichols*, supra).

There is authority in other jurisdictions which concludes that public safety alone represents a legitimate public purpose and that where an ordinance designed to promote public safety provides for the maintenance of private roads or streets, such is valid. *Klink v. Monroe Tp.*, 436 A.2d 545 (1981). See also, 18 McQuillin, *Municipal Corporations*, §§53.44 at 246. Therefore, it could be argued that because Richland County, in this ordinance, has mandated that scraping be done on roadways only for emergency vehicle passage, such a finding is sufficient in that it promotes public safety.

We decline to follow these cases, however, because other authority suggests that a much stricter standard is preferable where the maintenance of roadways at public expense is involved. These cases suggest that, in the enactment of an ordinance such as here, there must not only be a determination of a need to promote public safety or some other public purpose, but that there must also be an irrevocable dedication of the private property to the public, before an ordinance meets the public purpose test.

Opinion of the Justices, 560 A.2d 552 (Me. 1989) is a good example. There, a statute provided for the maintenance of private roadways. The legislature found that the maintenance of private roadways promoted public safety in that it insured "adequate access and egress for police, fire and emergency vehicles, as well as other vehicles traveling to and from those residences."

*6 The Court, nevertheless, ruled the statute unconstitutional because it did not promote a public purpose. The Court emphasized that the statute provided that the public "has no legal right of travel" on the roads. The Court warned that, without a public dedication, any such statute is unconstitutional.

Any possible consent by the private owners to the public's use of the road at most would arise only by inference from the absence, at the time of expenditure, of any barrier or sign "hav[ing] the effect of discouraging public travel." But even that questionable implicit consent could disappear at the whim of owners who subsequently put up a "no trespassing" sign or similar barrier. Any indirect public benefits derived from the proposed public expenditures upon private roads from which the public is or may be barred are outweighed by the public detriment.

560 A.2d at 555. It is apparent from the Court's citation of authorities in this case that the decision turns on the fact that the Legislature did not insure public access. Clearly, the Court was willing to give great deference to a legislative determination of public purpose, but was unwilling to approve any statute where public dedication was not provided for. Consistent with the idea that the "essence of dedication is that it shall be for the use of the public at large", one Court has stated,

[t]he distinguishing characteristic of a public way is that it is open to general public use, and it is the right to travel upon the street, and not the exercise of the right which makes the street public. Its character is not determined by the number of persons who actually use it; if it is open, it is immaterial that but few persons are in a position to make use of it, or that one person is most benefited by it... [T]he fact that the terminus of the dedicated street fails to connect with another public road, making of it a technical dead end, [does not] deprive it of its public character...

Measured by the foregoing standard the alley is clearly a public way and for a public purpose.

Dorris v. Hawk, 292 P.2d 417 (Okla. 1956).

While we have not found any authorities rendered by our Supreme Court directly addressing the kind of ordinance being considered here, we have located an Order issued by the Honorable Jonathan McKown, dated October 22, 1984, which substantially deals with this question. Judge McKown held that roads should neither be built, nor maintained, on private property at public expense, unless certain stringent guidelines are followed, namely that there has been an irrevocable conveyance of such property by the landowner for public use; that such instrument is recorded in the county courthouse; and that there is a determination by the county that "the public benefit and use [is] substantial...." Judge McKown also held that roads should not be built "except in exceptional circumstances or [on a] bona fide emergency basis."

*7 Here, Richland County, in its ordinance, requires both a determination of necessity for emergency vehicle passage, as well as a public dedication before a road may be scraped. Because both requirements are contained in the ordinance, a court would probably conclude that Richland County's determination of public purpose is constitutionally valid on its face. Moreover, based on Judge McKown's ruling, if Richland County, in its acceptance of a particular roadway, concludes that the public benefit in that instance is substantial, then the proposed ordinance would also be constitutional as applied in a given situation.

As is our policy, this Office comments upon the legal issues relevant here. Whether or not Richland County Council wishes to adopt the ordinance in question, as a matter of public policy, is entirely a matter for County Council.

Sincerely,

Charles W. Gambrell, Jr.
Deputy Attorney General

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Office of the Attorney General

State of South Carolina
February 3, 2005

*1 The Honorable Wayne C. Ramsey
Member
Gaffney City Council
P. O. Box 2109
Gaffney, South Carolina 29342

Dear Mr. Ramsey:

You have requested an opinion "about the City of Gaffney doing work on private property." You note that the Gaffney City Council has "had a request to move a storm drain that is located on church property." You indicate that "the current drainpipe only drains church property" and no other private property. You further state that "[n]o city street storm water goes into this system" and that "[t]he church wants the line moved so they can build a new building." You seek "an opinion on using taxpayer money to do this work that only benefits private property."

Law / Analysis

Of course, it is the policy of this Office to issue opinions to municipal or county councils as a body and not to a single member thereof. It is not clear from your letter as to whether you are requesting an opinion on behalf of the entire Town Council of Gaffney or simply as one member thereof. However, since we have addressed your question in numerous prior opinions, we will review these for you herein.

This office has repeatedly recognized that public funds must be used for public and not private purposes. See, e.g., Opinion of the Attorney General dated October 8, 2003 citing decisions of the South Carolina Supreme Court in Elliott v. McNair, 250 S.C. 75, 156 S.E.2d 421 (1967); Haesloop v. Charleston, 123 S.C. 272, 115 S.E.2d 596 (1923). In an opinion dated August 29, 2003, we advised that, "[t]he Due Process Clause of the Constitution (federal and state) requires that public funds must be expended for a public purpose." Moreover, Article X, Section 5 of the State Constitution requires that taxes (public funds) be spent for public purposes. While each case must be decided on its own merits, the notion of what constitutes a public purpose has been described by our Supreme Court in Anderson v. Baehr, 265 S.C. 153, 217 S.E.2d 43 (1975) as follows:

(a)s a general rule a public purpose has for its objective the promotion of the public health, safety, morals, general welfare, security, prosperity and contentment for all the inhabitants or residents, or at least a substantial part thereof... Legislation (i.e., relative to the expenditure of funds) does not have to benefit all of the people in order to serve a public purpose.

See also: WDW Properties v. City of Sumter, 342 S.C. 6, 535 S.E.2d 631 (2000); Nichols v. South Carolina Research Authority, 290 S.C. 415, 351 S.E.2d 155 (1986); Carll v. South Carolina Jobs-Economic Development Authority, 284 S.C. 438, 327 S.E.2d 331 (1985); Caldwell v. McMillan, 224 S.C. 150, 77 S.E.2d 798 (1953). An opinion of this office dated December 18, 2000 commented that the constitutional requirement of "public purpose... was intended to prevent governmental bodies from depleting the public treasury by giving advantages to special interests or by engaging in non-public enterprises." Furthermore, Article X, Section 11 of the State Constitution provides that:

*2 (t)he credit of neither the State nor of any of its political subdivisions shall be pledged or loaned for the benefit of any individual, company, association, corporation, or any religious or private education institution except as permitted by Section 3, Article XI of this Constitution.

This provision proscribes the expenditure of public funds "for the primary benefit of private parties." State ex rel. McLeod v. Riley, 276 S.C. 323, 329, 278 S.E.2d 612 (1981). The term "credit" has been construed as any "pecuniary liability" or "pecuniary involvement". Elliott v. McNair, supra.

In Nichols, the court established the following test to determine whether the "public purpose" requirement has been met:

(t)he Court should first determine the ultimate goal or benefit to the public intended by the project. Second, the Court should analyze whether public or private parties will be the primary beneficiaries. Third, the speculative nature of the project must be

considered. Fourth, the Court must analyze and balance the probability that the public interest will be ultimately served and to what degree.

318 S.E.2d at 163. In Bauer v. S.C. State Housing Authority, 271 S.C. 219, 256 S.E.2d 869 (1978), the Supreme Court warned that "(i)t is not sufficient that an undertaking bring about a remote or indirect public benefit to categorize it as a project within the sphere of public purpose."

Applying these general principles of constitutional law, we have recognized on numerous occasions that counties and municipalities cannot expand public funds or use equipment or employees to perform work on private property unless a public purpose can be demonstrated. See, e.g. Op. S.C. Atty. Gen., April 2, 1987 ["(t)his Office has opined on numerous occasions that county equipment and personnel ... may not be used for work on private property."]; Op. S.C. Atty. Gen., August 2, 1985 ["this Office has ruled on numerous occasions that public funds or other resources could not be used to perform work or otherwise improve private property."]; Op. S.C. Atty. Gen., January 9, 1976 [removing dead animals from private property is a proper public purpose for the health and safety of the community and is thus permissible under the State Constitution]; Op. S.C. Atty. Gen., Op. No. 3968 (February 10, 1975) [a statute authorizing public funds or equipment to be used on private property for no public purpose is invalid]; Op. S.C. Atty. Gen., February 26, 1971 [use of county prison labor on private property for no public purpose violates the State Constitution]; Op. S.C. Atty. Gen., August 18, 1967 [county may not use road machinery of county for private purposes].

Of course, church property is private property. See, Op. S.C. Atty. Gen., January 6, 1978 [church property is considered non-commercial private property].

The Supreme Court of Texas, in Ex Parte Conger, 163 Tex. 505, 357 S.W.2d 740, 742 (1962) stated the following with respect to the question of using public funds primarily for the benefit of a church:

*3 The complaint against Commissioner Conger was that by implied consent he allowed county-owned machinery to be used for the benefit of private parties in blading and scraping off two lots in the town of McCamey so that the members of a church would have a place to park their cars while attending religious services. The employee who did this work had been instructed by Commissioner Conger not to use the county equipment on private property. He testified, however, that 'I had had permission to use the equipment on the lands wherein the Lions Club had given the church permission, and I just presumed that if it was all right for me to use them for a parking area on one it would be all right to use it on another lot for the same purposes.' Work performed on privately owned property to furnish parking facilities for the use of members in attending services at their church is not for a public use or purpose, whether that work consists in scraping off weeds or paving the lot or excavating for a foundation. The matter does not turn on the extent of character of work, but rather for whose benefit it was performed. A denominational church is a private institution, privately owned and operated. ...

Thus, it is clear that the general constitutional prohibitions against using public funds for private purposes or expending public funds for work on private property apply with equal force to church property.

Conclusion

Your letter indicates that the City's funds would be expended to remove a storm drain on church property, and that this cost would serve no public purpose. However, the State Constitution protects taxpayers against a governmental entity's spending public funds for private purposes. As stated above, the constitutional requirement of public purpose "was intended to prevent governmental bodies from depleting the public treasury by giving advantages to special interests or by engaging in non-public enterprises." Thus, assuming these facts, such an expenditure of public funds as described in your letter would be violative of the South Carolina Constitution.

Very truly yours,

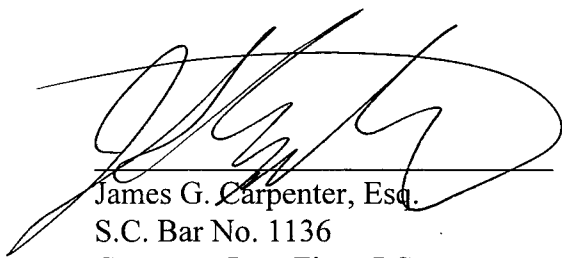
Robert D. Cook
Assistant Deputy Attorney General

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Certificate of Counsel

The undersigned Counsel for the Appellants certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.



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