

**RESOLUTION NO.: R-2018-040**

ORIGINAL  
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*Amending Resolution R-2015-049 Amending Resolution R-2014-045 Amending R-2014-024 Adopting a Policy and Criteria to Consider the Inclusion of Real Property in a Multi-County Industrial Park to Apply Richland County's Special Source Revenue Credit Incentive to Real Property within the Corporate Limits of the City of Columbia to remove the sunset of the tax credit and amend the criteria for consideration of inclusion in a Multi-County Industrial Park*

WHEREAS, Resolution R-2014-024, enacted on March 4, 2014, adopted criteria for Columbia City Council to determine when it is appropriate to include a real property or real properties located within the corporate limits of the City in a Multi-County Industrial Park in order for the development to qualify for Richland County's Special Source Revenue Credit Incentive; and,

WHEREAS Resolution R-2014-045, enacted on June 10, 2014, amended Resolution R-2014-024 to specify that the criteria approved in Resolution R-2014-024 could apply only to privately owned student housing projects; and,

WHEREAS, Resolution R-2015-049, enacted on June 16, 2015, amended the two prior resolutions to expand the tax credit to include comparable market rate rental housing projects and to sunset the tax credit on December 31, 2015 for previously approved projects or projects submitted, accepted and scheduled for site plan review approval by the applicable review body on or before December 31, 2015; and,

WHEREAS, Columbia City Council now desires to repeal the sunset of the tax credit that was effective December 31, 2015, and to amend the criteria for inclusion of a real property or properties located within the corporate limits of the City of Columbia in a Multi-County Industrial Park in order for the development to qualify for Richland County's Special Source Revenue Credit Incentive; NOW THEREFORE,

BE IT RESOLVED by the Mayor and City Council this 15th day of May, 2018, that the sunseting of the tax credit on December 31, 2015, is hereby repealed as of the effective date of this Resolution, and real properties that meet the criteria adopted by Columbia City Council may again apply for inclusion in a Multi-County Industrial Park for the purpose of receiving Richland County's Special Source Revenue Credit Incentive..

BE IT FURTHER RESOLVED that the following criteria are hereby adopted in order for Columbia City Council to determine when it is appropriate to include a real property or real properties developed as student housing projects located within the corporate limits of the City of Columbia in a Multi-County Industrial Park in order for the development to qualify for Richland County's Special Source Revenue Credit Incentive:

1. A minimum private investment of \$30,000,000 in total project costs as allowed by Richland County with no use of JEDA funds;
2. A minimum investment of \$3,000,000 per useable acre;
3. Pay a minimum tax bill of \$750,000 per year in annual property taxes before all tax credits have been applied;

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4. Use will pay more in taxes after all credits have been applied than any other likely use of the property;

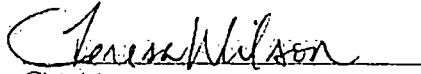
BE IT FURTHER RESOLVED, that inclusion of a real property or real properties developed as privately owned rental housing projects located within the corporate limits of the City of Columbia in a Multi-County Industrial Park shall be by ordinance and the enactment of such an ordinance is in the sole and exclusive legislative discretion of Columbia City Council.

Requested by:

Assistant City Manager Palen

  
\_\_\_\_\_  
Mayor

Approved by:

  
\_\_\_\_\_  
City Manager


Approved as to form:

  
\_\_\_\_\_  
City Attorney

Introduced: 5/15/2018

Final Reading: 5/15/2018

ATTEST:

  
\_\_\_\_\_  
City Clerk

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**ORDINANCE NO.: 2018-022**

*Consenting to the Inclusion of Property in a Multi-County Industrial/Business Park  
(Project Reign, 1087 and 1115 Shop Road – TMS # R11210-01-13 and R11210-01-01)*

WHEREAS, the City of Columbia, South Carolina ("City"), is a body, politic and corporate located in Richland County, South Carolina ("County"); and,

WHEREAS, through Columbia City Council ("Council"), the City is entitled to exercise all the powers and privileges provided to municipal corporations in the State of South Carolina; and,

WHEREAS, a student housing developer, Reign Living, LLC, and its affiliates (collectively, "Developer") are planning a privately-owned student housing development known as Project Reign ("Development") on property located in the City, as more particularly described on Exhibit A ("Property," together with the Development, "Project"); and,

WHEREAS, to make the Project competitive with the university-owned student housing developments in the County, representatives of the Developer and the City approached the County seeking certain property tax incentives for the Project; and,

WHEREAS, the County has agreed to offer an infrastructure credit to reduce the property taxes due on the Project ("Credit") pursuant to the terms of Section 4-1-175 of the Code of Laws of South Carolina 1976, as amended ("Credit Act") and an infrastructure credit agreement between the County and the Developer ("Credit Agreement"); and,

WHEREAS, to grant the Developer the full value of the Credit, the County desires to locate the Project in the multi-county industrial park ("Park") the County has jointly developed with Fairfield County, South Carolina ("Fairfield"), pursuant to Article VIII, Section 13(D) of the South Carolina Constitution and Section 4-1-170 of the Code of Laws of South Carolina, 1976, as amended ("Park Act"); and,

WHEREAS, pursuant to the Park Act and the agreement between the County and Fairfield which governs the operation of the Park ("Park Agreement"), following application of the Credit and distribution of the net fees in lieu of taxes ("FILOT") generated from the Project to Fairfield, the FILOT payment will be distributed on a pro-rata basis to the taxing entities in the County that, at the time the Project is included in the Park, are eligible to levy tax millage on the Project; and,

WHEREAS, pursuant to the Park Act, because the Project is located within the City's geographical borders, the City must consent to the inclusion of the Project within the boundaries of the Park; and

WHEREAS, the Project is anticipated to meet the criteria set forth in Resolution No.: R-2014-024, and subsequent amendments in R-2014-045, R-2015-049 and R-2018-040, and it is appropriate to consent to including the Project in the Park; NOW, THEREFORE,

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BE IT ORDAINED by the Mayor and City Council this 5th day of June, 2018, that the City hereby consents to the inclusion of the Property in the Park, which consent is conditioned upon the following:

1. The County's approval, execution and delivery of the Credit Agreement with the Developer related to the Project; and,

2. Collectively, the Park Agreement and Credit Agreement will provide that (a) the owner of the Property will pay a FILOT with respect to the Project during the term of the Credit Agreement; (b) the annual FILOT payment due with respect to the Project will be subject to reduction by the Credit, which is equal to a maximum of 33% of the FILOT due with respect to the Project, for a period of 10 consecutive years, beginning with the first full year for which the Developer owes a FILOT payment with respect to the Project; (c) the City will be entitled to receive the portion of the net FILOT payment; and (d) the Project will be deemed removed from the Park on the expiration or earlier termination of the Credit Agreement; and,

3. The City Manager is authorized to execute any documents, and take any further action as may be reasonably necessary to further the intent of this Ordinance.

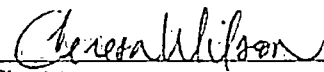
4. Any prior ordinance, resolution or order, the terms of which are in conflict with this Ordinance, is, only to the extent of that conflict, repealed.

Requested by:


Assistant City Manager Palen

  
\_\_\_\_\_  
Mayor

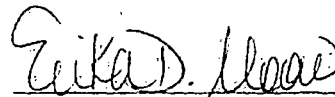
Approved by:

  
\_\_\_\_\_  
City Manager

Approved as to form:

  
\_\_\_\_\_  
City Attorney

ATTEST:

  
\_\_\_\_\_  
City Clerk

Introduced: 5/15/2018  
Final Reading: 6/5/2018

**ORDINANCE NO.: 2018-022**  
**EXHIBIT A**  
**PROPERTY DESCRIPTION**

**COLONIAL II, PARCEL A**

ALL that certain piece, parcel or tract of land, with the improvements thereon, situate, lying and being on the southwest side of Shop Road near the southern limits of the City of Columbia, in the County of Richland, State of South Carolina, containing 7.31 acres, being designated as Parcel "A", as shown on a plat of Property Surveyed for William M. Gregg, II made by B.P. Barber & Associates, dated November 25, 1957, last revised November 23, 1988, and filed for record in the Office of the Register of Deeds for Richland County, South Carolina, in Plat Book 52 at Page 4211. Said tract of land containing the same buttings, boundings and dimensions as shown on said plat.

**BEGINNING** at a concrete monument on the southwest side of Shop Road, distant 570.4 feet in a southeast direction from the southeast corner of said Shop Road and Stadium Road; thence along said Shop Road S46°05'E for a distance of 711.97 feet to an iron, said iron being the Point of Beginning of this Parcel "A"; thence continuing along Shop Road S46°05'E for a distance of 708.03 feet to a concrete monument; thence turning and running S44°55'W for a distance of 460.0 feet along land now or formerly of Morris to a concrete monument; thence turning and running N46°05'W for a distance of 708.03 feet along land now or formerly of State Record and now or formerly of Kahn to a concrete monument; thence turning and running N44°55'E for a distance of 460.0 feet along the line dividing this parcel from parcel "B" on said plat to an iron, said iron being the Point of Beginning of Parcel "A".

**TMS #: R11210-01-01**

**COLONIAL I, PARCEL B:**

All that certain piece, parcel or tract of land, with the improvements thereon, situate, lying and being on the southwest side of Shop Road near the southern limits of the City of Columbia, in the County of Richland, State of South Carolina, containing 6.85 acres, being designated as Parcel "B", as shown on a plat of Property Surveyed for William M. Gregg, II made by B.P. Barber & Associates, dated November 25, 1957, last revised November 23, 1988, and filed of record in the Register of Deeds for Richland County, South Carolina, in Plat Book 52 at page 4211. Said tract of land containing the same buttings, boundings and dimensions as shown on said plat.

**LESS, HOWEVER,** all that certain piece, parcel or tract of land, lying, situate and being in the County of Richland, Near the City of Columbia, in the state of South Carolina, designated as a portion of Tax Parcel Number 11210-01-13, and shown on a plat prepared for DIN/CAL, INC. by United Design Services, Inc. dated October 31, 2006, and being more fully described as follows:

**COMMENCING** from the intersection of George Rogers Boulevard and Shop Road, then running along the Southwestern Right-of-Way of Shop Road in a southeasterly direction for 530' +/- to a

concrete monument, which is the point of beginning, thence continuing along said right-of-way of Shop road  $S45^{\circ}10'28''$  E for 421.88' to an iron pin, thence turning and running along the remaining portion of Tax Parcel Number 11210-01-13 (Parcel B-1) now or formerly of Colonial Warehouse, LLC  $S44^{\circ}50'30''$  W for 450.45' to an iron pin, thence turning and running along lands now or formerly of Seaboard Coastline Railroad  $N45^{\circ}08'34''$  W for 135.85' to a concrete monument, thence turning and continuing along lands of the same  $N44^{\circ}41'27''$  E for 18.33' to a concrete monument, thence turning and continuing along lands of the same along a curve to the right being subtended by chord bearing of  $N16^{\circ}44'59''$  W and a chord distance of 325.42' have a radius of 349.1' to a concrete monument; thence turning and running along lands of the same  $N44^{\circ}55'00''$  E for 279.95' to a concrete monument, which is the point of beginning. Said parcel contains 3.95 acres, 172,198 sq.ft.

**TMS #: R11210-01-13**

Said property is subject to all applicable covenants, conditions, restrictions, limitations, obligations and easements of record.

**DERIVATION:** This being the same property conveyed from Joseph M. Strickland, Master-in-Equity for Richland County to Charles E. Truluck and Douglas H. Truluck, as Co-Trustees of the Milton F. Truluck Testamentary Trust dated February 21, 2014 and recorded on March 12, 2014 in Book 1931, Page 3606 in the ROD Office for Richland County.

It is the intent of Grantor to convey to Grantee any and all property currently owned by it and known under the above TMS Number(s).

RESOLUTION NO.: R-2018-094

*Adopting a Policy and Criteria to Consider the Inclusion of Real Property in a Multi-County Industrial Park to Apply Richland County's Special Source Revenue Credit Incentive to Real Property within the Corporate Limits of the City of Columbia developed with the inclusion of structured public parking within project*

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WHEREAS, to encourage capital investment, create economic growth, increase tax basis and meet public parking needs within the City of Columbia ("City"); and,

WHEREAS, Columbia City Council desires to incentivize, via a Credit Agreement, new development and redevelopment projects that include a public parking component; and,

WHEREAS, this incentive is available for new development and/or redevelopment of vacant or abandoned buildings ("Property") that meet the criteria established in this resolution but necessary action must be taken by Richland County ("County") and the City of Columbia in order for a specific project to be granted the incentive; and,

WHEREAS, the Credit Agreement will provide that (a) the owner of the Property ("Owner") will make a payment in lieu of tax related to the Property ("PILOT") during the term of the Credit Agreement, which PILOT shall be based on property tax assessment of the Property of six (6%) percent; (b) the annual PILOT payment payable from the Owner to the County will be subject to reduction by a fifty (50%) percent infrastructure credit to reimburse the Owner's cost of the public parking component during the term of the Credit Agreement; and (c) at least twenty-five (25%) percent of the parking spaces (the "Minimum Spaces") shall be available to the public as outlined and subject to verification by the City; and,

WHEREAS, the term of the Credit Agreement is intended to be for ten (10) years unless or until the requirements for public parking are no longer met; and,

WHEREAS, as used in this resolution, the City considers Property to mean property specifically associated with the required or basic parking and agreed to by the City and Owner; and,

WHEREAS, as used in this resolution, the City considers public parking to mean parking that is available to any member of the general public. Should the availability of the public parking be time specific, this time specific public parking is subject to prior approval by the City. Monthly, daily and hourly, event and residential parking shall be operated according to guidelines established by the City and agreed on by the Owner, based on the specific parking needs in the location; and,

WHEREAS, for projects in locations that have parking requirements via code, such requirements must be met outside of the public parking component; for locations which do not have parking requirements, the Owner shall include one (1) space per residential unit and/or two (2) spaces per 1,000 square feet of commercial space as the basis to add for calculating the twenty-five (25%) percent addition of public parking spaces in order to qualify for the credit; and,

WHEREAS, the Owner acknowledges the type of use of the public spaces may vary from location based on the needs of a specific location to include a combination of, monthly, daily, hourly, event parking, evening residential parking, etc.; and,

WHEREAS, the public parking spaces shall be clearly identifiable in a manner agreed upon by the City; and,

WHEREAS, no less than fifty (50%) percent of the public parking spaces shall be located as a grouping on the entry level of the parking facility in an area with the most convenient access to transient customers with the remainder of the spaces being located in a grouping together at a location agreed upon by the City and Owner prior to construction; and,

WHEREAS, said public parking will be made available at the rate agreed upon by the City based on market rates established in other public parking facilities within close proximity to the facility and are subject to change as those rates change; and,

WHEREAS, Columbia City Council desires to sunset the tax credit on December 31, 2020 for projects submitted, accepted and scheduled for site plan review approval by the applicable review body on or before December 31, 2020; and,

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WHEREAS, this incentive is intended to aid the Owner with the cost of providing public parking. Should the Owner elect to discontinue use as public parking, the incentive will be immediately discontinued and incentives previously realized will be paid to the taxing authorities based upon the previous three years of credit that was recognized. Should the Owner sell the project as a whole or the parking facility, the incentive will continue for the remaining term of the Credit Agreement, as long as the new Owner agrees to be bound by the restrictions contained in or contemplated by this resolution, the Credit Agreement and the project-specific ordinance described below; NOW and THEREFORE,

BE IT RESOLVED by the Mayor and City Council this 18th day of September, 2018, that the following criteria are hereby adopted in order for Columbia City Council to determine when it is appropriate to include a real property or real properties developed as development with a public parking component located within the corporate limits of the City in a Multi-County Industrial Park in order for the development to qualify for the County's Special Source Revenue Credit incentives:

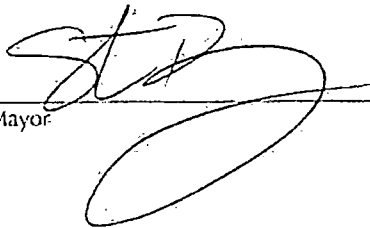
1. A minimum taxable investment of Thirty Million and No/100 (\$30,000,000.00) Dollars in total project costs as allowed by the County and the City with no use of JEDA funds; and,
2. Structured parking and other public infrastructure improvements with no use of public funds used in construction cost with a minimum of twenty-five (25%) percent of the parking within the facility being designated and operated as public parking per the terms described above and outlined further in a project-specific ordinance; and
3. Columbia City Council reserves the right to review (cost benefit analysis) and approve or deny any other assistance that may already be available to the development project.

BE IT FURTHER RESOLVED that inclusion of a real property or real properties developed as residential, commercial or mixed-use projects located within the corporate limits of the City in a Multi-County Industrial Park shall be by ordinance and the enactment of such an ordinance is in the sole and exclusive legislative discretion of Columbia City Council.

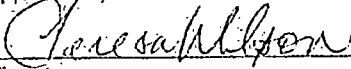
BE IT FURTHER RESOLVED that only those otherwise eligible structured public parking projects submitted, accepted and scheduled for site plan review approval by the applicable review body on or before December 31, 2020 shall be eligible for this tax credit.

Requested by:

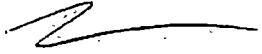
Assistant City Manager Gentry


  
\_\_\_\_\_  
Mayor

Approved by:

  
\_\_\_\_\_  
City Manager

Approved as to form:

  
\_\_\_\_\_  
City Attorney

ATTEST:  
  
\_\_\_\_\_  
City Clerk

Introduced: 9/18/2018  
Final Reading: 9/18/2018

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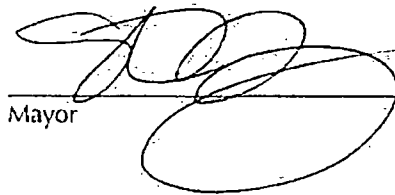
RESOLUTION NO.: R-2018-099

*Repealing Resolution R-2018-040 Amending Resolution R-2015-049 Amending Resolution R-2014-045 Amending R-2014-024 Adopting a Policy and Criteria to Consider the Inclusion of Real Property in a Multi-County Industrial Park to Apply Richland County's Special Source Revenue Credit Incentive to Real Property within the Corporate Limits of the City of Columbia to remove the sunset of the tax credit and amend the criteria for consideration of inclusion in a Multi-County Industrial Park*


BE IT RESOLVED by the Mayor and City Council this 2nd day of October, 2018, that Resolution R-2018-040 enacted on May 15, 2018 Amending Resolution R-2015-049 Amending Resolution R-2014-045 Amending R-2014-024 Adopting a Policy and Criteria to Consider the Inclusion of Real Property in a Multi-County Industrial Park to Apply Richland County's Special Source Revenue Credit Incentive to Real Property within the Corporate Limits of the City of Columbia ~~are hereby repealed in their entirety as of the effective date of this resolution.~~

Requested by:


Assistant City Manager Palen


  
\_\_\_\_\_  
Mayor

Approved by:

  
\_\_\_\_\_  
City Manager

Approved as to form:

  
\_\_\_\_\_  
City Attorney

ATTEST:  
  
\_\_\_\_\_  
City Clerk

Introduced: 10/2/2018  
Final Reading: 10/2/2018

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RESOLUTION NO.: R-2018-108

*Amending Resolution No.: R-2018-094 Adopting a Policy and Criteria to Consider the Inclusion of Real Property in a Multi-County Industrial Park to Apply Richland County's Special Source Revenue Credit Incentive to Real Property within the Corporate Limits of the City of Columbia developed with the inclusion of structured public parking within project*

WHEREAS, Resolution No.: R-2018-094 enacted on September 18, 2018, a copy of which is attached hereto and incorporated herein by reference, adopted a policy and criteria to consider the inclusion of real property in a Multi-County Industrial Park to apply Richland County's Special Source Revenue Credit incentive to real property within the corporate limits of the City of Columbia developed with the inclusion of structured public parking within project; and,

WHEREAS, Columbia City Council desires to amend Resolution No.: R-2018-094 and change the Credit Agreement paragraph to read as follows:

WHEREAS, the term of the Credit Agreement is intended to be for ten (10) years unless or until the requirements for public parking are no longer met, consideration may be given to extend this period to up to fifteen (15) years based on a review of financial projections and project impacts; NOW, THEREFORE,

BE IT RESOLVED by the Mayor and City Council this 4th day of December, 2018, that Resolution No.: R-2018-094 is hereby amended as follows:

WHEREAS, the term of the Credit Agreement is intended to be for an amount not to exceed the equivalent of \$25,000 per space for all spaces within the garage or 15 years of a tax abatement, whichever occurs first; and,

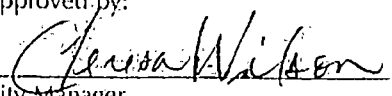
BE IT FURTHER RESOLVED that the rest and remainder of the policy and criteria set forth in said Resolution No.: R-2018-094 shall remain in full force and effect.

Requested by:

Assistant City Manager Gentry

  
\_\_\_\_\_  
Mayor

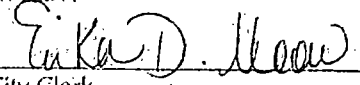
Approved by:

  
\_\_\_\_\_  
City Manager

Approved as to form:

  
\_\_\_\_\_  
City Attorney

ATTEST:

  
\_\_\_\_\_  
City Clerk

Introduced: 11/20/2018  
Final Reading: 12/4/2018

421 S.C. 110  
Supreme Court of South Carolina.

SOUTH CAROLINA PUBLIC INTEREST  
FOUNDATION and Edward D. Sloan,  
individually, and on behalf of all others similarly  
situated, Petitioners,

v.

SOUTH CAROLINA DEPARTMENT OF  
TRANSPORTATION and John V. Walsh, Deputy  
Secretary of Transportation for Engineering,  
Respondents.

Appellate Case No. 2015-001175

Opinion No. 27738

Heard January 12, 2016

Filed September 14, 2017

**Synopsis**

**Background:** Taxpayer and public interest group brought declaratory judgment action against South Carolina Department of Transportation (SCDOT) and Deputy Secretary of Transportation for Engineering at SCDOT, alleging that SCDOT's inspection of privately owned bridges in housing development violated state constitution. The Circuit Court, Richland County, 2012 WL 10861813, L. Casey Manning, J., granted summary judgment in favor of SCDOT. Taxpayer and group appealed. The Court of Appeals, 412 S.C. 18, 770 S.E.2d 399, affirmed. Plaintiffs filed petition for writ of certiorari.

**Holdings:** The Supreme Court, Beatty, C.J., held that:

[1] taxpayers had public-importance standing;

[2] review was warranted under exception to mootness doctrine for controversies capable of repetition but evading review;

[3] expenditure of public funds by SCDOT for inspection of private bridges contravened constitutional requirement that expenditure of public funds serve a public purpose; and

[4] inspection of bridges was ultra vires.  
Reversed.

Kittredge, J., filed dissenting opinion in which Costa M. Pleicones, Acting Justice, concurred.

Costa M. Pleicones, Acting Justice, filed dissenting opinion in which Kittredge, J., concurred.

West Headnotes (19)

[1] **Appeal and Error**

↔Extent of Review Dependent on Nature of Decision Appealed from

**Judgment**

↔Absence of issue of fact

When reviewing a grant of summary judgment, appellate courts apply the same standard that governs the trial court under the rule providing that summary judgment is proper when there is no genuine issue as to material fact and the moving party is entitled to judgment as a matter of law. S.C. R. Civ. P. 56(c).

Cases that cite this headnote

[2] **Appeal and Error**

↔Judgment

When reviewing a grant of summary judgment, an appellate court reviews all ambiguities, conclusions, and inferences arising in and from the evidence in a light most favorable to the non-moving party below. S.C. R. Civ. P. 56(c).

Cases that cite this headnote

[3] **Action**

↔Persons entitled to sue

A plaintiff must have standing to institute an action.

Cases that cite this headnote

[4] **Action**

↔Persons entitled to sue

A party has constitutional standing if he can show: (1) he suffered an invasion of a legally protected interest, which is concrete and particularized, and actual or imminent; (2) a causal connection between the injury and the challenged conduct; and (3) it is likely the injury

will be redressed by a favorable decision.

Cases that cite this headnote

[5]

**States**

⊕Rights and remedies of taxpayers

Taxpayers who challenged expenditure of public funds by South Carolina Department of Transportation (SCDOT) for inspection of private bridges did not have constitutional standing; taxpayers did not suffer concrete and particularized injury distinct from that shared by other taxpayers. S.C. Const. art. 10, §§ 5, 11.

Cases that cite this headnote

[6]

**Action**

⊕Persons entitled to sue

A party is not required to show he has suffered a concrete or particularized injury in order to obtain public-importance standing, nor must he show he has an interest greater than other potential plaintiffs.

Cases that cite this headnote

[7]

**Action**

⊕Persons entitled to sue

When deciding whether to confer public-importance standing, courts must take the competing policy concerns into consideration, and must also determine whether the party presents an issue of public importance and whether future guidance on that issue is needed.

Cases that cite this headnote

[8]

**Action**

⊕Persons entitled to sue

The key in determining whether to confer public-importance standing is whether a resolution is needed for future guidance.

Cases that cite this headnote

[9]

**States**

⊕Rights and remedies of taxpayers

Taxpayers had public-importance standing to challenge expenditure of public funds by South Carolina Department of Transportation (SCDOT) for inspection of private bridges; issue involved both conduct of a government entity and expenditure of public funds, decision on the merits could have far-reaching consequences for safety of state's citizens, there was no judicial guidance addressing the issue, and there was evidence that SCDOT would inspect that type of property in the future. S.C. Const. art. 10, §§ 5, 11.

Cases that cite this headnote

[10]

**Action**

⊕Moot, hypothetical or abstract questions

A justiciable controversy must be present before any action can be maintained.

Cases that cite this headnote

[11]

**Action**

⊕Moot, hypothetical or abstract questions

A "justiciable controversy" is a real and substantial controversy appropriate for judicial determination, as opposed to a dispute or difference of a contingent, hypothetical or abstract character.

Cases that cite this headnote

[12]

**Action**

⊕Moot, hypothetical or abstract questions

A case becomes moot when judgment, if rendered, will have no practical legal effect upon the existing controversy.

Cases that cite this headnote

[13]

**Appeal and Error**

⊕Want of Actual Controversy

Under an exception to the mootness doctrine, if the issue raised is capable of repetition but generally will evade review, the appellate court can take jurisdiction.

Cases that cite this headnote

- [14] **Appeal and Error**  
⊕Want of Actual Controversy

Under an exception to the mootness doctrine, an appellate court may decide questions of imperative and manifest urgency to establish a rule for future conduct in matters of important public interest.

Cases that cite this headnote

- [15] **Appeal and Error**  
⊕Want of Actual Controversy

If a decision by the trial court may affect future events, or have collateral consequences for the parties, an appeal from that decision is not moot, even though the appellate court cannot give effective relief in the present case.

Cases that cite this headnote

- [16] **Appeal and Error**  
⊕Nature of action or proceedings in general

Under exception to mootness doctrine for controversies capable of repetition but evading review, Supreme Court would review taxpayers' challenge to expenditure of public funds by South Carolina Department of Transportation (SCDOT) for inspection of private bridges; SCDOT had stated that it would inspect private bridges in the future, and issue was one that would typically become moot before it could be reviewed. S.C. Const. art. 10, §§ 5, 11.

Cases that cite this headnote

- [17] **Action**  
⊕Moot, hypothetical or abstract questions

When asserting that a controversy falls under the exception to the mootness doctrine for cases capable of repetition but evading review, the party bringing the action need only show the issue raised is capable of repetition and is not required to prove there is a reasonable expectation the issue will arise again; however, the action must be one which will truly evade

review.

Cases that cite this headnote

- [18] **States**  
⊕Limitation of use of funds or credit

Expenditure of public funds by South Carolina Department of Transportation (SCDOT) for inspection of private bridges contravened constitutional requirement that expenditure of public funds serve a public purpose; owners of bridges, rather than public at large, were beneficiaries of inspections, and it was not public's responsibility to pay maintenance costs of bridges located within gated community that sought to exclude public from enjoying use of bridges. S.C. Const. art. 10, § 5.

Cases that cite this headnote

- [19] **States**  
⊕Limitation of use of funds or credit

Expenditure of public funds by South Carolina Department of Transportation (SCDOT) for inspection of private bridges was not performed upon request of municipality and was thus ultra vires, where request to inspect bridges came from city councilman, not from city. S.C. Code Ann. § 57-3-110(7).

Cases that cite this headnote

**\*\*856 ON WRIT OF CERTIORARI TO THE COURT OF APPEALS**

Appeal from Richland County, L. Casey Manning, Circuit Court Judge

**Attorneys and Law Firms**

James G. Carpenter and Jennifer J. Miller, both of Greenville, for Petitioners.

Beacham O. Brooker, Jr., of SC Department of Transportation, of Columbia, for Respondents.

**Opinion**

**\*\*857 CHIEF JUSTICE BEATTY:**

**\*114 South Carolina Public Interest Foundation and**

Edward D. Sloan,<sup>1</sup> individually and on behalf of all others similarly situated (“Petitioners”), filed this declaratory judgment action against the South Carolina Department of Transportation (“SCDOT”) and John V. Walsh, Deputy Secretary of Transportation \*115 for Engineering of SCDOT (“Respondents”). Petitioners sought a declaration that SCDOT’s inspection of three privately owned bridges violated sections 5 and 11 of article X of the South Carolina Constitution,<sup>2</sup> which Petitioners assert prohibit the expenditure of public funds for a private purpose. The trial court granted Respondents’ motion for summary judgment, finding: Petitioners lacked standing; the controversy was moot and did not fall under any of the exceptions to the mootness doctrine; and Respondents’ actions were not *ultra vires* or unconstitutional. The Court of Appeals affirmed. *S.C. Pub. Interest Found. v. S.C. Dep’t of Transp.*, 412 S.C. 18, 770 S.E.2d 399 (Ct. App. 2015). This Court granted Petitioners’ request for a writ of certiorari. We reverse.

### I. Factual and Procedural History

Aiken City Councilman Reggie Ebner is a resident of Woodside Plantation, a gated subdivision in the City of Aiken. In September of 2010, Ebner emailed then-State Representative Tom Young asking for guidance on “who is responsible for the design approval, construction inspection, safety requirements and final approval for bridges in the City of Aiken.” In July of 2011, Young forwarded an email from his “constituent Reggie Ebner” to Walsh at SCDOT. In the email, Ebner requested SCDOT inspect three wooden bridges located within Woodside Plantation, which he alleged had engineering and construction flaws. Ebner signed the email “Reggie Ebner, City of Aiken Councilman for District 4.” After receiving the email, SCDOT conducted an inspection of the three bridges and issued a report on its findings.<sup>3</sup> SCDOT estimated the cost of the inspection was \$1,400.

Following the inspection, the Office of the Chief Internal Auditor (“OCIA”) for the Commission on the Department of Transportation investigated the propriety of Respondents’ actions. In a report to former Secretary of Transportation Robert St. Onge, OCIA made several findings, including:

- \*116 (1) The bridges are neither part of the State highway system nor are they owned or maintained by the City of Aiken;
- (2) The request to inspect the bridges came from a city councilman, not from the City of Aiken;
- (3) Prior to the inspection, SCDOT personnel made a

direct inquiry to the City of Aiken and verified that the bridges were private property;

(4) SCDOT’s employees warned Chief Engineer for Operations Clem Watson that it was against SCDOT’s policy to inspect privately owned bridges;

(5) SCDOT had no obligation to inspect the bridges; and

(6) Walsh and Watson maintained their actions fell within a “grey area” of the law.

Petitioners subsequently filed this declaratory judgment action seeking a declaration that SCDOT’s inspection of the privately owned bridges contravened the constitutional requirement that the expenditure of public funds serve a public purpose. After both parties moved for summary judgment, the trial court concluded: Petitioners lacked standing; the issue was moot; and no exceptions to the mootness doctrine applied. Nevertheless, the trial court proceeded to address the merits of the issue and determined the inspection was not unconstitutional because it did not solely benefit the homeowners in Woodside Plantation, but was for the health, safety, and welfare of the public at large. The trial court also found the inspection was not *ultra vires* because “the inspection of the bridges was legitimately within the City’s police power and the decision \*\*858 by Walsh to assist it was well within the Department’s enumerated powers to assist other governmental entities in areas of its expertise” under section 57-3-110 of the South Carolina Code.<sup>4</sup>

The Court of Appeals affirmed, concluding Petitioners did not have standing and the action did not fall under any exception to the mootness doctrine. *S.C. Pub. Interest Found.*, 412 S.C. at 24-28, 770 S.E.2d at 402-04. The Court of Appeals \*117 based its conclusion solely on its belief that SCDOT “conducted its own audit and concluded its own actions were improper.” *Id.* at 24, 770 S.E.2d at 402. The Court of Appeals declined to reach the issues of whether Respondents’ conduct was *ultra vires* or unconstitutional based on its disposition of the justiciability issues. *Id.* at 28, 770 S.E.2d at 404. This Court granted certiorari to review the decision of the Court of Appeals.

### II. Standard of Review

[1] [2]When reviewing a grant of summary judgment, appellate courts apply the same standard that governs the trial court under Rule 56(c), SCRCP, which provides that summary judgment is proper when there is no genuine issue as to material fact and the moving party is entitled to

judgment as a matter of law. *USAA Prop. & Cas. Ins. Co. v. Clegg*, 377 S.C. 643, 653, 661 S.E.2d 791, 796 (2008); Rule 56(c), SCRCP. This Court reviews all ambiguities, conclusions, and inferences arising in and from the evidence in a light most favorable to the non-moving party below. *Willis v. Wu*, 362 S.C. 146, 151, 607 S.E.2d 63, 65 (2004).

### III. Discussion

#### A. Whether Petitioners have standing to bring their claim.

<sup>[3]</sup>“A plaintiff must have standing to institute an action.” *Sloan v. Greenville Cnty.*, 356 S.C. 531, 547, 590 S.E.2d 338, 347 (Ct. App. 2003). Standing is “[a] party’s right to make a legal claim or seek judicial enforcement of a duty or right.” *Black’s Law Dictionary* 1625 (10th ed. 2014). We recognize three types of standing: (1) standing conferred by statute; (2) “constitutional standing”; and (3) public importance standing. *ATC S., Inc. v. Charleston Cnty.*, 380 S.C. 191, 195, 669 S.E.2d 337, 339 (2008). Petitioners assert they have constitutional standing as taxpayers and public importance standing.

##### 1. Constitutional Standing

<sup>[4]</sup> <sup>[5]</sup>A party has constitutional standing if he can show: (1) he suffered an invasion of a legally protected interest, which is concrete and particularized, and actual or imminent; \*118 2) a causal connection between the injury and the challenged conduct; and (3) it is likely the injury will be redressed by a favorable decision. *Youngblood v. S.C. Dep’t. of Soc. Servs.*, 402 S.C. 311, 317-18, 741 S.E.2d 515, 518 (2013). Here, Petitioners are unable to show they suffered a concrete and particularized injury distinct from that shared by other taxpayers; therefore, we find Petitioners do not have constitutional standing. *See Freemantle v. Preston*, 398 S.C. 186, 193, 728 S.E.2d 40, 44 (2012) (recognizing that a taxpayer’s injuries are “common to all citizens and taxpayers ... [which thereby] defeats the constitutional requirement of a concrete and particularized injury”).

##### 2. Public Importance Standing

<sup>[6]</sup> <sup>[7]</sup> <sup>[8]</sup> <sup>[9]</sup>Unlike with constitutional standing, a party is not required to show he has suffered a concrete or particularized injury in order to obtain public importance standing. *S.C. Pub. Interest Found. v. S.C. Transp. Infrastructure Bank*, 403 S.C. 640, 645, 744 S.E.2d 521, 524 (2013). Nor must he “show he has an interest greater than other potential plaintiffs.” *Davis v. Richland Cnty. Council*, 372 S.C. 497, 500, 642 S.E.2d 740, 742 (2007).

Requiring otherwise would undermine the purpose of public importance standing, which is to “[a]llow[ ] interested citizens a right of action in our judicial system when issues are of significant public importance to ensure [ ] ... accountability and the concomitant integrity of government action.” \*\*859 *Sloan v. Greenville Cnty.*, 356 S.C. at 551, 590 S.E.2d at 349. However, as this Court recognized:

An appropriate balance between the competing policy concerns underlying the issue of standing must be realized. **Citizens must be afforded access to the judicial process to address alleged injustices.** On the other hand, standing cannot be granted to every individual who has a grievance against a public official. Otherwise, public officials would be subject to numerous lawsuits at the expense of both judicial economy and the freedom from frivolous lawsuits.

*Sloan v. Sanford*, 357 S.C. 431, 434, 593 S.E.2d 470, 472 (2004). **Thus, when deciding whether to confer public importance standing, courts must take these competing policy concerns into consideration, and must also determine whether the party presents an issue of public importance and whether future guidance on that issue is needed.** \*119 *ATC S.*, 380 S.C. at 198-99, 669 S.E.2d at 341. However, as this Court has acknowledged, since many issues may be of public interest, or importance,<sup>5</sup> **[t]he key ... is whether a resolution is needed for future guidance.** *Id.* at 199, 669 S.E.2d at 341; *Carnival Corp. v. Historic Ansonborough Neighborhood Ass’n*, 407 S.C. 67, 79-80, 753 S.E.2d 846, 853 (2014) (“Whether [public importance standing] applies in a particular case turns on whether resolution of the dispute is needed for future guidance.... [T]he need for future guidance generally dictates when [public importance standing] applies.”). Applying this test to the case at hand, we find Petitioners have established public importance standing.

The issue of whether SCDOT may inspect bridges within private, gated communities is one of public importance as it involves both the conduct of a government entity and the expenditure of public funds. *See Sloan v. Sch. Dist. of Greenville Cnty.*, 342 S.C. 515, 523, 537 S.E.2d 299, 303 (Ct. App. 2000) (recognizing that there is a “public interest involved i[n] the prevention of the unlawful expenditure of money raised by taxation”). A further indicator of the issue’s importance is that, as even the dissent recognizes, a decision on the merits of the issue may “have far-reaching ... consequences for the safety of our citizens.” **Additionally, future guidance is needed since there is no judicial guidance addressing the issue and there is evidence SCDOT will inspect this type of property in the future.** When asked during oral argument whether SCDOT would inspect bridges located on private property

again, SCDOT replied “Yes, if we have the time.” Although a close call, we find the policy concerns that we must balance in determining whether to confer public importance standing weigh in Petitioners’ favor given the factors already mentioned and the issue involved implicates both statutory and constitutional provisions. Accordingly, we hold Petitioners have public importance standing. A contrary holding would essentially render a law superfluous if we deem the conduct it prohibits too insignificant to ensure the law is enforced.<sup>6</sup>

**\*120 B Whether the controversy falls within an exception to the mootness doctrine.**

Petitioners contend the Court of Appeals erred in concluding this matter is not justiciable \*\*860 because Respondents admitted their conduct was wrongful. We agree.

[10] [11] A justiciable controversy must be present before any action can be maintained. *Byrd v. Irmo High Sch.*, 321 S.C. 426, 430, 468 S.E.2d 861, 864 (1996). “A justiciable controversy is a real and substantial controversy appropriate for judicial determination, as opposed to a dispute or difference of a contingent, hypothetical or abstract character.” *Sloan v. Greenville Cnty.*, 356 S.C. at 546, 590 S.E.2d at 346.

The Court of Appeals’ finding hinged on its understanding that SCDOT “conducted its own audit and concluded its own actions were improper.” *S.C. Pub. Interest Found.*, 412 S.C. at 24, 770 S.E.2d at 402. In reality, OCIA, a division of the Commission on the Department of Transportation, conducted the audit. While it found that certain SCDOT employees thought the inspection of the bridges was against SCDOT’s policy, it stopped short of concluding SCDOT’s actions were wrongful. Further, on appeal, Respondents admit that they disagree with the findings in OCIA’s report. Instead, they maintain their inspection of the bridges was lawful because their actions served a public purpose and because they believed \*121 they were assisting a municipality. Accordingly, we conclude the Court of Appeals erred in finding Respondents admitted their conduct was improper.

Petitioners also contend the Court of Appeals erred in determining the controversy did not fall within any of the exceptions to the mootness doctrine. We agree.

[12] [13] [14] [15] “A case becomes moot when judgment, if rendered, will have no practical legal effect upon the existing controversy.” *Sloan v. Greenville Cnty.*, 380 S.C. 528, 535, 670 S.E.2d 663, 667 (Ct. App. 2009). There are three exceptions to mootness. “First, if the issue raised is capable of repetition but generally will evade review, the

appellate court can take jurisdiction.” *Sloan v. Greenville Cnty.*, 380 S.C. at 535, 670 S.E.2d at 667. “Second, an appellate court may decide questions of imperative and manifest urgency to establish a rule for future conduct in matters of important public interest.” *Curtis v. State*, 345 S.C. 557, 568, 549 S.E.2d 591, 596 (2001). “Finally, if a decision by the trial court may affect future events, or have collateral consequences for the parties, an appeal from that decision is not moot, even though the appellate court cannot give effective relief in the present case.” *Id.*

[16] We acknowledge that the controversy that gave rise to this appeal is moot because SCDOT has already inspected the bridges. Thus, any ruling from this Court will have no practical effect on the controversy. Nevertheless, we conclude this controversy should be addressed because it is one which is capable of repetition yet will evade review.

[17] When asserting the controversy falls under this exception, “[t]he party bringing the action need only show the issue raised is *capable* of repetition and is not required to prove there is a ‘reasonable expectation’ the issue will arise again.” *Sloan v. Greenville Cnty.*, 356 S.C. at 554-55, 590 S.E.2d at 351. “However, the action must be one which will truly evade review.” *Sloan v. Friends of Hunley, Inc.*, 369 S.C. 20, 27, 630 S.E.2d 474, 478 (2006).

In *Byrd v. Irmo High School*, 321 S.C. 426, 432, 468 S.E.2d 861, 864 (1996), this Court determined short-term student suspensions were capable of repetition, yet will evade review because they “by their very nature, are completed long before \*122 an appellate court can review the issues they implicate.” Applying *Byrd* to this case, we conclude the issue of whether Respondents can inspect bridges inside private, gated communities is one that is capable of repetition, yet will generally evade review. Respondents are capable of repeating their actions in the future, especially since they maintain their conduct was lawful. In fact, they said they would inspect private bridges in the future. Moreover, this issue is one which will typically become moot before it can be reviewed. Like student suspensions, the inspection of roadways and bridges can typically be completed long before a court can review the propriety of the action. For example, here, the inspection took only one day to complete. Accordingly, while we find the issue giving rise to this appeal is moot, we find the controversy is \*\*861 capable of repetition yet will generally evade review. In view of our conclusions on the mootness and standing issues, we could remand to the Court of Appeals to consider Petitioners’ remaining issues. However, in the interest of judicial economy, we decline to do so and instead proceed with our review. *See Furtick v. S.C. Dep’t of Prob., Parole & Pardon Servs.*, 352 S.C. 594, 599, 576 S.E.2d 146, 149 (2003) (addressing the merits of

an issue in the interest of judicial economy even though the respondent was entitled to review by the lower court).

**C. Whether SCDOT's inspection was unlawful.**

<sup>[18]</sup>Petitioners assert Respondents' inspection of the privately owned bridges was unconstitutional because it contravened the constitutional requirement that the expenditure of public funds serve a public purpose.<sup>7</sup> We agree.

\*123 Article X, section 5 of the South Carolina Constitution provides: "Any tax which shall be levied shall distinctly state the public purpose to which the proceeds of the tax shall be applied." S.C. Const. art. X, § 5. Thus, all taxes levied must be used towards a public purpose. *See Feldman & Co. v. City Council of Charleston*, 23 S.C. 57, 62 (1885) ("Hence it seems to be universally conceded, even by those who are disposed to enlarge the taxing power of the legislature to its greatest extent, that a law authorizing taxation for any other tha[n] a public purpose is void."). "In deciding whether governmental action satisfies a public purpose, we look to the object sought to be accomplished." *Carll v. S.C. Jobs-Econ. Dev. Auth.*, 284 S.C. 438, 443, 327 S.E.2d 331, 334 (1985). "As a general rule a public purpose has for its objective the promotion of the public health, safety, morals, general welfare, security, prosperity, and contentment of all the inhabitants or residents, *or at least a substantial part thereof*." *Anderson v. Baehr*, 265 S.C. 153, 162, 217 S.E.2d 43, 47 (1975) (emphasis added).

We find the inspection of the bridges did not serve a public purpose. We do not doubt that the inspection was conducted to assuage safety concerns. However, the owners of the bridges were the beneficiaries of the inspection, not the public at large, whose access to the bridges is limited to the authorization provided by the homeowners. In short, it is not the public's responsibility to pay the maintenance costs of bridges located within a gated community that seeks to exclude the public from enjoying the use of the bridges. Thus, because it did not serve a public purpose, we find the inspection was unconstitutional.

<sup>[19]</sup>Further, even if we did not find SCDOT's actions were unconstitutional, we would nevertheless find the inspection *ultra vires* because it was not performed upon the request of a municipality as required under section 57-3-110(7) of the South Carolina Code, which provides:

The Department of Transportation shall have the following duties and powers:

instruct, assist, and cooperate with the agencies,

departments, and bodies politic and legally constituted agencies of the State in street, highway, traffic, and mass transit matters when requested to do so, and, *if requested by such \*124 government authorities, supervise or furnish engineering supervision for the construction and improvement of roads and bridges*, provided such duties do not impair the attention to be given the highways in the state highway system.

S.C. Code Ann. § 57-3-110(7) (2006) (emphasis added). In arguing otherwise, Respondents assert Ebner's email established "sufficient color of authority for the State Highway Engineer to believe he was assisting \*\*862 a City under the statutory powers and duties conferred on the Department of Transportation" under section 57-3-110(7). We disagree.

In the email Representative Young sent to Walsh at SCDOT, Young identified Ebner as his constituent, not as a councilman acting for the City of Aiken. Therefore, SCDOT was on notice that the forwarded request was from a private individual, not from the City of Aiken. Although Ebner signed his email "Reggie Ebner, City of Aiken Councilman for District 4," this alone is insufficient to serve as a request from the entity. Our conclusion is also consistent with OCIA's finding that the request to inspect the bridges came from a city councilman, not from the City of Aiken. Consequently, we find Respondents were not acting pursuant to a request from the City of Aiken.

**IV. Conclusion**

In conclusion, we find Respondents' conduct was unconstitutional and *ultra vires*. Accordingly, the decision of the Court of Appeals is

**REVERSED.**

HEARN, J., and Acting Justice James E. Moore, concur. KITTREDGE, J., dissenting in a separate opinion in which Acting Justice Costa M. Pleicones, concurs. Acting Justice Costa M. Pleicones, dissenting in a separate opinion in which KITTREDGE, J., concurs.

JUSTICE KITTREDGE:

I join Justice Pleicones in dissent. I write separately to comment on the standing issue, but primarily to express my \*125 fundamental disagreement with the majority's analysis of the merits.

Unquestionably, Petitioners (Sloan) may not be accorded taxpayer standing under our jurisprudence, as set forth by Justice Pleicones. *See, e.g., Crews v. Beattie*, 197 S.C. 32, 49, 14 S.E.2d 351, 357–58 (1941) (recognizing that the generalized interest every taxpayer has in the operation of the government is usually insufficient to confer standing). The public importance exception to the normal standing requirements presents a closer question, but again, I join Justice Pleicones in finding Sloan lacks standing under this doctrine as well. To accord Sloan standing in this case is tantamount to conferring standing on every citizen in every case where improper governmental activity is alleged. That has never been my understanding of the public importance exception, and it was not my intent to allow the exception to swallow the rule when I authored our opinion in *ATC South, Inc. v. Charleston County*, 380 S.C. 191, 669 S.E.2d 337 (2008). *See id.* at 199, 669 S.E.2d at 341 (“The key to the public importance analysis is whether a resolution is needed for future guidance.”).

Even assuming Sloan has public interest standing, I respectfully disagree with the majority’s analysis and conclusion. I believe today’s decision will have far-reaching negative consequences for the safety of our citizens,<sup>8</sup> in that the majority unreasonably constrains the authority and discretion of Respondent South Carolina Department of Transportation (DOT) in the discharge of its constitutional and statutory duty to build and maintain a safe roadway system for the use of the public. *See* S.C. Const. art. XII, § 1 (authorizing the General Assembly to establish agencies to protect the public health, safety, and welfare and to set the limits within which those agencies may operate); S.C. Code Ann. § 57-3-110 (2006) (listing DOT’s powers and responsibilities); *see also Leonard v. Talbert*, 222 S.C. 79, 83, 71 S.E.2d 603, 604 (1952) (“Subject to constitutional limitations, the state has *absolute control* of the highways, including streets, within its borders, even though the fee is in the municipality. Such power of *su* \*126 *pervision* and control may be exercised directly by the legislature or may be delegated by it to subordinate or local governmental agencies....” (emphasis added) (citation and internal quotation marks omitted)); *cf. S.C. State Highway Dep’t v. Harbin*, 226 S.C. 585, 597–98, 86 S.E.2d 466, 472 (1955) \*\*863 (recognizing that “under its police power [the General Assembly] has full authority in the interest of public safety” to establish both the conditions under which a person may be permitted to operate a motor vehicle and the grounds on which that permit may be revoked).

The majority presents the issue in this case in a myopic and misleading way, essentially asking whether public funds may be spent for a private purpose. Framing the issue in that manner leads to the self-evident conclusion, which is,

of course, that public funds may not be spent for a private purpose. However, misstating the question presented to the Court obscures the real issue and attributes to DOT a position it does not assert, as DOT has never contended it may spend “public funds for a private purpose.”

The bridges in Woodside Plantation in Aiken are not public and they are not “in the state highway system,”<sup>9</sup> but they are located in a road system that is used by the public,<sup>10</sup> as are numerous privately owned bridges and dams throughout the state. When the public, including school buses, regularly travels along a roadway that contains a privately constructed bridge, I am confident the legislature has granted DOT the legal authority to exercise its discretion to provide engineering supervision when requested by the local government.<sup>11</sup> *See* S.C. Code Ann. § 57-3-110(7).

In reaching a contrary conclusion, the majority reads section 57-3-110(7) in isolation, without appreciating the statute’s \*127 placement within the South Carolina Code. In contrast, I would approach the question of the legislature’s intent in section 57-3-110(7) by examining the statute in its proper context. *See, e.g., Sparks v. Palmetto Hardwood, Inc.*, 406 S.C. 124, 128–29, 750 S.E.2d 61, 63 (2013) (noting that courts must construe a statute’s words in context so as not to frustrate the purpose of the statutory scheme in which they appear (citations omitted)).

I begin with section 57-3-120, which states, “Highway, street, or road are general terms denoting *a public way for the purpose of vehicular travel*, ... and the terms shall include roadways, pedestrian facilities, bridges, ... and all other facilities commonly considered component parts of highways, streets, or roads.” S.C. Code Ann. § 57-3-120(1) (2006) (emphasis added) (internal quotation marks omitted). As Woodside Plantation’s roads and bridges are utilized by the public, I believe those structures constitute “public way[s] for the purpose of vehicular travel” so as to fall within the legislature’s definition of a highway, street, or road. *Id.*

As set forth in section 57-3-110, DOT’s “duties and powers” are broad and include the ability to “lay out, build, and maintain public highways and bridges, including the exclusive authority to establish design criteria, construction specifications, and standards required to construct and maintain highways and bridges.” *Id.* § 57-3-110(1). Then, subsection (7) makes clear DOT’s authority is not limited to state highways, giving DOT discretion to

instruct, assist, and cooperate with the ... bodies politic ... of the State in street, highway, traffic, and mass transit matters when requested to do so, and, if requested by such government authorities,

supervise or furnish engineering supervision for the construction and improvement of roads and bridges, provided such duties do not impair the attention to be given the highways in the state highway system.

*Id.* § 57-3-110(7).

I draw three conclusions, important for the resolution of this case, from the language in \*\*864 section 57-3-110(7). First, because \*128 DOT may only provide engineering support to local governments when doing so does not interfere with DOT's obligations to state highways, DOT's primary responsibility is clearly to the state highway system. *See id.* Second, by giving DOT discretion to assist local governments, subsection (7) necessarily authorizes DOT to provide assistance to local governments for roads and bridges *outside of* the state highway system. *See id.* Third, although subsection (1) limits DOT's power to "lay out, build, and maintain" to "public highways and bridges," subsection (7) speaks only of "roads and bridges" generally, indicating the restriction in subsection (1) does not apply when DOT provides assistance under subsection (7). *Id.* § 57-3-110(1), (7) (emphasis added); *see, e.g., State v. Sweat*, 386 S.C. 339, 351, 688 S.E.2d 569, 575 (2010) ("A statute should be so construed that no word ... shall be rendered surplusage...." (citation and internal quotation marks omitted)). The legislature, in my judgment, thus struck a balance between ensuring DOT focused on the state highway system and giving DOT discretion to provide for the safety of roads and bridges outside of that system.

I would therefore construe DOT's authority to "instruct, assist, and cooperate with" local governmental authorities "in street, highway, traffic, and mass transit matters" as embracing the "furnish[ing] [of] engineering supervision for the construction and improvement of roads and bridges." S.C. Code Ann. § 57-3-110(7). Therefore, provided a privately owned bridge is part of "a public way for the purpose of vehicular travel" such that a nexus exists between the bridge and the road system utilized by the public, I would find the legislature has authorized DOT to act within the broad parameters of subsection (7). *Id.* §§ 57-3-110(7), -120(1).

In the instant case, DOT spent a *de minimis* amount of time and money for a manifestly public purpose, the type of conduct expressly permitted by section 57-3-110(7).<sup>12</sup> Therefore, \*129 in my view, the trial court's decision granting DOT's motion for summary judgment should be affirmed. But a majority of the Court believes otherwise, under the guise that DOT spent "public funds for a private purpose." We are thus left with DOT no longer having either authority or discretion to provide assistance to local governments on matters critical to the safety of the traveling public. The result the Court reaches today is

contrary both to law and, most regrettably, to DOT's public safety goals, as defined by the legislature.

I dissent.

ACTING JUSTICE PLEICONES:

I respectfully dissent because in my opinion, the trial judge and the Court of Appeals were correct in finding Sloan lacked standing to bring this action.

In my view, the trial judge properly determined there was no evidence SCDOT has a pattern of, or intends to hereafter provide, the inspection of private property in derogation of state law. The majority correctly points out the public interest exception was created to "ensure accountability and the concomitant integrity of government action," and to provide "future guidance." *See ATC South, Inc. v. Charleston Cnty.*, 380 S.C. 191, 199, 669 S.E.2d 337, 341 (2008); *Sloan v. Greenville Cnty.*, 356 S.C. 531, 551, 590 S.E.2d 338, 349 (Ct. App. 2003); *cf. \*\*865 Sloan v. Dep't of Transp.*, 365 S.C. 299, 308, 618 S.E.2d 876, 881 (2005) (Pleicones, J., dissenting) (quoting *Crews v. Beattie*, 197 S.C. 32, 49, 14 S.E.2d 351, 358 (1941) ("[t]he mere fact that the issue is one of public importance does not confer upon any citizen or taxpayer the right to invoke per se a judicial determination of the issue")); \*130 *Baird v. Charleston Cnty.*, 333 S.C. 519, 530–31, 511 S.E.2d 69, 75 (1999). As demonstrated by the investigation conducted by the Office of the Chief Internal Auditor for the Commission on the Department of Transportation—which addressed issues this inspection posed, and concluded, "Deviations from federal and state regulations must be avoided"—SCDOT has established it maintains proper internal procedures for addressing and remaining accountable for the decisions made within its discretion. Accordingly, in my opinion, Sloan has not established he has standing by way of the public interest exception.

For the same reason, in my opinion, Sloan also lacks taxpayer standing. *See Sloan*, 356 S.C. at 549, 590 S.E.2d at 347 (citing *Beaufort Cnty. v. Trask*, 349 S.C. 522, 529, 563 S.E.2d 660, 664 (Ct. App. 2002) ("For a plaintiff to have taxpayer standing, *the party must demonstrate some overriding public purpose or concern to confer standing to sue on behalf of her fellow taxpayers*" (emphasis supplied))); *Crews*, 197 S.C. at 49, 14 S.E.2d at 357–58 ("The general rule is that a taxpayer may not maintain a suit to enjoin the action of State officers when he has no special interest and his only standing is the exceedingly small interest of a general taxpayer.").

Accordingly, I would affirm the Court of Appeals.

All Citations

421 S.C. 110, 804 S.E.2d 854

Footnotes

- 1 Sloan is a citizen, resident, taxpayer, and registered elector of South Carolina.
- 2 S.C. Const. art. X, §§ 5, 11.
- 3 SCDOT determined the bridges “are in good condition with just some minor problems.”
- 4 See S.C. Code Ann. § 57-3-110 (2006) (providing SCDOT may, upon request, assist government authorities in supervising the construction of roads and bridges under certain circumstances).
- 5 See *ATC S.*, 380 S.C. at 199, 669 S.E.2d at 341 (“Of course zoning is a matter of public importance, but the same may be said of most legislative and executive actions.”).
- 6 We note that this Court has granted Sloan public importance standing in at least six other cases. See *S.C. Pub. Interest Found. v. S.C. Transp. Infrastructure Bank*, 403 S.C. 640, 744 S.E.2d 521 (2013) (granting Sloan public importance standing in order to consider whether the statute that governs the composition of the South Carolina Transportation Infrastructure Bank’s Board of Directors is constitutional); *Sloan v. Dep’t of Transp.*, 379 S.C. 160, 666 S.E.2d 236 (2008) (finding Sloan had public importance standing to challenge SCDOT’s alleged misuse of a statutory emergency procurement provision); *Sloan v. Hardee*, 371 S.C. 495, 640 S.E.2d 457 (2007) (applying public importance standing to decide whether certain SCDOT Commissioners were lawfully appointed); *Sloan v. Wilkins*, 362 S.C. 430, 608 S.E.2d 579 (2005) (determining Sloan was entitled to public importance standing to challenge whether an act violated the one subject provision of the South Carolina Constitution); *Sloan v. S.C. Dep’t of Transp.*, 365 S.C. 299, 618 S.E.2d 876 (2005) (holding Sloan had public importance standing to dispute the propriety of the procurement procedure SCDOT used to award contracts for certain construction projects); *Sloan v. Sanford*, 357 S.C. 431, 593 S.E.2d 470 (2004) (conferring public importance standing to determine whether the governor may hold a commission in the Air Force Reserve).
- 7 Specifically, Petitioners raised, verbatim, the following issues in their brief:
  1. When the Department of Transportation expended public funds to assist a private citizen in his dispute with the developer of a private, gated community, did the courts below err in failing to rule that the expenditure violated the South Carolina Constitution, Article X, Sections 5 and 11?
  2. When a private citizen in a dispute with the developer of a private, gated community asked the Department of Transportation for professional engineering assistance, did the courts below err in ruling that the request for assistance came from a municipality?
- 8 The majority references my “far-reaching negative consequences” statement as “[a] further indicator of the issue’s importance” justifying Sloan’s public importance standing. Not so. My comment is addressed to the impact of what I believe is the Court’s clearly erroneous decision today on the merits.
- 9 S.C. Code Ann. § 57-3-110(7) (authorizing DOT to assist local governments so long as such assistance does not interfere with DOT’s obligations to the state highway system).
- 10 School buses regularly travel the roads within Woodside Plantation, which in 2011 had approximately 4,000 residents (a population that is expected to double to 8,000 residents).
- 11 The majority also finds fault with the request for assistance from a member of the Aiken City Council. Councilman Reggie Ebner made the request via email to then-Representative Tom Young. Councilman Ebner signed the email “Reggie Ebner, City of Aiken Councilman for District 4.” Representative Young forwarded the request to DOT and referred to the councilman as a constituent. We are told the request lacked “sufficient color of authority.” I respectfully disagree.
- 12 One of the flaws in the report of the Office of the Chief Internal Auditor is the implication that DOT acted unlawfully merely because “[t]he bridges [in Woodside Plantation] are neither part of the State highway system nor are they owned or maintained by the City

of Aiken.” As discussed above, the notion that DOT’s authority and assistance may never be offered beyond “the State highway system” is contrary to section 57-3-110(7)’s express terms. Moreover, the City of Aiken clearly has an interest in ensuring the safety and integrity of privately owned bridges along public ways within its corporate limits. See *Vaughan v. Town of Lyman*, 370 S.C. 436, 442, 635 S.E.2d 631, 634 (2006) (“Our Court has long recognized that a municipality has a duty to maintain its streets. (citation omitted)); *Floyd v. Town of Lake City*, 231 S.C. 516, 522, 99 S.E.2d 181, 184 (1957) (discussing a statute allowing an individual to recover from a municipality for “damage[s] [caused] by reason of a defect in any street, causeway, bridge[,] or public way ... within the limits of any city or town” and noting a city’s “duty to maintain its streets and other public ways in reasonable repair for the purpose of travel” (citation and internal quotation marks omitted)).

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425 S.C. 350  
Supreme Court of South Carolina.

Lynne VICARY, Kent Prause, and South Carolina  
Coastal Conservation League, Petitioners,  
v.  
TOWN OF AWENDAW, and EBC, LLC,  
Defendants,  
Of whom Town of Awendaw is the Respondent.

Appellate Case No. 2016-002150

Opinion No. 27855

Heard October 17, 2018

Filed December 19, 2018

**Synopsis**

**Background:** Residents brought action against town, seeking declaratory judgment that town’s annexation of property located in national forest was void. Following bench trial, the Circuit Court, Charleston County, J.C. Nicholson, Jr., J., ruled in residents’ favor. Town appealed. The Court of Appeals, 417 S.C. 631, 790 S.E.2d 787, reversed. Residents petitioned for certiorari review, which petition was granted.

**Holdings:** The Supreme Court, Hearn, J., held that:

<sup>[1]</sup> residents credibly alleged that town engaged in nefarious conduct in purportedly complying with statute governing annexation methods and, thus, had standing to challenge town’s annexation of property, and

<sup>[2]</sup> public importance exception to general standing rules applied to provide residents with standing to challenge town’s annexation of property.

Reversed.

West Headnotes (7)

<sup>[1]</sup> **Action**

⇨Persons entitled to sue

The party seeking to establish standing has the burden of proving it.

Cases that cite this headnote

<sup>[2]</sup> **Appeal and Error**

⇨Statutory or legislative law

The interpretation of a statute is a question of law, which the appellate court reviews without any particular deference to the circuit court.

Cases that cite this headnote

<sup>[3]</sup> **Towns**

⇨Proceedings

Town residents credibly alleged that town engaged in nefarious conduct in purportedly complying with statute governing annexation methods and, thus, residents had standing to challenge town’s annexation of ten-foot wide strip of land over a mile long in national forest; because there was only one property owner at issue, namely the federal government, the town effectively used the “0% method,” which was not sanctioned as appropriate method under governing statute. S.C. Code Ann. § 5-3-150.

Cases that cite this headnote

<sup>[4]</sup> **Municipal Corporations**

⇨Proceedings to prevent or contest annexation in general

A party that can demonstrate the annexing body engaged in nefarious conduct in purportedly complying with the statute governing annexation methods has standing to challenge the annexation. S.C. Code Ann. § 5-3-150.

Cases that cite this headnote

<sup>[5]</sup> **Municipal Corporations**

⇨Proceedings to prevent or contest annexation in general

A party’s burden to demonstrate deceitful conduct in order to have standing to challenge a municipality’s annexation on the basis that the municipality engaged in nefarious conduct in purportedly complying with statutory requirements for annexation is high in light of the presumption of validity bestowed upon annexations. S.C. Code Ann. § 5-3-150.

Cases that cite this headnote

- [6] **Towns**  
⊕⇒Proceedings

Public importance exception to general standing rules applied to provide town residents with standing to challenge town's annexation of ten-foot wide strip of land over a mile long in national forest; future guidance was needed to determine the validity of town's repeated use of decade-old letter as valid petition for annexation and town allegedly did not comply with proper procedure, instead representing to public that it had received signed petition from National Forest Service when in fact it had not.

Cases that cite this headnote

- [7] **Action**  
⊕⇒Persons entitled to sue

For a court to relax general standing rules, the matter of importance must, in the context of the case, be inextricably connected to the public need for court resolution for future guidance.

Cases that cite this headnote

**\*\*601 ON WRIT OF CERTIORARI TO THE COURT OF APPEALS**

Appeal from Charleston County, J. C. Nicholson, Jr., Circuit Court Judge

**Attorneys and Law Firms**

Christopher K. DeScherer, Catherine M. Wannamaker and James Blanding Holman, IV, all of Southern Environmental Law Center, of Charleston, and W. Jefferson Leath, Jr., of Leath Bouch & Seekings, LLP, of Charleston, for Petitioners.

Newman Jackson Smith, of Nelson Mullins Riley & Scarborough, LLP, of Charleston, for Respondent.

**Opinion**

JUSTICE HEARN:

\*352 The sole question before us is whether Petitioners Lynne Vicary, Kent Prause, and the South Carolina Coastal

Conservation League possessed standing to contest Respondent \*353 Town of Awendaw's annexation of land within the Francis Marion National Forest (Ten-Foot Strip). Because the Town allegedly acted nefariously in using a decade-old letter as a petition for annexation, the circuit court found Petitioners had standing and reached the merits. The court of appeals reversed, finding Petitioners lacked standing. *Vicary v. Town of Awendaw*, 417 S.C. 631, 639, 790 S.E.2d 787, 791 (Ct. App. 2016). We now reverse, holding Petitioners have standing to challenge the annexation of the Ten-Foot Strip.

**FACTS**

The merits of this appeal concern three parcels of land, serving as links in a chain necessary to satisfy contiguity requirements of annexation. The first link, the Ten-Foot Strip, is a ten-foot wide, 1.25 mile-long parcel of land in the National Forest, which is managed by the United States Forest Service. The second link is property owned by the Mt. Nebo AME Church (Church Tract), and the third link is approximately 360 acres of unimproved real estate surrounded by the National Forest on three sides (Nebo Tract).

In the fall of 2003, the Town sought to annex the Ten-Foot Strip, which required a petition signed by the Forest Service. The Town's representatives sent the Forest Service four letters from November 2003 through February 2004 in an effort to obtain its approval. Through verbal discussions, the Town learned the Forest Service was generally opposed to annexations because of their impact on the Forest Service's ability to conduct controlled fire burns. Additionally, the Forest Service indicated any petition would likely have to come from officials in Washington D.C., a process that could take several years. Thereafter, without receiving written authorization, the Town annexed the Ten-Foot Strip. In doing so, the Town relied on a 1994 letter from a Forest Service representative, stating it had "no objection" to annexing several strips of property within the same vicinity. However, the Town realized the letter may have not clearly related to the proposed annexation, as it noted in a 2003 letter to the Forest Service, "Although we did previously receive a letter from the forest department giving Awendaw the right of way, that documentation is unclear ... We would like to clarify that you will allow the Town to annex the portion of your property that is \*354 necessary in order to annex Mt. Nebo AME Church [the Church Tract]."

Despite the 1994 letter being a decade old and ostensibly not involving the same property, in May of 2004, the Town passed the ordinance, purportedly under the 100% petition

method, claiming it had obtained a signed petition from the Forest Service. Relying on the annexed Ten-Foot Strip to satisfy contiguity, the Town passed another ordinance annexing the Church Tract after receiving a petition from church representatives.

Five years later, EBC, LLC, the owner of the Nebo Tract, requested the Town annex its property pursuant to the 100% petition method. On October 1, 2009, the Town passed an ordinance annexing the property, and simultaneously rezoned it as a “planned development” to permit residential and commercial development. In annexing the property, the Town relied on the Church Tract and the Ten-Foot Strip to establish contiguity. \*\*602 Without either component, there would be no contiguity and annexation would be impossible.

In November 2009, Petitioners filed a complaint against the Town and EBC, which they amended in April 2010, alleging, *inter alia*, the Town lacked authority to annex the Ten-Foot Strip because the Forest Service never submitted a petition for annexation. The Town and EBC moved for partial summary judgment, contending Petitioners lacked standing to challenge the annexation and regardless, the statute of limitations barred their claims. The circuit court denied partial summary judgment on both grounds, finding Petitioners had standing to challenge the Town’s annexation of the Ten-Foot Strip under the public importance exception, the Declaratory Judgment Act,<sup>1</sup> and as taxpayers. The Town appealed to the court of appeals, which dismissed as not immediately appealable. Thereafter, the Town sought certiorari from this Court, which we denied on the same ground.

In April 2014, the case proceeded to a bench trial. There, Robert Frank, a registered land surveyor, testified that the 1994 Forest Service letter referred to a different strip of land than the Ten-Foot Strip. In response, Bill Wallace, the Town’s \*355 administrator, noted the Town had used the letter at least seven times prior to the 2004 annexation of the Ten-Foot Strip, and that he believed the letter incorporated it. Further, Wallace stated that no one representing the Forest Service had ever objected to those annexations. Kent Prause, one of the Petitioners who lived about three to four miles from the Nebo Tract, testified as to the potential future harm caused by developing the property. He noted the unique species of animals, as well as the overall use and enjoyment of the National Forest, which nearby development could threaten. Additionally, development potentially threatened the Forest Service’s ability to conduct prescribed fire burnings necessary to maintain the health of the forest.

The circuit court found Petitioners had standing to

challenge the annexation, and the statute of limitations did not bar their claims. Reaching the merits, the court concluded the Town’s 2004 annexation of the Ten-Foot Strip was *void ab initio* because it never received a petition from the Forest Service. As a result, the Town’s 2009 annexation of the Nebo Tract lacked contiguity and was also *void ab initio*.

The Town appealed, arguing, *inter alia*, Petitioners lacked standing to challenge the annexation. The court of appeals agreed, concluding this Court’s jurisprudence on standing to challenge annexations pursuant to the 100% petition method afforded standing only to the State and private parties suffering from an actual infringement of their own rights. We granted certiorari to determine whether Petitioners had standing to challenge the Town’s annexation of the Ten-Foot Strip.

#### STANDARD OF REVIEW

<sup>[1]</sup> <sup>[2]</sup>The party seeking to establish standing has the burden of proving it. *Sea Pines Ass’n for Prot. of Wildlife, Inc. v. S.C. Dep’t of Nat. Res.*, 345 S.C. 594, 601, 550 S.E.2d 287, 291 (2001). Additionally, the interpretation of a statute is a question of law, which this Court reviews without any particular deference to the circuit court. *Catawba Indian Tribe of S.C. v. State*, 372 S.C. 519, 524, 642 S.E.2d 751, 753 (2007).

#### \*356 DISCUSSION

<sup>[3]</sup>Section 5-3-150 of the South Carolina Code sets forth the requirements for an annexation when either all or seventy-five percent of the landowners sign a petition to be annexed. This provision contemplates two approaches—the 75% and 100% methods. Under the 75% method,

[T]he municipality or any resident of it and any person residing in the area to be annexed or owning real property of it may institute and maintain a suit in the court of common pleas, and in that suit the person may challenge and have adjudicated any issue raised in connection with the proposed or completed annexation....

S.C. Code Ann. § 5-3-150(1)(5) (2004). Unlike the 75% method, section 5-3-150(3) does not \*\*603 contain any such language conferring standing. Instead, the provision states,

Notwithstanding the provisions of subsections (1) and (2) of this section, any area or property which is contiguous to a municipality may be annexed to

the municipality by filing with the municipal governing body a petition signed by all persons owning real estate in the area requesting annexation. Upon the agreement of the governing body to accept the petition and annex the area, and the enactment of an ordinance declaring the area annexed to the municipality, the annexation is complete. No member of the governing body who owns property or stock in a corporation owning property in the area proposed to be annexed is eligible to vote on the ordinance. This method of annexation is in addition to any other methods authorized by law.

S.C. Code Ann. § 5-3-150(3). This Court has previously addressed standing to challenge the validity of an annexation carried out pursuant to section 5-3-150. See *Ex parte State ex rel. Wilson v. Town of Yemassee*, 391 S.C. 565, 707 S.E.2d 402 (2011); *St. Andrews Pub. Serv. Dist. v. City Council of City of Charleston*, 349 S.C. 602, 564 S.E.2d 647 (2002).

In *St. Andrews*, the Court held non-statutory parties lacked standing to challenge a purportedly unauthorized annexation. 349 S.C. at 605, 564 S.E.2d at 648. The St. Andrews Public Service District challenged the City of Charleston's annexation of roadways, which the City used to achieve contiguity with six other parcels of land. *Id.* at 604, 564 S.E.2d at 648. The \*357 District did not have an interest in the property, but it claimed the annexation was *void ab initio*, thereby conferring standing. *Id.* Importantly, prior to *St. Andrews*, a "stranger" to an annexation had standing to challenge acts that were "absolutely void, i.e., not authorized by law." *Quinn v. City of Columbia*, 303 S.C. 405, 407, 401 S.E.2d 165, 167 (1991), *overruled by St. Andrews*, 349 S.C. 602, 564 S.E.2d 647. However, in *St. Andrews*, the Court ended this exception, finding the better policy was to limit "'outsider' annexation challenges to those brought by the State 'acting in the public interest.'" *St. Andrews*, 349 S.C. at 605, 564 S.E.2d at 648. In doing so, the Court held "the only non-statutory party which may challenge a municipal annexation is the State, through a quo warranto action." *Id.*

Nine years later, in *Town of Yemassee*, this Court addressed a similar challenge where the petitioners would have had standing under the 75% method, but not under the 100% method. There, the annexed land included marshlands—property held by the State under the public trust doctrine. 391 S.C. at 569, 707 S.E.2d at 404. The town purported to annex the territory pursuant to the 100% petition method after receiving signatures from "all" the landowners, despite lacking one from the State. *Id.* Residents of the town challenged the annexation, claiming they had standing to contest the *method* used by the town—either

the 100% or 75% method. *Id.* at 573, 707 S.E.2d at 406. The residents contended they were entitled to present evidence that the town failed to comply with the 100% method in order to show that they had standing pursuant to the 75% method. *Id.* This Court disagreed, holding despite the defect in the annexation under the 100% method, the residents lacked standing. Specifically, the Court held:

We reject the suggestion that the perceived merits of the underlying claim may influence the standing determination. This basic principle defeats the Private Party Appellants' claim.

The ordinance recites that the annexation was achieved using the 100% petition method. If we went behind that assertion without a proper plaintiff, we would be inviting a sliding scale for standing: the more meritorious a claim appears, the more relaxed the standing requirement would be. We rejected such reasoning when we overruled *Quinn v. City of Columbia*. See \*358 *St. Andrews Public Service District*, 349 S.C. at 605, 564 S.E.2d at 648 (overruling the *Quinn* rule that a stranger to an annexation may challenge the annexation if the ordinance is "absolutely void"). Adhering to our precedent, we must determine standing without regard to the merits of the underlying claim.

*Id.* at 573–74, 707 S.E.2d at 407. While the Court rejected a sliding scale approach to standing, significantly, there was no contention the Town of Yemassee acted nefariously.

Although *St. Andrews* and *Town of Yemassee* set forth the general framework for \*\*604 resolving questions of standing pursuant to section 5-3-150, those cases are premised on a good faith attempt by the annexing body to comply with the statutory requirements. As we noted in *Town of Yemassee*, the 100% method, with less stringent conditions than the 75% method, is "readily understood in light of the requirement that all property owners in the annexed area consent by signing the annexation petition." *Id.* at 572, 707 S.E.2d at 406 (emphasis in original). Unlike the 75% method, the 100% method does not contain a notice provision or an authorization for third parties to challenge the annexation. Again, this makes sense because the 100% method is a "fast track" scheme available "only when all of the property owners consent." *Id.* Therefore, the Court's rejection of a "sliding scale" approach to a standing analysis remains good law when there is no allegation of nefarious conduct by the annexing body.

We do not believe the General Assembly intended to preclude standing where there is a credible allegation that the annexing body engaged in deceitful conduct. The contrary view would eviscerate section 5-3-150's

requirements for a valid annexation and would allow an annexing body to shield itself from outside challenges by simply claiming it is employing the 100% method when it is not actually doing so. In order to benefit from the limited standing applicable in section 5-3-150, there must be a good faith attempt to comply with its provisions. Because there is only one property owner here—the United States Government—we agree with the circuit court that the Town effectively used the “0% method,” which, of course, is not sanctioned as an appropriate method in the Code.

[4] [5] We hold today a party that can demonstrate the annexing body engaged in nefarious conduct in purportedly \*359 complying with section 5-3-150 has standing to challenge the annexation. While we carve out an exception to the general framework adopted by *St. Andrews* and *Town of Yemassee*, we note a party’s burden to demonstrate deceitful conduct in order to have standing is high in light of the presumption of validity bestowed upon annexations. *City of Columbia v. Town of Irmo*, 316 S.C. 193, 196, 447 S.E.2d 855, 857 (1994) (“There is a presumption in favor of regularity in annexation proceedings.”).

[6] [7] The circuit court concluded Petitioners also had standing under the public importance exception, which confers standing to a party “when an issue is of such public importance as to require its resolution for future guidance.” *ATC S., Inc. v. Charleston Cty.*, 380 S.C. 191, 198, 669 S.E.2d 337, 341 (2008). **The linchpin of the public importance exception is the need for future guidance.** In ascertaining the parameters of such need, while noting that the framework is not inflexible, we have repeatedly cautioned against its routine use. In this respect, our jurisprudence has tended to favor the former, leading to the doctrine’s expansive reach. However, we reiterate the need for “future guidance” is the key to transcending a purely private matter and rising to the level of public importance. *Id.* at 199, 669 S.E.2d at 341. Stated precisely, “For a court to relax general standing rules, the matter of importance must, *in the context of the case*, be inextricably connected to the public need for court resolution for future guidance.” *Id.*

The need for future guidance is nothing new, as we have previously conferred standing in such contexts. *See Baird v. Charleston Cty.*, 333 S.C. 519, 531, 511 S.E.2d 69, 75 (1999) (holding the need for future guidance existed where doctors alleged a county committed *ultra vires* acts when issuing hospital bonds); *Ashmore v. Greater Greenville Sewer Dist.*, 211 S.C. 77, 44 S.E.2d 88 (1947) (noting questions of public interest should be answered where

future guidance is needed to resolve the issue before the court). **Like the county in *Baird* and the governmental entity in *Ashmore*, future guidance is needed to determine the validity of the Town’s repeated use of the 1994 letter as a valid petition. Indeed, the town administrator testified that the Town had repeatedly used the 1994 letter without objection and fully intended to use it again in the future if necessary. Therefore, \*\*605 Petitioners have satisfied \*360 the “future guidance” prong of the public importance exception.**

While this Court has previously declined to utilize the public importance exception in a zoning and annexation dispute, the unique facts present here compel a contrary decision. *See ATC S., Inc.*, 380 S.C. at 200, 669 S.E.2d at 341 (holding the public importance exception did not apply in a zoning dispute where the “local government followed proper procedure and rezoned a single piece of property for a narrow purpose and the only complaint comes from a nonadjoining landowner which just happens to be a competitor”); *Quinn v. City of Columbia*, 303 S.C. 405, 407, 401 S.E.2d 165, 167 (1991) (rejecting the notion that challenging an annexation was a matter of sufficient public importance to confer standing), *overruled by St. Andrews*, 349 S.C. 602, 564 S.E.2d 647. Unlike the local government in *ATC*, the Town allegedly did not comply with the proper procedure, instead representing to the public that it had received a signed petition from the Forest Service when in fact it had not.

We recognize this Court’s jurisprudence has historically carved a narrow avenue to challenge annexations carried out under the 100% method. However, when an annexing body arguably engages in underhanded conduct, it becomes subject to a lawsuit challenging its compliance with the petition method used to carry out the annexation. Accordingly, we **REVERSE** and remand to the court of appeals to address the Town’s remaining arguments.

**REVERSED.**

BEATTY, C.J., KITTREDGE, FEW and JAMES, JJ., concur.

All Citations

425 S.C. 350, 822 S.E.2d 600

Footnotes

- 1 S.C. Code Ann. Code Ann. § 15-53-30 (2005).

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WHEN IT'S WORTH FIGHTING FOR

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SERVING S.C. AND N.C.

October 1, 2019

The Honorable Jenny Abbott Kitchings  
Clerk of SC Court of Appeals  
PO Box 11629  
Columbia, SC 29211

**RECEIVED**  
OCT 07 2019  
SC Court of Appeals

Re: *South Carolina Public Interest Foundation et al. vs. The City of Columbia, et al*  
Appellate Case No. 2017-000617

Dear Ms. Kitchings:

Appellants write pursuant to SCACR 208(b)(7) to bring to the Court's attention authorities that have come to their attention since the filing of the initial briefs.

The City of Columbia stated that the City Resolution allowing "the inclusion of student housing real property in the Richland County Multi-County Business Park" was "sunsetting on December 31, 2015." City's Brief, p. 8

The following authorities demonstrate that the City of Columbia has taken many actions on this issue since the "sunsetting."

1. Columbia City Council Resolution No. R-2018-040, dated May 15, 2018, "removes the sunset of the tax credit . . . for consideration of inclusion in a Multi-County Industrial Park" (emphasis added).
2. Columbia City Ordinance No.: 2018-022, dated June 5, 2018, consents "to the inclusion of Property in a Multi-County Industrial/Business Park." This is for the "Reign Living, LLC, . . . a privately owned student housing development" on Shop Road, near Williams-Brice Stadium.
3. On September 18, 2018, the City of Columbia adopted new criteria for projects or properties that could be included in the Industrial Park. Columbia City Council Resolution No. R-2018-094.
4. On October 2, 2018, the City repealed all the prior ordinances relating specifically to the inclusion of student housing in the Industrial Park. Columbia City Council Resolution No. R-2018-099.

5. On December 4, 2018, the City Council adopted a Resolution modifying the requirements of Resolution R-2018-094, for inclusion in the Industrial Park. Columbia City Council Resolution No. R-2018-108.

(copies enclosed).

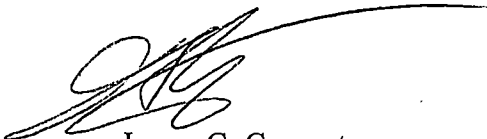
The cumulative effect of these resolutions appears to be that the City of Columbia is again allowing student housing to be included in the Industrial Park, provided the project complies with the most recent criteria. In other words, the sunseting did not last. (In addition, the private student housing projects continue to enjoy the 50% credits.)

Appellants also bring to this Court's attention two recent cases from the Supreme Court addressing Appellants' public importance standing, and the "need for future guidance." Appellants' Final Brief, pp. 19-22 addresses this issue. The Brief of Respondents Richland County and Fairfield County addresses this issue on pp. 25-26. Appellants enclose copies of the cases, with the relevant sections in bold and underlined.

1. *South Carolina Public Interest Foundation v. South Carolina Department of Transportation*, 421 S.C. 110, 804 S.E.2d 854 (2017);
2. *Vicary v. Town of Awendaw*, 425 S.C. 350, 822 S.E.2d 600 (2018).

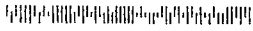
If you need anything else, please telephone me. Thank you very much.

Sincerely yours,  
THE CARPENTER LAW FIRM, PC



James G. Carpenter

CC w/ encl: Burnet R. Maybank III  
Ray N. Stevens/ Ray Jones



THE CARPENTER LAW FIRM, P.C.  
219 EAST NORTH STREET GREENVILLE, SC 29601

RECEIVED  
OCT 07 2013  
SC COURT OF APPEALS

The Honorable Jenny Abbott Kitchings  
Clerk of SC Court of Appeals  
PO Box 11629  
Columbia, SC 29211