

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM THE ADMINISTRATIVE LAW COURT
John D. McLeod, Administrative Law Judge

Appellate Case No. 2017-001554

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

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

vs.

South Carolina Department of Health and Environmental Control, Respondent, and Roper Pond, LLC, Respondent/Appellant.

RECORD ON APPEAL
VOLUME IV OF IV

RECEIVED
JUN 08 2018
SC Court of Appeals

Amy E. Armstrong
S.C. Environmental Law Project
P.O. Box 1380
Pawleys Island, SC 29585
Attorney for Appellant/Respondent

Terry E. Richardson
Richardson Patrick Westbrook & Brickman, LLC
P.O. Box 1368
Barnwell, SC 29812
Attorney for Appellant/Respondent

Joan Hartley
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Nexsen Pruet, LLC
Post Office Drawer 2426
Columbia, SC 29202
Attorney for Respondent/Appellant

Michael Gary Corley
PO Box 5761
Greenville SC 29606
Attorney for Appellant/Respondent

June 7, 2018

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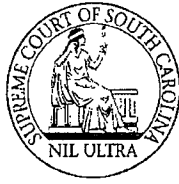
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RECEIVED

MAR 16 2015

NEXSEN PRUET, LLC
COLUMBIA

The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA
29211

1231 GERVAIS STREET
COLUMBIA, SOUTH CAROLINA 29201

TELEPHONE: (803) 734-1080

FAX: (803) 734-1499

www.sccourts.org

March 12, 2015

W. Thomas Lavender, Jr., Esquire
PO Drawer 2426
Columbia SC 29202-2426

Joan Wash Hartley, Esquire
PO Drawer 2426
Columbia SC 29202-2426

Amy Elizabeth Armstrong, Esquire
PO Box 1380
Pawleys Island SC 29585

Roger Page Hall, Esquire
PO Box 2844
Columbia SC 29202

Stephen Philip Hightower, Esquire
2600 Bull St.
Columbia SC 29201

Jacquelyn Sue Dickman, Esquire
2600 Bull St.
Columbia SC 29201

Michael Gary Corley, Esquire
1312 Augusta Street
Greenville SC 29605

Re: Town of Arcadia Lakes v. SCDHEC
Appellate Case No. 2013-001521

Dear Counsel:

As you know, this case is to be orally argued on March 18, 2015. In addition to the issues that have been raised in this case, the parties should be prepared to discuss whether this case is moot since the construction related to the disputed permit has apparently already been completed.

Very truly yours,

A handwritten signature in black ink, appearing to be "D. Corley", with a long horizontal flourish extending to the right.

CLERK

cc: James Blanding Holman, IV, Esquire

Joan W. Hartley
Special Counsel
Admitted in SC, NC

July 20, 2015

The Honorable John D. McLeod
Administrative Law Court
Edgar Brown Building, Suite 224
1205 Pendleton Street
Columbia, South Carolina 29201

Re: *Town of Arcadia Lakes, et al. v. South Carolina Department of
Health and Environmental Control and Roper Pond, LLC*
Docket No. 09-ALC-07-0069-CC

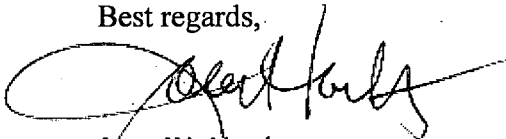
Dear Judge McLeod:

Charleston
Charlotte
Columbia
Greensboro
Greenville
Hilton Head
Myrtle Beach

Enclosed for filing please find the original and one copy of Respondent Roper Pond, LLC's original executed Amended Affidavit of Charles C. Mickel to replace the unexecuted Amended Affidavit that was filed with the Response in Opposition to Petitioners' Motion to Strike or, Alternatively, to Allow Discovery in the above-referenced matter that was filed with the Court on July 16, 2015. Please note that the unexecuted affidavit failed to include updated information in Paragraph 1. Please return a clocked-in copy to us via the enclosed envelope.

By copy of this letter, we are serving the same of counsel for Petitioners and Respondent South Carolina Department of Health and Environmental Control. As always, we appreciate your consideration in this matter.

Best regards,



Joan W. Hartley

JWH/cb

cc: Amy E. Armstrong, Esquire
Stephen P. Hightower, Esquire

1441 Main Street
Suite 1500 (29201)
PO Drawer 2426
Columbia, SC 29202
www.nexsenpruet.com

T 803.540.2129
F 803.253.8277
E JHartley@nexsenpruet.com
Nexsen Pruet Adams Kleemeier, LLC
Attorneys and Counselors at Law

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

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

Petitioners,

vs.

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

Respondents.

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

**AMENDED AFFIDAVIT OF
CHARLES C. MICKEL**

PERSONALLY APPEARED BEFORE ME Charles C. Mickel, who, after being duly sworn, deposes and says that:

1. He is a member of Roper Pond, LLC ("Roper Pond") and was managing member from 2009 to 2011. He has personal knowledge of the financing for and costs associated with the development of the Roper Pond property on Trenholm Road ("Property"). He also has knowledge of the costs associated with the litigation of this matter.

2. The total charge for B.P. Barber & Associates' services related to the appeal was \$56,734.60. Copies of the invoices for these services are attached hereto as Exhibit 1.

3. Roper Pond has incurred other costs solely as a result of the delay in the planned development of the Property. The following is a summary of the costs of delay from the date of the Petitioners' request for Board review of the Department's decision at issue in this matter on December 30, 2009, through the date of the Order Denying Motion to Reconsider and for Stay

issued by this Court on April 1, 2010 ("Delay"). These costs associated with the Delay of the planned development of the Property total \$617,623.16 and are summarized below. Documents related to these costs are attached as Exhibit 1:

- (a) \$207,966.58 - Interest paid during the Delay on loans and notes for financing of the purchase of the property and the development costs for the project, including building design, engineering, geotechnical and due diligence;
- (b) \$31,122.58 - Property taxes paid on the real property during the Delay;
- (c) \$4,000 - Permitting costs for renewing or reissuing Richland County permits which expired during the Delay;
- (d) \$234,000 - Costs to comply with new electrical code adopted during the Delay which was previously approved under the prior electrical code;
- (e) \$102,534 - Increase in water/sewer impact and tap fees to East Richland County Public Service District and the City of Columbia, respectively, during the Delay;
- (f) \$38,000 - Overhead for management of project during the Delay.

FURTHER AFFIANT SAYETH NOT.



Charles C. Mickel

SWORN and subscribed to before me
this 17th day of July, 2015.

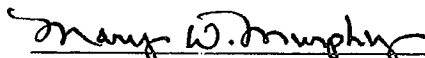
 (L.S.)
Notary Public for South Carolina
My Commission Expires: 7/10/2024

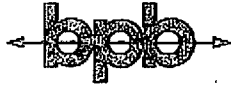
Exhibit 1

Roper Pond, LLC

B.P. Barber (Engineering)

10/29/2008	Arcadia Lakes Appeal	\$	4,065.00	8-0212
4/24/2009	Arcadia Lakes Appeal	\$	1,180.00	8-0193
4/24/2009	Arcadia Lakes Appeal	\$	15,894.32	8-0262
5/21/2009	Arcadia Lakes Appeal	\$	8,097.50	8-0230
5/21/2009	Arcadia Lakes Appeal	\$	11,722.50	9-0089
7/31/2009	Arcadia Lakes Appeal	\$	2,693.25	9-0107
10/1/2009	Arcadia Lakes Appeal	\$	466.25	9-0125
2/24/2010	Arcadia Lakes Appeal	\$	12,615.78	9-0145
Total Engineering Costs		\$	<u>56,734.60</u>	

1311



TO: Estates, Inc.
1401 Main Street
Suite 650
Columbia, SC 29201

FROM: BP Barber
PO Box 1116
Columbia, SC 29202-1116
(803) 254-4400

ATTN: Ms. Teresa Hodge

INVOICE NO.

LD8-0212
October 9, 2008

RE: Trenholm Road Site on the Roper Property
Project No. 05216
Invoice #8

Engineering services per proposal agreement dated 2/13/08 as follows:

1. Wetlands Coordination and follow-up with the Corps of Engineers and secure 401 water quality permit.

Senior Project Manager	2.00 Hrs	@	\$135.00	=	\$ 270.00
Senior Design Associate II	10.00 Hrs	@	\$115.00	=	\$ 1,150.00
Design Tech III	4.00 Hrs	@	\$ 65.00	=	\$ 260.00
Mileage, Prints & Postage					<u>\$ 0.00</u>
	Amount Due				\$ 1,680.00

Amount Due \$1,680.00

2. Preliminary Engineering, \$4,500.00 (100% Complete)

3. Construction Documents, \$28,500.00 (100% Complete)

4. Stormwater Pollution Prevention Plan (SWPPP) (\$3,500.00) (100% Complete)

5. a) Expense for SCDHEC Wastewater Permit Fee	\$ 0.00
b) Expense for SCDHEC Water Permit Fee	\$ 0.00
c) Expense for Richland County	\$ 0.00
d) Expense for Richland County Road Maintenance Fee	\$ 0.00
e) Expense for NPDES Fee	\$ 0.00
f) Expense for Mileage, Prints and Postage	<u>\$ 35.33</u>
Amount Due	\$ 35.33

6. Meetings and coordination on Arcadia Lakes Appeal..... \$4,065.00

TOTAL AMOUNT DUE \$5,780.33

Period of Statement: 8/30/08 through 9/26/08

Please note that by the terms of our "Agreement", payment, in full, is due no later than November 10, 2008. Past due amounts will be subject to monthly interest at the rate of 18% per annum.

REMIT TO: BP Barber
PO Box 1116
Columbia, SC 29202-1116

JMF:ahm
2,890.16 1/40/D
2,890.17 3/40/D



TO: Estates, Inc.
1401 Main Street
Suite 650
Columbia, SC 29201

FROM: BP Barber
PO Box 1116
Columbia, SC 29202-1116
(803) 254-4400

ATTN: Ms. Teresa Hodge

INVOICE NO.

LD8-0193
September 10, 2008

RE: Trenholm Road Site on the Roper Property
Project No. 05216
Invoice #7

Engineering services per proposal agreement dated 2/13/08 as follows:

1. Wetlands Coordination and follow-up with the Corps of Engineers.

Senior Project Manager	1.00 Hrs	@	\$ 135.00	=	\$ 135.00
Senior Design Associate II	4.00 Hrs	@	\$ 115.00	=	\$ 460.00
Design Tech III	2.00 Hrs	@	\$ 65.00	=	\$ 130.00
Mileage, Prints & Postage					<u>\$ 6.75</u>
Amount Due					\$ 731.75

Amount Due.....\$731.75

2. Preliminary Engineering, \$4,500.00 (100% Complete)

3. Construction Documents

\$ 28,500.00	Amount per agreement
<u>-\$ 27,450.00</u>	Amount previously invoiced
<u>-\$ 1,050.00</u>	Amount due this invoice
\$ 0.00	Balance remaining

Amount Due.....\$1,050.00

4. Stormwater Pollution Prevention Plan (SWPPP) (\$3,500.00) (100% Complete)

5. a) Expense for SCDHEC Wastewater Permit Fee.....	\$ 0.00
b) Expense for SCDHEC Water Permit Fee.....	\$ 0.00
c) Expense for Richland County.....	\$ 0.00
d) Expense for Richland County Road Maintenance Fee.....	\$ 0.00
e) Expense for NPDES Fee	\$ 0.00
f) Expense for Mileage, Prints and Postage.....	<u>\$ 64.95</u>
Amount Due.....	\$ 64.95

6. Meetings and coordination on Arcadia Lakes Annexation.....\$1,180.00

TOTAL AMOUNT DUE.....\$3,026.70

Period of Statement: 8/2/08 through 8/29/08

Please note that by the terms of our "Agreement", payment, in full, is due no later than October 10, 2008. Past due amounts will be subject to monthly interest at the rate of 18% per annum.

REMIT TO: BP Barber
PO Box 1116
Columbia, SC 29202-1116

JMF:ahm
1,513.35 1/40/D
1,513.35 3/40/D

ESTATES MANAGEMENT COMPANY
DISBURSEMENT REQUEST FORM / PURCHASE ORDER

VENDOR NAME AND ADDRESS:

BP Barber

P.O. Box 1116

Columbia, SC 29202-1116

PROPERTY: Roper Pond(150)

VENDOR #:

CHECK #:

SPECIAL INSTRUCTIONS

(i.e.: mailing, partial payments, new address)

PURCHASE ORDER #:

INVOICE NUMBER	INVOICE DATE	DESCRIPTION	GL ACCOUNT #	AMOUNT
LD8-0262	12/9/2008	Reimbursables	1252	\$91.06
		Arcadia Lakes Appeal		\$15,894.32
		Total		\$15,985.38
LD8-0193	9/10/2008	Wetlands Coordination	✓	\$731.75
		Construction Documents		\$1,050.00
		Reimbursables		\$64.95
		Arcadia Lakes Appeal		\$1,180.00
		Total		\$3,026.70
TOTAL:				\$19,012.08
PREPARED BY: M. [Signature]		DATE: 4/24/09		APPROVED BY: [Signature]
DATE:				
COMMENTS:				



TO: Estates, Inc.
1401 Main Street
Suite 650
Columbia, SC 29201

FROM: BP Barber
PO Box 1116
Columbia, SC 29202-1116
(803) 254-4400

ATTN: Ms. Teresa Hodge

INVOICE NO.

LD8-0262
December 9, 2008

RE: Trenholm Road Site on the Roper Property
Project No. 05216
Invoice #10

Engineering services per proposal agreement dated 2/13/08 as follows:

1. Wetlands Coordination and follow-up with the Corps of Engineers and secure 401 water quality permit.

Senior Project Manager	0.00 Hrs	@	\$135.00	=	\$	0.00
Senior Design Associate II	0.00 Hrs	@	\$115.00	=	\$	0.00
Design Tech III	0.00 Hrs	@	\$ 65.00	=	\$	0.00
Mileage, Prints & Postage					\$	0.00
Amount Due					\$	0.00

Amount Due.....\$0.00

2. Preliminary Engineering, \$4,500.00 (100% Complete)

3. Construction Documents, \$28,500.00 (100% Complete)

4. Stormwater Pollution Prevention Plan (SWPPP) (\$3,500.00) (100% Complete)

5. a) Expense for SCDHEC Wastewater Permit Fee.....	\$	0.00
b) Expense for SCDHEC Water Permit Fee.....	\$	0.00
c) Expense for Richland County.....	\$	0.00
d) Expense for Richland County Road Maintenance Fee.....	\$	0.00
e) Expense for NPDES Fee.....	\$	0.00
f) Expense for Mileage, Prints and Postage.....	\$	91.06
Amount Due.....	\$	91.06

6. Meetings, coordination and plan changes on Arcadia Lakes Appeal.....\$15,894.32

TOTAL AMOUNT DUE.....\$15,985.38

Period of Statement: 10/25/08 through 11/21/08

Please note that by the terms of our "Agreement", payment, in full, is due no later than January 9, 2009. Past due amounts will be subject to monthly interest at the rate of 18% per annum.

REMIT TO: BP Barber
PO Box 1116
Columbia, SC 29202-1116

JMF:ahm
7,992.69 1/40/D
7,992.69 3/40/D

N:\Support Staff\L Watkins\Futter\Invoices\05216\LD8-0262.doc

ESTATES MANAGEMENT COMPANY
DISBURSEMENT REQUEST FORM / PURCHASE ORDER

VENDOR NAME AND ADDRESS:

BP Barber
P.O. Box 1116
Columbia, SC 29202-1116

PROPERTY: Roper Pond(150)

VENDOR #: _____

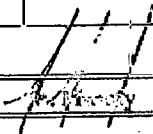
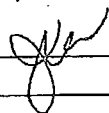
CHECK #: _____

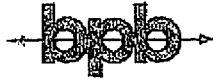
SPECIAL INSTRUCTIONS

(i.e.: mailing, partial payments, new address)

PURCHASE ORDER #: _____

Payments in full through 4/30/09

INVOICE NUMBER	INVOICE DATE	DESCRIPTION	GL ACCOUNT #	AMOUNT
LD8-0230	11/11/2008	Reimbursables		\$47.39
		Arcadia Lakes Appeal		\$8,097.50
		Total		\$8,144.89
LD8-	4/24/2009	Bidding & Award		\$810.00
		Reimbursables		\$123.31
		Arcadia Lakes Appeal		\$11,772.50
		Reduction In Amount		(\$2,000.00)
		Total		\$10,705.81
TOTAL:				\$18,850.70
PREPARED BY: 		DATE: 5/20/09		APPROVED BY: _____
COMMENTS:				
				



TO: Estates, Inc.
1401 Main Street
Suite 650
Columbia, SC 29201

FROM: BP Barber
PO Box 1116
Columbia, SC 29202-1116
(803) 254-4400

ATTN: Ms. Teresa Hodge

INVOICE NO.

LD8-0230
November 11, 2008

RE: Trenholm Road Site on the Roper Property
Project No. 05216
Invoice #9

Engineering services per proposal agreement dated 2/13/08 as follows:

1. Wetlands Coordination and follow-up with the Corps of Engineers and secure 401 water quality permit.

Senior Project Manager	0.00 Hrs	@	\$135.00	=	\$	0.00
Senior Design Associate II	0.00 Hrs	@	\$115.00	=	\$	0.00
Design Tech III	0.00 Hrs	@	\$ 65.00	=	\$	0.00
Mileage, Prints & Postage					\$	0.00
Amount Due					\$	0.00

Amount Due.....\$0.00

2. Preliminary Engineering, \$4,500.00 (100% Complete)

3. Construction Documents, \$28,500.00 (100% Complete)

4. Stormwater Pollution Prevention Plan (SWPPP) (\$3,500.00) (100% Complete)

5. a) Expense for SCDHEC Wastewater Permit Fee.....	\$	0.00
b) Expense for SCDHEC Water Permit Fee.....	\$	0.00
c) Expense for Richland County.....	\$	0.00
d) Expense for Richland County Road Maintenance Fee.....	\$	0.00
e) Expense for NPDES Fee.....	\$	0.00
f) Expense for Mileage, Prints and Postage.....	\$	47.39
Amount Due.....	\$	47.39

6. Meetings, coordination and plan changes on Arcadia Lakes Appeal\$8,097.50

TOTAL AMOUNT DUE.....\$8,144.89

Period of Statement: 9/27/08 through 10/24/08

Please note that by the terms of our "Agreement", payment, in full, is due no later than December 11, 2008. Past due amounts will be subject to monthly interest at the rate of 18% per annum.

REMIT TO: BP Barber
PO Box 1116
Columbia, SC 29202-1116

JMF:ahm
4,072.44 1/40/D
4,072.45 3/40/D



TO: Estates Inc.
1401 Main Street
Suite 650
Columbia, SC 29201

FROM: BP Barber
PO Box 1116
Columbia, SC 29202-1116
(803) 254-4400

ATTN: Ms. Teresa Hodge

April 24, 2009

RE: Roper Pond Apartments
Project No. 05216
Invoice #11

Engineering services per proposal agreement dated 2/13/08.

1. Wetlands Coordination and follow-up with the Corps of Engineers and secure 401 water quality permit.

Senior Project Manager	0.00 Hrs @	\$135.00 =	\$ 0.00
Senior Design Associate II	0.00 Hrs @	\$115.00 =	\$ 0.00
			\$ 0.00

Amount Due.....\$ 0.00

2. Preliminary Engineering, \$4,500.00 (100% Complete)

3. Construction Documents, \$28,500.00 (100% Complete)

4. Stormwater Pollution Prevention Plan (SWPPP), \$3,500.00 (100% Complete)

5. Bidding and Award:

\$2,000.00 Amount per agreement
\$ 0.00 Amount previously invoiced
\$ 810.00 Amount due this invoice
\$1,190.00 Balance Remaining

Amount Due.....\$ 810.00

6. Expenses:

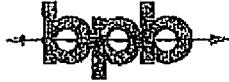
a) expense for SCDHEC Wastewater Permit Fee.....	\$ 0.00
b) expense for SCDHEC Water Permit Fee.....	\$ 0.00
c) expense for Richland County.....	\$ 0.00
d) expense for Richland County Road Maintenance Fee.....	\$ 0.00
e) expense for NPDES Fee.....	\$ 0.00
f) expense for Mileage, printing & postage.....	\$ 123.31
	\$ 123.31

Amount Due.....\$123.31

Please note that by the terms of our "Agreement", payment, in full, is due no later than May 25, 2009. Past due amounts will be subject to monthly interest at the rate of 18% per annum.

REMIT TO: BP Barber
PO Box 1116
Columbia, SC 29202-1116

JMF:ahm
6,352.91 1/40/D
6352.90 3/40/D



200 hrs
120 hrs
billed

TO: Estates Inc.
1401 Main Street
Suite 650
Columbia, SC 29201

FROM: BP Barber
PO Box 1116
Columbia, SC 29202-1116
(803) 254-4400

ATTN: Ms. Teresa Hodge

April 24, 2009
Page 2

Additional Services for the Appeal Process

7. Meetings, coordination and plan changes on Arcadia Lakes appeal:

Meetings and plan changes required by Richland County and SCDHEC before and after receipt of the letter dated 12-30-08 sent to the SCDHEC board by the neighborhood. These were extra reviews and meetings after their reviews of the plans prior to receipt of the letter. We also spent many hours calling to track down the project status and push to get the approval of the project from Richland County & SCDHEC. Met with Elliot Powell and the Gills Creek Watershed Board on two occasions. Met with Bob Mundy, Matt Mundy, Tommy Lavender, George Whatley and Jim Futter on 2-27-09 and collected and prepared information based on the requests made at the meeting. Review of Chandler letters to the Administrative Law Judge dated 2-16-09 and the Chandler letter to the EPA dated 2-23-09. Make many minor changes on the Driveway, Water and Sewer encroachment permits after review of the permits for completeness. We also spent many hours tracking these permits down at the SCDOT. These services are only for items beyond the normal review process based on our experience on several recent similar projects.

Senior Project Manager	50.50 Hrs	@	\$135.00	=	\$6,817.50
Wetlands Permitting Specialist	10.50 Hrs	@	\$115.00	=	\$1,207.50
Project Engineer I	18.00 Hrs	@	\$90.00	=	\$1,620.00
Design Tech II	23.50 Hrs	@	\$65.00	=	\$1,527.50
Administration I	12.00 Hrs	@	\$50.00	=	\$600.00
					<u>\$11,772.50</u>

Amount Due.....\$11,772.50

TOTAL AMOUNT DUE\$ 12,705.81

Period of Statement: 11/22/08 through 4/24/09 (5 months)

original proposal

<54,000> - 6-10%

97,000

Please note that by the terms of our "Agreement", payment, in full, is due no later than May 25, 2009. Past due amounts will be subject to monthly interest at the rate of 18% per annum.

REMIT TO: BP Barber
PO Box 1116
Columbia, SC 29202-1116

JMF:ahm
6,352.91 1/40/D
6,352.90 3/40/D



TO: Estates, Inc.
1401 Main Street
Suite 650
Columbia, SC 29201

FROM: BP Barber
PO Box 1116
Columbia, SC 29202-1116
(803) 254-4400

ATTN: Ms. Teresa Hodge

INVOICE NO.

LD9-0089
April 24, 2009
Page 1 of 2

RE: Roper Pond Apartments
Project No. 05216
Invoice #11

Engineering services per proposal agreement dated 2/13/08:

1. Wetlands Coordination and follow-up with the Corps of Engineers and secure 401 water quality permit.

Senior Project Manager	0.00 Hrs @	\$135.00	=	\$ 0.00
Senior Design Associate II	0.00 Hrs @	\$115.00	=	\$ 0.00
Amount Due				\$ 0.00

Amount Due.....\$0.00

2. Preliminary Engineering, \$4,500.00 (100% Complete)
3. Construction Documents, \$28,500.00 (100% Complete)
4. Stormwater Pollution Prevention Plan (SWPPP) (\$3,500.00) (100% Complete)
5. Bidding and Award:

\$ 2,000.00	Amount per agreement
-\$ 0.00	Amount previously invoiced
<u>\$ 810.00</u>	Amount due this invoice
<u>\$ 1,190.00</u>	Balance remaining

Amount Due.....\$810.00

6. Expenses:
- | | |
|--|-----------|
| a) Expense for SCDHEC Wastewater Permit Fee..... | \$ 0.00 |
| b) Expense for SCDHEC Water Permit Fee..... | \$ 0.00 |
| c) Expense for Richland County..... | \$ 0.00 |
| d) Expense for Richland County Road Maintenance Fee..... | \$ 0.00 |
| e) Expense for NPDES Fee..... | \$ 0.00 |
| f) Expense for Mileage, Prints and Postage..... | \$ 123.31 |
| Amount Due..... | \$ 123.31 |

Please note that by the terms of our "Agreement", payment, in full, is due no later than May 25, 2009. Past due amounts will be subject to monthly interest at the rate of 18% per annum.

REMIT TO: BP Barber
PO Box 1116
Columbia, SC 29202-1116

JMF:ahm
5,352.91 1/40/0
5,352.90 3/40/0

INVESTIGATION
DESIGN TEST II
PROJECT HIGHLIGHT
WESTERN INVESTIGATION

LIBRARY
0001, 0002
10-1-60

INVESTIGATION

INVESTIGATION

INVESTIGATION
DESIGN TEST II
PROJECT HIGHLIGHT
WESTERN INVESTIGATION



TO: Estates, Inc.
1401 Main Street
Suite 650
Columbia, SC 29201

FROM: BP Barber
PO Box 1116
Columbia, SC 29202-1116
(803) 254-4400

ATTN: Ms. Teresa Hodge

INVOICE NO.

LD9-0089
April 24, 2009
Page 2 of 2

Additional Services for the Appeal Process

7. Meetings, coordination and plan changes on Arcadia Lakes appeal:

Meetings and plan changes required by Richland County and SCDHEC before and after receipt of the letter dated 12-30-08 sent to the SCDHEC board by the neighborhood. These were extra reviews and meetings after their reviews of the plans prior to receipt of the letter. We also spent many hours calling to track down the project status and push to get the approval of the project from Richland County & SCDHEC. Met with Elliot Powell and the Gills Creek Watershed Board on two occasions. Met with Bob Mundy, Matt Mundy, Tommy Lavender, George Whitley and Jim Futter on 2-27-09 and collected and prepared information based on the requests made at the meeting. Review of Chandler letters to the Administrative Law Judge dated 2-16-09 and the Chandler letter to the EPA dated 2-23-09. Make many minor changes on the Driveway, Water and Sewer encroachment permits after review of the permits for completeness. We also spent many hours tracking these permits down at the SCDO. These services are only for items beyond the normal review process based on our experience on several recent similar projects.

Senior Project Manager	50.50 Hrs	@	\$135.00	=	\$ 6,817.50
Wetlands Permitting Specialist	10.50 Hrs	@	\$115.00	=	\$ 1,207.50
Project Engineer I	18.00 Hrs	@	\$ 90.00	=	\$ 1,620.00
Design Tech II	23.50 Hrs	@	\$ 65.00	=	\$ 1,527.50
Administration I	12.00 Hrs	@	\$ 50.00	=	\$ 600.00
Amount Due					\$ 11,772.50

Amount Due \$11,772.50

TOTAL AMOUNT DUE \$12,705.81

10% discount applied to the last two invoices for long term client (\$2,000.00)

FINAL AMOUNT DUE \$10,705.81

Period of Statement: 11/22/08 through 4/30/09 (5 months)

Please note that by the terms of our "Agreement", payment, in full, is due no later than May 25, 2009. Past due amounts will be subject to monthly interest at the rate of 18% per annum.

REMIT TO: BP Barber
PO Box 1116
Columbia, SC 29202-1116

JMF:ahm
\$3,352.91 1/40/D
\$3,352.90 3/40/D



TO: Estates, Inc.
1401 Main Street
Suite 650
Columbia, SC 29201

FROM: BP Barber
PO Box 1116
Columbia, SC 29202-1116
(803) 254-4400

ATTN: Ms. Teresa Hodge

INVOICE NO.

LD9-0107
July 14, 2009
Page 2 of 2

7.	Expenses:	
	a) Expense for SCDHEC Wastewater Permit Fee.....	\$ 0.00
	b) Expense for SCDHEC Water Permit Fee.....	\$ 0.00
	c) Expense for Richland County	\$ 0.00
	d) Expense for Richland County Road Maintenance Fee.....	\$ 0.00
	e) Expense for NPDES Fee	\$ 0.00
	f) Expense for Mileage, Prints and Postage.....	\$ 22.55
	Amount Due.....	\$ 22.55

Additional Services for the Appeal Process

8. Meetings, coordination and site visits on Appeal:
Collect all files, calculations and drawings and data and prepare for the Attorney to pickup and review. Prepare Corps of Engineer letter requesting that they agree with all the information they provided in several emails over the course of their review. We had several discussions with The Corps about dredging the pond and entering and existing the pond during construction to avoid having to secure any additional permits from The Corps. Then attended a meeting at The Corps to pursue a quicker turnaround for the letter we requested. Took several calls from Estates and the Attorney about the letter and modified accordingly. Made a site visit to Roper Pond to observe the North Carolina Scientist take samples and provided a report on the visit.

Senior Project Manager	11.75 Hrs	@	\$135.00	=	\$ 1,586.25
Wetlands Permitting Specialist	8.00 Hrs	@	\$115.00	=	\$ 920.00
Administration I	3.75 Hrs	@	\$ 50.00	=	\$ 187.50
	Amount Due				\$ 2,693.75

Amount Due\$2,693.25

Total Amount\$3,121.30

10% discount for long term client and assistance during this phase of the project.....(\$312.13)

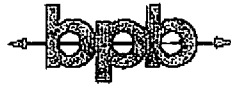
TOTAL AMOUNT DUE.....\$2,809.17

Period of Statement: 5/1/09 through 7/3/09

Please note that by the terms of our "Agreement", payment, in full, is due no later than August 14, 2009. Past due amounts will be subject to monthly interest at the rate of 18% per annum.

REMIT TO: BP Barber
PO Box 1116
Columbia, SC 29202-1116

JMF:ahm
1,500.00 1/40/D
1,715.05 3/40/D



TO: Estates, Inc.
1401 Main Street
Suite 650
Columbia, SC 29201

FROM: BP Barber
PO Box 1116
Columbia, SC 29202-1116
(803) 254-4400

ATTN: Ms. Teresa Hodge

INVOICE NO.

LD9-0107
July 14, 2009
Page 1 of 2

RE: Roper Pond Apartments
Project No. 05216
Invoice #12

Engineering services per proposal agreement dated 2/13/08:

1. Wetlands Coordination and follow-up with the Corps of Engineers and secure 401 water quality permit.

Senior Project Manager	0.00 Hrs	@	\$135.00	=	\$ 0.00
Senior Design Associate II	0.00 Hrs	@	\$115.00	=	\$ 0.00
Amount Due					\$ 0.00

Amount Due.....\$0.00

2. Preliminary Engineering, \$4,500.00 (100% Complete)
3. Construction Documents, \$28,500.00 (100% Complete)
4. Stormwater Pollution Prevention Plan (SWPPP) (\$3,500.00) (100% Complete)
5. Bidding and Award:

\$ 2,000.00	Amount per agreement
-\$ 810.00	Amount previously invoiced
-\$ 0.00	Amount due this invoice
\$ 1,190.00	Balance remaining

Amount Due\$0.00

6. Construction Administration

Senior Project Manager	3.00 Hrs	@	\$ 135.00	=	\$ 405.00
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Amount Due\$405.00

Please note that by the terms of our "Agreement", payment, in full, is due no later than August 14, 2009. Past due amounts will be subject to monthly interest at the rate of 18% per annum.

REMIT TO: BP Barber
PO Box 1116
Columbia, SC 29202-1116

JMF:ahm
1,500.00 1/40/D
1,715.05 3/40/D



TO: Estates, Inc.
1401 Main Street
Suite 650
Columbia, SC 29201

FROM: BP Barber
PO Box 1116
Columbia, SC 29202-1116
(803) 254-4400

ATTN: Ms. Teresa Hodge

INVOICE NO.

LD9-0125
August 17, 2009
Page 1 of 2

RE: Roper Pond Apartments
Project No. 05216
Invoice #13

Engineering services per proposal agreement dated 2/13/08:

1. Wetlands Coordination and follow-up with the Corps of Engineers and secure 401 water quality permit.

Senior Project Manager	0.00 Hrs	@	\$135.00	=	\$	0.00
Senior Design Associate II	0.00 Hrs	@	\$115.00	=	\$	0.00
Amount Due					\$	0.00

Amount Due \$0.00

2. Preliminary Engineering, \$4,500.00 (100% Complete)

3. Construction Documents, \$28,500.00 (100% Complete)

4. Stormwater Pollution Prevention Plan (SWPPP) (\$3,500.00) (100% Complete)

5. Bidding and Award:

\$ 2,000.00	Amount per agreement
-\$ 810.00	Amount previously invoiced
<u>-\$ 0.00</u>	Amount due this invoice
\$ 1,190.00	Balance remaining

Amount Due \$0.00

6. Construction Administration

Senior Project Manager	0.00 Hrs	@	\$ 135.00	=	\$	0.00
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Amount Due \$0.00

Please note that by the terms of our "Agreement", payment, in full, is due no later than September 17, 2009. Past due amounts will be subject to monthly interest at the rate of 18% per annum.

REMIT TO: BP Barber
PO Box 1116
Columbia, SC 29202-1116

JMF:ahm
235.00 1/40/D
231.25 3/40/D

THE FOLLOWING IS A SUMMARY OF THE RESULTS OF THE ANALYSIS OF THE SAMPLES OF THE
 BLOOD OF THE DEFENDANT, TAKEN AT THE TIME OF THE ARREST, AND AT THE TIME OF THE TRIAL.

ANALYSIS OF BLOOD SAMPLES TAKEN AT THE TIME OF THE ARREST

ANALYSIS OF BLOOD SAMPLES TAKEN AT THE TIME OF THE TRIAL	ANALYSIS OF BLOOD SAMPLES TAKEN AT THE TIME OF THE ARREST	ANALYSIS OF BLOOD SAMPLES TAKEN AT THE TIME OF THE TRIAL	ANALYSIS OF BLOOD SAMPLES TAKEN AT THE TIME OF THE ARREST
1.0000	1.0000	1.0000	1.0000
1.0000	1.0000	1.0000	1.0000
1.0000	1.0000	1.0000	1.0000
1.0000	1.0000	1.0000	1.0000

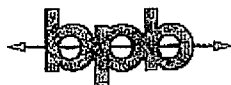
ANALYSIS OF BLOOD SAMPLES TAKEN AT THE TIME OF THE TRIAL

ANALYSIS OF BLOOD SAMPLES TAKEN AT THE TIME OF THE ARREST

ANALYSIS OF BLOOD SAMPLES TAKEN AT THE TIME OF THE TRIAL

ANALYSIS OF BLOOD SAMPLES TAKEN AT THE TIME OF THE TRIAL

ANALYSIS OF BLOOD SAMPLES TAKEN AT THE TIME OF THE TRIAL



TO: Estates, Inc.
1401 Main Street
Suite 650
Columbia, SC 29201

FROM: BP Barber
PO Box 1116
Columbia, SC 29202-1116
(803) 254-4400

ATTN: Ms. Teresa Hodge

INVOICE NO.

LD9-0125
August 17, 2009
Page 2 of 2

7.	Expenses:	
	a) Expense for SCDHEC Wastewater Permit Fee	\$ 0.00
	b) Expense for SCDHEC Water Permit Fee	\$ 0.00
	c) Expense for Richland County	\$ 0.00
	d) Expense for Richland County Road Maintenance Fee	\$ 0.00
	e) Expense for NPDES Fee	\$ 0.00
	f) Expense for Mileage, Prints and Postage	\$ 0.00
	Amount Due	\$ 0.00

Additional Services for the Appeal Process

8. Meetings, coordination and site visits on Appeal:
Meeting with Matt Mundy on July 30, 2009 and research and answer questions on the list provided by the attorney.

Senior Project Manager	1.75 Hrs	@	\$135.00	=	\$	236.25
Senior Design Technician II	2.00 Hrs	@	\$115.00	=	\$	230.00
Administration I	0.00 Hrs	@	\$ 50.00	=	\$	0.00
	Amount Due				\$	466.25

Amount Due..... \$466.25

Total Amount\$466.25

TOTAL AMOUNT DUE.....\$466.25

Period of Statement: 7/4/09 through 7/31/09

Please note that by the terms of our "Agreement", payment, in full, is due no later than September 17, 2009. Past due amounts will be subject to monthly interest at the rate of 18% per annum.

REMIT TO: BP Barber
PO Box 1116
Columbia, SC 29202-1116

JMF:ahm
235.00 1/40/D
231.25 3/40/D

ESTATES MANAGEMENT COMPANY
DISBURSEMENT REQUEST FORM / PURCHASE ORDER

VENDOR NAME AND ADDRESS:

BP Barber
P.O. Box 1116
Columbia, SC 29202-1116

PROPERTY: Roper Pond(150)

VENDOR #: _____

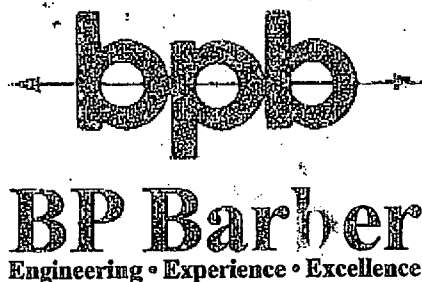
CHECK #: _____

SPECIAL INSTRUCTIONS

(i.e.: mailing, partial payments, new address)

PURCHASE ORDER #: _____

INVOICE NUMBER	INVOICE DATE	DESCRIPTION	GL ACCOUNT #	AMOUNT
LD9-0145	9/18/2009	Additional Services for Appeal Process	1252	\$3,153.95
		Payment 2 of 4		
Payment Dates:				
4/19/2010	\$ 3,153.95	Paid		
6/18/2010	\$ 3,153.95			
8/19/2010	\$ 3,153.94			
10/19/2010	\$ 3,153.94			
Total Payments	\$ 12,615.78			
TOTAL:				\$3,153.95
PREPARED BY:	<i>[Signature]</i>	DATE: 7/6/10	APPROVED BY:	<i>[Signature]</i> DATE: 7/6/10
COMMENTS:				



February 24, 2010

Mr. Robert Mundy
Estates Inc.
1401 Main Street, Suite 650
Columbia, SC 29201

RE: Roper Pond LLC
BP Barber Project No. 05216
Invoice #LD9-0145

Dear Mr. Mundy:

As you are aware we have completed our work on the appeal process for the referenced project. I have included a breakdown of our services at your request and for your records.

Senior Project Manager

Meetings with attorneys at Estates and Nexsen Pruet to be ready for trial, site visit, discussions with Carlos Cometto (Professional Engineer) about an independent review of the plans, discussions with Jill Stewart and Ann Clark at SCDHEC about the plans and the trial, attend trial on September 3rd & 4th.

Senior Design Technician II

Meetings with attorneys at Estates and Nexsen Pruet to be ready for trial, review case history, review hydrologic unit code (HUC) and mapping study, review flood mapping and old aerial photos of the site, discussions with Jill Stewart and Ann Clark about the plans and the trial, review downstream conditions attend trial on September 3rd and 4th.

Engineering Associate II

Review all submittals and prepare list of pertinent permits and calculations submitted to regulatory agencies.

Engineering Associate I

Collect the data for the downstream conditions, flood maps and aerial photos. Look up hydrologic unit code (HVC) mapping for Senior Tech.

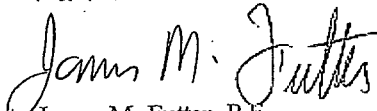
Administrative II

Make prints, compile lists and letters for transmittal to agencies and owner.

I have attached a copy of the invoice that is overdue. Please remit payment for this invoice at your earliest convenience.

Very truly yours,

BP Barber


James M. Futter, P.E.
Senior Project Manager



PAST DUE

TO: Estates, Inc.
1401 Main Street
Suite 650
Columbia, SC 29201

FROM: BP Barber
PO Box 1116
Columbia, SC 29202-1116
(803) 254-4400

ATTN: Ms. Teresa Hodge

INVOICE NO.

LD9-0145
September 18, 2009
Page 1 of 2

RE: Roper Pond Apartments
Project No. 05216
Invoice #14

Engineering services per proposal agreement dated 2/13/08:

1. Wetlands Coordination and follow-up with the Corps of Engineers and secure 401 water quality permit.

Senior Project Manager	0.00 Hrs	@	\$135.00	=	\$ 0.00
Senior Design Associate II	0.00 Hrs	@	\$115.00	=	\$ 0.00
Amount Due					\$ 0.00

Amount Due.....\$0.00

2. Preliminary Engineering, \$4,500.00 (100% Complete)
3. Construction Documents, \$28,500.00 (100% Complete)
4. Stormwater Pollution Prevention Plan (SWPPP) (\$3,500.00) (100% Complete)
5. Bidding and Award:

\$ 2,000.00	Amount per agreement
-\$ 810.00	Amount previously invoiced
-\$ 0.00	Amount due this invoice
\$ 1,190.00	Balance remaining

Amount Due\$0.00

6. Construction Administration

Senior Project Manager	0.00 Hrs	@	\$ 135.00	=	\$ 0.00
------------------------	----------	---	-----------	---	---------

Amount Due\$0.00

Please note that by the terms of our "Agreement", payment, in full, is due no later than October 19, 2009. Past due amounts will be subject to monthly interest at the rate of 18% per annum.

REMIT TO: BP Barber
PO Box 1116
Columbia, SC 29202-1116

JMF:ahm
6,307.89 1/40/D
6,307.89 3/40/D



TO: Estates, Inc.
1401 Main Street
Suite 650
Columbia, SC 29201

FROM: BP Barber
PO Box 1116
Columbia, SC 29202-1116
(803) 254-4400

ATTN: Ms. Teresa Hodge

INVOICE NO.

L-9-0145
September 18, 2009
Page 2 of 2

7. Expenses:	
a) Expense for SCDHEC Wastewater Permit Fee.....	\$ 0.00
b) Expense for SCDHEC Water Permit Fee.....	\$ 0.00
c) Expense for Richland County	\$ 0.00
d) Expense for Richland County Road Maintenance Fee.....	\$ 0.00
e) Expense for NPDES Fee.....	\$ 93.28
f) Expense for Mileage, Prints and Postage.....	\$ 93.28
Amount Due.....	\$ 93.28

Additional Services for the Appeal Process

8. Meetings, coordination and site visits on Appeal:
Meetings with Nexsen Pruet, research files, answer questions, telephone conferences and appearance at trial on 9/3 and 9/4/09.

Senior Project Manager	45.50 Hrs	@	\$135.00	=	\$ 6,142.50
Senior Design Technician II	47.50 Hrs	@	\$115.00	=	\$ 5,462.50
Engineering Associate II	2.00 Hrs	@	\$ 75.00	=	\$ 150.00
Engineering Associate I	9.50 Hrs	@	\$ 65.00	=	\$ 617.50
Administration II	3.00 Hrs	@	\$ 50.00	=	\$ 150.00
Amount Due					\$ 12,522.50

TOTAL AMOUNT DUE.....\$12,615.78

Period of Statement: 8/1/09 through 9/4/09

Please note that by the terms of our "Agreement", payment, in full, is due no later than October 19, 2009. Past due amounts will be subject to monthly interest at the rate of 18% per annum.

REMIT TO: BP Barber
PO Box 1116
Columbia, SC 29202-1116

JMF:ahm
6,307.89 1/40/D
6,307.89 3/40/D

ESTATES MANAGEMENT COMPANY
DISBURSEMENT REQUEST FORM / PURCHASE ORDER

VENDOR NAME AND ADDRESS:

BP Barber
P.O. Box 1116
Columbia, SC 29202-1116

PROPERTY: Roper Pond (150)

VENDOR #:

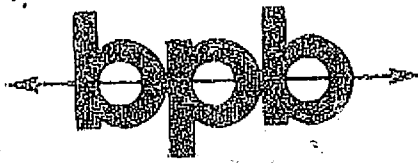
CHECK #:

SPECIAL INSTRUCTIONS

(i.e.: mailing, partial payments, new address)

PURCHASE ORDER #:

INVOICE NUMBER	INVOICE DATE	DESCRIPTION	GL ACCOUNT #	AMOUNT
LD9-0145	9/18/2009	Additional Services for Appeal Process	1252	\$3,153.94
Payment Dates:		Payment 3 of 4		
4/19/2010	\$ 3,153.94			
6/18/2010	\$ 3,153.95			
8/19/2010	\$ 3,153.94			
10/19/2010	\$ 3,153.94			
Total Payments	\$ 12,615.77			
TOTAL:				\$3,153.94
PREPARED BY:	M. Maddy	DATE:	9/2/10	APPROVED BY:
COMMENTS:				



BP Barber
Engineering • Experience • Excellence

February 24, 2010

Mr. Robert Mundy
Estates Inc.
1401 Main Street, Suite 650
Columbia, SC 29201

RE: Roper Pond LLC
BP Barber Project No. 05216
Invoice #LD9-0145

Dear Mr. Mundy:

As you are aware we have completed our work on the appeal process for the referenced project. I have included a breakdown of our services at your request and for your records.

Senior Project Manager

Meetings with attorneys at Estates and Nexsen Pruet to be ready for trial, site visit, discussions with Carlos Cometto (Professional Engineer) about an independent review of the plans, discussions with Jill Stewart and Ann Clark at SCDHEC about the plans and the trial, attend trial on September 3rd & 4th.

Senior Design Technician II

Meetings with attorneys at Estates and Nexsen Pruet to be ready for trial, review case history, review hydrologic unit code (HUC) and mapping study, review flood mapping and old aerial photos of the site, discussions with Jill Stewart and Ann Clark about the plans and the trial, review downstream conditions attend trial on September 3rd and 4th.

Engineering Associate II

Review all submittals and prepare list of pertinent permits and calculations submitted to regulatory agencies.

Engineering Associate I

Collect the data for the downstream conditions, flood maps and aerial photos. Look up hydrologic unit code (HVC) mapping for Senior Tech.

Administrative II

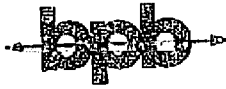
Make prints, compile lists and letters for transmittal to agencies and owner.

I have attached a copy of the invoice that is overdue. Please remit payment for this invoice at your earliest convenience.

Very truly yours,

BP Barber

James M. Futter, P.E.
Senior Project Manager

**PAST DUE**

TO: Estates, Inc.
1401 Main Street
Suite 650
Columbia, SC 29201

FROM: BP Barber
PO Box 1116
Columbia, SC 29202-1116
(803) 254-4400

ATTN: Ms. Teresa Hodge

INVOICE NO.

LD9-0145

September 18, 2009

Page 1 of 2

RE: Roper Pond Apartments
Project No. 05216
Invoice #14

Engineering services per proposal agreement dated 2/13/08:

1. Wetlands Coordination and follow-up with the Corps of Engineers and secure 401 water quality permit.

Senior Project Manager	0.00 Hrs	@	\$135.00	=	\$	0.00
Senior Design Associate II	0.00 Hrs	@	\$115.00	=	\$	0.00
Amount Due					\$	0.00

Amount Due.....\$0.00

2. Preliminary Engineering, \$4,500.00 (100% Complete)
3. Construction Documents, \$28,500.00 (100% Complete)
4. Stormwater Pollution Prevention Plan (SWPPP) (\$3,500.00) (100% Complete)
5. Bidding and Award:

\$ 2,000.00	Amount per agreement
-\$ 810.00	Amount previously invoiced
-\$ 0.00	Amount due this invoice
\$ 1,190.00	Balance remaining

Amount Due\$0.00

6. Construction Administration

Senior Project Manager	0.00 Hrs	@	\$ 135.00	=	\$	0.00
------------------------	----------	---	-----------	---	----	------

Amount Due\$0.00

Please note that by the terms of our "Agreement", payment, in full, is due no later than October 19, 2009. Past due amounts will be subject to monthly interest at the rate of 18% per annum.

REMIT TO: BP Barber
PO Box 1116
Columbia, SC 29202-1116

JMF:ahm
6,307.89 1/40/D
6,307.89 3/40/D

TO: Estates, Inc.
1401 Mai Street
Suite 650
Columbia, SC 29201

FROM: Barber
PO Box 1116
Columbia, SC 29202-1116
(803) 254-4400

ATTN: Ms. Teresa Hodge

INVOICE N .

LD9-0145
September 18, 2009
Page 2 of 2

7. Expenses:	
a) Expense for SCDHEC Wastewater Permit Fee.....	\$ 0.00
b) Expense for SCDHEC Water Permit Fee.....	\$ 0.00
c) Expense for Richland County	\$ 0.00
d) Expense for Richland County Road Maintenance Fee.....	\$ 0.00
e) Expense for NPDES Fee	\$ 93.28
f) Expense for Mileage, Prints and Postage.....	\$ 93.28
Amount Due.....	\$ 93.28

Additional Services for the Appeal Process

8. Meetings, coordination and site visits on Appeal:
Meetings with Nexsen Pruet, research files, answer questions, telephone conferences and appearance at trial on 9/3 and 9/4/09.

Senior Project Manager	45.50 Hrs	@	\$135.00	=	\$ 6,142.50
Senior Design Technician II	47.50 Hrs	@	\$115.00	=	\$ 5,462.50
Engineering Associate II	2.00 Hrs	@	\$ 75.00	=	\$ 150.00
Engineering Associate I	9.50 Hrs	@	\$ 65.00	=	\$ 617.50
Administration II	3.00 Hrs	@	\$ 50.00	=	\$ 150.00
Amount Due					\$ 12,522.50

TOTAL AMOUNT DUE.....\$12,615.78

Period of Statement: 8/1/09 through 9/4/09

Please note that by the terms of our "Agreement", payment, in full, is due no later than October 19, 2009. Past due amounts will be subject to monthly interest at the rate of 18% per annum.

REMIT TO: BP Barber
PO Box 1116
Columbia, SC 29202-1116

JMF:ahm
6,307.89 1/40/D
6,307.89 3/40/D

ESTATES MANAGEMENT COMPANY
DISBURSEMENT REQUEST FORM / PURCHASE ORDER

VENDOR NAME AND ADDRESS:

BP Barber

P.O. Box 1116

Columbia, SC 29202-1116

PROPERTY: Roper Pond (150)

VENDOR #:

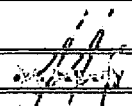
CHECK #:

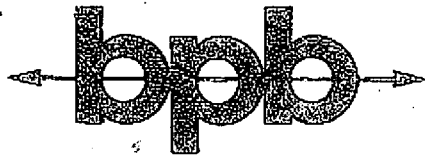
SPECIAL INSTRUCTIONS

(i.e.: mailing, partial payments, new address)

Please put in description FINAL. Thanks!

PURCHASE ORDER #:

INVOICE NUMBER	INVOICE DATE	DESCRIPTION	GL ACCOUNT #	AMOUNT
LD9-0145	10/18/2010	Additional Services for Appeal Process	1252	\$3,153.94
		Payment 4 of 4		
Payment Dates:				
4/19/2010	\$ 3,153.94			
6/18/2010	\$ 3,153.95			
8/19/2010	\$ 3,153.94			
10/19/2010	\$ 3,153.94			
Total Payments	\$ 12,615.77			
TOTAL:				\$3,153.94
PREPARED BY:		DATE: 10/18/10	APPROVED BY:	DATE:
COMMENTS:				



BP Barber

Engineering • Experience • Excellence

February 24, 2010

Mr. Robert Mundy
Estates Inc.
1401 Main Street, Suite 650
Columbia, SC 29201

RE: Roper Pond LLC
BP Barber Project No. 05216
Invoice #LD9-0145

Dear Mr. Mundy:

As you are aware we have completed our work on the appeal process for the referenced project. I have included a breakdown of our services at your request and for your records.

Senior Project Manager

Meetings with attorneys at Estates and Nexsen Pruet to be ready for trial, site visit, discussions with Carlos Cometto (Professional Engineer) about an independent review of the plans, discussions with Jill Stewart and Ann Clark at SCDHEC about the plans and the trial, attend trial on September 3rd & 4th.

Senior Design Technician II

Meetings with attorneys at Estates and Nexsen Pruet to be ready for trial, review case history, review hydrologic unit code (HUC) and mapping study, review flood mapping and old aerial photos of the site, discussions with Jill Stewart and Ann Clark about the plans and the trial, review downstream conditions attend trial on September 3rd and 4th.

Engineering Associate II

Review all submittals and prepare list of pertinent permits and calculations submitted to regulatory agencies.

Engineering Associate I

Collect the data for the downstream conditions, flood maps and aerial photos. Look up hydrologic unit code (HVC) mapping for Senior Tech.

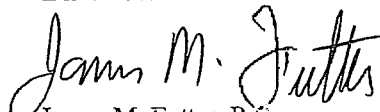
Administrative II

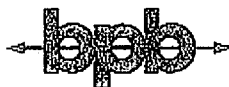
Make prints, compile lists and letters for transmittal to agencies and owner.

I have attached a copy of the invoice that is overdue. Please remit payment for this invoice at your earliest convenience.

Very truly yours,

BP Barber


James M. Futter, P.E.
Senior Project Manager



PAST DUE

TO: Estates, Inc.
1401 Main Street
Suite 650
Columbia, SC 29201

FROM: BP Barber
PO Box 1116
Columbia, SC 29202-1116
(803) 254-4400

ATTN: Ms. Teresa Hodge

INVOICE NO.

LD9-0145
September 18, 2009
Page 1 of 2

RE: Roper Pond Apartments
Project No. 05216
Invoice #14

Engineering services per proposal agreement dated 2/13/08:

1. Wetlands Coordination and follow-up with the Corps of Engineers and secure 401 water quality permit.

Senior Project Manager	0.00 Hrs	@	\$135.00	=	\$	0.00
Senior Design Associate II	0.00 Hrs	@	\$115.00	=	\$	0.00
Amount Due					\$	0.00

Amount Due.....\$0.00

2. Preliminary Engineering, \$4,500.00 (100% Complete)
3. Construction Documents, \$28,500.00 (100% Complete)
4. Stormwater Pollution Prevention Plan (SWPPP) (\$3,500.00) (100% Complete)
5. Bidding and Award:

\$ 2,000.00	Amount per agreement
-\$ 810.00	Amount previously invoiced
-\$ 0.00	Amount due this invoice
\$ 1,190.00	Balance remaining

Amount Due\$0.00

6. Construction Administration

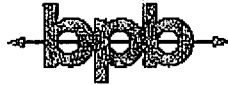
Senior Project Manager	0.00 Hrs	@	\$ 135.00	=	\$	0.00
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Amount Due\$0.00

Please note that by the terms of our "Agreement", payment, in full, is due no later than October 19, 2009. Past due amounts will be subject to monthly interest at the rate of 18% per annum.

REMIT TO: BP Barber
PO Box 1116
Columbia, SC 29202-1116

JMF:ahna
6,307.89 1/40/D
6,307.89 3/40/D



TO: Estates, Inc.
1401 Main Street
Suite 650
Columbia, SC 29201

FROM: BP Barber
PO Box 1116
Columbia, SC 29202-1116
(803) 254-4400

ATTN: Ms. Teresa Lodge

INVOICE NO.

L#9-0145
September 18, 2009
Page 2 of 2

7. Expenses:	
a) Expense for SCDHEC Wastewater Permit Fee.....	\$ 0.00
b) Expense for SCDHEC Water Permit Fee.....	\$ 0.00
c) Expense for Richland County	\$ 0.00
d) Expense for Richland County Road Maintenance Fee.....	\$ 0.00
e) Expense for NPDES Fee	\$ 0.00
f) Expense for Mileage, Prints and Postage.....	\$ 93.28
Amount Due.....	\$ 93.28

Additional Services for the Appeal Process

8. Meetings, coordination and site visits on Appeal:
Meetings with Nexsen Pruet, research files, answer questions, telephone conferences and appearance at trial on 9/3 and 9/4/09.

Senior Project Manager	45.50 Hrs	@	\$135.00	=	\$ 6,142.50
Senior Design Technician II	47.50 Hrs	@	\$115.00	=	\$ 5,462.50
Engineering Associate II	2.00 Hrs	@	\$ 75.00	=	\$ 150.00
Engineering Associate I	9.50 Hrs	@	\$ 65.00	=	\$ 617.50
Administration II	3.00 Hrs	@	\$ 50.00	=	\$ 150.00
Amount Due					\$ 12,522.50

TOTAL AMOUNT DUE.....\$12,615.78

Period of Statement: 8/1/09 through 9/4/09

Please note that by the terms of our "Agreement", payment, in full, is due no later than October 19, 2009. Past due amounts will be subject to monthly interest at the rate of 18% per annum.

REMIT TO: BP Barber
PO Box 1116
Columbia, SC 29202-1116

JMF:ahm
6,307.89 1/40/D
6,307.89 3/40/D

ESTATES MANAGEMENT COMPANY
DISBURSEMENT REQUEST FORM / PURCHASE ORDER

VENDOR NAME AND ADDRESS:

BP Barber
P.O. Box 1116
Columbia, SC 29202-1116

PROPERTY: Roper Pond(150)

VENDOR #:

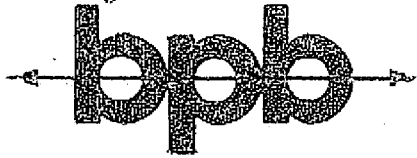
CHECK #:

SPECIAL INSTRUCTIONS

(i.e.: mailing, partial payments, new address)

PURCHASE ORDER #:

INVOICE NUMBER	INVOICE DATE	DESCRIPTION	GL ACCOUNT #	AMOUNT
LD9-0145	9/18/2009	Additional Services for Appeal Process	1252	\$3,153.95
Payment Dates:		Payment 1 of 4		
4/19/2010	\$ 3,153.95			
6/18/2010	\$ 3,153.95			
8/19/2010	\$ 3,153.94			
10/19/2010	\$ 3,153.94			
Total Payments	\$ 12,615.78			
TOTAL:				\$3,153.95
PREPARED BY:	M Mandy	DATE: 4/19/10	APPROVED BY:	DATE:
COMMENTS:				



BP Barber

Engineering • Experience • Excellence

February 24, 2010

Mr. Robert Mundy
Estates Inc.
1401 Main Street, Suite 650
Columbia, SC 29201

RE: Roper Pond LLC
BP Barber Project No. 05216
Invoice #LD9-0145

Dear Mr. Mundy:

As you are aware we have completed our work on the appeal process for the referenced project. I have included a breakdown of our services at your request and for your records.

Senior Project Manager

Meetings with attorneys at Estates and Nexsen Pruet to be ready for trial, site visit, discussions with Carlos Cometto (Professional Engineer) about an independent review of the plans, discussions with Jill Stewart and Ann Clark at SCDHEC about the plans and the trial, attend trial on September 3rd & 4th.

Senior Design Technician II

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Engineering Associate I

Collect the data for the downstream conditions, flood maps and aerial photos. Look up hydrologic unit code (HVC) mapping for Senior Tech.

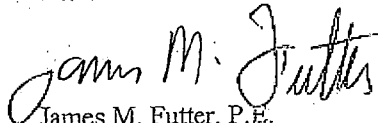
Administrative II

Make prints, compile lists and letters for transmittal to agencies and owner.

I have attached a copy of the invoice that is overdue. Please remit payment for this invoice at your earliest convenience.

Very truly yours,

BP Barber


James M. Futter, P.E.
Senior Project Manager

**PAST DUE**

TO: Estates, Inc.
1401 Main Street
Suite 650
Columbia, SC 29201

FROM: BP Barber
PO Box 1116
Columbia, SC 29202-1116
(803) 254-4400

ATTN: Ms. Teresa Hodge

INVOICE NO.

LD9-0145
September 18, 2009
Page 1 of 2

RE: Roper Pond Apartments
Project No. 05216
Invoice #14

Engineering services per proposal agreement dated 2/13/08:

1. Wetlands Coordination and follow-up with the Corps of Engineers and secure 401 water quality permit.

Senior Project Manager	0.00 Hrs	@	\$135.00	=	\$	0.00
Senior Design Associate II	0.00 Hrs	@	\$115.00	=	\$	0.00
Amount Due					\$	0.00

Amount Due.....\$0.00

2. Preliminary Engineering, \$4,500.00 (100% Complete)
3. Construction Documents, \$28,500.00 (100% Complete)
4. Stormwater Pollution Prevention Plan (SWPPP) (\$3,500.00) (100% Complete)
5. Bidding and Award:

\$ 2,000.00	Amount per agreement
-\$ 810.00	Amount previously invoiced
-\$ 0.00	Amount due this invoice
\$ 1,190.00	Balance remaining

Amount Due\$0.00

6. Construction Administration

Senior Project Manager	0.00 Hrs	@	\$ 135.00	=	\$	0.00
------------------------	----------	---	-----------	---	----	------

Amount Due\$0.00

Please note that by the terms of our "Agreement", payment, in full, is due no later than October 19, 2009. Past due amounts will be subject to monthly interest at the rate of 18% per annum.

REMIT TO: BP Barber
PO Box 1116
Columbia, SC 29202-1116

JMF:ahm
6,307.89 1/40/D
6,307.89 3/40/D



TO: Estates, Inc.
1401 Main Street
Suite 650
Columbia, SC 29201

FROM: BP Barber
PO Box 1116
Columbia, SC 29202-1116
(803) 254-4400

ATTN: Ms. Teresa Hodge

INVOICE NO.

LD9-0145
September 18, 2009
Page 2 of 2

7.	Expenses:		
	a) Expense for SCDHEC Wastewater Permit Fee.....	\$	0.00
	b) Expense for SCDHEC Water Permit Fee.....	\$	0.00
	c) Expense for Richland County	\$	0.00
	d) Expense for Richland County Road Maintenance Fee.....	\$	0.00
	e) Expense for NPDES Fee	\$	0.00
	f) Expense for Mileage, Prints and Postage.....	\$	93.28
	Amount Due.....	\$	93.28

Additional Services for the Appeal Process

8. Meetings, coordination and site visits on Appeal:
Meetings with Nexsen Pruet, research files, answer questions, telephone conferences and appearance at trial on 9/3 and 9/4/09.

Senior Project Manager	45.50 Hrs	@	\$135.00	=	\$ 6,142.50
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Engineering Associate II	2.00 Hrs	@	\$ 75.00	=	\$ 150.00
Engineering Associate I	9.50 Hrs	@	\$ 65.00	=	\$ 617.50
Administration II	3.00 Hrs	@	\$ 50.00	=	\$ 150.00
	Amount Due				\$ 12,522.50

TOTAL AMOUNT DUE.....\$12,615.78

Period of Statement: 8/1/09 through 9/4/09

Please note that by the terms of our "Agreement", payment, in full, is due no later than October 19, 2009. Past due amounts will be subject to monthly interest at the rate of 18% per annum.

REMIT TO: BP Barber
PO Box 1116
Columbia, SC 29202-1116

JMF:ahm
6,307.89 1/40/D
6,307.89 3/40/D

Roper Pond, LLC**Loan Rate: 6.00%**

		Current	
Date	Loan Amount	Date	Interest
2/16/2009	\$ 10,000.00	4/1/2010	\$ 672.33
2/16/2009	\$ 8,600.00	4/1/2010	\$ 578.20
2/16/2009	\$ 2,000.00	4/1/2010	\$ 134.47
2/16/2009	\$ 43,000.00	4/1/2010	\$ 2,891.01
2/16/2009	\$ 15,000.00	4/1/2010	\$ 1,008.49
2/16/2009	\$ 60,000.00	4/1/2010	\$ 4,033.97
2/16/2009	\$ 5,000.00	4/1/2010	\$ 336.16
2/16/2009	\$ 40,000.00	4/1/2010	\$ 2,689.32
2/16/2009	\$ 15,000.00	4/1/2010	\$ 1,008.49
2/16/2009	\$ 30,000.00	4/1/2010	\$ 2,016.99
2/16/2009	\$ 21,000.00	4/1/2010	\$ 1,411.89
2/16/2009	\$ 115,015.00	4/1/2010	\$ 7,732.79
2/16/2009	\$ 10,000.00	4/1/2010	\$ 672.33
2/16/2009	\$ 52,000.00	4/1/2010	\$ 3,496.11
2/16/2009	\$ 10,000.00	4/1/2010	\$ 672.33
2/16/2009	\$ 10,000.00	4/1/2010	\$ 672.33
2/16/2009	\$ 40,000.00	4/1/2010	\$ 2,689.32
2/16/2009	\$ 20,000.00	4/1/2010	\$ 1,344.66
2/16/2009	\$ 20,000.00	4/1/2010	\$ 1,344.66
2/16/2009	\$ 2,500.00	4/1/2010	\$ 168.08
2/16/2009	\$ 45,000.00	4/1/2010	\$ 3,025.48
2/16/2009	\$ 13,000.00	4/1/2010	\$ 874.03
Total	\$ 587,115.00		\$ 39,473.43

awsuit O ertainty

7/16/2015

	Capital Contribution	Lawsuit Initiated	Lawsuit Stay Lifted	Days Outstanding	Interest Rate	Days Per Year	UNPAID Accrued Interest
Capital De- lo (R pe Pond L	2,500,000	2/16/2009	4/1/2010		6.0000%	365	168,493.15
							<u>168,493.15</u>

1353

**DEMAND
PROMISSORY NOTE**

\$10,000.00
Columbia, South Carolina

Dated to be effective as
of February 20, 2008

FOR VALUE RECEIVED, ESTATES MANAGEMENT COMPANY, INC., (the "Borrower"), hereby promises to pay, in lawful money of the United States of America, to the order of Estates Management Company (the "Lender"), the principal sum of \$10,000.00 in accordance with the terms of this Note.

Interest shall accrue on the principal balance outstanding at the rate of 6.00% as of the date hereof and shall be determined on the basis of 360 days per annum, cumulative and compounded. All outstanding principal shall be payable on demand of Lender.

Payments of principal and all other amounts hereunder shall be made in U.S. funds to the Lender, or such other place as the Lender may designate from time to time in writing.

Borrower's failure to pay to Lender when due any principal payment hereunder shall constitute an "Event of Default" hereunder. Upon the occurrence of an Event of Default, then at any time thereafter the Lender may declare the entire remaining principal balance due hereunder, immediately due and payable.

The invalidity of any provision of this Note shall not affect the validity of any other provision hereof. No delay or failure on the part of the Lender in the exercise of any right or remedy shall operate as a waiver thereof, and no single exercise of any right or remedy shall preclude Lender from the exercise of any other or further rights or remedies.

In the event this Note is placed in the hands of an attorney for collection (but not for resolution of any disputes on a set off or recoupment of the amount due hereunder), all expenses of the Lender, including reasonable attorneys' fees, shall be added to the principal amount of this Note and collected as a part hereof. This Note shall be governed by and construed in accordance with the laws of the State of South Carolina. Jurisdiction and venue for the enforcement of this Note hereof shall be exclusively in the courts for the State of South Carolina.

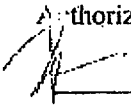
Borrower expressly waives demand, presentment, protest and notice of non-payment or dishonor and all other notices or demands whatsoever (except for notices expressly set forth herein), and such parties agree to remain bound hereby until all amounts due hereunder are paid in full, notwithstanding any extension of time for payment which may be granted, even though the period of extension be indefinite.

The Borrower reserves the right to prepay this Note in whole or in part at any time without fee or penalty.

EXECUTED to be effective as of February 20, 2008.

Roper Pond, LLC

Its: Authorized Agent

By: 

Its: Authorized Agent

Date: 2/20/08

Notice Address for Borrower:
1401 Main Street, Suite 650
Columbia, SC 29201

**DEMAND
PROMISSORY NOTE**

\$8,600.00
Columbia, South Carolina

Dated to be effective as
of March 26, 2008

FOR VALUE RECEIVED, ESTATES MANAGEMENT COMPANY, INC., (the "Borrower"), hereby promises to pay, in lawful money of the United States of America, to the order of Estates Management Company (the "Lender"), the principal sum of \$8,600.00 in accordance with the terms of this Note.

Interest shall accrue on the principal balance outstanding at the rate of 6.00% as of the date hereof and shall be determined on the basis of 360 days per annum, cumulative and compounded. All outstanding principal shall be payable on demand of Lender.

Payments of principal and all other amounts hereunder shall be made in U.S. funds to the Lender, or such other place as the Lender may designate from time to time in writing.

Borrower's failure to pay to Lender when due any principal payment hereunder shall constitute an "Event of Default" hereunder. Upon the occurrence of an Event of Default, then at any time thereafter the Lender may declare the entire remaining principal balance due hereunder, immediately due and payable.

The invalidity of any provision of this Note shall not affect the validity of any other provision hereof. No delay or failure on the part of the Lender in the exercise of any right or remedy shall operate as a waiver thereof, and no single exercise of any right or remedy shall preclude Lender from the exercise of any other or further rights or remedies.

In the event this Note is placed in the hands of an attorney for collection (but not for resolution of any disputes on a set off or recoupment of the amount due hereunder), all expenses of the Lender, including reasonable attorneys' fees, shall be added to the principal amount of this Note and collected as a part hereof. This Note shall be governed by and construed in accordance with the laws of the State of South Carolina. Jurisdiction and venue for the enforcement of this Note hereof shall be exclusively in the courts for the State of South Carolina.

Borrower expressly waives demand, presentment, protest and notice of non-payment or dishonor and all other notices or demands whatsoever (except for notices expressly set forth herein), and such parties agree to remain bound hereby until all amounts due hereunder are paid in full, notwithstanding any extension of time for payment which may be granted, even though the period of extension be indefinite.

The Borrower reserves the right to prepay this Note in whole or in part at any time without fee or penalty.

EXECUTED to be effective as of March 26, 2008.

Roper Pond, LLC

Its: Authorized Agent

By: [Signature]

Its: Authorized Agent

Date: 3/26/08

Notice Address for Borrower:
1401 Main Street, Suite 650
Columbia, SC 29201

**DEMAND
PROMISSORY NOTE**

\$2,000.00
Columbia, South Carolina

Dated to be effective as
of April 29, 2008

FOR VALUE RECEIVED, ESTATES MANAGEMENT COMPANY, INC., (the "Borrower"), hereby promises to pay, in lawful money of the United States of America, to the order of Estates Management Company (the "Lender"), the principal sum of \$2,000.00 in accordance with the terms of this Note.

Interest shall accrue on the principal balance outstanding at the rate of 6.00% as of the date hereof and shall be determined on the basis of 360 days per annum, cumulative and compounded. All outstanding principal shall be payable on demand of Lender.

Payments of principal and all other amounts hereunder shall be made in U.S. funds to the Lender, or such other place as the Lender may designate from time to time in writing.

Borrower's failure to pay to Lender when due any principal payment hereunder shall constitute an "Event of Default" hereunder. Upon the occurrence of an Event of Default, then at any time thereafter the Lender may declare the entire remaining principal balance due hereunder, immediately due and payable.

The invalidity of any provision of this Note shall not affect the validity of any other provision hereof. No delay or failure on the part of the Lender in the exercise of any right or remedy shall operate as a waiver thereof, and no single exercise of any right or remedy shall preclude Lender from the exercise of any other or further rights or remedies.

In the event this Note is placed in the hands of an attorney for collection (but not for resolution of any disputes on a set off or recoupment of the amount due hereunder), all expenses of the Lender, including reasonable attorneys' fees, shall be added to the principal amount of this Note and collected as a part hereof. This Note shall be governed by and construed in accordance with the laws of the State of South Carolina. Jurisdiction and venue for the enforcement of this Note hereof shall be exclusively in the courts for the State of South Carolina.

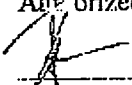
Borrower expressly waives demand, presentment, protest and notice of non-payment or dishonor and all other notices or demands whatsoever (except for notices expressly set forth herein), and such parties agree to remain bound hereby until all amounts due hereunder are paid in full, notwithstanding any extension of time for payment which may be granted, even though the period of extension be indefinite.

The Borrower reserves the right to prepay this Note in whole or in part at any time without fee or penalty.

EXECUTED to be effective as of April 29, 2008.

Roper Pond, LLC

Its: Authorized Agent

By: 

Its: Authorized Agent

Date: 4/29/08

Notice Address for Borrower:
1401 Main Street, Suite 650
Columbia, SC 29201

**DEMAND
PROMISSORY NOTE**

\$43,000.00
Columbia, South Carolina

Dated to be effective as
of May 6, 2008

FOR VALUE RECEIVED, ESTATES MANAGEMENT COMPANY, INC., (the "Borrower"), hereby promises to pay, in lawful money of the United States of America, to the order of Estates Management Company (the "Lender"), the principal sum of \$43,000.00 in accordance with the terms of this Note.

Interest shall accrue on the principal balance outstanding at the rate of 6.00% as of the date hereof and shall be determined on the basis of 360 days per annum, cumulative and compounded. All outstanding principal shall be payable on demand of Lender.

Payments of principal and all other amounts hereunder shall be made in U.S. funds to the Lender, or such other place as the Lender may designate from time to time in writing.

Borrower's failure to pay to Lender when due any principal payment hereunder shall constitute an "Event of Default" hereunder. Upon the occurrence of an Event of Default, then at any time thereafter the Lender may declare the entire remaining principal balance due hereunder, immediately due and payable.

The invalidity of any provision of this Note shall not affect the validity of any other provision hereof. No delay or failure on the part of the Lender in the exercise of any right or remedy shall operate as a waiver thereof, and no single exercise of any right or remedy shall preclude Lender from the exercise of any other or further rights or remedies.

In the event this Note is placed in the hands of an attorney for collection (but not for resolution of any disputes on a set off or recoupment of the amount due hereunder), all expenses of the Lender, including reasonable attorneys' fees, shall be added to the principal amount of this Note and collected as a part hereof. This Note shall be governed by and construed in accordance with the laws of the State of South Carolina. Jurisdiction and venue for the enforcement of this Note hereof shall be exclusively in the courts for the State of South Carolina.

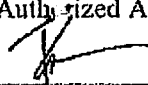
Borrower expressly waives demand, presentment, protest and notice of non-payment or dishonor and all other notices or demands whatsoever (except for notices expressly set forth herein), and such parties agree to remain bound hereby until all amounts due hereunder are paid in full, notwithstanding any extension of time for payment which may be granted, even though the period of extension be indefinite.

The Borrower reserves the right to prepay this Note in whole or in part at any time without fee or penalty.

EXECUTED to be effective as of May 6, 2008.

Roper Pond, LLC

Its: Authorized Agent

By: 

Its: Authorized Agent

Date: May 6, 2008

Notice Address for Borrower:
1401 Main Street, Suite 650
Columbia, SC 29201

**DEMAND
PROMISSORY NOTE**

\$15,000.00
Columbia, South Carolina

Dated to be effective as
of June 20, 2008

FOR VALUE RECEIVED, ESTATES MANAGEMENT COMPANY, INC., (the "Borrower"), hereby promises to pay, in lawful money of the United States of America, to the order of Estates Management Company (the "Lender"), the principal sum of \$15,000.00 in accordance with the terms of this Note.

Interest shall accrue on the principal balance outstanding at the rate of 6.00% as of the date hereof and shall be determined on the basis of 360 days per annum, cumulative and compounded. All outstanding principal shall be payable on demand of Lender.

Payments of principal and all other amounts hereunder shall be made in U.S. funds to the Lender, or such other place as the Lender may designate from time to time in writing.

Borrower's failure to pay to Lender when due any principal payment hereunder shall constitute an "Event of Default" hereunder. Upon the occurrence of an Event of Default, then at any time thereafter the Lender may declare the entire remaining principal balance due hereunder, immediately due and payable.

The invalidity of any provision of this Note shall not affect the validity of any other provision hereof. No delay or failure on the part of the Lender in the exercise of any right or remedy shall operate as a waiver thereof, and no single exercise of any right or remedy shall preclude Lender from the exercise of any other or further rights or remedies.

In the event this Note is placed in the hands of an attorney for collection (but not for resolution of any disputes on a set off or recoupment of the amount due hereunder), all expenses of the Lender, including reasonable attorneys' fees, shall be added to the principal amount of this Note and collected as a part hereof. This Note shall be governed by and construed in accordance with the laws of the State of South Carolina. Jurisdiction and venue for the enforcement of this Note hereof shall be exclusively in the courts for the State of South Carolina.

Borrower expressly waives demand, presentment, protest and notice of non-payment or dishonor and all other notices or demands whatsoever (except for notices expressly set forth herein), and such parties agree to remain bound hereby until all amounts due hereunder are paid in full, notwithstanding any extension of time for payment which may be granted, even though the period of extension be indefinite.

The Borrower reserves the right to prepay this Note in whole or in part at any time without fee or penalty.

EXECUTED to be effective as of June 20, 2008.

Roper Pond, LLC

Its: Authorized Agent

By:

Shawn Moore

Its:

Authorized Agent

Date:

June 20, 2008

Notice Address for Borrower:
1401 Main Street, Suite 650
Columbia, SC 29201

**DEMAND
PROMISSORY NOTE**

560,000.00
Columbia, South Carolina

Dated to be effective as
of July 18, 2008

FOR VALUE RECEIVED, ESTATES MANAGEMENT COMPANY, INC., (the "Borrower"), hereby promises to pay, in lawful money of the United States of America, to the order of Estates Management Company (the "Lender"), the principal sum of \$60,000.00 in accordance with the terms of this Note.

Interest shall accrue on the principal balance outstanding at the rate of 6.00% as of the date hereof and shall be determined on the basis of 360 days per annum, cumulative and compounded. All outstanding principal shall be payable on demand of Lender.

Payments of principal and all other amounts hereunder shall be made in U.S. funds to the Lender, or such other place as the Lender may designate from time to time in writing.

Borrower's failure to pay to Lender when due any principal payment hereunder shall constitute an "Event of Default" hereunder. Upon the occurrence of an Event of Default, then at any time thereafter the Lender may declare the entire remaining principal balance due hereunder, immediately due and payable.

The invalidity of any provision of this Note shall not affect the validity of any other provision hereof. No delay or failure on the part of the Lender in the exercise of any right or remedy shall operate as a waiver thereof, and no single exercise of any right or remedy shall preclude Lender from the exercise of any other or further rights or remedies.

In the event this Note is placed in the hands of an attorney for collection (but not for resolution of any disputes on a set off or recoupment of the amount due hereunder), all expenses of the Lender, including reasonable attorneys' fees, shall be added to the principal amount of this Note and collected as a part hereof. This Note shall be governed by and construed in accordance with the laws of the State of South Carolina. Jurisdiction and venue for the enforcement of this Note hereof shall be exclusively in the courts for the State of South Carolina.

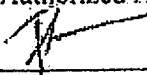
Borrower expressly waives demand, presentment, protest and notice of non-payment or dishonor and all other notices or demands whatsoever (except for notices expressly set forth herein), and such parties agree to remain bound hereby until all amounts due hereunder are paid in full, notwithstanding any extension of time for payment which may be granted, even though the period of extension be indefinite.

The Borrower reserves the right to prepay this Note in whole or in part at any time without fee or penalty.

EXECUTED to be effective as of July 18, 2008.

Roper Pond, LLC

Its: Authorized Agent

By: 

Its: Authorized Agent

Date: 7/18/08

Notice Address for Borrower:
1401 Main Street, Suite 650
Columbia, SC 29201

**DEMAND
PROMISSORY NOTE**

\$5,000.00
Columbia, South Carolina

Dated to be effective as
of August 12, 2008

15

FOR VALUE RECEIVED, ROPER POND, LLC., (the "Borrower"), hereby promises to pay, in lawful money of the United States of America, to the order of Estates Management Company (the "Lender"), the principal sum of \$5,000.00 in accordance with the terms of this Note.

Interest shall accrue on the principal balance outstanding at the rate of 6.00% as of the date hereof and shall be determined on the basis of 360 days per annum, cumulative and compounded. All outstanding principal shall be payable on demand of Lender.

Payments of principal and all other amounts hereunder shall be made in U.S. funds to the Lender, or such other place as the Lender may designate from time to time in writing.

Borrower's failure to pay to Lender when due any principal payment hereunder shall constitute an "Event of Default" hereunder. Upon the occurrence of an Event of Default, then at any time thereafter the Lender may declare the entire remaining principal balance due hereunder, immediately due and payable.

The invalidity of any provision of this Note shall not affect the validity of any other provision hereof. No delay or failure on the part of the Lender in the exercise of any right or remedy shall operate as a waiver thereof, and no single exercise of any right or remedy shall preclude Lender from the exercise of any other or further rights or remedies.

In the event this Note is placed in the hands of an attorney for collection (but not for resolution of any disputes on a set off or recoupment of the amount due hereunder), all expenses of the Lender, including reasonable attorneys' fees, shall be added to the principal amount of this Note and collected as a part hereof. This Note shall be governed by and construed in accordance with the laws of the State of South Carolina. Jurisdiction and venue for the enforcement of this Note hereof shall be exclusively in the courts for the State of South Carolina.

Borrower expressly waives demand, presentment, protest and notice of non-payment or dishonor and all other notices or demands whatsoever (except for notices expressly set forth herein), and such parties agree to remain bound hereby until all amounts due hereunder are paid in full, notwithstanding any extension of time for payment which may be granted, even though the period of extension be indefinite.

The Borrower reserves the right to prepay this Note in whole or in part at any time without fee or penalty.

EXECUTED to be effective as of August 15, 2008.

Roper Pond, LLC

Its: Authorized Agent

By: *[Signature]*

Its: Authorized Agent

Date: August 15, 2008

Notice Address for Borrower:
1401 Main Street, Suite 650
Columbia, SC 29201

**DEMAND
PROMISSORY NOTE**

\$40,000.00
Columbia, South Carolina

Dated to be effective as
of September 4, 2008

FOR VALUE RECEIVED, ROPER POND, LLC., (the "Borrower"), hereby promises to pay, in lawful money of the United States of America, to the order of Estates Management Company (the "Lender"), the principal sum of \$40,000.00 in accordance with the terms of this Note.

Interest shall accrue on the principal balance outstanding at the rate of 6.00% as of the date hereof and shall be determined on the basis of 360 days per annum, cumulative and compounded. All outstanding principal shall be payable on demand of Lender.

Payments of principal and all other amounts hereunder shall be made in U.S. funds to the Lender, or such other place as the Lender may designate from time to time in writing.

Borrower's failure to pay to Lender when due any principal payment hereunder shall constitute an "Event of Default" hereunder. Upon the occurrence of an Event of Default, then at any time thereafter the Lender may declare the entire remaining principal balance due hereunder, immediately due and payable.

The invalidity of any provision of this Note shall not affect the validity of any other provision hereof. No delay or failure on the part of the Lender in the exercise of any right or remedy shall operate as a waiver thereof, and no single exercise of any right or remedy shall preclude Lender from the exercise of any other or further rights or remedies.

In the event this Note is placed in the hands of an attorney for collection (but not for resolution of any disputes on a set off or recoupment of the amount due hereunder), all expenses of the Lender, including reasonable attorneys' fees, shall be added to the principal amount of this Note and collected as a part hereof. This Note shall be governed by and construed in accordance with the laws of the State of South Carolina. Jurisdiction and venue for the enforcement of this Note hereof shall be exclusively in the courts for the State of South Carolina.

Borrower expressly waives demand, presentment, protest and notice of non-payment or dishonor and all other notices or demands whatsoever (except for notices expressly set forth herein), and such parties agree to remain bound hereby until all amounts due hereunder are paid in full, notwithstanding any extension of time for payment which may be granted, even though the period of extension be indefinite.

The Borrower reserves the right to prepay this Note in whole or in part at any time without fee or penalty.

EXECUTED to be effective as of September 4, 2008.

Roper Pond, LLC

Its: Authorized Agent

By: [Signature]

Its: AUTHORIZED AGENT

Date: 9/4/08

Notice Address for Borrower:
1401 Main Street, Suite 650
Columbia, SC 29201

**DEMAND
PROMISSORY NOTE**

\$15,000.00
Columbia, South Carolina

Dated to be effective as
of September 15, 2008

FOR VALUE RECEIVED, ROPER POND, LLC., (the "Borrower"), hereby promises to pay, in lawful money of the United States of America, to the order of Estates Management Company (the "Lender"), the principal sum of \$15,000.00 in accordance with the terms of this Note.

Interest shall accrue on the principal balance outstanding at the rate of 6.00% as of the date hereof and shall be determined on the basis of 360 days per annum, cumulative and compounded. All outstanding principal shall be payable on demand of Lender.

Payments of principal and all other amounts hereunder shall be made in U.S. funds to the Lender, or such other place as the Lender may designate from time to time in writing.

Borrower's failure to pay to Lender when due any principal payment hereunder shall constitute an "Event of Default" hereunder. Upon the occurrence of an Event of Default, then at any time thereafter the Lender may declare the entire remaining principal balance due hereunder, immediately due and payable.

The invalidity of any provision of this Note shall not affect the validity of any other provision hereof. No delay or failure on the part of the Lender in the exercise of any right or remedy shall operate as a waiver thereof, and no single exercise of any right or remedy shall preclude Lender from the exercise of any other or further rights or remedies.

In the event this Note is placed in the hands of an attorney for collection (but not for resolution of any disputes on a set off or recoupment of the amount due hereunder), all expenses of the Lender, including reasonable attorneys' fees, shall be added to the principal amount of this Note and collected as a part hereof. This Note shall be governed by and construed in accordance with the laws of the State of South Carolina. Jurisdiction and venue for the enforcement of this Note hereof shall be exclusively in the courts for the State of South Carolina.

Borrower expressly waives demand, presentment, protest and notice of non-payment or dishonor and all other notices or demands whatsoever (except for notices expressly set forth herein), and such parties agree to remain bound hereby until all amounts due hereunder are paid in full, notwithstanding any extension of time for payment which may be granted, even though the period of extension be indefinite.

The Borrower reserves the right to prepay this Note in whole or in part at any time without fee or penalty.

EXECUTED to be effective as of September 15, 2008.

Roper Pond, LLC

Its: Authorized Agent

By: 

Its: AUTHORIZED AGENT

Date: 9/15/08

Notice Address for Borrower:
1401 Main Street, Suite 650
Columbia, SC 29201

**DEMAND
PROMISSORY NOTE**

\$30,000.00
Columbia, South Carolina

Dated to be effective as
of September 29, 2008

FOR VALUE RECEIVED, ROPER POND, LLC., (the "Borrower"), hereby promises to pay, in lawful money of the United States of America, to the order of Estates Management Company (the "Lender"), the principal sum of \$30,000.00 in accordance with the terms of this Note.

Interest shall accrue on the principal balance outstanding at the rate of 6.00% as of the date hereof and shall be determined on the basis of 360 days per annum, cumulative and compounded. All outstanding principal shall be payable on demand of Lender.

Payments of principal and all other amounts hereunder shall be made in U.S. funds to the Lender, or such other place as the Lender may designate from time to time in writing.

Borrower's failure to pay to Lender when due any principal payment hereunder shall constitute an "Event of Default" hereunder. Upon the occurrence of an Event of Default, then at any time thereafter the Lender may declare the entire remaining principal balance due hereunder, immediately due and payable.

The invalidity of any provision of this Note shall not affect the validity of any other provision hereof. No delay or failure on the part of the Lender in the exercise of any right or remedy shall operate as a waiver thereof, and no single exercise of any right or remedy shall preclude Lender from the exercise of any other or further rights or remedies.

In the event this Note is placed in the hands of an attorney for collection (but not for resolution of any disputes on a set off or recoupment of the amount due hereunder), all expenses of the Lender, including reasonable attorneys' fees, shall be added to the principal amount of this Note and collected as a part hereof. This Note shall be governed by and construed in accordance with the laws of the State of South Carolina. Jurisdiction and venue for the enforcement of this Note hereof shall be exclusively in the courts for the State of South Carolina.

Borrower expressly waives demand, presentment, protest and notice of non-payment or dishonor and all other notices or demands whatsoever (except for notices expressly set forth herein), and such parties agree to remain bound hereby until all amounts due hereunder are paid in full, notwithstanding any extension of time for payment which may be granted, even though the period of extension be indefinite.

The Borrower reserves the right to prepay this Note in whole or in part at any time without fee or penalty.

EXECUTED to be effective as of September 29, 2008.

Roper Pond, LLC

Its: Authorized Agent

By: ROBERT MUNDY

Its: AUTHORIZED AGENT

Date: [Signature]

Notice Address for Borrower:
1401 Main Street, Suite 650
Columbia, SC 29201

**DEMAND
PROMISSORY NOTE**

\$21,000.00
Columbia, South Carolina

Dated to be effective as
of October 28, 2008

FOR VALUE RECEIVED, ROPER POND, LLC., (the "Borrower"), hereby promises to pay, in lawful money of the United States of America, to the order of Estates Management Company (the "Lender"), the principal sum of \$21,000.00 in accordance with the terms of this Note.

Interest shall accrue on the principal balance outstanding at the rate of 6.00% as of the date hereof and shall be determined on the basis of 360 days per annum, cumulative and compounded. All outstanding principal shall be payable on demand of Lender.

Payments of principal and all other amounts hereunder shall be made in U.S. funds to the Lender, or such other place as the Lender may designate from time to time in writing.

Borrower's failure to pay to Lender when due any principal payment hereunder shall constitute an "Event of Default" hereunder. Upon the occurrence of an Event of Default, then at any time thereafter the Lender may declare the entire remaining principal balance due hereunder, immediately due and payable.

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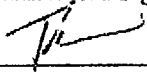
Borrower expressly waives demand, presentment, protest and notice of non-payment or dishonor and all other notices or demands whatsoever (except for notices expressly set forth herein), and such parties agree to remain bound hereby until all amounts due hereunder are paid in full, notwithstanding any extension of time for payment which may be granted, even though the period of extension be indefinite.

The Borrower reserves the right to prepay this Note in whole or in part at any time without fee or penalty.

EXECUTED to be effective as of October 28, 2008.

Roper Pond, LLC

Its: Authorized Agent

By: 

Its: AUTHORIZED AGENT

Date: OCTOBER 28, 2008

Notice Address for Borrower:

1401 Main Street, Suite 650

Columbia, SC 29201

**DEMAND
PROMISSORY NOTE**

\$115,015.00
Columbia, South Carolina

Dated to be effective as
of December 18, 2008

FOR VALUE RECEIVED, ROPER POND, LLC., (the "Borrower"), hereby promises to pay, in lawful money of the United States of America, to the order of Estates Management Company (the "Lender"), the principal sum of \$115,015.00 in accordance with the terms of this Note.

Interest shall accrue on the principal balance outstanding at the rate of 6.00% as of the date hereof and shall be determined on the basis of 360 days per annum, cumulative and compounded. All outstanding principal shall be payable on demand of Lender.

Payments of principal and all other amounts hereunder shall be made in U.S. funds to the Lender, or such other place as the Lender may designate from time to time in writing.

Borrower's failure to pay to Lender when due any principal payment hereunder shall constitute an "Event of Default" hereunder. Upon the occurrence of an Event of Default, then at any time thereafter the Lender may declare the entire remaining principal balance due hereunder, immediately due and payable.

The invalidity of any provision of this Note shall not affect the validity of any other provision hereof. No delay or failure on the part of the Lender in the exercise of any right or remedy shall operate as a waiver thereof, and no single exercise of any right or remedy shall preclude Lender from the exercise of any other or further rights or remedies.

In the event this Note is placed in the hands of an attorney for collection (but not for resolution of any disputes on a set off or recoupment of the amount due hereunder), all expenses of the Lender, including reasonable attorneys' fees, shall be added to the principal amount of this Note and collected as a part hereof. This Note shall be governed by and construed in accordance with the laws of the State of South Carolina. Jurisdiction and venue for the enforcement of this Note hereof shall be exclusively in the courts for the State of South Carolina.

Borrower expressly waives demand, presentment, protest and notice of non-payment or dishonor and all other notices or demands whatsoever (except for notices expressly set forth herein), and such parties agree to remain bound hereby until all amounts due hereunder are paid in full, notwithstanding any extension of time for payment which may be granted, even though the period of extension be indefinite.

The Borrower reserves the right to prepay this Note in whole or in part at any time without fee or penalty.

EXECUTED to be effective as of December 18, 2008.

Roper Pond, LLC

Its: Authorized Agent

By:  _____

Its: _____

Date: _____

Notice Address for Borrower:
1401 Main Street, Suite 650
Columbia, SC 29201

**DEMAND
PROMISSORY NOTE**

\$10,000.00
Columbia, South Carolina

Dated to be effective as
of January 26, 2009

FOR VALUE RECEIVED, ROPER POND, LLC., (the "Borrower"), hereby promises to pay, in lawful money of the United States of America, to the order of Estates Management Company (the "Lender"), the principal sum of \$10,000.00 in accordance with the terms of this Note.

Interest shall accrue on the principal balance outstanding at the rate of 6.00% as of the date hereof and shall be determined on the basis of 360 days per annum, cumulative and compounded. All outstanding principal shall be payable on demand of Lender.

Payments of principal and all other amounts hereunder shall be made in U.S. funds to the Lender, or such other place as the Lender may designate from time to time in writing.

Borrower's failure to pay to Lender when due any principal payment hereunder shall constitute an "Event of Default" hereunder. Upon the occurrence of an Event of Default, then at any time thereafter the Lender may declare the entire remaining principal balance due hereunder, immediately due and payable.

The invalidity of any provision of this Note shall not affect the validity of any other provision hereof. No delay or failure on the part of the Lender in the exercise of any right or remedy shall operate as a waiver thereof, and no single exercise of any right or remedy shall preclude Lender from the exercise of any other or further rights or remedies.

In the event this Note is placed in the hands of an attorney for collection (but not for resolution of any disputes on a set off or recoupment of the amount due hereunder), all expenses of the Lender, including reasonable attorneys' fees, shall be added to the principal amount of this Note and collected as a part hereof. This Note shall be governed by and construed in accordance with the laws of the State of South Carolina. Jurisdiction and venue for the enforcement of this Note hereof shall be exclusively in the courts for the State of South Carolina.

Borrower expressly waives demand, presentment, protest and notice of non-payment or dishonor and all other notices or demands whatsoever (except for notices expressly set forth herein), and such parties agree to remain bound hereby until all amounts due hereunder are paid in full, notwithstanding any extension of time for payment which may be granted, even though the period of extension be indefinite.

The Borrower reserves the right to prepay this Note in whole or in part at any time without fee or penalty.

EXECUTED to be effective as of January 26, 2009.

Roper Pond, LLC
Its: Authorized Agent

By: [Signature]

Its: AUTHORIZED AGENT

Date: 1/26/2009

Notice Address for Borrower:
1401 Main Street, Suite 650
Columbia, SC 29201

**DEMAND
PROMISSORY NOTE**

\$52,000.00
Columbia, South Carolina

Dated to be effective as
of February 9, 2009

FOR VALUE RECEIVED, ROPER POND, LLC., (the "Borrower"), hereby promises to pay, in lawful money of the United States of America, to the order of Estates Management Company (the "Lender"), the principal sum of \$52,000.00 in accordance with the terms of this Note.

Interest shall accrue on the principal balance outstanding at the rate of 6.00% as of the date hereof and shall be determined on the basis of 360 days per annum, cumulative and compounded. All outstanding principal shall be payable on demand of Lender.

Payments of principal and all other amounts hereunder shall be made in U.S. funds to the Lender, or such other place as the Lender may designate from time to time in writing.

Borrower's failure to pay to Lender when due any principal payment hereunder shall constitute an "Event of Default" hereunder. Upon the occurrence of an Event of Default, then at any time thereafter the Lender may declare the entire remaining principal balance due hereunder, immediately due and payable.

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In the event this Note is placed in the hands of an attorney for collection (but not for resolution of any disputes on a set off or recoupment of the amount due hereunder), all expenses of the Lender, including reasonable attorneys' fees, shall be added to the principal amount of this Note and collected as a part hereof. This Note shall be governed by and construed in accordance with the laws of the State of South Carolina. Jurisdiction and venue for the enforcement of this Note hereof shall be exclusively in the courts for the State of South Carolina.

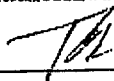
Borrower expressly waives demand, presentment, protest and notice of non-payment or dishonor and all other notices or demands whatsoever (except for notices expressly set forth herein), and such parties agree to remain bound hereby until all amounts due hereunder are paid in full, notwithstanding any extension of time for payment which may be granted, even though the period of extension be indefinite.

The Borrower reserves the right to prepay this Note in whole or in part at any time without fee or penalty.

EXECUTED to be effective as of February 2, 2009.

Roper Pond, LLC

Its: Authorized Agent

By: 

Its: AUTHORIZED AGENT

Date: FEBRUARY 9, 2009

Notice Address for Borrower:
1401 Main Street, Suite 650
Columbia, SC 29201

**DEMAND
PROMISSORY NOTE**

\$10,000.00
Columbia, South Carolina

Dated to be effective as
of February 27, 2009

FOR VALUE RECEIVED, ROPER POND, LLC., (the "Borrower"), hereby promises to pay, in lawful money of the United States of America, to the order of Estates Management Company (the "Lender"), the principal sum of \$10,000.00 in accordance with the terms of this Note.

Interest shall accrue on the principal balance outstanding at the rate of 6.00% as of the date hereof and shall be determined on the basis of 360 days per annum, cumulative and compounded. All outstanding principal shall be payable on demand of Lender.

Payments of principal and all other amounts hereunder shall be made in U.S. funds to the Lender, or such other place as the Lender may designate from time to time in writing.

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Borrower expressly waives demand, presentment, protest and notice of non-payment or dishonor and all other notices or demands whatsoever (except for notices expressly set forth herein), and such parties agree to remain bound hereby until all amounts due hereunder are paid in full, notwithstanding any extension of time for payment which may be granted, even though the period of extension be indefinite.

The Borrower reserves the right to prepay this Note in whole or in part at any time without fee or penalty.

EXECUTED to be effective as of February 27, 2009.

Roper Pond, LLC
Its: Authorized Agent

By: 

Its: AUTHORIZED AGENT

Date: FEBRUARY 27, 2009

Notice Address for Borrower:
1401 Main Street, Suite 650
Columbia, SC 29201

**DEMAND
PROMISSORY NOTE**

\$10,000.00
Columbia, South Carolina

Dated to be effective as
of April 13, 2009

FOR VALUE RECEIVED, ROPER POND, LLC., (the "Borrower"), hereby promises to pay, in lawful money of the United States of America, to the order of Estates Management Company (the "Lender"), the principal sum of \$10,000.00 in accordance with the terms of this Note.

Interest shall accrue on the principal balance outstanding at the rate of 6.00% as of the date hereof and shall be determined on the basis of 360 days per annum, cumulative and compounded. All outstanding principal shall be payable on demand of Lender.

Payments of principal and all other amounts hereunder shall be made in U.S. funds to the Lender, or such other place as the Lender may designate from time to time in writing.

Borrower's failure to pay to Lender when due any principal payment hereunder shall constitute an "Event of Default" hereunder. Upon the occurrence of an Event of Default, then at any time thereafter the Lender may declare the entire remaining principal balance due hereunder, immediately due and payable.

The invalidity of any provision of this Note shall not affect the validity of any other provision hereof. No delay or failure on the part of the Lender in the exercise of any right or remedy shall operate as a waiver thereof, and no single exercise of any right or remedy shall preclude Lender from the exercise of any other or further rights or remedies.

In the event this Note is placed in the hands of an attorney for collection (but not for resolution of any disputes on a set off or recoupment of the amount due hereunder), all expenses of the Lender, including reasonable attorneys' fees, shall be added to the principal amount of this Note and collected as a part hereof. This Note shall be governed by and construed in accordance with the laws of the State of South Carolina. Jurisdiction and venue for the enforcement of this Note hereof shall be exclusively in the courts for the State of South Carolina.

Borrower expressly waives demand, presentment, protest and notice of non-payment or dishonor and all other notices or demands whatsoever (except for notices expressly set forth herein), and such parties agree to remain bound hereby until all amounts due hereunder are paid in full, notwithstanding any extension of time for payment which may be granted, even though the period of extension be indefinite.

The Borrower reserves the right to prepay this Note in whole or in part at any time without fee or penalty.

EXECUTED to be effective as of April 13, 2009.

Roper Pond, LLC

Its: Authorized Agent

By: 

Its: AUTHORIZED AGENT

Date: APRIL 13, 2009

Notice Address for Borrower:
1401 Main Street, Suite 650
Columbia, SC 29201

**DEMAND
PROMISSORY NOTE**

\$40,000.00
Columbia, South Carolina

Dated to be effective as
of April 23, 2009

FOR VALUE RECEIVED, ROPER POND, LLC., (the "Borrower"), hereby promises to pay, in lawful money of the United States of America, to the order of Estates Management Company (the "Lender"), the principal sum of \$40,000.00 in accordance with the terms of this Note.

Interest shall accrue on the principal balance outstanding at the rate of 6.00% as of the date hereof and shall be determined on the basis of 360 days per annum, cumulative and compounded. All outstanding principal shall be payable on demand of Lender.

Payments of principal and all other amounts hereunder shall be made in U.S. funds to the Lender, or such other place as the Lender may designate from time to time in writing.

Borrower's failure to pay to Lender when due any principal payment hereunder shall constitute an "Event of Default" hereunder. Upon the occurrence of an Event of Default, then at any time thereafter the Lender may declare the entire remaining principal balance due hereunder, immediately due and payable.

The invalidity of any provision of this Note shall not affect the validity of any other provision hereof. No delay or failure on the part of the Lender in the exercise of any right or remedy shall operate as a waiver thereof, and no single exercise of any right or remedy shall preclude Lender from the exercise of any other or further rights or remedies.

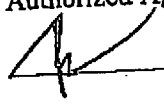
In the event this Note is placed in the hands of an attorney for collection (but not for resolution of any disputes on a set off or recoupment of the amount due hereunder), all expenses of the Lender, including reasonable attorneys' fees, shall be added to the principal amount of this Note and collected as a part hereof. This Note shall be governed by and construed in accordance with the laws of the State of South Carolina. Jurisdiction and venue for the enforcement of this Note hereof shall be exclusively in the courts for the State of South Carolina.

Borrower expressly waives demand, presentment, protest and notice of non-payment or dishonor and all other notices or demands whatsoever (except for notices expressly set forth herein), and such parties agree to remain bound hereby until all amounts due hereunder are paid in full, notwithstanding any extension of time for payment which may be granted, even though the period of extension be indefinite.

The Borrower reserves the right to prepay this Note in whole or in part at any time without fee or penalty.

EXECUTED to be effective as of April 23, 2009.

Roper Pond, LLC
Its: Authorized Agent

By: 

Its: Authorized Agent

Date: Thursday April 23, 2009

Notice Address for Borrower:
1401 Main Street, Suite 650
Columbia, SC 29201

**DEMAND
PROMISSORY NOTE**

\$20,000.00
Columbia, South Carolina

Dated to be effective as
of June 18, 2009

FOR VALUE RECEIVED, ROPER POND, LLC., (the "Borrower"), hereby promises to pay, in lawful money of the United States of America, to the order of Estates Management Company (the "Lender"), the principal sum of \$20,000.00 in accordance with the terms of this Note.

Interest shall accrue on the principal balance outstanding at the rate of 6.00% as of the date hereof and shall be determined on the basis of 360 days per annum, cumulative and compounded. All outstanding principal shall be payable on demand of Lender.

Payments of principal and all other amounts hereunder shall be made in U.S. funds to the Lender, or such other place as the Lender may designate from time to time in writing.

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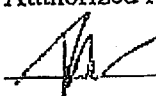
Borrower expressly waives demand, presentment, protest and notice of non-payment or dishonor and all other notices or demands whatsoever (except for notices expressly set forth herein), and such parties agree to remain bound hereby until all amounts due hereunder are paid in full, notwithstanding any extension of time for payment which may be granted, even though the period of extension be indefinite.

The Borrower reserves the right to prepay this Note in whole or in part at any time without fee or penalty.

EXECUTED to be effective as of June 18, 2009.

Roper Pond, LLC

Its: Authorized Agent

By:  _____

Its: Authorized Agent

Date: Thursday June 18, 2009

Notice Address for Borrower:
1401 Main Street, Suite 650
Columbia, SC 29201

**DEMAND
PROMISSORY NOTE**

\$20,000.00
Columbia, South Carolina

Dated to be effective as
of July 31, 2009

FOR VALUE RECEIVED, ROPER POND, LLC., (the "Borrower"), hereby promises to pay, in lawful money of the United States of America, to the order of Estates Management Company (the "Lender"), the principal sum of \$20,000.00 in accordance with the terms of this Note.

Interest shall accrue on the principal balance outstanding at the rate of 6.00% as of the date hereof and shall be determined on the basis of 360 days per annum, cumulative and compounded. All outstanding principal shall be payable on demand of Lender.

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The Borrower reserves the right to prepay this Note in whole or in part at any time without fee or penalty.

EXECUTED to be effective as of July 31, 2009.

Roper Pond, LLC
Its: Authorized Agent

By: 

Its: Authorized Agent

Date: Friday July 31, 2009

Notice Address for Borrower:
1401 Main Street, Suite 650
Columbia, SC 29201

**DEMAND
PROMISSORY NOTE**

\$2,500.00
Columbia, South Carolina

Dated to be effective as
of September 30, 2009

FOR VALUE RECEIVED, ROPER POND, LLC., (the "Borrower"), hereby promises to pay, in lawful money of the United States of America, to the order of Estates Management Company (the "Lender"), the principal sum of \$2,500.00 in accordance with the terms of this Note.

Interest shall accrue on the principal balance outstanding at the rate of 6.00% as of the date hereof and shall be determined on the basis of 360 days per annum, cumulative and compounded. All outstanding principal shall be payable on demand of Lender.

Payments of principal and all other amounts hereunder shall be made in U.S. funds to the Lender, or such other place as the Lender may designate from time to time in writing.

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Borrower expressly waives demand, presentment, protest and notice of non-payment or dishonor and all other notices or demands whatsoever (except for notices expressly set forth herein), and such parties agree to remain bound hereby until all amounts due hereunder are paid in full, notwithstanding any extension of time for payment which may be granted, even though the period of extension be indefinite.

The Borrower reserves the right to prepay this Note in whole or in part at any time without fee or penalty.

EXECUTED to be effective as of September 30, 2009, 2009.

Roper Pond, LLC
Its: Authorized Agent

By: [Signature]

Its: Authorized Agent

Date: Wednesday September 30, 2009

Notice Address for Borrower:
1401 Main Street, Suite 650
Columbia, SC 29201

**DEMAND
PROMISSORY NOTE**

\$45,000.00
Columbia, South Carolina

Dated to be effective as
of November 2, 2009

FOR VALUE RECEIVED, ROPER POND, LLC., (the "Borrower"), hereby promises to pay, in lawful money of the United States of America, to the order of Estates Management Company (the "Lender"), the principal sum of \$45,000.00 in accordance with the terms of this Note.

Interest shall accrue on the principal balance outstanding at the rate of 6.00% as of the date hereof and shall be determined on the basis of 360 days per annum, cumulative and compounded. All outstanding principal shall be payable on demand of Lender.

Payments of principal and all other amounts hereunder shall be made in U.S. funds to the Lender, or such other place as the Lender may designate from time to time in writing.

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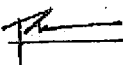
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The Borrower reserves the right to prepay this Note in whole or in part at any time without fee or penalty.

EXECUTED to be effective as of November 2, 2009.

Roper Pond, LLC
Its: Authorized Agent

By: 

Its: Authorized Agent

Date: Monday November 2, 2009

Notice Address for Borrower:
1401 Main Street, Suite 650
Columbia, SC 29201

**DEMAND
PROMISSORY NOTE**

\$13,000.00
Columbia, South Carolina

Dated to be effective as
of January 28, 2010

FOR VALUE RECEIVED, ROPER POND, LLC., (the "Borrower"), hereby promises to pay, in lawful money of the United States of America, to the order of Estates Management Company (the "Lender"), the principal sum of \$13,000.00 in accordance with the terms of this Note.

Interest shall accrue on the principal balance outstanding at the rate of 6.00% as of the date hereof and shall be determined on the basis of 360 days per annum, cumulative and compounded. All outstanding principal shall be payable on demand of Lender.

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The Borrower reserves the right to prepay this Note in whole or in part at any time without fee or penalty.

EXECUTED to be effective as of January 28, 2010.

Roper Pond, LLC
Its: Authorized Agent

By:  _____

Its: Authorized Agent

Date: Thursday January 28, 2010

Notice Address for Borrower:
1401 Main Street, Suite 650
Columbia, SC 29201

Memo

To: Jackie Arneson
From: Matt Mundy *MM*
Date: 1/28/2010
Re: Transfer for New Roper Pond Operations

Please transfer \$13,000.00 from Estates Management (300) Operating Account (2000020066747) to the new Roper Pond (150) Account (2000041878024) for start up operations.

Please record the following journal entries:

Estates Management Company (300)

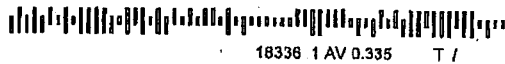
1102	Operating Cash	\$ (13,000.00)
1125	A/R Roper Pond	\$ 13,000.00

Roper Pond (150)

1102	Operating Cash	\$ 13,000.00
1342	Note Payable - EMC	\$ (13,000.00)

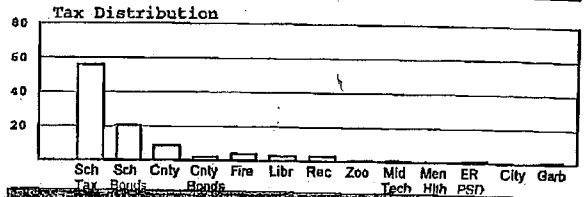
This was approved by Bob.

**2009
TAX NOTICE**
RICHLAND COUNTY
REAL PROPERTY
Paul Brawley, Auditor



ROPER POND LLC
1401 MAIN ST STE 650
COLUMBIA SC 29201-2888

1	NOTICE NO.	2	TAX DIST.
NO	R-2009-136795	2ER	
PROPERTY DESCRIPTION		STATEMENT DATE	
6837 N TRENHOLM RD			



TAX DISTRIBUTION		
DOLLAR AMOUNT	ALLOCATION	%
15,418.48	SCHOOL TAXES	55.7
5,667.20	SCHOOL BONDS	20.5
2,438.41	COUNTY †	8.8
554.40	COUNTY BONDS	2.0
1,145.76	FIRE SERVICE	4.1
806.96	PUBLIC LIBRARY	2.9
813.12	RECREATION	2.9
123.20	RIVERBANKS ZOO	.4
172.48	MIDLANDS TECH	.6
73.92	MENTAL HEALTH	.3
246.40	EAST RICH. PSD	.9
.00	CITY †	.0
249.00	GARBAGE	.9
27,709.33	PAY THIS AMOUNT	

TAX MAP NUMBER		PROPERTY LOCATION		PRIOR YEAR TAX
16907-01-04-		13.00 ACRES		22,155.00
ACRES	APPAISED VALUE TAXABLE	RATIO	ASSESSED VALUE	
13.00	1,026,600	.06	61,600	
ENTITY	TOTAL ASSESSED VALUE	MILLS	TAX	
COUNTY	61,600	464.8	28,631.68	
* COUNTY INCLUDES - OPERATIONS, LANDFILL, CAPITAL REPLACEMENTS, CONSERVATION COMMISSION AND NEIGHBORHOOD REDEVELOPMENT. † LOCAL OPTION SALES TAX CREDIT HAS BEEN APPLIED TO YOUR COUNTY AND CITY TAX DISTRIBUTION		HOMESTEAD EXEMPTION	.00	
		SCHOOL TAX CREDIT	.00	
		LOCAL OPTION SALES TAX CREDIT	1,171.35	
		GARBAGE	249.00	
		PAY THIS AMOUNT	27,709.33	
PAY THIS AMOUNT BY	AFTER	AFTER	AFTER	
JULY 15, 2010	JANUARY 15, 2010	FEBRUARY 2, 2010	MARCH 16, 2010	
27,709.33	28,540.61	30,480.26	31,865.73	
IMPORTANT MESSAGES				
Your taxes increased due to a \$306 million school bond referendum approved by voters in 2008, real property reassessment and County Council setting a higher millage rate than the Auditor calculated.				

TOTAL: \$27,709.33				
PREPARED BY:	DATE: 12/31/2009	APPROVED BY:	DATE:	
COMMENTS:				

RICHLAND COUNTY

PO BOX 11947
COLUMBIA, SC 29211

Batch Date: 1/08/2010 Time: 17:00:32
PostMark: 12/31/2009

REAL ESTATE TAX

David A. Adams
County Treasurer
(803) 576-2250
treasurer@richlandonline.com

Roper

✓ 10143

12/31/09

Tax Bill No: R-2009-136795
Tax Map No: 16907-01-04
Loc 6837 N TRENHOLM RD

Millage 464.80

Tot-Asm 61600

Where DK Clerk ID
Batch 52270 Trans No. 23026
Other: 466036783

Dist-No
2ER

Current Payroll: 709.33

County Tax	531.68
County Sales Tax	171.35
Homesite	.00
County Relief	.00
So. C. Waste	449.00
Gen. Cost	44.00
City Tax	.00
City Sales-Cr	.00

Paid to Date **27,709.33**
 12-1-2009

PAID THRU BANK DISKETTE
This is a paid receipt

ROPER POND LLC

1401 MAIN STREET SUITE 650

COLUMBIA SC 29201-0000

PLACE
STAMP
HERE

RICHLAND COUNTY
PO BOX 11947
COLUMBIA SC 29211-1947

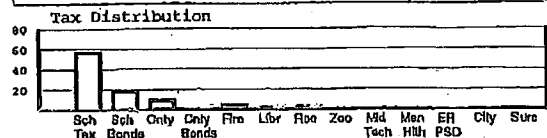
**2010
TAX NOTICE**
RICHLAND COUNTY
REAL PROPERTY
Paul Brawley, Auditor



18891 1 AV 0.335 T /
#018691 R
ROPER POND LLC
1401 MAIN ST STE 650
COLUMBIA SC 29201-2888

TAX MAP NUMBER		PROPERTY LOCATION		PRIOR YEAR TAX	
16907-01-04-		13.00 ACRES		27,709.33	
ACRES	APPRAISED VALUE TAXABLE	RATIO		ASSESSED VALUE	
13.00	1,026,600	.06		61,600	
ENTITY	TOTAL ASSESSED VALUE	MILLS		TAX	
COUNTY	61,600	468.2		28,841.12	
COUNTY INCLUDES: 0: ERATIONS, LANDFILL, CAPITAL REPLACEMENTS, CONSERVATION COMMISSION AND NEIGHBORHOOD REDEVELOPMENT. LOCAL OPTION SALES TAX CREDIT HAS BEEN APPLIED TO YOUR COUNTY AND CITY TAX DISTRIBUTION			HOMESTEAD EXEMPTION .00 SCHOOL TAX CREDIT .00 LOCAL OPTION SALES TAX CREDIT 1,088.20 Garbage 249.00 PAY THIS AMOUNT 28,001.92		
PAY THIS AMOUNT BY		AFTER	AFTER	AFTER	
JANUARY 15, 2011		JANUARY 15, 2011	FEBRUARY 2, 2011	MARCH 18, 2011	
28,841.98		28,841.98	30,802.11	32,202.21	
IMPORTANT MESSAGES					
Surcharge Library appropriated deficiency for 2009					

1	NOTICE NO.	2	TAX DIST.
NO	R-2010-137209	2ER	
PROPERTY DESCRIPTION		STATEMENT DATE	
6837 N TRENHOLM RD			



TAX DISTRIBUTION		
DOLLAR AMOUNT	ALLOCATION	%
15,911.28	SCHOOL TAXES	56.9
5,236.00	SCHOOL BONDS	18.7
2,558.52	COUNTY* †	9.1
554.40	COUNTY BONDS	2.0
1,225.84	FIRE SERVICE	4.4
819.28	PUBLIC LIBRARY	2.9
825.44	RECREATION	2.9
123.20	RIVERBANKS ZOO	.4
172.48	MIDLANDS TECH	.6
73.92	MENTAL HEALTH	.3
246.40	EAST RICH. PSD	.9
.00	CITY †	.0
6.16	Library Surcharge	.0
.00		.0
249.00	Garbage	.9
PAY THIS AMOUNT		

FOR CHANGE OF ADDRESS:

Please put the address you want your receipt mailed to in the space provided if different from the address on the front.

If you want this to be a permanent change of address you must contact the assessor at 803-576-2640 or email AssessorCOA@rcgov.us.

Thank you.

NAME _____
ADDRESS _____
CITY & STATE _____ ZIP _____

COUNTY

REAL ESTATE TAX

29211

David A. Adams
County Treasurer
(803) 576-2250
treasurer@richlandonline.com

2011 Time: 17:48:23
2011

4-2010-137209
16907-01-04
N TRENHOLM RD

Age 468.20

Tot-Asm 61800

Where OF Clerk
Batch 55342 Tracked
Check: 28001 82/10/11 280010170

Dist-No
2ER

Current Payment 28,001.92

County Tax 28,841.12
County Salary 1,088.20
Homestead .00
County Relief .00
Solid Waste 49.00
Penalty .00
City Tax .00
City Sales-Cr .00

Pay Date 28,001.92
10/11

This is a paid receipt

NOTICE NO.	TAX DIST.
2010-137209	2ER
DESCRIPTION	STATEMENT DATE
HOLM RD	

The Lib Fee Zoo Mid Men ER City Surc
Tech High PSD

DISTRIBUTION	
ALLOCATION	%
SCHOOL TAXES	56.9
SCHOOL BONDS	18.7
COUNTY* ↑	9.1
COUNTY BONDS	2.0
FIRE SERVICE	4.4
PUBLIC LIBRARY	2.9
RECREATION	2.9
RIVERBANKS ZOO	.4
MIDLANDS TECH	.6
MENTAL HEALTH	.3
EAST RICH. PSD	.9
CITY ↑	.0
Library Surcharge	.0
	.0
Garbage	.9
PAY THIS AMOUNT	

ROPER POND LLC

1401 MAIN STREET SUITE 650

COLUMBIA SC 29201-0000

RICHLAND COUNTY
PO BOX 11947
COLUMBIA SC 29211-1947

FOR CHANGE OF ADDRESS:

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in the space provided if different from the address on the front.

If you want this to be a permanent change
of address you must contact the assessor at
803-576-2640 or email AssessorCOA@rcgov.us.

Thank you.

NAME _____

ADDRESS _____

CITY & STATE _____ ZIP _____

Matt Mundy

From: Teresa Hodge
Sent: Thursday, May 28, 2015 12:08 PM
To: Janet Safran
Subject: FW: Roper Building Permit

Teresa Hodge

Estates Management Company
1401 Main Street, Ste. 650
Columbia, SC 29201
O: 803-779-1400
F: 803-765-9427
M: 803-309-1304

From: Matt Mundy [mailto:mmundy@estatesinc.com]
Sent: Tuesday, October 20, 2009 4:30 PM
To: 'Lavender, Tommy'; 'Hartley, Joan W.'
Cc: thodge@estatesinc.com; bmundy@estatesinc.com
Subject: FW: Roper Building Permit

Joan & Tommy,
Please refer to the below email. These are examples of costs that we plan on going back against the Petitioners with. We have incurred numerous costs over the course of this outside of legal fees. B.P. Barber is right up there in competition with the amount of money we have paid to Nexsen Pruet for this appeal. Including the fee we will incur below from Richland County for the second time. The cost to have your plans reviewed once is approximately \$4,000.00. The bills keep stacking up. Thanks!
Regards,
MM

Matt Mundy
Estates Management Company
1401 Main Street, Suite 650
Columbia, SC 29201
(803).779.1400 - Office
(803).765.9427 - Fax
www.estatesinc.com

From: Teresa Hodge [mailto:thodge@estatesinc.com]
Sent: Tuesday, October 20, 2009 1:35 PM
To: mmundy@estatesinc.com
Cc: bmundy@estatesinc.com
Subject: Roper Building Permit

Van Higgins called today to check on Roper Pond. He explained that there is typically a 6 month period that the permit is good for. We submitted back in January. I explained our situation and that we may not start construction until next Spring.

He said they wouldn't have to re-review the plans, but we would have to pay the permit review fee again since the time has expired. Matt- you will want to adjust the proforma to reflect this. The 2 outstanding items will remain for now: RESCHECK and Fire Marshal approval. For now, he is shelving the plans until we get ready for the permit again.

Teresa Hodge

Estates Management Company
1401 Main Street, Suite 650
Columbia, SC 29201
Office: 803-779-1400
Fax: 803-765-9427
Cell: 803-309-1304
thodge@estatesinc.com

No virus found in this incoming message.

Checked by AVG - www.avg.com

Version: 8.5.422 / Virus Database: 270.14.15/2434 - Release Date: 10/20/09 18:42:00

Matt Mundy

From: Bobby Bazemore <bbazemore@burdetteengr.com>
Sent: Tuesday, August 31, 2010 6:39 PM
To: thodge@estatesinc.com
Subject: FW: Roper Pond

Teresa,

This is the last correspondence I had sent on the changes to the electrical design to meet the new 2008 NEC requirements. I could not find where I sent you a fee proposal for reworking the drawings. I can give you a proposal tomorrow, but I wanted to make sure you didn't have a proposal that I did not keep a copy of.

If you have something, please forward to me. Otherwise, I will send you a proposal to revise the drawings for re-permitting and re-bidding the project. What is the time frame for getting these out to bids again?

Bobby

From: Bobby Bazemore
Sent: Monday, February 22, 2010 10:49 AM
To: 'thodge@estatesinc.com'
Subject: RE: Roper Pond

Teresa,

Unfortunately, there have been several changes in between the 2005 NEC and 2008 NEC. Since the code was in print during the design, but not yet enforced, we incorporated some of the smaller impact items into the design, but we did not include all items to keep the contractor's cost in line. The following is a list of items that will need to be revised, along with an estimate of the cost impact.

1. We need to change most of the breakers in all the apartment panels to AFCI type. Cost estimate \$45 x 12 breakers=\$540 per apartment.
2. The outlets in the units need to change to tamper resistant type from standard type outlets. Cost estimate \$3 x average 30 outlets= \$90 per apartment

These costs are estimates. With markups and Change Order pricing in this market, the total cost per apartment could be \$800-\$1000 per apartment.

We would have to revise the drawings to include these changes and issue a new permit set of plans. Do you need a fee estimate for the changes to the electrical design?

Bobby

From: Teresa Hodge [mailto:thodge@estatesinc.com]
Sent: Friday, February 05, 2010 1:58 PM
To: Bobby Bazemore
Subject: RE: Roper Pond

Please let us know as soon as possible. I hope its not too many changes. Thanks!

Teresa Hodge

Estates Management Company
1401 Main Street, Suite 650
Columbia, SC 29201

Office: 803-779-1400
Fax: 803-765-9427
Cell: 803-309-1304
thodge@estatesinc.com

From: Bobby Bazemore [mailto:bbazemore@burdetteengr.com]
Sent: Friday, February 05, 2010 11:04 AM
To: thodge@estatesinc.com
Subject: RE: Roper Pond

Good Morning Teresa,

Congratulations. The 2008 code made some fairly significant changes. Give me till Wednesday to review the drawings in light of those changes and I will send you a summary and order of magnitude for approximate costs.

Bobby

From: Teresa Hodge [mailto:thodge@estatesinc.com]
Sent: Thursday, February 04, 2010 1:44 PM
To: Bobby Bazemore
Subject: Roper Pond

Bobby,

I wanted to relay the good news with Roper Pond. The judge ruled in our favor and we are now trying to get back into things and pull the permit etc.

I spoke with Richland County and we have to get them to re-review the plans. They say now the 2008 NEC is in effect and the plans would need to reflect this.

What is involved with getting our plans up to code? Thanks!

Teresa Hodge

Estates Management Company
1401 Main Street, Suite 650
Columbia, SC 29201
Office: 803-779-1400
Fax: 803-765-9427
Cell: 803-309-1304
thodge@estatesinc.com

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Version: 8.5.435 / Virus Database: 271.1.1/2669 - Release Date: 02/05/10 07:35:00

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Checked by AVG - www.avg.com

Version: 8.5.441 / Virus Database: 271.1.1/3064 - Release Date: 08/31/10 18:34:00



Burdette Engineering, Inc.
102 Pilgrim Road
Greenville, SC 29607-5702
864 / 297-8717
FAX 864 / 297-8719

September 7, 2010

Ms. Teresa Hodge
Estates, Inc.
1401 Main Street, Ste 650
Columbia, SC 29201

Re: Additional Services for Re-bidding Roper Pond Apartments
Columbia, SC

Dear Ms. Hodge:

Congratulations on being able to move ahead with this project. The following is a scope for the additional fee request to meet the request of the local authority to bring the design up to the latest (2008) National Electrical Code, which was not in force when the initial design was completed. Our scope will be to:

1. Revise the electrical plans to bring them in compliance with the 2008 NEC which was adopted by the State Authority after the initial design to include:
 - a. Specifying arc flash protection for all 120 volt circuits in the dwelling units.
 - b. Specifying tamper proof devices in the dwelling unit for all devices not GFCI protected.
 - c. Other miscellaneous items as required.
2. Provisions for Estates to re-bid the project for incorporating prior addendum items into plans, updating specifications and for further bidding questions.
3. Additionally, to provide alternate design for adding gas fired water heaters and cook tops in lieu of electric.

Engineering fees shall be as follows:

A.	NEC 2008 Revisions and review (items 1 and 2 above)	\$ 5,300
B.	Alternate for Gas Appliances (item 3 above)	\$ 1,200

We would like to request that we receive final architectural and HVAC plans one week prior to bidding for final coordination, and we shall provide Architect and HVAC same. Please let us know how and when to proceed.

Sincerely,

Donald J. Burdette, P.E.

08033a-1

Roper Impact and Tap Fees 5/9/11

City of Columbia			
	Prior 2009	Current	
2" main line tap	\$2,868/each	\$2,968/each	\$ 5,786.00
3" main line tap	\$540/each	\$2,018/each	\$ 2,018.00
5" main line tap	\$4,500/each	\$3,161/each	\$ 25,288.00
1" irrigation meter		\$1,500/meter	\$ 12,000.00
TOTAL	\$ 29,408.00		\$ 45,092.00
1" irrigation meters	\$840/each	\$7,040/each	\$ 23,160.00
TOTAL	\$ 82,736.00		\$ 73,302.00

Sewer- East Richland				
	Prior to 2009		2009-current	
Tap Fee	\$350/unit + club	\$ 71,750.00	\$350/unit + club	\$ 71,750.00
Inspection Fee	\$50/bldg + club	\$ 450.00	\$50/bldg + club	\$ 450.00
Capacity Fee	\$900/unit	\$ 183,600.00	\$1,350/unit	\$ 275,400.00
Clubhouse capacity	\$1,700 per toilet	\$ 10,200.00	\$2,550 per toilet	\$ 15,300.00
prev TOTAL		\$ 255,000.00	New TOTAL	\$ 362,900.00

Notes:

City of Columbia new fees did not include install. Had to be installed by Plumbing Sub-Contrator. Estimated to be \$1,500/Meter

Total Change in Impact & Tap Fees \$ 102,534.00

* does not include irrigation meters

2,900 increase (tapped)
 5,034 increase (meters)
 102,534

Teresa Hodge

From: Teresa Hodge [thodge@estatesinc.com]
Sent: Monday, January 31, 2011 1:29 PM
To: 'mmundy@estatesinc.com'
Subject: sewer impact fees

Matt,

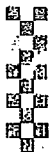
Here is the break down for the increase in Sewer Impact fees from East Richland County:

Sewer- East Richland			
	Prior to 2009	2009-current	
Tap Fee	\$350/unit + club	\$350/unit + club	\$ 71,750.00
Inspection Fee	\$50/bldg + club	\$50/bldg + club	\$ 450.00
Capacity Fee	\$900/unit	\$1,350/unit	\$ 275,400.00
Clubhouse capacity	\$1,700 per toilet	\$2,550 per toilet	\$ 15,300.00
	\$		
prev TOTAL	266,000.00	New TOTAL	\$ 362,900.00

The Prior to 2009 #'s were given to me verbally by Greg Davis with East Richland. I have the new fee spreadsheet that says "October 2009- Present" do you need that?

Teresa Hodge

Estates Management Company
1401 Main Street, Suite 650
Columbia, SC 29201
Office: 803-779-1400
Fax: 803-765-9427
Cell: 803-309-1304
thodge@estatesinc.com



FAY TO TERESA HOGUE
 803 765 9427
 FROM DANNIE WAIN
 FAX 803 736 5399



East Richland County Public Service District SH 1 of 1
 P O Box 23069 / 704 Ross Road
 Columbia, South Carolina 29224-3069 1/20/11

As of October 1, 2009 - Present

OUR PHONE BOX 78 1573

Memo: To all applicants

Greg Davis

Re: Applicable fees for new connections

Below is the current schedule of connection fees. All fees (except installation charges) must be prior to the installation of any sanitary sewer line. These fees are collected at the time the application is completed. A plumber's permit can not be issued until verification of a current bond is made and fees are paid.

Tap Fee

First unit one time charge

\$350.00 - per unit

Each additional under the same roof

\$350.00

71,400
 + 350 ch
 71,750

Inspection / Permit Fee

Per inspection

\$50.00 per bldg - 450

Capacity Fee

Residential Homes

Each

\$1,350.00

Apartment/Duplex

Unit

\$1,350.00

Mobile Homes

Each

\$1,350.00

Joint acct.
 or bedrooms

\$275,400
 plus club

Institutional

Schools w/o Cafeteria, gym, showers

\$675.00 per commode/urinal

Schools with cafeteria only

\$1,000.00 per commode/urinal

Schools with Cafeteria, gym, showers

\$1,350.00 per commode/urinal

Churches

\$675.00 per commode/urinal

346,800
 + 450
 + 10,200

Commercial - office / clubhouse

General

\$2,550.00 per commode/urinal (9)

\$357,450

Laundromats

Plus

\$2,550.00 per commode/urinal

\$1,575.00 per washer

Restaurants

Plus

\$2,550.00 per commode/urinal

\$150.00 per seating capacity

Service station

\$2,550.00 per commode/urinal

Plus

\$1,575.00 per wash bay

Hotel/Motel

\$375.00 per unit/bedroom

Hospital

\$775.00 per bed

1/18/2011
(DATE)
Michelle Garner
(QUOTE CREATED BY)
Roper Pond Apts
(PROJECT)
North Trenholm Rd
(LOCATION)
311-10
(CITY FILE #)

METER SIZE: _____ \$
_____ \$
PROTECTUS-TYPE METER _____ \$

*OWNER MUST CHOOSE FROM APPROVED LARGE METER CONTRACTOR LIST FOR METER INSTALLATION
*OWNER IS RESPONSIBLE FOR THE INSTALLATION OF THE BACKFLOW PREVENTOR AND METER VAULT.
*Upon payment and application must tell Engineering which contractor has been chosen.

MAIN LINE TAPS:

TAP	8"	X	6"	@	N Trenholm Rd	\$2,868.00
TAP	8"	X	6"	@	N Trenholm Rd	\$2,868.00
TAP		X		@		\$
TAP		X		@		\$

FIRE HYDRANT INSTALLATION FEE: _____ \$

SEWER TAP _____ N/A

	YES	NO	
COVENANT REQUIRED	X		TMS#16907-01-04
EMAIL SUSAN/LISA/ANGELA once the covenant is executed			Portion in Arcadia Lakes
CONTIGUOUS TO CITY LIMITS		X	Richland County
* IF YES COVENANT FOR CONTIGUOUS PROPERTIES REQUIRED			
PTO REQUIRED			
- WATER	X		
- SEWER		X	
STORM DRAINAGE CERT. REQUIRED		X	IF STORM DRAINAGE
FIRE HYDRANT INSTALLED BY:			CERT IS REQ'D SELL
- CITY AT DEVELOPER'S EXPENSE		X	METER AS CONST.
- CITY AT NO CHARGE		X	UNTIL CERT IS OBTAINED
AGREEMENT TO COMPLY	X		
ENCROACHMENT REQUIRED BY:			
- CITY		X	
- ENGINEER	X		
NEED SIGNED GREASE TRAP LETTER		X	
SQUARE FOOTAGE OF BUILDING	RESIDENTIAL		
RATE TYPE FOR FIRE CHARGES			SMALL BUSINESS (1000 SQ FT AND UNDER)
			COMMERCIAL (1000 - 10,000 SQ FT)
			HEAVY COMMERCIAL (10,500 SQ FT AND UP)
CHECK WITH INSPECTOR and WITH SUSAN:	X		
this is for 4" and above meters to be sure we have everything we need before we sell the meter, 9/23/09 per Susan.			
and email any service orders to the inspector for main line taps and meters for projects			
OK TO SELL AS CONSTRUCTION W/LETTER		X	



City of Columbia
Utilities and Engineering Department
Special Services

MAIN LINE TAP FEES:

2X2	\$993.00	14X8	\$4,108.00
4X2	\$1,303.00	14X10	\$4,378.00
4X3	\$1,898.00	16X4	\$3,368.00
4X4	\$1,933.00	16X6	\$4,243.00
6X2	\$1,293.00	16X8	\$4,658.00
6X3	\$2,103.00	16X10	\$4,978.00
6X4	\$2,288.00	16X12	\$5,378.00
6X6	\$2,783.00	18X4	\$4,193.00
8X2	\$1,333.00	18X6	\$4,493.00
8X3	\$2,208.00	18X8	\$4,883.00
8X4	\$2,343.00	18X10	\$5,203.00
8X6	\$2,868.00	18X12	\$5,628.00
8X8	\$3,183.00	18X18	\$5,728.00
10X2	\$1,423.00	20X6	\$4,543.00
10X3	\$2,328.00	24X2	\$1,933.00
10X4	\$2,498.00	24X3	\$3,038.00
10X6	\$3,063.00	24X6	\$4,593.00
10X8	\$3,583.00	24X8	\$5,033.00
10X10	\$3,838.00	24X10	\$5,428.00
12X2	\$1,433.00	24X12	\$5,828.00
12X4	\$2,518.00	30X6	\$5,893.00
12X6	\$3,243.00	30X8	\$6,233.00
12X8	\$3,563.00	30X10	\$6,528.00
12X10	\$3,933.00	36X6	\$5,943.00
12X12	\$4,308.00	36X8	\$6,283.00
14X4	\$3,118.00	36X10	\$6,628.00
14X6	\$3,653.00	48X12	\$8,000.00

Last Revised 1/21/11

New Ordinance

Meter size	Water Tap Fees	
	City make tap	Meter drop-in
❖ ¾"	\$2512.00	\$1062.00
❖ 1"	\$3468.00	\$2018.00
❖ 1-1/2"	\$4350.00	\$2900.00
❖ 2"	\$8490.00	\$7040.00

Sec. 23-147. Installation of water meters serving fire protection sprinkler systems.

(a) Water meters serving fire protection sprinkler systems.

Applicant shall be responsible for all costs of installation and materials, including cost of making connection to the main, cutting and repairing pavement, and restoration required to install a water meter to serve a fire protection sprinkler system. Water meters to serve fire protection sprinkler systems shall be purchased from the City of Columbia water division.

(b) Charges for water meters serving fire protection sprinkler systems shall be the City's cost of the meter times 1.15.

(c) Water meters serving fire protection sprinkler systems shall be installed in a separate vault meeting current City of Columbia design regulations. Installation shall be by a City approved contractor hired by the owner at the owner's expense. A list of approved contractors shall be provided by the Utilities and Engineering Department. Installation shall include, but not be limited to, City approved backflow device and necessary isolation valves. Plans shall be approved by the Utilities and Engineering Department prior to the purchase and installation of a water meter to serve a fire protection sprinkler system. Installation of a water meter to serve a fire protection sprinkler system, including service and connection, must be coordinated with the City of Columbia inspector and approved prior to operation.

❖ 4" w/1-1/2"	\$3161.00
❖ 6" w/1-1/2"	\$4210.00
❖ 8" w/2"	\$5967.00
❖ 10" w/2"	\$8279.00

*Meter relocations, requiring a new tap, will be \$1450.00. Relocation WITHOUT a new tap (under 15 feet) will remain at \$125.00.

FIRE HYDRANT INSTALLATION AND RELOCATIONS = \$800.00

***IF RELOCATION IS OVER 15' A MAIN LINE TAP FEE APPLIES**

FIRE HYDRANT METER FEE = \$240.00

Meter reduction fee is \$30.00

IRRIGATION METERS DO NOT COME WITH A BACKFLOW PREVENTOR OWNER IS RESPONSIBLE FOR INSTALLATION AND YEARLY CERTIFICATION.

Sewer Tap Fees

*****Commercial Sewer Fees will be based on DHEC table*****

City Make tap	Developer Installed Tap
\$1300.00 tap fee + \$2640.00 expansion fee= \$3940.00	\$300.00 tap fee + \$2640.00 expansion fee= \$2940.00

*Sewer tap renewal = \$1300.00 sewer tap fee

DHEC (Department of Health and Environmental Control)
(803) 898-3432

PUBLIC SERVICE COMMISSION
(803) 296-5100

PUPS (Palmetto Utility Protection Services)
Dial 8-1-1, if in SC
If not in SC, dial 1-888-721-7877



SCHEDULE OF TAP FEES

INSTALLATION AND RELOCATION OF A FIRE HYDRANT	\$800.00
FIRE HYDRANT METER (NON REFUNDABLE DEPOSIT)	\$240.00

WATER METER FEES

IRRIGATION	<u>Make tap and install meter:</u>	<u>Install meter on existing tap:</u>
3/4"	\$465.00	\$265.00
1"	\$510.00	\$310.00
1-1/2"	\$720.00	\$520.00
2"	\$840.00	\$640.00

Note: For irrigation meters, the landowner is responsible for the backflow preventer and having it inspected by a certified plumber on a yearly basis.

INSIDE CITY LIMITS	<u>Make tap and install meter:</u>	<u>Install meter on existing tap:</u>
3/4"	\$485.00 residential	\$285.00 residential
	\$497.00 commercial	\$297.00 commercial
1"	\$535.00 residential	\$335.00 residential
	\$547.00 commercial	\$347.00 commercial
1-1/2"	\$720.00 residential	\$520.00 residential
	\$732.00 commercial	\$532.00 commercial
2"	\$840.00 residential	\$640.00 residential
	\$852.00 commercial	\$652.00 commercial

OUTSIDE CITY LIMITS	<u>Make tap and install meter:</u>	<u>Install meter on existing tap:</u>
3/4"	\$490.00 residential	\$290.00 residential
	\$502.00 commercial	\$302.00 commercial
1"	\$540.00 residential	\$340.00 residential
	\$552.00 commercial	\$352.00 commercial
1-1/2"	\$720.00 residential	\$520.00 residential
	\$732.00 commercial	\$532.00 commercial
2"	\$840.00 residential	\$640.00 residential
	\$852.00 commercial	\$652.00 commercial

The Chapin area prices are reflective of an agreement dated June 29, 1988 between the City of Columbia and the Town of Chapin, South Carolina. The boundaries and description of said area is more clearly set forth on a map filed in the Department of Utilities and Engineering under City File #184-24.

CHAPIN AREA	<u>Make tap and install meter:</u>	<u>Install meter on existing tap:</u>
3/4"	\$1025.00 residential	\$825.00 residential
	\$1037.00 commercial	\$837.00 commercial
1"	\$1363.00 residential	\$1163.00 residential
	\$1375.00 commercial	\$1175.00 commercial
1-1/2"	\$2000.00 residential	\$1800.00 residential
	\$2012.00 commercial	\$1812.00 commercial
2"	\$2667.00 residential	\$2467.00 residential
	\$2679.00 commercial	\$2479.00 commercial



COST OF INSTALLING A PROTECTUS-TYPE METER (BY SIZE)

**NOTE: THESE PRICES ARE FOR THE METERS ONLY,
NOT THE METER PIT OR THE MAIN LINE TAP FEE(S).**

4" METER WITH A 1-1/2" BY-PASS METER	\$4,500.00
Chapin area price	\$5,333.00
6" METER WITH A 1-1/2" BY-PASS METER	\$6,000.00
Chapin area	\$8,000.00
8" METER WITH A 2" BY-PASS METER	\$8,000.00
Chapin area	\$10,667.00
10" METER WITH A 2" BY-PASS METER	\$10,300.00
Chapin area	\$13,773.00

MAIN LINE TAP FEES:

2X2	\$993.00	14X4	\$3118.00
4X2	\$1303.00	14X6	\$3653.00
4X3	\$1898.00	14X8	\$4108.00
4X4	\$1933.00	14X10	\$4378.00
6X2	\$1293.00	16X4	\$3368.00
6X3	\$2103.00	16X6	\$4243.00
6X4	\$2288.00	16X8	\$4658.00
6X6	\$2783.00	16X10	\$4978.00
8X2	\$1333.00	16X12	\$5378.00
8X3	\$2208.00	18X4	\$4193.00
8X4	\$2343.00	18X6	\$4493.00
8X6	\$2868.00	18X8	\$4883.00
8X8	\$3183.00	18X10	\$5203.00
10X2	\$1423.00	18X12	\$5628.00
10X3	\$2328.00	24X2	\$1933.00
10X4	\$2498.00	24X3	\$3038.00
10X6	\$3063.00	24X6	\$4593.00
10X8	\$3583.00	24X8	\$5033.00
10X10	\$3838.00	24X10	\$5428.00
12X2	\$1433.00	24X12	\$5828.00
12X4	\$2518.00	30X6	\$5893.00
12X6	\$3243.00	30X8	\$6233.00
12X8	\$3563.00	30X10	\$6528.00
12X10	\$3933.00	36X6	\$5943.00
12X12	\$4308.00	36X8	\$6283.00
		36X10	\$6628.00

SEWER TAP FEES (RESIDENTIAL)

INSIDE THE CITY LIMITS

OUTSIDE THE CITY LIMITS

\$600.00 PER TAP

\$800.00 PER TAP

*See sewer tap fee calculation sheet for commercial properties.

SANITARY SEWER TAP FEES
ESTABLISHED BY DIRECTOR OF UTILITIES

Page 1 of 4

Amusement Centers - per person (without food service)	5 GPD
- per seat (w/food service or restaurant)	40 GPD
Auditorium - per seat	5 GPD
Auto Dealerships, Sales Office - per employee	25 GPD
Service Area - per 1000 Sq. Ft.	200 GPD
Car Wash - Cars/Day	75 GPD
Auto Repair - per 1000 Sq. Ft.	200 GPD
Add if Floor Drain Connects	1 Tap
Barber Shop - per chair	100 GPD
Beauty Shop - per chair	125 GPD
Car Wash (self service - cars/day est. by supplier)	75 GPD
Church - Kitchen Addition	1 Tap
Deli - no cooking	70 GPD
Dentist - staff	15 GPD
- patients	5 GPD
Dog Run (home type)	1 Tap
(pad must be covered and above flood plain)	
Fitness Center (per member)	50 GPD
Funeral Homes	2 Taps
Mall Food Court Per Individual Vendor	1 Tap Min.
70 GPD/Seat ÷ Number of Vendor Spaces	
Pantry - Seven Eleven - Quick Stop, etc. with Food	2 Taps
Restaurant - Drive through only	2 Taps
Restaurants - Fast food type with drive through window	30% Surcharge
Retail Space (free standing building) per employee	25 GPD
Shopping Centers Per Subdivided Retail Space Per 1,000 Sq.Ft.	200 GPD
Stadium Parking Lots (3 people/car x 3.2 gallon/person)	
Tennis Courts (with sanitary facilities and showers - per person)	10 GPD
Veterinarian Clinics (each 10 runs with overnight cages)	1 Tap

09/13/96

Unit Contributory Loadings to All Domestic Wastewater Treatment Facilities	
Type of Establishment	Hydraulic Loading (GPD)
A. AIRPORT:	
1. Per Employee	10
2. Per Passenger	5
B. APARTMENTS, CONDOMINIUMS, PATIO HOMES:	
1. Three (3) Bedrooms (Per Unit)	400
2. Two (2) Bedrooms (Per Unit)	300
3. One (1) Bedroom (Per Unit)	200
C. ASSEMBLY HALLS: (Per Seat)	5
D. BARBER SHOP:	
1. Per Employee	10
2. Per Chair	100
E. BARS, TAVERNS:	
1. Per Employee	10
2. Per Seat, Excluding Restaurant	40
F. BEAUTY SHOP:	
1. Per Employee	10
2. Per Chair	125
G. BOARDING HOUSE, DORMITORY: (Per Resident)	50
H. BOWLING ALLEY:	
1. Per Employee	10
2. Per Lane, No Restaurant, Bar or Lounge	125
I. CAMPS:	
1. Resort, Luxury (Per Person)	100
2. Summer (Per Person)	50
3. Day, with Central Bathhouse (Per Person)	35
4. Travel Trailer (Per Site)	175
J. CAR WASH: (Per Cash Washed)	75
K. CHURCHES: (Per Seat)	3
L. CLINICS, DOCTOR'S OFFICE:	
1. Per Employee	15
2. Per Patient	5
M. COUNTRY CLUB, FITNESS CENTER, SPA: (Per Member)	50

61-67, Appendix A. Unit Contributory Loadings to All Domestic Wastewater Treatment Facilities.

09/13/96

- 5 -

EMPLOYEE x GPD = TAPS

400

river up the circulation

page
3 of 4

N. DENTIST OFFICE:	
1. Per Employee	15
2. Per Chair	450
O. FACTORIES, INDUSTRIES:	
1. Per Employee	25
2. Per Employee, with Showers	35
3. Per Employee, with Kitchen	40
4. Per Employee, with Showers and Kitchen	45
P. FAIRGROUNDS: (Average Attendance, Per Person)	5
Q. GROCERY STORES: (Per one thousand (1,000) Square feet, No Restaurant)	200
R. HOSPITALS:	
1. Per Resident Staff	100
2. Per Bed	200
S. HOTELS: (Per Bedroom, No Restaurant)	100
T. INSTITUTIONS: (Per Resident)	100
U. Laundries: (Self Service, Per Machine)	400
V. MARINAS: (Per Slip)	30
W. MOBILE HOMES: (Per Unit)	300
X. MOTELS: (Per Unit, No Restaurant)	100
Y. NURSING HOMES:	
1. Per Bed	100
2. Per Bed, with Laundry	150
Z. OFFICE, SMALL STORES, BUSINESS, ADMINISTRATION BUILDINGS: (Per Person, No Restaurant) <i>L/A, HOUSE</i>	25
AA. PICNIC PARKS: (Average Attendance, Per Person)	10
BB. PRISON/JAIL:	
1. Per Employee	15
2. Per Inmate	125
CC. RESIDENCES: (Per House, Unit)	400
DD. REST AREAS, WELCOME CENTERS:	
1. Per Person	5
2. Per Person, with Showers	10
EE. REST HOMES:	
1. Per Bed	100
2. Per Bed, with Laundry	150

61-67, Appendix A. Unit Contributory Loadings to All Domestic Wastewater Treatment Facilities.

09/13/96

SEWER TAP FEE CALCULATION

Page
4 of 4

FF. RESTAURANTS:	
1. Fast Food Type, Not Twenty Four (24) Hours (Per Seats)	40
2. Twenty Four (24) Hour Restaurant (Per Seat)	70
3. Drive-In (Per Car Served)	40
4. Vending Machine, Walk-up Deli (Per Person)	40
GG. SCHOOLS, DAY CARE:	
1. Per Person	10
2. Per Person, with Cafeteria	15
3. Per Person, with Cafeteria, Gym and Showers	20
HH. SERVICE STATIONS:	
1. Per Employee	10
2. Per Car Served	10
3. Car Wash (Per Car Washed)	75
II. SHOPPING CENTERS, LARGE DEPARTMENT STORES, MALLS: (Per one thousand (1,000) Square Feet, No Restaurant)	200
JJ. STADIUMS, COLISEUMS: (Per Seat, No Restaurant)	5
KK. SWIMMING POOLS: (Per Person, with Sewer Facilities and Showers)	10
LL. THEATERS: Indoor (Per Seat), Drive In (Per Stall)	5

61-67, Appendix A. Unit Contributory Loadings to All Domestic Wastewater Treatment Facilities.

09/13/96

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

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

Petitioners,

vs.

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

Respondents.

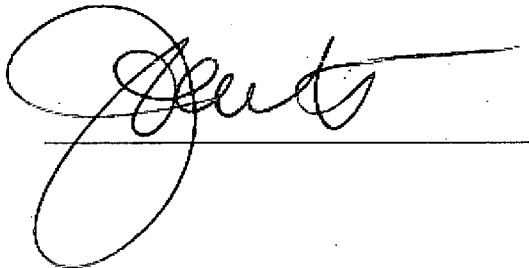
Docket No. 09-ALC-07-0069-CC

CERTIFICATE OF SERVICE

This is to certify that Respondent Roper Pond, LLC's original executed Amended Affidavit of Charles C. Mickel has been served on counsel of record by placing the same in the United States mail, first class postage prepaid, addressed to the following as shown below this 20th day of July, 2015:

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

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

A handwritten signature in dark ink, appearing to read 'Amy E. Armstrong', is written over a horizontal line.

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

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

Petitioners,

v.

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

Respondents.

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

**NOTICE OF HEARING
(MOTION)**

Before the Administrative Law Court ("ALC" or "Court") is a Motion for Attorneys' Fees and Costs and Sanctions that was filed by Roper Pond, LLC ("Roper Pond"). By order dated August 3, 2015, the Court bifurcated the issues and will consider at the upcoming hearing the substantial justification and frivolous/delay issues only.

IT IS HEREBY ORDERED that the hearing on the motion that is before the undersigned Administrative Law Judge shall be scheduled to begin at 10:00 a.m. on Monday, May 9, 2016, at the offices of the Administrative Law Court, Edgar A. Brown Building, Second Floor, 1205 Pendleton Street, Columbia, South Carolina.

1. This hearing will be conducted in accordance with the Rules of Procedure of the Administrative Law Court.
2. Unless otherwise determined by the Administrative Law Judge, the hearing will proceed as follows:
 - a. Call of the case;

FILED

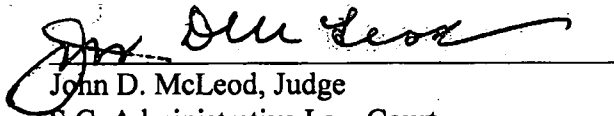
MAR 30 2016

SC ADMIN. LAW COURT

- b. Oral statement by moving party, not to exceed thirty (60) minutes;
 - c. Oral statement by responding party, not to exceed thirty (60) minutes;
 - d. Oral reply statement by moving party, not to exceed ten (15) minutes;
3. A party may represent himself or may be represented by an attorney at the hearing. An attorney representing a party must file a Notice of Appearance within ten (10) days of service of this Notice, unless previously filed with the Court.
4. TAKE NOTICE THAT A FAILURE TO APPEAR AT THE HEARING MAY RESULT IN:
- a. A finding that the party who fails to appear does not object to the relief sought by the opposing party;
 - b. Such other rulings as are deemed appropriate by the Administrative Law Judge.
5. THE PARTIES MAY REQUEST A CONTINUANCE NO LATER THAN 24 HOURS PRIOR TO THE SCHEDULED HEARING DATE. FAILURE TO GIVE TIMELY NOTICE OF CANCELLATION MAY RESULT IN IMPOSITION OF COURT COSTS AGAINST THE PARTIES.

AND IT IS SO ORDERED.

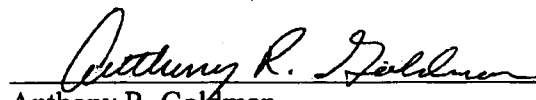
March 30, 2016
Columbia, S.C.


John D. McLeod, Judge
S.C. Administrative Law Court

CERTIFICATE OF SERVICE

I, Anthony R. Goldman, hereby certify that I have this date served this Order upon all parties to this cause by depositing a copy hereof, in the United States mail, postage paid, in the Interagency Mail Service, or by electronic mail to the address provided by the party(ies) and/or their attorney(s).

March 30, 2016
Columbia, S.C.


Anthony R. Goldman
Judicial Law Clerk

Hartley, Joan W.

From: Hartley, Joan W.
Sent: Monday, June 20, 2016 11:51 PM
To: Anthony Goldman (agoldman@scalp.net)
Cc: Amy Armstrong; Lavender, Tommy; Hightower, Stephen (HIGHTOSP@dhec.sc.gov)
Subject: RE: Town of Arcadia Lakes, et al. v. Roper Pond & DHEC
Attachments: June 20, 2016 Roper Pond, LLC's Proposed Order.doc

Anthony,

Attached is Roper Pond's Proposed order in Word. The hard copy is being filed and serve by mail.

Thanks,
Joan

-----Original Message-----

From: Amy Armstrong [mailto:amy@scalp.org]
Sent: Monday, June 20, 2016 5:08 PM
To: Anthony Goldman
Cc: Hartley, Joan W.; jessie@scalp.org; ethanblu72@gmail.com; Stephen Hightower; Lavender, Tommy; Charlie Cook; Linda & Bob Jackson
Subject: Town of Arcadia Lakes, et al. v. Roper Pond & DHEC

Anthony,

I'm attaching the Town of Arcadia Lakes' proposed order in word. I am also sending a hard copy by U.S. Mail.

Thank you for your assistance,

Amy

--

Amy E. Armstrong
S.C. Environmental Law Project
P.O. Box 1380
Pawleys Island, SC 29585
Phone: (843) 527-0078
FAX: (843) 527-0540
amy@scalp.org

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

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

Petitioners,

vs.

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

Respondents.

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

**ROPER POND, LLC'S PROPOSED
ORDER**

This matter comes before the South Carolina Administrative Law Court ("ALC" or "Court") on the Third Amended Petition for Attorneys' Fees and Costs and for Sanctions Pursuant to Rule 72, SCRPAJC ("Petition") filed by Respondent Roper Pond, LLC ("Roper Pond") on November 30, 2015. Roper Pond seeks an award of attorneys' fees and costs from Petitioner Town of Arcadia Lakes ("Town") pursuant to S.C. CODE ANN. § 15-77-300, which provides, *inter alia*, that fees will be awarded against a political subdivision of the State in a civil action when the political subdivision acted without substantial justification in pressing its claims. Roper Pond also seeks sanctions against the Town pursuant to Rule 72, SCRPAJC, in the form of an award of attorneys' fees and costs and the cost of delay of Roper Pond's proposed development. By order dated August 3, 2015, the issues for determination on Roper Pond's Petition were bifurcated with the first phase to determine whether Roper Pond is entitled to fees and costs under S.C. CODE ANN. § 15-77-300 and sanctions under Rule 72, SCRPAJC, and the

second phase to determine the amount of any award of fees and costs and/or sanctions granted in the first phase. The Town filed its Amended Response to Respondent Roper Pond, LLC's Third Amended Petition for Fees, Costs, and Sanctions on February 5, 2016, and Roper Pond filed a reply on February 16, 2016. The Court heard arguments on the first phase determinations on Roper Pond's Petition on May 9, 2016. For the reasons set forth below, the Court finds that Roper Pond is entitled to an award of attorneys' fees and costs under S.C. CODE ANN. § 15-77-300 and an award of costs of delay of the proposed development as sanctions against the Town pursuant to Rule 72, SCRPA LC.

PROCEDURAL HISTORY

By letter dated December 15, 2008, Respondent South Carolina Department of Health and Environmental Control ("Department" or "DHEC") granted Roper Pond coverage under the 2006 NPDES General Permit for Storm Water Discharges from Large and Small Construction Activities ("Construction General Permit"), authorizing land-disturbing activities on 9.6 acres in association with construction of a multi-family residential housing development to be located off Trenholm Road in Richland County ("Proposed Project"). On December 30, 2009, Petitioners Town of Arcadia Lakes, Robert L. Jackson, Linda Z. Jackson, Robert E. Williams, Barbara S. Williams, Elizabeth M. Walker, Louis E. Spradlin, Mary Helen Spradlin, Thomas Hutto Utsey, Tony Sinclair, Aaron Small, Bette Small, Gene F. Starr, M.D., Elaine J. Starr, Sanford T. Marcus, Ruth L. Marcus, and Steven Brown (collectively, the "Petitioners") requested that the South Carolina Board of Health and Environmental Control ("Board") review of the issuance of the authorization to discharge under the Construction General Permit. By letter dated January 14, 2009, the Clerk of the Board notified Petitioners that the Board had decided not to conduct a review conference as requested. On February 16, 2009, Petitioners filed a Request for Contested

Case Hearing, asserting numerous grounds for its appeal of the Department's decision in this matter. (*See* Request for Contested Case Hearing, pp. 3-8). At the hearing on the merits, Petitioners' case in chief focused almost exclusively the potential biological impacts of the excavation and lowering of the Pond and allegations that Roper Pond did not have a valid federal permit for the Proposed Project. On January 21, 2010, this Court issued an order finding that the Petitioners lacked standing, but ruling on the merits of the case. The order affirmed the Department's decision to authorize coverage under the Construction General Permit and rejected Petitioners' arguments that Roper Pond failed to obtain the necessary Corps permits and DHEC 401 water quality certification for the Proposed Project.

On February 1, 2010, Petitioners filed a Motion to Reconsider and for Stay. On March 23, 2010, the Court held a hearing to consider Petitioners' Motion to Reconsider and for Stay, and on April 1, 2010, the Court issued an order denying Petitioners' Motion to Reconsider and for Stay. On April 19, 2010, Roper Pond filed a Petition for Attorneys' Fees and Costs and for Sanctions Pursuant to Rule 72, SCRPA LC. On April 20, 2010, Petitioners filed and served a Notice of Appeal of the Court's decision. On May 11, 2010, the Court issued an order holding the Petition for Attorneys' Fees and Costs and for Sanctions Pursuant to Rule 72, SCRPA LC, in abeyance pending the resolution of Petitioners' appeal. On May 6, 2013, the Court of Appeals issued a decision upholding this Court's ruling on standing and the merits of the case. On June 12, 2013, the Court of Appeals withdrew its March 6, 2013 Opinion and substituted a new Opinion, again affirming this Court's Final Order and Decision on standing and the merits of the case.

On July 12, 2013, Petitioners filed a petition for writ of certiorari with the Supreme Court. The Supreme Court granted the writ on August 22, 2014. On March 18, 2015, the Court heard

oral arguments. By order dated April 9, 2015, the Supreme Court dismissed the writ of certiorari as moot. The Order stated that “construction activities subject to and authorized by the state-wide general permit have been completed, Roper’s coverage under the state-wide general permit has now terminated.” (Ex. A to Amended Response to Respondent Roper Pond, LLC’s Third Amended Petitioner for Fees, Costs, and Sanctions dated February 5, 2016 (“February 5, 2016 Response”)). The Supreme Court therefore dismissed the matter as moot “as it is now impossible for this Court to grant any redress in the context of the issues as framed and litigated below (i.e., modify or revoke authorization for Roper’s construction activities under the state-wide permit).” *Id.* On May 13, 2015, Roper Pond filed a motion for costs pursuant to Rule 222, SCACR. On June 17, 2015, the Supreme Court issued an order which provided in its entirety: “The Motion for Costs filed on behalf of respondent, Roper Pond, LLC, in the above entitled matter is denied.” (February 5, 2016 Response, Ex. B).

FACTUAL BACKGROUND

On September 24, 2008, Roper Pond filed a notice of intent to discharge stormwater associated with the construction of the Proposed Project under the Construction General Permit. A storm water pollution prevention plan (“SWPPP”) was submitted with the notice of intent as required by the General Permit and S.C. CODE ANN. REGS. §§ 72-300 *et seq.* (“Stormwater Regulations”). (DHEC Tr. Ex. 2). Roper Pond submitted the notice of intent and SWPPP to Richland County which had delegated authority to review and approve SWPPPs pursuant to the Stormwater Regulations. (Transcript of Hearing on the Merits, hereinafter “Hrg. Tr.,” p. 51); 26 S.C. CODE ANN. REGS. § 72-304(A)(1). However, prior to the conclusion of Richland County’s review, DHEC requested transfer of the review to the Department because of “concerns that had been raised by citizens about the project.” (Hrg. Tr., p. 52-53). In reviewing a SWPPP, the reviewing entity assesses the proposed BMPs to determine whether those measures are adequate

to meet the requirements of the Stormwater Regulations and the General Permit. With respect to any potential deficiencies in the SWPPP or the BMPs detailed in the SWPPP, Jill Stewart, a licensed professional engineer in South Carolina and Manager of the DHEC's Stormwater Permitting Section, testified the SWPPP for any proposed project can be revised as needed to incorporate the appropriate combination of BMPs and implementation procedures necessary to meet the requirements of the General Permit. (Hrg. Tr., p. 74, l. 24 – p. 75, l. 8).

During DHEC's review of Roper Pond's request for coverage under the Construction General Permit, the Town was provided the opportunity to comment on Roper Pond's SWPPP, including meetings with DHEC and other governmental representatives to discuss concerns regarding the Proposed Project. (Hrg. Tr., p. 56). The Town was involved in communications with DHEC and other governmental representatives regarding the Proposed Project. (Hartley Aff., Exs. 8-12; Town 30(b)(6) Dep., p. 134). Brian Bates and Daniel Hill, both professional engineers and residents of the Town, assisted the Town in its review of the SWPPP and its opposition to the Proposed Project. (Affidavit of Joan W. Hartley, attached to Third Amended Petition as Ex. A, hereinafter "Hartley Aff.," Exs. 5, 6, 7, and 8). In an October 2, 2008 email, Richard Thomas, Mayor of the Town, advised Mr. Bates as follows:

Thank you again . . . wish us luck Monday . . . Joel has received a copy of a letter DEHEC sent to the developer telling him that they had pulled the developer's application and want him to provide all documentation for additional review. Is the first flush requirements a possible application killer that would require them to reapply. If we could get to that point, we may have [a] chance to get them under the new rules if they approved before they have a chance to reapply. . . RT

(Hartley Aff., Ex. 14). On October 3, 2008, Mr. Hill emailed Mr. Thomas a summary of concerns identified in his review of Roper Pond's SWPPP. (Hartley Aff., Ex. 6). The concerns raised by the Town's consultants were addressed in DHEC's letter to Roper Pond following the Department's review of the SWPPP. In an October 29, 2008 email, Mr. Thomas forwarded the

Department's review letter for the SWPPP to Mr. Bates and requested that Mr. Bates advise him "if we in Arcadia Lakes need to ask for more." (Hartley Aff., Ex. 5). Mr. Bates advised Mr. Thomas as follows:

Told you that "waters of the state for water quality" thing had teeth. They now have to show how they are going to collect, and hold for 24 hours, the first inch of runoff from the entire site, which will be approximately 36,000 cubic feet or 271,000 gallons. For visualization purposes, that would be a pond (like the one that was built for those 4 or 5 lots down Trenholm Road) that would be 3-ft. deep and 110-ft. X 110-ft. square or about the volume of the Rockbridge Club swimming pool. To account for that outside of the wetlands boundary, they are going to have to significantly revise the site plans.

I suggest we wait until they try to address this and then bring up the interpretation that this water must be segregated from all of the other runoff. To do that on dense site is an impractical endeavor at best and not usually required due to its complexity. However, a strict interpretation of the regulations indicates that it is required.

Id. (emphasis added). Mr. Thomas responded: "Thanks again for your continued expertise in this matter." *Id.* Although DHEC was addressing the technical issues raised by the Town, Mr. Bates advised the Town to withhold comments on other potential issues regarding the regulatory sufficiency of the SWPPP.

The Town adhered to this advice when Roper Pond's consultant revised the SWPPP to address the issues raised in DHEC's review letter. In a November 6, 2008 email, Mr. Thomas requested that Mr. Bates and Mr. Hill attend a meeting with DHEC and Senator Joel Lourie to "review the revised set of BP Barber plans for the Roper Property." (Hartley Aff., Ex. 8). Mr. Bates advised Mr. Thomas as follows:

Yes I can attend a meeting at that time. As for your phone message about BP Barber, I don't care if they are there, but letting them know our position on their design (assuming we find flaws) that quickly will just expedite their response. I would think that every day that this thing is not resolved is another day it isn't being built. Going through the system is a more formal, civil, and slower method in my opinion. I would rather them keep guessing what our next move is instead of confronting them. Just my thoughts.

(Hartley Aff., Ex. 9). Upon receipt of the following email message, Mr. Thomas responded: "I agree with you . . . I will let Joel know that You Danny and I can be there." (Hartley Aff., Ex. 10) (ellipses in original). Mr. Thomas thereafter forwarded the email to Senator Lourie, advocating Mr. Bates' recommendation to exclude B.P. Barber and Roper Pond from the meeting. (Hartley Aff., Exs. 11 and 12). There is nothing in the record to indicate that the Town submitted further comments on the revised SWPPP following the November 14, 2008 meeting with DHEC and Senator Lourie.

The Department issued its decision to grant coverage to Roper Pond on December 15, 2008. On December 17, 2008, Mr. Thomas sent an email to Brian Bates regarding the appeal of the Department's decision. Mr. Thomas wrote:

We have until December 30 (15 days) to file an appeal to the DEHEC Board. We need to review the approval and the revised plans to determine if we have a reason or cause to appeal to the Board, **and if not, can we still send in a blanket appeal to the DEHEC Board and delay the actual decision for 60 days.** We need to get our hands on the plans.

(Hartley Aff., Ex. 15) (emphasis added). Mr. Thomas thus acknowledges that the Town had not reviewed the final SWPPP approved by DHEC for the Proposed Project. Still, without reviewing the final SWPPP, the Town determined that it should file an appeal of the DHEC decision. At the close of the December 17, 2008 email, Mr. Thomas wrote: **"Let me know where you think we can go to delay and/or stop this project."** *Id.* (emphasis added).

On December 30, 2008, the deadline for filing for Board review, Linda Jackson forwarded a draft appeal letter to Mr. Thomas. (Hartley Aff., Ex. 13). The draft letter raised a number of issues regarding the planned development of the property, but did not identify a single defect in the Department's grant of coverage under the Construction General Permit. The draft letter included the following claims:

Mr. Mundy, who signed the Notice of Intent for this project, has claimed for months that he is not the current owner of the land upon which the project is to be built. The current owner of record is Roper Pond, LLC of which Mr. Mundy was a member. According to Mr. Mundy, Roper Pond, LLC was sold to Capital Development, LLC in January of 2008, however, there is no deed of record to reflect a transfer of interest in the referenced real property. From what we know, the only member of Capital Development, LLC is Charles Mikel who lives in Greenville. This information may or may not have any impact on the decision to issue the stormwater permit, but we believe that the Board need to be informed about who is truly responsible in this situation.

What is significant in this matter is that Mr. Mundy came to the Arcadia Lakes community in May of 2004 with a plan for the subject property to be developed with high end, single-family patio homes with a transition-type design which moved from patio homes to multi-family condominium units, along with a clubhouse and other recreational areas. The original plan for the property was based on a density of approximately four (4) units per acre. The new plan for development of the property presented in early August of this year by Mr. Mundy has no provision for a transition, and in fact has total of eight (8) multi-family apartment buildings with an overall density of approximately sixteen (16) units per acre. We feel that this drastic change in the plans for the property was misleading to adjacent property owners and the local neighborhood in general. Had we not been presented a plan four years ago that was basically satisfactory to the neighborhood, we never would have allowed the County rezoning process to move forward unchallenged. Essentially, the community was duped.

(Hartley Aff., Ex. 13). Although the Petitioners filed a different letter requesting Board review, this earlier draft by Ms. Jackson summarizes the actual concerns regarding the Proposed Project, none of which relate to the approval of the SWPPP and coverage under the Construction General Permit.

Prior to filing the request for a contested case hearing, counsel for Petitioners conferred with Gene McCall, an environmental consultant and attorney, regarding potential bases for challenging DHEC's decision to grant Roper Pond coverage under the Construction General Permit. (February 5, 2016 Response, Exs. C and D). Mr. McCall withdrew from the case because of a conflict but offered to "get with Brian Bates and we will come up with several names of potential engineering expert witnesses." (February 5, 2016 Response, Ex. E). In their

request for a contested case hearing, Petitioners identified the following alleged defects in the SWPPP:

A. Upon information and belief, Roper Pond, LLC, submitted incorrect and incomplete information to DHEC. Roper Pond, LLC's Stormwater Pollution Prevention Plan (SWPPP) is deficient and DHEC should not have issued a Construction NPDES Permit for this site:

(1) There are significant defects in the construction and post construction portions of Roper's SWPPP. The silt fence shown on drawing C2 is placed inside the Wetlands Buffer, too close to the wetlands, and in some areas through the wetlands. The Wetlands Buffer area must remain undisturbed to be effective.

(2) The September 2, 2008 Richland County conditional approval states that the maximum driveway width be 24 feet. The Roper drawing C4 shows a 26 foot width. This adds significant impervious area which would cause additional stormwater runoff and additional pollutants. The County conditional approval requires "Preservation of trees in the green area next to the pond." Based on the existing condition shown on drawing C1 and the Site Planting Plan, it appears that no trees are being preserved in the green area around the pond. Grubbing existing trees in the area around the pond defeats the usefulness of a Wetlands Buffer and will cause sediment to enter the pond.

(3) Roper Pond, LLC's documents note that zinc is a problem in Cary Lake, but incorrectly states that no zinc will come from its development. It is well documented that zinc is discharged from roof drains or large buildings and from large parking lot areas.

(4) DHEC is not authorized to issue an NPDES Construction Permit where such construction or post construction condition would "cause or contribute" to impairment of the receiving water body, unless, the MS4 is in compliance with its Stormwater Management Plan (SWMP). On its website, Richland County states, "Q. Why is Richland County proposing new stormwater regulations, to include buffers? A. Because Richland County is in violation of the clean water act and has been cited by DHEC . . . And as a result of this violation, we have agreed to change our regulations to address the cited deficiencies. These changes would help Richland County improve the water quality in our community for our residents." Therefore DHEC cannot issue a new construction permit until the County adopts and applies the improved ordinance.

(5) Roper Pond, LLC's calculated trapping efficiency for the post construction water quality devices (i.e., Best Management Practices (BMPs)) is flawed. First, the calculations do not properly and adequately address capture of the "first flush" stormwater runoff volume that would come from the site; and thus, the devices are not of adequate size to

capture what is documented to be the most significant portion of a runoff event for transporting pollutants to the receiving water. Second, Roper Pond, LLC, assumes an even distribution of particles, 20% for each of the five particle sizes. This assumed particle distribution is incorrect and yields an inaccurate and incorrect particle trapping efficiency for these BMPs. Also, no oil and grease trapping efficiency was calculated. Leaking vehicle crankcase and transmission oils in parking lots would contain and transport zinc if not properly captured. DHEC should not have approved the Construction NPDES Permit because of these significant deficiencies.

(Request for Contested Case Hearing dated February 16, 2009, pp. 3-5). Despite the alleged deficiencies raised by the Town prior to DHEC's December 15, 2008 approval of Roper Pond's SWPPP and the alleged deficiencies asserted in Petitioners' Request for Contested Case Hearing, and contrary to the recommendation of Mr. McCall, Petitioners failed to offer an engineering expert witness to testify at the hearing on the merits. Moreover, Petitioners failed to present any evidence at the hearing on the merits in support of its allegations that the SWPPP and the BMPs proposed in the SWPPP were not sufficient to meet the regulatory requirements. (Final Order and Decision issued January 21, 2010, hereinafter ("ALC Final Order"), p. 21). None of Petitioners' witnesses reviewed the General Permit, the SWPPP, or the BMPs to be implemented under the SWPPP. (Hrg. Tr. p. 201, l. 12 – p. 202, l. 7; Hrg. Tr. p. 276, ll. 14-18). Petitioners' only expert witness admitted that he did not review the General Permit, the SWPPP, or the BMPs to be implemented under the SWPPP and admitted that he was not able to offer an opinion regarding the sufficiency of such measures. (Hrg. Tr. p. 201, l. 12 – p. 202, l. 7; p. 211, ll. 2-11). The Town's claims that Roper Pond's SWPPP and the BMPs proposed in the SWPPP were therefore abandoned as a basis for challenging the Proposed Project.

During the 30(b)(6) deposition of the Town, Mr. Thomas, the Town's mayor and designated deponent, failed to identify a factual basis for challenging the sufficiency of the SWPPP. On July 29, 2009, Roper Pond noticed the deposition of the Town pursuant to Rule

30(b)(6), SCRCPP. The notice of deposition included the following matters on which the Town was to designate an individual to testify:

2. Actual or threatened harm from the activities authorized under the 2006 NPDES General Permit for Storm Water Discharges from Large and Small Construction Activities ("General Permit") for land-disturbing activities on 9.6 acres in association with construction of a multi-family residential housing development to be located off Trenholm Road in Richland County ("Proposed Project").

* * *

4. The specific manner in which the land-disturbing activities authorized under the General Permit will violate the terms and conditions of the General Permit and/or DHEC Regulations.

(Pet. Tr. Ex. 1, Transcript of the Deposition of Richard W. Thomas, Jr., hereinafter "Thomas Dep.," Notice of Rule 30(b)(6) Deposition of the Town of Arcadia Lakes, attached thereto as Ex.

1). The Town designated Mr. Thomas as its sole witness for the Rule 30(b)(6) deposition of the Town. Mr. Thomas holds a master's degree in engineering with a focus on structures of mechanics and environmental engineering. (Thomas Dep., p. 14, ll. 4-10). As an engineer licensed by the State, Mr. Thomas has affixed his seal to drawings which include the design of water retention structures. (Thomas Dep., p. 16, l. 15 - p. 19, l. 10). Mr. Thomas is aware of the requirements for the management of stormwater at an improved site. (Thomas Dep., p. 24, ll. 16-22). Mr. Thomas testified that he has seen the design drawings for the Proposed Project. (Thomas Dep., p. 22, l. 19 - 23, l. 11; p. 25, ll. 17-23). Mr. Thomas testified that he would be competent to prepare and seal such drawings. (Thomas Dep., p. 32, ll. 11-16). However, Mr. Thomas was unable to testify regarding the topics identified by Roper Pond in its notice of deposition to the Town.

When counsel for Roper Pond asked Mr. Thomas to identify any alleged deficiencies in the SWPPP approved by the Department for the Proposed Project, Mr. Thomas responded that any deficiencies were identified by its attorney in the pleadings in this matter:

Q: All right. Let's talk about that. Tell me—well, let me back up. The current plan.

Tell me what in the current plan you think presents a possibility or probability of harm to Cary Lake.

A: I outlined those before. It will possibly do harm to the water flowing through the project and under North Trenholm Road into Cary Lake.

Q: What is the deficiency in the BP Barber drawings that may lead to the possibility?

A: They're outlined in our petition.

Q: Point them out to me.

A: You want me to read you the document?

Q: No, sir. I want to know what the town's—

A: I'll defer that to Mr. Chandler because he's the legal expert.

Q: He is not my witness, Mr. Thomas. You are my witness and you are the town.

Tell me what facts the town has as we sit here today that allows you to opine that there's a possibility of harm if the BP Barber plan is implemented.

A: Based on what we have been told and led to believe by Mr. Chandler, who is the expert in the legal side of this, there are violations in this plan with regard to the project. The plans and its permitting with DHEC and the U.S. Corp of Engineers.

Q: I want you to step aside and put aside anything Mr. Chandler may have told you. In the absence of Mr. Chandler's comments, is the town aware of any fact upon which it could base an opinion that there is a deficiency in the BP Barber drawings permitted by DHEC?

A: We have hired Mr. Chandler as our spokesman on the legal issues in this case. We believe the case has merit.

Q: Step aside what Mr. Chandler tells you—if Mr. Chandler becomes a witness, we'll deal with this case differently.

What information does the Town of Arcadia Lakes have that, outside of Mr. Chandler's comments to you, leads you to the conclusion that there are deficiencies in the BP Barber design approved by DHEC?

A: We lean on Mr. Chandler's filings and his documentation as the basis for our—

Q: Is Mr. Chandler's complaint the sole source of facts, for the Town of Arcadia Lakes, for it to present a position that the BP Barber drawings are in some way insufficient?

A: I can repeat. Mr. Chandler's pleadings and his filings speak to the case that the town and the petitioners—not speaking for them, but as far as the town is concerned—where we are in our position on this project.

(Thomas Dep., p. 51, l. 14 – p. 53, l. 22). Mr. Thomas further testified regarding an allegation of a technical deficiency in the SWPPP:

Q: I assume that you are asserting that that's something wrong with the plans?

A: If Mr. Chandler says that's something wrong, then I agree with Mr. Chandler.

Q: What information did Mr. Chandler rely upon to come to that conclusion?

A: You'd have to talk to Mr. Chandler, because I do not know.

Q: Do you know of any witness on behalf of the Town of Arcadia Lakes, outside of Mr. Chandler, who can tell me how that conclusion was arrived at?

A: Not to my knowledge.

(Thomas Dep., p. 60, ll. 2-14). Despite Mr. Thomas's education in environmental engineering, his experience in the design of stormwater retention structures, and his familiarity with the

SWPPP, he was unable to identify a single factual allegation related to the purported defects in the SWPPP independent of the filings in this matter.

Although the Town did not present evidence of deficiencies in the SWPPP, the Town identified a number of concerns with the Proposed Project unrelated to DHEC's decision to grant Roper Pond coverage under the Construction General Permit. Mr. Thomas testified at length about the Town's numerous concerns and complaints about the planned development of the Roper Pond property as an apartment complex. Mr. Thomas testified that there was no opposition to the previous plan to construct condominiums on the Roper Pond property. Specifically, Mr. Thomas testified regarding a request from Roper Pond to annex the property into the Town and the support for the development of the property as condominiums and patio homes:

Q: All right. Arcadia Lakes has its own zoning ordinance administered by its own zoning board?

A: That's correct.

Q: Why did you not suggest that he make an appeal to your zoning board?

A: It was easier—we thought it was easier for them to do it the other way. I don't remember what the context was then.

Q: Were you concerned that the citizens would oppose that kind of zoning?

A: No. As a matter of fact from the condo standpoint, out of the 15 or 20 small zero lot line patio homes, we had as many as 10 that were spoken for by town's people that wanted to retire and no longer do yard work and still be in the town.

Our town is a very close town. We have almost 900 residents and we are a very, very close [k]nit town. People don't want to move out of the town once they move in.

There are a lot of amenities in the town that are very, very good. For instance, there's no taxes. We don't have any town taxes. We deal off of

County taxes, revenue sharing, franchise fees, business licenses. Those type of things. We run the town off of a very lean budget.

Q: So you, for whatever reason, suggested that rather than annexing him in and changing your zoning—

A: We couldn't do that. It was my understanding at that time that that was not an option.

Q: For what reason?

A: If we annexed him in, then he would be annexed in as the existing zoning. And he didn't want the existing zoning, which was residential, light commercial. He wanted multifamily.

Q: So to solve that you suggested he get the County to change it, and then you can bring him in, grandfather him in, or bring him in subject to that zoning?

A: Correct.

Q: And you thought that would work?

A: With the plans that he had then, everyone was very much in favor of those. The plans were very high-end condos, low density, a lot of amenities, and fit in with the -- --

Q: Understanding that we're talking hindsight, but the feeling at the time was that if he had gone forward with that project of patio homes to condominiums, it would have been supported by the town and you could have brought it in, annexed it in, subject to the County zoning?

A: --with the plans that were presented to us at that time, we did not have any major problems with those plans at that time that I can recall.

Q: You would have recommended bringing it into the city by annexation?

A: Correct.

Q: And you had citizens in the town who were in favor of it and who actually wanted to live in the patio homes?

A: That's correct.

(Thomas Dep., p. 83, l. 21 – p. 86, l. 10). The opposition to the development began upon learning that the property would be developed as an apartment project. Mr. Thomas testified:

Q: As of October 2nd, was one of your reasons for opposing this project as mayor of the Town of Arcadia lakes, the potential for individual unit owners to have their property values depressed?

A: Yes. That was one of the reasons we wanted an economic study done to determine that.

Q: Is that one of the reasons you wanted to stop this project?

A: That was one of the reasons for our opposition to the project as it was presented.

Q: And do I understand you to say that as it was presented, the primary concern was the additional density over and above what was presented to you in 2004?

A: No. It was also the economic impact. It was also the character of the neighborhood.

Q: Well, you did not oppose the townhouses, patio homes, condominiums, correct? You personally wanted to buy one.

A: True.

Q: What factor, other than the density of the apartments, led you to believe there would be a depression in economic value for certain homeowners in Arcadia Lakes?

A: Safety to you, to the transient nature of the folks renting the property, light intrusion into the actual property adjoined, potential overflow of the sewer system due to the fact—did it actually—was it sized properly to handle an additional 204 units. I mean, the town only has 890 people living in the town. You're adding another 4-500 residents to the system, traffic. All those had—all those come together—all of that has to do with the density.

Q: All of those factors arise out of the increase density, right?

A: That's the way I see it.

(Thomas Dep., p. 112, l. 5 -113, l. 17). The Town believed that the developers of the Proposed Project had misled the Town to obtain support for the rezoning of the property. For example, in an August 23, 2008 email, Mr. Thomas wrote:

I believe that the town was misled and deceived in the initial meetings 3+ years ago when the same developer came to us for our support and the support of the adjacent neighborhood to rezone and then used the rezoning to restructure his plans for monetary gain. Per conversation with Mr. Carter Ellis, the same was told to the property owners on the north side of the Roper Property to get their blessing for the rezoning. The town should use all necessary means to go before the Richland County Planning Commission and appeal the August 21 Planning Committee recommendation (on numerous reasons of environmental impact, faulty traffic studies and NPDES requirements that have not been studied or met concerning flood control) and to resend [sic] the past zoning change on the grounds of misrepresentation and breach of verbal contract.

(Hartley Aff., Ex. 2).

In addition to the appeal of DHEC's decision to grant Roper Pond coverage under the Construction General Permit for the Proposed Project, the Town opposed other governmental authorizations for the Proposed Project. For example, Mr. Thomas contacted politicians and others to assist the Town in holding up South Carolina Department of Transportation approval for the Proposed Project. (Hartley Aff., Exs. 3 and 4). Additionally, at its October 2, 2008 council meeting, the Town adopted a resolution to the Richland County Planning Commission regarding development plans submitted to the County for the Proposed Project. (Hartley Aff., Ex. 16). The Resolution advised the Commission of the Town's belief that the proposed development as multifamily high density apartments was "out of character and totally incongruous for the entire town, its neighborhoods, contiguous community and the intended zoning use as originally presented." *Id.* The resolution further requested that "an economic impact study be performed to determine the loss of property value to the homes in the adjacent Kaminer Station Subdivision, and homes directly affected across Trenholm Road and by adjacent nearby lakes, due to the

proposed 204 apartments . . .” *Id.* In their briefs to the Court of Appeals, the Petitioners continued to raise these concerns as potential harm resulting from DHEC’s decision to grant Roper Pond coverage under the Construction General Permit:

Finally, the discussion of the Town’s standing has to this point focused on harm directly resulting from the dredging of Roper Pond and the water flowing from the pond into the Town. However, for purposes of the standing inquiry, the harm to the Town extends to the proposed apartment complex as a whole, as the size and design of the Roper Pond Apartments depends on the availability of Roper Pond for the development’s stormwater. In regard to harm to the Town from the Apartments themselves, which is imminent if the proposed project moves forward, Mr. Thomas presented the Town’s position that the value of properties in the vicinity of the Apartments, which would be within the Town’s boundaries, would be diminished. (App. 895). The density and character of the proposed Apartments are inconsistent with surrounding development in the Town. (App. 896; 904-905). The Town is also concerned about additional security issues and need for policing as a result of the Apartments. (App. 895). Thomas expressed that with the transient nature of those residing in the Apartments--meaning people who rent for a relatively short time rather than property owners--the Town anticipated increased security issues and crime in the vicinity. (App. 895; 905). Thomas also cited increased traffic and congestion in the town from adding a dense development of 400 to 500 residents on the border of the Town of Arcadia Lakes, which only has 890 residents.

(Final Brief of Appellants dated February 28, 2011, pp. 43-44). Although the Town included general environmental allegations of potential harm resulting from DHEC’s decision to grant coverage under the Construction General Permit for the Proposed Project, the Town continued to assert potential harm resulting from the construction of the Proposed Project which was unrelated to DHEC’s decision or any potential environmental impacts related to DHEC’s decision. In affirming this Court’s ruling on the Town’s lack of standing, the Court of Appeals held:

The ALC found the Town did not satisfy the first element required to establish standing, namely, that it had a personal stake in the litigation. *Quoting Glaze v. Grooms*, 324 S.C. 249, 255, 478 S.E.2d 841, 845 (1996), the ALC referenced the general rule that “a municipality must allege an infringement of its own proprietary interests or statutory rights to establish standing.” In response to this statement, Appellants advocate a broad interpretation of the term “proprietary interest” in determining whether the Town has demonstrated an injury in fact sufficient to confer standing. In the present case, Appellants argue “proprietary interests” include: (1) the Town’s interest in protecting the environmental quality

of Cary Lake, which lies partly within the Town borders; (2) the Town's ability to comply with federal law, such as NPDES regulations; (3) the Town's interest in maintaining its character and desirable attributes, including its aesthetic appeal; and (4) the diminution of property values within the Town and other adverse effects of a nearby apartment complex on such concerns as security and traffic congestion. We hold that none of these professed interests, whether "proprietary" or not, are sufficient to confer standing on the Town in this case.

As to the first two concerns, Town Mayor Richard Thomas testified in a deposition that the Town had no ownership interest in Cary Lake. Mayor Thomas gave a brief statement that under NPDES regulations, the Town was responsible for water that flowed out of Cary Lake, but provided no supporting authority for this assertion. Moreover, he acknowledged the Town is not responsible for the maintenance of Cary Lake, has never allocated funds for this purpose, and has never incurred any fines under NPDES regulations despite alleged problems in the past with water flowing into Cary Lake. He also stated that Cary Lake is the "bottom lake," that is, the final lake into which the remaining six lakes flow. We also find significant the absence of any evidence from Appellants that the BMPs to be implemented under the SWPPP were inadequate to prevent sediment from leaving the construction site; thus, Appellants have also failed to show their alleged injuries are "fairly traceable" to the challenged action in this case. Similarly, Appellants authorization of coverage to Roper for land-disturbing activities under the State General Permit and either of their two remaining concerns. Therefore, pursuant to section 1-23-610, we affirm the ALC's determination that the Town lacks standing.

Town of Arcadia Lakes v. South Carolina Dep't of Health and Envtl. Control, 404 S.C. 515, 529-31, 745 S.E.2d 385, 393 (Ct. App. 2013). In affirming this Court's ruling, the Court of Appeals noted the "absence of any evidence from Appellants that the BMPs to be implemented under the SWPPP were inadequate to prevent sediment from leaving the construction site; thus, Appellants have also failed to show their alleged injuries are 'fairly traceable' to the challenged action in this case." *Id.* The Court of Appeals recognized that the challenged action in this case is the sufficiency of the BMPs to be implemented under the SWPPP and that Petitioners failed to present evidence on this issue.

Instead of presenting evidence on the sufficiency of the SWPPP, the Petitioners presented expert testimony that the excavation and lowering of the pond would negatively impact the biological composition of the pond and therefore should have been considered in connection with

filling of 0.075 acres of wetlands under Nationwide Permit 29 ("NWP 29"). More specifically, Petitioners argued that there was no valid Nationwide Permit for filling the 0.075 acres of wetlands because the 401 water quality certification issued in 2007 for Nationwide Permits, including NWP 29, included a general condition for consideration of the "overall project proposed or accomplished by a single owner/developer" for any activities covered by a Nationwide Permit. That argument was rejected by this Court. (Final Order, p. 23). Additionally, the Court of Appeals found this general condition to be inapplicable because the excavation of the pond "would not result in a discharge into a navigable water." (*Town of Arcadia Lakes*, 404 S.C. at 534, 745 S.E.2d at 395). Significantly, in their Proposed Order submitted to this Court of December 3, 2009, Petitioners proposed this argument as a conclusion of law, but failed to cite to any legal authority supporting this argument. (Hartley Aff., Ex. 19, p. 22).

Roper Pond incurred increased costs as a result of the delay in the construction of the Proposed Project. (Affidavit of Charles C. Mickel, Ex. C. to Petition). The DHEC decision which was challenged in this contested case was issued to Roper Pond by letter dated December 15, 2008. This Court issued its Final Order and Decision on January 21, 2010. Petitioners thereafter filed a Motion to Reconsider and for Stay on February 16, 2010. The Court denied that Motion on April 1, 2010. As such, the DHEC decision was stayed for more than fifteen months. Additionally, this delay required Roper Pond to re-apply for certain County permits which had expired during the pendency of the contested case and thus resulted in further delay. *Id.* Roper Pond claims specific increased costs for the Proposed Project as a result of this delay. *Id.*

DISCUSSION

I. ATTORNEYS' FEES AND COSTS UNDER S.C. CODE ANN. § 15-77-30

Roper Pond seeks an award of attorneys' fees and costs from the Town pursuant to S.C. CODE ANN. § 15-77-300, which provides, *inter alia*, that fees will be awarded against a political subdivision of the State in a civil action when the political subdivision acted without substantial justification in pressing its claims. Section 15-77-300 of S.C. CODE ANN. § 15-77-300 *et seq.* ("State Action Statute") provides in relevant part as follows:

(A) In any civil action brought by the State, any political subdivision of the State or any party who is contesting state action, unless the prevailing party is the State or any political subdivision of the State, the court may allow the prevailing party to recover reasonable attorney's fees to be taxed as court costs against the appropriate agency if:

(1) The court finds that the agency acted without substantial justification in pressing its claim against the party; and

(2) The court finds that there are no special circumstances that would make the award of attorney's fees unjust.

* * *

(C) The provisions of this section do not apply to civil actions relating to the establishment of public utility rates, disciplinary actions by state licensing boards, habeas corpus or post conviction relief actions, child support actions, except as otherwise provided for herein, and child abuse and neglect actions.

S.C. CODE ANN. § 15-77-300(A), (C). The parties do not dispute that the Town is a political subdivision of the State. Additionally, attorneys' fees and costs incurred in an action originating in the Administrative Law Court are subject to an award under S.C. CODE ANN. § 15-77-300. *See Video Gaming Consultants, Inc. v. South Carolina Dep't of Revenue*, 358 S.C. 647, 651-52, 595 S.E.2d 890, 892 (Ct. App. 2004) (reviewing an award of attorneys' fees pursuant to S.C. CODE ANN. § 15-77-300 for fees associated with appeal originating in the Administrative Law Court

upon a finding the Department of Revenue acted with substantial justification).¹ Therefore, an action brought by the Town before the Administration Law Court is subject to the State Action Statute.

In order to recover under the State Action Statute, a party must establish that: “first, the contesting party must be the ‘prevailing party;’ second, the court must find ‘that the agency acted without substantial justification in pressing its claim against the party;’ and third, the court must find ‘that there are no special circumstances that would make an award of attorney’s fees unjust.’” *Heath v. County of Aiken*, 302 S.C. 178, 182, 394 S.E.2d 709, 711 (1990) (quoting *Heath v. Aiken County*, 295 S.C. 416, 420, 368 S.E.2d 904, 906 (1988)). As discussed below, the Court finds that Roper Pond has established each of the three elements required for an award of attorneys’ fees and cost under Section 15-77-300.

A. Prevailing Party

On January 21, 2010, this Court issued an order finding that the Petitioners lack standing to bring this action and affirming the Department’s grant of coverage the Roper Pond under the Construction General Permit. “The key factor in determining whether a party is a prevailing party is the degree of success obtained by the party seeking attorney’s fees.” *Douan v. Charleston County Council*, 631 S.E.2d 544, 546 (Ct. App. 2006). The South Carolina Supreme Court has held that “a party need not be successful as to all issues in order to be found to be a

¹ Section 15-77-300(C) of the State Action Statute expressly excludes other actions which are within the jurisdiction of the Administrative Law Court. See S.C. CODE ANN. § 40-1-160 (2001) (providing that an appeal from the decision of a state licensing board is filed in the Administrative Law Court); *Al-Shabazz v. State*, 338 S.C. 354, 369, 527 S.E.2d 742, 750 (2000) (holding that an inmate may seek post-conviction relief under the provisions for contested cases contained in the Administrative Procedures Act); S.C. CODE ANN. § 1-23-310(3) (Supp. 2009) (defining contested case as “a proceeding including, but not restricted to, ratemaking, price fixing, and licensing, in which the legal rights, duties, or privileges of a party are required by law to be determined by an agency after an opportunity for hearing”). “The enumeration of exclusions from the operation of a statute indicates that the statute should apply to all cases not specifically excluded.” *Stewart v. Richland Memorial Hosp.*, 350 S.C. 589, 594, 567 S.E.2d 510, 513 (Ct. App. 2002) (citation omitted).

prevailing party” under the State Action Statute. *Heath v. County of Aiken*, 302 S.C. 178, 182, 394 S.E.2d 709, 711 (1990). In *Heath*, the Court defined “prevailing party” as “[t]he one who successfully prosecutes the action or successfully defends against it, prevailing on the main issue, even though not to the extent of the original contention [and] is the one in whose favor the decision or verdict is rendered and judgment entered.” *Id.* at 182-83, 394 S.E.2d at 711 (quoting *Buza v. Columbia Lumber Co.*, 395 P.2d 511, 514 (1964)). This Court’s Final Order found that Petitioners, including the Town, lacked standing in this matter; however, the Court also considered the merits of the issues raised by Petitioners and affirmed the Department’s decision to grant Roper Pond coverage under the Construction General Permit. Upon the denial of the Motion to Reconsider, Roper Pond was a prevailing party in this matter. Additionally, the Court of Appeals affirmed this Court’s decision on standing and the substantive ruling on the Department’s decision to grant Roper Pond coverage under the Construction General Permit. *Town of Arcadia Lakes v. South Carolina Dep’t of Health and Envtl. Control*, 404 S.C. 515, 745 S.E.2d 385 (Ct. App. 2013).

The Town argues that Roper Pond is not a prevailing party under Section 15-7-300. As a threshold consideration, Section 15-77-300 provides in relevant part: “In any civil action brought by the State, any political subdivision of the State or any party who is contesting state action, **unless the prevailing party is the State or any political subdivision of the State**, the court may allow the prevailing party to recover reasonable attorney’s fees . . .” S.C. CODE ANN. § 15-77-300(A) (emphasis added). The Town makes no claim that the Town and the other Petitioners were the prevailing parties, and there is no basis for such claim. This Court found that the Town lacked standing to bring this contested case and further ruled that Petitioners failed to meet the burden of proof that DHEC improperly issued Roper Pond coverage under the Construction

General Permit. The Court of Appeals affirmed this Court's ruling on standing and the merits of the case. The Supreme Court dismissed the matter as moot. Therefore, the Town is subject to the award of attorneys' fees and costs under Section 15-77-300 because it is not a prevailing party. Additionally, if Roper Pond is a prevailing party, it is entitled to attorneys' fees and costs under Section 15-77-300. This Court ruled in favor of DHEC and Roper Pond in the contested case. The Court of Appeals affirmed this Court's decision, and the Supreme Court's dismissal of the matter as moot allowed the Court of Appeals decision to stand. Therefore, Roper Pond is a prevailing party in this case.

The Town argues that Roper Pond is not a prevailing party in this matter because the Supreme Court did not affirm the lower court opinions. This argument imposes a requirement that a ruling be affirmed on appeal in order to entitle the prevailing party to an award fees and costs under Section 15-77-300. The State Action Statute imposes no such requirement. The award of fees and costs under the State Action Statute is made at the trial court level, and according to the case law, such determination can be made following a ruling/judgment by the trial court prior to any appeal. *See, e.g., Brown v. City of N. Charleston*, 314 S.C. 298, 442 S.E.2d 633 (Ct. App. 1994) (affirming the trial court order granting summary judgment to plaintiffs and reversing the trial court's denial of attorney fees under Section 15-77-300); *Cornelius v. Oconee County*, 369 S.C. 531, 633 S.E.2d 492 (2006) (affirming trial court's order granting summary judgment to plaintiff and awarding attorney fees under Section 15-77-300). The Supreme Court's failure to affirm the Court of Appeals decision does not affect Roper Pond's status as a prevailing party in this matter.

Similarly, the Town asserts that "the Supreme Court's decision to dismiss the case as moot does not evidence an intent to allow the Court of Appeal's decision to stand." (February 5,

2016 Response, p. 7). In dismissing the matter as moot, the Supreme Court recognized that the coverage under the Construction General Permit had been terminated because the construction activities for the Proposed Project had been completed. The Court thus held that that the matter was moot “as it is now impossible for this Court to grant any redress in the context of the issues as framed and litigated below (i.e., modify or revoke authorization for Roper’s construction activities under the state-wide permit).” *Id.* Simply stated, the Supreme Court could not remand the case for modification or revocation of the authorization under the Construction General Permit because the authorization had been terminated. However, in the order dismissing the matter as moot, the Supreme Court did not reverse or vacate the Court of Appeals decision upholding this Court’s final order in the case. The Court took no action on the Court of Appeals decision. Had the Supreme Court intended to vacate the lower courts’ rulings, the Court could have taken such action in the Order. *See, e.g., Friends of McLeod, Inc. v. City of Charleston*, 384 S.C. 438, 682 S.E.2d 488 (2009) (dismissing appeal as moot and vacating the Court of Appeals opinion in the matter); *McDill v. Nationwide Mut. Ins. Co.*, 368 S.C. 29, 627 S.E.2d 749 (Ct. App. 2005) (finding that decision in separate tort action rendered insurance coverage litigation moot and vacating the trial court’s order). Similarly, the Supreme Court has issued published opinions dismissing the grant of certiorari and requiring the Court of Appeals to depublish its opinion in the case. *See, e.g., Rivera v. Newton*, 413 S.C. 26, 773 S.E.2d 913 (2015) (dismissing the writ of certiorari as improvidently granted and directing the Court of Appeals to depublish its opinion and stating that the opinion no longer have any precedential effect); *Horton v. City of Columbia*, 413 S.C. 25, 773 S.E.2d 912 (2015) (same); *Keeter v. Alpine Towers Int’l, Inc.*, 410 S.C. 445, 766 S.E.2d 375 (2014) (same). In this matter, the Supreme Court’s dismissal of the appeal as moot does not affect the validity of this Court’s Final Order or the Court of Appeals

decision affirming that Order. The Supreme Court's order does not reverse or vacate the Court of Appeals decision affirming this Court's Final Order and Decision. The decision of the Court of Appeals stands as a published opinion affirming this Court's Final Order and Decision. *Town of Arcadia Lakes v. South Carolina Dep't of Health and Envtl. Control*, 404 S.C. 515, 745 S.E.2d 385 (Ct. App. 2013).

Moreover, despite the completion of the project, the Supreme Court could have reversed or vacated all or part of the Court of Appeals decision under one of the exceptions to mootness. "Two exceptions in which the court may address an issue despite mootness are 1) when the issue raised is capable of repetition, yet evading review, and 2) when the question considers matters of important public interest." *Sloan v. Friends of Hunley, Inc.*, 369 S.C. 20, 27-28, 630 S.E.2d 474, 478 (2006). Both the Petitioners and the Wildlife Federation argued the Court of Appeals decision on standing would have far-reaching implications for other parties seeking review the decisions of the Department. Petitioners argued in their brief to the Supreme Court:

The new, unjustifiably burdensome requirements for standing that a Plaintiff have a property interest in the area over which the challenged activity will occur, as well as prove either the merits or a future permit violation, are a significant divergence from well-established standing law. Neither of these standards has been applied by this State's appellate court or any federal court, and, indeed, both federal and South Carolina courts hold the contrary. Instead these new requirements muddy the waters of this state's carefully crafted standing law and will like have far-reaching implications for citizens and municipalities in their efforts to protect the aesthetic, recreational and environmental qualities of their communities.

(Brief of Petitioners on Writ of Certiorari, Hartley Aff., Ex. 17, p. 4). Petitioners also included a footnote advising the Supreme Court that this Court had already cited to the Court of Appeals opinion in granting a motion for summary judgment for lack of standing in the case of *Preservation Society of Charleston, et al. v. S.C. State Ports Authority*, Docket No. 13-ALJ-07-0056-CC, filed April 11, 2014. *Id.* at Footnote 1. The Wildlife Federation filed an *amicus curiae*

brief solely on the issue of standing and argued that it “is actively engaged in proceedings involving the review of permitting decision made by the South Carolina Department of Health and Environmental Control (DHEC), and has long-standing interested in its right to review DHEC decisions under S.C. CODE ANN. § 44-1-60.” (Brief of Amicus Curiae South Carolina Wildlife Federation in Support of Petitioners’ Standing, Hartley Aff., Ex. 18, p. 1). Had the Supreme Court found the ruling on standing in this case to be as departure from well-established standing law as the Petitioners and the Wildlife Federation contended, the Court could have applied one of the exceptions to the mootness rule and corrected the alleged errors in the standing holding of this Court and the Court of Appeals. However, the Supreme Court did not take such action.

The Town argues that “[t]he fact that the Supreme Court dismissed this case as moot after hearing arguments and indicated a concern that meaningful judicial relief was no longer possible, and without affirming the Court of Appeals, takes ‘prevailing party’ status off the table.” (February 5, 2016 Response, p. 7). However, the cases cited by the Town in support of this argument are easily distinguished as the mootness determinations in those cases were made prior to the trial court’s decision on the merits of each case. In *City of Charleston v. Masi*, 362 S.C. 505, 609 S.E.2d 301 (2005), the Supreme Court held that the trial court properly declined to award attorney’s fees under the State Action Statute where the trial court held the action to be moot by the Supreme Court’s decision in another matter. The Court thus upheld the trial court’s denial of attorney’s fees, finding that “[t]he District is not a prevailing party because its degree of success is nonexistent given that the circuit court did not specifically find for either party and because this case is being dismissed as moot.” 373 S.C. at 387, 645 S.E.2d at 243. As such, since there was no decision by the trial court, there could be no prevailing party for purposes of

the State Action Statute. That is not the case here. This Court issued a Final Order and Decision which was affirmed by the Court of Appeal.

Similarly, in *Douan v. Charleston County Council*, 373 S.C. 384, 645 S.E.2d 241 (2007), the plaintiff challenged the County's action alleging that a proposed ordinance and referendum violated state law. Prior to the trial court's decision in that case, the Supreme Court issued a decision in a related case against the county election commission which rendered the action before the trial court moot. Since the trial court did not rule on the merits of the case, the Supreme Court held that the trial court properly held that the plaintiff was not a prevailing party in that action and therefore not entitled to attorneys' fees under the State Action Statute. 373 S.C. at 387, 645 S.E.2d at 243.² Again, this Court issued a Final Order and Decision which was affirmed by the Court of Appeal. Therefore, the holdings in *Masi* and *Duan* do not preclude this Court's finding that Roper Pond is a prevailing party in this matter.

Petitioners further cite to *Session v. Withers*, 327 S.C. 409, 488 S.E.2d 888 (Ct. App. 1997), in support of its argument that there can be no "prevailing party" when a matter is dismissed as moot on appeal. In that case, the trial court awarded costs to the plaintiff as the prevailing party pursuant to Rule 54, SCRPC, upon a jury verdict in the amount of \$600. The plaintiff thereafter entered into a settlement with the liability insurer under which she agreed to mark the judgment obtained satisfied. *Id.* at 417, 488 S.E.2d at 892. Since Rule 54, SCRPC, required that any costs taxed be included in the judgment, the plaintiff could not make claim to such costs since she was contractually obligated not to execute the judgment. The Court thus

² See, also, *Jasper County Bd. of Educ. v. Jasper County Grand Jury*, 303 S.C. 49, 51-52, 398 S.E.2d 498, 499-500 (1990) (holding that party was not a "prevailing party" entitled to recover attorney's fees under § 15-77-300 where case was dismissed for lack of jurisdiction and thus there was never a resolution on the merits); *Richland County v. Kaiser*, 351 S.C. 89, 97, 567 S.E.2d 260, 264 (Ct. App. 2002) (holding that party was not prevailing party upon reversal of decision in party's favor at the Court of Appeals).

held that the appeal related to the attorney's fees was rendered moot. *Id.* It was the inability to execute the judgment which included the costs that rendered the issue moot. Such is not the case here. This Court's Final Order and Decision stands, and there is no contractual impediment to Roper Pond's executing a judgment on this Court's award of attorney's fees under the State Action Statute.

Additionally, the Town argues that the Supreme Court order denying Roper Pond's motion for costs under SCACR Rule 222 precludes Roper Pond's status as a prevailing party in this action. (February 5, 2016 Response, pp. 21-22). The Town concedes that "Rule 222 contains no standard for determining whether an award of costs is warranted." (February 5, 2016 Response, p. 22). Moreover, Rule 222 does not refer to "prevailing party" in determining the award of costs. Therefore, the Court's denial of Roper Pond's motion for costs does not affect Roper Pond's status as a prevailing party in this action. Additionally, the Supreme Court recently held that its ruling on a motion for costs under SCACR Rule 222 has no bearing on a trial court's authority to grant attorney fees under a statute. In *Austin v. Stokes-Craven Holding Corp.*, 406 S.C. 187, 750 S.E.2d 78 (2013), the Supreme Court held that an appellate court's authority to award discretionary appellate attorneys' fees and a circuit court's authority to award appellate and post-appellate attorneys' fees pursuant to South Carolina Regulation of Manufacturers, Distributors, and Dealers Act were not mutually exclusive:

Notably, it is within this Court's discretion whether to award fees and costs under Rule 222. *See* Rule 222(a), (e), SCACR (identifying circumstances for which an appellate court may tax costs on appeal). In contrast, section 56-15-110(a) states that a party who prevails under the Dealer's Act "**shall recover** double the actual damages by him sustained, and the cost of suit, including a reasonable attorney's fee." (Emphasis added.) This is a fundamental distinction as a denial of fees under a discretionary rule cannot eliminate a statutory mandate. Thus, we hold that this Court's summary denial of Austin's request for attorney's fees under Rule 222 was not dispositive of his right to seek statutory fees in the circuit court. Moreover, this conclusion is consistent with our jurisprudence interpreting Rule

222 wherein our appellate courts have found that a decision under this rule does not preempt an award of attorney's fees to which one is otherwise entitled, *i.e.*, statutorily authorized. *See Taylor v. Medenica*, 332 S.C. 324, 504 S.E.2d 590 (1998) (awarding Respondents a \$1,000 attorneys' fee and \$81.66 for costs as allowed by Rule 222 and holding that Respondents could seek additional attorneys' fees in the circuit court under the UTPA, which provides for reasonable attorneys' fees and costs); *Muller v. Myrtle Beach Golf & Yacht Club*, 313 S.C. 412, 416, 438 S.E.2d 248, 250 (1993) (finding Appellant waived right to recover appellate costs and fees under Rule 222 as he failed to file an itemized statement of costs prior to the Court's issuance of the remittitur, but holding that Appellant could seek appellate costs in the circuit court based on his statutory right under section 29-5-10 (authorizing costs incurred for the enforcement of a mechanic's lien) as "Rule 222 does not preempt an award of attorney's fees to which one is otherwise entitled" (citation omitted)); ***McDowell v. S.C. Dep't of Soc. Servs.*, 304 S.C. 539, 543, 405 S.E.2d 830, 833 (1991) (holding that an award of attorney's fees under Supreme Court Rule 38 (precursor to Rule 222) did not "preempt an award of attorney's fees to which one is otherwise entitled" and, thus, Appellant could seek an award of attorney's fees pursuant to section 15-77-300, which permits an award of fees for a party prevailing in an action against a state agency); see also *Parker v. Shecut*, 359 S.C. 143, 597 S.E.2d 793 (2004) (recognizing, in a partition action, that whether Respondents were entitled to appellate attorney's fees pursuant to section 15-61-110 was a determination for the circuit court). Accordingly, we find the Court's denial of Austin's Rule 222 motion had no preclusive effect on his attempt to seek statutory attorney fees in the circuit court, including appellate fees and the post-appellate fees incurred in enforcing the judgment against Stokes-Craven.**

406 S.C. at 199-200, 750 S.E.2d at 84-85 (second emphasis added). This ruling cites to *McDowell v. S.C. Dep't of Soc. Servs.*, 304 S.C. 539, 543, 405 S.E.2d 830, 833 (1991), which expressly references Section 15-77-300 of the State Action Statute. This ruling affirms that the Supreme Court's denial of costs under Rule 222 has no effect on this Court's authority to award attorneys' fees and costs to Roper Pond under Section 15-77-300. Roper Pond is therefore a prevailing party entitled to fees and costs under the State Action Statute.

B. Without Substantial Justification

Roper Pond asserts that the Town acted without substantial justification because Petitioners failed to offer evidence at the hearing on the merits to support its allegations that DHEC acted in conflict with established regulations and the relevant case law. "An agency

action supported by substantial justification is one which has a reasonable basis in law and fact.” *McDowell v. South Carolina Dep’t of Soc. Servs.*, 304 S.C. 539, 542, 405 S.E.2d 830, 832 (1991) (citing *Pierce v. Underwood*, 487 U.S. 552 (1988)). In *Heath v. County of Aiken*, the South Carolina Supreme Court held that “substantial justification,” for the purposes of S.C. CODE ANN. § 15-77-300, means “justified to a degree that could satisfy a reasonable person.” 302 S.C. at 183, 394 S.E.2d at 712. However, the South Carolina Supreme Court interprets the State Action Statute to hold state agencies and political subdivisions to a higher standard than other litigants. “[A] court need not go so far as to brand a claim ‘frivolous’ in order for it to be found to be without substantial justification.” *Id.* (citing *Pierce v. Underwood*, 108 S. Ct. at 2251). In *Heath*, the Court held that the county council acted without substantial justification because “[t]he statute construed in [the case] was unambiguous, and coupled with the relevant precedent clearly established that the Council’s claims were without merit.” *Id.* at 184, 394 S.E.2d at 712. Therefore, the substantial justification standard in Section 15-77-300 requires a court to examine the established body of law in determining whether a state agency or political subdivision acted “without substantial justification” in pressing a claim. The holding in *Layman v. State*, 376 S.C. 434, 658 S.E.2d 320 (2008), further clarifies “substantial justification” for the purposes of S.C. CODE ANN. § 15-77-300:

Substantial justification for purposes of the state action statute means “justified to a degree that could satisfy a reasonable person.” *Heath v. County of Aiken*, 302 S.C. 178, 183, 394 S.E.2d 709, 712 (1990) (quoting *Pierce v. Underwood*, 487 U.S. 552, 564, 108 S.Ct. 2541, 101 L.Ed.2d 490 (1988)). Therefore, in deciding whether a state agency acted with substantial justification, the relevant question is whether the agency’s position in litigating the case had a reasonable basis in law and in fact. *McDowell v. S.C. Dept. of Soc. Servs.*, 304 S.C. 539, 542, 405 S.E.2d 830, 832 (1991). Although an agency’s loss on the merits does not create a presumption that its position was not substantially justified, *Video Gaming Consultants, Inc. v. S.C. Dept. of Revenue*, 358 S.C. 647, 650, 595 S.E.2d 890, 892 (Ct. App. 2004), **the substance and outcome of the matter litigated is**

nevertheless relevant to the determination of whether there was substantial justification in pressing a claim. *Heath*, 302 S.C. at 183, 394 S.E.2d at 712.

Layman v. State, 376 S.C. 434, 445, 658 S.E.2d 320, 325-26 (2008) (emphasis added). The substance of the Town's case and the ruling on the evidence presented must be examined in determining whether the Town acted "without substantial justification."

In the Request for Contested Case Hearing, Petitioners cited a number of state and federal statutes and regulations which the Department's decision in this matter allegedly violated. The DHEC decision which was challenged in this matter was the grant of coverage to Roper Pond under the Construction General Permit. The Department's decision was based on its review and approval of SWPPP prepared for the Proposed Project. However, at the hearing on the merits, Petitioners offered no evidence that the SWPPP approved by the Department was technically deficient. (Final Order and Decision, pp. 21-22). The Court of Appeals affirmed this Court's finding on that issue: "We also find significant the absence of any evidence from Appellants that the BMPs to be implemented under the SWPPP were inadequate to prevent sediment from leaving the construction site." *Town of Arcadia Lakes v. South Carolina Dep't of Health and Env'tl. Control*, 404 S.C. 515, 531, 745 S.E.2d 385, 393 (Ct. App. 2013).

Additionally, since the nature of any deficiencies in the SWPPP would involve technical or specialized knowledge outside of the common knowledge and experience of a trier of fact, it would be expected that Petitioners would have offered an expert to assist the Court in assessing any alleged deficiencies. Rule 702, SCRE. Until Mr. McCall was conflicted out of this case, Petitioners claimed that he offered his expert opinion on these alleged deficiencies. Upon notifying the Town that he could not participate in this litigation, Mr. McCall offered to confer with Brian Bates and recommend other engineering experts to the Petitioners. However, no expert witness was offered for this purpose. Petitioners' only expert witness offered in this

matter admitted that he had not reviewed the SWPPP prepared on behalf of Roper Pond. (Hrg. Tr., pp. 201-02). Therefore, Petitioners failed to present evidence on DHEC's alleged failure to satisfy the fundamental regulatory requirements on which its decision in this matter was based.

Additionally, Petitioners' case in chief was focused almost exclusively on the dredging of the Pond; however, Petitioners' expert at trial admitted at trial that he was not qualified to opine on this matter. Petitioners' expert testified that he has no prior experience in assessing the potential impacts of excavation of a water body. (Hrg. Tr., pp. 190-91). Moreover, while Petitioners' expert initially opined that the proposed excavation of the pond "will simply destroy the ecosystem that is now present," he later withdrew that opinion because, as he stated, "I was trying to restrict myself to what I actually knew as opposed to my conjectures." (Roper Pond Ex. 12; Hrg. Tr., p. 200). With respect to the testimony of Petitioners' expert, the Court of the Appeals stated as follows:

Although Reice admitted he previously opined that the proposed excavation of the Pond would have disastrous consequences, he now admitted this was only conjecture. Furthermore, Reice's primary interest was sedimentation, and he admitted he had no direct experience with excavation. When asked if he believed the land-disturbing activities conducted in conjunction with Roper Pond Apartments would have an adverse impact on Roper Pond, Reice stated only that "[i]t doesn't sound good" and he would "be surprised if they didn't," but declined to offer an expert opinion about the probable results. On cross-examination, Reice also stated he was not provided copies of Roper's SWPPP and except for what he heard at the hearing, had no knowledge of the BMPs that Roper intended to follow in order to minimize the impact of its construction activities.

Town of Arcadia Lakes, 404 S.C. at 526, 745 S.E.2d at 391.

Instead of presenting evidence on alleged deficiency in the SWPPP, Petitioners argued that Roper Pond did not have the required federal permit for impacts resulting from excavation of the pond on the property. (Petitioners' Proposed Order, Hartley Aff., Ex. 19, p. 21). However, the federal law is clear and well-settled that a federal permit is required for excavation of a water body only when such activity is to be conducted in a "navigable water of the United States" under

Section 10 of the Federal Rivers and Harbors Act, 33 U.S.C. §§ 401 *et seq.* (“Rivers and Harbors Act”). 33 U.S.C. § 403. This Court found that “Petitioners neither claimed nor presented any evidence that the Pond is a navigable water of the United States under Section 10 of the Rivers and Harbors Act.” (Final Order and Decision, p. 27). Moreover, Petitioners failed to identify any other federal or state law which required a permit for excavation of the Pond. Instead, Petitioners claimed that a federal permit for excavation of the Pond, which was not required under federal law, was nonetheless required as a general condition of the 401 water quality certification for the Nationwide Permits. Specifically, Petitioners argued that there was no valid Nationwide Permit for filling the 0.075 acres of wetlands because the 401 water quality certification issued in 2007 for Nationwide Permits, including NWP 29, included a general condition for consideration of the “overall project proposed or accomplished by a single owner/developer” for any activities covered by a Nationwide Permit. That argument was rejected by this Court. (Final Order, p. 23). Additionally, the Court of Appeals found this general condition to be inapplicable because the excavation of the pond “would not result in a discharge into a navigable water.” (*Town of Arcadia Lakes*, 404 S.C. at 534, 745 S.E.2d at 395). Moreover, in their Proposed Order submitted to this Court, Petitioners failed to cite to any legal authority supporting this argument. (Hartley Aff., Ex. 19, p. 22).

Petitioners’ failure to cite relevant case law or other legal authority for their claims supports a demonstration of “without substantial justification.” Although Petitioners’ claims might be characterized as novel, the fact that a political subdivision of the State has raised novel issues in an action does not mean that the political subdivision was substantially justified in bringing such action. *Cornelius v. Oconee County*, 369 S.C. 531, 539-40, 633 S.E.2d 492, 497 (2006) (finding that citizen who initiated declaratory judgment action against a county was

entitled to attorneys' fees because the fact that novel issues were raised does not mean the county was substantially justified in opposing the citizen in the declaratory judgment action). The substantial justification standard under Section 15-77-300 requires more than a plausible legal theory on which to bring the contested case. In *Cornelius v. Oconee County*, 369 S.C. 531, 633 S.E.2d 492 (2006), the Supreme Court upheld the award of attorney fees in a declaratory judgment action brought by a county citizen against the county for a wastewater treatment facility funding scheme which violated a county referendum. The county argued that the award of attorney fees under Section 15-77-300 was improper because, *inter alia*, the county "acted with 'substantial justification' because there are no preexisting judicial precedents on these issues, merely attorney general opinions." *Id.* at 538-39, 633 S.E.2d at 496. In upholding the award of attorney fees, the Supreme Court held:

The trial court can award attorneys' fees under the statute only if it finds the State "agency acted without substantial justification in pressing its claim. . . ." § 15-77-300(1). An agency acts with "substantial justification" within the meaning of the statute when its position has a "reasonable basis in law and fact." *McDowell v. SCDSS*, 304 S.C. 539, 542, 405 S.E.2d 830, 832 (1991). Contrary to County's contention, **the fact that novel issues were raised does not mean County was substantially justified in opposing Cornelius**. Declaratory judgment actions by their very nature often present novel questions. *See, e.g. Eargle, supra* (authority of county administrator to suspend elected official's employees); *United Oil Marketers, supra* (constitutionality of license tax incentive statute for gas/ethanol blend); *Heath v. County of Aiken*, 302 S.C. 178, 394 S.E.2d 709 (1990) (to define relationship between sheriff's office and county council). Moreover, **County cited no viable authority supporting its position that it was no longer bound by the Referendum's terms**. We agree with the circuit court that County acted without substantial justification, and no special circumstances render the attorneys' fee award unjust.

Id. at 539-40, 633 S.E.2d at 496-97 (emphasis added). As such, the fact that there were no prior rulings directly on point as to the claims raised by the county did not preclude a finding that the county acted without substantial justification. Such is the case here. Petitioners advanced a legal theory for which there was no precedential basis in federal or state law. Moreover, despite the

wealth of case law interpreting the Clean Water Act, the Rivers and Harbors Act, and the permitting programs established under those Acts, Petitioners continued to press their claim that a 401 Certification issued for a Nationwide Permit in 2007, two years prior to the DHEC decision at issue in this case, required the Department to consider the impacts of the excavation of Roper Pond. The Court of Appeals rejected all of Petitioners' arguments regarding the sufficiency of the 401 certification and the alleged error in the Department's failure to consider the impacts of the dredging of the Pond:

Appellants further argue the 401 certification issued by DHEC was insufficient to satisfy the requirements Roper needed to fulfill to obtain a 404 permit because: (1) the 401 certifications that DHEC issued for projects authorized under NWP 29 or NWP 39 could not apply to the excavation of the pond because that activity was not disclosed when Roper applied to the Corps for a 404 permit; (2) the project did not comply with certain general conditions applicable to all NWPs, specifically that DHEC consider the impacts to all land within a project boundary and to adjacent bodies of water or wetlands; (3) DHEC never issued a formal certification that the project met the conditions under NWP 29 for water quality certification; and (4) DHEC failed to conduct the required review for compliance with certain water quality regulations. We hold none of these allegations warrant reversal of the ALC's finding that Roper had an effective 401 certification for its proposed project.

Town of Arcadia Lakes, 404 S.C. at 534, 745 S.E.2d at 395. The Court of Appeal also affirmed this Court's ruling that a 404 permit was not required for coverage under the Construction General Permit:

Finally, Appellants take issue with the finding that Roper was entitled to coverage under the State General Permit. They submit two arguments in support of their position. We reject both arguments.

First, Appellants reiterate their previous argument that Roper was not entitled to coverage because the 401 certification was inadequate for a 404 permit, which in turn was a prerequisite for coverage under the State General Permit. We have already determined that the 401 certification that DHEC issued was sufficient for Roper to obtain coverage under NWP 29.

Appellants further contend that the excavation of the pond and lowering of its surface would make the pond a water control structure and would therefore require, under the terms of the State General Permit, a 404 permit from the Corps,

which in turn would require a 401 certification. The ALC did not specifically address the question of whether the use of the pond as a water control structure required a 404 permit, and Appellants did not request a ruling in their motion to reconsider. The issue, then, has not been preserved for appellate review, and it would be improper for us to address it now. *See Shealy v. Aiken Cnty.*, 341 S.C. 448, 460, 535 S.E.2d 438, 444–45 (2000) (holding an issue was not preserved for appeal because the trial judge's general ruling was insufficient to preserve the specific issue for appellate review and the appellant did not move to alter or amend the judgment pursuant to Rule 59(e), SCRCP); *Hendrix v. Eastern Distribution, Inc.*, 320 S.C. 218, 218, 464 S.E.2d 112, 113 (1995) (vacating an opinion by this court “to the extent it addressed an issue which was not preserved”).

Id. at 536, 745 S.E.2d at 396. Petitioners’ presentation of novel legal theories in an attempt to create a 404 permitting requirement where none existing in the well-settled and substantial body of law was rejected by this Court and the Court of Appeals. Therefore, despite Petitioner’s novel legal theories, the Town acted without substantial justification in bring this action.

The Town argues that there was substantial justification to bring this action because “the Town’s decision to file the request for contested case hearing was made solely and completely on reliance of the advice of counsel.” (February 5, 2016 Response, p. 12). This argument suggests a showing of “substantial justification” would only require a party to overcome the frivolous filing standard under Rule 11, SCRCP, or the Frivolous Civil Proceedings Sanctions Act, S.C. CODE ANN. § 15-36-10 et seq. (“FCPSA”). *Father v. South Carolina Dep’t of Soc. Servs.*, 345 S.C. 57, 72, 545 S.E.2d 523, 531 (Ct. App. 2001) (finding the standard for sanctions under Rule 11 to be essentially the same as that under the FCPSA). The South Carolina Supreme Court has expressly held that a finding of “without substantial justification” does not require a showing that the claims asserted were frivolous. *Heath*, 302 S.C. at 183, 394 S.E.2d at 712 (holding that “a court need not go so far as to brand a claim ‘frivolous’ in order for it to be found to be without substantial justification”). As such, a party’s reliance on legal advice that it has claims which can

be expected to survive a motion for sanctions under Rule 11, SCRCP, or the FCPSA does not shield a party from a finding of “without substantial justification” under Section 15-77-300.

Additionally, if reliance on the advice of counsel were a shield against a finding of “without substantial justification,” Section 15-77-300 would be rendered meaningless. The South Carolina appellate courts have upheld a number of lower court findings that a state agency or political subdivision acted “without substantial justification” under Section 15-77-300, and in every reported case, the state agency or political subdivision was represented by counsel. *See Layman v. State*, 376 S.C. 434, 445, 658 S.E.2d 320, 325-26 (2008) (upholding award of attorney fees in class action by state retirees against the State and the South Carolina Retirement System); *Cornelius v. Oconee County*, 369 S.C. 531, 539-40, 633 S.E.2d 492, 497 (2006) (upholding award of attorney fees to citizen who brought declaratory judgment action against the county); *Tennis v. S.C. Dep’t of Soc. Servs.*, 355 S.C. 551, 559, 585 S.E.2d 312, 317 (Ct. App. 2003) (reversing the denial of attorney fees in daycare operator action against DSS); *Brown v. City of North Charleston*, 314 S.C. 298, 301, 442 S.E.2d 633, 635 (Ct. App. 1994) (reversing trial court’s denial of attorney fees for citizen seeking displacement and relocation costs from the city); *Heath v. County of Aiken*, 302 S.C. 178, 183, 394 S.E.2d 709, 712 (1990) (upholding award of attorney fees in declaratory judgment action brought by sheriff against the county). The reliance on the advice of counsel therefore does not preclude a finding that a state agency or political subdivision of the state acted without substantial justification. Additionally, as discussed below, the Supreme Court has recently addressed reliance on legal counsel in the context of an award of attorneys’ fees and costs under Section 15-77-300; however, the Court addressed this argument under the “special circumstances” element of Section 15-77-300—not the determination of “without substantial justification.”

The Town further argues that its claims were justified because “if the Supreme Court believed that the case was frivolous or without merit it would not have exercised its discretion and requested briefing and oral arguments.” (February 5, 2016 Responses, p. 6). There is no basis for this contention. The Supreme Court regularly grants certiorari to review a decision of the Court of Appeals and then subsequently dismisses the petition for writ of certiorari as improvidently granted following oral arguments. *See, e.g., York County v. South Carolina Dept. of Health and Environmental Control*, 408 S.C. 180 (2014) (dismissing writ of certiorari as improvidently granted following May 6, 2014 oral argument); *(State v. Gilliard*, No. 2012-213344, 2015 WL 4348912, at *1 (S.C. July 15, 2015) (dismissing writ of certiorari as improvidently granted following June 16, 2015 oral argument); *State v. Scott*, 413 S.C. 24, 773 S.E.2d 912 (2015) (missing writ of certiorari as improvidently granted following April 22, 2015 oral argument); *Washington v. Rhett*, No. 2015-MO-039, 2015 WL 3886259, at *1 (S.C. June 24, 2015) (dismissing writ of certiorari as improvidently granted following June 16, 2015 oral argument); *State v. McMillan*, No. 015-MO-035, 2015 WL 3819068, at *1 (S.C. June 17, 2015) (dismissing writ of certiorari as improvidently granted following May 20, 2015 oral argument); *Estate of Atn Burns Livingston v. Livingston*, 412 S.C. 610, 773 S.E.2d 579, 580 (2015) (dismissing writ of certiorari as improvidently granted following May 5, 2015 oral argument). As such, the fact that the Supreme Court granted the petition for writ of certiorari in this matter cannot be construed as the Supreme Court’s “clear acknowledgment of the meritorious claims” as the Town contends. (February 5, 2016 Response, p. 9). The Town improperly interprets the Supreme Court’s decision to grant its writ of certiorari as a statement on the merits of the claims at issue.

Roper Pond further argues that the Town acted without substantial justification in bringing this action because the Town lacked standing to bring the action. “[S]tanding is a fundamental prerequisite for instituting a legal action.” *Carnival Corp. v. Historic Ansonborough Neighborhood Ass’n*, 407 S.C. 67, 81, 753 S.E.2d 846, 853 (2014). Affirming this Court’s Final Order and Decision, the Court of Appeals found that the Town lacked standing because the Town failed to present evidence to show that any of its “professed interests” would result in an injury in fact to the Town or that any alleged injuries “were ‘fairly traceable to the challenged action in this case.’” *Town of Arcadia Lakes v. South Carolina Dep’t of Health and Envtl. Control*, 404 S.C. 515, 530, 745 S.E.2d 385, 393 (Ct. App. 2013). There is an inherent absence of “substantial justification” for an action where the Town failed to present evidence to establish standing to challenge the DHEC decision at issue. The Court thus finds that the Town’s lack of standing further supports the finding that the Town acted without substantial justification

Roper Pond further argues that the Town acted without substantial justification because the Town’s primary objective in appealing the Department’s decision in this matter was not to challenge the Department’s decision to grant Roper Pond coverage under the Construction General Permit, but to stop or delay the construction of an apartment complex on the Roper Pond property. Roper Pond offers the testimony and correspondence of Mr. Thomas, mayor and Rule 30(b)(6) deponent for the Town, as evidence of this intent to stop or delay the Proposed Project. Mr. Thomas testified that there was no opposition to the previous plan to construct condominiums on the Roper Pond property. (Thomas Dep., p. 83, l. 21 – p. 86, l. 10). The opposition to the development began upon learning that the property would be developed as an apartment project. (Thomas Dep., p. 112, l. 5 -113, l. 17). In an August 23, 2008 email, Mr. Thomas wrote that “the town was misled and deceived in the initial meetings 3+ years ago” by

the developer to gain support for rezoning of the Roper Pond property. (Hartley Aff., Ex. 2). Mr. Thomas further wrote: "The town should use all necessary means to go before the Richland County Planning Commission and appeal the August 21 Planning Committee recommendation (on numerous reasons of environmental impact, faulty traffic studies and NPDES requirements that have not been studied or met concerning flood control) and to resend [sic] the past zoning change on the grounds of misrepresentation and breach of verbal contract." *Id.* Mr. Thomas acknowledged that the Town opposed the planned development of the property for reasons which had nothing to do with the Department's approval of the SWPPP and authorization under the Construction General Permit. Moreover, Mr. Thomas admitted that the Town had no independent knowledge of facts supporting its appeal of the Department's grant of coverage to Roper Pond under the Construction General Permit.

Upon receipt of the December 15, 2008 DHEC decision at issue in this case, Mr. Thomas sent an email to Brian Bates stating that the Town could "send in a blanket appeal to the DEHEC Board and delay the actual decision for 60 days." (Thomas Dep., Ex. 5, attached to Hartley Aff. as Ex. 15). At the close of this email, Mr. Thomas wrote: "Let me know where you think we can go to delay and/or stop this project." *Id.* The stated objective of this email is further evidenced by the Town's efforts to oppose governmental authorization for the planned development at every opportunity. For example, Mr. Thomas contacted politicians and others to assist the Town in holding up South Carolina Department of Transportation approval for the Proposed Project. (Exs. 3 and 4 of Hartley Aff.). Additionally, at its October 2, 2008 council meeting, the Town adopted a resolution to the Richland County Planning Commission regarding development plans submitted to the County for the Proposed Project. (Thomas Dep., Ex. 6, attached to Hartley Aff. as Ex. 16). The Resolution advised the Commission of the Town's belief that the proposed

development as multifamily high density apartments was “out of character and totally incongruous for the entire town, its neighborhoods, contiguous community and the intended zoning use as originally presented.” *Id.* The resolution further requested that “an economic impact study be performed to determine the loss of property value to the homes in the adjacent Kaminer Station Subdivision, and homes directly affected across Trenholm Road and by adjacent nearby lakes, due to the proposed 204 apartments . . .” *Id.* This evidence supports Roper Pond’s contention that the Town engaged in an comprehensive effort to delay or stop the Proposed Project.

Similarly, Roper Pond argues that meeting with DHEC and governmental authorities were intended to obstruct the development of the Proposed Project and were not intended to facilitate the correction of deficiencies in the SWPPP prepared by B.P. Barber on behalf of Roper Pond. The Town supported the exclusion of B.P. Barber from a meeting with Senator Joel Lourie as a strategy for further delaying the approval of the SWPPP. (See, e.g., Exs. 5, 6, 7, and 8 to Hartley Aff.). Brian Bates and Daniel Hill, the professional engineers assisting the Town in its opposition to the Department’s approval of the SWPPP, attended a meeting with Senator Lourie on behalf of the Town. The email correspondence regarding this meeting demonstrates the Mr. Thomas agreed with and promoted Mr. Bates’ recommendation that B.P. Barber be excluded from the meeting. In a November 6, 2008 email, Mr. Bates advised Mr. Thomas as follows:

Yes I can attend a meeting at that time. As for your phone message about BP Barber, I don’t care if they are there, but letting them know our position on their design (assuming we find flaws) that quickly will just expedite their response. I would think that every day that this thing is not resolve is another day it isn’t being built. Going through the system is a more formal, civil, and slower method in my opinion. I would rather them keep guessing what our next move is instead of confronting them. Just my thoughts.

(Ex. 9 to Hartley Aff.). Upon receipt of the following email message, Mr. Thomas responded: "I agree with you . . . I will let Joel know that You Danny and I can be there." (Ex. 10 to Hartley Aff.) (ellipses in original). Mr. Thomas thereafter forwarded the email to Senator Lourie with his endorsement of the proposed strategy. (Exs. 11 and 12 to Hartley Aff.). This evidence supports Roper Pond's claim that the Town's "concerns" about the SWPPP were merely another avenue in to determine "where you think we can go to delay and/or stop this project."

With respect to the Town's concerns regarding the SWPPP for the Proposed Project, the Town was afforded numerous opportunities to raise those concerns prior to the Department's decision to grant Roper Pond coverage under the Construction General Permit. The Town provided comments to the Department shortly after the Department staff took over the review of the SWPPP. In an October 29, 2008 email, Mr. Thomas forwarded the Department's review letter for the SWPPP to Mr. Bates and requested that Mr. Bates advise him "if we in Arcadia Lakes need to ask for more." (Ex. 5 of Hartley Aff.). Mr. Bates advised Mr. Thomas to "wait until they try to address this and then bring up the interpretation that this water must be segregated from all of the other runoff." *Id.* Mr. Thomas responded: "Thanks again for your continued expertise in this matter." *Id.* This email exchange demonstrates that the Town was raising technical issues to the Department staff, and the Department staff was adequately addressing those issues. Additionally, it shows that the Town's real objective in raising these issues was not to ensure that the SWPPP was technically sufficient to control the stormwater runoff on the property, but to identify potential obstacles to the development of the property. As evidenced by Mr. Thomas's email of December 17, 2008, the Town intended to appeal that decision even if there were no grounds for such appeal. At the hearing on the merits, the Town failed to offer any evidence of a technical deficiency in the SWPPP. The evidence of the Town's

efforts to delay or stop the Proposed Project further supports this Court's finding that the Town acted "without substantial justification" in bringing this contested case.

C. Special Circumstances

The Town fails to identify any special circumstances that would make an award under Section 15-77-300 unjust. (February 5, 2016 Response). However, the reliance on advice of counsel has been advanced as a special circumstance in a Section 15-77-300 ruling. In the recent decision in *McNaughton v. Charleston Charter School for Math and Science, Inc.*, 411 S.C. 249, 768 S.E.2d 389 (2015), the Supreme Court addressed the defendant school's reliance on the advice of legal counsel in the context of an award of attorney fees under Section 15-77-300. The Supreme Court affirmed the trial court's verdict in favor of McNaughton on her breach of contract claim against the school and award of attorney fees under Section 15-77-300. On appeal, the school argued that the award of attorney fees was unjust because the principal had received the advice of counsel in making prior to terminating McNaughton. The Supreme Court upheld the circuit court's ruling which rejected this argument: .

Appellant also argues that special circumstances exist rendering the award of attorney's fees unjust. *See* S.C. Code Ann. § 15-77-300(B)(2). In particular, Appellant relies on the fact that the principal solicited legal advice before terminating McNaughton's employment to ensure that the existence of the contingency clause in her employment agreement did not have legal significance. Appellant also cites the contingency clause itself, its students' math scores, and the letter of recommendation provided to McNaughton as special circumstances making attorney's fees unjust. Appellant contends that because its decision to terminate McNaughton's employment was made in good faith and in pursuit of its students' best interests, the trial court should not have awarded attorney's fees.

The trial court rejected these arguments, and found that no special circumstances existed to make an award of attorney's fees unjust in this case. We find the trial court did not abuse its discretion in making this finding, but instead, carefully considered and applied each of the applicable factors in the statute. *See* Layman, 376 S.C. at 444, 658 S.E.2d at 325. Accordingly, we affirm the trial court's decision to award McNaughton's attorney's fees under section 15-77-300.

Id. at 267-68, 768 S.E.2d at 399. The Town thus cannot rely on the advice of counsel to shield it from an award of attorneys' fees and costs under Section 15-77-300. There no special circumstances which would make an award of attorneys' fees and costs unjust. The Court thus finds that Roper Pond is entitled to an award of attorneys' fees and costs pursuant to Section 15-77-300 of the State Action Statute.

II. SANCTIONS PURSUANT TO RULE 72, SCR PALC

Roper Pond seeks sanctions against the Town pursuant to Rule 72, SCR PALC, for the costs of delay of the Proposed Project during the pendency of the automatic stay before this Court. Roper Pond asserts that the Town's primary objective in appealing the Department's decision in this matter was not to challenge the technical sufficiency of the SWPPP, but to stop or delay the construction of an apartment complex on the Roper Pond property. As discussed above, Roper Pond cites to the numerous communications between the Town's mayor and the engineers who assisted the Town during DHEC's review of Roper Pond's SWPPP. In a December 17, 2008 email regarding the appeal of the Department's decision on the State Construction General Permit coverage for Roper Pond, Mr. Thomas wrote: "Let me know where you think we can go to delay and/or stop this project." (Hartley Aff., Ex. 15). A December 30, 2009 draft of the request for Board review raised any number of issues regarding the Proposed Project, but failed not identify any defect in the Department's grant of coverage under the Construction General Permit.

The Town acknowledges that "the Town wanted to slow the process," but disputes that its actions were "solely for the purpose of delay." (February 5, 2016 Response, p. 17). The evidence on the record demonstrates that the Town opposed the development of the property as an apartment complex. The Town argues that the request for contested case hearing was not filed solely for the purpose of delay because the Town had other concerns about the proposed

development. The Town claims that the contested case was not brought “solely for the purpose of delay” because there were numerous concerns about zoning, compliance with the county land development ordinance, maintaining the character of the Town, diminution in property values in the Town, and faulty traffic impact studies. (February 5, 2016 Response, pp. 14-16). However, none of these alleged concerns in any manner relate to the DHEC decision at issue in this contested case. Moreover, these concerns should be addressed through local zoning and land use authorities. However, the Roper Pond Property is outside of the corporate limits of the Town. Richland County—not the Town—has jurisdiction over zoning and land use issues affecting the Property. The Court thus find that the Town availed itself of the appeal process authorized under S.C. CODE ANN. § 44-1-60 and the Administrative Procedures Act, S.C. CODE ANN. §§ 1-23-10 *et seq.* (“APA”) in order to redress claims which are properly addressed by and through Richland County zoning and land use authorities.

Additionally, Roper Pond has presented evidence of numerous communications in which the Town’s mayor and those acted on the Town’s behalf admit that Petitioners were challenging the DHEC decision to issue coverage under the General Permit as a means to stop or delay the proposed development. The fundamental regulatory issue in the DHEC decision at issue in this case was the technical sufficiency of the SWPP submitted to DHEC in support of Roper Pond’s request for coverage under the General Permit. However, as this Court and the Court of Appeals held, Petitioners failed to present any evidence regarding any alleged deficiencies in the SWPPP, and neither Petitioner’s expert nor any of the Petitioners even reviewed the SWPPP. *Town of Arcadia Lakes v. South Carolina Dep’t of Health and Env’tl. Control*, 404 S.C. 515, 527-33, 745 S.E.2d 385, 391-94 (Ct. App. 2013). Moreover, with respect to the Town’s concerns regarding the SWPPP for the Proposed Project, the Town was afforded numerous opportunities to raise

those concerns prior to the Department's decision to grant Roper Pond coverage under the Construction General Permit. Prior to a November 14, 2008 meeting with the Department staff at Senator Lourie's office, the Town and its technical advisors had reviewed the SWPPP and provided comments to the Department staff, which the staff unquestionably addressed. In an October 2, 2008 email, Mr. Thomas advised Mr. Bates as follows:

Thank you again . . . wish us luck Monday . . . Joel has received a copy of a letter DEHEC sent to the developer telling him that they had pulled the developer's application and want him to provide all documentation for additional review. Is the first flush requirements a possible application killer that would require them to reapply. If we could get to that point, we may have [a] chance to get them under the new rules if they approved before they have a chance to reapply. . . RT

(Ex. 14 to Hartley Aff.). It is apparent that the Town provided comments to the Department shortly after the Department staff took over the review of the SWPPP. In an October 29, 2008 email, Mr. Thomas forwarded the Department's review letter for the SWPPP to Brian Bates and requested that Mr. Bates advise him "if we in Arcadia Lakes need to ask for more." (Ex. 5 of Hartley Aff.). Mr. Bates advised Mr. Thomas as follows:

Told you that "waters of the state for water quality" thing had teeth. They now have to show how they are going to collect, and hold for 24 hours, the first inch of runoff from the entire site, which will be approximately 36,000 cubic feet or 271,000 gallons. For visualization purposes, that would be a pond (like the one that was built for those 4 or 5 lots down Trenholm Road) that would be 3-ft. deep and 110-ft. X 110-ft. square or about the volume of the Rockbridge Club swimming pool. To account for that outside of the wetlands boundary, they are going to have to significantly revise the site plans.

I suggest we wait until they try to address this and then bring up the interpretation that this water must be segregated from all of the other runoff. To do that on dense site is an impractical endeavor at best and not usually required due to its complexity. However, a strict interpretation of the regulations indicates that it is required.

Id. (emphasis added). Mr. Thomas responded: "Thanks again for your continued expertise in this matter." *Id.* This email exchanges demonstrates that the Town was raising technical issues to the Department staff, and the Department staff was adequately addressing those issues.

Additionally, it demonstrates that the Town's real objective in raising these issues was not to ensure that the SWPPP was technically sufficient to control the stormwater runoff on the property, but to identify potential obstacles to the development of the property. Otherwise, there would be no suggestion that "we wait until they try to address this and then bring up the interpretation that this water must be segregated from all of the other runoff." (Hartley Aff., Ex. 5). Petitioners offered no evidence at the hearing that the concerns raised by the Town and other Petitioners were not fully considered by the Department staff and addressed by Roper Pond's consultant prior to the Department's final decision.

The Town argues that in denying Roper Pond's motion for costs under Rule 222, SCACR, "the Supreme Court implicitly concluded that dismissal on mootness grounds is not a favourable disposition and, after a thorough review of the record, found nothing untoward or evidencing that the case was brought solely for delay such that costs would be warranted." (February 5, 2016 Response, p. 22). The Town reads too much into the single sentence denying the motion for costs under Rule 222. This is particularly true as it relates to Roper Town's petition for sanctions under Rule 72, SCRPALC. The Supreme Court's Order denying the motion reads as follows: "The Motion for Costs filed on behalf of respondent, Roper Pond, LLC, in the above entitled matter is denied." A review of the record would not provide the Supreme Court with the evidence supporting Roper Pond's claim that the Town brought the contested case solely for the purpose of delay. The record on appeal before the Supreme Court did not include the Mayor's communications prior to bringing the contested case. Additionally, since Roper Pond's April 19, 2010 Petition for Fees, Costs, and Sanctions was held in abeyance during the pendency of the appeal, the parties did not argue this issue in its briefs or oral arguments before the Supreme Court. However, even if such communications were before the Supreme Court, there is no basis

for reading the one-sentence order denying Roper Pond's motion for costs as a ruling on the Town's objectives in bringing this action.

The Town argues that sanctions are not warranted because the "appeals process also did nothing to delay the project, as the project went forward to completion regardless." (February 5, 2016 Response, p. 13). This arguments disregards the financial impacts of the substantial delay in the construction of the Proposed Project. The DHEC decision which was challenged in this contested case was issued to Roper Pond by letter dated December 15, 2008. This Court issued its Final Order and Decision on January 21, 2010. Petitioners thereafter filed a Motion to Reconsider and for Stay on February 16, 2010. The Court denied that Motion on April 1, 2010. As such, the DHEC decision was stayed for more than fifteen months. Additionally, this delay required Roper Pond to re-apply for certain County permits which had expired during the pendency of the contested case and thus resulted in further delay. Accordingly, the Town cannot claim that there was there was no consequence to the delay in the construction of the Proposed Project during the pendency of this contested case.

Roper Pond claims substantial cost increases directly attributable to the delay of construction of the Proposed Project during the pendency of the contested case before this Court. Roper Pond has presented evidence to demonstrate that the Town availed itself of the contested case procedures established under S.C. CODE ANN. § 44-1-60 and the Administrative Procedures Act, S.C. CODE ANN. §§ 1-23-10 *et seq.*, for the purpose of stopping or delaying the Proposed Project. Rule 72, SCRPA, authorizes this Court to impose such sanctions "as the circumstances of the case and discouragement of like conduct in the future may require." Rule 72, SCRPA. The objective of discouraging like conduct in the future is appropriately achieved by shifting some or all of the cost of the delay of the Proposed Project from Roper Pond

to the Town. Otherwise, Petitioners have achieved their stated and improper objective of delaying the Proposed Project by preventing the commencement of construction for more than fifteen months. Not only has such action unnecessarily expended valuable judicial resources, it has caused significant economic harm to Roper Pond. The Court therefore grants Roper Pond's Petition for sanctions for delay of the Proposed Project during the pendency of the stay before this Court.

ORDER

IT IS HEREBY ORDERED that Roper Pond is entitled to an award of attorneys' fees and costs under S.C. CODE ANN. § 15-77-300.

IT IS FURTHER ORDERED that Roper Pond is entitled to sanctions against Petitioner Town of Arcadia Lakes for the delay in construction of the Proposed Project during the pendency of the stay before this Court.

AND IT IS SO ORDERED.

John D. McLeod
Administrative Law Judge

_____, 2016
Columbia, South Carolina

Hartley, Joan W.

From: Amy Armstrong <amy@scelp.org>
Sent: Monday, June 20, 2016 5:08 PM
To: Anthony Goldman
Cc: Hartley, Joan W.; jessie@scelp.org; ethanblu72@gmail.com; Stephen Hightower; Lavender, Tommy; Charlie Cook; Linda & Bob Jackson
Subject: Town of Arcadia Lakes, et al. v. Roper Pond & DHEC
Attachments: Proposed Order on Sanctions.docx

Anthony,

I'm attaching the Town of Arcadia Lakes' proposed order in word. I am also sending a hard copy by U.S. Mail.

Thank you for your assistance,

Amy

--
Amy E. Armstrong
S.C. Environmental Law Project
P.O. Box 1380
Pawleys Island, SC 29585
Phone: (843) 527-0078
FAX: (843) 527-0540
amy@scelp.org

STATE OF SOUTH CAROLINA

ADMINISTRATIVE LAW COURT

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

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

ORDER

Petitioners,)

vs.)

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

Respondents.)

Appearances:

Amy E. Armstrong, Esquire for the Petitioners

W. Thomas Lavender, Esquire and Joan W. Hartley, Esquire for the Respondent Roper Pond, LLC

Stephen P. Hightower, Esquire and Roger P. Hall, Esquire for the Respondent DHEC

STATEMENT OF THE CASE

This matter arises from Respondent Roper Pond, LLC's ("Roper Pond") Petition for Fees and costs pursuant to S.C. Code Ann. 15-77-300 (2010) (hereinafter the "State Action Statute") as well as Sanctions pursuant to Rule 72, South Carolina Rules of Procedure for the Administrative Law Court ("SCALC"). Roper Pond filed its Second Amended Petition for Attorneys' Fees and Costs and for Sanctions before this Court on May 25, 2015 following the South Carolina Supreme Court's Order to dismissing the appeal as moot on April 9, 2015. On November 30, 2015, Roper Pond filed a Third Amended Petition for Fees, withdrawing all

claims and grounds for relief with the exception of its claim that the Town of Arcadia Lakes' filing of the underlying contested case was "taken solely for purposes of delay" under Rule 72, SCALC and its claim against the Town of Arcadia Lakes under Section 15-77-300.

Based on the Court's review of the record and the applicable law, this Court denies Roper Pond's Petition.

DISCUSSION AND FINDINGS OF FACT

Respondent South Carolina Department of Health and Environmental Control ("Department") granted Roper Pond coverage under the 2006 NPDES General Permit for Storm Water Discharges from Large and Small Construction Activities ("Construction General Permit"), authorizing land-disturbing activities on 9.6 acres in association with construction of a multi-family residential housing development to be located off Trenholm Road in Richland County ("Project") pursuant to the Construction General Permit. On December 30, 2008, Petitioners Town of Arcadia Lakes ("Town"), Robert L. Jackson, Linda Z. Jackson, Robert E. Williams, Barbara S. Williams, Elizabeth M. Walker, Louis E. Spradlin, Mary Helen Spradlin, Thomas Hutto Utsey, Tony Sinclair, Aaron Small, Bette Small, Gene F. Starr, M.D., Elaine J. Starr, Sanford T. Marcus, Ruth L. Marcus, and Steven Brown (collectively, the "Petitioners") requested South Carolina Board of Health and Environmental Control ("Board") review of the issuance of the authorization to discharge under the Construction General Permit. By letter dated January 14, 2009, the Clerk of the Board notified Petitioners that the Board had decided not to conduct a review conference as requested. On February 16, 2009, Petitioners filed a Request for Contested Case Hearing, asserting the numerous grounds for its appeal of the Department's decision in this matter.

On January 21, 2010, the Court issued its Final Order and Decision upholding the

Department's decision to authorize coverage under the Construction General Permit and rejecting Petitioners' arguments that an individual 401 water quality certification was required for the excavation of Roper Pond (hereinafter "the Pond"). On February 1, 2010, Petitioners filed a Motion to Reconsider and for Stay. On March 23, 2010, the Court held a hearing to consider Petitioners' Motion to Reconsider and for Stay, and on April 1, 2010, the Court issued an Order Denying Petitioners' Motion to Reconsider and for Stay. On April 19, 2010, Roper Pond filed a Petition for Attorneys' Fees and Costs and for Sanctions Pursuant to Rule 72, SCRPA LC. On April 20, 2010, Petitioners filed and served a Notice of Appeal of the Court's decision. On May 11, 2010, this Court issued an order holding the Petition for Attorneys' Fees and Costs and for Sanctions Pursuant to Rule 72, SCRPA LC, in abeyance pending the resolution of Petitioners' appeal.

On March 6, 2013, the Court of Appeals issued Opinion No. 5095, affirming this Court's Final Order and Decision. The Petitioners filed a Petition for Rehearing, which was granted. On June 12, 2013, the Court of Appeals substituted and refiled Opinion No. 5095, again affirming this Court's Final Order and Decision. On July 12, 2013, Roper Pond filed an Amended Petition for Attorneys' Fees and Costs and for Sanctions Pursuant to Rule 72, SCRPA LC in this Court, along with supporting memorandum of law and affidavits.

The Petitioners filed a Petition for Writ of Certiorari to the Supreme Court, which was granted. On February 20, 2015, the Supreme Court accepted South Carolina Wildlife Federation's ("Wildlife Federation") Brief of Amicus Curiae in support of Petitioners. On March 18, 2015 the Supreme Court heard oral arguments. On April 9, 2015, the Supreme Court dismissed the writ of certiorari as moot due to their inability "to grant any redress in the context of the issues as framed and litigated below." On April 28, 2015, the Clerk of the Supreme

Court remitted the case to this Court after the Supreme Court. Roper Pond filed a Petition for Fees and Costs in the Supreme Court pursuant to SCACR Rule 222 (hereinafter "Rule 222"). The Supreme Court denied Roper Pond's Petition.

I. Attorneys' Fees pursuant to SC CODE ANN. 15-77-300 et seq.

Roper Pond argues that it is entitled to an award of attorneys' fees and costs pursuant to S.C. Code Ann. § 15-77-300 et seq. ("State Action Statute"), which authorizes a prevailing party to recover attorney's fees in an action brought by the State or a political subdivision thereof. Section 15-77-300 of the State Action Statute provides in relevant part as follows:

(A) In any civil action brought by the State, any political subdivision of the State or any party who is contesting state action, unless the prevailing party is the State or any political subdivision of the State, the court may allow the prevailing party to recover reasonable attorney's fees to be taxed as court costs against the appropriate agency if:

- (1) The court finds that the agency acted without substantial justification in pressing its claim against the party; and
- (2) The court finds that there are no special circumstances that would make the award of attorney's fees unjust.

...

Accordingly, there are three prerequisites to recovery of attorney's fees and costs under the State Action Statute: (1) the contesting party must be the "prevailing party;" (2) the court must find that the agency acted without substantial justification in pressing its claim against the party; and (3) the court must find that there are no special circumstances that would make an award of attorney's fees unjust. Heath v. County of Aiken, 302 S.C. 178, 182-84, 394 S.E.2d 709, 711-12 (1990).

The Supreme Court's denial of Roper Pond's request for attorneys' fees under Rule 222 does not preclude Roper Pond from seeking statutory fees. Austin v. Stokes-Craven Holding

Corp., 406 S.C. 187, 199-200, 750 S.E.2d 78, 84-85 (2013). However, as “[t]he key factor in determining whether a party is a prevailing party is the degree of success obtained by the party seeking attorney’s fees,” Douan v. Charleston County Council, 373 S.C. 384, 386, 645 S.E.2d 241, 243 (2007), the Supreme Court’s denial of costs under Rule 222 is relevant to this Court’s analysis under the State Action Statute. While the Supreme Court’s denial of attorney’s fees under Rule 222 does not impinge upon this Court’s authority to rule on 15-77-300, it remains a relevant factor to be considered.

A. “Prevailing Party”

“As a general rule, attorney fees are not recoverable unless authorized by contract or statute.” Judy v. Judy, 403 S.C. 203, 211, 742 S.E.2d 672, 676 (Ct. App. 2013), reh’g denied (May 21, 2013), cert. denied (June 25, 2014). As with Section 15-77-300, various statutes that allow for the recovery of fees and costs utilize the term “prevailing party;” however, depending on the context of the case and particular provision at issue, the meaning of the term can shift.¹ The South Carolina Supreme Court has found that a prevailing party is “one who successfully prosecutes an action or successfully defends against it, prevailing on the main issue, even though not to the extent of the original contention [and] is the one in whose favor the decision or verdict

¹ See Sloan v. Friends of Hunley, 393 S.C. 152, 157, 711 S.E.2d 895, 897 (2011) (affirming trial court’s finding that plaintiff was “prevailing party” entitled to attorneys’ fees under FOIA statute after affirming trial court’s grant of summary judgment in favor of plaintiff based on defendant mooting the case and frustrating intent of FOIA); Cedar Creek Properties v. Cantelou Associates, Inc., 320 S.C. 483, 465 S.E.2d 774 (Ct. App. 1995) (concluding property owner was “prevailing party” entitled to award of attorneys’ fees and costs where contractor canceled mechanics’ lien only after property owner had initiated litigation to have lien dissolved); Uhlig, LLC v. Shirley, 895 F. Supp. 2d 707 (D.S.C. 2012), appeal dismissed (4th Cir. Nov. 26, 2013) (affirming plaintiff was “prevailing party” at trial for verdict directed in plaintiff’s favor as to each cause of action submitted to jury); Cornelius v. Oconee Cnty., 369 S.C. 531, 633 S.E.2d 492 (2006) (confirming a party whose position prevails in declaratory judgment action with a state agency may be awarded fees under § 15-77-300).

is rendered and judgment entered.” Sloan v. Friends of Hunley, 393 S.C. at 157, 711 S.E.2d at 897; see also Douan v. Charleston County Council, 373 S.C. 384, 386, 645 S.E.2d 241, 243 (2007) (“The key factor in determining whether a party is a prevailing party is the degree of success obtained by the party seeking attorney's fees.”). A “prevailing party,” for the purposes of a statute authorizing the award of attorney fees to the prevailing party in state-initiated action, is a party who successfully prosecutes the action by prevailing on the main issue and in whose favor the decision or verdict is rendered and judgment entered. Douan v. Charleston County Council, 373 S.C. 384, 645 S.E.2d 241 (2007). In Douan, the Plaintiff's challenge to county's sales and use tax referendum was rendered moot by a Supreme Court decision voiding election results. Id. However, the Plaintiff was not considered a “prevailing party” for the purposes of a provision authorizing an award of attorney fees to the prevailing party pursuant to the State Action Statute because mootness made it impossible to grant relief. Id.; see also, City of Charleston v. Masi, 362 S.C. 505, 510, 609 S.E.2d 301, 304 (2005) (“The District is not a prevailing party because its degree of success is nonexistent given that the circuit court did not specifically find for either party and because this case is being dismissed as moot.”). There is no legal significance as to why a case becomes moot, merely that the final judgment rendered found the controversy to be moot. See Douan, at 384, 645 S.E.2d at 241; See Masi, at 505, 609 S.E.2d at 301. Here, as with Douan and City of Charleston v. Masi, the posture of the case precludes any party from claiming “prevailing party” status.

Roper Pond claims that at “. . . the Supreme Court, every ruling on every issue – including standing – has been in favor of Roper Pond and the Department,” however, that assertion overlooks the express language of the Supreme Court's Order holding the case as moot because they could not provide any remedy. While it is understandable that Roper Pond would

instead rely on this Court's ruling, under which it was the prevailing party, much has happened since that time. The Court of Appeals issued two separate opinions. Then the Supreme Court granted certiorari and accepted an amicus brief in support of Petitioners' arguments. If the case was without merit or solely for the purpose of delay, the Supreme Court need not have exercised its discretion, requested briefing and oral arguments, and ultimately issued an opinion. It is evident from these actions that this case raised issues that the appellate courts went to great lengths to address, which would be unnecessary and a waste of judicial resources had these appellate courts not believed that the case presented important and meritorious issues.

At base, Roper Pond's petition consists of a declaration that it is entitled to attorney's fees and costs because it claims victory. Roper Pond asserts itself as the prevailing party "on all issues before this Court" and points to the Court of Appeals decision to affirm those rulings (See Mem. in Supp. of Pet. 7); however, Roper Pond fails to meet the essential "prevailing party" element to recover under the State Action Statute. S.C. Code Ann. § 15-77-300(A). While this Court had the authority to award fees and costs following a ruling, the final judgment must be considered in determining if there is a "prevailing party." See, e.g., Brown v. City of N Charleston, 314 S.C. 298, 442 S.E.2d 633 (Ct. App. 1994); Cornelius v Oconee County, 369 S.C. 531, 633 S.E.2d 492 (2006). Importantly, prevailing at one stage of the case is insufficient to meet the "prevailing party" requirement. Douan v. Charleston County Council, 373 S.C. 384, 645 S.E.2d 241 (2007). The final disposition must be entered in favor of the party seeking fees and costs. The Supreme Court's decision to dismiss the case as moot cannot be read to be a favorable final judgment.

This Court cannot be ignorant of the events occurring after its decision, and instead must consider the final disposition of this case. The "final judgment" in this case is the Supreme

Court's order finding and concluding that the case is moot. The Supreme Court did not affirm this court or the Court of Appeals' opinions, instead concluding that since Roper Pond had proceeded with and completed the challenged construction during the pendency of the appeal it was "impossible for this Court to grant any redress in the context of the issues framed and litigated below." Order, p. 2. The Supreme Court's decision to dismiss the case as moot does not evidence an affirmance of the Court of Appeal's decision. Rather, had the Supreme Court intended to affirm the favorable decision below, it could have affirmed that court's decision.² In addition, the Supreme Court denied Roper Pond's Petition for Fees and Costs pursuant to SCACR Rule 222. Accordingly, I find that Roper Pond does not qualify as a "prevailing party" entitled to seek attorneys' fees under the State Action Statute.

Moreover, the Supreme Court's Order contains a telling passage: "As to Petitioners' concerns regarding post-construction stormwater, sedimentation, and water-quality issues, counsel for Respondent South Carolina Department of Health and Environmental Control (DHEC) assured this Court at oral argument that DHEC has the ongoing ability to receive and investigate postconstruction complaints." Order at 2, note 2. The Supreme Court's Order attests to legitimate judicial concern over the conduct of Roper Pond and DHEC. See Order. The fact that the Supreme Court dismissed this case as moot after hearing arguments and indicating a concern that meaningful judicial relief was no longer possible, without affirming the Court of Appeals, takes "prevailing party" status off the table. See City of Charleston v. Masi, 362 S.C.

² Roper Pond makes much out of the Supreme Court declining to utilize one of the "[t]wo exceptions in which the court may address an issue despite mootness..." *Sloan v. Friends of Hunley, Inc.*, 369 S.C. 20, 27-28, 630 S.E.2d 474, 478 (2006). The inference drawn by the Respondents is misplaced. It is improper to speculate on or add to the intentions underlying the Supreme Court's decision in the absence of language to that effect. Petitioners' failure to elicit a response from the Supreme Court on an issue does not impart greater meaning to the opinion of that court.

505, 510, 609 S.E.2d 301, 304 (2005); Sessions v. Withers, 327 S.C. 409, 488 S.E.2d 888 (Ct. App. 1997) (declining to determine whether party was a “prevailing party” entitled to an award of costs where matter on appeal dismissed as moot).

As further support for this Court’s determination that Roper Pond is not the “prevailing party,” the U.S. Supreme Court’s interpretation of that phrase is instructive. In Buckhannon Bd. and Care Home, Inc. v. W. Va. Dep’t of Health and Human Res., Justice Rehnquist held that a “prevailing party” is derived from “a court-ordered ‘chang[e] [in] the legal relationship between [the plaintiff] and the defendant.’” 532 U.S. 598, 604, 121 S.Ct. 1835, 1840 (2001) (quoting Texas State Teachers Assn. v. Garland Independent School Dist., 489 U.S. 782, 792, 109 S.Ct. 1486 (1989) (citing Hewitt v. Helms, 482 U.S. 755, 760–761, 107 S.Ct. 2672, and Rhodes v. Stewart, 488 U.S. 1, 3–4, 109 S.Ct. 202 (1988) (*per curiam*))). Rehnquist clarified that, “[w]e have only awarded attorney’s fees where the plaintiff has received a judgment on the merits...,” “[n]ever have we awarded attorney’s fees for a nonjudicial ‘alteration of actual circumstances.’” Id. at 605-06, 121 S.Ct. at 1841 (quoting Ginsburg, J. (dissent)). The South Carolina Supreme Court embraced this approach in the recent case of Hueble v. S.C. Dep’t of Nat. Res., holding that “it is not enough for a desired outcome to occur to attain ‘prevailing party’ status. Rather, it requires both a change on the part of the parties and an enforceable acknowledgement by a court.” ___ S.E.2d ___, 2016 WL 1665818, at 5 (2016).

The S.C. Supreme Court, in dismissing this case as moot, did not explicitly or implicitly require a change on the part of the parties. Instead it recognized that through the actions of the Respondent it became “impossible for this Court to grant any redress in the context of the issues framed and litigated below.” Order at 2. Though the dismissal allows Roper Pond’s desired outcome of constructing its project, it does not ultimately require a change on the part of either of

the parties nor does it introduce an “enforceable acknowledgment.” As in the case of City of Charleston v. Masi, the South Carolina Supreme Court dismissed this case as moot because judgment would no longer have any practical legal effect. 362 S.C. 505, 508, 609 S.E.2d 301, 303 (2004) (dismissing the case as “nonjusticiable because a judgment, if rendered, would not have any practical legal effect”). Even under the U.S. Supreme Court’s definition of “prevailing party,” Roper Pond cannot be considered to have attained such status to entitle it to attorneys’ fees.

Since Roper Pond is not able to establish that it was the “prevailing party” in this case, it is not entitled to an award of attorneys’ fees and costs.

B. Substantial justification

Even if Roper Pond could establish itself as the prevailing party, it is nonetheless not entitled to attorney’s fees under S.C. Code Ann. § 15-77-300 because the Town acted with substantial justification. If the government acts with “substantial justification” in pursuing its claim or position, the court should deny recovery of attorney fees. 2 S.C. Jur. Attorney Fees § 65. The government is presumed to be substantially justified in pressing its claim against the party if it follows a statutory or constitutional mandate that has not been invalidated by a court of competent jurisdiction. S.C. Code Ann. § 15-77-300(A). For purposes of determining whether a prevailing party in a state-initiated action is entitled to attorney fees, the government’s loss on the merits does not create a presumption that its position was not substantially justified. Video Gaming Consultants, Inc. v. South Carolina Dept. of Revenue, 358 S.C. 647, 595 S.E.2d 890 (2004); Layman v. State, 376 S.C. 434, 445, 658 S.E.2d 320, 326 (2008). “Conceivably, the Government could take a position that is not substantially justified, yet win; and even more likely, it could take a position that is substantially justified, yet lose.” Pierce v. Underwood, 487

U.S. 552, 569, 108 S.Ct. 2541, 2552 (1988).

In deciding whether the Town acted with substantial justification in pressing its claim, as would preclude award of attorney fees to prevailing party, the courts look to the government's position in litigating the case to determine whether it is one which has a reasonable basis in law and fact. Video Gaming Consultants, Inc. v. South Carolina Dept. of Revenue, 358 S.C. 647, 595 S.E.2d 890 (2004); McDowell v. S.C. Dept. of Soc. Serv., 304 S.C. 539, 542, 405 S.E.2d 830, 832 (1991) (citing Pierce v. Underwood, 487 U.S. 552, 108 S.Ct. 2541 (1988)); Layman v. State, 376 S.C. 434, 445, 658 S.E.2d 320, 326 (2008). The holding in Layman v. State, further clarifies "substantial justification" for the purposes of S.C. CODE ANN. § 15-77-300:

Substantial justification for purposes of the state action statute means "justified to a degree that could satisfy a reasonable person." Heath v. County of Aiken, 302 S.C. 178, 183, 394 S.E.2d 709, 712 (1990) (quoting Pierce v. Underwood, 487 U.S. 552, 564, 108 S.Ct. 2541, 101 L.Ed.2d 490 (1988)). Therefore, in deciding whether a state agency acted with substantial justification, the relevant question is whether the agency's position in litigating the case had a reasonable basis in law and in fact. McDowell v. S C Dept. of Soc. Servs., 304 S.C. 539, 542, 405 S.E.2d 830, 832 (1991). Although an agency's loss on the merits does not create a presumption that its position was not substantially justified, Video Gaming Consultants, Inc. v. S C Dept. of Revenue, 358 S.C. 647, 650, 595 S.E.2d 890, 892 (Ct. App. 2004), the substance and outcome of the matter litigated is nevertheless relevant to the determination of whether there was substantial justification in pressing a claim. Heath, 302 S.C. at 183, 394 S.E.2d at 712.

Layman v. State, 376 S.C. 434, 445, 658 S.E.2d 320, 325-26 (2008).

When determining if the state acted with substantial justification, the determination must be made by using the totality of the circumstances. National Organization for Marriage, Inc. v. U.S., 807 F.3d 592, 597 (4th Cir. 2015) (citing Bowles v. U.S., 947 F.2d 91, 94 (4th Cir. 1991)) (holding that the IRS's position was substantially justified such that attorney's fees should not be

awarded).³ The Fourth Circuit in National Organization for Marriage acknowledged that a decision on the merits, regardless of whether it was reached in an intermediate or terminal court, is not enough to determine if the state acted without substantial justification. See id. at 598 (citing U.S. v. Paisley, 957 F.2d 1161, 1166-67 (4th Cir. 1992)). As such, this Court's determination, as well as the determinations made by the S.C. Court of Appeals, are not dispositive to the determination of substantial justification.

Roper Pond bears the burden of proving that the Town acted without "substantial justification" such that there is no reasonable basis in law and fact for pressing its claims. Pierce v. Underwood, 108 S.Ct. 2541, 2250 (1990). In Heath v. County of Aiken, 302 S.C. 178, 394 S.E.2d 709 (1990), the Court held that "substantial justification" is determined by a "reasonable person" standard. Substantial justification in the context of attorney's fees means "'justified in substance or in the main'—that is justified to a degree that could satisfy a reasonable man." Pierce v. Underwood, 108 S.Ct. 2541, 2250 (1990). The Supreme Court in Pierce further explained that the phrase substantial justification "does not mean a large or considerable amount of evidence, but rather such relevant evidence as a reasonable mind might accept to support a conclusion To our knowledge, [substantial justification] has never been described as meaning 'justified to a high degree, but rather has been said to be satisfied if there is a 'genuine dispute.'" Pierce, 487 U.S. at 565, 108 S.Ct. at 2550 (internal citations omitted). Roper Pond offers scant evidence, failing to meet its burden.

³ In National Organization for Marriage, the Fourth Circuit acknowledged that "[t]he pertinent indicia will change depending on the case..." while stating that within that case circumstances such as "the stage at which the merits were thereby decided, and the views of other courts on the strength, hence reasonableness, of the Government's position," should be considered. 807 F.3d at 597-98 (citing U.S. v. Paisley, 957 F.2d 1161, 1166 (4th Cir. 1992) (citing Pierce, 487 U.S. at 568-71)).

The Court in Heath found a lack of substantial justification when both the statute was unambiguous and the relevant precedent indicated that the claims were without merit. This case presents neither of these circumstances. Roper Pond simply and repeatedly asks this Court to assume that the Town did not have substantial justification instead of elucidating how this case is similar to Heath, or any other cases where a court has found a lack of substantial justification. It bears noting that there is no case law on the question of whether an excavation of a water of the United States disqualifies a project from coverage under DHEC's 401 water quality certification of a Nationwide Permit, and thus requires an individual 401 certification.

On the other hand, while I ultimately disagreed with the Town, I find testimony and evidence demonstrating that the Town did have a reasonable basis in fact and law for pursuing its claims. The Town sought the advice of experts in the fields of environmental and administrative law and environmental engineering. (See Aff. of Charlie Cook). The Town relied on this advice and counsel in deciding to file the request for contested case hearing. (Id.). The Town retained James S. Chandler, Jr., who advised the Town that ample support in fact and law existed to warrant filing the request for contested case hearing. (Aff. of Amy Armstrong). The Town also retained Eugene McCall, who has been practicing law for 27 years, primarily in the areas of environmental and water law. (Aff. of Charlie Cook). In 2008 the Town and Individual Petitioners asked Mr. McCall and Mr. Chandler to review DHEC's file for the Roper Pond project, as well as inspect the project site. (Id.) Both attorneys advised the Town of their opinion that there was sufficient legal and factual basis for filing a request for contested case hearing. (Id.) Indeed, at the time that the contested case was filed Mr. McCall believed that the Town was doing "the right thing." (McCall email).

Roper Pond fails to identify any specific evidence proving a lack of a reasonable basis in

fact and law. Instead, Roper Pond's relies on the favorable decision it received from this Court in attempting to meet its burden. In essence, Roper Pond's regurgitation of its arguments made before this Court provide the sole basis for its claim that there is no reasonable basis in fact or law for the Petitioner's case. Yet the Sate Action Statute requires something more.

Factually, the evidence indicates that Town of Arcadia Lakes, as a political entity, pursued litigation in this case when, after investigation, it was convinced in good faith that DHEC was not abiding by its own regulations, which affected the Town's own material interests. Legally, even though pursuing litigation merely based on novel arguments is not enough to show substantial justification, see Cornelius v. Oconee Cty., 369, S.C. 531, 539-40, 633 S.E.2d 492, 496-97 (2006), the existence of novel arguments precludes neither a finding of substantial justification nor the existence of other arguments based on factual contentions. Cornelius is only applicable so far as a claim is not considered to be substantially justified simply because it is novel; however, this speaks nothing to the legitimate grounds a claim, like this one, may be brought under.

No indication of unreasonableness resulting from an unfavorable decision in this case exists, due to the fact that such presumption does not arise under the law. That the South Carolina Supreme Court dismissed the case as being moot and did not reach the merits also fails to prove unreasonableness. That both the Petitioners' request for rehearing at the intermediate appellate court level and their request for *certiorari* were granted, while not dispositive, are indicators that weigh into a determination of whether the state's actions were substantially justified.

Moreover, the Town sought advice of counsel and experts upon which it based its decision to file the request for contested case hearing. (Exhibit C, Cook Aff.). While believing

that the DHEC authorization was erroneous, the Town was unable to determine whether facts and law supported its supposition on its own. For that reason, the Town sought the advice of two practitioners experienced in environmental engineering and environmental and administrative law to provide it advice and counsel as to whether a valid basis for challenging the DHEC authorizations existed. (Id. at pp. 2-3). The Town's outside counsel and expert advised it that there was a reasonable and substantial basis in fact and law for filing the request for contested case hearing. (Id.) That advice and counsel formed the basis of the Town's decision to pursue this contested case proceeding. (Exhibit C, Cook Aff.; Id.) Indeed, it was only after the Town sought and received such advice from counsel that it decided to proceed with the underlying challenge. (Exhibit C, Cook Aff.).

The S.C. Supreme Court's decision in McNaughton v. Charleston Charter School for Math and Science is inapplicable. In that case, the Supreme Court held that the act of obtaining legal advice as to potential liability did not constitute a "special circumstance" such that it would be unjust to award attorney's fees and therefore proper to disturb the determination of the trial court. McNaughton, 411 S.C. 249, 267-78, 768 S.E.2d 389, 399 (2015). This holding has little relevance to this case for three reasons. First, the counsel sought regarded the charter school's liability for firing a teacher, id., whereas this case concerns legal advice as to the ability to bring suit. Second, the court only addresses the argument regarding legal counsel within the "special circumstances" considerations of S.C. Code Ann. § 15-77-300(A)(2) with no mention of the substantial justification considerations found in § 15-77-300(A)(1). Id. Lastly, McNaughton concerns an appellate court's ability to overturn determinations made at the trial court level, which necessitates a distinct standard of proof from this case need in this case. Id. at 265, 768 S.E.2d at 398 (requiring a finding of abuse of discretion by the tr court to overturn a decision to

award or deny attorney's fees); Layman v. State, 376 S.C. 434, 444, 658 S.E.2d 320, 325 (2008) (same); Cornelius v. Oconee Cty., 369 S.C. 531, 539, 633 S.E.2d 492, 496 (2006) (same). For these reasons the applicability of McNaughton has minimal, if any, bearing on the present determination as to substantial justification.

Moreover, assertions as to an underlying intent behind Petitioners' suit are both overreaching and misplaced. S.C. Code Ann. § 15-77-300 does not include any provision for considering party intent nor provide any avenue with which to interpret its relevance. While the totality of circumstances must be considered, as mentioned above, Roper Pond's attempt to project animus behind previous litigation is simultaneously unnecessary and irrelevant to the § 15-77-300 inquiry.

C. Propriety of an Award of Fees

Given that the Town (1) retained experts to advise it on the reasonable factual and legal bases for filing the request for contested case hearing; (2) the Supreme Court's dismissal of the case as moot, as opposed to an affirmance of the lower court order or a dismissal as certiorari improvidently granted; (3) Roper Pond's failure to attain prevailing party status; and (4) Roper Pond's failure to prove lack of a reasonable factual and legal basis for filing the contested case, I find that an award of fees would unjustly punish the Town for trying, although unsuccessfully, to protect its interests.

II. Fees and Sanctions pursuant to Rule 72 SCRPALC, actions "taken solely for purposes of delay"

Rule 72 of this court's rules states that "[i]f the presiding administrative law judge determines that a contested case, appeal or motion is frivolous or taken solely for purposes of delay, the judge may impose such sanctions as the circumstances of the case and discouragement

of like conduct in the future may require.” Rule 72, SCALC. The 2009 Revised Notes for Rule 72 explain that, “[i]n determining whether a case is frivolous, the administrative law judge may refer to S.C. Code Ann. § 15-36-10, the Frivolous Civil Proceedings Sanctions Act.” See Oconee County Assessor v. Chirillo et al., Docket No. 09-ALJ-17-0079-CC, 2010 WL 6782538, at *13-14 (S.C.Admin.Law.Judge.Div., Nov. 23, 2010) (citing Rule 72, SCALC (2009 Revised Notes)). Roper Pond, LLC has abandoned all claims that the contested case is frivolous, instead arguing only that the Town brought this case “solely for the purpose of delay.” Roper Pond’s concession is that the case is not frivolous and that the underlying case has merit.⁴ Thus the Court will turn to the question of whether the evidence supports that the action was filed solely for purposes of delay.

This case raises particularly novel reasoning behind sanctions pursuant to Rule 72. Even taking into account claims brought under S.C. Code Ann. § 15-36-10, the Frivolous Civil Proceedings Sanctions Act (“FCPSA”), claims that an entire case was pursued for the sole purpose of delay or under entirely frivolous premises are rare. See Runyon v. Wright, 322 S.C. 15, 20, 471 S.E.2d 160, 162 (1996) (upholding sanctions brought pursuant to an interpleader action found to be presented for the sole purpose of delaying satisfaction of a \$6,000 judgment); But see Oconee County Assessor v. Chirillo et al., Docket No. 09-ALJ-17-0079-CC, 2010 WL 6782538, at *13-14 (denying sanctions upon finding the actions of the County Assessor were without malice and based upon statutory language “open to interpretation when applied to the facts.”).

Roper Pond attempts to create a false dichotomy between “solely for the purposes of

⁴ Although frivolity is a higher standard, Roper Pond’s concession further supports that the Town had a reasonable basis in fact and law, i.e., that the Town had substantial justification.

delay” and frivolousness under SCALC Rule 72, when in fact the two criteria are intrinsically related. As explained in In re Marriage of Flaherty, “[t]he two standards are often used together, with one providing evidence of the other. Thus, the total lack of merit of an appeal is viewed as evidence that appellant must have intended it only for delay.” 31 Cal.3d 637, 649 (Cal. 1982).

No factual or legal support exists for the contention that a case could be reasonable or meritorious, i.e., not frivolous, and also brought **solely** for the purpose of delay. This Court has not uncovered any instance where a reasonable attorney or party filed a legally and factually sound case **solely** for the purpose of delay.

The Supreme Court’s decision to grant *certiorari* in this case, and to dismiss it as moot, not as improvidently granted, clearly evinces the Court’s belief that this case contained meritorious, unanswered legal issues sufficient to provide the Town a legitimate basis for contesting the permit. As such, a finding by this Court that this case was brought solely for the purposes of delay would amount to a direct contradiction to the Order of the Supreme Court.

A. Roper Pond’s Claim for Sanctions Does not Meet the Required Evidentiary Standard

“Solely” is defined as “without another” or “to the exclusion of all else.” See “Solely,” Merriam-Webster, <http://www.merriam-webster.com/dictionary/solely>. For a challenge to be taken “solely” for the purposes of delay, there can be no other purpose for which the challenge is commenced. A case brought “solely for the purposes of delay” requires a demonstration that there is no legitimate basis for initiating the action and a lack of intention or desire to achieve resolution of the issues raised. Although delaying a project may be a desirable outcome in a challenge to a contentious project, it is only if that delay is brought about solely for the sake of delay, i.e., harassment, that Rule 72 is implicated. As discussed, I find that the Town had a legitimate and reasonable basis in law and fact for initiating this case.

Furthermore, the unlikely scenario of a reasonable filing solely for the purpose of delay is not one that can be proven by use of a threadbare assumption. There is no evidence establishing that the Town pursued this action solely for the purpose of delay. Instead, the Town sought the advice and counsel of highly respected legal experts in the community (Cook Aff.); which experts analyzed the relevant facts and law and ascertained that the claims brought by the Town had merit toward protecting legitimate aesthetic and recreational interests. (Cook and Armstrong Aff.'s). In such instances, evidence of bad faith is required to show that the case was brought solely to delay. I find no such evidence of bad faith here. (See SCRCF, Rule 11(a)) (See also Cook Aff. (the Town sought advice of experienced practitioners prior to filing the contested case proceeding); Armstrong Aff. (counsel for the Town advised the Town that ample support in fact and law existed for filing the contested case proceeding).). While the Town's mayor expressed that delay to fully assess the impacts of the project would benefit the Town, there is nothing to indicate that case was filed only for the purpose of delay.

A variety of legitimate legal concerns were raised by the Town throughout the exhibits presented by Roper Pond, as well as through testimony of then-Mayor Richard Thomas. The property had changed hands from Mr. Mundy (who signed the Notice of Intent for the project) to Roper Pond, which was then acquired by Capital Development, LLC in January 2008 (Resp.'s Ex. 15). Afterwards, the project as proposed was changed from single-family patio homes to a property development for multifamily high density apartments directly adjacent to a tranquil residential area. Id. This was not what was proposed when the Town previously declined to challenge the County rezoning process. (Resp.'s Ex. 2, 15). The Mayor and Town Council expressed concerns regarding the project's adherence to the County's Land Development ordinances (Resp.'s Ex. 16), as well as its economic impact, inconsistency with the character of

the area, and the impact on impaired waters in the area (Resp.'s Ex. 13, 16).

These concerns form the legitimate purposes for which the challenge was commenced and include, inter alia, protecting interests recognized by law, such as the financial, recreational and aesthetic harms asserted by the Town of Arcadia Lakes. (Dec. 2009 Order 18, 19). The Town of Arcadia Lakes raised these legitimate concerns regarding Roper Pond's project; sought legal advice and counsel related to those concerns (See Aff.'s of Cook and Armstrong); retained legal and engineering experts (Cook Aff.); and otherwise conducted due diligence to ensure a valid, proper and substantial basis in fact and law existed prior to filing this contested case proceeding (Id.). While I ultimately concluded that legitimate basis did not prevail on the merits, the legitimate basis is not diminished.

Mayor Thomas testified further as to the Town's justification for filing this contested case. Water from Roper Pond goes straight under Trenholm Road into Cary Lake, which is in the Town of Arcadia Lakes. (R. p. 825). The Town desires to protect the environmental quality of Cary Lake, which is a natural resource within its borders. When asked what detriment the Town will sustain if the project proceeds under the permit as issued, Mayor Thomas directly responded, "the detriment is potential harm to the water flowing through the project under North Trenholm Road, and into Cary Lake" which would work a "harm to the environmental interest of the town." (R. p. 822, lines 16-21).

Mayor Thomas further explained the Town's justification for filing this case on the basis that Roper Pond's project stands to damage the Town's interest in maintaining its character and desirable attributes. Mayor Thomas noted that "[o]ur town motto is seven lakes - one town." (R. p. 823, lines 3-4). The "seven lakes [within our borders] are a vital part of our identity" and environmental harm to Cary Lake stands to damage this identity. (R. p. 823, line 3). Mayor

Thomas cited the risk of “[h]arm to the aesthetic interest of the Town of Arcadia Lakes being that the project is surrounded on three sides by the town” and that water flowing through the project flows directly into a lake within the Town’s borders. (R. p. 822, lines 20-22). While this Court ultimately concluded that the project would not harm the Town, I find that the Town’s motivation based on such concerns⁵ provides a legitimate justification.

The Town’s legal concerns also extended to: the project’s applicability with the Storm Water Pollution Prevention Plan (SWPPP); South Carolina Stormwater Management and Sediment Control Act; NPDES Rules and Regulations regarding the use of jurisdictional waters to mitigate first flush requirements; inconsistent information given by the applicant (Roper Pond); and liability of the Town for further NPDES infractions. (Resp.’s Ex. 7, 14). Hill Engineering, LLC echoed these concerns of the Town when analyzing the BP Barber review of the Plans of Roper Pond Development. (Resp.’s Ex. 6). Mayor Thomas noted that “we are responsible for the water that flows into Cary Lake as well as out through our NPDES rules and regs.” (R. p. 828). Mayor Thomas elaborated on the Town’s responsibilities under the NPDES provision of the Clean Water Act as follows: “The town is responsible for what comes into the town and what leaves the town as far as water quality. If the water quality coming into the town is not regulated by the town and we allow it to flow through the town [into downstream water bodies], then the way I understand the NPDES, we would then be responsible. Therefore, we could -- it could result in financial and/or litigation for the mitigation of that damage. Whatever that would be.” (R. p. 844, lines 5-15). I find the Town’s expressed concerns of water quality are evidence that the case was not filed solely for the purposes of delay.

⁵ Including the diminishment of the aesthetics, character and environment of the Town which would result in decreased demand for residing in the Town.

All of this testimony was uncontradicted. Roper Pond does not dispute the Town's interest in "protecting the environmental quality of Cary Lake" and interest in "maintaining its character and desirable attributes, including aesthetic appeal," which the Town explained formed the basis of its decision to seek review of the DHEC authorization. Nor does Roper Pond dispute the Town's testimony that there would be a "diminution of property values within the Town" as a result of Roper Pond's project. While none of these interests expressed by the Town rose to the level of overturning the DHEC permit, I find that they indicate reasons, other than delay, for bringing this case.

In addition, the Town performed its own due diligence in investigating the facts of the case and the legal basis for a challenge by seeking legal advice and counsel from experienced practitioners in the fields of environmental engineering and environmental and administrative law. (Cook Aff.) The Town retained two of the State's most experienced attorneys and engineers in the environmental field to advise it on whether a factually and legally viable case could be filed. (*Id.*). The Town retained James S. Chandler (now deceased) and Eugene McCall, an environmental engineer and attorney, and relied on that advice in deciding to file the underlying action. (*Id.*).

The Town's long-standing counsel of over ten (10) years was present and participated in the discussions surrounding the factual and legal bases for filing the underlying contested case proceeding and testifies that he has seen no evidence to indicate that the Town filed the contested case hearing solely for the purposes of delay. (*Id.*, pp. 3-4). In fact, on February 17, 2009, during the time which the Town sought legal advice, Mr. McCall told the Town's attorney that "I believe the Town of Arcadia Lakes and citizens did the right thing in filing the appeal. I was glad I was able to help you get over this critical hurdle." In sum, I find and conclude that the

evidence disproves that this case was filed solely for the purposes of delay.

Roper Pond relies heavily on the documents containing statements and emails of Richard Thomas, then-Mayor of the Town of Arcadia Lakes. These statements bolster and reflect the long list of legitimate reasons why the Town of Arcadia Lakes brought this case. For example, Mr. Thomas states “I believe that the town was misled and deceived in the initial meetings 3+ years ago when the same developer came to us for our support and the support of the adjacent neighborhood to rezone and then used the rezoning to restructure his plans for monetary gain.” Mayor Thomas goes on to list other reasons for the Town’s concerns, and thus its rationale for initiating this action, including environmental impact, faulty traffic impact studies, and flood control. (*Id.*) Roper Pond lists a number of concerns raised by the Town – each of which reinforces their legitimate reasons for concern about this high density project. The Supreme Court’s opinion explicitly recognized that if those concerns have come to fruition and violations of the challenged authorizations occurred, DHEC can and should take enforcement action. (Order at 2).

Similarly, the Town created a list of questions and concerns for the Richland County Planning Commission meeting concerning Roper Pond raises twenty-one different issues all of which are reasons why this case was eventually brought by the Town. The evidence indicates that, after the Town felt it had been deceived, it finally resorted to discussing the use of delay as a negotiation tactic and to obtain more information about the newly-proposed development. (*See Hartley Aff. Ex. 9-11* (containing email discussions about not expediting the process between Mr. Thomas, Brian Bates of Arcadia Lakes's town council and Senator Joel Lourie.) I find that while the Town clearly wanted to slow the process, in large part to allow it to fully assess Roper Pond’s new plans, its communications do not show that the Town brought the case “solely for

the purpose of delay.”

Reper Pond attempts to scaffold the claim that the contested case was filed solely for purposes of delay by providing exhibits relating to delays or potential delays. I find that all of the “delays” mentioned by the Town and its agents are normal aspects of the public decision-making process with reasonable bases; none are intended solely to delay, but rather to gain more information and fully understand and assess the project at issue.

I find no evidence showing that the Town or its agents were under the impression that there were no legitimate legal arguments to be made. Instead, I find the evidence indicates that the Town had consistently and reasonably expressed its belief that there had been potential violations of DHEC regulations and zoning laws, as well as an unanticipated change in the proposed project. (See, e.g., Resp. Ex. 15 (potential violations of DHEC regulations, and concerns over SCDOT enforcement); Resp. Ex. 16 (potential violations of zoning code); Cook Aff.). In sum, I find that the Town did not file the contested case solely for the purposes of delay as contemplated under SCALC Rule 72.

CONCLUSIONS OF LAW

1. The South Carolina Administrative Law Court has subject matter jurisdiction in this action pursuant to S.C. Code Ann. § 15-77-300 and Rule 72, SCRPA. Cornelius v Oconee County, 369 S.C. 531, 633 S.E.2d 492 (2006) (affirming trial court's order granting summary judgment to plaintiff and awarding attorney fees under Section 15-77-300).
2. “As a general rule, attorney fees are not recoverable unless authorized by contract or statute.” Judy v. Judy, 403 S.C. 203, 211, 742 S.E.2d 672, 676 (Ct. App. 2013), reh'g denied (May 21, 2013), cert. denied (June 25, 2014).
3. In order to be awarded Attorneys’ Fees under the State Action Statute, 15-77-300, the party

seeking fees must show by a preponderance of the evidence that: (1) the contesting party must be the “prevailing party;” (2) the court must find that the agency acted without substantial justification in pressing its claim against the party; and (3) the court must find that there are no special circumstances that would make an award of attorney's fees unjust. Heath v. County of Aiken, 302 S.C. 178, 182-84, 394 S.E.2d 709, 711-12 (1990).

4. The Supreme Court’s denial of a request for attorneys’ fees under Rule 222 does not prevent that party from seeking attorney’s fees under a statute. Austin v. Stokes-Craven Holding Corp., 406 S.C. 187, 199-200, 750 S.E.2d 78, 84-85 (2013). However, the Supreme Court’s denial of attorney’s fees under Rule 222 remains a factor to be considered in a 15-77-300 analysis. Douan v. Charleston County Council, 373 S.C. 384, 386, 645 S.E.2d 241, 243 (2007).
5. A Supreme Court decision dismissing a case as moot, made upon a determination that redress would be impossible based on the context of the issues as framed below, see Sloan v. Friends of Hunley, Inc., 369 S.C. 20, 26, 630 S.E.2d 474, 477 (2006), cannot be read as to either affirm or reverse the opinions proffered by the lower courts.
6. “Prevailing Party” is generally defined as “[t]he one who successfully prosecutes the action or successfully defends against it, prevailing on the main issue, even though not to the extent of the original contention [and] is the one in whose favor the decision or verdict is rendered and judgment entered.” Heath v. County of Aiken, 302 S.C. 178, 182, 394 S.E.2d 709, 711 (1990). Prevailing at one stage of the case is insufficient to meet the “prevailing party” requirement. Douan v. Charleston County Council, 373 S.C. 384, 645 S.E.2d 241 (2007).
7. The definition of “prevailing party” adopted in Buckhannon Bd. and Care Home, Inc. v W. Va. Dep’t of Health and Human Res., 532 U.S. 598, 604, 121 S.Ct. 1835, 1840 (2001), and

embraced by the S.C. Supreme Court in Hueble v. S.C. Dep't of Nat. Res., __ S.E.2d __, 2016 WL 1665818, at 5 (2016), precludes a finding that Roper Pond is a “prevailing party” due to the determination of the S.C. Supreme Court in this case that the underlying case became moot as the challenged construction was completed, leaving no practical legal remedy. I conclude that Roper Pond is not a “prevailing party” as contemplated by the State Action Statute. This conclusion is further supported by the Supreme Court’s denial of attorney’s fees and costs under SCACR Rule 222.

8. Roper Pond bears the burden of proving that the Town acted without “substantial justification” such that there is no reasonable basis in law and fact for pressing its claims. Pierce v. Underwood, 108 S.Ct. 2541, 2250 (1990).
9. If the government acts with “substantial justification” in pursuing its claim or position, the court should deny recovery of attorney fees. 2 S.C. Jur. Attorney Fees § 65.
10. The government is presumed to be substantially justified in pressing its claim against the party if it follows a statutory or constitutional mandate that has not been invalidated by a court of competent jurisdiction. S.C. Code Ann. § 15-77-300(A). The Town’s claim sought relief under a regulatory provision whose applicability had not been determined by a court.
11. A party’s loss on the merits does not create a presumption that its position was not substantially justified. Video Gaming Consultants, Inc. v. South Carolina Dept. of Revenue, 358 S.C. 647, 595 S.E.2d 890 (2004); Layman v. State, 376 S.C. 434, 445, 658 S.E.2d 320, 326 (2008). “Conceivably, the Government could take a position that is not substantially justified, yet win; and even more likely, it could take a position that is substantially justified, yet lose.” Pierce v. Underwood, 487 U.S. 552, 569, 108 S.Ct. 2541, 2552 (1988).
12. Litigation merely based on novel arguments is not enough to show substantial justification.

See Cornelius v. Oconee Cty., 369, S.C. 531, 539-40, 633 S.E.2d 492, 496-97 (2006).

However, the existence of novel arguments precludes neither a finding of substantial justification nor the existence of other arguments based on factual contentions. While the existence of novel arguments is not enough to show substantial justification, it is not enough to show a lack of substantial justification either.

13. As provided in Layman v. State,

Substantial justification for purposes of the state action statute means "justified to a degree that could satisfy a reasonable person." Heath v. County of Aiken, 302 S.C. 178, 183, 394 S.E.2d 709, 712 (1990) (quoting Pierce v. Underwood, 487 U.S. 552, 564, 108 S.Ct. 2541, 101 L.Ed.2d 490 (1988)).

Therefore, in deciding whether a state agency acted with substantial justification, the relevant question is whether the agency's position in litigating the case had a reasonable basis in law and in fact. McDowell v. S C Dept. of Soc. Servs., 304 S.C. 539, 542, 405 S.E.2d 830, 832 (1991).

Although an agency's loss on the merits does not create a presumption that its position was not substantially justified, Video Gaming Consultants, Inc. v. S C Dept. of Revenue, 358 S.C. 647, 650, 595 S.E.2d 890, 892 (Ct. App. 2004), the substance and outcome of the matter litigated is nevertheless relevant to the determination of whether there was substantial justification in pressing a claim. Heath, 302 S.C. at 183, 394 S.E.2d at 712.

376 S.C. 434, 445, 658 S.E.2d 320, 325-26 (2008). However, "[substantial justification] has never been described as meaning 'justified to a high degree, but rather has been said to be satisfied if there is a 'genuine dispute.'" Pierce, 487 U.S. at 565, 108 S.Ct. at 2550 (internal citations omitted).

14. The determination of substantial justification must be made by using the totality of the circumstances. National Organization for Marriage, Inc. v. U.S., 807 F.3d 592, 597 (4th Cir. 2015) (citing Bowles v. U.S., 947 F.2d 91, 94 (4th Cir. 1991)) (holding that the IRS's position was substantially justified such that attorney's fees should not be awarded); id. at 597-98 (finding that "[t]he pertinent indicia will change depending on the case..." while stating that within that case circumstances such as "the stage at which the merits were

thereby decided, and the views of other courts on the strength, hence reasonableness, of the Government's position," should be considered). However, a decision on the merits, regardless of whether it was reached in an intermediate or terminal court, is not enough to determine if the state acted without substantial justification. See id. at 598 (citing U.S. v. Paisley, 957 F.2d 1161, 1166-67 (4th Cir. 1992)).

15. Roper Pond has failed to meet its burden of proof; therefore I conclude that the Town of Arcadia Lakes acted with substantial justification in challenging the permits issued by the South Carolina Department of Health and Environmental Control.
16. Rule 72 of this court's rules states that "[i]f the presiding administrative law judge determines that a contested case, appeal or motion is frivolous or taken solely for purposes of delay, the judge may impose such sanctions as the circumstances of the case and discouragement of like conduct in the future may require." Rule 72, SCALC. The 2009 Revised Notes for Rule 72 explain that, "[i]n determining whether a case is frivolous, the administrative law judge may refer to S.C. Code Ann. § 15-36-10, the Frivolous Civil Proceedings Sanctions Act." See Oconee County Assessor v. Chirillo et al., Docket No. 09-ALJ-17-0079-CC, 2010 WL 6782538, at *13-14 (S.C.Admin.Law.Judge.Div., Nov. 23, 2010) (citing Rule 72, SCALC (2009 Revised Notes)).
17. A case brought "solely for the purposes of delay" requires a demonstration that there is no legitimate basis for initiating the action and a lack of intention or desire to achieve resolution of the issues raised. See "Solely," Merriam-Webster, <http://www.merriam-webster.com/dictionary/solely>. Although delaying a project may be a desirable outcome in a challenge to a contentious project, it is only if that delay is brought about solely for the sake of delay, i.e., harassment, that Rule 72 is implicated.

18. Solely for the purposes of delay and frivolousness under SCALC Rule 72 are intrinsically related. In re Marriage of Flaherty, 31 Cal.3d 637, 649 (Cal. 1982). A case cannot be reasonable or meritorious, i.e., not frivolous, and also brought solely for the purpose of delay. The Court has not uncovered any instance where a reasonable attorney or party filed a case with reasonable factual and legal bases solely for the purpose of delay.
19. By waiving arguments that this case is frivolous, Roper Pond also waived the bulk of arguments which allege an underlying animus, delay, with which this case was brought.
20. Roper Pond failed to establish that the Town brought the case “solely for the purpose of delay;” therefore I conclude that the Town did not bring the case “solely for the purposes of delay” and does not violate Rule 72.

ORDER

Based on the foregoing, **IT IS THEREFORE ORDERED** that Roper Pond’s Petition for Attorneys’ Fees and Costs and For Sanction Pursuant to Rule 72, SCRPALC is, in its entirety, hereby **DENIED**.

John D. McLeod
Administrative Law Judge

July __, 2016
Columbia, South Carolina

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

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

Petitioners,)

vs.)

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

Respondents.)

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

**NOTICE OF MOTION HEARING
(by Telephone Conference)**

On February 21, 2017, Petitioner filed a Motion to Strike or, alternatively, to allow discovery in response to certain statement and exhibits that were contained in Roper Pond's Petition for Fees and Costs and Sanctions. Therefore,

IT IS HEREBY ORDERED that a hearing on the motion before the undersigned Administrative Law Judge is scheduled to begin at 10:00 a.m. on Friday, March 10, 2017, and will be heard by telephone conference call by the Administrative Law Court.

1. This hearing will be conducted in accordance with the Rules of Procedure of the Administrative Law Court.
2. Unless otherwise determined by the Administrative Law Judge, the hearing will proceed as follows:
 - a. Call of the case;
 - b. Oral statement by moving party, not to exceed thirty (30) minutes;
 - c. Oral statement by responding party, not to exceed thirty (30) minutes;
 - d. Oral reply statement by moving party, not to exceed ten (10) minutes;

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SC ADMIN. LAW COURT

3. A party may represent himself or may be represented by an attorney at the hearing. An attorney representing a party must file a Notice of Appearance within ten (10) days of service of this Notice, unless previously filed with the Court.
 4. TAKE NOTICE THAT A FAILURE TO PARTICIPATE IN THE HEARING MAY RESULT IN:
 - a. A finding that the party who fails to participate does not object to the relief sought by the opposing party;
 - b. Such other rulings as are deemed appropriate by the Administrative Law Judge.
 5. THE PARTIES MAY REQUEST A CONTINUANCE NO LATER THAN 24 HOURS PRIOR TO THE SCHEDULED HEARING DATE. FAILURE TO GIVE TIMELY NOTICE OF CANCELLATION MAY RESULT IN IMPOSITION OF COURT COSTS AGAINST THE PARTIES.
- AND IT IS SO ORDERED.**

March 1, 2017
Columbia, S.C.


John D. McLeod, Judge
S.C. Administrative Law Court

CERTIFICATE OF SERVICE

I, Anthony R. Goldman, hereby certify that I have this date served this Order upon all parties to this cause by depositing a copy hereof, in the United States mail, postage paid; in the Interagency Mail Service, or by electronic mail to the address provided by the party(ies) and/or their attorney(s).

March 1, 2017
Columbia, S.C.


Anthony R. Goldman
Judicial Law Clerk

Hartley, Joan W.

From: Hartley, Joan W.
Sent: Wednesday, March 15, 2017 1:24 PM
To: Anthony Goldman
Cc: Amy Armstrong; Hightower, Stephen (HIGHTOSP@dhec.sc.gov)
Subject: RE: 09-0069, Roper Pond (Mickel Affidavit)

Anthony,

I apologize for the multiple responses. By way of further response, the Mickell Affidavit supports the Factual Background in the September 1, 2016 Order on Roper Pond's Petition. On page 16 in the last paragraph prior to the Discussion section, the Order states that "Roper Pond incurred increased costs as a result of the delay in the construction of the Proposed Project." The Mickell Affidavit was offered in support of that statement.

Thanks,
Joan

Joan W. Hartley, Esq.
Nexsen Pruet, LLC
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Columbia, SC 29201
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Attorneys

Offices

From: Anthony Goldman [mailto:agoldman@scalc.net]
Sent: Wednesday, March 15, 2017 1:07 PM
To: Hartley, Joan W. <JHartley@nexsenpruet.com>
Cc: Amy Armstrong <amy@scelp.org>; Hightower, Stephen (HIGHTOSP@dhec.sc.gov) <HIGHTOSP@dhec.sc.gov>
Subject: 09-0069, Roper Pond (Mickel Affidavit)
Importance: High

Joan,

My notes from the motion hearing (by telephone conference call) on March 10, 2017 indicate that the Charles Mickel affidavit was going to be stricken from consideration by the Court.

However, my notes are not entirely clear as to whether the striking of the Mickel affidavit was made by the Court or whether Respondent decided to withdraw the affidavit.

Could you please let me know if Respondent decided to withdraw the document?

Thank you!

Anthony R. Goldman, Esquire
Judicial Law Clerk to
The Honorable John D. McLeod
S.C. Administrative Law Court

Any views or opinions expressed in this email are those of the author and do not necessarily represent those of the SC Administrative Law Court.

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Hartley, Joan W.

From: Anthony Goldman [mailto:agoldman@scalp.net]

Sent: Wednesday, March 15, 2017 2:08 PM

To: Hartley, Joan W. <JHartley@nexsenpruet.com>; Amy Armstrong <amy@scelp.org>; Lavender, Tommy <TLavender@nexsenpruet.com>; Hightower, Stephen (HIGHTOSP@dhec.sc.gov) <HIGHTOSP@dhec.sc.gov>

Subject: 09-0069, Roper Pond

All,

The Court is treating the Motion To Strike as directed at Respondent's 3rd Amended Petition only (filed on 11-30-2015) and assumes that all prior petitions are also abandoned. If this is not correct adjustments must be made.

The Court has vacated its original order and issued an amended order with minor changes on pages 2 and 37-38.

The Court grants Petitioner's Motion To Strike as to Exhibit C of the Hartley Affidavit (the Mickel Affidavit). The Mundy Affidavit has been previously withdrawn.

Further, the ability to conduct discovery is denied.

Judge McLeod requests that Ms. Hartley please prepare an order.

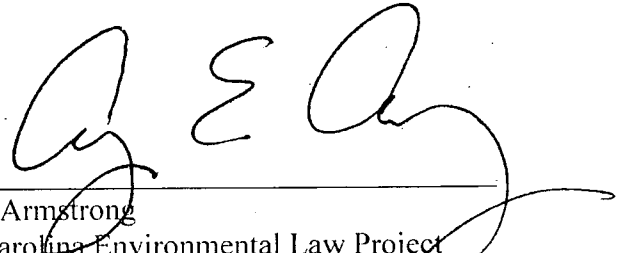
Thank you!

Anthony R. Goldman, Esquire
Judicial Law Clerk to
The Honorable John D. McLeod
S.C. Administrative Law Court

Any views or opinions expressed in this email are those of the author and do not necessarily represent those of the SC Administrative Law Court.

Certificate of Counsel

The undersigned does hereby certify that this Record on Appeal complies with SCRAP Rule 210.

A large, stylized handwritten signature in black ink, appearing to read 'A E A', is written over a horizontal line.

Amy E. Armstrong

South Carolina Environmental Law Project

Mailing Address: Post Office Box 1380
Pawleys Island, SC 29585

Office Address: 430 Highmarket Street
Georgetown, SC 29440

Telephone: (843)527-0078

Fax: (843)527-0540

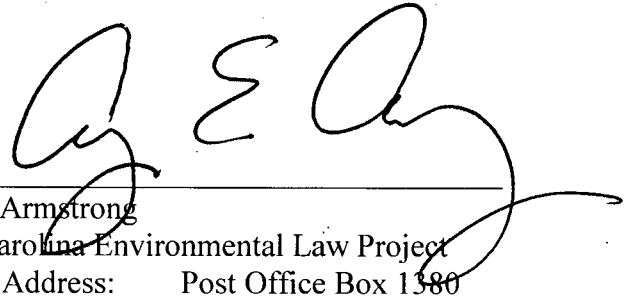
Attorney for the Appellant/Respondent

Georgetown, South Carolina

June 5, 2018

Certificate of Counsel

The undersigned does hereby certify that this Record on Appeal complies with SCRAP Rule 210.



Amy E. Armstrong
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Georgetown, South Carolina

June 5, 2018

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