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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Erin D. Dean, Special Referee

CASE NO.: 2019-CP-07-00818
APPELLATE TRACKING NO.: 2021-00321

Mare Baracco,…….. Appellant/Respondent,

v.

County of Beaufort,…….. Respondent/Appellant.

RECORD ON APPEAL
VOLUME 1

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County's redacted e-mails Bate Stamped pages 220, 221, and 255

NOTE: Un-Redacted documents, County's 1-4, supplied by Respondent/Appellant in separate volume for *in camera* examination.

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Beaufort
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2019CP0700818

Mare Baracco
PLAINTIFF(S)

Beaufort County Of
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT**. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☑ **DECISION BY THE COURT**. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **STAYED DUE TO BANKRUPTCY**

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☑ Statement of Judgment by the Court:

This matter is assigned to the Hon. Perry M. Buckner for disposition to include but not limited to establishing a scheduling order pursuant to SC Code Ann. Section 30-4-100.

ORDER INFORMATION

This order ☐ ends ☑ does not end the case. ☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 05/28/2020 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

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Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

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Beaufort Common Pleas

Case Caption: Mare Baracco VS Beaufort County Of

Case Number: 2019CP0700818

Type: Order/Electronic Form 4

IT IS SO ORDERED>

s/D.L. Jefferson Chief Administrative Judge 2128

ELECTRONICALLY FILED - 2020 Jun 03 8:03 AM - BEAUFORT - COMMON PLEAS - CASE#2019CP0700818

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BEAUFORT	)	CASE NO. 2019-CP-07-00818
	)	
MARE BARACCO,	)	
	)	
Plaintiff,	)	
	)	
v.	)	**ORDER**
	)	
COUNTY OF BEAUFORT;	)	
	)	
Defendant.	)	

THIS MATTER came before the Court on 06/02/2020, for a videoconference Hearing being held pursuant to S.C. Code. Ann. 30-4-100(A) as a result of the filing of Plaintiff's Amended Complaint. Present via videoconference was Plaintiff, Mare Baracco and her counsel Tommy Goldstein, counsel for the Defendant, Richardson LaBruce was also present via videoconference. The court reporter was also present via videoconference and was Mona Manley.

This action has been delayed since the initial filing because of the health of Tommy Goldstein, attorney for the Plaintiff. Mr. Goldstein informed the Court via letter on January 21, 2020 that he was healthy enough to resume and appreciated the courtesies that the Court had shown him and his client. This Court did not receive Defendant's Reply Memorandum until the day before this Hearing took place, and received Plaintiff's Reply thereto the morning of this hearing. This Court is unable to make any type of final ruling at the initial hearing.

Therefore, in order to establish a scheduling order to conclude this action, this Court hereby appoints Beaufort County Bar member, Erin Dean, pursuant to Rule 53, SCRCP, as Special Referee for all of the causes of action in this case as this is a document intensive case and the documents are located in Beaufort County.

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The Plaintiff shall notify the Special Referee within 15 days of the date of this Order which documents the Plaintiff is requesting and which requests are in dispute and provide a copy of this to opposing counsel.

The Defendant shall notify the Special Referee within 30 days of the date of this Order with any objections under S.C. Code Ann. 30-4-40 that Defendant has to the records being requested and shall copy opposing counsel. Defendant shall further notify the Special Referee within 30 days of the date of this Order the exact fee the County intends to charge for the requests with an hourly rate and the reasons for the charges. The Special Referee shall then decide the reasonableness of the fee, and whether or not any of the exceptions under the applicable FOIA statue apply. The Defendant is to notify the Special Referee within 30 days of the date of this Order of the physical location of the actual documents for inspection should the Referee feel the need to inspect in lieu of having numerous electronic copies of the documents forwarded to the Referee. The Special Referee will then advise all counsel of record if she intends to view the actual documents. Both parties have the absolute right to watch the Special Referee review the actual documents, but leave is given for the Special Referee to review the actual documents without anyone present if counsel consents. The Special Referee will then conduct a hearing, which can be via Webex, on the merits of this action once she has had the chance to review the documents. Each party shall bear one half the costs of the Special Referee and will copy opposing counsel on all transmittals to the Special Referee.

IT IS SO ORDERED.

[JUDGE'S SIGNATURE PAGE TO FOLLOW]

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Beaufort Common Pleas

Case Caption: Mare Baracco VS Beaufort County Of

Case Number: 2019CP0700818

Type: Order/Other

It is so Ordered

s/ Perry M Buckner III 2122

ELECTRONICALLY FILED - 2020 Nov 13 10:26 AM - BEAUFORT - COMMON PLEAS - CASE#2019CP0700818

STATE OF SOUTH CAROLINA)	**IN THE COURT OF COMMON PLEAS**
)	**FOURTEENTH JUDICIAL CIRCUIT**
COUNTY OF BEAUFORT)	**CASE NO.: 2019-CP-07-00818**
)	
MARE BARACCO,)	
)	
Plaintiff,)	
)	**ORDER**
-versus-)	
)	
COUNTY OF BEAUFORT)	
)	
Defendant.)	
)	

This matter came before me as appointed Special Referee pursuant to Rule 53, SCRCP and by Order of this Court issued the Honorable Perry M. Buckner, III dated June 3, 2020. Under the terms of the Order, I was directed to review four (4) separate Freedom of Information Act (hereinafter "FOIA") requests submitted by the Plaintiff Mare Baracco to the Defendant County of Beaufort and the responses to the same – of note, FOIA No. 2 was subsequently rendered as moot. The FOIA responses provided to Plaintiff and the Court contained Privilege Logs which set forth the bates label of the documents and the particular exclusion that the Defendant claimed were exempt from disclosure pursuant to S.C. Code Section 30-4-40 (Court's Exhibits 1, 2 and 3). The Defendant also provided to the Court the un-redacted versions of the documents for an *in camera* review pursuant to the Court's June 3, 2020 Order (Court's Exhibit 4, retained by Special Referee). It must be noted that Defendant has not produced the documents responsive to FOIA No. 4 to Plaintiff or the Court upon agreement by the parties to delay the production of those documents pending the outcome of the Court's ruling relative to production of FOIA requests No. 1 and No. 3. All documents were submitted electronically. The Order further required the

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conduct of a Merits Hearing after the review of the submitted records was complete. Prior to the Merits Hearing, the Court instructed counsel for the Defendant to remove the redactions relative to the "to/from" lines on the emails produced so that the distribution list would be available to Plaintiff. Thereafter, the Defendant produced revised redacted documents in response to FOIA No.1 (with bates labels County FOIA#1 000001-County FOIA #1 000306 as redacted/removed) and FOIA No. 3 (with bates labels County FOIA #3 000001-County FOIA #3 0006667 as redacted/removed) (Court's Exhibit 3). The Privilege Logs for each set remained the same (Court's Exhibits 1 and 2).

The Merits Hearing was conducted virtually via the Lifesize streaming program supplied by the Court Reporting service on September 25, 2020. Appearing at the hearing was Plaintiff, Mare Baracco, with her attorney, Thomas R. Goldstein, and E. Richardson LaBruce on behalf of the Defendant. The Court Reporter, Mackenzie R. Allen, also appeared remotely. The parties submitted a Joint Exhibit List which set forth twenty-three (23) exhibits that were entered into evidence by consent of the parties. The Court submitted six (6) Court's Exhibits into evidence to include the revised FOIA responses and the un-redacted versions of the responses. Based on the testimony of the Plaintiff, the arguments of counsel, the pleadings and exhibits filed to date, I make the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This case involves a dispute under the South Carolina Freedom of Information Act (FOIA), S.C. Code Ann. Sections 30-4-10, *et seq.* Prior to the initiation of the current law suit, Plaintiff Mare Baracco, a citizen and resident of Beaufort County, submitted four (4) FOIA requests to Beaufort County that are the subject of this litigation: February 10, 2019 (Bostick

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Circle and 429 Broad River Road, October 8 2018 Community Services Meeting)(Joint Exhibit 1); March 10, 2019 (Emails 2013 through Present)(Joint Exhibit 4); March 18, 2019 (narrowing the March 10, 2019 FOIA request down to four email addresses)(Joint Exhibit 6); and March 31, 2019 (Alice Howard emails)(Joint Exhibit 8).

Defendant Beaufort County acknowledged each request and provided the estimated total of the fees for responding to each request (Joint Exhibits 2, 5, 7 and 9). As to the February 10, 2019 FOIA Request (FOIA Request No. 1, Beaufort County case #2019-000231), the Defendant requested a deposit of $124.66 as a condition of fulfilling the request which was paid by the Plaintiff (Joint Exhibit 22, a portion of check number 4801 dated 2.21.19 in the amount of $144.66). Defendant Beaufort County produced the documents responsive to FOIA No. 1 on March 21, 2019. At the same time, Defendant Beaufort County refunded $53.66 back to the Plaintiff due to its overestimating the initial costs of production. Defendant Beaufort County requested a 25% deposit of the estimated $12,079.00 cost for producing the response to the March 10 2019 FOIA request (FOIA Request No. 2, Beaufort County Case #2019-000385). The $3,019.75 deposit was never paid by the Plaintiff. She did request an explanation of the charges and subsequently narrowed her request down to four email addresses and encompassed the request into the March 18, 2019 FOIA request (FOIA Request No. 3, Beaufort County Case #2019-000459). Defendant Beaufort County requested a 25% deposit of $152.82 prior to producing the records. This deposit was not paid by Plaintiff. With regard to the final FOIA request under consideration in this case, Defendant Beaufort County requested a 25% deposit in the amount of $1,617.14 in advance of responding to the March 31, 2019 FOIA request (FOIA request No. 4, Beaufort County Case #2019-000575). This deposit was not paid by the Plaintiff.

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On April 10, 2019, Plaintiff filed the instant suit seeking a declaratory judgment, injunctive relief and an award of attorney's fees pursuant to the *South Carolina Freedom of Information Act* (hereinafter "the Act"), specifically S.C. Code Ann. Section 30-4-100. An Amended Complaint was filed on June 27, 2019. Plaintiff asserts that the Defendant Beaufort County redacted documents in violation of the Act and that the fees charged were done as a pretext designed to thwart Plaintiff's rights to public information. Defendant Beaufort County argues that the redactions were proper under the Act and that estimated fees were reasonable and determined pursuant to the statute.

I. REASONABLENESS OF FEES CHARGED

S.C. Code Ann. Section 30-4-30(B) establishes the framework for the establishment and collection of reasonable fees "not to exceed the actual cost of the search, retrieval and redaction of the records." *Id.* The Act requires the public body to post the fee schedule online and that any such fees "for the search, retrieval, and redaction of records shall not exceed the prorated hourly salary of the lowest paid employee who, in the reasonable discretion of the custodian of the records, has the necessary skills and training to perform the request." *Id.* The Act goes on to state that "[f]ees may not be charged for examination and review to determine if the documents are subject to disclosure." *Id.* Finally, the Act does provide that a "deposit not to exceed twenty-five percent of the total reasonably anticipated cost for reproduction of the records may be required prior to the public body searching for or making copies of records." *Id.*

Plaintiff testified with regard to the FOIA requests and responses to the same and confirmed that she had paid a total of $71.00 for the documents responsive to FOIA Request No.1 (She originally paid the $124.66 deposit and was refunded $53.66 by the Defendant) and

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that no additional funds had been paid for deposits for any of the requests. In correspondence prior to the hearing, counsel for Plaintiff agreed that they were not contesting the reasonableness of the charges for FOIA No. 1 since the fee was *de minimus*-however, the Plaintiff contests the original fee schedules for each of the four FOIA requests as being in violation of the mandates of S.C. Code 30-4-30(b) of the Act. There was no breakdown of fees charged for FOIA No. 1 entered into the record.

With regard to the original fee estimate for responding to FOIA No. 2, the Defendant listed $72.00 per hour for IT to search and compile emails with an estimated 167 hours to complete the task and an additional $16.00 per hour for Records Management to compile and redact emails for an estimated 3hours for a total of $12,079.00. As previously indicated, after receiving an explanation from the Defendant for the charges, the Plaintiff limited to the scope of the request and submitted FOIA No. 3 which encompassed the previous request, making FOIA No. 2 and its estimated charges moot.

With regard to FOIA No. 3, Plaintiff was advised by Defendant that the estimated cost was $611.26 with a requested deposit of 25% in the amount of $152.82. This included estimated fee of IT to search and compile emails at $49.07 per hour, 8 hours estimated for Legal/Admin to sort emails at $72.00 per hours and $16.00 per hour for Records Management to redact and compile mails (Joint Exhibit 7). However, Plaintiff further narrowed her request after the hearing with Judge Buckner such that a new fee estimate was generated for a total of $71.00 which was $30.00 per hour for IT Department to conduct archival search of e-mails and $14.00 per hour for Records Management to retrieve emails, convert to legible form and to compile documents. The revised cost breakdown also lists a fee of $72.00 per hour for Legal Department of record with a

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note that states Plaintiff is not being charged this fee since the production is a result of a Court Order. Again, Plaintiff has confirmed she is not disputing the total charged since it is *de minimus*, but is disputing the fee schedule as being in violation of the Act.

Finally, with regard to FOIA No. 4, the Defendant provided an estimate for that production which included an hourly rate for the IT Department to conduct an archival search of emails at $30.74 per hour, $72.00 per hour for Legal Department to sort emails and a charge of $16.00 for Records Management to compile and redact emails for a total estimated fees of $1617.14 with a 25% deposit due of $404.29. After the litigation was filed and in response to the Special Referee's inquiry regarding the estimated cost for the production of documents responsive to FOIA No. 4, Defendant indicated that upon inquiry by the Special Referee at to the cost, Defendant provided estimated costs as follows: $33.19 per hour for IT Department to conduct archival search of e-mails, $16.48 per hour for Records Management to retrieve e-mails, convert to legible form and compile documents and $72.00 per hour for Legal Department redaction of documents (but again lists the Legal Department's time and total as not applicable since the production is a result of a Court Order) for a total estimated cost of $389.99. The Court cannot help but note that the Defendant Beaufort County website does not list the specific fee schedule by Department for Research/Labor but rather states "[b]ased on department; typically no less than an hourly rate of $14.00 including time/labor to research, scan, compile and redact as necessary. The Court would also note that although the four (4) FOIA requests were made from February 10, 2019-March 31, 2019, the amounts of the fees per hour charged are not consistent for the IT department and the Record Management departments performing the work. For example, the hourly rate for the IT department in response to FOIA No. 3 was originally

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listed as $49.07 per hour, but this figure was reduced to $30.00 per hour after the scope was revised following the hearing with Judge Buckner. The same department, IT, listed an hourly rate of $30.74 with regard to the production of documents in response to FOIA No. 4 and then an increase to $33.19 in response to the Court's inquiry in 2020 indicating that was the current rate for the IT department. Additionally, when comparing the charges for Record Management across the four requests, the fees fluctuated from $16.00 per hour down to $14.00 per hour and up again to $16.48 per hour in 2020. The varying rates across the same Departments for responses requested within a month of the other are problematic in light of the mandate of the Act requiring the fees for such activities not to exceed the "prorated hourly salary of the lowest paid employee, who, in the reasonable discretion of the custodian of records, has the necessary skill and training to perform the task." S.C. Code Ann. Section 30-4-30(B) (as amended). Perhaps more problematic is the original attempt by the Defendant to charge the Plaintiff for work performed by its Legal Department in reviewing and redacting the records in response to FOIA No. 3 and 4 (and perhaps FOIA No. 2 since the rate listed, $72.00, is the consistent rate charges for the Legal Department, not IT). The Act is clear that the public shall not be charged fees for the "examination and review to determine if the documents are subject to disclosure" *Id.* Therefore, any attempt to charge fees by the Defendant's Legal Department were inappropriate under the act.

Although it appears that the estimated fee schedules originally provided to the Plaintiff in response to her four FOIA requests may not have complied with the mandates of S.C. Code Ann. Section 30-4-30(B), because the Plaintiff did not pay the requested deposits for FOIA No. 2 (now moot), 3 or 4, nor is she contesting the reasonableness of the fee she paid relative to FOIA

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No. 1, I find that the Plaintiff has suffered no damages as a result of the Defendant's estimated fee calculations. Further, since the Defendant has removed the charges for the Legal Department relative to FOIA No.'s 3 and 4 prior to the Plaintiff paying either the deposit or the estimated fess, I find there has been no violation of the Act relative to the fees.

II. WERE THE DEFENDANT'S REDACTIONS TO THE FOIA RESPONSES APPROPRIATE UNDER THE ACT?

It has been the long standing law of this State that "public business be performed in an open and public manner so that citizens shall be advised of the performance of public officials and of the decisions that are reached in public activity and in the formulation of public policy." S.C. Code Ann. Section 30-4-15. "The essential purpose of FOIA is to protect the public from secret government activity." *Lambries v. Saluda County. Council.* 409 S.C. 1, 8-9, 760 S.E. 2d 785, 789 (2014). S.C. Code Ann. Section 3-4-40 provides matters that may be exempt from disclosure at the discretion of the public body. "Whether a record is exempt from disclosure depends on the particular facts of the case." *Glassmeyer v. City of Columbia,* 414 S.C. 213, 219, 777 S.E.2d 835, 839 (Ct. App. 2015)(citations omitted). "Underlying each case, however, is the principle that the exemptions in Section 30-4-40 of the South Carolina Code (2007) are to be narrowly construed so as to fulfill the purpose of the FOIA." *Id.* "The burden of proving that an exemption exists lies with the government." *Evening Post Publ'g Co. v. City of North Charleston*, 363 S.C. 452, 457, 611 S.E. 2d 496, 499 (2005). In the instant case, every redaction, with the exception of one, was listed under the Defendant's Privilege logs as being exempt under S.C. Code Ann. 30-4-70(a)(7) as being "[c]orrespondence or work products of legal counsel for a public body" and "material that would violate attorney-client relationships" (Court's Exhibits 1 and 2). There was one document relative to FOIA request No. 3 that was also redacted based on

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attorney-client privileged materials as well as S.C. Code Ann. Section 30-2-310(C) (social security number, driver's license number) and S.C. Code Ann. Section 30-4-40(a)(2)(items of a personal nature)(Court's Exhibit 2, document bearing bates labels 000139-000140). Plaintiff has raised the issue as to whether or not the redactions were appropriate for several reasons. First, whether the reactions made on the basis of attorney-client privilege involve legal advice or analysis as required under the Act; second, whether the redactions that took place from July 20, 2018 - October 15, 2018 when in house counsel also served at the Interim County Administrator were improperly made (i.e. did they involve legal analysis which would be a protected exemption or administrative functions which would not be a protected exemption); and third, whether or not the documents involved correspondence with "non-clients" such that the attorney-client exemption was waived. Each issue will be explored separately below.

A. Was the information redacted from the FOIA responses, and as explained on the respective Privilege Logs, related to legal advice and therefore protected by the attorney-client privilege?

The South Carolina Supreme Court has long held that in order for a communication to be protected under the attorney-client privilege, the information exchanged must involve a request for legal advice. *Branden &Nether v. Gowing*, 7 Rich. 459 (S.C. 1854). Our Supreme Court has also stated that the attorney-client privilege exists

> 1) [w]here legal advice of any kind is sought (2) from a professional legal adviser In his capacity as such, (3) the communications relating to that purpose (4) Made in confidence (5) by the client, (6) are at his insistence permanently protected (7) from disclosure by himself or by the legal advisor, (8) unless the protection is waived.

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Tobaccoville USA, Inc. v. McMaster, 692 S.E.2d 526, 529-530 (2010).

> In order to establish the attorney-client relationship, it must be shown that the relationship between the parties was that of attorney and client and that the communications were of a confidential nature. The communication involved must relate to a fact of which the Attorney was informed by his client without the presence of Strangers for the purpose of securing primarily either an opinion On law or legal services or assistance in some legal proceeding. The Attorney-client privilege also applies to communications originating From the lawyer rather than from the client. When the attorney communicates To the client, the privilege applies only if communication is based on confidential Information provided by the client. The attorney-client privilege, though, does not protect communications with non-clients.

Marshall v. Marshall, 282 S.C. 534, 538-539, 320 S.E. 2d 44,46-47 (Ct. App. 1984)(citations omitted). Additionally, "[a]ny voluntary disclosure by a client to a third party waives the attorney-client privilege not only as to the specific communication disclosed but also to all communication between the same attorney and the same client on the same subject." *Id. at 538.*

The *in camera* review of the un-redacted documents revealed that the documents contained email exchanges between Beaufort County officials/staff and County Attorney, Thomas J. Keaveny, II (hereinafter "Keaveny") or, with regard to the items relative to FOIA request No. 1, Thomas A. Bendle, Jr. Beaufort County's outside counsel employed with the Law Firm of Howell, Gibson, and Hughes, P.A. However, as the parties are aware, the inquiry does not stop there. In order to maintain its status as a privileged document, the exchange must be in regards to legal advice in order for the exemption under FOIA to apply.

A thorough review by this Court of the 167 pages of documents produced in response to FOIA No. 3 revealed that the majority of the redactions did pertain to legal advice received from Keaveny. A few exceptions were found, namely, bates label County FOIA #3_000140 (which was an attachment to FOIA #3_000139 from a third party). This is also the document that was

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claimed as exempt pursuant to S.C. Code 30-2-310 (C), social security number and drivers license number, and 30-4-40(a)(2), items of a personal nature in addition to the attorney-client/work product exemption. During the hearing, in response to inquiry from the Court, Beaufort County confirmed the individual was one of the three final candidates pursuant to S.C. Code Ann. 30-4-40(a)(13), and therefore, hold that the complete redaction of 000140 was in error. Accordingly, the Court directs Beaufort County to provide 000140 with the redaction only for the content included below the signature line and date of the document. The email found on County FOIA No. 3_149 was from Sarah McKee of GovHRUSA to Keaveny and Sue Rainey. Since GovHRUSA is a non-client of Beaufort County, the email should not have been redacted. It is noted that there was no attachment to the email in the un-redacted materials. In that other emails from Ms. McKee were produced to Plaintiff in un-redacted form, it is inferred that this particular redaction was an oversight by the Defendant in that it landed in the middle of appropriately redacted attorney-client privileged correspondence. The emails found on FOIA No. 3_00175-179 that include Elizabeth Ryan of South Carolina Emergency Management Department should be produced to Plaintiff in un-redacted form as well since she is employed by an agency outside of Beaufort County.

After a careful review of the un-redacted documents produced to the Court with regard to FOIA No. 1, with the exception of the documents that include Debra Regecz as further discussed below, I find the remaining redactions appropriate and subject to exemption pursuant to S.C. Code. Ann. 30-4-40(a)(7).

B. Is the email correspondence dated July 20, 2018-October 15, 2018, properly redacted pursuant to SC Code Ann. 30-4-40(a)(7) in that Keaveny was both the County Attorney and the Interim County Administrator during this time period.

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The parties stipulated that Keaveny was employed by Beaufort County as both County Attorney and Interim County Administrator from July 20, 2018-October 15, 2018. Plaintiff correctly argued that if Keaveny was serving in his capacity as Interim County Administrator in any of the emails that were subject to the FOIA production during the roughly three month period identified above, those documents would not be exempt from disclosure pursuant to the attorney-client privilege protection under the Act. The only documents subject to production in FOIA No. 1 and FOIA No. 3 that fell in the time frame where Keaveny was acting in a dual capacity were CountyFOIA#1_000273 and CountyFOIA#3_000155-CountyFOIA#3_000168. Beaufort County produced CountyFOIA#3_000155-CountyFOIA#3_000168 without redaction. Therefore, the only document which need be reviewed for exemption purposes is CountyFOIA#1_000273. As discussed above, if the communication's primary purpose is to provide legal advice, then the redaction was appropriate under the Act. As indicated in the Privilege log provided by Beaufort County pursuant to Judge Buckner's instructions, this communication was between the retained agent and a County employee which included an email in the chain from Keaveny with regard to legal advice surrounding a potential contract. Keaveny was clearly acting in his role as County Attorney as the email in the chain which included Keaveny was dated December 21, 2107, prior to his undertaking both roles with the County. However, the inquiry with regard to this particular document does not stop there since it involves the status of the retained real estate agent as discussed in detail in Section C below.

C. Does the inclusion of the County's retained real estate agent, Debra Regecz of Ballenger Realty Company, waive the asserted attorney-client protection as found under the Act.

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As referenced herein, correspondence which includes third parties waives the attorney-client privilege. See *Marshall v. Marshall*, 282 S.C. 534, 320 S.E.2d 44 (Ct. App. 1984). Therefore in order to determine whether or not the inclusion of Debra Regecz in certain email correspondence waives the asserted attorney-client privilege, a determination of her status as a "privileged person" must be made. There are generally three categories of people who are considered privileged persons: (1) the client or prospective client, (2) the lawyer; and (3) the agents of the client and lawyer. Restatement (Third) of the Law Governing Lawyers Section 70 (2000). In the instant case, the only consideration is whether or not Ms. Regecz is an agent of the client and lawyer. Neither party could produce any South Carolina law directly on point with regard to this issue (although Beaufort County did cite a Colorado case, *Alliance Constr. Solutions, Inc. v. Dep't of Corr., 54 P.3d 861, 867, 870-71(Colo. 2002),* which held that an independent contractor of a government agency was the functional equivalent of an employee for purposes of privilege).

S.C. Code Ann. 40-57-370 (E) states in pertinent part:

> For all real estate transactions, no agency relationship between a buyer, seller, landlord or tenant and a real estate brokerage firm and its associated licensees exists unless the buyer, seller, landlord, or tenant and the brokerage company and its associated licenses agree, **in writing,** to the agency relationship. No type of agency relationship may be assumed by a buyer, seller, landlord, tenant or licensee or created orally or by implication (emphasis added).. . .

Therefore, in order for Ballanger Realty and its licensee Debra Regecz, to be an agent of Beaufort County, there must be an agreement in writing setting forth the agency relationship. Court's Exhibit No. 5, documents submitted by Beaufort County on September 25, 2020 relative to the agency issue with Ballenger Realty, did contain a Contract for Services for Beaufort County between Beaufort County and Ballenger Realty with regard to RFP No. 030217.

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Ballenger Realty is referred to as the "Contractor" in the document. Article 13 of the Contract, page 6 of 8, titled "Independent Contractor" states:

> The Contractor shall be fully independent in performing the services and shall not act as an agent or employee of the County. As such the Contractor shall be solely responsible for its employees, subcontractors, and agents for their compensation, benefits, contributions and taxes, if any.

The language of the Contract arising out of the RFP specifically states that the Contractor is not an agent or employee of Beaufort County. Interestingly, the Contract provided is only signed by Gary Kubic, County Administrator for Beaufort County. Regardless, unless there is a signed contract which indicates the agency relationship between Ballenger/Regecz, then under S.C. Code Ann. 40-37-370 (E), no such relationship exists. To date, Beaufort County has been unable to provide the Court with a fully executed written contract between it and Ballenger/Regecz that establishes an agency relationship. Accordingly, I find that Ballenger/Regecz is not an "agent of the client" under South Carolina law and therefore, any email that included Ms. Regecz is not subject to the attorney-client exemption under the Act.

III. ALLEGED IMPROPER MOTIVES OF BOTH PARTIES

Additionally, through the Plaintiff's testimony and the introduction of Joint Exhibits 13, 16, 17, 18, and 19, the Plaintiff presented evidence that she contends shows a history and pattern of conduct by the Defendant (and others) which drove the decisions made by the Defendant in both the redaction of the documents produced in this case as well as the fees charged. In response to those allegations, the Defendant denied the same and pointed out through cross examination of the Plaintiff that the allegations and exhibits were from 2014 and 2015 and primarily involved employees who no longer work for the Beaufort County. Likewise the Defendant asserts that the Plaintiff has a long standing practice of using FOIA requests as a retaliatory tool to harass public

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officials and to search through the public records to find anything potentially harmful for political opponents and third parties (see Plaintiff's Memorandum of Law, Defendant's Memorandum of Law, Plaintiff's Reply to County's Memorandum of Law, and the testimony of the Plaintiff on direct and cross-examination). While each party contends the other's motivations were improper, I find both positions without merit with regard to the FOIA requests before the Court for consideration (Specifically FOIA Requests No. 1, No. 3 and No. 4) as well as the Defendant's responses to the same.

IV. ATTORNEY FEES

Plaintiff has made a claim for attorney's fees under both S.C. Code Ann. Section 30-4-100 and S.C. Code Ann. 30-4-110. Plaintiff is misplaced in her assertions with regard to S.C. Code Ann. 30-4-110. That is the provision under the Act which allows the Public Body to seek relief for "unduly burdensome, overly broad, vague, repetitive, or otherwise improper requests or where it has received a request but is unable to make a good faith determination as to whether the information is exempt from disclosure." *Id.* Beaufort County asserts it was prohibited from filing a request for such a hearing when the Plaintiff modified her request from FOIA No. 2 to FOIA No. 3. Regardless, S.C. Code Ann. Section 30-4-110 is not pertinent to the relief requested by the Plaintiff. However, S.C. Code Ann. 30-4-100 does provide:

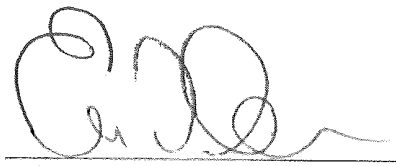
> [i]f a person or entity seeking relief under this section prevails, he may be awarded attorney's fees and other costs of litigation specific to the request. If the person or entity prevails in part, the court may **in its discretion** (emphasis added) award him reasonable attorney's fees or an appropriate portion of those attorney's fees.

Here, Plaintiff has prevailed in part, however, the issue on which she prevailed (the documents that included Regecz in the correspondence) appears to be one of first impression in South Carolina. It is very clear that the redaction of the documents that included Regecz as a recipient

under the attorney-client privilege exemption was done with a good faith belief that she was, in fact, the agent of the County and subject to protection. Accordingly, the Plaintiff's request for attorney's fees and other litigation costs is denied.

IT IS THEREFORE, ordered that the Defendant shall produce un-redacted copies of any email that includes third-part recipients to specifically include any email that includes Debra Regecz in the to/from distribution list to Plaintiff within thirty days (30) of the date of this Order. Additionally, any Post-Trial Motions shall be filed on or before December 4, 2020, unless special circumstances warrant an extension.

AND IT IS SO ORDERED.



Erin D. Dean
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erindean@tgdcpa.com
Special Referee Pursuant to The Order signed by Judge Buckner dated June 2, 2020

November 13, 2020
Beaufort, South Carolina

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STATE OF SOUTH CAROLINA)	**IN THE COURT OF COMMON PLEAS**
)	**FOURTEENTH JUDICIAL CIRCUIT**
COUNTY OF BEAUFORT)	**CASE NO.: 2019-CP-07-0818**
)	
MARE BARACCO,)	
)	
Plaintiff,)	
)	**ORDER DENYING MOTIONS FOR**
-versus-)	**RECONSIDERATION**
)	
COUNTY OF BEAUFORT)	
)	
Defendant.)	
)	

This matter came before me as appointed Special Referee pursuant to Rule 53, SCRCP and by Order of this Court issued by the Honorable Perry M. Buckner, III dated June 3, 2020. On November 13, 2020, I issued my Order ruling on the matters that were before the Court pursuant to the Order of Reference. Thereafter, Plaintiff Mare Baracco filed a Motion for Reconsideration on November 19, 2020 pursuant to Rules 59(e) and 60, of the SCRCP on several grounds. The Defendant County of Beaufort also filed a Motion to Reconsider on November 23, 2020 pursuant to Rule 59(e), of the SCRCP on two grounds as well.

After inquiry by the Court, the parties agreed that no hearing on either Motion to Reconsider was needed and that they would each respond to the other's Motions via brief. Accordingly, the Defendant Beaufort County filed its Brief in Opposition to Plaintiff's Motion to Reconsider on January 8, 2021. Plaintiff then filed her Reply to the County's Memorandum on January 18, 2021. With regard to the Defendant's Motion to Reconsider, Plaintiff filed its Memorandum in Opposition to the Defendant's Motion to Reconsider on December 17, 2021. Defendant Beaufort County's Reply to Plaintiff's Memorandum of Law in Opposition to County's Motion for Reconsideration was filed on January 15, 2021. Thereafter, Plaintiff filed a Reply to

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County's Memorandum on January 19, 2021. For the reasons set forth herein, both Motions to Reconsider are denied.

I. Plaintiff's Motion to Reconsider:

A. The use of private e-mail communications is a waiver of attorney-client privilege.

Plaintiff asserts that the use of certain County Council member's personal email addresses to communicate with the County Attorney is in violation of SC Code 30-4-70 (c) of the Freedom of Information Act and therefore any such attorney-client privilege associated with the communication is waived. The Court finds neither statutory nor common law support for this contention. While use of private email to conduct governmental business is not best practices, I can find no statutory authority or South Carolina case that indicates 1) such manner of communication is prohibited, or 2) that such manner of communication operates to waive attorney-client privilege. Accordingly, I do not find sufficient evidence to grant Plaintiff's Motion to Reconsider on this ground.

B. The record contains no evidence of "harassment" by the Plaintiff.

During the merits hearing, counsel for Defendant County did question Plaintiff regarding the number of FOIA requests she had filed with the County, and Joint Exhibit 22 contained numerous checks from Plaintiff to Defendant for FOIA inquiries not at issue in the instant case. Regardless, the Court found neither party acted with improper motivation in requesting or responding to the subject FOIA requests before the Court. Therefore, I do not find sufficient evidence to grant Plaintiff's Motion to Reconsider on this ground.

C. The Court overlooks how Tom Keaveny's dual capacity waives the attorney-client privilege.

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There was one document (County FOIA#1_000273) that was not produced by the County during the July 20, 2018 - October 15, 2018 time period when Keaveny served as both the County Attorney and the Interim County Administrator. The Court has been unable to locate any case law or statutory prohibition from an employee serving in this dual capacity. The document at issue did contain a legal analysis by Keaveny and as such was protected by the attorney-client privilege. However, because the recipient list included a third party vendor (subject of Defendant's Motion to Reconsider), the Court determined that the privilege had been waived and ordered that the document be produced. Therefore, there is no need to grant the Plaintiff's Motion to Reconsider on this ground.

D. The refusal to award fees is an abuse of discretion.

S.C. Code Ann. 30-4-100 provides:

> [i]f a person or entity seeking relief under this section prevails, he may be awarded attorney's fees and other costs of litigation specific to the request. If the person or entity prevails in part, the court may **in its discretion** (emphasis added) award him reasonable attorney's fees or an appropriate portion of those attorney's fees.

Here, the Plaintiff prevailed in part and therefore, the statute indicates that there is a permissive ability to award fees to the Plaintiff in the Court's discretion. "The decision to award or deny attorney's fees under a state statute will not be disturbed absent an abuse of discretion. . . . An abuse of discretion occurs when the conclusions of the trial court are either controlled by an error of law or are based on unsupported factual conclusions." *Sloan v. Friends of the Hunley, Inc.* 393 S.C.152, 156, 711 S.E.2d 895, 897 (2011) (internal citations omitted). Plaintiff relies on the *Sloan* case cited above to infer that because the Plaintiff prevailed, in part, the failure to award fees was an abuse of discretion. In *Sloan*, the Court determined that Sloan was the prevailing party (not the partially prevailing party) and that, but for filing the suit, the documents would not

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have been received. Here the Defendant produced responses to FOIA No. 1 even prior to suit being filed. Additionally, she amended her request relative to FOIA No. 2 (which became FOIA No. 3) prior to suit being filed. Accordingly, the facts of the instant case are vastly different than those set forth in *Sloan* such that the Plaintiff's reliance on the *Sloan* case to show an abuse of discretion by this Court in failing to award her attorney's fees is respectfully misplaced. Therefore, the Plaintiff's Motion to Reconsider the failure to award her attorney's fees is denied as well.

II. Defendant Beaufort County's Motion to Reconsider:

A. Whether Public Body may charge for Redactions.

Defendant asserts that the Court erred in determining that the Defendant's legal department cannot charge for "redacting" the records. SC Code Ann. Section 30-4-30(B) does state that a "public body may establish and collect reasonable fees not to exceed the actual cost of the search, retrieval, and redaction of records." This section also clearly states "[f]ees may not be charged for examination and review to determine if documents are subject to disclosure." Therefore, there can be no charge to determine what portions of the documents are exempt from disclosure. The act of redaction requires no special skill necessary to charge the full $72.00 per hour fee (the same charged for legal review) nor has any such evidence been placed into the record of the instant case. The FOIA is clear to instruct that "the fee for the search, retrieval, or redaction of records shall not exceed the prorated hourly salary of the lowest paid employee who, in the reasonable discretion of the custodian of records, has the necessary skill and training to perform the request." These tasks (search, retrieval and redaction) are administerial not analytical in nature. The Defendant argues that the 2017 amendment to the FOIA permits compensation for

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the time spent reviewing documents as part of the redaction process. Unfortunately, that is not how the language of the statute reads. To charge the public for the physical act of redaction by the legal department at the highest hourly fee charged by the County appears to be an attempt to recoup the legal fees incurred for reviewing the records for exemption status in violation of the direct mandates of the Statute. Accordingly, the Defendant's Motion to Reconsider on this ground is denied.

B. Whether Debra Regecz was an Agent of the County for Purposes of the Attorney-Client Privilege.

Defendant County argues that Ms. Regecz was, in essence, the functional equivalent of an employee of the County such that her inclusion in various emails did not waive the attorney-client privilege. Defendant relies on the "functional equivalent doctrine," as found in the case of *United States v.Koval,* 296 F.2d 918 (2d. Cir.1961), for the position " that where a non-employee is someone whose involvement is needed to enable effective communication between the lawyer and the client or plays a role as the necessary agent of the attorney or the client, the privilege is not waived merely due to their inclusion in the communication (Defendant Reply Memorandum to Plaintiff's Memorandum in Opposition to County's Motion for Reconsideration, p. 3)." Defendant County goes on to suggest that derivative attorney-client privilege should become an accepted manifestation of the attorney-client privilege in South Carolina as it is in courts throughout the United States. The fact that Ms. Regecz acted as the Real Estate Agent for the Defendant County with regard to the purchase of 1 Bostick Circle, Beaufort, South Caorlina is not disputed. What is disputed is whether that representation elevates Ms. Regecz to a "functional employee" or to agency status necessary to invoke the protections under the attorney-client privilege exemption under FOIA. Neither Defendant nor Plaintiff addressed S.C. Code

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Ann. 40-57-370 (E) in their respective Memorandums on this issue which states in pertinent part:

> For all real estate transactions, no agency relationship between a buyer, seller, landlord or tenant and a real estate brokerage firm and its associated licensees exists unless the buyer, seller, landlord, or tenant and the brokerage company and its associated licenses agree, **in writing,** to the agency relationship. No type of agency relationship may be assumed by a buyer, seller, landlord, tenant or licensee or created orally or by implication (emphasis added). . . .

Clearly under South Carolina statutory authority, in order for an agency relationship to exist between the County and Ms. Regecz, a written contract must exist. Furthermore, as addressed in Plaintiff's Memorandum in Opposition to Defendant's Motion to Reconsider, while the subject documents would have been protected prior to the closing of the real estate transaction, SC Code Ann. Section 30-4-30(5)(a) provides that documents of and documents incidental to proposed contractual arrangements including proposed sales or purchases of property are not exempt from disclosure once the contract is entered into or the property is sold or purchased. To date, Defendant has not been able to produce a contract between it and Ballenger Realty for the property that is the subject of the email exchange. As a result, the Court is unable to conclude that Ms. Regecz was an agent/functional employee of Defendant County. Therefore, since the property sale has concluded and there is no attorney-client privilege between the Defendant County and Ms. Regecz, the documents must be produced in response to Plaintiff's FOIA requests. The Defendant's Motion to Reconsider is denied as to that ground as well.

Conclusion

For the reasons set forth above, the Plaintiff's Motion to Reconsider is denied as to all four grounds. The Defendant's Motion to Reconsider is also denied as to both grounds asserted.

AND IT IS SO ORDERED.

Erin D. Dean
S.C. Bar No. 65320
Post Office Box 2055
Beaufort, South Carolina 29901-2055
(843) 524-1116
erindean@tgdcpa.com
Special Referee Pursuant to The Order signed by Judge Buckner dated June 2, 2020

March 2, 2021
Beaufort, South Carolina

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ELECTRONICALLY FILED - 2019 Jun 27 4:30 PM - BEAUFORT - COMMON PLEAS - CASE#2019CP0700818

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BEAUFORT	)	CASE NO.: 19-CP-07-00818
Mare Baracco,	)	
	)	
Plaintiff,	)	
versus	)	**SUMMONS**
	)	**AMENDED COMPLAINT**
	)	FREEDOM OF INFORMATION ACT
County of Beaufort,	)	(NON-JURY TRIAL DEMANDED)
	)	
Defendant.	)	

TO THE DEFENDANT ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you; and to serve a copy of your Answer to the said Complaint upon the subscribers at their offices at 2344 Cosgrove Avenue, Post Office Box 71121, Charleston, South Carolina, 29415-1121 within thirty (30) days after the service hereof, exclusive of the day of such service.

YOU ARE HEREBY GIVEN FURTHER NOTICE that if you fail to appear and defend and fail to answer the Complaint as required by this Summons within thirty (30) days after the service hereof, exclusive of the day of such service, judgment by default will be entered against you for the relief demanded in the Complaint.

June 27, 2019

/s/Thomas R. Goldstein
Thomas R. Goldstein, S. C. Bar I.D. # 2186
BELK, COBB, INFINGER & GOLDSTEIN, P.A.
Post Office Box 71121
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(843) 554-4291
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ATTORNEYS FOR PLAINTIFF
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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BEAUFORT	)	CASE NO.: 19-CP-07-00818
Mare Baracco,	)	
	)	
Plaintiff,	)	
versus	)	
	)	**AMENDED COMPLAINT**
	)	FREEDOM OF INFORMATION ACT
County of Beaufort,	)	(NON-JURY TRIAL DEMANDED)
	)	
Defendant.	)	

1. The plaintiff, Mare Baracco, is a citizen and resident of the County of Beaufort. As a citizen of the State of South Carolina, the plaintiff has standing to bring an action under the *South Carolina Freedom of Information Act*: "Any citizen of the State may apply to the circuit court for either or both a declaratory judgement and injunctive relief to enforce the provisions of this chapter. . ." § 30-4-100, S. C. Code, ann.

2. The plaintiff is a county government organized and existing pursuant to § 4-9-10, S. C. Code, ann.

3. The allegations herein arise under a claim for violations of the *South Carolina Freedom of Information Act* as authorized by § 30-4-100, S. C. Code, Ann., which states in part:

> Each public body, upon written request for records made under this chapter, shall within fifteen days (excepting Saturdays, Sundays, and legal public holidays) of the receipt of any such request notify the person making such request of its determination and the reasons therefore.

4. The Honorable Court has jurisdiction of the parties hereto and the subject matter of this lawsuit as provided by § 30-4-100, S. C. Code, Ann.

JURISDICTION AND VENUE

5. This Court has jurisdiction over these matters based upon the statutory provisions set forth in the *South Carolina Freedom of Information Act* and because the plaintiff made four

written requests for public documents on February 10, 2019, March 10, 2019 and on March 18, 2019, for specified public documents under the *South Carolina Freedom of Information Act*. (See the index summary of these requests, attached here as Exhibit 1 and incorporated by this reference.) On February 11, 2019, March 11, 2019, March 18, 2019, and April 1, the County acknowledged receipt of the requests as summarized in Exhibit 1.

6. Venue is proper in the Beaufort County Court of Common Pleas as all of the acts referred to herein occur in Beaufort County.

BACKGROUND FACTS

7. As set forth above, on February 10, 2019, the plaintiff submitted a proper *Freedom of Information* Request to Beaufort County for information and documents related to the County's October 8, 2018, Community Services meeting and the County's written documents related to its purchase of a parcel of real property, commonly referred to as 1 Bostick Circle and the Broad River parcels, 429 Broad River Road, to be utilized by the County as a residence for the Department of Special Needs. The County acknowledged the plaintiff's request on February 11, 2019, and assigned it case number 2019-000231. (See attached Index, Exhibit 1.) Subsequently, the County required the plaintiff make a prepayment of $124.66 as a condition of fulfilling the request, and in response, the plaintiff, on February 20, 2019, appeared in person and paid in full. Thereafter, on March 21, 2019 the plaintiff picked up a flash drive that the County provided as an electronic format that contained the documents the plaintiff requested and for which the plaintiff paid. At the time the plaintiff picked up the flash drive, the County informed plaintiff they overestimated its research time and a refund in the amount of $53.66 would be forthcoming.

8. Despite being provided a flash drive, which the County represented contained its response to the plaintiff's February 10th F.O.I.A. request, when the plaintiff downloaded the flash

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drive, she discovered a majority of the emails the County provided had been redacted without explanation while others contained in her request are missing entirely.

9. On March 10 2019, plaintiff emailed her second F.O.I.A. request to the County's F.O.I.A. office, requesting copies of official e-mails from specified addresses. Beaufort County responded by requiring a 25% deposit against its anticipated charges of $12,079.00 for providing the electronically stored information. After the plaintiff requested a written explanation for the County's charges and its redactions, the County did not respond until 39 days later on May 2nd, when the Assistant County Administrator, Monica Spells, informed the plaintiff via email her question was being forwarded to the County Legal Department. As of the date of this amended complaint, the Legal Department never responded nor followed up with the plaintiff, and the plaintiff shows further that since the County's real estate purchase is complete, there are no provisions under the *South Carolina Freedom of Information Act* that would authorize a redaction.

10. As set forth above, on March 10, 2019, the plaintiff made a request for copies of public documents, which Beaufort County assigned as Case # 2019-00385. Instead of producing a single document, the County, acting through its F.O.I.A. Specialist, Whitney Snyder, sent to plaintiff a reply on March 18, 2019, stating that in order to fulfill her request, the County demands that plaintiff pay a deposit of $3,019.75 as partial payment for the County's anticipated charges of $12,079.00 to retrieve the requested documents.

11. When plaintiff made an inquiry as to why the County must expend, over $12,000.00 to provide documents electronically archived, the County replied that its charge includes charges and fees for an anticipated outlay of 167 hours for I.T. to "search and compile emails" at $72.00 per hour, as well as charges for Records Management to "compile and redact"

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emails at $16.00 per hour. These charges are excessive and unlawful and designed to thwart the plaintiff's search for public documents.

12. Thereafter, on March 18, 2019, the plaintiff submitted another *F.O.I.A.* request for other documents, which Beaufort County assigned as Case #2019-000459. In this case, the County listed its retrieval fees as follows: 0.25 hours estimated for I.T. "to search and compile emails," at $49.07 per hour," 8 hours estimated for "legal/Admin to "sort emails" at $72.00 per hour, and 1 hour estimated for records Management to "redact emails and couple" at $16.00 per hour. The County then demanded a deposit of $152.82 as partial payment for the County's anticipated charges.

13. On March 31, 2019, the plaintiff submitted a F.O.I.A. request for other public documents which she described as all e-mails from 2015 through the present for specified addresses, which Beaufort County assigned as Case #2019-000575. In this case, the County again required pre-payment and estimated its retrieve fees as follows: 0.33 hours estimate for I.T. "to search and compile emails," at $30.74 per hour; 22 hours estimated for "Legal/Admin to sort emails" at $72.00 per hour; and 1 hour estimated for Records Management "to compile and redact emails" at $16.00 per hour. Using these estimated charges, the County demanded the plaintiff pay a deposit of $404.29 to cover the County's alleged anticipated expenses.

14. The State of South Carolina requires that the County store, organize and maintain the information requested by the plaintiff and designate a records custodian to manage and store such information. § 30-1-10, *et. seq., South Carolina Records Retention Act*. As a result, the requested information is already stored, organized, and maintained and requires little effort to forward, and the County's charges are designed to thwart and chill the plaintiff's requests for public documents.

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15. The *South Carolina Freedom of Information Act* regulates the fees that the County can charge for access to public records. § 30-4-30(b):

> The public body may establish and collect fees not to exceed the **actual cost** of searching for or making copies of records. Fees charged by a public body must be uniform for copies of the same record or document. . . . **The records must be furnished at the lowest possible cost to the person requesting the records. . . . Fees may not be charged for examination and review to determine if the documents are subject to disclosure.**" (emphasis added)

16. The charges demanded by Beaufort County are prohibited by the *South Carolina Freedom of Information Act* and are inflated to deter the plaintiff from making her request and to chill her access to public documents. The fees and charges are unlawfully inflated and are not authorized by law. While the County may choose to have public e-mails reviewed by legal counsel, this is not an expense that the County can impose upon a citizen seeking access to government records.

17. The County's excessive charges are pretext, designed to thwart the application of the *South Carolina Freedom of Information Act* to the plaintiff's statutory access to governmental records, which can easily be compiled and retrieved electronically.

18. Despite several efforts to resolve the County's refusal to make records reasonably accessible to the plaintiff, the plaintiff has been forced to hire legal counsel and incur costs and expenses that she would not otherwise have incurred, and she is entitled to an award of attorney's fees and costs as provided by the *Freedom of Information Act*, § 30-4-100, S. C. Code of Laws, ann.

19. The *South Carolina Freedom of Information Act,* § 30-4-100, S. C. Code, ann., provides that the plaintiff is entitled to an Order of the Court enjoining the City from violations and for an award of reasonable attorney's fees for bringing this action to obtain the County's compliance with the *Act*. § 30-4-110 authorizes the Court to impose fines and penalties when it finds the public body's refusal is intentional or willful, and the plaintiff is informed and believes

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that the County's imposition of excessive fees and costs is a willful violation, designed to chill the public's right to access to government records, and is a type of willful violation for which the Court should impose a permanent injunction and fines and penalties.

WHEREFORE, the plaintiff prays that this Court issue its Order:

a. entering an injunction, both temporarily and permanently, requiring the County of Beaufort to make its records available and to conform to the *South Carolina Freedom of Information Act* and to provide the information properly requested by the plaintiff;

b. requiring the County to produce immediately the public documents sought in the plaintiff's February 3, 2019, *F.O.I.A.* request, limiting the charges for the record production to those authorized by law,

c. for an award of attorney's fees and costs for the prosecution of this action as provided for by the *Act*, and

d. for such fines and penalties as the Court finds just and proper pursuant to § 30-4-110, S. C. Code, ann., for the City's willful violations, and

e. requiring all issues of disputed fact be tried by a jury; and

f. granting such other relief as this Court deems just and proper

Respectfully submitted,

BELK, COBB, INFINGER, & GOLDSTEIN, P.A.

June 27, 2019

/s/ Thomas R. Goldstein
Thomas R. Goldstein, I.D. No.: 2186
(2344 Cosgrove Avenue)
P.O. Box 71121
North Charleston, SC 29415-1121 (29405)
(843) 554-4291; (843) 554-5566 (fax)
tgoldstein@cobblaw.net
Attorneys for Plaintiff

ELECTRONICALLY FILED - 2019 Jun 27 4:30 PM - BEAUFORT - COMMON PLEAS - CASE#2019CP070818

Date	Subject	Case Number	Response
2/10/2019	1 Bostick Circle 429 Broad River	**#2019-000231**	1) Email reply Feb 11 confirming receipt 2) Email of Feb 20 req. payment of $124.66; paid 3) March 21 I p/up flashdrive; refund of $53.66 4) March 24 I asked for reason for redactions 5) April 30 I again asked reason and all emails in their unredacted format 6) May 2 FOIA office claimed documents were exempt from production 7) May 2 reply from Monica Spells she was forwarded my email and was sending to legal for follow up
3/10/2019	County employees /officials emails	**#2019-000385**	1) Reply March 11 confirming receipt 2) Reply March 18 - $12,079, with 25% deposit required 3) March 18 I emailed for breakdown of fees 4) March 18 Reply that fee breakdown was for IT costs of $72 hrly, and fees for filing, sorting and redacting
3/18/2019	Revised FOIA for County employees /officials emails	**#2019-000459**	1) Reply March 18 confirming receipt 2) Reply March 25 - $611.26, and 25% dep 3) March 25 I requested a breakdown of fees 4) Reply with fee breakdown of $72 hrly for legal, IT cost of $49.07 hrly, and fees filing sorting and redact
3/31/2019	County official Alice Howard emails from her personal email account to county employees/officials	**#2019-000575**	1) Reply April 1 confirming receipt 2) Reply April 2 -$1617.14 and 25% dep, with IT cost $30.74 hrly, legal $72 hrly, fees for filing, sorting, redacting

ELECTRONICALLY FILED - 2019 Aug 14 4:04 PM - BEAUFORT - COMMON PLEAS - CASE#2019CP0700818

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT	)	Civil Action No. 2019-CP-07-00818
MARE BARACCO,	)	
	)	
Plaintiff,	)	
	)	
-vs-	)	**ANSWER OF DEFENDANT BEAUFORT COUNTY**
	)	
BEAUFORT COUNTY,	)	(NON-JURY TRIAL DEMANDED)
	)	
Defendant.	)	
	)	

TO: THOMAS R. GOLDSTEIN, ESQ., as Attorney for the Plaintiff

COMES NOW, the Defendant, Beaufort County (the "***Defendant***" or the "***County***"), reserving all rights to amend this Answer within thirty (30) days pursuant to Rule 15(a) of the South Carolina Rules of Civil Procedure (hereinafter, "SCRCP"), reserving all rights to include in the Answer any defenses and/or objections under Rule 12 of the SCRCP, and reserving all rights to make any motions under Rule 12 of the SCRCP, answering the Amended Complaint of the Plaintiff (the "***Complaint***") by respectfully alleging as follows:

FOR A FIRST DEFENSE
(General Denial)

1. Each and every allegation of the Complaint not hereinafter expressly admitted is denied and strict proof demanded thereof.

2. Defendant is informed and believes that the allegations of Paragraph 1 of the Complaint constitute legal conclusions to which no response is required. To the extent the Court requires an answer, Defendant admits the same.

3. Defendant is informed and believes that the allegations of Paragraph 2 of the Complaint constitute legal conclusions to which no response is required. To the extent the Court requires an answer, Defendant admits that the Defendant, not the Plaintiff, is a

ELECTRONICALLY FILED - 2019 Aug 14 4:04 PM - BEAUFORT - COMMON PLEAS - CASE#2019CP0700818

body politic of the State of South Carolina organized pursuant to South Carolina Code Ann. § 4-9-10.

4. Defendant is informed and believes that the allegations of Paragraphs 3 and 4 of the Complaint constitute legal conclusions to which no response is required. To the extent the Court requires an answer, Defendant admits so much as is consistent with documents of public record, the South Carolina Constitution, and the South Carolina Code of Laws. As to the remaining allegations of Paragraphs 3 and 4 of the Complaint, including but not limited to the any claims of violations by the Defendant, Defendant is without sufficient knowledge or information to form a belief as to the veracity of these allegations; therefore, Defendant denies the same and demands strict proof thereof.

5. Defendant admits the allegations of Paragraph 6 of the Complaint.

6. Responding to the allegations of Paragraphs 7 through 13 of the Complaint, the Defendant admits that it received requests from the Plaintiff for information and that the Defendant's review of the responsive documents revealed that they contained material exempt from disclosure pursuant to the South Carolina Freedom of Information Act, and craves reference to the public records and written documents cited by the Plaintiff. As to the remaining allegations of Paragraphs 7 through 13 of the Complaint, including but not limited to the accuracy or reliability of the Plaintiff's Exhibit 1, the Defendant is without sufficient knowledge or information to form a belief as to the veracity of these allegations; therefore, Defendant denies the same and demands strict proof thereof.

7. Defendant is informed and believes that the allegations of Paragraphs 14 through 19 of the Complaint constitute legal conclusions to which no response is required. To the extent the Court requires an answer, Defendant admits so much as is consistent with documents of public record and the South Carolina Code of Laws. As to the remaining allegations of Paragraphs 14 and 15 of the Complaint, including but not limited to the any claims of violations of South Carolina law by the Defendant, Defendant is without sufficient knowledge or information to form a belief as to the veracity of these allegations; therefore, Defendant denies the same and demands strict proof thereof.

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FOR A SECOND DEFENSE
(South Carolina Tort Claims Act)

8. The above allegations, denials, defenses and admissions are hereby re-alleged, re-affirmed, and incorporated herein by reference.

9. The Defendant, as a body politic of the State of South Carolina, enjoys certain immunities under the South Carolina Tort Claims Act, as set forth in Section 15-78-10, *et seq.*, of the South Carolina Code of Laws, 1976, as amended, and hereby asserts all of the appropriate and applicable immunities and limitations available to it under the South Carolina Tort Claims Act.

FOR A THIRD DEFENSE
(Failure to State a Claim—Rule 12(b)(6) Motion to Dismiss)

10. The above allegations, denials, defenses and admissions are hereby re-alleged, re-affirmed, and incorporated herein by reference.

11. The Plaintiff's Complaint fails to state facts sufficient to constitute a cause of action upon which relief may be granted.

FOR A FOURTH DEFENSE
(Additional Defenses)

12. The above allegations, denials, defenses and admissions are hereby re-alleged, re-affirmed, and incorporated herein by reference.

13. The Defendant hereby asserts all of its additional affirmative defenses that may be revealed during the course of discovery in this action.

WHEREFORE, having fully answered the Complaint, Beaufort County prays that the Complaint be dismissed, that the County be awarded its reasonable attorneys' fees, that all costs of this action be taxed against the Plaintiff, and for such other and further relief as is just and proper.

{Signature Page to Follow}

{Signature Page for Defendant Beaufort County's Answer to Plaintiff Mare Baracco's Complaint}

Respectfully submitted,

FINGER, MELNICK & BROOKS, P.A.

s/ E. Richardson LaBruce
E. Richardson LaBruce, SC Bar No. 80106
35 Hospital Center Common, Suite 200
Post Office Box 24005
Hilton Head, South Carolina 29925-4005
Telephone: (843) 681-7000
Email: erlabruce@fingerlaw.com
ATTORNEY(S) FOR DEFENDANT,
BEAUFORT COUNTY

Hilton Head Island, South Carolina
August 14, 2019.
f:\client\b\beaufort county\adv. baracco, mare\pleadings\answer\answer (nc)(erl.final.1)(8.14.2019)j.s..docx

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ELECTRONICALLY FILED - 2020 Feb 11 8:43 PM - BEAUFORT - COMMON PLEAS - CASE#2019CP0700818

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BEAUFORT	)	CASE NO.: 19-CP-07-00818
Mare Baracco,	)	
	)	
Plaintiff,	)	
versus	)	
	)	**MEMORANDUM OF LAW**
	)	
County of Beaufort,	)	
	)	
Defendant.	)	

This matter is before the Court under the *South Carolina Freedom of Information Act*, §§ 30-4-10, *et. seq*. In her amended complaint, the plaintiff alleges that she made four straightforward requests under § 30-4-40, S. C. Code, ann. for County documents related to the sale and purchase of parcels of real estate commonly referred to as 1 Bostwick Circle and 429 Broad River Road and for e-mail communications of County officials connected with these and other transactions. See attached summary of requests, which was attached as Exhibit 1 to the Amended Complaint. The plaintiff made requests for County records on

February 10, 2019	Case Number 2019-000231 (request for documents related to real estate purchases)	Exhibit 2
March 10, 2019	Case Number 2019-000385 (request for county officials' correspondence)	Exhibit 3
March 18, 2019	Case Number 2019-000459 (revised request for county officials' correspondence)	Exhibit 4
March 31, 2019	Case Number 2019-00575 (request for emails from private accounts)	Exhibit 5

By written responses dated February 11th, March 11th , March 18th and April 1st (Exhibits 2, 3, 4, and 5), the County acknowledged receipt of the requests and informed the plaintiff that the cost for supplying such documents was approximately $14,432.06 and required a 25% deposit ($3,608.02)

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as a condition of fulfilling the request. (In order to simplify the Court's burden to review the documents, the plaintiff is attaching each request for documents as a separate tab. Thus, all the correspondence related to the February 10th request is attached as Exhibit 2, and so on. Exhibit 1 is the summary of the requests attached to the amended complaint.)

When the County responded to plaintiff's initial request, it redacted large portions of the documents it provided. (It also provided multiple copies of the same documents for which it charged the plaintiff.) When the plaintiff inquired as to the reason for the redactions, the County avoided the question and then provided non-answers:

April 30, 2019

. . . The emails from [request] #2 and #3 were all redacted (it was about 76 pages). Also, I requested the emails between Gruber and Regecz, and they were not included.
/s/ Mare Baracco

[no date]

Beaufort County has responded to your FOIA request in full and in accordance with South Carolina's Freedom of Information act. If no documents were produced in response to a portion of your request, either not documents exist, or, if documents do exist and/or they were redacted, they are exempted form production pursuant to the act.
/s/ Bill Lisbon, FOIA Specialist

May 2, 2019

. . . In an effort to amicably resolve my concern, what is the County claiming as their rationale under FOIA and the SC Records and retention act for the redactions?
/s/ Mare Baracco

May 2, 2019

Good afternoon. I just forward your correspondence to our Legal Department . . . for follow up. My office was not involved in the redactions.
/s/ Monica N. Spells, ICMA-CM

May 2, 2019

. . . Ms. Spells, are you the County's FOIA Officer? If not, please tell me who is—
/s/ Mare Baracco

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May 3, 2019

Good morning. No, ma'am and we do not have an employee with that title.
/s/ Monica N. Spells, ICMA-CM

June 4, 2019

Re your reply of May 2, I have still not heard from the legal department as to their reason for the redaction of FOIA 2019-000231. May I have a response please? Thank you.
/s/ Mare Baracco

June 4, 2019

I have submitted your follow up inquiry to the Legal Department. Generally speaking, my understanding is that the Legal Department redacts those portions of documents which contain information which the public records act exempts from production. . . . I recommend contacting either of those offices directly with any further inquiries about this item.
/s/ Monica Spells

Without going through the hundreds of pages of nonsense, the County made clear it had no intention of answering the plaintiff's legitimate inquiry. In fact, it went the other direction, and in a show of intimidation, it demanded that the plaintiff pay exorbitant fees as a pre-condition to examining public records. When the plaintiff questioned these charges, the County responded by informing her that the County Attorney's office was reviewing the documents prior to their release. See page 5 of Exhibit 4, County's March 18, 2019 correspondence: "167 hours estimated for I.T. to search and compile emails @ $72.00/hour = $12,024.00. On March 27th, the County Administrator, John Weaver, wrote to both a sitting councilman and to the plaintiff and attempted to explain why the charges are so high:

As part of recommendations from SLED to tighten all controls over all of our information technology systems, especially those that tie to criminal justice information, the County has restricted the email search permission to only the IT Director and another senior manager in that department. A previous staff member no longer employed with the County previously searched emails at an hourly rate of $25. Staff did not update this information on their end. I have handled that botch from a managerial standpoint. The current hourly rate of the IT Director is $49.07 and the hourly rate of the other manager is $30.74. the primary email searcher is the senior manager and the IT Director is the secondary email searcher. Their availability coupled with FOIA response deadlines determines who conducts the search.

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If requested emails involve elected and appointed officials, historically, the Legal Department/County Attorney review these emails prior to release to ensure that privileged information is not released inadvertently.

Staff currently uses an estimated minimum time of one minute per email for the County attorney to review these emails. The current hourly rate of the County Attorney is $72.

The Legal Department/County Attorney determines redactions and will have to address this question. My understanding is that some elected officials use a combination of personal email accounts and an account provided by Beaufort County in the course of conducting business with other individuals using Beaufort County accounts.

/s/ John Weaver
March 27, 2019 (Compare this correspondence to the correspondence to the plaintiff on the same subject, quoted on page 8 of this Memorandum and attached as Exhibit 6.)

The above explanation is entirely bogus. First, the *South Carolina Freedom of Information Act* requires that the government's imposition of charges be at the lowest possible rate, § 30-4-30, S. C. Code, ann.: "The records must be furnished at the lowest possible cost to the person requesting the records." Here, the excessiveness of these charges, especially considering the County's demonstrated animus for the plaintiff (discussed more fully below), is *res ipsa loquitur*. The great South Carolina jurist, Professor Kemmerlin, quoted Shakespeare to legions of students and lawyers for the proposition that South Carolina may not have *res ipsa loquitur* by name, but has the same principle by a different name, circumstantial evidence: "What's in a name? That which we call a rose/By any other word would smell as sweet." *Romeo and Juliet*, Act II, Sc. 2, lines 43-44 In light of the public policy of the *Freedom of Information* Act, the County's assessment of these charges, and the pretexts articulated to justify them, should shock the conscience of the Court unless the Court's conscience is un-shockable.

Second, there is no such thing as "privileged information" when government officials communicate with third parties or one another. Despite dying a thousand deaths in a thousand cases, the non-lawyer's faith in the myth that copying a lawyer on a communication makes it "privileged," this belief persists as an immortal, unshakable canard. Government officials routinely copy the County Attorney in correspondence and then claim that because a lawyer is one of the recipients, all

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communication is "privileged" even though no case supports this assertion. See *Marshall v. Marshall*, 282 S. C. 534, 320 S.E.2d 44 (Ct. App. 1984): "The attorney client privilege, though, does not protect communications with non-clients." See also *Floyd v. Floyd*, 365 S.C. 56, 615 S.E.2d 465 (Ct. App. 2005) As these and many other cases hold, attorney client privilege only applies when a client is seeking legal advice based on confidential information. Nothing sought by the plaintiff in this case involves either seeking legal advice or confidential information. Under the County's legal theory, every email copied to a lawyer makes it "privileged." When Berkeley County resisted turning over superintendent evaluations on the ground that they were protected by attorney-client privilege, the Supreme Court disagreed, holding: "The interest in confidentiality expressed through the attorney-client privilege should not trump the public's right to know at this juncture." *Evening Post Publishing Company v. Berkeley County School District*, 392 S.C. 76, 708 S.E.2d 745 (2011) (Court reversed grant of summary judgment to the School District.)

Third, SLED has nothing to do with the responsibilities of local goverments' creation, retention, and dissemination of public documents. The County's duties are under the *State Records Retention Act* and the *South Carolina Freedom of Information Act*, and neither legislative authority grants to SLED any oversight, let alone veto, authority. The County's justification is made of whole cloth.

Finally, the South Carolina General Assembly and the South Carolina Supreme Court have been crystal clear that a citizen's right is "vital" to keeping government honest and preventing dishonest conduct that would otherwise flourish in the dark. "The Freedom of Information Act (FOIA) serves the important governmental interests of providing transparency in governmental decision making, preventing fraud and corruption, and fostering trust in government." *Disabao v. South Carolina Ass'n. of School Adm's.*, 404 S.C. 433, 746 S.E.2d 329 (2013) As the Supreme Court said in *Evening Post Publishing Company v. Berkeley County School District*, 392 S.C. 76, 708 S.E.2d 745 (2011): "It is vital in a democratic society that public business be performed in an open and public manner so that citizens shall be advised of the performance of public officials and of the decisions that are reached in public activity and in the formulation of public policy. Toward this end,

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provisions of this chapter must be construed so as to make it possible for citizens, or their representatives, to learn and report fully the activities of their public officials at a minimum cost or delay to the persons seeking access to public documents or meetings. S. C. Code, Ann. § 30-4-15 (2007)." The assertion that the email communications of government officials are "privileged" is nonsense, and such an assertion, when viewed alongside the evidence of the County's hostility to the plaintiff because she questions governmental actions is exactly why the General Assembly adopted the *Freedom of Information Act* as a bulwark against such governmental secrecy and why the General Assembly originally made willful violations subject to criminal penalties. See § 30-4-110, "Penalties": Prior to May, 2017, the statute read: Any person or group of persons who willfully violates the provisions of this chapter shall be deemed guilty of a misdemeanor, and upon conviction, shall be fined not more than one hundred dollars or imprisoned not more than thirty days for the first offense . . ." However, in May 2017, the General Assembly deleted the criminal penalties but broadened the potential for recovery to a prevailing plaintiff by including not only attorney's fees, but also "compensatory damages":

> (C) If a person or entity seeking relief under this section prevails, the court may order:
>
> (1) Equitable relief as he [*sic.*] considers appropriate;
>
> (2) Actual or compensatory damages; or
>
> (3) A reasonable attorney's fees and other costs of litigation specific to the request, unless there is a finding of good faith. The finding of good faith is a bar to the award of attorney's fees and costs.

After the County refused to provide the documents without the plaintiff paying prohibitive fees, the plaintiff sued on April 10, 2019, under the *Act*, alleging that the County was in violation of its duties to supply unredacted material and for imposing retaliatory fees instead of "fees not to exceed the actual cost of searching for or making copies of such records." § 30-3-30(b). The plaintiff also

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alleged that the County specifically and willfully directed these actions against the plaintiff.

In its Answer the County interposes three defenses: a general denial, a motion to dismiss, and an assertion that the County is exempt from suit under the *State Tort Claims Act*. (See Answer filed August 14, 2019.) As discussed in more detail below, in May 2017, the General Assembly amended the *Freedom of Information Act* to provide the County the option to allege a "good faith" defense. The County adroitly avoided this defense because while lawyers are zealous advocates for clients, zealousness has a limit, and that limit is the front door to the Courthouse.

Clearly, the plaintiff has alleged a proper cause of action because the General Assembly created the cause of action in § 30-4-100:

A) A citizen of the State may apply to the circuit court for a declaratory judgment, injunctive relief, or both, to enforce the provisions of this chapter in appropriate cases if the application is made no later than one year after the date of the alleged violation or one year after a public vote in public session, whichever comes later. Upon the filing of the request for declaratory judgment or injunctive relief related to provisions of this chapter, the chief administrative judge of the circuit court must schedule an initial hearing within ten days of the service on all parties.[1] If the hearing court is unable to make a final ruling at the initial hearing, the court shall establish a scheduling order to conclude actions brought pursuant to this chapter within six months of initial filing. The court may extend this time period upon a showing of good cause. The court may order equitable relief as it considers appropriate, and a violation of this chapter must be considered to be an irreparable injury for which no adequate remedy at law exists.

(B) If a person or entity seeking relief under this section prevails, he may be awarded reasonable attorney's fees and other costs of litigation specific to the request. If the person or entity prevails in part, the court may in its discretion award him reasonable attorney's fees or an appropriate portion of those attorney's fees.

HISTORY: 1978 Act No. 593, Section 11; 1987 Act No. 118, Section 8; 2017 Act No. 67 (H.3352), Section 4, eff. May 19, 2017.

There is nothing in the *State Tort Claims Act* that abrogates the *Freedom of Information Act*, and the universal rule of statutory construction requires that the two Acts of the General Assembly be

[1] The reason this was not done was because shortly after filing the summons and complaint, plaintiff's counsel became a guest of the M.U.S.C. Department of Cardiology, which led to open heart surgery. During the extended recuperation period, both opposing counsel and the Clerk of Court's office were not only understanding but also generous beyond my capacity to repay.

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harmonized.

The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature. *Charleston County Sch. Dist. v. State Budget and Control Bd.*, 313 S.C. 1, 437 S.E.2d 6 (1993). Under the plain meaning rule, it is not the court's place to change the meaning of a clear and unambiguous statute. *In re Vincent J.*, 333 S.C. 233, 509 S.E.2d 261 (1998) (citations omitted). Where the statute's language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning. Id. at 233, 509 S.E.2d at 262 (citing *Paschal v. State Election Comm'n*, 317 S.C. 434, 454 S.E.2d 890 (1995)). "What a legislature says in the text of a statute is considered the best evidence of the legislative intent or will. Therefore, the courts are bound to give effect to the expressed intent of the legislature." Norman J. Singer, *Sutherland Statutory Construction* § 46.03 at 94 (5th ed. 1992).

. . .

The goal of statutory construction is to harmonize conflicting statutes whenever possible and to prevent an interpretation that would lead to a result that is plainly absurd. *Ray Bell Constr. Co. v. School Dist. of Greenville Co.*, 331 S.C. 19, 501 S.E.2d 725 (1998).

Hodges v. Rainey, 341 S.C. 79, 533 S.E.2d 578 (2000)

It is a hard sell to convince this Court that the General Assembly did not mean what it said in the *Freedom of Information Act*, since the General Assembly took pains to declare violations to be an irreparable harm and to provide for expedited hearings and attorney's fees for citizens who bring such actions. § 30-4-100(a) says: "The court may order equitable relief as it considers appropriate, and a violation of this chapter must be considered to be an irreparable injury for which no adequate remedy at law exists." Second, the purpose of the *State Tort Claims Act* is to abolish sovereign immunity and set out the rules for suing the State, so the two Acts are not in conflict. While the *State Tort Claims Act* provides limited immunity in specific instances, it does not relieve the County from adhering to its responsibilities under *the Freedom of Information Act*. In its Answer, the County does not dispute that it is subject to the *Act*, nor does it offer a reasonable explanation as to why it charges are in excess of fourteen thousand dollars when the requested information can be produced as electronically stored material that is easily retrievable and easily loaded on a flash drive or burned to a C.D. disc. See

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Exhibit No. 6, March 27, 2019, correspondence from Acting County Administrator, John Weaver: "Ms. Baracco As you may not know, Beaufort County perhaps has the most sophisticated FOIA system of any county or municipality in South Carolina, including both manpower and electronic capabilities." Moreover, much of the information sought by the plaintiff involves an inquiry into County sales and purchases previously completed, so the material is obviously public and obviously not subject to any disclosure exemption or redaction. The *Act* does provide statutory exemptions that allow the County to redact information, but none of them are implicated here. For the convenience of the Court, the statutory exemptions are: (1) trade secrets, (2) information of a personal nature, (3) confidential informants, *etc.*, (4) matters specifically exempted, (5) documents related to a proposed sale, (6) salaries less than $50,000.00, (7) lawyers' work product and confidential communications, (8) working papers of the General Assembly, (9) trade negotiations, (10) Department of Revenue audit criteria, (11) anonymous gifts, (12) investment information in the State Retirement System, (13) certain employment application information, (14) scientific and educational proprietary information, (15) identity of certain complainants, (16) investment decisions of endowed funds, (17) structural plans, (18) autopsy photos, and (19) financial data of the Venture Capital Authority. If a governmental body asserts a right to redact, the burden is on the government asserting the exemption to prove it, and such exemptions are to be narrowly construed. *Evening Post Publ. Co. v. City of North Charleston*, 363 S.C. 452, 611 S.E.2d 496 (2005), § 30-4-40, "Matters exempt from disclosure" Here, despite that none of plaintiff's requests are subject to any exemption, the County furnished no explanation as to why it was redacting the information it did produce.

In evaluating whether either the County's charges or the County's redactions are reasonable, *i.e.* authorized by a statutory exemption, the Court need only look at the redacted e-mails and the County's putative justification to see that they fit none of the exemptions. In addition, as the attached

collection of the County's expressed hostility for the plaintiff demonstrates, Exhibit 6, the County demonstrated animus for the plaintiff and deploys its excessive charges and refusals to further its attacks upon her and to justify its refusing her access to public documents, probably because they will prove to be embarrassing. A selection of these Exhibits, collected in Exhibit 6, demonstrate that the County has gone to considerable pains to investigate her background, distribute information about her to County officials, including a list of her public statements critical of local government, and, most disturbing, coordinate with other local governments to stand united against her. (See Plaintiff's Exhibit No. 6.) **After** the plaintiff made routine *F.O.I.A.* requests, the County undertook to investigate her, and its efforts demonstrate the County's willfulness in harassing her only because she made lawful requests for documents. For example, in a June 10, 2014, email from the Town Manager of Bluffton to the Bluffton Police Chief and the Bluffton City Attorney, regarding an earlier F.O.I.A. request, the Town Manager wrote:

> Chief: This is the F.O.I.A. request I was speaking of. Anyone we may have arrested?
>
> /s/ Anthony Barrett

This is one example of numerous examples of animus collected and attached as Exhibit 6. The County may attempt to pass off Mr. Barrett's comment as innocuous, but if it does, the Court should be aware that after the Town of Port Royal issued a 2012, municipal violation against the plaintiff for an alleged animal at large, and after a jury acquitted her of the charges on November 8, 2012, Beaufort County followed up on her acquittal by issuing to her an unlawful "Magistrate's Summons" for the same offense. In another example of animus, the County Attorney circulated an email among government officials, page 5 of Exhibit 6, dated June 11, 2014, to urge other local

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governments to get on board with a "similar approach" of the County's requiring a 50% deposit for plaintiff's requests. On June 23rd, the County Attorney estimates charging the plaintiff $35,000.00 for her requests even though the plaintiff's requests are electronically stored and can be recaptured in seconds. The County's imposition of excessive charges and efforts at redaction when the subject matter is not covered by any exception to disclosure is evidence of willfulness. This willfulness is conduct which the *Freedom of Information Act* addresses. In the version of the *Freedom of Information Act* in effect prior to May 2017, such conduct was deemed criminal. See § 30-4-110, S. C. Code, ann.: "Any person or group of persons who willfully violates the provisions of this chapter shall be deemed guilty of a misdemeanor and upon conviction shall be fined not more than one hundred dollars or imprisoned not more than thirty days for the first offense . . ." The amendment to this section in 2017, quoted below, deleted the criminal penalties and added compensatory damages.

At no time, either before or after the plaintiff filed this action, has the County offered an explanation as to why the County Attorney must review the information requested by her, but the selected expressions of animus collected in Exhibit 6 make the County's motivations pretty clear. Since plaintiff filed her suit, the County never offered any justification for expenses in excess of fourteen thousand dollars associated with the routine retrieval of information the County is required to archive under the state's *Records Retention Act*, and such unexplained charges are at variance with the Administrator's statement that "Beaufort County perhaps has the most sophisticated FOIA system of any county or municipality in South Carolina." (quoted above page 9) See §30-1-20, S. C. Code, ann.: "The chief administrative officer of any agency or any subdivision or any public body in charge of public records . . . is responsible for carrying out the duties and responsibilities of this chapter . . ." . The responsibilities of Chapter 1 require the County to maintain, archive, and make available the

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public records of the County, and these include the electronic correspondence of the members of County Council and their agents. When government officials communicate with third parties or with one another, there is no attorney/client privilege implicated, and even communications to the County Attorney may not be covered by privilege if others are included in the communication. Not one of the redacted e-mails represents a request for legal advice, and if the County is going to withhold information from the plaintiff, then it must at least provide her with a log of material it is refusing to turn over with an explanation. If the County chooses to pay its attorney to review every *F.O.I.A.* disclosure it makes, that is not a charge that passes through to the requestor. In essence, the County now argues that because the County has a lawyer, that every communication by a government official is subject to attorney/client privilege, a tacit assertion that is not supported by any case law, statute, regulation, or policy governing the conduct of lawyers.

In conclusion, the evidence in this case is overwhelming that the County singled out the Plaintiff for special adverse treatment, denied her reasonable access to specific documents, redacted documents for no reason other than to thwart the plaintiff, and imposed excessive and unlawful charges for the collection of information and documents, which are easily retrieved, and forced her to file an application with the Court to address an irreparable harm. The Plaintiff is entitled to a declaration that the County must turn over the documents in electronic form, unredacted, immediately and should be enjoined from further violations of the *Act*. In addition, the Court should require the County to reimburse the Plaintiff for the attorney's fees and for the compensatory damages she has incurred in compelling the County to conform to South Carolina law. Finally, the Court should impose the punishment it finds to be just and proper for a willful violation in order to deter the County from such unlawful conduct in the future. This last prayer for relief is not fanciful. The Courts of this state are clogged with *F.O.I.A.* cases because when local governments ignore their statutory duties

to requestors, there is no personal penalty for disobedience. Government officials have free representation by counsel paid for by taxpayers; their penalties are paid by taxpayers; in short, they have no skin in the game, and they never experience a consequence for breaking the law. If the Court could require a governmental official to report to jail for a weekend because of an intentional *F.O.I.A.* violation, then local governments would pay attention to their statutory duties. However, in May 2017, the General Assembly amended § 110 to delete the criminal penalties. Instead, under the revised statute, the Court's power is limited to an award of attorney's fees, compensatory damages, and/or a "civil fine" of up to $500.00 per occurrence. As this case demonstrates, until a Court punishes local governments for disobedience of their statutory duty to be transparent, local governments will continue to violate *F.O.I.A.* with impunity because officials who are charged with a duty to provide documents are never called upon to answer for their violations.

Respectfully submitted,

February 3, 2020

/s/Thomas R. Goldstein
Thomas R. Goldstein, S. C. Bar I.D. # 2186
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ATTORNEYS FOR PLAINTIFF

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EXHIBIT 1

Date	Subject	Case Number	Response
2/10/2019	1 Bostick Circle 429 Broad River	#2019-000231	1) Email reply Feb 11 confirming receipt 2) Email of Feb 20 req. payment of $124.66; paid 3) March 21 I p/up flashdrive; refund of $53.66 4) March 24 I asked for reason for redactions 5) April 30 I again asked reason and all emails in their unredacted format 6) May 2 FOIA office claimed documents were exempt from production 7) May 2 reply from Monica Spells she was forwarded my email and was sending to legal for follow up
3/10/2019	County employees /officials emails	#2019-000385	1) Reply March 11 confirming receipt 2) Reply March 18 - $12,079, with 25% deposit required 3) March 18 I emailed for breakdown of fees 4) March 18 Reply that fee breakdown was for IT costs of $72 hrly, and fees for filing, sorting and redacting
3/18/2019	Revised FOIA for County employees /officials emails	#2019-000459	1) Reply March 18 confirming receipt 2) Reply March 25 - $611.26, and 25% dep 3) March 25 I requested a breakdown of fees 4) Reply with fee breakdown of $72 hrly for legal, IT cost of $49.07 hrly, and fees filing sorting and redact
3/31/2019	County official Alice Howard emails from her personal email account to county employees/officials	#2019-000575	1) Reply April 1 confirming receipt 2) Reply April 2 -$1617.14 and 25% dep, with IT cost $30.74 hrly, legal $72 hrly, fees for filing, sorting, redacting

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT	)	Civil Action No. 2019-CP-07-00818
MARE BARACCO,	)	
	)	
Plaintiff,	)	
	)	
-vs-	)	**MEMORANDUM OF LAW**
	)	**BY BEAUFORT COUNTY**
BEAUFORT COUNTY,	)	(Hearing Per S.C. Code Ann. § 30-4-100(A))
	)	
Defendant.	)	
	)	

The Defendant, BEAUFORT COUNTY, respectfully submits this Memorandum in opposition to the Plaintiff's *Amended Complaint* and *Memorandum of Law*.

PROCEDURAL SUMMARY:

This initial hearing is being held pursuant to Section 30-4-100(A) of the South Carolina Freedom of Information Act. Pursuant to the Act, "[i]f the hearing court is unable to make a final ruling at the initial hearing, the court shall establish a scheduling order to conclude actions brought pursuant to this chapter within six months of initial filing. The court may extend this time period upon a showing of good cause." If the Court determines that there is sufficient information to render a decision, it "may order equitable relief as it considers appropriate." *Id.* Further, the Court may, in its discretion, award reasonable attorneys' fees and costs, in whole or in part, to the prevailing party. S.C. Code Ann. § 30-4-100(B).

SUMMARY OF ARGUMENT:

The *Amended Complaint* of the Plaintiff essentially raises two important and under-developed questions of interpretation of the South Carolina Freedom of Information Act ("***FOIA***"): (1) what constitutes a reasonable fee for the cost of the "redaction" of public records in response to a valid FOIA request; and, (2) whether communications to and from an in-house governmental attorney are afforded the same protections as similar communications between outside counsel and a private party. *See* S.C. Code Ann. § 30–4–30(B).

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As to the first question, for years South Carolina permitted local governments to recover a reasonable fee for the cost of the "search and retrieval" of public records in response to a FOIA request. *See* S.C. Code Ann. § 30–4–30(B). In 2017, in response to the increasing demands and costs falling upon local governments, the General Assembly amended the Act to grant public bodies with the right to charge reasonable fees for the cost of "redaction" in addition to "search and retrieval." *Id.* South Carolina has routinely recognized the admirable goal of limiting taxpayer burden. Public money pays for the creation of the public records, the maintenance of them, the storage of them, and, ultimately, their production pursuant to a FOIA request. Requiring extensive retrieval, review and production of tens of thousands of documents annually in response to FOIA requests conflicts with this goal when local governments cannot recover ***the actual*** direct cost of numerous and expensive FOIA requests. If the local government cannot recover these costs from the individual requestors, many of whom are using these documents for their personal benefit, the financial burden will inevitably fall upon the local taxpayers.

In her *Amended Complaint* and accompanying *Memorandum of Law*, the Plaintiff devotes pages to inference and speculation regarding how the costs of production requested by the County and the potential duplication of documents were the result of ill motives hatched over 6 years earlier by mostly former County employees/officials, while minimizing the vast scale of her request. The Plaintiff alleges "that she made four straightforward requests under § 30-4-40, S. C. Code, ann. for County documents related to the sale and purchase of parcels of real estate commonly referred to as 1 Bostwick Circle and 429 Broad River Road and for e-mail communications of County officials connected with these and other transactions." (Pl. Memo. Of Law, p. 1). While the Plaintiff's initial request may have dealt with two residential real estate transactions, the numerous e-mail requests that followed were not so limited in scope. For instance, in her second FOIA request, on March 10, 2019, the Plaintiff demanded approximately **six (6) years'** worth of e-mails to/from/between two County Councilmembers with various County department heads, the County Administrator, the County Attorney, the County Sheriff, members of County Council, and/or other public and private individuals. There was no limit as to subject matter. Unsurprisingly, the request implicated hundreds of documents to and from a large number of individuals.

Public bodies often devote substantial hours to reviewing documents to determine whether they, or portions thereof, are exempt from disclosure under FOIA. In many instances, these redactions are not only permitted by law but required by it. Separating exempt material from non-exempt

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material for six (6) years' worth of e-mails to/from/between approximately fifteen individuals would undoubtedly take tens if not hundreds of hours. The Plaintiff did not and has not contested the time estimated by County employees to respond to her request; rather, she rejects the notion that she is responsible for reimbursing County taxpayers for the substantial time and efforts to be expended by County employees on her behalf due to the breadth of her request.

As to the second question, while South Carolina has consistently acknowledged the vital public purpose behind transparency in local government, it is important to not understate the critical nature of the attorney-client privilege for public bodies. Public bodies and governmental employees often rely on opinions from legal counsel to guide their actions. Such legal guidance can include the downsides, risks, and costs of pursuing a certain course of action; the existence of any potential alternatives; and, the possible collateral benefits and/or risks in terms of expense, politics, and/or public harm. Perhaps it was for this reason that the General Assembly included within FOIA an expansive exemption for "***[c]orrespondence*** or work products ***of legal counsel for a public body and*** any other material that would violate attorney-client relationships." *See* S.C. Code Ann. § 30–4–40(7) *(emphasis added)*.

Nevertheless, the Plaintiff seemingly argues that nearly all – if not all – communications from or to an in-house governmental attorney are immune to these long-standing protections: "The assertion that the email communications of government officials are 'privileged' is nonsense…." (Pl. Memo. Of Law, p. 6). This position is wholly unsupported by any relevant case law and runs counter to findings of courts across this country. Zealously defended for centuries, the attorney-client privilege remains a cornerstone of American jurisprudence, even for governmental officials and governmental employees. Like lawyers working within the private sector, governmental attorneys' communications should be protected by the attorney-client privilege so long as they relate to some legal strategy, or to the meaning, requirements, allowances, or prohibitions of the law. In this case, the County's attorneys were brought into these communications due to their legal knowledge and the existence of potential legal issues, and they remained engaged in the planning and completion of the real property acquisition. While the County recognizes that whether a particular communication is privileged can become murkier given the recognized public benefit of transparency in government actions and the complex and varied roles expected of a county attorney on a daily basis, the redactions made by the County in this case were proper, legal, and necessary to avoid an inadvertent waiver of privileged material through disclosure to a third party.

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Finally, the Plaintiff seeks both attorneys' fees and compensatory damages arguing that the County's actions were not in good faith. As an initial matter, the Plaintiff brought this action pursuant to S.C. Code Ann. § 30-4-100, whereas compensatory damages are only discretionarily permitted when a party prevails under S.C. Code Ann. § 30-4-110. *See* S.C. Code Ann. § 30-4-110(C)(2) ("If a person or entity seeking relief ***under this section*** prevails, the court may order...(2) actual or compensatory damages.")(emphasis added). Thus, the Plaintiff lacks any statutory grounds for compensatory damages. Similarly, the "good faith" defense that the Plaintiff alleges the County did not raise in its answer due to its *limitations on zealousness*[1] is incorporated within Section 30-4-110 of FOIA, not Section 30-4-100. Further, the Plaintiff's argument that the County did not act in good faith is unsupported by the uncontroverted facts. As set forth herein, if the Court finds that the County did fail to comply with FOIA as to one or more particulars, the County's failure was not intentional but was the result of complex and unresolved legal issues.

ANALYSIS:

I. THE IRRELEVANCE OF PLAINTIFF'S EXHIBITS

The Plaintiff's *Memorandum of Law* references numerous exhibits and e-mails that purportedly detail the County's animus toward the Plaintiff. As of the date of this Memorandum, the Plaintiff has not provided such documents to the Defendant. Nevertheless, looking solely at the descriptions provided in the Plaintiff's *Memorandum of Law*, those exhibits are entirely irrelevant to the underlying matter and, as such, provide more insight into the Plaintiff than the Defendant:

1. **JUNE 10, 2014 EMAIL (PL. MEMO. OF LAW, P. 10)**: For unknown reasons, the Plaintiff attempts to establish "the County's willfulness in harassing her" through an e-mail between the former Town Manager of Bluffton, the former Bluffton Police Chief, and the Bluffton Town Attorney. Although located in Beaufort County, the Town of Bluffton is a separate and independent municipality that has absolutely zero involvement in this litigation. At best, the referenced e-mail

[1] The Plaintiff alleges the County "adroitly avoided [a good faith] defense] because while lawyers are zealous advocates for clients, zealousness has a limit, and that limit is the front door to the Courthouse." (Pl. Memo. Of Law, p. 7). The Plaintiff contends that "good faith" is an affirmative defense that must be brought at the time of pleading despite the fact that responsive pleadings may not even be necessary under the cited portion of the South Carolina Code, given the timelines contained therein.

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provides zero relevant context other than, perhaps, attempting to establish a correlation between the Bluffton Town Attorney and Defendant's counsel in this matter.

2. **JUNE 11, 2014 EMAIL (PL. MEMO. OF LAW, P. 10-11)**: The Plaintiff similarly references but does not provide an email from "the County Attorney" in which he or she purportedly urges other local governments "to get on board with a 'similar approach' of the County requiring a 50% deposit for plaintiff's requests." The Plaintiff goes to great lengths to imply how such action was criminal under the former iteration of the Act. This position is completely without merit. Prior to the 2017 revisions to the Freedom of Information Act, the Act granted the public body with the right to charge a "reasonable deposit of these costs." *See* S.C. Code Ann. 30-4-30(b) (2016). While reasonable minds could differ regarding the imposition of a fifty (50%) percent deposit requirement, arguing that the consideration of it was criminal borders on the absurd. In 2017, the Act was amended to permit a "deposit not to exceed twenty-five percent of the total reasonably anticipated cost for reproduction of the records." *See* S.C. Code Ann. 30-4-30(b) (2018). The County has used this percentage since the revisions to FOIA became effective. Moreover, although "the County Attorney" referenced in the e-mail is not named, all members of the County Legal Department in 2014 are and have been employed elsewhere at all times relevant to this litigation.

Similarly, the majority of Plaintiff's *Memorandum of Law* is dedicated to outlining and detailing the apparently contentious relationship between the Plaintiff and Defendant, stemming from an animal-control incident involving the Town of Port Royal in 2012. Since that time, the Plaintiff has undergone great efforts to use FOIA as a retaliatory tool to harass public officials and to troll through public records searching for anything potentially harmful to political opponents and third parties. Importantly, the individuals involved in 2012, 2013, and/or 2014, which apparently lie at the heart of the Plaintiff's claims of "animus" and "hostility," are no longer employed by the County and, in some cases, have been employed elsewhere for years. (Pl. Memo. Of Law, p. 10). While the County believes that the exhibits referenced by the Plaintiff – which as of this date have

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not been shared with the County – are largely irrelevant to the issues at hand, any relevance they may possess do more to illustrate how the Plaintiff's multi-year fishing expedition against individual County employees and officials is not in the public interest. Instead, they evidence Plaintiff's weaponization of the rights granted to the people by FOIA for her personal benefit and pleasure.

II. Recovery of Direct Costs

Section 30-4-30(B) of the South Carolina Freedom of Information Act sets forth the following rules on fees and charges:

> *The public body may establish and collect fees as provided for in this section. The public body may establish and collect reasonable fees not to exceed the actual cost of the search, retrieval, and redaction of records. The public body shall develop a fee schedule to be posted online. The fee for the search, retrieval, or redaction of records shall not exceed the prorated hourly salary of the lowest paid employee who, in the reasonable discretion of the custodian of the records, has the necessary skill and training to perform the request. Fees charged by a public body must be uniform for copies of the same record or document and may not exceed the prevailing commercial rate for the producing of copies. Copy charges may not apply to records that are transmitted in an electronic format. If records are not in electronic format and the public body agrees to produce them in electronic format, the public body may charge for the staff time required to transfer the documents to electronic format.... The records must be furnished at the lowest possible cost to the person requesting the records.... Documents may be furnished when appropriate without charge or at a reduced charge where the agency determines that waiver or reduction of the fee is in the public interest because furnishing the information can be considered as primarily benefiting the general public. Fees may not be charged for examination and review to determine if the documents are subject to disclosure. A deposit not to exceed twenty-five percent of the total reasonably anticipated cost for reproduction of the records may be required prior to the public body searching for or making copies of records.*

All parties should desire to keep production costs as low as reasonably possible. Public money pays for the creation of the public records, the maintenance of them, the storage of them, and, ultimately, their production pursuant to a FOIA request. Each step in the process is a cost to the taxpayer. As such, FOIA's objectives are best achieved when both the requestor and the public body work cooperatively.

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The Plaintiff alleges "that she made four straightforward requests under § 30-4-40, S. C. Code, ann. for County documents related to the sale and purchase of parcels of real estate commonly referred to as 1 Bostwick Circle and 429 Broad River Road and for e-mail communications of County officials connected with these and other transactions." (Pl. Memo. Of Law, p. 1). While the Plaintiff's initial request may have dealt with a simple set of real estate transactions, the numerous e-mail requests that followed were not so limited in scope. For instance, in her second FOIA request, on March 10, 2019, the Plaintiff demanded the following:

1. *All Emails from January 1, 2013 – today:*

   sturodman@gmail.com to/from and between any of the following email addresses: gkubic@bcgov.net; jgruber@bcgov.net; tkeaveny@bcgov.net; tvaux@bcgov.net; pjtanner@bcgov.net; acoppage@bcgov.net; mhatfield@bcgov.net; rbrooks@bcgov.net; lmcellyn@bcgov.net; psommerville@hargray.com; mhatfield@bcgov.net; vwillis@portroyal.org; brianb@bcgov.net;

2. *All Emails from January 1, 2013 – today:*

   psommerville@hargray.com to/from and between any of the following email addresses: gkubic@bcgov.net; jgruber@bcgov.net; tkeaveny@bcgov.net; tvaux@bcgov.net; pjtanner@bcgov.net; acoppage@bcgov.net; mhatfield@bcgov.net; rbrooks@bcgov.net; lmcellyn@bcgov.net; sromdan@gmail.com; mhatfield@bcgov.net; vwillis@portroyal.org; brianb@bcgov.net;

3. *All Emails from January 1, 2013 – today:*

   bjhillster@gmail.com to/from and between any of the following email addresses: gkubic@bcgov.net; jgruber@bcgov.net; pjtanner@bcgov.net; acoppage@bcgov.net; mhatfield@bcgov.net; srodman@gmail.com; mhatfield@bcgov.net; psommerville@hargray.com;brianb@bcgov.net;

(the "***March 10th FOIA request***"). In other words, the Plaintiff demanded approximately **six (6) years'** worth of e-mails to/from/between two County Councilmembers using their personal e-mail addresses with various County department heads, the County Administrator, the County Attorney, the County Sheriff, members of County Council, and/or other public and private individuals. There was no limit as to subject matter. Unsurprisingly, the broad scope of this request implicated hundreds of documents and came with a correspondingly high fee. As elected officials and members of the County governing body, these councilmembers were often copied to or involved in highly sensitive

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legal matters, employment decisions, economic development proposals, and more. Each e-mail requires sufficient review to ensure that no confidential information is inadvertently released.

The Plaintiff seemingly relies solely on the overall dollar amount requested by the County in responding to the Plaintiff's various FOIA demands. The Plaintiff does not specifically identify which portions of the South Carolina Code the County allegedly violated, nor does she single out which charges she deems improper. Rather, she relies on an unrecognized legal doctrine (*res ipsa loquitor*), *Romeo and Juliet*, and irrelevant communications, none of which have any bearing on the matter at hand, to support her claims.

As evident from the *Amended Complaint* and set forth in Plaintiff's *Memorandum of Law*, the County requested that the Plaintiff deposit a combined $3,608.02 as the approximate twenty-five percent of the anticipated $14,432.06 costs that would be incurred by the County in responding to **all four** of the Plaintiff's FOIA requests. Notably, $12,079.00 of this total was the result of the March 10th FOIA request alone. Although not clear from the pleadings, it appears the Plaintiff is primarily challenging the County's imposition of the following charges: (1) the $72.00/an hour rate charged by the County for the IT Department to search and compile records in response to the March 10, 2019, FOIA Request; and (2) the $72.00/an hour charged by the County for the Legal Department to redact records in response to the March 18, 2019, FOIA Request and the March 31, 2019, FOIA Request.

A. The $72.00/an Hour Hourly Rate Charged for IT Review for the March 10, 2019.

As detailed in the Plaintiff's *Memorandum of Law*, the County estimated that searching and retrieving the hundreds of records requested by the March 10th FOIA request would take approximately 167 hours, based on an estimated time of one minute per document. (Pl. Memo. of Law, p. 4). Shortly thereafter, the Plaintiff requested a thorough explanation from the former County Administrator, who responded that (i) SLED, as the primary law enforcement agency for the state, has recommended stronger internal controls on access to the County network, presumably to limit outside interference/hacking; (ii) the IT charge should range from $49.07/an hour to $30.74/an hour based upon which member of the County IT Department conducts the search; (iii) the County Attorney is required to review any disclosed e-mails from elected or appointed officials to ensure that the attorney-client privilege is not waived; and, (iv) that the County Attorney's rate

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for review is $72.00/an hour. Upon receipt of this explanation, the Plaintiff ***revised her request on that same day***, March 18, 2019, by reducing its scope to all e-mails over a 6-year period between the County Council Chairman, the former County Administrator, the former County Attorney/former Deputy County Administrator, and the County Attorney. (Pl. Memo. Of Law, p. 1)(identifying Exhibit 4 as "***revised*** request for county official's correspondence")(emphasis added).

The Plaintiff now objects to the initial estimate provided by the County after she abandoned the request and then revised it. By revising her request, the Plaintiff has abandoned any claim that she may have against the County due to the County's initial estimate of costs. Revising her request similarly eliminated the County's ability to file pursuant to Section 30-4-110 of FOIA for relief from an unduly burdensome or overly broad request. *See* S.C. Code Ann. § 30-4-110(A)(" A public body may file a request for … relief from unduly burdensome, overly broad, vague, repetitive, or otherwise improper requests…."). The County reasonably relied upon the revised scope of the Plaintiff's request and, as such, the Plaintiff should be estopped from challenging the County's initial estimate of costs.

B. <u>The Hourly Rate Charged for Administrative and Legal Redactions</u>.

The South Carolina Freedom of Information Act's fundamental premise is to give "any person [the] right to inspect or copy any public record of a public body" "at a minimum cost or delay to the persons seeking access to public documents or meetings." S.C. Code Ann. § 30–4–30(a); S.C. Code Ann. § 30-4-15. Ultimately, the Act permits public bodies to charge fees to a requestor in order to comply with a request; however, they shall be "reasonable fees not to exceed the actual cost of the search, retrieval and redaction of [the] records" and "at the lowest possible cost to the person requesting the records." S.C. Code Ann. § 30–4–30(B).

For years, South Carolina permitted local governments to recover a reasonable fee only for the cost of the "search and retrieval" of public records in response to a valid FOIA request. *See* S.C. Code Ann. § 30–4–30(B). In 2017, to better help local governments recover the actual costs spent by them in complying with FOIA, the General Assembly amended the Act to grant public bodies with the right to charge reasonable fees for the cost of "redaction" in addition to "search and retrieval." *Id.* The Plaintiff baldly asserts that having members of the legal department or administrative department review such documents at their hourly rate is excessive and exorbitant. But

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as noted by the Plaintiff's own exhibits, the County had a reasonable explanation – confidential information needs to be protected.

E-mails between County Councilmembers, the County Attorney, the County Sheriff and/or the County's Administration Department are likely to include substantial legally protected material. For one, the inclusion of communications from or to the County Attorney for a 6 year period within the FOIA request, is undoubtedly going to produce a number of attorney-client privileged documents. The County employs over a thousand people, serves approximately two hundred thousand residents and tens of thousands of visitors annually, operates a multi-million-dollar budget, all while performing a huge variety of different tasks regulated by local, state and federal regulations. Potential legal issues from employment matters to condemnation are unavoidable. Moreover, the law protects more than just attorney-client privileged material from disclosure. It protects against the release of trade secrets or other confidential information that may be gathered in a search to bring economic development to the County, it prohibits the release of information regarding minors and information regarding the tax liability of certain local businesses, and it requires the County safeguard other private information. As a result, the County **must** review all documents it discloses prior to production, in particular, documents from the County legal department and County administrative department as they are more likely to possess sensitive information.

The law does not require that the County charge the fee of lowest paid employee; rather, the hourly fee for the redaction "shall not exceed the prorated hourly salary of the lowest paid employee who, in the reasonable discretion of the custodian of the records, ***has the necessary skill and training to perform the request***." *See* S.C. Code Ann. § 30–4–30(B)(emphasis added). Members of the County legal department possesses the institutional knowledge and/or training to determine what material is confidential and needs to be protected. Determining whether a particular document is protected or exempt from disclosure requires an expansive knowledge of common law privilege principles, as well as various statutes and federal regulations. Moreover, applying a $72.00 an hour rate for legal review seems hardly excessive or exorbitant in almost any context.

Public bodies often devote substantial hours to reviewing documents to determine whether they, or portions thereof, are exempt from disclosure under the Act. In many instances, these redactions are not only permitted by law but required by it. Thus, when a request demands years' worth of documents specifically between members of the governing body and its counsel and/or other public officials, it should be no surprise that the legal department would need to dedicate substantial

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time for review to prevent the unintentional disclosure of privileged material. Accepting the Plaintiff's argument that the County should not recover for the actual costs of redaction would effectively reallocate the financial burden of overly burdensome FOIA requests back onto the public body in contravention of FOIA's 2017 amendments.

The Act permits public bodies to recover a reasonable fee for the cost of having an employee of the public body ***search***, ***retrieve***, and ***redact*** public records in response to a valid FOIA request. South Carolina courts do not appear to have opined on what constitutes "the prorated hourly salary of the lowest paid employee ***who***, in the reasonable discretion of the custodian of the records, ***has the necessary skill and training to perform the request***." The statute, by itself, fails to establish a bright line rule for public bodies to follow in determining amounts to charge to requestors. Ultimately, the question of whether a fee is reasonable is largely left to the reviewing court's discretion.

Once again, there are competing public policy factors in analyzing these costs. For one, FOIA is designed to provide the public with records at the "lowest possible cost to the person requesting" them. On the other hand, the South Carolina General Assembly has routinely recognized the admirable goal of limiting taxpayer burden. Requiring extensive retrieval, review and production of tens of thousands of documents annually in response to FOIA requests conflicts with this goal if local governments cannot recover ***the actual*** direct and indirect cost of numerous and expensive FOIA requests. If the local government cannot recover these costs from the individual requestors, many of whom are using these documents for their personal benefit or pleasure, the financial burden will inevitably fall upon the local taxpayers. Thus, while the ultimate amount charged by the County may seem excessive when viewed in a vacuum, proper context regarding the scope of the Plaintiff's request reveals that the County's fees were legally permitted and reasonable under South Carolina law.

III. Attorney Client Privilege

> *The attorney-client privilege is the oldest of the privileges for confidential communications known to the common law. Its purpose is to encourage full and frank communication between attorneys and their clients and thereby promote broader public interests in the observance of law and administration of justice. The privilege recognizes that sound legal advice or advocacy serves public ends and that such advice or advocacy depends upon the lawyer's being fully informed by the client.... The lawyer-client privilege rests on the need for the advocate and*

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counselor to know all that relates to the client's reasons for seeking representation if the professional mission is to be carried out.[2]

The Freedom of Information Act's basic premise is to give "any person [the] right to inspect or copy any public record of a public body." *See* S.C. Code Ann. § 30–4–30(a). This right is not without some exceptions, including the right of the public body to exempt from disclosure "[c]orrespondence or work products of legal counsel for a public body ***and*** any other material that would violate attorney-client relationships." *See* S.C. Code Ann. § 30–4–40(a)(7) (emphasis added).

A. Literal Interpretation of the Exemption Would Exclude All Communications From Governmental Counsel.

Under a literal interpretation of the statute, the exemption should be divided into three separate exemptions: (1) correspondence of legal counsel for a public body, (2) work products of legal counsel for a public body, and (3) any other material that would violate attorney-client relationships. Applying the exemption in this manner would permit a public body to refuse to disclose ***any*** correspondence from legal counsel for a public body to the public body and its representatives as part of a FOIA request. This interpretation finds some limited support in the text of the Freedom of Information Act and in practicality. Determining whether a particular communication is attorney-client privileged is a fact-intensive exercise and often requires the dedication of substantial legal and staff resources, as indicated in the case at hand. Permitting such a broad exemption, if not abused, would further the state-recognized goal of limiting taxpayer burden by eliminating extensive review of tens of thousands of documents annually in response to FOIA requests. As noted herein, the practice of having legal counsel review and analyze all correspondence to weed out attorney-client privileged information in response to a FOIA request – a request which need not meet even the minimal relevancy or scope requirements of civil discovery – imposes substantial direct costs on the taxpayer and enormous indirect costs through lost productivity.

While our courts have not directly addressed whether such an interpretation is proper, our Supreme Court has implied that not all attorney-client communications are immune from

[2] *Upjohn Co. v. United States*, 449 U.S. 383 at 389, 101 S.Ct. 677, 66 L.Ed.2d 584 (1981) (internal quotation marks and citations omitted).

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discovery pursuant to FOIA if it appears that incorporating counsel into such communications was done merely for the purpose of shielding such communications from disclosure:

> *The General Assembly, by the clear language of the statute, believes FOIA should be broadly construed to allow the public to gain access to public records. The interest in confidentiality expressed through the attorney-client privilege should not trump the public's right to know at this juncture. More development of the facts surrounding the hiring of Childs and Halligan as well as court review of the actual completed questionnaire is necessary to explore these competing interests before rendering judgment as a matter of law.* [3]

In reaching its decision in *Berkeley County*, the South Carolina Supreme Court did not reject that the attorney-client privilege could be used by a governmental entity nor did it explicitly reject the statutory interpretation provided above; rather, it questioned whether the School District initially retained outside counsel for the sole purpose of circumventing FOIA.

Assuming for the sake of argument that the Supreme Court would reject the literal interpretation of the exemption statute, a more liberal interpretation reveals two well-defined and understood protections: (1) public records that would be exempt under the work product doctrine, and (2) public records that would be exempt under the attorney-client privilege. Even applying this more liberal interpretation, the County's redactions of communications between its in-house attorneys and employees were appropriate and permitted under FOIA.

B. <u>The Attorney-Client Privilege Applies to Governmental Officials and Employees Communicating with In-House Counsel</u>.

Despite the explicit inclusion of a broad attorney-client privilege exemption within FOIA, the Plaintiff apparently contends that no communication with in-house governmental counsel can be considered privileged: "[T]here is no such thing as 'privileged information' when government officials communicate with third parties or one another." (Pl. Memo. Of Law, p. 4). "The assertion that the email communications of government officials are 'privileged' is nonsense…." (Pl. Memo of

[3] *Evening Post Publ'g Co. v. Berkeley County Sch. Dist.*, 392 S.C. 76, 82, 708 S.E.2d 745 (2011). In this case, the school district failed to turn over employee evaluations that were prepared by outside counsel. The school district argued that the evaluations were attorney-client privileged and, as such, exempt from disclosure pursuant to FOIA. Summary judgment was ultimately granted to the school district. The Supreme Court, on appeal, reversed the decision of the trial court finding that summary judgment was inappropriate as there were factual questions regarding the necessity of hiring counsel to complete employee evaluations.

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Law, p. 6). The mere fact that an attorney is counsel for a governmental body does not dilute the attorney-client privilege.

Although, there is relatively little case law or instruction on the attorney-client privilege for governmental clients in South Carolina, nothing exists to suggest that attorneys representing governmental clients are categorically less entitled to offer the protections afforded by the attorney-client privilege. Courts across the country have consistently rejected this argument that the ***status of the attorney*** can somehow eliminate, as the Plaintiff contends, the privileges afforded to the client. *In re Grand Jury Investigation (John Doe)*, 399 F.3d 527 (2nd Cir. 2005) (finding, "if anything, the traditional rationale for the [attorney-client] privilege applies with special force in the government context"); *In re Sealed Case*, 737 F.2d 94, 99 (D.C. Cir. 2004). ("The lawyer whose testimony the government seeks in this case served as in-house attorney. That status alone does not dilute the privilege."). In fact, in a case where the government attorney is confronted with wrongful acts by government representatives, the attorney may have a greater obligation than an attorney representing a private corporation to investigate and question such conduct extensively. *See Ross v. City of Memphis*, 423 F.3d 596, 601-603 (6th Cir. 2005)(noting that the privilege in the civil context for government employees should be even more robust so that the government can investigate wrongdoing more thoroughly and pursue remedial options). Thus, to the extent the Plaintiff claims that the attorney-client privilege is not applicable to any communications between a governmental official or employee and its in-house counsel, such a claim must fail as a matter of law and policy.

C. <u>The County Appropriately Redacted Exempt Portions of Its Records</u>.

At its core, the attorney-client privilege protects communications between attorneys and clients in which legal advice was sought or rendered, and which was intended to be and was in fact kept confidential, unless otherwise waived. Utilizing these traditional factors, whether a particular communication from a governmental attorney is privileged can become complicated given the recognized public benefit of transparency in government actions, and the complex and varied roles expected of a county/municipal attorney. Local governments employ dozens of people, serve tens of thousands of residents, and operate multi-million-dollar budgets all while performing a huge variety of different tasks; therefore, potential legal issues and litigation are highly probable. A

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strong position on the attorney-client privilege is critical and benefits the public by encouraging employees and officials to divulge potentially problematic information to the attorney and promote full and frank discussion between counsel and the government's representatives.

There is relatively little case law or instruction on the attorney-client privilege in governmental clients in South Carolina. Despite the lack of established law pertaining to government lawyers in South Carolina, our Supreme Court has had several opportunities to examine the attorney-client privilege in other respects. Generally, the attorney-client privilege will exist:

> *(1) [w]here legal advice of any kind is sought (2) from a professional legal adviser in his capacity as such, (3) the communications relating to that purpose (4) made in confidence (5) by the client, (6) are at his instance permanently protected (7) from disclosure by himself or by the legal adviser, (8) [unless] the protection [is] waived.*[4]

"In order to establish the privilege, it must be shown that the relationship between the parties was that of attorney and client and that the communications were of a confidential nature." *Marshall v. Marshall*, 320 S.E.2d 44, 46-47 (S.C. Ct. App. 1984). But any voluntary disclosure of a communication by a client to a third party waives the attorney-client privilege. *Id.*

As alluded to by the Plaintiff, not all communications between an attorney and client are protected; rather, there must be a solicitation of legal advice. This limitation is, perhaps, one of the most complicated and difficult areas of the attorney-client privilege to navigate as attorney-client communications often contain a combination of legal and practical advice. At times, the attorney serves as an advocate on behalf of the client; at other times, the attorney may serve as a counselor. As such, in evaluating whether a particular communication's primary purpose is legal, courts have relied on a variety of factors including (1) the extent to which the attorney performs legal and non-legal work for the client, (2) the nature of the communication, and (3) whether the attorney had previously provided legal assistance relating to the same matter.

A cursory review of the relevant records in conjunction with these three factors reveals that the communications should be considered privileged. First, the attorneys involved in the communications were involved solely due to their employment as in-house legal counsel for the County. Second, the communications involved the acquisition of a lot within a residential

[4] *Tobaccoville USA, Inc. v. McMaster*, 692 S.E.2d 526, 529-30 (S.C. 2010).

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subdivision for the potential placement of a Department of Special Needs home. The communications were predominantly centered around the process by which a local government could acquire this real estate and the various title issues revealed by the title work, in particular various restrictive covenants. South Carolina has long recognized that the acquisition of real estate constitutes the practice of law and therefore must be done by or under the supervision of a South Carolina lawyer. These steps include the review of title, the preparation of closing documents, and conducting the closing. Thirdly, it is standard practice for the County's attorneys to be prominently involved in the acquisition of any real estate on behalf of the County, for the reasons listed above.

Like lawyers working within the private sector, governmental attorneys' communications should be protected by the attorney-client privilege so long as they relate to some legal strategy, or to the meaning, requirements, allowances, or prohibitions of the law. In this case, the County's attorneys were brought into these communications due to their legal knowledge and the existence of potential legal issues, and they remained engaged in the planning and completion of the real property acquisition.

The Plaintiff appears to contend that the privilege should not apply to these communications that were not specifically regarding legal advice but, perhaps, were conveying facts regarding the potential use of the real property and/or the negotiation of price. In dealing with legal counsel, public bodies and their employees must often disclose private and confidential details regarding their plans and their activities. Whether a certain property could support a certain use is certainly a legal question as it implicates private restrictive covenants and zoning concerns. Governments should exercise caution and ensure that their activities conform with constitutional requirements, as well as state and local laws. Eliminating the guarantee of confidentiality in such discussions for governmental clients would undermine the importance of the attorney-client privilege and seemingly punish those that use appropriate due diligence prior to spending taxpayer resources.

Finally, the Plaintiff appears to contend that the attorney-client privilege was waived by disclosure of the communications to third parties. (Pl. Memo. Of Law, p. 5)(quoting *Marshall v. Marshall*, 282 S. C. 534, 320 S.E.2d 44 (Ct. App. 1984): "The attorney client privilege, though, does not protect communications with non-clients."). Since the Plaintiff does not specifically allege in her pleadings what such third party was copied on these privileged communications, the County must assume that the Plaintiff is referencing the realtor that was representing the County in this acquisition

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and other. Three categories of people are considered privileged persons: (1) the client or prospective clients; (2) the lawyer; and (3) ***the agents of the client*** and the lawyer. RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS § 70 (2000) (emphasis added). Thus, the Plaintiff's claims of voluntary or involuntary waiver appear without merit.

D. Good Faith Defense.

The Plaintiff's argument that the County did not act in good faith when it redacted these records flies in the face of logic. For one, she contends that incorporating legal counsel into these communications was intended for the purpose of thwarting disclosure of these records. Including legal counsel in discussions involving the potential acquisition of real property and the construction of a Department of Special Needs home in a private subdivision is not only proper but should be encouraged. Moreover, the Plaintiff insinuates that the decision to include counsel in these communications was not designed to merely avoid disclosure; rather, it was intended to specifically avoid disclosure to **her**, given her past interactions with certain County officials. This conclusion is reached despite there being no evidence of the Plaintiff having even limited involvement with this acquisition or anything related to it.

In reality, if the Court determines that any redactions were improperly made, they were the result of the extremely difficult and unique challenges posed by the interplay between the Freedom of Information Act and the attorney-client privilege. Many of the procedures and objections that are available to private attorneys in discovery are not similarly available to local governments responding to a FOIA request. Limited and strict timelines coupled with vague and often overwhelming requests can create an environment ripe for mistake.

As noted herein, determining whether a particular communication is subject to the attorney-client privilege is often a very fact-intensive and difficult exercise. Given the limited timeframe in which to respond to a valid FOIA request, a thorough analysis of every communication to determine whether the attorney-client privilege will apply is simply not feasible in certain scenarios. Despite the attorney-client privilege having been recognized for centuries, its application as to public bodies and organizations remains relatively limited in South Carolina. As a result, government attorneys are often forced to choose between two unappealing options: (1)

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liberal disclosure and risk the waiver of the attorney-client privilege[5] or (2) liberal redactions and risk the violation of the Freedom of Information Act.

By its very nature and as aptly noted by the Plaintiff, the recognition of the governmental attorney-client privilege stands in conflict with the compelling public interest in open and honest government. At the same time, the litany of different statutes, ordinances, and regulations that apply to public officials and employees require full and competent representation to minimize risk to the public and the individual. The County recognizes the difficulties in balancing these organizational concerns with the heightened scrutiny that accompanies working with elected officials. Squaring these competing concepts is incredibly difficult, especially when reviewing hundreds of documents under strict time constraints.

The County acknowledges that the lack of guidance from South Carolina courts on the governmental attorney-client privilege exemption in FOIA may result in different attorneys reaching different conclusions regarding the appropriateness of any redactions. Nevertheless, the redactions made in this case – despite the claims of the Plaintiff – were clearly not made with animus, but rather, in a diligent effort by County attorneys attempting to comply with their legal responsibilities.

CONCLUSION:

For the reasons set forth herein, the Defendant, Beaufort County, respectfully requests that the *Amended Complaint* of the Defendant be dismissed.

Respectfully submitted,

FINGER, MELNICK & BROOKS, P.A.

s/ E. Richardson LaBruce
E. Richardson LaBruce, SC Bar No. 80106
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Post Office Box 24005
Hilton Head, South Carolina 29925-4005
Telephone: (843) 681-7000

[5] *Floyd v. Floyd*, 365 S.C. 56, 89, 615 S.E.2d 465, 483 (S.C. Ct. App. 2005)(finding an implied waiver of privilege by making communications with counsel an issue by "open[ing] the door to admission of the letters by his assertions at trial that he was following the advice of counsel in administering the trust."); *Marshall v. Marshall*, 282 S.C. 534, 538, 320 S.E.2d 44, 46-47 (S.C. Ct. App. 1984).

Email: erlabruce@fingerlaw.com
ATTORNEY(S) FOR DEFENDANT, BEAUFORT COUNTY

Hilton Head Island, South Carolina
June 1, 2020.

f:\client\b\beaufort county\adv. baracco, mare\pleadings\bc memorandum of law\memorandum of law (erl.final).docx

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BEAUFORT	)	CASE NO.: 19-CP-07-00818
Mare Baracco,	)	
	)	
Plaintiff,	)	
versus	)	**REPLY TO COUNTY'S MEMORANDUM OF LAW**
	)	
	)	
County of Beaufort,	)	
	)	
Defendant.	)	

It is difficult to respond to a memorandum of law provided the day before a hearing, but Plaintiff submits that three points require a brief reply.

The County inadvertently provides the Court a peek behind the curtain of bureaucratic intransigence on page 5 of its well-written Memorandum: "Since that time, the Plaintiff has undergone great efforts to use FOIA as a retaliatory tool to harass public officials and to troll through public records searching for anything potentially harmful to political opponents and third parties." This is an astonishing unsupported assertion, but it does illuminate the genesis of the present controversy. The "time" to which the County refers stems from a 2012 incident in which the Port Royal Police Department issued a criminal citation against the Plaintiff for "animal at large." The same day that Port Royal issued its criminal process, the Beaufort County Sheriff's Department served a criminal "notice" on the Plaintiff for the same offense. After a jury acquitted the Plaintiff in Municipal Court, the Beaufort County Sheriff's Department followed up her acquittal by attempting to prosecute under its criminal "Notice" for the same offense in Magistrate's Court, asserting that Port Royal had entered into a "Mutual Aid Agreement" with the Sheriff's Department to allow them to re-try the Plaintiff for the same offense. As a result of that ill-advised government overreach, the Plaintiff sued the County, which resulted in the County paying the Plaintiff a confidential sum to be released from the civil suit she brought against the County.

As a result of that bit of government oppression, the Plaintiff's became interested in Beaufort

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County Government, specifically the alleged "Mutual Aid Agreement," which turned out to be an illegal agreement. She followed up her initial request for public documents which a request for documents related to the sale of the two parcels and later to discover what the Council members had been discussing concerning her. As to her request for the documents related to 1 Bostwick Circle, once again the Plaintiff brought to the County's attention its illegal conduct. As a result of the Plaintiff's focus, the County undertook a study of the transaction and concluded in a December 12, 2018, study:

> The property is owned by the County. The controversy surrounding the property has two elements. First, the unauthorized purchase by the former Interim County Administrator. The County should provide a staff position for a licensed real estate professional that can assist all departments with their real estate purchases and property management needs. There is no available disciplinary action available against the former Interim County Administrator because he is no longer employed by the County
>
> December 12, 2018, Memorandum by Christopher S. Inglese, Assistant County Attorney

Therefore, Counsel's attributing bad motives to the Plaintiff is not only irrelevant under a F.O.I.A. evaluation, but also completely refuted by the facts as the County's investigation into Bostwick Circle confirmed her identification of problems. By projecting bad motives on to the Plaintiff, the County seeks to divert the conversation from the legal issue before the Court in the manner identified by the consummate trial lawyer, Cicero: *In hominem dicendum est igitur, quum oratio argumentationem non habet., Pro Flacco*, § 10. (If you have no basis in argument, then abuse the Plaintiff. Flacco was a tax collector accused of pocketing collections. The jury acquitted him.)

The County raises two other points that require a brief reply: 1) That attorney client privilege allows the County to redact information, and 2) that the County can require the Plaintiff to pay for its attorney's fees to review the documents prior to release. Both of these issues are fully discussed in Plaintiff's February 11th Memorandum of Law, but Plaintiff adds two brief remarks.

ATTORNEY CLIENT PRIVILEGE

As set forth in the Plaintiff's original memorandum this issue came up in *Evening Post*

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Publishing Company v. Berkeley County School District, 392 S.C. 76, 708 S.E.2d 745 (2011) (Court reversed grant of summary judgment to the School District.) There, the Evening Post wanted to review the information surrounding the selection of a school superintendent. Berkeley County refused to hand over the documents because the County claimed it was protected by attorney client privilege. The trial court granted summary judgment for the County. The Supreme Court reversed holding:

> **FOIA is remedial in nature and should be liberally construed to carry out its purpose. *Quality Towing, Inc. v. City of Myrtle Beach*, 345 S.C. 156, 161, 547 S.E.2d 862, 864-65 (2001). As the General Assembly stated, [I]t is vital in a democratic society that public business be performed in an open and public manner so that citizens shall be advised of the performance of public officials and of the decisions that are reached in public activity and in the formulation of public policy. Toward this end, provisions of this chapter must be construed so as to make it possible for citizens, or their representatives, to learn and report fully the activities of their public officials at a minimum cost or delay to the persons seeking access to public documents or meetings. S. C. Code Ann. § 30-4-15 (2007).**
>
> **FOIA's basic premise is to give "any person has a right to inspect or copy any public record of a public body." Id. § 30-4-30(a). This right is not without some exceptions, enumerated under section 30-4-40, the following being the one at issue in this case: "Correspondence or work products of legal counsel for a public body and any other material that would violate attorney-client relationships." *Id.* § 30-4-40(a)(7). The determination of whether documents or portions thereof are exempt from FOIA must be made on a case-by-case basis, and the exempt and non-exempt material shall be separated and the nonexempt material disclosed. *City of Columbia v. ACLU*, 323 S.C. 384, 387, 475 S.E .2d 747, 749 (1996); see also *Beattie v. Aiken County Dep't of Social Servs.*, 319 S.C. 449, 453, 462 S.E.2d 276, 279 (1995); *Newberry Publ'g Co., Inc. v. Newberry County Comm'n on Alcohol & Drug Abuse*, 308 S.C. 352, 354, 417 S.E.2d 870, 872 (1992). However, the exemptions should be narrowly construed to not provide a blanket prohibition of disclosure in order to "guarantee the public reasonable access to certain activities of the government." See *Fowler v. Beasley*, 322 S.C. 463, 468, 472 S.E.2d 630, 633 (1996); see also S. C. Code Ann. § 30-4-15 (2007). The burden of proving that an exemption exists lies with the government. *Evening Post Publ'g Co. v. City of North Charleston*, 363 S.C. 452, 457, 611 S.E.2d 496, 499 (2005).**
>
> **The circuit court stated in its order that an in camera review was held, but for only three out of the five items the circuit court claimed Evening Post requested. No indication is given in the order or the record why only three of the items were reviewed by the circuit court. In addition, the circuit court did not even see the documents ultimately sought by Evening Post in the lawsuit-the Board Members' completed questionnaires. Summary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law. *Lanham*, 349 S.C. at 362, 563 S.E.2d at 333. We find it troublesome**

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that the circuit court did not look at the documents ultimately sought by Evening Post before granting School District's summary judgment motion.

Additionally, School District's attorney admitted at the motions hearing that the evaluations were within the normal course of events, and that attorney involvement was not necessary to the process. During oral argument before this Court, School District's attorney clarified his statement by noting that while attorney involvement normally is not required, it was necessary in this particular instance. Thus, two reasonable inferences regarding the necessity of attorney involvement can be drawn: (1) The Board's annual review of the superintendent, required by Floyd's contract was within the normal course of events, or (2) attorney involvement was required because of the contentious environment surrounding the Board.

Here, it is premature to address this point because under the *Evening Post* standard—and as common-sense dictates, the County is required to hand over the redacted correspondence to the Court for an in-camera review. See above: "We find it troublesome that the circuit court did not look at the documents ultimately sought by Evening Post before granting School District's summary judgment motion." As set forth in Plaintiff's February 11th memorandum, attorney-client privilege does not attach just because a lawyer is included in an e-mail string. Attorney-client privilege attaches only when a client seeks legal advice based on confidential information, and when municipal employees share that inquiry with numerous persons in an e-mail chain, he or she waives the attorney-client privilege even if it attached in the first place.

ALLOWED COSTS

This issue too is fully briefed in the Plaintiff's February 11th Memorandum of Law. There is no room for disagreement on this point. The General Assembly requires that the information be provided at the lowest possible rate. See § 30-4-30 (B): "The public body may establish and collect fees as provided for in this section. . . . Fees may not be charged for examination and review to determine if the documents are subject to disclosure." Moreover, Beaufort County posts its allowable charges on its home page as: "$14.00 per hour and $7.00 per flash drive." (Since the Plaintiff filed this lawsuit, the County amended its homepage to come into conformity with the law on charges, proving, once again, how fundamentally important the judicial branch is to a free Republic.) Compare this with the Deputy County Attorney's June 11, 2014, e-mail to all local municipalities (Exhibit 6), urging them to band together to charge the Plaintiff more than the law allows, and we have a recipe

guaranteed to shock the conscience of the Court.

In summary, even if the Plaintiff were the terrible person the County implies, the legal analysis does not alter. The law is applied equally to each one of us, and it is unconscionable that Beaufort County thinks it can the Plaintiff's is undeserving of the protection of the law because it questions her motives and paints her in a bad light.

Respectfully submitted,

June 2, 2020

/s/Thomas R. Goldstein
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N. Charleston, South Carolina 29415-1121
(843) 554-4201
ATTORNEYS FOR PLAINTIFF

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From: tgoldstein@cobblaw.net
To: Richardson LaBruce
Subject: RE: documents
Date: Friday, June 19, 2020 12:15:26 PM

That's reasonable. We propose the following search terms:

Mare

Deckard
Baracco

Bostick Circle

Gruber

Regecz

Love

DSN

"Special needs"

BCDSN

Homes

Appraisal

"Mutual Aid"

Willis

Beach

Purchase

Acquisition

Procure

"Dave Thomas"

In addition to the foregoing search terms, we want, obviously, the Referee to examine the 146 pages of redacted material previously supplied. (I think this has been understood between us from the beginning.)

Tommy

From: Richardson LaBruce <erlabruce@Fingerlaw.com>
Sent: Friday, June 19, 2020 9:21 AM
To: tgoldstein@cobblaw.net

Subject: RE: documents

Tommy,

I hope you are doing well. I just wanted to quickly follow up with you once again as to the scope of your client's request. I remain concerned about the total cost to both parties and the time needed for Erin to review everything.

E. Richardson LaBruce
Attorney | FINGER, MELNICK & BROOKS, P.A.

35 Hospital Center Common, Suite 200 | Post Office Box 24005
Hilton Head Island, South Carolina 29925-4005
D: (843) 681-7009 | C: (843) 263-7812 | F: (843) 681-8802

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FDCPA: This firm is a debt collector attempting to collect a debt. Any information will be used for that purpose.

From: Richardson LaBruce
Sent: Tuesday, June 16, 2020 10:47 AM
To: 'tgoldstein@cobblaw.net' <tgoldstein@cobblaw.net>
Subject: RE: documents

Tommy,

Have you had an opportunity to confirm the scope of the document request with your client? I am going to need as much time as possible to get everything together.

E. Richardson LaBruce
Attorney | FINGER, MELNICK & BROOKS, P.A.

35 Hospital Center Common, Suite 200 | Post Office Box 24005
Hilton Head Island, South Carolina 29925-4005
D: (843) 681-7009 | C: (843) 263-7812 | F: (843) 681-8802

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FDCPA: This firm is a debt collector attempting to collect a debt. Any information will be used for that purpose.

From: tgoldstein@cobblaw.net [mailto:tgoldstein@cobblaw.net]
Sent: Wednesday, June 10, 2020 11:29 AM
To: Richardson LaBruce <erlabruce@Fingerlaw.com>
Subject: RE: documents

That's a fair question. Let me get an answer.

From: Richardson LaBruce <erlabruce@Fingerlaw.com>
Sent: Wednesday, June 10, 2020 10:13 AM
To: tgoldstein@cobblaw.net
Subject: RE: documents

Tommy,

I am sorry it has taken so long to reply.

Would you please confirm that your client does not wish to minimize the scope of any of her requests? In other words, will Erin be reviewing all 4 requests in full? If so, I assume that means she will need to review the thousands of responsive documents (both redacted and unredacted) requested by your client's March 10th FOIA request. That could take hundreds of hours of review on top of an estimated 170 hours of review on our end.

If you read Judge Buckner's order differently, please let me know.

E. Richardson LaBruce
Attorney | FINGER, MELNICK & BROOKS, P.A.

35 Hospital Center Common, Suite 200 | Post Office Box 24005
Hilton Head Island, South Carolina 29925-4005
D: (843) 681-7009 | C: (843) 263-7812 | F: (843) 681-8802

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FDCPA: This firm is a debt collector attempting to collect a debt. Any information will be used for that purpose.

From: tgoldstein@cobblaw.net [mailto:tgoldstein@cobblaw.net]
Sent: Friday, June 5, 2020 9:13 AM
To: Richardson LaBruce <erlabruce@Fingerlaw.com>
Subject: documents

Did you want to set up a time to through the documents and see if we can narrow the dispute? I assume the only way to do this (unless you trust me enough to send me the documents) is for me to come to your office and separate them into two piles. (I guess, there might be three piles—the third being documents we agree are irrelevant.)

FINGER, MELNICK & BROOKS, P.A.

ATTORNEYS AT LAW

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THOMAS L. BROOKS.
TYLER A. MELNICK
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Also admitted in:
* Georgia
† New York

▫ Court Certified Mediator
▪ Court Certified Arbitrator / Mediator

June 29, 2020

Via United States Mail,
***With Copy by* E-Mail (*erindean@tgdpa.com*)**:
Erin Dubose Dean, Esq.
TUPPER, GRIMSLEY & DEAN, P.A.
Post Office Box 2055
Beaufort, South Carolina 29901-2055

Re: Mare Baracco v. Beaufort County; 2019-CP-07-00818
Our File No. 6868.002 – Beaufort County

Dear Erin,

To ensure that Beaufort County is fully complying with the terms of Judge Buckner's Order of June 3, 2020, in the above-referenced case, I would like to request confirmation of the process moving forward.

The Plaintiff, through her counsel, was required to specify which documents she was requesting on or before June 18, 2020. The County understands that Exhibit "A" to the Complaint serves as the Plaintiff's request, subject to some limitations provided below. Exhibit "A" to the Complaint establishes puportedly four (4) records requests each of which is discussed briefly.

As to Request Number 1, which involved the production of records related to the County's October 8, 2018, Community Services Committee meeting and all documents related to the County's purchase of 1 Bostick Circle, the County has already fulfilled this request and the Plaintiff has paid for the production of these records. We understand that the Complaint only challenges the scope of the redactions made by Beaufort County pursuant to Section 30-4-40(7) of the South Carolina Code: "Correspondence or work products of legal counsel for a public body…." To comply with Judge Buckner's Order, Beaufort County will prepare a privilege log on or before Monday, July 6, 2020. This privilege log will accompany both the redacted and unredacted versions of the produced records. I expect we will use Citrix ShareFile, which should allow me to password protect the unredacted files, to provide these records to you while copying Plaintiff's counsel.

As to Request Number 2, which involved the production of approximately 6 years of e-mails to/from/between two County Councilmembers and various County department heads and other elected officials among other requests, Beaufort County never retrieved these records nor redacted them given the Plaintiff's decision to amend the request less than ten (10) days later. The Plaintiff, through its counsel, appears to demand that these documents be produced in full. Given the sheer scope of the request, Beaufort County and its counsel will be unable to search, retrieve and redact the tens of thousands of pages of public records within the time frame established by Judge Buckner's Order.

An initial estimate from the Beaufort County IT Department indicated the existence of thousands of responsive documents. In an effort to be mindful of your time as well as the potential costs to the parties given the parties' obligations to pay for your fees, I respectfully request that we delay the production and review of these records until such time as you have completed your review of all of the other documents. For the reasons set forth in our *Reply Memorandum*, a review of these records is not essential to rendering an opinion on the merits of the Complaint.

In Request Number 3, submitted on March 18, 2019, the Plaintiff reduced the scope of material requested in Request Number 2 to approximately 6 years of e-mails between one councilmember (Paul Sommerville) and three Beaufort County employees: Gary Kubic (former Administrator), Joshua Gruber (former Interim Administrator/Deputy Administrator/Attorney), and Thomas Keaveny (former Interim Administrator/Attorney/Deputy Attorney). Beaufort County never retrieved these records nor redacted them given the Plaintiff's decision to initiate this action on April 10, 2019. Nevertheless, given the smaller scope of Request Number 3, the County intends to have a privilege log along with redacted and unredacted versions of these documents available for your review by Monday, July 6, 2020. This production will also include an itemized statement of the costs and fees owed by the Plaintiff for production pursuant to the Freedom of Information Act. If, for some reason, the scope of the production exceeds what the County expected or personnel issues delay the search and/or retrieval of these records, we will notify you at once.

As to Request Number 4, submitted by the Plaintiff on March 31, 2019, the County did not retrieve or redact these records given the Plaintiff's decision to initiate litigation. Request Number 4 asked for the production of all e-mails between one councilmember (Alice Howard), the above-listed three Beaufort County employees, and three County Councilmembers. Although not quite as voluminous as Request Number 2, an initial estimate from the Beaufort County IT Department revealed the existence of hundreds of documents. For the reasons provided above, I once again respectfully request that we delay the production and review of these records until such time as you have completed your review of all of the other documents.

Finally, by e-mail of Friday, June 19, 2020, the Plaintiff appears to have altered the scope of Request Number 2, 3, and 4 to only such e-mails that include or reference any of the following search terms:

1. Mare
2. Deckard
3. Baracco
4. Bostick Circle
5. Gruber
6. Regecz
7. Love
8. DSN
9. "Special needs"
10. BCDSN
11. Homes
12. Appraisal
13. "Mutual Aid"
14. Willis
15. Beach
16. Purchase
17. Acquisition
18. Procure
19. "Dave Thomas"

On or before July 6, 2020, the County should be able to provide a reasonable estimate of the total costs likely to be incurred by Beaufort County in searching for, retrieving, and redacting the records for revised Request Number 2 and revised Request Number 4. Ultimately, a final figure is dependent upon the completion of production, as cost is dependent upon the actual number of hours spent by Beaufort County.

We sincerely appreciate your agreement to resolve this matter. If you have any concerns, questions, or comments regarding the above-outlined approach, please do not hestiate to contact me.

With best regards, I am

Sincerely yours,

E. Richardson LaBruce
FINGER, MELNICK & BROOKS, P.A.

Enc.
cc: Thomas R. Goldstein, Esq. (*via U.S. Mail and e-mail*)
Thomas J. Keaveny, II, Esq. (*via U.S. Mail and e-mail*)

f:\client\b\beaufort county\adv. baracco, mare\correspondence\letter to erin dean (6.29.2020)(final).docx

FINGER, MELNICK & BROOKS, P.A.

ATTORNEYS AT LAW

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Also admitted in:
* Georgia
† New York

▫ Court Certified Mediator
▪ Court Certified Arbitrator / Mediator

July 6, 2020

Via E-Mail Only (*erindean@tgdcpa.com*):
Erin Dubose Dean, Esq.
TUPPER, GRIMSLEY & DEAN, P.A.
Post Office Box 2055
Beaufort, South Carolina 29901-2055

Re: Mare Baracco v. Beaufort County; 2019-CP-07-00818
Our File No. 6868.002 – Beaufort County

Dear Erin,

In accordance with Judge Buckner's Order of June 3, 2020, in the above-referenced case and my earlier letter of July 2, 2020, please find below Beaufort County's Exemption Log in response to Freedom of Information Act Request #2019-459. This FOIA Request was submitted to the County on March 18, 2019, and is referenced as FOIA Request No. 3 in earlier correspondence:

> *Any/all emails to/from or between psommerville@hargray.com and the following email addresses, from 1/1/2013 – today:*
>
> *gkubic@bcgov.net; jgruber@bcgov.net; tkeaveny@bcgov.net*

By separate e-mail, you should receive a ShareFile link to (i) the clean copies of the produced documents, which will be password protected, and (ii) the redacted copies of the produced documents, which will not be password protected. The clean documents contain handwritten notations from the County Legal Department. These notations are made as part of the redaction process by the County and are mirrored within the Exemption Log.

Given the Plaintiff's decision to reduce the scope of her request, the total pages of documents produced have been reduced from 667 to 167. All pages removed from the production for falling outside of the scope of the request are available for your review should you deem it necessary.

The total cost for the search, retrieval, and redaction of these records is as follows. Please note that these fees do not include the costs associated with our office's involvement in this production. If you believe the costs incurred by outside counsel in responding to this request and the creation of the Exemption Log are necessary or appropriate for your consideration, please let me know.

DESCRIPTION	TIME	HOURLY RATE	TOTAL
I.T. Department conducts archival search of e-mails*	.50	$30.00*	$15.00
Records Management retrieves e-mails, converts to legible form, compiles documents	4.00	$14.00	$56.00
Legal Department redaction of records	7.00	$72.00	n/a**
Total:			**$71.00**

* Current rate for I.T. Department.

** Redaction is completed by the County Administrative Department and/or the County Legal Department, depending on the nature of the documents requested. Given that this production is the result of a court order, the time spent by the Legal Department redacting these records has not been included in the total due from Plaintiff to County for production.

If you have any questions, comments, or concerns, please do not hesitate to contact me.

With best regards, I am

Sincerely yours,

s/ E. Richardson LaBruce
E. Richardson LaBruce
FINGER, MELNICK & BROOKS, P.A.

Enc. Exemption Log;
Documents (CountyFOIA#3__000001 - CountyFOIA#3__000667)(as redacted/removed)
cc: Thomas R. Goldstein, Esq. (*via e-mail only*)
Thomas J. Keaveny, II, Esq. (*via e-mail only*)

f:\client\b\beaufort county\adv. baracco, mare\foia production\request 3\exemption log and cover letter (erl.final).docx

FOIA EXEMPTION LOG

E-MAILS FROM/TO/BETWEEN PSUMMERVILLE@HARGRAY.COM AND TKEAVENY@BCGOV.NET; JGRUBER@BCGOV.NET; AND/OR GKUBIC@BCGOV.NET (JANUARY 1, 2013 THROUGH MARCH 18, 2019)			
FOIA REQUEST NO.	PAGE NO.	CATEGORY DESCRIPTION	NATURE OF EXEMPTION/NON-PRODUCTION
County FOIA # 3 (2019-459)	000001 - 000032	Email and attachment regarding rules for public hearings	Outside of scope of revised request; material removed
County FOIA # 3 (2019-459)	000033 - 000038	Communications to and from county attorney from County staff, County councilmember(s) and County agent regarding tree cutting; attachment	30-4-40(a)(7): "Correspondence or work products of legal counsel for a public body." 30-4-40(a)(7): "material that would violate attorney-client relationships"
County FOIA # 3 (2019-459)	000039 – 000043	Email regarding economic development resolution	Outside of scope of revised request; material removed
County FOIA # 3 (2019-459)	000067	Email from County Attorney to Council Chair regarding open position	30-4-40(a)(7): "Correspondence or work products of legal counsel for a public body." 30-4-40(a)(7): "material that would violate attorney-client relationships"
County FOIA # 3 (2019-459)	000089 - 000092	Emails regarding open employment position	Outside of scope of revised request; material removed
County FOIA # 3 (2019-459)	000093 – 000094	Email from County employee to County Attorney with attachment; Email from County Attorney to Council Chair with attachment	30-4-40(a)(7): "Correspondence or work products of legal counsel for a public body." 30-4-40(a)(7): "material that would violate attorney-client relationships"
County FOIA # 3 (2019-459)	000095 – 000138	Email from County Attorney to Council Chair re: contract; attachment (000096-0000138)	30-4-40(a)(7): "Correspondence or work products of legal counsel for a public body." 30-4-40(a)(7): "material that would violate attorney-client relationships"
County FOIA # 3 (2019-459)	000139- 000140	Email from County Attorney to Council Chair; attachment	30-4-40(a)(7): "Correspondence or work products of legal counsel for a public body." 30-4-40(a)(7): "material that would violate attorney-client relationships" 30-2-310(C): Social security number; driver's license number 30-4-40(a)(2): Items of a personal nature

County FOIA # 3 (2019-459)	000141 - 000143	Email chain forwarded to Council Chair by County Attorney	Outside of scope of revised request 30-4-40(a)(7): "Correspondence or work products of legal counsel for a public body." 30-4-40(a)(7): "material that would violate attorney-client relationships"
County FOIA # 3 (2019-459)	000144 - 000154	Email chain from County Attorney to Council chair; attachment (000146-000149; 000151-000154)	30-4-40(a)(7): "Correspondence or work products of legal counsel for a public body." 30-4-40(a)(7): "material that would violate attorney-client relationships"
County FOIA # 3 (2019-459)	000155 – 000168	Email and attachments from County Chair to Keaveny as Interim Administrator.	No exemption for these documents.
County FOIA # 3 (2019-459)	000169 – 000174	Email chain from Council member	Outside of scope of revised request; material removed 30-4-40(a)(7): "Correspondence or work products of legal counsel for a public body." 30-4-40(a)(7): "material that would violate attorney-client relationships"
County FOIA # 3 (2019-459)	000175 – 000190	Email chain regarding emergency management; attachments	30-4-40(a)(7): "Correspondence or work products of legal counsel for a public body." 30-4-40(a)(7): "material that would violate attorney-client relationships"
County FOIA # 3 (2019-459)	000191 – 000193	Email chain regarding Reconstruction Monument (attachment)	Outside of scope of revised request; removed.
County FOIA # 3 (2019-459)	000194 – 000197	Email chain regarding Reconstruction Monument (attachment)	Outside of scope of revised request; material removed 30-4-40(a)(7): "Correspondence or work products of legal counsel for a public body." 30-4-40(a)(7): "material that would violate attorney-client relationships"
County FOIA # 3 (2019-459)	000198 – 000248	Various e-mail chains and attachments re: economic development, committee appointments, overlay district, Council rules	Outside of scope of revised request; removed.
County FOIA # 3 (2019-459)	000249 - 000254	Communications to and from county attorney from County staff, County councilmember(s) and County agent regarding tree cutting; attachment	30-4-40(a)(7): "Correspondence or work products of legal counsel for a public body." 30-4-40(a)(7): "material that would violate attorney-client relationships"
County FOIA # 3 (2019-459)	000255 - 000257	Email regarding economic development resolution	Outside of scope of revised request; material removed

County FOIA # 3 (2019-459)	000258 - 000270	Email regarding economic development resolution; attachment	Outside of scope of revised request; material removed
County FOIA # 3 (2019-459)	000275 - 000285	Email with other local officials regarding County Economic Development corporation; attachments	Outside of scope of revised request; material removed
County FOIA # 3 (2019-459)	000286 - 000287	Email regarding economic development corporation; attachment	Outside of scope of revised request; material removed 30-4-40(a)(7): "Correspondence or work products of legal counsel for a public body." 30-4-40(a)(7): "material that would violate attorney-client relationships"
County FOIA # 3 (2019-459)	000288 - 000307	Emails regarding economic development corporation; attachments	Outside of scope of revised request; material removed
County FOIA # 3 (2019-459)	000308 - 000323	Email chain regarding emergency management; attachments;	30-4-40(a)(7): "Correspondence or work products of legal counsel for a public body." 30-4-40(a)(7): "material that would violate attorney-client relationships" Duplication of production from 000175 through 000190; material removed.
County FOIA # 3 (2019-459)	000324 – 000327	Email chain regarding Reconstruction Monument (attachment)	Outside of scope of revised request; removed. Duplication of production from 000191 through 000197; material removed.
County FOIA # 3 (2019-459)	000328 – 000330	Email chain regarding Reconstruction Monument (attachment)	Outside of scope of revised request; removed.
County FOIA # 3 (2019-459)	000333	Email between City and County officials regarding storm debris; private phone number redacted	30-4-40(a)(2): Items of a personal nature
County FOIA # 3 (2019-459)	000338 – 000467	Various emails and attachments	Outside of scope of revised request; removed.
County FOIA # 3 (2019-459)	000468 - 000470	Email regarding economic development corporation; attachment	Outside of scope of revised request; material removed 30-4-40(a)(7): "Correspondence or work products of legal counsel for a public body." 30-4-40(a)(7): "material that would violate attorney-client relationships"
County FOIA # 3 (2019-459)	000471 - 000606	Various emails and attachments	Outside of scope of revised request; material removed; redactions not completed.
County FOIA # 3 (2019-459)	000614 - 000644	Various emails and attachments re: MCIP; Department of Commerce; LIBPA newsletter, etc.	Outside of scope of revised request; material removed; redactions not completed.

County FOIA # 3 (2019-459)	000645 - 000655	Email chain regarding emergency management; attachments;	30-4-40(a)(7): "Correspondence or work products of legal counsel for a public body." 30-4-40(a)(7): "material that would violate attorney-client relationships" Duplication of production from 000175 through 000185; material removed.
County FOIA # 3 (2019-459)	000656 - 000667	Email chain regarding debris cleanup; attachments; LIPBA	Outside of scope of revised request; material removed; redactions not completed.
END OF PRODUCTION			

FINGER, MELNICK & BROOKS, P.A.

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Also admitted in:
* Georgia
† New York

▫ Court Certified Mediator
▪ Court Certified Arbitrator / Mediator

July 7, 2020

Via E-Mail Only (*erindean@tgdcpa.com*):
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TUPPER, GRIMSLEY & DEAN, P.A.
Post Office Box 2055
Beaufort, South Carolina 29901-2055

Re: Mare Baracco v. Beaufort County; 2019-CP-07-00818
Our File No. 6868.002 – Beaufort County

Dear Erin,

In accordance with Judge Buckner's Order of June 3, 2020, in the above-referenced case and my earlier letter of July 2, 2020, please find below Beaufort County's Exemption Log in response to Freedom of Information Act Request #2019-231. This FOIA Request was submitted to the County on February 1, 2019, and is referenced as FOIA Request No. 1 in earlier correspondence. The responsive documents were provided to the Plaintiff on March 21, 2019.

I have attached a copy of the earlier redacted documents hereto. The same documents, without redactions, will be provided by separate e-mail and through Citrix ShareFile. These "clean" documents contain handwritten notations from the County Legal Department. These notations are made as part of the redaction process by the County and are mirrored within the Exemption Log.

Payment for these documents has already been made the Plaintiff and received by the County.

If you have any questions, comments, or concerns, please do not hesitate to contact me.

With best regards, I am

Sincerely yours,

s/ E. Richardson LaBruce
E. Richardson LaBruce
FINGER, MELNICK & BROOKS, P.A.

Enc. Exemption Log;
Documents (CountyFOIA#1__000001 - CountyFOIA#3__000306)(as redacted/removed)
cc: Ms. Xiomara Ingram, TGDC (*via e-mail only*)
Thomas R. Goldstein, Esq. (*via e-mail only*)

Ms. Rebecca Lambooy (*via e-mail only*)
Thomas J. Keaveny, II, Esq. (*via e-mail only*)

f:\client\b\beaufort county\adv. baracco, mare\foia production\foia 2019-231\exemption log and cover letter (erl final).docx

FOIA EXEMPTION LOG

PRODUCTION OF E-MAILS RELATED TO THE COUNTY'S OCTOBER 8, 2018, COMMUNITY SERVICES COMMITTEE MEETING AND ALL DOCUMENTS RELATED TO THE COUNTY'S PURCHASE OF 1 BOSTICK CIRCLE			
FOIA REQUEST NO.	PAGE NO.	CATEGORY DESCRIPTION	NATURE OF EXEMPTION/NON-PRODUCTION
County FOIA # 1 (2019-231)	000007 - 000077	Email chains and attachments; duplication	30-4-40(a)(7): "Correspondence or work products of legal counsel for a public body." 30-4-40(a)(7): "material that would violate attorney-client relationships" Duplication of production; material removed.
County FOIA # 1 (2019-231)	000133	Email from County Attorney to County employees and retained agent	30-4-40(a)(7): "Correspondence or work products of legal counsel for a public body." 30-4-40(a)(7): "material that would violate attorney-client relationships"
County FOIA # 1 (2019-231)	000136	Email from County Attorney to County employees and retained agent	30-4-40(a)(7): "Correspondence or work products of legal counsel for a public body." 30-4-40(a)(7): "material that would violate attorney-client relationships"
County FOIA # 1 (2019-231)	000143	Email from County Attorney to County employees and retained agent	30-4-40(a)(7): "Correspondence or work products of legal counsel for a public body." 30-4-40(a)(7): "material that would violate attorney-client relationships"
County FOIA # 1 (2019-231)	000146	Email from County Attorney to County employees and retained agent	30-4-40(a)(7): "Correspondence or work products of legal counsel for a public body." 30-4-40(a)(7): "material that would violate attorney-client relationships"
County FOIA # 1 (2019-231)	000149, 000163, 000166	Email from retained agent to County Attorney and County employees; email chain following with same text being redacted	30-4-40(a)(7): "Correspondence or work products of legal counsel for a public body." 30-4-40(a)(7): "material that would violate attorney-client relationships"
County FOIA # 1 (2019-231)	000180	Email from County Attorney to County employees and retained agent;	30-4-40(a)(7): "Correspondence or work products of legal counsel for a public body." 30-4-40(a)(7): "material that would violate attorney-client relationships"
County FOIA # 1 (2019-231)	000195 – 000197; 000199 – 000201; 000203 - 000205	Email chain from outside counsel to County Attorney, and County Attorney reply to outside counsel with copy to County employees and retained agent; e-mail chain following with same text being redacted	30-4-40(a)(7): "Correspondence or work products of legal counsel for a public body." 30-4-40(a)(7): "material that would violate attorney-client relationships"

County FOIA # 1 (2019-231)	000206 - 000209	Email from retained agent to County attorneys in reply to email chain from outside counsel to County Attorney and e-mail chain following; redacted text includes same text as redacted in 000195-000197	30-4-40(a)(7): "Correspondence or work products of legal counsel for a public body." 30-4-40(a)(7): "material that would violate attorney-client relationships"
County FOIA # 1 (2019-231)	000211 - 000213	County Attorney reply to 000206 - 000209	30-4-40(a)(7): "Correspondence or work products of legal counsel for a public body." 30-4-40(a)(7): "material that would violate attorney-client relationships"
County FOIA # 1 (2019-231)	000215 - 000217	Same text redacted as set forth in 000199 – 000203, except for the inadvertent redaction of 2/1/18 e-mail from Regecz to Love produced on Page 000199.	30-4-40(a)(7): "Correspondence or work products of legal counsel for a public body." 30-4-40(a)(7): "material that would violate attorney-client relationships"
County FOIA # 1 (2019-231)	000220 - 000222	Email from retained agent to County attorneys in reply to email chain from outside counsel to County Attorney and e-mail chain following; redacted text includes same text as redacted in 000195-000197	30-4-40(a)(7): "Correspondence or work products of legal counsel for a public body." 30-4-40(a)(7): "material that would violate attorney-client relationships"
County FOIA # 1 (2019-231)	000225 - 000228	Replies from County employee and County Attorney to email chain referenced in 000220 – 000222; redacted text includes same text as redacted in 000220-000222	30-4-40(a)(7): "Correspondence or work products of legal counsel for a public body." 30-4-40(a)(7): "material that would violate attorney-client relationships"
County FOIA # 1 (2019-231)	000230 - 000232	Replies from retained agent and outside counsel to email chain referenced in 000220 – 000222; redacted text includes same text as redacted in 000220-000222	30-4-40(a)(7): "Correspondence or work products of legal counsel for a public body." 30-4-40(a)(7): "material that would violate attorney-client relationships"
County FOIA # 1 (2019-231)	000234 - 000236	Reply from County employee to email chain referenced in 000230 – 000232; redacted text includes same text as redacted in 000230-000232	30-4-40(a)(7): "Correspondence or work products of legal counsel for a public body." 30-4-40(a)(7): "material that would violate attorney-client relationships" 30-4-40(a)(2): Items of a personal nature
County FOIA # 1 (2019-231)	000238 – 000240; 000243 – 000246; 000249 – 000252; 000255 - 000258	Redacted text includes same text as redacted in 000230-000232; email chain	30-4-40(a)(7): "Correspondence or work products of legal counsel for a public body." 30-4-40(a)(7): "material that would violate attorney-client relationships"
County FOIA # 1 (2019-231)	000273;	Email from retained agent to County employee summarizing legal advise in reply to email from County Attorney to retained agent and employees	30-4-40(a)(7): "Correspondence or work products of legal counsel for a public body." 30-4-40(a)(7): "material that would violate attorney-client relationships"
END OF PRODUCTION			

BELK, COBB, INFINGER AND GOLDSTEIN, P.A.

Harry C. Belk (1919-2003)
Dale T. Cobb, Jr.

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July 13, 2020

Ms. Erin D. Dean, Esq.
Tupper, Grimsley, & Dean, P.A.
P. O. Box 2055
Beaufort, S. C. 29901-2055

RE: *Baracco vs. Beaufort County*, 2019-CP-07-00818

Dear Erin,

I have finally caught up with pressing deadlines to allow sufficient time to respond to Richardson LaBruce's letter to you of June 29, 2020. Following William of Occam, I think the simplest explanation for the status of the case is: The County is doing its best to complicate a straightforward matter that should/could be resolved in short order by lawyers doing their jobs in good faith. That is not a swipe at Mr. LaBruce; if he and I were left to our own devices, I have no doubt we would not be burdening you with this dispute. Unfortunately, the County undermines Mr. LaBruce's good faith because of its animosity for Ms. Baracco as I will explain. This situation brings to mind a similar case arising from Tim Scott's chairmanship of Charleston County Council. Years ago, Chairman Scott directed the County Attorney, Arthur Rosenblum, to post The Ten Commandments in Council chambers. When Mr. Rosenblum explained to the Chair of County Council that the legal controversy around posting The Ten Commandments was settled law, Chairman Scott informed Mr. Rosenblum thusly: "You're fired," he said. Explaining further, he told Mr. Rosenblum: "I want a lawyer who does what I tell him to do, not a lawyer who tells me what I can do." And just like that, Joe Dawson became the County Attorney. And thus, is ever the tension between a lawyer and a governmental client. Elected representatives frequently believe themselves to be above the law as current events prove *passim*.

Mr. LaBruce finds himself, no doubt, in a similar relationship, but none of this will make sense to you unless I bore you with a few of the pertinent details. In 2012, some neighbors of Ms. Baracco accused her of having her dog at large. Unfortunately for Ms. Baracco, her complaining neighbors were politically connected, and, because of this political connection, the Town of Port Royal issued a criminal citation to her requiring her to obtain counsel and defend herself. In due course she appeared before a Judge, Ned Tupper (after Judge James Grimsley recused himself) of your firm, and a jury on November 8, 2012 to face the criminal charge lodged against her. After hearing from the witnesses, considering the evidence, and receiving the judge's charge on the law, and after due deliberation, the jury returned a verdict of "not guilty." You would think that ended the matter.

But it did not.

Unsatisfied with the "not guilty" verdict, her complaining neighbors then privately persuaded employees of the Town of Port Royal and Beaufort County to bring her before a County magistrate on a "Magistrate's Summons" to answer to the same charge. A series of magistrate court hearings resulted in that Court imposing a contempt order upon her along with various restrictions arising out of the charge on which a jury previously acquitted her. This turn of events forced Ms. Baracco to hire counsel a second time, and it was during the course of vacating the second criminal penalties that she uncovered the County's basis for continued prosecution of her. The County asserted that it could bring the second charge because it had jurisdiction to enforce an alleged municipal violation under a "mutual aid agreement" with Port Royal. At the time of the second prosecution, the Sheriff of Beaufort County decided he wanted no part of this assertion and voiced his opinion that he regarded such an agreement as "void." In light of the Sheriff's position, the County's claim of jurisdiction rested upon gossamer, and the Court determined the County had no jurisdiction to try her for the same offense a second time in a different court. I will not bore you with all the details of her discoveries arising out of her effort to clear her name, but the process awakened her to questionable governmental activities, and she became more interested in the workings of Beaufort County government.

As a result, she brought suit against the County for misusing its authority in persecuting, not prosecuting, her. Instead of testing its legal theory, Beaufort County elected to pay Ms. Baracco a confidential amount to avoid having its conduct reviewed by a jury in open court. Consequently, we can safely say that each remains on the other's radar, but, of course, Beaufort County must treat her as any other citizen and not retaliate against her because she prevailed on a legal dispute that was entirely of the County's making and which brought to light unlawful government conduct.

Having the experience of discovery flowing from the shenanigans of her dual prosecutions, Ms. Baracco probed some of the County's activities in other areas. So, as you can see, the County has some specific animus for her, and it is against this background we turn to an analysis of her F.O.I.A. requests and the County's responses.

Request 1 (1 Bostick Circle and 429 Broad River Road)

The County did not fulfill this simple request for documents related to the acquisition of real estate because, as you can see, the material it turned over is heavily redacted. However, Ms. Baracco paid the full price of $124.66 quoted by the County as a precondition to provide the documents. Notwithstanding that she paid in full and that the County has never explained the redactions, *i.e.* never explained how a completed real estate transaction can be privileged or even provided a privilege log identifying the basis for its redactions. You can see for yourself from the documents we provided you that a claim of attorney client privilege, assuming that is the basis, is spurious. The redacted documents we provided to you demonstrate:

a) A sizable portion of the documents are redacted with no explanation, and
b) The County **deleted all emails between Joshua Gruber and Deborah Regecz.**

Independent of Ms. Baracco's F.O.I.A. request (although maybe motivated in part by her questions having come up short on the above described mistreatment of her), the County determined these property purchases were "*unauthorized.*" The County determined further that because the person responsible for the unauthorized acquisition is no longer employed by the County, it is helpless to take remedial steps. The significance of this is that the County cannot simultaneously conclude an act was "*unauthorized,*" while at the same time claim it is "privileged." I am confident there is no privilege for an illegal act. Moreover, the e-mails involve communications with third parties, and one thing every lawyer knows is that by including third parties in attorney-client communications waives the privilege. Finally, if these e-mails really were subject to a privilege, the County would have identified the basis of the privilege a long time ago. Only now, fifteen months after Ms. Baracco filed suit, has the County asked for time to compile a privilege log, something it should have done at the outset a year ago. (To be fair, I had a heart attack in April 2019, which led to open heart surgery in August 2019, and so a fair amount of delay is on me.)

Request 2 (Officials' e-mails)

Ms. Baracco did amend her request, but only in response to the County's excessive and inexplicable demand of $12,079.00 to provide electronic data. I am about as computer illiterate as a lawyer can be, and I know I could put the 37,000 + e-mails in my Outlook inbox (don't ask) on a computer disc in about a minute. If I were to transfer them according to specific recipients, it would take longer, but we would still be measuring the time in minutes.

Request 3 (Revised request for officials' emails)

Ms. Baracco's third request for Councilmembers' personal e-mail accounts is a dilemma caused by the Council members' refusal to keep their government activities separate from their personal business. Whatever these councilmembers are doing on their private e-mail accounts related to running the government cannot be subject to a claim of privilege because they are taking the communication outside the official channels of communication. (Note: To keep this letter as short as possible, I am avoiding a discussion of what is involved in claiming attorney/client privilege. As you know, the Berkeley County School District tried this argument once, and the Supreme Court was not convinced. Just copying a lawyer on an e-mail does not implicate attorney client privilege.)

Request 4 (Alice Howard emails from personal e-mail address)

The analysis here is the same as above. While there might be hundreds or even thousands of emails from a councilmember's personal email to her colleagues and/or other government employees, these communications are obviously not privileged or subject to redaction. Attorney client privilege is limited to a client asking for or receiving legal advice, not a group chat.

In short, the County's complaints of cost and burden are just more of the same deflection and pretext. Moving e-mails from one electronic format to another is a straightforward task. The County cannot manufacture a controversy by saying that they want to review e-mails that clearly do not meet the standard for redaction or privilege. Further, we discovered that months before Judge Buckner appointed you as special circuit judge in this case, Beaufort County became aware it was overcharging Ms. Baracco and determined to stay the course despite knowing they were acting illegally. (I suspect that the redacted material is a discussion of this fact.) In addition, we recently learned one of Beaufort County's Freedom of Information Act Specialists, Bill Lisbon, quit, citing ethical concerns as a reason.

In summary, the longer this case goes on, the odor of the County's conduct becomes more and more pronounced. If the County were dealing in good faith, Mr. LaBruce and I would have reviewed these documents months ago without burdening the Court and probably reached an accommodation. However, as the above summary of procedural history indicates, the County is going to deploy every dilatory strategy at its disposal, and I level this accusation at the government, not its lawyer, whom I feel sure is being stymied by a recalcitrant client that has no skin in the game. When government misbehaves, the bad actors are never called to account, and the judgments local governments pay to satisfy claims are paid by the people challenging government misconduct through higher taxes. We can debate the plaintiff's request for documents for the next ten years, but at the end of the day, Ms. Baracco made a straightforward request, and the County does not want to comply because the release of these email communications will probably prove embarrassing. With kind regards, I am

Very truly yours,

TRG/

Belk, Cobb, Infinger & Goldstein, P.A.
Thomas R. Goldstein

tgoldstein@cobblaw.net

From: Erin Dean <ErinDean@tgdcpa.com>
Sent: Tuesday, July 28, 2020 1:39 PM
To: 'Richardson LaBruce'; rlambooy@cobblaw.net
Cc: Xiomara Ingram; tgoldstein@cobblaw.net
Subject: RE: Good news and bad news

All:

I have now been through the two sets of documents sent in response to FOIA 2019-459 and FOIA 2019-231. I need clarification on the following:

A) Request #1-February 10, 2019 (FOIA 2019-231):

1) Fee of $124.66 has been paid by Ms. Baracco. Is Plaintiff contesting the reasonableness of this fee?
2) There is an allegation in the July 13, 2020 letter indicating that all emails between Josh Gruber and Deborah Regecz were deleted. Please provide the basis for this assertion as I am not in possession of any documentation that supports or refutes this assertion.
4) Is there documentation that establishes the relationship between the County and Ms. Regecz?

B) Request #2-March 10, 2019 (FOIA 2019-385)

1) Has this request been abandoned by Request #3 or is this something that still needs to be considered and ruled upon?
2) If not abandoned, I will need the reasonable estimate for the fee for Request number 2 as indicated in the LaBruce letter to me dated June 29, 2020.

C) Request #3-March 18, 2019 (FOIA 2019-459)

1) This request was an amendment of Request #2 but was again revised at the request of Judge Buckner which lead to the reduction of documents from 667 to 167. I have only reviewed the 167 pages provided. Does Plaintiff believe it necessary for me to receive and review the 500 pages that were removed?
2) Fee for the production of the revised scope of Request #3 was $71.00. Is the Plaintiff contesting the reasonableness of this fee?

D) Request #4 March 31, 2019 (FOIA 2019-575)

1) Please provide reasonable estimate for the fee for Request number 2 as indicated in the LaBruce letter to me dated June 29, 2020.

Depending on whether or not I need to review the additional 500 pages removed after the scope limitation for FOIA 2019-459, we can likely go ahead and set up a date to hold a web-ex hearing in August. I am on a family vacation the first week (August 3-7) but have availability each of the following weeks. I do hold Beaufort Multi-Disciplinary Treatment Court (i.e. Drug Court) on Tuesdays and currently have depositions or mediations set for August 13, 20, 25 and 28. If preferred, my paralegal (Xiomara Ingram) can coordinate a mutually agreeable date with your assistants if you let her know best person to contact.

Thank you.

BELK, COBB, INFINGER AND GOLDSTEIN, P.A.

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Ph: (843) 554-4291
Fax: (843) 554-5566

July 28, 2020

Ms. Erin D. Dean, Esq.
Tupper, Grimsley, & Dean, P.A.
P. O. Box 2055
Beaufort, S. C. 29901-2055

RE: *Baracco vs. Beaufort County*, 2019-CP-07-00818

Dear Erin,

Thank you for your letter of today's date. I will address each one of your questions in the order you present them.

Request 1 (1 Bostick Circle and 429 Broad River Road)

1. Reasonableness of fee. While the County overcharged her, there is no real dispute over the fee because it is *de minimus.*

2. In March 2017, the County hired Debra Regecz with Ballenger Realty to assist with certain DSN property purchases under Mr. Gruber's authority. Since Mr. Gruber approved the purchase (which the County found to be "improper"), it is not possible competed either real estate transaction without having communication with the County's hired real estate agent. (See attached email chain from Dave Thomas [Purchasing Director] to Debra Regecz dated December 21, 2017, and the responses following. See also the Community Services Committee Minutes of October 8, 2018, also enclosed, where the County recognized the purchase was questionable, including, but not limited to: "There were questions on the legality of the deed filed by Josh Gruber as County Attorney.")

3. There is a wealth of documentation that establishes the relationship between the Count and Mrs. Regecz; further, within the redacted documents the Count previously provide the plaintiff, there is mention of required authorization from Gruber to Ms. Regecz. The review of the provided emails reveals that there are omissions in what the County provided.

Request 2 (Officials' e-mails)

1. The request has not been "abandoned," but it is encompassed by Request #3. The County told Ms. Baracco that the cost to her would be in excess of $10,000, so in an effort to avoid a controversy, she restated her request more narrowly to mitigate the controversy over the unreasonable fee.

2. The reasonable fee for the request should be determined by the County's F.O.I.A. policies as applied to Ms. Baracco, but as you can see from various e-mails, the County targeted her for excessive fees to thwart her request.

Request 3 (Revised request for officials' emails)

1. Do we believe you need to request the 500 pages that were removed? Unfortunately, we cannot answer that because we have seen neither the 167 pages the County is producing to you, nor the 500 pages that have been removed. Once again, the County is making a simple

matter needlessly complex to thwart Ms. Baracco. You are having an in-camera review with the County without our participation. Whatever the County has furnished you, they have not furnished us, so it is impossible for me to address your question. We have not seen what the County has provided you.

2. We would not contest a fee of $71.00, but your letter is the first we have heard of this charge. As I said above, you are engaged in an in-camera review that excludes the plaintiff. I suggested a year ago that the two lawyers review the documents and see if we could not reach an agreement, and here we are, now being excluded from the in-camera review. I assume the $71.00 charge is fair, but I do not know how they computed it, or what it encompasses.

Request 4 (Alice Howard emails from personal e-mail address)

1. I cannot provide a reasonable estimate for the fee in Request #2 because I do not know what they produced or how they arrived at their proposed charges. For example, I could send a bill to Ms. Baracco for a million dollars for my work on her case. She would probably want to know how I arrived at that figure. It is the same thing with the County. For a year, I suggested I make a trip down to Beaufort, go through the documents and separate them into two piles: one pile for contested and one for agreed upon documents. Now, here we are again, right where we started out—being asked to justify our request for documents we have never seen. That is the exact opposite of F.O.I.A. I assume the portion of Mr. LaBruce' s June 29th letter you want me to address is: "Ultimately, a final figure is dependent upon the completion of production, as cost is dependent upon the actual number of hours spent by Beaufort County." That is not a correct statement of law. A correct statement of law is: "The records must be furnished at the lowest possible cost to the person requesting the records." § 30-4-30(B), S. C. Code, ann. Since we have already uncovered one e-mail from a Beaufort County official exhorting municipalities to get on board with Beaufort County's treatment of Ms. Baracco, you can understand why we cannot accept a bald statement from the County about how it computes its charges. Moreover, Beaufort County experienced at least one F.O.I.A. Compliance Officer's resignation because of "ethical concerns," so its track record is not good. The County has done everything possible to complicate what should have been simple requests easily compiled and transmitted by electronic means.

In summary, we do not know what the County has produced for you to look at since all our documents remain blacked out. We do not know what amount the County is **now** claiming is due or how they arrived at the charge. In short, we are no further along in this process than we were when we filed the summons and complaint. Until someone makes unredacted documents available to us and provides the County's revised claim for charges, we cannot have any input into the County's production or lack of production. With kind regards, I am

Very truly yours,

TRG/

Belk, Cobb, Infinger & Goldstein, P.A.
Thomas R. Goldstein

cc: Richardson LaBruce (with enclosure)

From: Thomas, Dave <dthomas@bcgov.net>
Sent: Thursday, December 21, 2017 11:00 AM
To: Debra Regecz
Cc: Love, William; Sutton, Mark; Roseneau, Mark; Keaveny, Thomas
Subject: RE: 1 Bostick

I believe Josh must give you authorization to sign the standard contract. Tom?

From: Debra Regecz [mailto:deb@redhatteam.com]
Sent: Thursday, December 21, 2017 10:57 AM
To: Thomas, Dave
Cc: Love, William; Sutton, Mark; Roseneau, Mark; Keaveny, Thomas
Subject: RE: 1 Bostick

Am I able to use a standard contract and sign as representative or does this need to go thru legal and Josh for signature? If Josh needs to sign the offer how many days will be needed with the holidays?
I believe we should start with the $34,000 and if needed go to full price. Deb

From: Thomas, Dave [mailto:dthomas@bcgov.net]
Sent: Thursday, December 21, 2017 10:44 AM
To: Debra Regecz <deb@redhatteam.com>
Cc: Love, William <wlove@bcgov.net>; Sutton, Mark <msutton@bcgov.net>; Roseneau, Mark <markr@bcgov.net>; Keaveny, Thomas <tkeaveny@bcgov.net>
Subject: RE: 1 Bostick

I would go with whatever Mark and Bill recommend.
Thanks,
Dave

From: Debra Regecz [mailto:deb@redhatteam.com]
Sent: Thursday, December 21, 2017 10:30 AM
To: Thomas, Dave
Cc: Love, William; Sutton, Mark; Roseneau, Mark; Keaveny, Thomas
Subject: FW: 1 Bostick

Dave, We have identified the listing below as a lot for the final DSN home. Asking price is $37,000 and Bill has suggested offering $34,000; it sold earlier this year for $30,000. There is already a TOPO plat and Mark has reviewed and approved.

How would you recommend I proceed?

Deb

Follow this link to see the page:

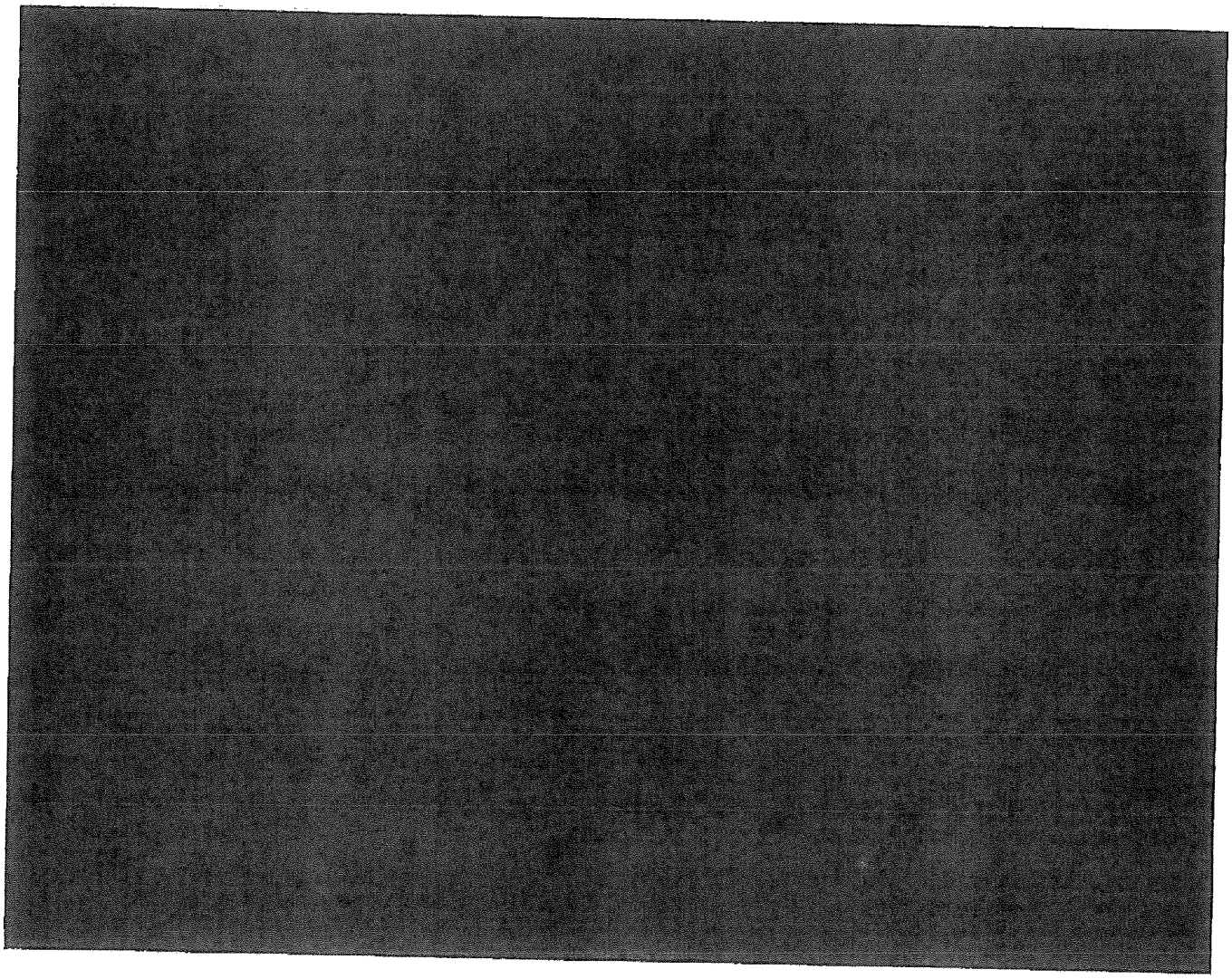
Click to view listing(s)

This link will no longer be available after 1/20/2018.
Clicking to view the listings in this email confirms you want to receive new listing updates.

Debra Regecz, Red Hat Team

From: Thomas, Dave <dthomas@bcgov.net>
Sent: Thursday, December 21, 2017 12:06 PM
To: Debra Regecz; Keaveny, Thomas
Cc: Love, William; Sutton, Mark; Roseneau, Mark
Subject: RE: 1 Bostick- contract & tax record

The only issue that I see is the hold harmless clause. We are not allowed by SC law to indemnify anyone.



From: Debra Regecz [mailto:deb@redhatteam.com]
Sent: Thursday, December 21, 2017 10:57 AM
To: Thomas, Dave
Cc: Love, William; Sutton, Mark; Roseneau, Mark; Keaveny, Thomas
Subject: RE: 1 Bostick

From:	Debra Regecz <deb@redhatteam.com>
Sent:	Tuesday, January 23, 2018 4:26 PM
To:	Keaveny, Thomas; 'Thomas A. Bendle, Jr.'
Cc:	Love, William; Thomas, Dave; 'Melanie Bradham'; Sutton, Mark, Roseneau, Mark
Subject:	Signed contract to Purchase 1 Bostick Circle 20180123.pdf
Attachments:	Offer to Purchase 1 Bostick Circle 20180123.pdf

Offer accepted 😉
Please arrange for the $500 earnest money/check to be sent to Tab's office.

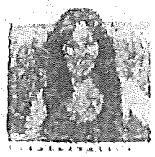
Thank you everyone! Deb

From: Cynthia Young [mailto:cindyyoung@hargray.com]
Sent: Tuesday, January 23, 2018 4:01 PM
To: Debra Regecz <deb@redhatteam.com>
Subject: FW: Completed: Please DocuSign: Offer to Purchase 1 Bostick Circle 20180123.pdf

Hi Debra,
Here is the signed contract. I will let you know what attorney the sellers are using as soon as I know.

Sincerely,

Cindy Young
Point South Realty



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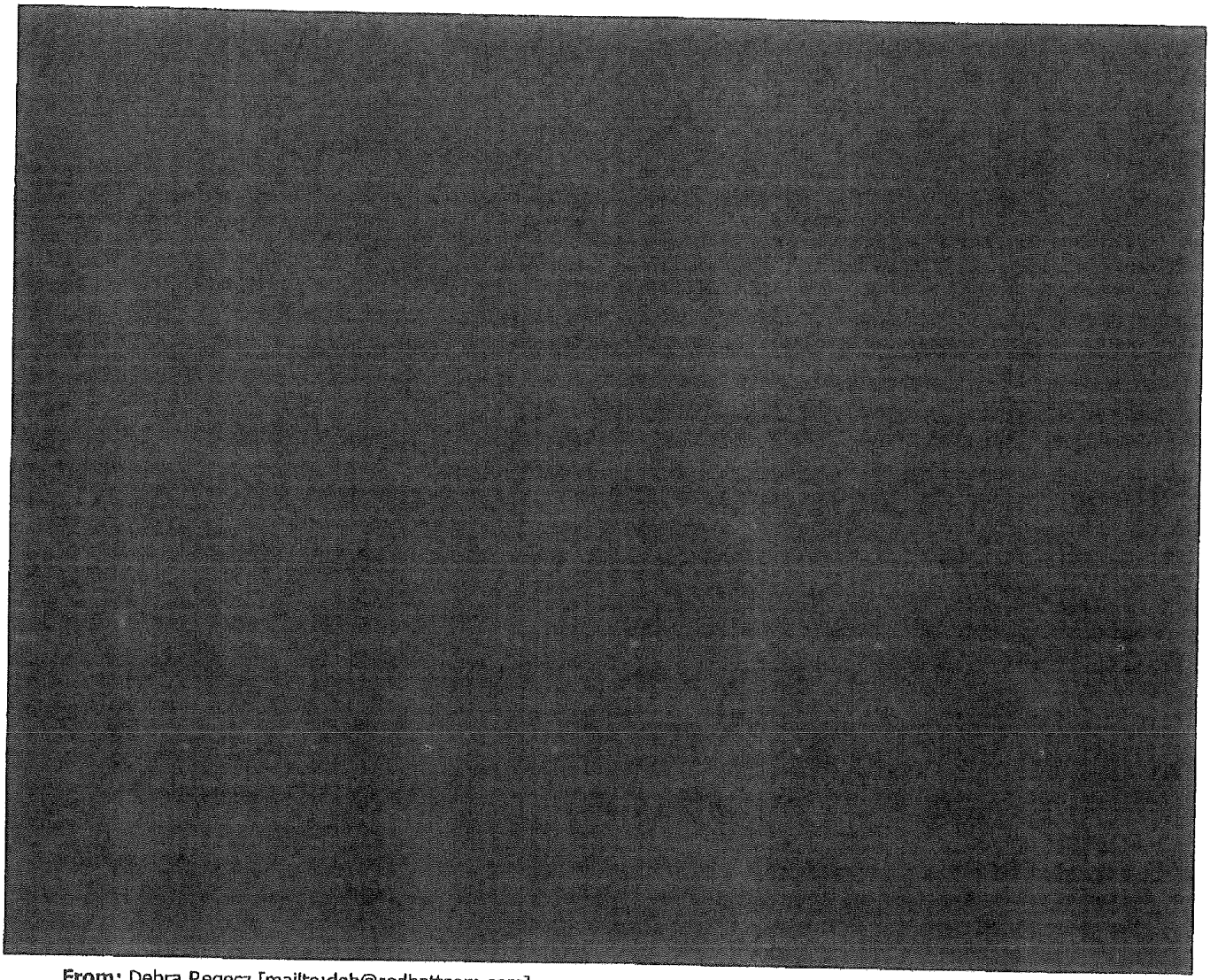
From: Donnell Lewis via DocuSign <dse@docusign.net> on behalf of Donnell Lewis via DocuSign <dse@docusign.net>
Reply-To: DocuSign <no-reply@docusign.com>
Date: Tuesday, January 23, 2018 at 1:52 PM
To: Cynthia Young <cindyyoung@hargray.com>
Subject: Completed: Please DocuSign: Offer to Purchase 1 Bostick Circle 20180123.pdf

DocuSign

From: Debra Regecz <deb@redhatteam.com>
Sent: Thursday, December 21, 2017 12:40 PM
To: Mayse, Wanda
Subject: FW: 1 Bostick- contract & tax record
Attachments: 1 Bostick Circle, offer.pdf; 1 Bostick Circle, Baker.pdf

So sorry, it appears I missed you on this thread. I have been emailing about an offer and I sent over to the attorney for review.



From: Debra Regecz [mailto:deb@redhatteam.com]
Sent: Thursday, December 21, 2017 10:57 AM
To: Thomas, Dave
Cc: Love, William; Sutton, Mark; Roseneau, Mark; Keaveny, Thomas
Subject: RE: 1 Bostick

INFORMATION ITEM

3. **Discussion / Acquisition of Properties and Homes for the Beaufort County Disabilities and Special Needs Department**
   - **Staff Overview**
     - i. **Needs Discussion**
     - ii. **Funding for New Homes**
     - iii. **Realtor Services / Procurement**
     - iv. **Site Selection Challenges and Timeline for New Homes**
     - v. **Construction Updates:**
       1. **608 Center Drive West, Beaufort**
       2. **1604 Deanne Lane, Beaufort**
       3. **2700 Waddell Road, Beaufort**
       4. **1 Bostic Circle, Beaufort**
   - **Councilman Stu Rodman Report**

Discussion: Ms. Monica Spells, Assistant County Administrator–Civic Engagement and Outreach, said the three homes which were purchased as a result of the upcoming closing of the Port Royal facility, is separate from an additional home previously expressed by staff in 2016. At that time, based on the trends DSN was seeing, staff of DSN presented the need for 1-2 homes. Subsequently, we have a community residential facility out of compliance with state requirements that led to the discussion and direction for the need to search for three additional homes.

Mrs. Beth Cody, Fiscal Operations Manager, Disabilities and Special Needs, reviewed with the Committee the funding for the new homes. Disabilities and Special Needs receives about 78% of its funding from state; $2-$2.5 million annually comes from the County General Fund to support activities; grants, fees and work contracts also supplement the budget. For the home projects, there is a fund balance. In fiscal year 2016, we presented the need for two additional homes using fund balance dollars.. There was also the sale of the Port Royal property which would later be refunded to the County.

Mr. Bill Love, Director, Disabilities and Special Needs, said that the process of looking for property has been going on for over a year. We have 27 individuals that lived in Beaufort County but left the County due to the lack of a home. We talked about the need to build 1-2 homes and agreed to build one home in 2016. Shortly thereafter, we were working with a proviso regarding the community residential facility in Port Royal. That proviso approved us to build three homes and sell the Port Royal facility. It has been a challenge to find properties due to restrictions and resistance from the community.

Mr. Dave Thomas, Purchasing Director, said he was approached by Mr. Gruber in January 2017 regarding the need for property for Disabilities and Special Needs homes. A Request for Proposal was drafted to find a broker service for the sale of the house on Broad River Road. The RFP came back March 2017. The intent was to use the broker for a year.

Ms. Deb Regecz, realtor for Ballenger Realty and Beaufort County, reviewed with the Committee about site selection challenges. In November, the three homes with contracts to purchase were presented with the understanding that there was still an active search for a fourth lot. It was approved on December 11th. On December 15th, we looked at eight lots,the top pick being 1Bostick Circle. Documents which included the plat and drainage issues for fill were sent to Mark Sutton, Deputy Director of Facilities, for review. Mr. Sutton confirmed the house would the criteria and an

offer was presented on the December 21st. The purchase was signed by Mr. Gruber on January 22nd and the offer accepted on January 23rd.

Mrs. Lynn Russ, member of the Disabilities and Special Needs Board, spoke about the home in Pine Crest and said there have been no problems. With respect to the property at 1 Bostick Circle, she has been assured that the drainage permit has been issued. If you do not build a house here, someone else will.

Mr. Mark Sutton provided the Committee with a construction update on the following properties: 608 Center Drive West, Beaufort, 1604 Deanne Lane, Beaufort, 2700 Waddell Road, Beaufort, and 1 Bostic Circle, Beaufort. The construction on Center Drive is complete. We are working on an issue with water capacity for the sprinkler system. The next construction to be completed is the property on Waddell Road. We expect to close on 1October 15th. The construction at Deanne Lane just received approval and the lot has been cleared. This property will have a garage. The property at Bostick Circle will be unique. We were going to buy the lot and put the building out for bid. We have gone through final submittal, which has been denied by the HOA. It will take a soil engineer to come up with the exact amount, but he projects 60 yards of dirt that would need to be taken out and brought in. The wetness would need to be mitigated. We have a permitted site plan. The only question is how deep we will have to muck, if at all.

Mr. Rodman provided the Committee with a report on two items that have arisen: a personal services contract and the Bostick Circle land purchase. He met with Mr. Keaveny and several staff members on what had transpired. For the better part of 3-5 years we have been engaged in the process of bringing these four homes online. Last year, Council approved the contracting for three homes. At the beginning of this year, Mr. Gruber approved the land purchase of the fourth home. An issue for Council is whether this land purchase should have required Council approval. It could be argued yes as 1) an ordinance exists requiring such Council approval and 2) the total expenditure for the fourth home and land would require Council approval. Also, it could be argued as no it 1) being within Mr. Gruber's authority, 2) having budgetary approval by Council, 3) requiring subsequent Council approval for the building, and 4) conforming to the practice of Council to not always require approval of land purchases, such as right-of-ways. The conclusion: It is a gray area, but land purchases lead to subsequesnt expenditures and should therefore probably come to Council. Having been at the approval cycles, he said there was not intent visible by anyone trying to do something wrong. We as a Council, should revisit the ordinance regarding the purchases of real property to see if the language should be tidied up. We should bring the purchase of 1 Bostick Circle back before the Community Services to see if Council wants to confirm or reject it.

Questions, comments and concerns of the Committee included the following:

- Apparently, we had two properties sold: Broad River Boulevard and Port Royal. Who cought it and for how much?
  - Mr. Sutton said the property on Broad River Boulevard sold for $90,000.
- We sold a home and received $90,000 for it and have a piece of property in the Town of Port Royal that we will receive 100% of the proceeds once it is sold.
- Where did the money from the sale of the property at Broad River go?
  - Ms. Spells said she did not know. That would be a question for Mrs. Holland.
- There is concern with the gray areas that Council is not seeing. The word "approval" might be being used loosely. It would be nice to see all DSN land purchases over the last two years.
- Didn't Council approve to purchase of four homes?

To view video of full discussion of this meeting please visit http://beaufort.granicus.com/ViewPublisher.php?view_id=2

  - Ms. Spells said no, Council approved 3 homes.
- Revisions to the ordinance should be reviewed by the Public Facilities Committee.
- Staff needs to review the ordinance and bring forth their recommendation.
- The ordinance does not need to be revised, the ordinance was not followed.
  - Mr. Inglese suggested having a real estate professional on staff. This is the part of the Code of Ordinances that individual could administer. We do not need a change in the ordinance. We have a section on ratification, but even if it was done wrong.
- There were questions on the legality of the deed filed by Josh Gruber as County Attorney.

Motion: It was moved by Mr. Glover, seconded by Mr. Fobes, that the Committee table the discussion of the acquisition of property located at 1 Bostick Circle for the Beaufort County Disabilities and Special Needs Department home.

Motion to amend by addition: It was moved by Mr. Glover as the maker of the main motion, seconded by Mr. Fobes as seconder, that the motion include a review by the Legal Department of the ordinance and resolution, and bringing forth a recommendation on this property. The vote: YEAS – Mr. Caporale, Mr. Covert, Mr. Fobes, Mr. Glover, and Mrs. Howard. ABSENT – Mr. Vaux. The motion passed.

Recommendation: Committee table the discussion of the acquisition of property located at 1 Bostick Circle for the Beaufort County Disabilities and Special Needs Department home and direct the Legal Department to review the ordinance and resolution and bring forth a recommendation to the Committee on this property.

8. **Consideration of Reappointments and Appointments / Disabilities and Special Needs Board**

   Status: No action at this time.

9. **Consideration of Reappointments and Appointments / Library Board**

   Status: No action at this time.

To view video of full discussion of this meeting please visit http://beaufort.granicus.com/ViewPublisher.php?view_id=2

TUPPER, GRIMSLEY, DEAN & CANADAY

ATTORNEYS AT LAW

July 29, 2020

VIA EMAIL ONLY
Thomas R. Goldstein
BELK, COBB, INFINGER AND GOLDSTEIN, PA.
P.O. Box 71121
Charleston, SC 29415-1121
tgoldstein@cobblaw.net

Re: Mare Baracco v. Beaufort County
2019-CP-07-0818
TGDC File No. 9400

Mr. Goldstein:

I am in receipt of your letter of July 28, 2020 (received today) and have concerns over your statements regarding the Plaintiff being excluded from the in camera review. Mr. LaBruce suggested to us both that he send me (and you) a link that had the redacted documents and then a separate link just to me with those same documents un-redacted. I did not take your response (that "Rebs" be included in the distribution) to be an objection to the proposed process. The Order appointing me as Special Referee states "The Defendant is to notify the Special Referee within 30 days of the date of this Order of the physical location of the actual documents for inspection **should the Referee feel the need to inspect in lieu of having numerous electronic copies of the documents forwarded to the Referee (emphasis added)**. The Order goes on to read "The Special Referee will then advise all counsel of record **if she intends to view the actual documents**" and that "[b]oth parties have the absolute right to watch the Special Referee review the actual documents (emphasis added)." From my perspective, there was no need to view the actual documents as the electronic versions of the documents are sufficient to make a determination on the exclusions under the FIOA statute. Additionally, I conducted the in camera review of the redacted and un-redacted documents in the comfort of my office without neither counsel for Plaintiff, nor counsel for Beaufort County in attendance.

All that being said, I can certainly sit in a room with you and Mr. LaBruce to review/compare the actual redacted documents to the actual un-redacted documents if that elevates your comfort level. If I had any indication that you objected to the process as suggested by Mr. LaBruce, I would not have conducted the in camera review electronically. Please advise ASAP if you would like for the three of us to sit in a room so that you can see the two categories of the actual documents as I review them and I will set up a time and place to do so. Please be aware, however, that no determination with regard to whether or not the redactions were appropriate will be made until after the conduction of a

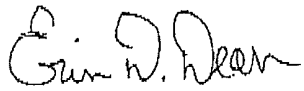
WebEx hearing. In the alternative, I can arrange a conference call with Judge Buckner if you believe the process has been compromised by my in camera review taking place electronically.

With regard to the County's charge of $71.00 for the production of the documents in Request #3, this figure came from the transmittal letter from Mr. LaBruce dated July 6, 2020. You were listed as a copied recipient but I have included again for your ease of review.

Please let me know how you wish to proceed with regard to an "in person" in camera review or whether you would like me to arrange a conference call with Judge Buckner at your earliest convenience.

Should you have any questions, please feel free to contact me. If I am unavailable, please ask to speak with my paralegal, Xiomara Ingram.

Very truly yours,



Erin D. Dean
EDD/xmi
Enclosure
cc: E. Richardson LaBruce (via email only)

FINGER, MELNICK & BROOKS, P.A.

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Also admitted in:
* Georgia
† New York

▫ Court Certified Mediator
▪ Court Certified Arbitrator / Mediator

August 12, 2020

Via E-Mail Only (*erindean@tgdcpa.com*):
Erin Dubose Dean, Esq.
TUPPER, GRIMSLEY & DEAN, P.A.
Post Office Box 2055
Beaufort, South Carolina 29901-2055

Re: Mare Baracco v. Beaufort County; 2019-CP-07-00818
Our File No. 6868.002 – Beaufort County

Dear Erin,

Please find the County's response to your letter of July 28, 2020, below. In an effort to avoid inundating you with back-and-forth correspondence, I have also taken this opportunity to respond to the Plaintiff's letters to you of July 13, 2020, and July 28, 2020.

A. **Request No. 1. February 10, 2019 (FOIA 2019-231)**:

(1) *Fee of $124.66 has been paid by Ms. Baracco. Is Plaintiff contesting the reasonableness of this fee*? According to Mr. Goldstein's letter dated July 28, 2020, this fee is not in question.

(2) *There is an allegation in the July 13, 2020 letter indicating that all emails between Josh Gruber and Deborah Regecz were deleted. Please provide the basis for this assertion as I am not in possession of any documentation that supports or refutes this assertion.* Contrary to the Plaintiff's claims, the County has produced all documentation related to this request. It is neither unusual nor suspect for a county administrator or other chief executive to delegate certain activities, including the negotiation of contracts and the completion of pre-closing due diligence, to employees of the organization.

On a related note, the Plaintiff has emphasized that Mr. Gruber acted outside the scope of his authority in acquiring real property without explicit approval from County Council. Although Plaintiff's counsel contends that "[he] is confident there is no privilege for an illegal act," such a broad claim mischaracterizes the applicable law and the underlying facts. The crime-fraud exception eliminates privilege for communications made for the specific purpose of furthering a fraudulent or criminal act. It does not work retroactively to eliminate privilege whole cloth as suggested. To accept the Plaintiff's argument would effectively penalize a client for doing what the attorney-client privilege is designed to encourage - consulting with counsel to ensure legal compliance.

(3) *Is there documentation that establishes the relationship between the County and Ms. Regecz*? Please see the contract attached hereto as Exhibit "A". The confidentiality of communications between counsel and agents of the client, even third party agents, has long been recognized. As a realtor, Ms. Regecz owed a fiduciary duty to the County and operated as a functional equivalent of a County employee; therefore, the privilege is not waived through disclosure.

B. **Request No. 2. March 10, 2019 (FOIA 2019-385)**:

(1) *Has this request been abandoned by Request #3 or is this something that still needs to be considered and ruled upon*? As set forth in our Memorandum, the Plaintiff's decision to narrow the scope of this request should be deemed an abandonment of the original request as it effectively eliminated the County's statutory right to challenge the breadth and the burdensomeness of the request as originally framed. Regardless, the County concurs with the Plaintiff that Request No. 2 is encompassed within Request No. 3 and need not be considered.

(2) *If not abandoned, I will need the reasonable estimate for the fee for Request number 2 as indicated in the LaBruce letter to me dated June 29, 2020.* As mentioned in the immediately preceding answer, both the County and the Plaintiff agree that Request No. 2 is no longer at issue, only Request No. 3.

C. **Request No. 3. March 18, 2019 (FOIA 2019-459)**:

(1) *This request was an amendment of Request #2 but was again revised at the request of Judge Buckner which led to the reduction of documents from 667 to 167. I have only reviewed the 167 pages provided. Does Plaintiff believe it necessary for me to receive and review the 500 pages that were removed*? As discussed in earlier correspondence, the County removed these 500 pages as they were outside of the scope of Request No. 3, as revised by the Plaintiff. The County remains willing and able to provide unredacted versions for your review in camera. The County's decision to acknowledge the number of pages eliminated from production due to the revised scope of the request was intended solely for the purpose of complete transparency, not to deceive or to thwart Ms. Baracco.

(2) *Fee for the production of the revised scope of Request #3 was $71.00. Is the Plaintiff contesting the reasonableness of this fee*? The basis of this fee was set forth in our letter to you dated July 6, 2020. This letter was received and acknowledged by Plaintiff's counsel on July 7, 2020.

D. **Request No. 4. March 31, 2019 (FOIA 2019-575)**:

(1) *Please provide reasonable estimate for the fee for Request number [4] as indicated in the LaBruce letter to me dated June 29, 2020.*

DESCRIPTION	TIME	HOURLY RATE	TOTAL
I.T. Department conducts archival search of e-mails*	0.33	$33.19*	$10.95
Records Management retrieves e-mails, converts to legible form, compiles documents	23.0	$16.48	$379.04
Legal Department redaction of records	n/a	$72.00	n/a**

Total:	**$389.99**

* Current rate for I.T. Department.

** Redaction is completed by the County Administrative Department and/or the County Legal Department, depending on the nature of the documents requested. Given that this production is the result of a court order, the time spent by the Legal Department redacting these records has not been included in the total due from Plaintiff to County for production.

***

The County understands that Ms. Baracco's history with former County employees and representatives likely influences her perception of actions taken by the County. As is evident from the pleadings and the correspondence on file, the Plaintiff appears to sincerely believe that ill motivations and/or personal vendettas drive the decisions made by Beaufort County and its counsel in this case. In support of her arguments, the Plaintiff offers comparisons to clear constitutional violations (*e.g.,* discussion of Chairman Tim Scott); vague evidence of past confidential settlements; unsubstantiated claims (*e.g.,* alleged wholesale deletions of Gruber e-mails with Regecz); and, speculation regarding former Beaufort County employees (*i.e.*, the resignation of Bill Lisbon), all of which are irrelevant to the matter at hand.

Despite the Plaintiff's allegations otherwise, the County's decisions and actions in this matter have been neither punitive nor retaliatory. Rather, the County has consistently indicated its willingness to produce the requested documentation, provided that the Plaintiff reimburse County taxpayers for the costs of compliance. As previously discussed, if it is determined that any redactions were improperly made or fees improperly estimated, such errors were the result of vague provisions within the Freedom of Information Act, a complex balancing of public interests, attempted compliance with limited and strict timelines, and the difficulty in responding to overwhelmingly burdensome requests, not personal animus.

While I am motivated to correct and address certain claims and insinuations made in the Plaintiff's earlier correspondence - in particular those that question the integrity of dedicated public servants and, to a somewhat lesser extent given the perfunctory inclusion of "That is not a swipe at Mr. LaBruce," my own - those statements are wholly irrelevant and immaterial to the issues at hand. This matter should be decided on the relevant facts and the appropriate law, not inappropriate commentary between the parties and their counsel.

If you have any questions, comments, or concerns, please do not hesitate to contact me.

With best regards, I am

Sincerely yours,

s/ E. Richardson LaBruce
E. Richardson LaBruce
FINGER, MELNICK & BROOKS, P.A.

Enc. Regecz Agreement
cc: Thomas R. Goldstein, Esq. (*via e-mail only*)
Thomas J. Keaveny, II, Esq. (*via e-mail only*)

f:\client\b\beaufort county\adv. baracco, mare\correspondence\letter to erin dean (response to 7.28)(erl.draft.2).docx

REALTOR® EQUAL HOUSING OPPORTUNITY

~~AGREEMENT~~/CONTRACT: TO BUY AND SELL REAL ESTATE
(GENERAL USE AND LOTS/ACREAGE)

1. PARTIES: This legally binding Agreement ("Contract") To Buy and Sell Real Estate is entered into by:

Buyer(s), Beaufort County ("Buyer"), and

Seller(s), Brian Baker and Leslie Baker ("Seller").

(A) "Party" - defined as either Buyer or Seller, "Parties" defined as both Buyer and Seller.
(B) "Brokers" are licensed South Carolina brokers-in-charge, their associated real estate licensees, and their subagents.
(C) "Closing Attorney" - is the licensed South Carolina attorney selected by Buyer to coordinate the transaction and Closing. N/A
(D) "Effective Date" - the final date upon which a Party to the negotiation places the final and required signatures and/or initials and date on this Contract and Delivers Notice to initially cause this primary Contract to be binding on all Parties.
(E) "Business Day" - a 24 hour period (Monday/Tuesday/Wednesday/Thursday/Friday) beginning at 10 AM and counted from 10 AM of the first Business Day following the appropriate date (Effective Date, Closing Date, stated date, Notice Delivery date). Business Days shall not begin, end, or include any Saturday, Sunday, or Federal legal holiday.
(F) "Good Funds" - is the transfer of the required amount of United States Dollars (USD) within any required timeframe.
(G) "Time" - all time stated shall be South Carolina local time. **Time is of the essence with respect to all provisions of this Contract stipulating time, deadline, or performance periods.**

☐ BUYER ☐ SELLER IS A SOUTH CAROLINA REAL ESTATE LICENSEE

2. PURCHASE PRICE: $34,000.00 Thirty-Four Thousand

Payable by transfer of Good Funds via ☐ Finance or ☐ a combination of Finance and Cash USD or ☒ Cash USD. Verification of Cash available for Closing is ☐ attached ☒ not attached ☐ to be Delivered before _____. This Contract ☐ is ☒ is not contingent upon the sale and closing of Buyer's real property and SCR504 ☐ is ☐ is not attached.
N/A

3. PROPERTY: Hereby acknowledging sufficient good Contract consideration (e.g. mutual promises herein), Seller will sell and convey and Buyer will buy for the Purchase Price any and all lot or parcel of land, appurtenant interests, improvements, landscape, systems, and fixtures if any thereon and further described below ("Property"). Seller agrees to maintain in operable condition the Property and any personal property conveying, including any landscaping, grounds and any agreed upon repairs or replacements, from the Effective Date through Closing subject to normal operable wear and tear. Buyer acknowledges opportunity to inquire about owners association issues, common area issues, condominium master deed issues, assigned parking/storage areas, memberships, lease issues and financed equipment prior to signing Contract. Leasing issues and items and financed equipment see Adjustments (e.g. tenants, leases, future vacation renters, SC vacation rental act reservations, rents, deposits, documents, solar panels, fuel tanks with fuel, alarm systems, satellite equipment, roll carts).

Address 1 Bostick Cir N/A Unit # N/A
City Beaufort State of South Carolina
Zip 29902-5706 County of Beaufort
Lot 247 Block N/A Section/Phase N/A Subdivision Battery Point S/D
Other N/A Tax Map R120 029 00A 0272 0000
Parties agree that no personal property will transfer as part of this sale, except described below and/or ☐ in attachment(s):
N/A
N/A

4. CONVEYANCE/CLOSING/POSSESSION: "Closing" occurs when Seller conveys Property to Buyer and occurs no later than 5 PM on or before February 16, 2018 ("Closing Date") with an automatic extension of N/A business days for an unsatisfied contingency through no fault of either party. Conveyance shall be fee simple made subject to all easements, reservations, rights of way, restrictive covenants of record (provided they do not make the title unmarketable or adversely affect the use/value of the Property in a material way) and to all government statutes, ordinances, rules, permits, and regulations. Seller agrees to convey marketable title with a properly recorded general warranty deed free of encumbrances and liens except as herein stated; and in name(s): N/A

[ ] BUYER [ ] BUYER [BB] DS SELLER [LTB] DS SELLER HAVE READ THIS PAGE

Ballenger Realty, 613 Carteret Street Beaufort SC 29902
Phone: (843)379-1400 Fax: (843)379-1401 Debra Regecz

1 Bostick Circle

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and ownership type determined by Buyer. The deed shall be delivered to the Closing Attorney's designated place on or before the Closing Date no later than 10 AM. Seller agrees to pay all statutory deed recording fees. Parties agree the Brokers shall have access to the closing and relevant documents; and the Brokers shall be given copies of the settlement statement prior to Closing for review. Parties agree to hire/use licensed Attorney(s). Seller shall convey possession of a vacant and reasonably clean Property, free of debris, along with all keys, codes, any remote controls, available documents (e.g. manuals, equipment warranties, service information) and similar ownership items to Buyer at Closing.

5. EARNEST MONEY: Total $ 500.00 **(USD) Earnest Money is paid as follows:** $_____ accompanies this offer and $_____ will be paid within 5 Business Days after Effective Date and Earnest Money is in the form of [X] check [ ] cash [ ] other (e.g. wire) N/A to be a Credit to Buyer at Closing or disbursed only as Parties agree in writing or by court order or by Contract or as required for Closing by Closing Attorney. Buyer and seller authorize Thomas A. Bendle, Jr. Howell, as Escrow Agent to deposit and hold and disburse earnest money according to the terms of any separate escrow agreement, the law, and any regulations. Broker does not guarantee payment of a check or checks accepted as earnest money. Parties direct escrow agent to communicate reasonable information confirming receipt and status of earnest money upon a Broker request.

THE PARTIES UNDERSTAND AND AGREE THAT UNDER ALL CIRCUMSTANCES INCLUDING DEFAULT, ESCROW AGENT WILL NOT DISBURSE EARNEST MONEY DEPOSIT TO EITHER PARTY UNTIL BOTH PARTIES HAVE EXECUTED AN AGREEMENT AUTHORIZING THE DISBURSEMENT (e.g. SCR518, SCR517, mediation agreement) OR UNTIL A COURT OF COMPETENT JURISDICTION HAS DIRECTED A DISBURSEMENT. EARNEST MONEY WILL NOT BE DISBURSED UNTIL DETERMINED TO BE GOOD FUNDS. IF LEGAL ACTIONS OCCUR RELATED TO EARNEST MONEY, PARTY RECEIVING THE LEAST AMOUNT OF EARNEST MONEY IN THE COURT'S DISBURSEMENT ORDER AGREES TO INDEMNIFY ESCROW AGENT'S FEES, COURT COSTS AND ATTORNEY FEES. IF INTERPLEADER IS TO BE UTILIZED, PARTIES AGREE THAT $ _____ SHALL BE PAID TO THE ESCROW AGENT BY THE PARTIES AS COMPENSATION BEFORE ESCROW AGENT INITIATES COURT OF COMPETENT JURISDICTION PROCEEDINGS ON EARNEST MONEY.

6. TRANSACTION COSTS: Buyer's transaction costs include all costs and closing costs resulting from selected financing, pre-paid recurring items, insurance (mortgage insurance, title insurance lender/owner, hazard) discount points, all costs to obtain information from or pertaining to any owners association (aka certificate of assessment), interest, non-recurring closing costs, title exam, FHA/VA allowable costs, fees and expenses of Buyer's attorney, contractually required real estate broker compensation, and the cost of any inspector, appraiser, or surveyor. Seller's transaction costs include deed preparation, deed recording costs, deed stamps/tax/recording costs calculated based on the value of the Property, all costs necessary to deliver marketable title and payoffs, satisfactions of mortgages/liens and recording, property taxes pro-rated at Closing, contractually required real estate broker compensation, and fees and expenses of Seller's attorney.

At Closing, Seller will pay Buyer's transaction costs not to exceed $ _____ OR _____ % of purchase price, whichever is higher, which includes non-allowable costs first and then allowable costs (FHA/VA). Buyer is responsible for any Buyer's transaction costs exceeding this amount. If the amount exceeds the actual amount of those costs or amount allowed by Lender, then any excess funds will revert to Seller. Seller will also provide or pay for all of Seller's transaction costs. If no Closing, Buyer is responsible for Buyer's transaction costs and Seller responsible for Seller's transaction costs.

Private/public transfer fees and any costs similar to transfer fees (e.g. capital contributions, conservancy fees, estoppel fees, or otherwise named but similar fees paid to the owners association) are the [ ] Seller's or [X] Buyer's transaction costs.
N/A

Unless otherwise agreed upon in writing, Buyer will pay Buyer's transaction costs and Seller pay Seller's transaction costs
N/A

7. FINANCE: Buyer's obligation under this Contract [ ] is [X] is not contingent upon obtaining financing of a [ ] 30 year or [ ] 15 year or [ ] other N/A purchase money loan at reasonable prevailing market terms with loan(s) equal in amounts to a minimum _____ % and maximum _____ % of the Purchase Price or Appraised Value whichever is lower. ("Financing Contingency"). Financing Contingency expires at Closing ("Financing Period"). Buyer must make timely good faith efforts to apply for and obtain financing while refraining from contrary actions ("Financing Effort"). In a timely manner, Buyer shall inform Seller and Brokers of pertinent financing issues and authorize Buyer's Lender to disclose pertinent loan information to Seller and Brokers ("Financing Disclosure"). Buyer shall apply for financing within N/A Business Days from the Effective Date and shall Deliver Notice to Seller of reasonable pre-final loan approval (e.g. pre-approval letter, initial approval letter) that contains no unreasonable credit, income, or asset conditions within N/A Business Days from the Effective Date (no repairs required prior to this Notice). Final loan approval occurs when Lender funds loan(s). If a

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Lender subsequently declines or fails to approve financing, the Buyer shall notify the Seller and Brokers as soon as possible. If the Seller and Brokers are notified of inability to obtain financing during the Financing Period, either Party may terminate this Contract by Notice.
Lender (may change): N/A ☐ FHA ☐ VA ☐ Conventional ☐ Seller
☐ Other N/A
An FHA VA Financing Addendum ☐ is ☐ is not attached. Additional financing terms ☐ are ☐ are not attached.

8. INSPECTION/REINSPECTION RIGHTS: Buyer and SC licensed and insured inspectors ("Inspectors") reasonably perform any reasonable ultimately non-destructive examination and make reasonable record of the Property with reasonable Notice to Seller through Closing including investigations of off-site conditions and any issues related to the Property at Buyer Expense ("Inspections"). Buyer and persons they choose may make reasonable visual observations of Property.

Sellers will make the Property accessible for Inspection and not unreasonably withhold access, unless otherwise agreed in writing by the Parties. Seller will keep all utilities operational through Closing unless otherwise agreed:
☐ Seller grants Buyer permission to connect utilities, pay for utilities, and hire professionals (e.g. electricians, plumbers) to safely connect and operate the utilities during the Inspections
Other N/A **☐ see attached.**

~~Buyer will hold harmless, indemnify, pay damages and attorneys fees to Seller and Brokers for all claims, injuries, and damages arising out of the exercise of these rights. Seller will hold harmless, indemnify, pay damages and attorneys fees to Brokers for all claims, injuries, and damages arising out of the exercise of these rights. Brokers recommend that Parties obtain all inspections as soon as possible. Brokers recommend that Parties and Inspectors use insurance to manage risk.~~

9. APPRAISED VALUE:

☐ This Contract is contingent upon the Property being valued according to the Lender's appraisal or other appraisal as agreed upon by the Parties ("Appraised Value") for the Purchase Price or higher. If the Parties are made aware that the Appraised Value is less than the Purchase Price and the Seller Delivers Notice to the Buyer within 5 Business Days or Closing (whichever earliest) of an amendment to reduce the Purchase Price to the Appraised Value, the Parties agree to proceed to Closing under terms of this Contract with the Purchase Price amended to be the Appraised Value. If Seller is aware and refuses to reduce as stated above, Buyer may proceed to Closing or terminate this Contract by Delivering Notice of Termination to the Seller.

☒ This Contract is **not** contingent upon the Property being valued at an Appraised Value according to the Lender's appraisal or other appraisal as agreed upon by the Parties for the Purchase Price or more.

10. SURVEY, TITLE EXAMINATION, ELEVATION, INSURANCE: Brokers recommend Buyer have Property surveyed, title examined, elevation/wetlands/beachfront determined, and appropriate insurance (e.g. flood, flood contents, hazard, liability, owner's title) effective at Closing. Unless otherwise agreed upon in writing by Parties, Buyer to obtain new insurance policies by Closing and Seller may cancel existing insurance after Closing. Flood Insurance, if required by Lender or at Buyer's option, shall be assigned to Buyer with permission of carrier and premium prorated to Closing. Buyers are solely responsible to investigate pricing, availability, coverage, and requirements of insurance (e.g. flood, flood contents, hazard, liability) for the property prior to signing Contract.

11. SURVIVAL: If any provision herein contained which by its nature or effect is required to be observed, kept, or performed after Closing, it will survive the Closing and remain binding upon for the parties hereto until fully observed, kept or performed.

12. DUE DILIGENCE:

The Due Diligence Period ends no later than 10 **Business Days after Contract's original Primary Effective Date as unless all the Parties agree in writing to extend the Due Diligence Period.**

During the Due Diligence Period, Buyer may take timely/prudent steps to help Buyer/Inspectors, Seller/Estimators, and REALTORS® all have adequate time for: Buyer to coordinate Inspections and Contract Renegotiations, Seller to obtain estimates, Buyer and Seller to negotiate Contract terms, and Buyer to potentially timely/proper Due Diligence terminate or buy.

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During the Due Diligence Period, Seller agrees Buyer may rely on the following list of five items in accordance with Contract and laws. Buyer is solely responsible for Inspections. Buyer is not required to Inspect. Until Buyer timely/properly terminates the Contract or the Parties agree on an amended Contract, the Buyer can rely on #1, #2, #3, #4, and #5. TIME IS OF THE ESSENCE. Delivering a Repair Request does not extend the Due Diligence Period.

(1) Conduct/obtain Inspections [e.g. on site conditions, off site conditions]
(2) Deliver Repairs Requests Notice to Seller [e.g. SCR525 with all repair requests, all/portions of reports]
(3) Proceed under amended Contract [e.g. SCR330 and SCR525, SCR390, SCR391]
(4) Proceed under As Is Contract [e.g. Buyer desires to buy anyway, Buyer wants Property without Repair]
(5) Terminate Contract by timely/properly Delivering "Notice of Termination" and "Termination Fee" to Seller within the Due Diligence Period, any remaining Earnest Money shall be returned to the Buyer.

TERMINATION: During the Due Diligence Period, Buyer may unilaterally terminate this Contract only by Delivering to the Seller both Notice of Termination and a Termination Fee of $ _____ USD Good Funds. DURING THE DUE DILIGENCE PERIOD, SHOULD BUYER FAIL TO OBTAIN A NEW/AMENDED CONTRACT WITH THE SELLER OR BUYER FAIL TO TIMELY/PROPERLY DUE DILIGENCE TERMINATE THE CONTRACT DURING THE DUE DILIGENCE PERIOD: The Buyer agrees to buy and Seller agrees to sell the Property AS IS. Parties agree "As Is" means Buyer buys the Property for the Purchase Price while Seller maintains the Property from the Effective Date through Closing subject to normal wear otherwise without repair or replacement and sells the Property for the Purchase Price unless otherwise agreed upon in writing by the Parties in this Contract.

13. FIRE OR CASUALTY OR INJURY: In case the Property is damaged wholly or partially by fire or other casualty prior to Closing, Parties will have the right for 5 Business Days after Notice of damage to Deliver Notice of Termination to other Party. If Party does not Deliver Notice of Termination, the Parties proceed according to the Contract and Seller is to be responsible to (1) repair all damage, (2) remit to Buyer an amount for repairs, or (3) assign to Buyer the right to all proceeds of insurance and remit any deductible amount applicable to such casualty. If Buyer or Inspections caused the damage, Buyer is responsible for indemnifying Seller for damages. Brokers and Parties should ensure that they are protected by appropriate risk management strategies such as insurance.

14. BUILDING PERMIT: This Contract ☐ is ☒ is not contingent upon Buyer's ability to acquire all required licenses and permits from the appropriate authorities to build on the Property. No later than N/A Business Days after the original Effective Date unless the Parties agree in writing to extend this Building Permit Period, Buyer may unilaterally terminate this Contract by Delivering to the Seller a Notice of Termination due to inability to acquire all required licenses and permits from the appropriate authorities to build on the Property. If Seller receives the Delivered Notice of Termination during the Building Permit Period, any remaining Earnest Money shall be returned to the Buyer. Should Buyer not Deliver Notice of Termination due to inability to acquire all required licenses and permits from the appropriate authorities to build on the Property to Seller during the Building Permit Period, Buyer agrees to purchase and Seller agrees to sell the Property in accordance with Contract.

15. REZONING: This Contract ☐ is ☒ is not contingent upon the Property being rezoned to N/A _____ by full approval (without any appeal during the appeal period) by the appropriate authorities. No later than N/A Business Days after the original Effective Date unless the Parties agree in writing to extend this Rezoning Period, Buyer may unilaterally terminate this Contract by Delivering to the Seller a Notice of Termination due to inability to acquire rezoning from the appropriate authorities to build on the Property. If Seller receives the Delivered Notice of Termination during the Rezoning Period, any remaining Earnest Money shall be returned to the Buyer. Should Buyer not Deliver Notice of Termination due to inability to acquire rezoning from the appropriate authorities during the Rezoning Period, Buyer agrees to purchase and Seller agrees to sell the Property in accordance with Contract. The ☐ Buyer or ☐ Seller shall be responsible for pursuing rezoning and paying all associated costs. All rezoning applications shall be submitted to the Seller for Seller's approval prior to filing. Seller shall not unreasonably or untimely withhold approval. All Parties agree to cooperate, sign the necessary documentation, and make efforts to support the rezoning application.

16. WELL, SEPTIC, WATER LINE, SEWER AVAILABILITY: This Contract ☒ is ☐ is not contingent upon Buyer's ability to obtain from the South Carolina Department of Health and Environmental Control or other appropriate authorities all required permits for a well and septic system suitable for the Buyer's intended structure in the event a well or septic system is needed on the Property. No later than 10 Business Days after the original Effective Date unless the Parties agree in writing to extend this Well and Septic Permit Period, Buyer may unilaterally terminate this Contract by Delivering to the Seller a Notice of Termination due to inability to acquire all required permits from the appropriate authorities to install a conventional well and conventional septic system on the Property. If Seller receives the Delivered Notice of Termination during the Well

[ ] BUYER [ ] BUYER [ ] SELLER [ ] SELLER HAVE READ THIS PAGE

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and Septic Period, any remaining Earnest Money shall be returned to the Buyer. Should Buyer not Deliver Notice of Termination due to inability to acquire all required permits from the appropriate authorities to install a well and septic system on the Property to Seller during the Well and Septic Period, Buyer agrees to purchase and Seller agrees to sell the Property in accordance with Contract. If the Property is connected or capable of being connected to a water and or sewer line maintained by a private or public utility for a customary tap fee not to exceed $ _____, the Buyer agrees to waive any applicable portion of the Well and Septic Contingency. Seller represents the Property is connected to water system: ☐ county ☐ city ☐ private ☐ corporate ☐ community ☐ well ☐ other N/A . Seller represents the Property is connected to water disposal system: ☐ septic ☐ sewer ☐ private ☐ corporate ☐ government ☐ other N/A .

17. CONDITION OF PROPERTY: Seller shall not remove any timber, vegetation, dirt, minerals, or otherwise affect the condition of the property from the Effective Date through Closing. All timber, vegetation, dirt, minerals, or similar shall remain as part of the Property and be conveyed to the Buyer at Closing. The Seller shall not bring any trash, refuse, debris, dirt, fill, medical wastes, hazardous wastes, or other materials onto the Property. Seller shall Deliver Notice of any legal action or condemnation action to the Buyer as soon as possible. If Seller Delivers such Notice, Buyer may unilaterally terminate this Contract by Delivering to the Seller a Notice of Termination. If Seller receives this Delivered Notice of Termination at any time, remaining Earnest Money shall be returned to the Buyer. Should Buyer not Deliver this Notice of Termination, Buyer agrees to purchase and Seller agrees to sell the Property in accordance with Contract.

18. SC RESIDENTIAL PROPERTY CONDITION DISCLOSURE STATEMENT ("CDS") [check one]:

☐ Buyer and Seller agree that Seller has Delivered prior to this Contract, a CDS to Buyer, as required by SC Code of Laws Section 27-50-10 et seq. If after delivery, Seller discovers a CDS material inaccuracy or the CDS becomes materially inaccurate due to an occurrence or circumstance; the Seller shall promptly correct this inaccuracy (e.g. delivering a corrected CDS to the Buyer or making reasonable repairs prior to Closing). Buyer understands the CDS does not replace Inspections. Buyer understands and agrees the CDS contains only statements made by the Seller. Parties agree the Brokers are not responsible nor liable for any information in the CDS and the Brokers have met requirements of SC Code 27-50-70. CDS is not a substitute for the Buyers and Inspectors inspecting the Property, Property issues, and off site conditions for all needs.

☒ Buyer and Seller agree that Seller will **NOT** complete nor provide a CDS to Buyer in accordance with SC Code of Law, as amended, Section 27-50-30, Paragraph (13). Buyers have sole responsibility to inspect Property for all their needs.

19. LEAD BASED PAINT/LEAD HAZARDS: If Property was built or contains items created prior to 1978, it may contain lead based hazards and Parties agree to sign "Disclosure of Information of Lead Based Paint and/or Lead Hazards" forms (e.g. SCR315) and give copies to Brokers. Parties acknowledge receiving and understanding the EPA pamphlet "Protect Your Family From Lead in Your Home." For their protection, Buyers should conduct/obtain inspections of all Property issues per their needs.

20. SEX OFFENDER/CRIMINAL INFORMATION: Parties agree that Brokers are not responsible for obtaining or disclosing information in the SC Sex Offender Registry and no course of action may be brought against any Brokers for failure to obtain or disclose sex offender or criminal information. Buyer and Seller agree that they have sole responsibility to obtain their own sex offender, death, psychological stigma, clandestine laboratory, and crime information from sources (e.g. law enforcement, P.I., web). The Buyer may obtain information about the Sex Offender Registry and persons registered with the Registry by contacting the local county Sheriff or other appropriate law enforcement officials.

21. TRUST ACCOUNT INTEREST/CHARITABLE CONTRIBUTION: According to the South Carolina Real Estate Commission regulations and South Carolina laws, any interest earned from deposit to Closing on Buyer's earnest money deposit belongs to Buyer. It is understood that Broker ☐ may ☒ may not place deposited earnest monies into an interest bearing trust account. If Buyer's earnest money deposit is deposited into an interest bearing trust account, Parties agree that Broker will retain all interest earned in said account and may contribute some or all to a charitable enterprise.

22. SC INCOME TAX ON NON-RESIDENT GAIN AND COMPLIANCE AND USA FEDERAL INCOME TAX: Seller and Buyer will comply with the provisions of South Carolina laws [e.g. 12-8-580 (as amended)] regarding state income tax withholding requirements if the Seller is not a resident or has not filed South Carolina state income tax returns. Seller and Buyer will comply with United States of America federal income tax laws. Seller and Buyer should discuss tax laws and minimization actions with their qualified tax advisor. Parties will comply with all local, state, federal laws, and any rules.

23. ROLLBACK TAXES (IF ANY): The Parties agree that the ☒ Seller or ☐ Buyer shall pay any rollback taxes when rollback taxes are determined and billed.

[JK] BUYER [____] BUYER [BB DS] SELLER [LTB DS] SELLER HAVE READ THIS PAGE

24. SPECIAL STUDIES AREA, WETLANDS, AND ENVIRONMENTAL MATTERS: All reports and certifications required by the Lender, Buyer, or any government concerning any special study area, wetlands, or environmental issues shall be ordered by N/A and paid for by N/A.

All of these reports or certifications shall be completed no later than N/A Business Days after the original Effective Date, unless the Parties agree in writing or extend this period ("Environmental Period"). In the event repairs are necessary to address environmental concerns (Repair Requests); the Seller shall be Delivered Notice in writing of the specific defects or deficiencies no later than 2 Business Days after the Environmental Period. If the Buyer fails to notify the Seller within this timeframe, Buyer shall have waived any and all rights under terms of this section. If Lender's commitment requires any additional inspections or certifications, these are to be provided by the Buyer.

Upon Delivered Notice of the Repair Requests, Seller has five Business Days to address the Buyer's Repair Requests. The costs of all repairs to address environmental concerns to be paid by Seller. If the Seller fails to agree to make these repairs within this timeframe, the Buyer shall have 2 Business Days to choose any of the following options (1) accept the Property in its present condition, (2) negotiate with the Seller for the payment of these repairs or (3) terminate this Contract and receive their Earnest Money. The repairs to any other items are the sole responsibility of the Buyer. The obligations of the Seller for repairs terminate upon Closing. If the Seller agrees to make the repairs, the Parties agree to proceed under Contract.

25. ENTIRE AND BINDING AGREEMENT (MERGER CLAUSE): Parties agree that this Contract expresses the entire agreement between the parties, that there is no other agreement, oral/otherwise, modifying the terms and this Contract is binding on Parties and principals, heirs, personal representatives, successors, and assigns. Illegal provisions are severable.

26. ADJUSTMENTS: Buyer and Seller agree to settle or prorate, annually or as appropriate; as of Closing Date: (A) utilities and waste fees issued after Closing which include service for time Property was owned/occupied by Seller (B) real estate taxes and owner association fees/assessments for the calendar year of Closing (C) any rents, deposits, fees associated with leasing (D) insurance, EMS service, fuel/consumables, and assessments. Closing Attorney shall make tax proration based on the available tax information deemed reliable by the Closing Attorney. Should the tax or tax estimate or proration later become inaccurate or change, Buyer and Seller shall make any financial adjustments between themselves once accurate tax information is available and Buyer takes timely reasonable steps to minimize taxes. This section survives Closing. Buyer is solely responsible for timely and reasonably minimizing the Buyer's taxes and obtaining tax minimization procedural information including related legal counsel and financial counsel. Special assessments approved prior to Closing shall be the responsibility of the Seller. Special Assessments approved after Closing shall be the responsibility of the Buyer.

27. DEFAULT/BREACH OF CONTRACT:

(A) If Seller defaults in the performance of any of the Seller's obligations under this Contract ("Default"), Buyer may:
  (i) Deliver Notice of Default to Seller and terminate Contract and
  (ii) Pursue any remedies available to Buyer at law or equity and
  (iii) Recover attorneys' fees and all other direct costs of litigation if Seller found in default/breach of Contract.

(B) If Buyer defaults in the performance of any of the Buyer's obligations under this Contract ("Default"), Seller may:
  (i) Deliver Notice of Default to Buyer and terminate Contract and
  (ii) Pursue any remedies available to Seller at law or equity and
  (iii) Recover attorneys' fees and all other direct costs of litigation if Buyer found in default/breach of Contract.

(C) If either/both Parties default, Parties agree to sign an escrow deposit disbursement agreement or release agreement.

(D) Parties may agree in writing to allow a Cure Period for a default. If within the Cure Period, either Party cures the Default and Delivers Notice, Parties shall proceed under the Contract.

28. MEDIATION: To potentially avoid expensive/lengthy/uncertain litigation, Parties may voluntarily/cooperatively decide which mediator to hire, how to pay the mediator, where to meet for mediation talks, and their own settlement agreement. Mediators do not decide settlement outcomes (Parties decide). Mediators merely facilitate the Parties reaching their own settlement and documenting settlement. Parties agree to attempt mediation for any dispute, claim, breach, representations made by any Party/Broker/other (e.g. concealment, misrepresentation, negligence, fraud) or service issues related to this Contract by using the National Association of REALTORS® Mediation Dispute Resolution System (803-772-5206 or www.NAR.REALTOR/policy/mediation or www.screaltors.org/mediation). Parties agree that the duty to attempt mediation survives closing and any signed mediation settlement agreement is binding. Parties agree some matters may proceed without mediation (e.g. foreclosure, action to enforce a mortgage or deed of trust or "rent to own" agreement, unlawful detainer action, file/enforce mechanic's lien, probate issues, interpleader action on earnest money). Parties agree some matters are not a waiver of mediation nor a breach of duty to attempt mediation (e.g. filing judicial action enabling recording notice of pending action, order for attachment/receivership/injunction or other provisional remedies).

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29. NON-RELIANCE CLAUSE (NOT A MERGER CLAUSE NOR EXTENSION OF A MERGER CLAUSE): Parties execute this Contract freely and voluntarily without reliance upon any statements, representations, inducements, promises, or agreements by Brokers or Parties except as expressly stipulated or set forth in this Contract. If not contained herein, such statements, representations, inducements, promises, or agreements shall be of no force or effect. Parties acknowledge that Brokers are being retained solely as licensed real estate agents and not as any attorney, tax/financial advisor, appraiser, surveyor, engineer, mold or air quality expert, home inspector, or other professional service provider.

30. BROKER DISCLAIMER: Parties acknowledge that Brokers give no warranties or representations of any kind, expressed or implied as to: (1) condition of the Property, including but not limited to termites, radon, mold, asbestos, moisture, environmental issues, water, waste, air quality, HVAC, utilities, plumbing, electrical or structure, etc. (2) condition of the Property, survey or legal matters, square footage (3) off site conditions (4) schools (5) title including but not limited to easements, encroachments, projections, encumbrances, restrictions, covenants, setbacks, and the like (6) fitness for a particular purpose of the Property or the improvements (7) zoning ordinances and restrictions (7) projected income, value, marketability, taxes, insurance, or other possible benefits to Buyer. Parties consent that their Brokers may communicate with them via any means; and use or disclose information not made confidential by written instruction of Parties.

31. BROKERS COMPENSATION: Parties direct Closing Attorney to use settlement funds to collect and disburse Brokers Compensation to Brokers in accordance with agreements and document compensation on the settlement statement. If a Party disputes Brokers Compensation, that Party agrees to retain a South Carolina law firm to escrow only the disputed amount of Brokerage Compensation until the dispute is resolved by a written agreement signed by that Party and the Affected Broker, arbitration award, or court order. Party requesting the escrow shall pay all costs for escrow. If the dispute is not resolved within 180 calendar days of Closing, the escrow shall be disbursed to the Broker. Parties agree that Brokers are third party beneficiaries to this Contract and have standing to seek remedies at law and equity. Parties represent that their only enforceable agency agreements are with the Brokers disclosed in this Contract. Parties consent to Brokers possibly receiving compensation from the HWC and/or others if compensation is paid in accordance with laws and REALTOR® ethics. NOTICE: THIS IS TO GIVE YOU NOTICE THAT BROKERS HAVE/WILL/MAY RECEIVE COMPENSATION FROM HWC/OTHERS FOR REFERRAL/PROCESSING. YOU ARE NOT REQUIRED TO PURCHASE A HWC OR SIMILAR RESIDENTIAL SERVICE CONTRACT AND IF YOU CHOOSE TO PURCHASE SUCH COVERAGE YOU ARE FREE TO PURCHASE IT FROM ANOTHER PROVIDER.

32. *BROKER LIABILITY LIMITATION:* *Parties agree Brokers provided Parties with benefits, services, assistance, and value in bringing about this Contract. In consideration and recognition of the risks, rewards, compensation and benefits arising from this transaction to Brokers, Parties each agree that they shall pay Brokers' attorneys fees and that Brokers, shall not be liable to either Party or both, either jointly, severally or individually, in an amount exceeding that Broker's Compensation by reason of any act or omission, including negligence, misrepresentation, errors and omissions, or breach of undertaking, except for intentional or willful acts.This limitation shall apply regardless of the cause of action or legal theory asserted against either Broker, unless the claim is for an intentional or willful act. This limitation of liability shall apply to all claims, losses, costs, damages or claimed expenses of any nature from any cause(s), except intentional or willful acts, so that the total liability of either Broker shall not exceed the amount set forth herein. Parties will indemnify and hold harmless and pay attorneys fees for Brokers from beach of contract, any negligent or intentional acts or omissions by any Parties, Inspectors, Professionals, Service Providers, Contractors, etc. including any introduced or recommended by Brokers. Parties each agree that there is valid and sufficient consideration for this limitation of liability and that Brokers are the intended third-party beneficiaries of this provision.*

33. ATTACHMENTS, OTHER CONTINGENCIES, TERMS, AND/OR STIPULATIONS: There may be attachments to this Contract. The most recent changes, amendments, attachments, contingencies, stipulations, addendum, additions, exhibits, or writings, agreed to by the Parties; is evidence of the Parties' intent and agreement and shall control any Contract language conflicts. Parties shall initial and date Contract changes. If any documents are attached as addenda, amendments, attachments, or exhibits considered part of this Agreement, such documents can be further identified or described here (e.g. SCR 390, 391, 311, 503, 504, 315, 320, 393, 370, 375, 513, 610): N/A

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34. NOTICE AND DELIVERY: Notice is any unilateral communication (offers, counteroffers, acceptance, termination, unilateral requests for better terms, and associated addenda/amendments) from one Party to the other. Notice to/from a Broker representing a Party is deemed Notice to/from the Party. All Notice, consents, approvals, counterparts, and similar actions required under Contract must be in paper or electronic writing and will be effective as of delivery to the Notice address/email/fax written below and awareness of receipt by Broker ("Delivered") unless Parties agree otherwise in writing.

35. PARTIES ARE SOLELY RESPONSIBLE FOR OBTAINING LEGAL ADVICE PRIOR TO SIGNING THIS CONTRACT AND DURING THE TRANSACTION. REAL ESTATE LICENSEES RECOMMEND OBTAINING LEGAL COUNSEL. Due to potential criminal activity, parties are solely responsible to verify all wiring instructions with law firm/bank and understand that audio/visual surveillance may occur. Parties acknowledge receiving, reading, reviewing, and understanding: this Contract, the SC Disclosure of Real Estate Brokerage Relationships form, any agency agreements, and copies of these documents. Parties acknowledge having time and opportunity to review all documents and receive legal counsel from their attorneys prior to signing Contract.

36. EXPIRATION OF OFFER: When signed by a Party and intended as an offer or counter offer, this document represents an offer to the other Party that may be rescinded any time prior to or expires at 5 ☐ AM ☒ PM on January 24th, 2018 unless accepted or counter-offered by the other Party in written form Delivered prior to such deadline: N/A

IN WITNESS WHEREOF, this Contract has been duly executed by the Parties as true to the best of their knowledge/belief. If signee is not a Party, appropriate legal documents (e.g. Power of Attorney, Corporate Authorization) are ☐ attached or ☐ to be Delivered within N/A Business Days. **Parties shall initial and date all page and changes in this Contract.**

BUYER: _____ **Date:** 1-22-18 **Time:** _____
Josh Gruber, Interim County Administrator, Beaufort County

~~**BUYER:**~~ _____ **Date:** _____ **Time:** N/A
N/A

NOTICE ADDRESS/EMAIL/FAX: N/A

SELLER: DocuSigned by: _____ **Date:** 1/23/2018 **Time:** _____
Brian Baker
2795A627504446...

SELLER: DocuSigned by: Leslie T. Baker **Date:** 1/23/2018 **Time:** _____
Leslie Baker
BE9E8C0DD4BC488...
N/A

NOTICE ADDRESS/EMAIL/FAX: N/A

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TRANSACTIONAL INFORMATION ONLY (Attach SCR390 if space needed for contractual agreement terms):

ESCROW AGENCY ACKNOWLEDGEMENT SIGNATURE: _____

ESCROW AGENT NAME (BROKER IN CHARGE/OTHER): Thomas A. Bendle, Jr. Howell,

DESCRIBE ESCROW AGENCY (BROKERAGE/LAW FIRM/OTHER): N/A

ESCROW AGENT CONTACT INFO: N/A N/A

N/A N/A N/A N/A

LICENSEE: Debra Regecz SC LICENSE # 51688 EXPIRES 06/30/2018

BROKER IN CHARGE: Everett Ballenger SC LICENSE # N/A EXPIRES 06/30/2019

BROKERAGE COMPANY NAME: Ballenger Realty

INVOLVED AS: [X] BUYER AGENT [ ] SELLER SUBAGENT [ ] DUAL AGENT [ ] BUYER DESIGNATED AGENT* [ ] CUSTOMER FACILITATOR [ ] TRANSACTION BROKERAGE N/A

MEMBERS OF Beaufort Board of Realtors ASSOCIATION/BOARD OF REALTORS®

NOTICE ADDRESS: 613 Carteret

NOTICE EMAIL/FAX: N/A

MOBILE PHONE: N/A OFFICE PHONE: N/A

OTHER: N/A

LICENSEE: Cindy Young SC LICENSE # N/A EXPIRES _____

BROKER IN CHARGE: N/A SC LICENSE # N/A EXPIRES _____

BROKERAGE COMPANY NAME: Point South

INVOLVED AS: [ ] SELLER AGENT [ ] SELLER SUBAGENT [ ] DUAL AGENT [ ] SELLER DESIGNATED AGENT* [ ] CUSTOMER FACILITATOR [ ] TRANSACTION BROKERAGE N/A

MEMBERS OF N/A ASSOCIATION/BOARD OF REALTORS®

NOTICE ADDRESS: N/A

NOTICE EMAIL/FAX: N/A

MOBILE PHONE: N/A OFFICE PHONE: N/A

OTHER: N/A

*DESIGNATED AGENCY - THE BROKER-IN-CHARGE AND ALL ASSOCIATED LICENSEES, EXCEPT THE DESIGNATED AGENTS, ARE DUAL AGENTS. DS NO AGENT IS NO CLIENT SERVICE, YES CUSTOMER SERVICE.

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FINGER, MELNICK & BROOKS, P.A.

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erlabruce@fingerlaw.com

Also admitted in:
* Georgia
† New York

▫ Court Certified Mediator
▪ Court Certified Arbitrator / Mediator

September 3, 2020

Via E-Mail Only (*erindean@tgdcpa.com*):
Erin Dubose Dean, Esq.
TUPPER, GRIMSLEY & DEAN, P.A.
Post Office Box 2055
Beaufort, South Carolina 29901-2055

Re: Mare Baracco v. Beaufort County; 2019-CP-07-00818
Our File No. 6868.002 – Beaufort County

Dear Erin,

As per your instructions, please find attached hereto the revised documents in response to Freedom of Information Act Request #2019-459. Our exemption log remains the same.

The modifications are two-fold. First, as instructed by you, we have removed redactions that covered the names of the senders/recipients of e-mails so that the Plaintiff can more thoroughly evaluate the appropriateness of the redactions. Second, we have redacted the far right side of certain pages to eliminate internal notes on our clean documents, an unfortunate byproduct of having to redact twice. Certain notes could not be removed without modifying the text of the e-mail so those remain.

These documents will also be provided via ShareFile. If you have any questions, comments, or concerns, please do not hesitate to contact me.

With best regards, I am

Sincerely yours,

s/ E. Richardson LaBruce
E. Richardson LaBruce
FINGER, MELNICK & BROOKS, P.A.

Enc. Exemption Log;
Documents (CountyFOIA#3__000001 - CountyFOIA#3__000667)(as redacted/removed)
cc: Thomas R. Goldstein, Esq. (*via e-mail only*)
Thomas J. Keaveny, II, Esq. (*via e-mail only*)

f:\client\b beaufort county\adv. baracco, mare\foia production\request 3\exemption log and cover letter (erl.final)(revised production).docx

FINGER, MELNICK & BROOKS, P.A.

ATTORNEYS AT LAW

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TYLER A. MELNICK
BENJAMIN T. SHELTON
E. RICHARDSON LaBRUCE
JACOB D. HUNT*

Of Counsel:
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erlabruce@fingerlaw.com

Also admitted in:
* Georgia
† New York

▫ Court Certified Mediator
▪ Court Certified Arbitrator / Mediator

September 3, 2020

Via E-Mail Only (*erindean@tgdcpa.com*):
Erin Dubose Dean, Esq.
TUPPER, GRIMSLEY & DEAN, P.A.
Post Office Box 2055
Beaufort, South Carolina 29901-2055

Re: Mare Baracco v. Beaufort County; 2019-CP-07-00818
Our File No. 6868.002 – Beaufort County

Dear Erin,

As per your instructions, please find attached hereto the revised documents in response to Freedom of Information Act Request #2019-231. Our exemption log remains the same.

The modifications are two-fold. First, as instructed by you, we have removed redactions that covered the names of the senders/recipients of e-mails so that the Plaintiff can more thoroughly evaluate the appropriateness of the redactions. Second, we have redacted the far right side of certain pages to eliminate internal notes on our clean documents, an unfortunate byproduct of having to redact twice. Certain notes could not be removed without modifying the text of the e-mail so those remain.

These documents will also be provided via ShareFile. If you have any questions, comments, or concerns, please do not hesitate to contact me.

With best regards, I am

Sincerely yours,

s/ E. Richardson LaBruce
E. Richardson LaBruce
FINGER, MELNICK & BROOKS, P.A.

Enc. Documents (CountyFOIA#1__000001 - CountyFOIA#3__000306)(as redacted/removed)(**revised**)
cc: Ms. Xiomara Ingram, TGDC (*via e-mail only*)
Thomas R. Goldstein, Esq. (*via e-mail only*)
Ms. Rebecca Lambooy (*via e-mail only*)
Thomas J. Keaveny, II, Esq. (*via e-mail only*)

f:\client\b\beaufort county\adv. baracco, mare\foia production\foia 2019-231\final production\revised redactions\exemption log and cover letter (erl.final)(revised production).docx

ELECTRONICALLY FILED - 2020 Sep 21 8:14 AM - BEAUFORT - COMMON PLEAS - CASE#2019CP0700818

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BEAUFORT	)	CASE NO.: 19-CP-07-00818
Mare Baracco,	)	
	)	
Plaintiff,	)	
versus	)	
	)	**PRE TRIAL BRIEF**
	)	
County of Beaufort,	)	
	)	
Defendant.	)	

1. Concise, non-argumentative statement of the facts of the case.

ANSWER: The Plaintiff is a citizen and resident of Beaufort County, South Carolina. She made four *Freedom of Information Act* requests on the following dates (technically three F.O.I.A. requests since Request No. 3 was a more narrowly tailored modification of request No. 2):

February 10, 2019 A request for documents related to two parcels of real estate, 1 Bostick Circle, and 429 Broad River Road.

March 10, 2019 A request for e-mails from County employees and specified government officials.

March 18, 2019 A more narrowly drawn request for e-mails from County employees and specified government officials.

March 31, 2019 E-mails from Alice Howard's personal e-mail address to County Officials.

ELECTRONIC .LY FILED - 2020 Sep 21 8:14 AM - BEAUFORT - COMMON PLE. - CASE#2019CP0700818

The County's responses to these requests was a mixed bag, and mostly noncompliant with F.O.I.A. The County responded to the February 10th request by providing heavily redacted documents. The County overcharged the plaintiff, but voluntarily refunded $53.66 of plaintiff's overpayment. The County did not respond to the second request, instead demanding 25% of $12,079.00 ($3,019.75) as a condition of responding. After this high demand for prepayment, the plaintiff narrowed her second request to which the County then demanded 25% of $ 611.25 ($152.81) as a condition of responding. The plaintiff inquired as to the high cost, which the County identified as being $72.00 an hour for its legal counsel to review the e-mails and $49.07 per hour for employees to fulfil the request.

The final request on March 31, 2019, for the Alice Howard emails resulted in a charge of $1,617.00 for which the County demanded a 25% deposit ($404.25) as a condition of fulfilling the request, against identify the costs as $30.74 per hour for employees and $72.00 per hour for the County's legal representative to review the e-mails.

The Plaintiff commenced this lawsuit on April 10, 2019, seeking injunctive relief and attorney's fees as provided by the *Freedom of Information Act.* The plaintiff amended her complaint once since its initial filing date.

2. An objective statement of the facts in controversy.

ANSWER: There are no facts in controversy. The City's redacted responses to Plaintiff's requests are undisputed as are the charges.

3. The legal issues involved. This includes the law applicable to the cause of action and the defense.

ANSWER: The only legal issues involved are whether the County did or did not comply with the requirements of the *F.O.I.A.* which requires that the County produce the documents at the

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"lowest possible cost," and which limits redactions to matters in which a Council member is seeking or receiving legal advice. See §§ 30-4-30 (fees) and 30-4-40 (exemptions), S. C. Code, ann.

The questions the Court is called upon to answer are:

(1) Are the responses properly redacted?

(2) Did the Count provide the documents at the "lowest possible cost"?

(3) Is the plaintiff entitled to injunctive relief and attorney's fees?

4. A listing of exhibits and a list of witnesses who may be called and, if available, their address and phone number.

ANSWER:

WITNESSES:

Mare Baracco
1006 Madrid Avenue
Port Royal, South Carolina 29935

EXHIBITS:

See attached proposed Joint Exhibit Index.

5. Any unusual problems relating to evidence to be introduced, such as "Business Records as Evidence Act," hearsay, use of depositions, etc.

ANSWER: The only unusual issue anticipated is the question over whether the County can hide the recipients of redacted e-mails before an *in camera* review for privilege.

6. Any unusual questions or matter which should be brought to the attention of the Court.

ANSWER: The only unusual question is raised by the County's contention that all emails should be redacted is that the communications contained in them are protected by "attorney-client privilege." (See County's Answer ¶ 6.) The evidence shows that some of the e-mails were between the Chair of Beaufort County Council, Paul Sommerville and the County Administrator, Tom

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Keaveney. It is true that Tom Keaveny is a South Carolina lawyer, but during the exchange of some of the e-mails that are the subject of Plaintiff's F.O.I.A. request, he was acting as County Administrator, not County Attorney, from July 20, 2018 until October 15, 2018. At other times during these exchanges, he may have been acting as a staff report in which capacity he reported to the Administrator. Of course, some of the unredacted e-mails (Exhibits 10, 12, and 13) demonstrate the County Administrator violated § 30-4-70(c) by conducting illegal electronic meetings in setting up the votes for public meetings, particularly in reference to the rehiring of Josh Gruber as County Administrator. The County cannot claim "attorney-client privilege" to commit an illegal act. In *Burton v. York County Sheriff's Dept.*, the Sheriff's Department raised a similar objection, arguing that its deputies were protected by the "privacy" exemption to F.O.I.A., § 30-4-40(a)(2). The Supreme Court disagreed, holding:

> In the present case, we find the manner in which the employees of the Sheriff's Department prosecute their duties to be a large and vital public interest that outweighs their desire to remain out of the public eye. The newspaper, in fulfilling its obligation to report on and hold to account those in public service, had a legitimate need to access the records Burton requested. Burton and the newspaper did not seek information regarding the off-duty sexual activities of the deputies involved. Rather, the access to information they sought and the trial court granted was focused on the performance of public duties by the Sheriff and his deputies and the response of the Department to allegations of misconduct by the deputies.
>
> We affirm the trial court's finding that the information requested by Burton was not exempt under section 30-4-40(a)(2) of the Act.
>
> *Burton v. York County Sheriff's Dept.*, 358 S.C. 339, 594 S.E.2d 888 (Ct. App. 2004)

The *Burton* Court carefully explained that "consistent with FOIA's goal of broad disclosure, the exemptions from its mandates **are to be narrowly construed**." Since public tax dollars pay the County Administrator and other staff, including the County Attorney, to administer the laws of the County, it is beyond dispute that the public is entitled to know what work they are performing on behalf of the County, and this is especially true when the County is accepting applications for government positions as the attachments to the redacted e-mails demonstrate that was the subject matter. As the Supreme Court held in *Evening Post Publishing Company v. Berkeley County School*

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District, 392 S.C. 76, 708 S.E.2d 745 (2011), a government cannot claim attorney client privilege simply because a lawyer is included in the e-mail chain. (Court reversed grant of summary judgment to the School District.) Attorney client privilege must involve a request for legal advice based on confidential information; routine communications back and forth do not qualify for such.

Similarly, the County cannot make the plaintiff pay $72.00 an hour because it decides to have its e-mails reviewed by counsel. Just because the County chooses to engage in demonstrably unproductive work does not mean it can pass along that charge to a citizen requesting to see public documents. The e-mail exchanges between County officials is not supposed to be a substitute for a public meeting. § 30-4-70(c): "No chance meeting, social meeting, or electronic communication may be used in circumvention of the spirit of requirements of this chapter to act upon a matter over which the public body has supervision, control, jurisdiction, or advisory power," and this prohibition undercuts the County's decision to claim "attorney client" privilege that requires charges assessed against the plaintiff. When charges are justified, the *South Carolina Freedom of Information Act* requires that the government's imposition of charges be **at the lowest possible rate**, § 30-4-30, S. C. Code, ann.: "The records must be furnished at the lowest possible cost to the person requesting the records." Here, the excessiveness of these charges, especially considering the County's demonstrated animus for the plaintiff violates this provision.

As to the redactions, there is no such thing as "privileged information" when government officials communicate with third parties or one another, especially where, as here, the County is claiming the County Administrator is its lawyer. Despite dying a thousand deaths in a thousand cases, the non-lawyer's unshakable faith in the myth that by copying a lawyer on a communication transforms it into a "privileged" communication, this belief persists as a zombie canard. Government officials routinely copy the County Attorney—and Mr. Keaveny was not the County Attorney for some of the communications—in correspondence and then claim that because a lawyer is one of the recipients, all communication is "privileged" even though no case supports this assertion. See *Marshall v. Marshall*, 282 S. C. 534, 320 S.E.2d 44 (Ct. App. 1984): "The attorney client privilege, though, does not protect communications with non-clients." See also *Floyd v. Floyd*, 365 S.C. 56,

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615 S.E.2d 465 (Ct. App. 2005) Moreover, the claim of attorney client privilege cannot serve as a shield from a violation of § 30-7-40(c). As these and many other cases hold, attorney client privilege only applies when a client is seeking legal advice based on an exchange of confidential information. Nothing sought by the plaintiff in this case involves either seeking legal advice or confidential information. (The description of attachments to the redacted e-mails reveal that the subject matter was involved a variety of government business, including the receipt of resumes for the position of County Administrator and the discussion of the County's severance agreement with Josh Gruber, a topic discussed in many newspaper articles.) Under the County's legal theory, every email copied to a lawyer makes it "privileged." As the Supreme Court said in *Evening Post*, "The interest in confidentiality expressed through the attorney-client privilege should not trump the public's right to know at this juncture." *Evening Post Publishing Company v. Berkeley County School District*, 392 S.C. 76, 708 S.E.2d 745 (2011) (Court reversed grant of summary judgment to the School District.)

Third, SLED has nothing to do with the responsibilities of local government's' creation, retention, and dissemination of public documents. The County's duties are under the *State Records Retention Act* and the *South Carolina Freedom of Information Act*, and neither legislative authority grants to SLED any oversight, let alone veto, authority. The County's justification is made of whole cloth.

Finally, the South Carolina General Assembly and the South Carolina Supreme Court have been consistent that a citizen's right is "vital" to keeping government honest and preventing dishonest conduct that would otherwise flourish in the dark. "The Freedom of Information Act (FOIA) serves the important governmental interests of providing transparency in governmental decision making, preventing fraud and corruption, and fostering trust in government." *Disabao v. South Carolina Ass'n. of School Adm's.*, 404 S.C. 433, 746 S.E.2d 329 (2013) As the Supreme Court said in *Evening Post Publishing Company v. Berkeley County School District*, 392 S.C. 76, 708 S.E.2d 745 (2011): "It is vital in a democratic society that public business be performed in an open and public manner so that citizens shall be advised of the performance of public officials and of the decisions that are reached in public activity and in the formulation of public policy. Toward this end, provisions of this

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chapter must be construed so as to make it possible for citizens, or their representatives, to learn and report fully the activities of their public officials at a minimum cost or delay to the persons seeking access to public documents or meetings. S. C. Code, Ann. § 30-4-15 (2007)." In the original version of the *Freedom of Information Act*, the General Assembly made willful violations subject to criminal penalties. See § 30-4-110, "Penalties": Prior to May, 2017, the statute read: Any person or group of persons who willfully violates the provisions of this chapter shall be deemed guilty of a misdemeanor, and upon conviction, shall be fined not more than one hundred dollars or imprisoned not more than thirty days for the first offense . . ." However, in May 2017, the General Assembly deleted the criminal penalties but broadened the potential for recovery to a prevailing plaintiff by including not only attorney's fees, but also "compensatory damages":

(C) If a person or entity seeking relief under this section prevails, the court may order:

(1) Equitable relief as he [*sic.*] considers appropriate;

(2) Actual or compensatory damages; or

(3) A reasonable attorney's fees and other costs of litigation specific to the request, unless there is a finding of good faith. The finding of good faith is a bar to the award of attorney's fees and costs.

As § 30-4-100 says:

A) A citizen of the State may apply to the circuit court for a declaratory judgment, injunctive relief, or both, to enforce the provisions of this chapter in appropriate cases if the application is made no later than one year after the date of the alleged violation or one year after a public vote in public session, whichever comes later. Upon the filing of the request for declaratory judgment or injunctive relief related to provisions of this chapter, the chief administrative judge of the circuit court must schedule an initial hearing within ten days of the service on all parties. If the hearing court is unable to make a final ruling at the initial hearing, the court shall establish a scheduling order to conclude actions brought pursuant to this chapter within six months of initial filing. The court may extend this time period upon a showing of good cause. The court may order equitable relief as it considers appropriate, and a violation of this chapter must be considered to be an irreparable injury for which no adequate remedy at law exists.

(B) If a person or entity seeking relief under this section prevails, he may be awarded reasonable attorney's fees and other costs of litigation specific to the request. If the person or entity prevails

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in part, the court may in its discretion award him reasonable attorney's fees or an appropriate portion of those attorney's fees.

HISTORY: 1978 Act No. 593, Section 11; 1987 Act No. 118, Section 8; 2017 Act No. 67 (H.3352), Section 4, eff. May 19, 2017.

The evidence demonstrates that the plaintiff's requests are routine and easily collected via electronic storage and transmission. The County's refusal to make routine government documents available is a clear violation of F.O.I.A. The remedy for such a violation is set forth in § 30-4-100(a), which says: "The court may order equitable relief as it considers appropriate, and a violation of this chapter must be considered to be an irreparable injury for which no adequate remedy at law exists." The County does not dispute its duties under the *Freedom of Information Act*, nor does it dispute that it is subject to the *Act*, nor does it offer a reasonable explanation as to why it charges are in excess of fourteen thousand dollars when the requested information can be produced as electronically stored material that is easily retrievable and easily loaded on a flash drive or burned to a C.D. disc. (Since filing this suit, the County has apparently abandoned its claim for $72.00 per hour for legal review, which would not have occurred but for the plaintiff filing suit.) As the County Administrator, John Weaver informed the plaintiff in his March 27, 2019, correspondence (Exhibit 6 to Plaintiff's Memorandum of Law): "Ms. Baracco, As you may not know, Beaufort County perhaps has the most sophisticated FOIA system of any county or municipality in South Carolina, including both manpower and electronic capabilities." Much of the information sought by the plaintiff involves an inquiry into County sales and purchases previously completed, so the material is obviously public and obviously not subject to any disclosure exemption or redaction. The *Act* does provide statutory exemptions that allow the County to redact information, but none of them are implicated here. For the convenience of the Court, the statutory exemptions are: (1) trade secrets, (2) information of a personal nature, (3) confidential informants, *etc.*, (4) matters specifically exempted, (5) documents

related to a proposed sale, (6) salaries less than $50,000.00, (7) lawyers' work product and confidential communications, (8) working papers of the General Assembly, (9) trade negotiations, (10) Department of Revenue audit criteria, (11) anonymous gifts, (12) investment information in the State Retirement System, (13) certain employment application information, (14) scientific and educational proprietary information, (15) identity of certain complainants, (16) investment decisions of endowed funds, (17) structural plans, (18) autopsy photos, and (19) financial data of the Venture Capital Authority. The County's explanations have been shifting, but it has never claimed an exemption under one of these statutory exemptions except for number 7, "lawyers' work product and confidential communications." If a governmental body asserts a right to redact, the burden is on the government asserting the exemption to prove it, and such exemptions are to be narrowly construed. *Evening Post Publ. Co. v. City of North Charleston*, 363 S.C. 452, 611 S.E.2d 496 (2005), § 30-4-40, "Matters exempt from disclosure" Here, despite that none of plaintiff's requests are subject to any exemption—they are not requests for matters related to litigation or the threat of litigation—the County furnished no explanation as to why it was redacting the information other than to assert boiler plate attorney/client privilege without identifying any pending or threatened litigation to which the communications might be related. As set forth above, it is clear from the attachments to the redacted e-mails, that the subject of them was not related to pending or threatened litigation.

In evaluating whether either the County's charges or the County's redactions are legal, *i.e.* authorized by a statutory exemption, the Court need only look at the partially redacted e-mails and the County's putative justifications to see that they fit none of the exemptions. In addition, as the attached collection of the County's expressed hostility for the plaintiff demonstrates, Exhibit 6 to Plaintiff's Memorandum of Law, the County demonstrated animus for the plaintiff and deployed its excessive charges and refusals to further its attacks upon her and to justify its refusing her access to public documents, probably because they will prove to be embarrassing.

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7. A statement that settlement negotiations were attempted before the date of the pre-trial hearing and the status of settlement negotiations.

ANSWER: The parties have had no settlement discussions.

September 21, 2020

/s/ Thomas R. Goldstein
Thomas R. Goldstein, S. C. Bar #2186
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ATTORNEYS FOR PLAINTIFF

THE UNDERSIGNED HEREBY CERTIFIES THAT A TRUE COPY OF THE FOREGOING PLEADING HAS BEEN SERVED UPON OPPOSING COUNSEL BY MAILING A COPY PROPERLY ADDRESSED WITH SUFFICIENT POSTAGE AFFIXED THERETO THIS 21st DAY OF SEPTEMBER, 2020.

BY: /s/ Thomas R. Goldstein

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT	)	Civil Action No. 2019-CP-07-00818
MARE BARACCO,	)	
	)	
Plaintiff,	)	
	)	
-vs-	)	**PRE-TRIAL BRIEF**
	)	**BY BEAUFORT COUNTY**
BEAUFORT COUNTY,	)	(Hearing Per S.C. Code Ann. § 30-4-100(A))
	)	
Defendant.	)	
	)	

I. CONCISE NON-ARGUMENTATIVE STATEMENT OF THE FACTS OF THE CASE:

On February 10, 2019, Mare Baracco, a resident of Port Royal, South Carolina, submitted a Freedom of Information Act ("***FOIA***") request to Beaufort County for communications related to the sale and purchase of two parcels of real estate commonly referred to as 1 Bostwick Circle and 429 Broad River Road ("***FOIA Request No. 1***"). (Pl. Memo. Of Law, p. 1); (Pl. Trial Ex. 2). On February 20, 2019, the County responded requesting an initial deposit of $124.66 as a condition of fulfilling the request. After tendering the initial deposit, Ms. Baracco was provided with the responsive documents on March 21, 2019. At that time, the County refunded Ms. Baracco $53.66 due to the County's overestimating the initial costs of production.

On March 10, 2019, Ms. Baracco submitted an additional FOIA request to Beaufort County. In this request, Ms. Baracco requested approximately six (6) years' worth of e-mails to/from/between two County Councilmembers with various County department heads, the County Administrator, the County Attorney, the County Sheriff, members of County Council, and/or other public and private individuals ("***FOIA Request No. 2***"). (Pl. Trial Ex. 4). There was no limit as to subject matter.

On March 18, 2019, the County responded by requesting a deposit of $3,019.75, which represented approximately 25% of the reasonably anticipated costs to be incurred by the County in responding to FOIA Request No. 2. (*Id.*). The County estimated that searching and retrieving the hundreds of records requested by FOIA Request No. 2 would take approximately 167 hours, based on an estimated time of one minute per document. (Pl. Memo. of Law, p. 4).

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On that same day, the Plaintiff requested a thorough explanation from the former County Administrator, who promptly responded that (i) SLED, as the primary law enforcement agency for the state, has recommended stronger internal controls on access to the County network, presumably to limit outside interference/hacking; (ii) the IT charge should range from $49.07/an hour to $30.74/an hour based upon which member of the County IT Department conducts the search; (iii) the County Attorney is required to review any disclosed e-mails from elected or appointed officials to ensure that the attorney-client privilege is not waived; and, (iv) that the County Attorney's rate for review is $72.00/an hour.

Upon receipt of this explanation on March 18, 2019, Ms. Baracco revised FOIA Request No. 2, by reducing its scope to all e-mails over a 6-year period between the County Council Chairman, the former County Administrator, the former County Attorney/former Deputy County Administrator, and the County Attorney ("***FOIA Request No. 3***"). (Pl. Memo. Of Law, p. 1)(identifying Exhibit 4 as "***revised*** request for county official's correspondence")(emphasis added). On March 25, 2019, the County responded that an initial deposit of $152.82 – once again, 25% of the estimated cost of fulfillment - would be required prior to record compilation. (Pl. Trial Ex. 6).

Thereafter, on March 31, 2019, Ms. Baracco submitted her fourth FOIA request to the County specifically requesting e-mails from County Council member Alice Howard's personal e-mail address from January 1, 2015, to the "present" to/from/between Ms. Howard and multiple individuals ("***FOIA Request No. 4***"). (Pl. Trial Ex. 7). On April 2, 2019, the County responded that an initial deposit of $404.29 would be required prior to the County beginning the process of fulfilling this request. This deposit represented 25% of the reasonably anticipated costs of producing the records, which the County determined was $1,617.14. (Pl. Trial Ex. 8).

The Plaintiff commenced this lawsuit on April 10, 2019, amending her complaint once.

II. AN OBJECTIVE STATEMENT OF THE FACTS IN CONTROVERSY:

There are no facts in controversy. The issues presented by this case are solely as to the interpretation and application of the South Carolina Freedom of Information Act. The only potential question of fact is whether Thomas Keaveny, Jr., was acting in his capacity as County

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Attorney for Beaufort County or Interim County Administrator for Beaufort County when he sent/received certain communications that the County asserts are exempt from disclosure.

III. THE LEGAL ISSUES INVOLVED. THIS INCLUDES THE LAW APPLICABLE TO THE CAUSE OF ACTION AND THE DEFENSE:

This action addresses various obligations of public bodies pursuant to the Freedom of Information Act. In particular, this action involves questions over the propriety of certain fees being charged to requestors and the scope of the attorney correspondence exemption within FOIA.

A. ***Were the $71.00 in costs assessed as part of the search, retrieval, and redaction of records in response to FOIA Request No. 1 "reasonable" for purposes of the South Carolina Freedom of Information Act and at the "lowest possible cost" to the Plaintiff?***

The Act permits public bodies to charge fees to a requestor in order to comply with a request; however, they shall be "reasonable fees not to exceed the actual cost of the search, retrieval and redaction of [the] records" and "at the lowest possible cost to the person requesting the records." S.C. Code Ann. § 30–4–30(B).

B. ***Was the information redacted from FOIA Request No. 1 exempt pursuant to South Carolina law?***

The County's Exemption Log of July 6, 2020, specifies the particular exemptions relied upon by the County in redacting portions of the materials produced in response to FOIA Request No. 1. In particular, Beaufort County relied upon S.C. Code Ann. § 30-4-40(a)(7), which exempts "[c]orrespondence or work products of legal counsel for a public body and any other material that would violate attorney-client relationships," and S.C. Code Ann. § 30-4-40(a)(2), which exempts "[i]nformation of a personal nature where the public disclosure thereof would constitute unreasonable invasion of personal privacy." Whether these redactions were legally appropriate will depend, in part, upon the following legal issues:

1. *Whether the South Carolina Freedom of Information Act's exemption for "correspondence or work products of legal counsel for a public body" exempts all communications from legal counsel regardless of privilege?*

See S.C. Code Ann. § 30-4-40(a)(7). If this question is answered in the affirmative, the other issues outlined in this subsection "B" do not need to be addressed. Applying the exemption in this manner

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would permit a public body to refuse to disclose ***any*** correspondence from legal counsel for a public body to the public body and its representatives as part of a FOIA request. In addition to being a literal interpretation of the exemption, applying the exemption is this manner is supported by practicality and the state-recognized goal of limiting taxpayer burden by eliminating extensive review of tens of thousands of documents annually in response to FOIA requests. If, however, the Court answers in the negative, then the following issues must also be considered:

2. *Whether communications to and from an in-house governmental attorney are afforded the same protections as similar communications between outside counsel and a private party?*

The Plaintiff contends that no communication with in-house governmental counsel can be considered privileged: "[T]here is no such thing as 'privileged information' when government officials communicate with third parties or one another." (Pl. Memo. Of Law, p. 4). "The assertion that the email communications of government officials are 'privileged' is nonsense...." (Pl. Memo of Law, p. 6). As set forth in the Defendant's brief, courts across the country have consistently rejected this argument that the ***status of the attorney*** can somehow eliminate, as the Plaintiff contends, the privileges afforded to the client.

3. *Was the County entitled to redact communications to which a County contractor was copied pursuant to Section 30–4–40(a)(7) of the South Carolina Freedom of Information Act?*

Three categories of people are considered privileged persons: (1) the client or prospective clients; (2) the lawyer; and (3) ***the agents of the client*** and the lawyer. RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS § 70 (2000) (emphasis added). Whether an agent of the County is a "privileged person" is addressed more thoroughly in Section VI herein.

C. ***Was the $72.00/an hour rate estimated by the County for the Legal Department to redact records in response to the FOIA Request No. 3 and FOIA Request No. 4 a "reasonably anticipated cost" based on the "prorated hourly salary of the lowest paid employee who ... has the necessary skill and training to perform the request"?***

The Act permits public bodies to collect a "deposit not to exceed twenty-five percent of the total reasonably anticipated cost" prior to the production of any records. *See* S.C. Code Ann. § 30–4–30(B). The total reasonably anticipated cost is based on the County's ability to charge the requestor

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"reasonable fees not to exceed the actual cost of the search, retrieval and redaction of [the] records" and "at the lowest possible cost to the person requesting the records." S.C. Code Ann. § 30–4–30(B). The law does not require that the County charge the fee of the lowest paid employee; rather, the hourly fee for the redaction "shall not exceed the prorated hourly salary of the lowest paid employee who, in the reasonable discretion of the custodian of the records, *has the necessary skill and training to perform the request.*" *See* S.C. Code Ann. § 30–4–30(B)(emphasis added).

D. ***Was the information redacted from the County's production in response to Request No. 3 exempt pursuant to South Carolina law?***

The County's Exemption Log of July 6, 2020, specifies the particular exemptions relied upon by the County in redacting portions of the materials produced in response to FOIA Request No. 3. In particular, Beaufort County relied upon S.C. Code Ann. § 30-4-40(a)(7), which exempts "[c]orrespondence or work products of legal counsel for a public body and any other material that would violate attorney-client relationships," and S.C. Code Ann. § 30-4-40(a)(2), which exempts "[i]nformation of a personal nature where the public disclosure thereof would constitute unreasonable invasion of personal privacy." Whether these redactions were legally appropriate will depend, in part, upon the issues decided above as well as the following:

1. *Whether certain communications made by or to Thomas Keaveny, Jr., between July 20, 2018, and October 15, 2018, were made/received in his capacity as County Attorney or Interim County Administrator?*

Upon accepting the role of the Interim County Administrator, Mr. Keaveny did not abandon his duties as the County Attorney; rather, circumstances outside of his control forced him to take up two separate roles within the County to help ease a complex transition. Whether a particular communication was made or received in Mr. Keaveny's capacity as an attorney will depend upon the context of the particular communication as discussed more thoroughly in Section VI herein.

2. *Whether certain communications are immune from the protections of the attorney-client privilege due to "illegality" pursuant to the crime-fraud exemption?*

The crime-fraud exception eliminates privilege for communications made for the specific purpose of furthering a fraudulent or criminal act. It does not work retroactively to eliminate privilege whole cloth as suggested by the Plaintiff. To accept the Plaintiff's argument would effectively

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penalize a client for doing what the attorney-client privilege is designed to encourage - consulting with counsel to ensure legal compliance.

E. ***Were the $389.99 in costs assessed as part of the search, retrieval, and redaction of records in response to FOIA Request No. 4 "reasonable" for purposes of the South Carolina Freedom of Information Act and at the "lowest possible cost" to the Plaintiff?***

The Act permits public bodies to charge fees to a requestor in order to comply with a request; however, they shall be "reasonable fees not to exceed the actual cost of the search, retrieval and redaction of [the] records" and "at the lowest possible cost to the person requesting the records." S.C. Code Ann. § 30–4–30(B).

F. ***Are compensatory damages available to the Plaintiff if the County violated the Freedom of Information Act?***

This action was brought pursuant to S.C. Code Ann. § 30-4-100. Compensatory damages are only discretionarily permitted when a party prevails under S.C. Code Ann. § 30-4-110. *See* S.C. Code Ann. § 30-4-110(C)(2) ("If a person or entity seeking relief *under this section* prevails, the court *may* order…(2) actual or compensatory damages.")(double emphasis added). Thus, the Plaintiff lacks any statutory grounds for compensatory damages. Further, if compensatory damages are permitted, the County's failure was not intentional but was the result of complex and unresolved legal issues entitling the County to the "good faith" defense of S.C. Code Ann. § 30-4-110.

G. ***Is either party entitled to injunctive relief and/or attorneys' fees?***

According to the Freedom of Information Act, "[i]f a person or entity seeking relief under [S.C. Code Ann. § 30-4-100] prevails, he *may* be awarded reasonable attorney's fees and other costs of litigation specific to the request. If the person or entity prevails in part, the court *may* in its discretion award him reasonable attorney's fees or an appropriate portion of those attorney's fees." *See* S.C. Code Ann. § 30-4-100(B) (double emphasis added). Whether to award attorneys' fees is in the discretion of the trial court, except where there is a finding of "good faith" as set forth in S.C. Code Ann. § 30-4-110.

IV. A LISTING OF EXHIBITS AND A LIST OF WITNESSES WHO MAY BE CALLED AND, IF AVAILABLE, THEIR ADDRESS AND PHONE NUMBER:

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As the issues before the Court are solely legal, the County does not intend to produce any witnesses. As for exhibits, please see proposed Joint Exhibit Index submitted by consent of Plaintiff and Defendant.

V. ANY UNUSUAL PROBLEMS RELATING TO EVIDENCE TO BE INTRODUCED, SUCH AS "BUSINESS RECORDS AS EVIDENCE ACT," HEARSAY, USE OF DEPOSITIONS, ETC.:

The issues before the Court are solely legal; nevertheless, much of the Plaintiff's focus to date has been detailing past interactions with County officials. Many of the Plaintiff's proposed exhibits and intended witness testimony are wholly irrelevant and immaterial to the issues at hand. This matter should be decided on the relevant facts and the appropriate law, not inappropriate commentary between the parties and their counsel. The County has consistently indicated its willingness to produce the requested documentation, provided that the Plaintiff reimburse County taxpayers for the costs of compliance. As set forth in prior letters to the Court, if it is determined that any redactions were improperly made or fees improperly estimated, such errors were the result of vague provisions within the Freedom of Information Act, a complex balancing of public interests, attempted compliance with limited and strict timelines, and the difficulty in responding to overwhelmingly burdensome requests, not personal animus.

VI. ANY UNUSUAL QUESTIONS OR MATTERS WHICH SHOULD BE BROUGHT TO THE ATTENTION OF THE COURT:

Although there are a number of legal issues presented by this case, earlier briefing by Beaufort County addressed all of these unusual questions. Prior to this hearing, however, the Court requested that the Parties brief the Court on two particular issues. Rather than reiterate the County's position on all such unique legal issues, the County will only address the two particular issues raised by the Court:

A. ***Whether certain communications made by or to Thomas Keaveny, Jr., between July 20, 2018, and October 15, 2018, were made/received in his capacity as County Attorney or Interim County Administrator?***

In reviewing the documents provided to the Plaintiff and the Court in response to FOIA Request No. 1 and FOIA Request No. 3, the only documents produced that fell within the above-referenced time frame were the following:

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(1) *CountyFOIA#1_000273*. The redacted information is a summation of legal advice provided by Mr. Keaveny as County Attorney on December 21, 2017, as indicated in the redacted e-mail chain that immediately followed.

(2) *CountyFOIA#3_000155 through CountyFOIA#3_000168*. All such documents were produced in full without any redactions.

The Plaintiff references Exhibits 10, 12 and 13 in support of her position that certain documents were improperly withheld from her. Both Exhibit 12 and Exhibit 13 appear to be an e-mails from March of 2015, which is three years prior to Mr. Keaveny's appointment as Interim County Administrator, and to which Mr. Keaveny was not a party. As for Exhibit 10, this document appears to be without redaction.

Mr. Keaveny, the then-acting County Attorney, was appointed by County Council to serve as Interim County Administrator while the County began the process of selecting a full-time administrator. This appointment occurred on July 20, 2018. From July 20, 2018, until October 15, 2018, Mr. Keaveny held two positions at the County: Interim County Administrator and County Attorney. At its core, the attorney-client privilege protects communications between attorneys and clients in which legal advice was sought or rendered, and which was intended to be and was in fact kept confidential, unless otherwise waived. Utilizing these traditional factors, whether a particular communication from a governmental attorney is privileged can become complicated given the complex and varied roles expected of a county/municipal attorney, especially when that attorney is serving in two distinct capacities with overlapping areas of concern.

Ultimately, to determine whether a particular communication made during this time frame should be subject to the privilege will depend upon the nature of the communication. If the communication's primary purpose was legal, the communication should be considered protected from disclosure. In evaluating whether a particular communication's primary purpose is legal in this particular context, the most important factor may be whether the attorney had previously provided legal assistance relating to the same matter.

As noted herein, determining whether a particular communication is subject to the attorney-client privilege is often a very fact-intensive and difficult exercise. Given the limited timeframe in which

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to respond to a valid FOIA request, a thorough analysis of every communication to determine whether the attorney-client privilege will apply is simply not feasible in certain scenarios. Despite the attorney-client privilege having been recognized for centuries, its application as to public bodies and organizations remains relatively limited in South Carolina. As a result, government attorneys are often forced to choose between two unappealing options: (1) liberal redactions and risk noncompliance with the Freedom of Information Act, as alleged by the Plaintiff in subsection "A"; or, (2) liberal disclosure and risk waiving the attorney-client privilege, as argued by the Plaintiff in subsection "B" below. In this particular case, only one document produced during this timeframe was redacted. This document, *CountyFOIA#1_000273*, was clearly a continuation of legal discussions that occurred prior to Mr. Keaveny's appointment as County Administrator; thus, the County believes that such information was exempt from disclosure and properly redacted.

B. ***Was the County entitled to redact communications to which a County contractor was copied pursuant to Section 30–4–40(a)(7) of the South Carolina Freedom of Information Act?***

The disclosure of privileged communications to third parties generally waives the attorney-client privilege. *Marshall v. Marshall*, 282 S. C. 534, 320 S.E.2d 44 (Ct. App. 1984). There are, however, exceptions to this general rule. Three categories of people are considered privileged persons: (1) the client or prospective clients; (2) the lawyer; and (3) *the agents of the client* and the lawyer. RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS § 70 (2000) (emphasis added). To be privileged, all persons copied on such communications must fall within one of these categories of privileged persons.

At issue in this case is whether a realtor working under contract with a governmental entity may be considered an "agent of the client" so as to retain the privileged nature of such communications. Although there is no bright line rule for determining when a third party constitutes an "agent of the client," courts have looked at the context of the relationship and the necessity that such persons be included within protected communications. *Faloney v. Wachovia Bank, N.A.* 254 F.R.D. 204, 212-13 (E.D. Pa. 2008) (finding email between corporate attorney and two bank officials was protected). Some courts have similarly applied the "functional equivalent" test to determine whether a third party was acting as the functional equivalent of an employee. *See Alliance Constr.*

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Solutions, Inc. v. Dep't of Corr., 54 P.3d 861, 867, 870-71 (Colo. 2002) (independent contractor of government agency was the functional equivalent of an employee for purposes of privilege).

By its very nature and as aptly noted by the Plaintiff, the recognition of the governmental attorney-client privilege stands in conflict with the compelling public interest in open and honest government. At the same time, the litany of different statutes, ordinances, and regulations that apply to public officials and employees require full and competent representation to minimize risk to the public and the individual. The County recognizes the difficulties in balancing these organizational concerns with the heightened scrutiny that accompanies working with elected officials; nevertheless, it is essential that governmental employees and agents of public bodies be protected in their communications with the public body's legal counsel.

In this particular case, Ms. Regecz was retained by the County to represent the County's interests in potential real property acquisitions and sales. Her role was unique at the County and, as such, she worked directly with various department heads and counsel to ensure that her actions on behalf of the County were consistent with South Carolina law. The acquisition and disposition of real property by a local government is heavily regulated and requires a comprehensive understanding of various legal issues and responsibilities for governmental actors. To withhold privilege in such a context would be contrary to the very purpose for which corporate privilege exists: Open communication with legal counsel regarding the potential acquisition of real property and the construction of a Department of Special Needs home in a private subdivision is not only proper but should be encouraged.

VII. A STATEMENT THAT SETTLEMENT NEGOTIATIONS WERE ATTEMPTED BEFORE THE DATE OF THE PRE-TRIAL HEARING AND THE STATUS OF THE SETTLEMENT NEGOTIATIONS:

The Parties have had no substantive settlement discussions.

Respectfully submitted,

FINGER, MELNICK & BROOKS, P.A.

s/ E. Richardson LaBruce
E. Richardson LaBruce, SC Bar No. 80106

35 Hospital Center Common, Suite 200
Post Office Box 24005
Hilton Head, South Carolina 29925-4005
Telephone: (843) 681-7000
Email: erlabruce@fingerlaw.com
ATTORNEY(S) FOR DEFENDANT, BEAUFORT COUNTY

Hilton Head Island, South Carolina
September 22, 2020.

f:\client\b\beaufort county\adv. baracco, mare\pleadings\bc memorandum of law\pretrial brief (final).docx

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BEAUFORT	)	CASE NO.: 19-CP-07-00818
Mare Baracco,	)	
	)	
Plaintiff,	)	
versus	)	
	)	**AFFIDAVIT OF ATTORNEY'S FEES**
	)	
County of Beaufort,	)	
	)	
Defendant.	)	

PERSONALLY APPEARED before me, Thomas R. Goldstein, who being duly sworn deposes and states the following:

1.

I am the attorney for the Plaintiff, Mare Baracco, in the above-mentioned action.

2.

I was admitted to the South Carolina Bar in 1982, and am presently a partner in the law firm of Belk, Cobb, Infinger & Goldstein, P.A. My practice involves litigation in circuit (and other) courts on civil matters. I am admitted in all state and federal courts in the state of South Carolina (1982 and 1984) as well as admitted to the practice in the Fourth Circuit Court of Appeals (1998) and the United States Supreme Court (1993).

3.

I incorporate Rule 407 of the South Carolina Appellate Court Rules, Rule 1.5 of the Rules of Professional Conduct, and further call the attention of the Court to the holdings in *Glasscock v. Glasscock*, 304 S.C. 531, 137 S.E.2d 788 (1964) and *Anderson v. Tolbert*, 322 S.C. 543, 473 S.E.2d 456 (Ct.App.1996), concerning the factors and criteria which should be considered in the setting of attorney's fees. I rely upon the discretion of this Court in the determination of the amount of fees based upon, among other things, the Court's file, the Court's knowledge of the litigation between these parties, which reflects the nature, extent and difficulty of the services rendered, the time necessarily expended, the result accomplished, the fact that there is no contingency of

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compensation in a *Freedom of Information Act* case, the professional standing of counsel, and fees customarily charged in this area for similar legal services.

4.

At the time of my initial conference with Mr. Baracco, I advised her of a fee arrangement whereby he would be charged an hourly rate of Two Hundred and Fifty Dollars ($275.00) per hour and for all costs incurred for the handling of her case.

5.

That 49.7 hours have been expended by me and my staff in this matter, together with costs incurred in the sum of Thirteen Thousand, Five-Hundred and Fifty-Seven and 20/100 Dollars ($13,557.20). Attached hereto as Exhibit "A" is an accurate summary of all time and costs incurred by Ms. Baracco by the undersigned and his staff.

6.

Based on the foregoing, I respectfully submit that Ms. Baracco is entitled to be reimbursed for all funds expended on attorney fees and costs, and request that the Court require the defendant to pay the sum of **$13,557.20**, for his attorney's fees and costs.

Thomas R. Goldstein, S. C. Bar No. 2186
Attorney for Plaintiff

SWORN to before me this
7 day of October 2020

(L.S.)
NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission Expires: ~~October~~ November 9, 2026

REBEKAH A. LAMBOOY NOTARY PUBLIC SOUTH CAROLINA My Comm. Exp. 11/9/2026

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BELK, COBB, INFINGER & GOLDSTEIN, P.A.
P. O. BOX 71121
CHARLESTON, SC 29415-1121

Mare Baracco
1006 Madrid Avenue
Port Royal, SC 29935

October 07, 2020
942600-1

Matter No. 942600-1
FOIA

Fees:

			Hours
04/08/19	TRG	Correspondence to client, Preparation of summons and complaint	1.70
04/09/19	TRG	Review and Revise complaint and Telephone Conference with Client	2.00
04/10/19	TRG	Review and revise complaint, Telephone Conference with Keaveney, Correspondence to Keaveney, acceptance of service	2.40
05/03/19	TRG	Email Correspondence with client re: service and transparency	0.30
05/15/19	TRG	File Acceptance of Service with the Court	0.20
06/11/19	TRG	Telephone Conference with Client and opposing counsel re; scheduling, review and revise complaint	1.50
06/28/19	TRG	Review and revise complaint and refile with Clerk of Court	2.00
01/22/20	TRG	Research memorandum of law, organize exhibits	3.00
01/23/20	TRG	Review and Revise memorandum of law	1.80
01/28/20	TRG	Research on case, revise and revise memorandum	1.80
02/24/20	TRG	Telephone Conference with Clerk of Court	0.30
03/10/20	TRG	Telephone Conference with Client re; hearing date	0.40
06/02/20	TRG	Attendance at court hearing on FOIA	1.60
06/10/20	TRG	Email Correspondence to Dean, transmitting documents	0.40
07/07/20	TRG	Email Correspondence re: discovery, review documents	0.50
07/28/20	TRG	Email Correspondence with E. Dean, Telephone Conference with client re: FOIA, Correspondence to Dean	1.60
07/29/20	TRG	Email Correspondence with E. Dean re: documents, Telephone Conference with Client, review and revise letter	1.20
07/30/20	TRG	Telephone Conference with Client	0.20
07/31/20	TRG	Email Correspondence with client re: documents	0.50
08/12/20	TRG	Review emails, Correspondence to Court re meetin	0.40
08/13/20	TRG	Correspondence to Court re status	0.20
08/25/20	TRG	Telephone Conference with Client re: trial	0.30
08/26/20	TRG	Review and revise pre-trial brief, Telephone Conference with Client	2.00
08/27/20	TRG	Prepare for trial, review and revise pre-trial brief	2.60
08/28/20	TRG	Conference with client, prepare for trial	2.00
09/02/20	PMI	Email Correspondence with E. Dean, X. Ingram, R. LaBruce	0.30
09/03/20	PMI	Email Correspondence with E. Dean and R. LaBruce re: pre-trial conference, Review and revise pre-trial brief and exhibits, Telephone Conference with Xiomara re: hearing	1.60
09/09/20	TRG	Email Correspondence with E. Dean and R. LaBruce re: telephone	0.80

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		conference and documents, Telephone Conference with all parties	
09/10/20	TRG	Telephone Conference with Client re: newly unredacted email responses	0.70
09/17/20	TRG	Email Correspondence with E. Dean, cleint and R. LaBruce, review and revise pre-trial brief, exhibits list, drafts	2.50
09/18/20	TRG	Review and revise pre-trial brief	1.00
09/21/20	TRG	File memo with the Court, email Correspondence with E. Dean, R. LaBruce	0.60
09/22/20	TRG	Preparation for hearing, transmit exhibits, Conference with cleint	6.00
09/23/20	TRG	Attendance at hearing	3.50
		Hours:	47.90

Expenses:

04/10/19	Summons and complaint filing fee	180.32
05/21/20	Check # 19161, Prolegal copies	44.38
09/24/20	Invoice # 68305, Clark and Associates	160.00
	Total expenses:	$384.70

Billing Summary

Previous balance	$0.00
Payments & adjustments	0.00
New fees	13,172.50
New expenses	384.70
Total now due	**$13,557.20**
Due date for new charges	11/01/20

PLEASE MAIL PAYMENTS TO:

BELK, COBB, INFINGER & GOLDSTEIN, P.A.
P.O. BOX 71121
CHARLESTON, SC 29415-1121

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BEAUFORT	)	CASE NO.: 2019-CP-07-00818
Mare Baracco,	)	
	)	
Plaintiff,	)	
versus	)	
	)	**MOTION FOR RECONSIDERATION**
	)	
County of Beaufort,	)	
	)	
Defendant.	)	

TO E. RICHARDSON LABRUCE, ATTORNEY FOR THE DEFENDANT:

Please take notice that the plaintiff above named will move ten days from receipt of this notice, or as soon thereafter as counsel may be heard, for an Order of the Court amending and altering the Court's Order entered November 13, 2020, on the grounds that the Order overlooks and misapplies material matters of law. This motion is based on Rules 59 and 60 of the *South Carolina Rules of Civil Procedure*, and the cases thereunder. The Court plaintiff submits that the Court overlooked the following material points:

1. The use of private e-mail communications is a waiver of attorney/client privilege

1. In holding that certain e-mail communications between government officials, which included the County Attorney as part of the address chain, the Court overlooks that the bulk of these e-mails originate from Council members' **private** e-mail addresses. Beaufort County provides each member of Council with an official government maintained e-mail address in order to communicate about matters of governmental interest because state law requires that these communications be properly archived. Like every state in the Union and the federal system, South Carolina has a records retention act, § 30-1-10, *et. seq.*, and Beaufort County is required to appoint a custodian of the records. See § 30-1-20, "Custodian of records; records officer." Once a council member declines to use his or her government e-mail address and chooses to resort to a private account, he or she waives any expectation that such communications are protected by "attorney/client privilege." The *Freedom of*

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Information Act speaks to this: "No chance meeting, social meeting, or electronic communication may be used in circumvention of the spirit of requirements of this chapter to act upon a matter over which the public body has supervision, control, jurisdiction, or advisory power." § 30-4-70(c), S. C. Code Ann. The County government flouts this requirement and stretches the concept of attorney/client so thin it becomes meaningless. When government officials choose to communicate about government matters privately, they cannot bring themselves under the umbrella of County protection, especially attorney/client privilege protection. Even the County's privilege log on page 1, item 1 claims an exemption for "E-Mails From/To/Between PSOMMERVILLE@HARGRAY.COM," *etc.* Postponing a discussion of Mr. Keaveny's dual role as Attorney/Administrator to § 3 below on page 3 below, it is indisputable that Mr. Keaveny has never acted as private counsel for Mr. Sommerville or any other member of Council who chose to communicate with him as private citizens from their private e-mail accounts. Whatever communications private individuals sent to Mr. Keaveny are clearly not in furtherance of County business, and if they are, then they are clear violations of the *Records Retention Act* and § 30-4-70(c) of the *Freedom of Information Act*'s requirement that government officials do not subvert the purposes of F.O.I.A. by electronic communications. (discussed more fully below).

2. The record contains no evidence of "harassment" by the plaintiff.

On pages 14-15 of the Order under review, the Court concludes: "While each party contends the other motivations were improper, I find both positions without merit with regard to the FOIA requests before the Court for consideration." While the plaintiff introduced specific documentary evidence of the County's efforts to single out the plaintiff for disparate and discriminatory treatment, including getting on board with a F.O.I.A. fee policy, there is not a *scintilla* of evidence in the record to support a finding that the plaintiff "harassed" the County through F.O.I.A. requests. The only "evidence" of such conduct in the case is the unsupported argument of counsel, which is not evidence and cannot support a finding that the plaintiff did anything other than exercise her right under the *South Carolina Freedom of Information Act* to be granted access to public documents. The County's failure to produce any evidence supporting this assertion cannot be elevated by a lawyer's argument

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into a finding of authenticity by the Court's conclusion that it finds the County's contention to be "without merit," because neither the pleadings nor the evidence raised that issue.

By contrast, the record depicts a local government using its superior position to obstruct and thwart the production of documents, including, but not limited to, failing to explain how the plaintiff's second F.O.I.A. request (which she voluntarily limited) would have cost $12,000.00 to fulfill or how the County never identified "attorney/client privilege" as being involved or producing a privilege log until one year after the plaintiff filed her action. The County's lack of explanation combined with the absence of any evidence that the plaintiff misused the F.O.I.A. requires that the Court amend the Order under review to make correct findings of fact. The plaintiff's production of evidence of animus is not offered for any reason other than to show the County's motivation in withholding information, but is unnecessary in evaluating this, or any other F.O.I.A. case, because the General Assembly has declared every violation of the Act to be an "irreparable harm." "The court may order equitable relief as it considers appropriate, and a violation of this chapter must be considered to be an irreparable injury for which no adequate remedy at law exists." § 30-40-100(A), S. C. Code,, ann. Likewise, the Court's error has a direct impact on the Court's evaluation of fees, which is discussed in the last section below.

3. The Court overlooks how Tom Keaveny's dual capacity waives the attorney client privilege.

The parties agree that from July 20, 2018, to October 15, 2018, Tom Keaveny was acting in a dual capacity as Interim County Administrator and County Attorney. As such, any communications with him as County Administrator cannot be shielded by the attorney/client privilege because a lawyer cannot act simultaneously as lawyer and administrator. In the rules that govern the conduct of lawyers, each lawyer knows she cannot appear as a lawyer and witness in the same matter. Rule 407 Rules of Professional Conduct, Rule 3.7 "Lawyer as Witness." A lawyer brings her independent legal judgment to a disputed matter while an Administrator serves in a political capacity, and the law books are overflowing with cases in which courts have struck down political actions as unconstitutional, illegal, or some combination. When Tom Keaveny discharged his political duties as County Administrator, his ministerial and discretionary actions are not protected by the attorney/client

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privilege for the same reason a lawyer cannot be an advocate and a witness in the same matter. Many persons with law degrees staff many government positions, but no one believes that a government official with a law degree is acting as a lawyer because lawyers have specific, limited roles in the administration of justice; to wit, serving clients: "Historically, a lawyer is an officer of the court and is bound to work for the advancement of justice while faithfully protecting the rightful interests of his clients." *Hickman v. Taylor*, 329 U.S. 495, 67 S.Ct. 385 (1947). Compare this with the preamble to the *Rules of Professional Conduct*: "A lawyer, being a member of the legal profession, is a representative of clients, an officer of the legal system and a public citizen having special responsibility for the quality of justice." Lawyers are not even permitted to go into business with their clients. Rule 407 Professional Conduct, Rule 1.8 "Conflict of Interest: current clients: Specific Rules."

By contrast, there are no such limitations on the conduct of government officials, and having assumed the office of County Administrator, Mr. Keaveny was no longer operating as attorney for the County. As County Administrator, he is the chief executive officer for the County, and while his functions as a lawyer remain on the penumbra of his duties, his main function is to serve the County and by extension, the Plaintiff. Therefore, all communications directed to him during this period of time cannot be protected by attorney/client privilege because he is prohibited from acting as counsel for Beaufort County while acting as the Chief Executive Officer of the Country.

Finally, the unredacted e-mails that the County did produce demonstrate that the communications with Mr. Keaveny were not matters pertaining to legal advice and demonstrate further why including a lawyer in an e-mail chain does not invoke attorney/client privilege as discussed by the Supreme Court in *Evening Post Publishing Company v. Berkeley County School District*, 392 S.C. 76, 708 S.E.2d 745 (2011). An unredacted e-mail dated July 18, 2018 at 9:34 p.m., from Stu Rodman's **private e-mail account**, entered into evidence as Exhibit 9, demonstrates how the County's position on redaction is self-refuting. In that e-mail, which the County previously supplied to a F.O.I.A. request without objection—along with dozens of others—County Councilman, Stu Rodman, sent an e-mail to three members of Council, Paul Sommerville, Jerry Stewart, and Alice

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Howard in violation of § 30-4-70(c). This section of F.O.I.A. prohibits circumventing the open meeting requirements of F.O.I.A. by using electronic communication, but this email demonstrates how the four members planned in secret to rehire Josh Gruber as County Administrator. This e-mail included a cc to Thomas Keaveny. In this e-mail, Councilmember Rodman sets out their strategy for the upcoming County Council meeting to ensure that the County Council selected their preferred candidate, Josh Gruber, for County Administrator. This e-mail, aside from being both an unethical and a shocking violation of § 30-4-70(c), demonstrates why including a lawyer in e-mail chains does not convey attorney/client privilege and, more importantly, why the Court errs in redacting e-mails from **private** accounts as "privileged." *Evening Post Publishing Company v. Berkeley County School District*, 392 S.C. 76, 708 S.E.2d 745 (2011) This fact demonstrates the error in the Court now redacting additional e-mails from the same private accounts on or about the same days. (It also places a County Attorney in an unresolvable dilemma.) This e-mail demonstrates four members of Council engaging in an obvious unlawful communication to manipulate the Council's selection of a new County Administrator, which became Tom Keaveny two days later. However, the County turned this e-mail over to the plaintiff without a claim of attorney/client privilege, and this e-mail is dated two days prior to Mr. Keaveny becoming County Administrator. Of course, because the plaintiff is excluded from *in camera* review of the specific language in putative attorney/client e-mails, she cannot quote language from them, but, as discussed above, since these originated from private e-mail accounts, it is a logical inference—which the July 18th e-mail confirms—that the subject matters of them are not related to seeking attorney advice for County business so much as seeking cover for unlawful attempts to circumvent the open meetings law. The County even refused to allow the plaintiff to see who the addressees were, but, only because the plaintiff filed this action, the Court required the County to provide the "privileged" e-mails with the addresses disclosed, another element on which the plaintiff was the prevailing party, which is discussed more fully in the next section.

4. The refusal to award fees is an abuse of discretion.

On page 15 of the Order under review, the Court correctly notes that the Court has discretion to award fees, but the refusal to award any fees in this case is an abuse of discretion because the

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General Assembly has declared F.O.I.A. violations to be "irreparable harms," and because the burden should not be placed on citizens to insure that government officials obey the law.

First, it is indisputable that the only reason the plaintiff received access to the requested material ordered by this Court is because she filed suit. Moreover, the only reason the County rethought its charges in this case is because: A) the plaintiff filed this action, and B) the parties appeared before Judge Buckner on June 2, 2020, during which hearing Judge Buckner expressed skepticism about both the fees proposed by the County and the reasons for nonproduction. The County never identified "attorney/client" privilege as the reason e-mails had to be redacted until matter was before the Court under the *South Carolina Freedom of Information Act*, §§ 30-4-10, *et. seq*. Prior to filing suit, the County made no mention of attorney/client privilege. Instead it sought to thwart the plaintiff's request by demanding she pay $12,000.00 to fulfill it. In her amended complaint, the plaintiff alleges that she made four straightforward requests under § 30-4-40, S. C. Code, ann. for County documents related to the sale and purchase of parcels of real estate commonly referred to as 1 Bostwick Circle and 429 Broad River Road and for e-mail communications of County officials—**from their private e-mail addresses**—connected with these and other transactions. See attached summary of requests, Exhibit 1 to the Amended Complaint. The County's Answer made no mention of attorney/client privilege, alleging only that matters were "exempt." Even if the Court declines to amend or alter its findings for the reasons set forth above, it is indisputable that the plaintiff would have received nothing but for her filing this action, and the fact that she had to file an action to force the County to respond entitles her to fees and costs, and it is an abuse of discretion to deny such. The Supreme Court addressed this issue in *Sloan v. Friends of the Hunley*, 393 S.C. 152, 711 S.E.2d 895 (2011), including a discussion of the discretionary standard to be applied by courts:

> "The decision to award or deny attorneys' fees under a state statute will not be disturbed on appeal absent an abuse of discretion." *Kiriakides v. Sch. Dist. Of Greenville County*, 382 S.C. 8, 20, 675 S.E.2d 439, 445 (2009) (citing *Layman v. State*, 376 S.C. 434, 444, 658 S.E.2d 320, 325 (2008). "An abuse of discretion occurs when the conclusions of the trial court are either controlled by an error or law or are based on unsupported factual

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conclusions." *Id.* 675 S.E.2d at 445 (quoting *Layman*, 376 S.C at 444, 658 S.E.2d at 325). The issue before the Court presents a series of legal questions in terms of determining (1) whether Sloan may be considered a prevailing party under the FOIA statute; (2) if Sloan is a prevailing party, whether his entitlement to fees may extend beyond the production of the requested documents; and (3) whether the law of the case from *Sloan I* affects the time period for the attorney fee award.

The Supreme Court analyzed Sloan's request under the same principle adopted by this Court in that the court found plaintiff prevailed in part but not in total and based on that finding, declined to award the plaintiff any fees or costs. The Supreme Court reversed, and under *Sloan II*, the refusal to award fees was an abuse of discretion because the Supreme Court found that in order to be a prevailing party, a plaintiff does not have to win 100 to 0, but is a prevailing party if she "successfully prosecutes an action . . . prevailing on the main issue, even though not to the extent of the contention [and] is the one in whose favor the decision or verdict is rendered and judgment entered." *Sloan* at page 897, quoting *Heath v. County of Aiken*, 302 S.C. 178, 182-83, 394 S.E.2d 709, 711 (1990). Moreover, the Court is required to construe the *Act* liberally in favor of the plaintiff as the citizen taking upon herself the responsibility for making government officials act in accordance with the law. "The FOIA is remedial in nature and should be liberally construed to carry out the purpose mandated by the legislature. *Campbell*, 354 S.C. at 281, 580 S.E.2d at 166." *Burton v. York County Sheriff's Dept.*, 358 S.C. 339, 594 S.E.2d 888 (Ct. App. 2004) (Trial Court's Order requiring disclosure of records affirmed and case remanded for determination of attorney's fees under the six factors listed by the Court.) (An interesting footnote to the *Burton* case is that two of the three Court of Appeals' authors are now on the Supreme Court.)

In *Sloan II*, the public body argued that Sloan was not a "prevailing party" because it handed over the documents before the Court ordered them to, a position rejected by the Supreme Court, and this holding demonstrates that the Court's refusal to award fees and costs is an abuse of discretion:

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Friends argues that Sloan was not a prevailing party under this definition "because Sloan did not receive any of the relief he requested in his complaint. . . ." We reject Friends' position and agree with the trial court that Sloan was a prevailing party for purposes of the FOIA attorney's fees provision. We find persuasive the decision of the Montana Supreme Court in *Havre Daily News, LLC v. City of Havre*, 333 Mont. 331, 142 P.3d 864 (2006). The *Havre* court addressed whether the post-complaint voluntary production of disputed documents precludes prevailing party status to a plaintiff.

. . .

When a public body frustrates a citizens FOIA request to the extent that the citizen must seek relief in the courts and incur litigation costs, the public body should not be able to preclude prevailing party status to the citizen by producing the documents after litigation is filed. See *Litchfield Plantation Co. v. Georgetown County Water & Sewer Dist.*, 314 S.C. 30, 34, 443 S.E.2d 574, 576 (1994) (Toal, J., concurring in part, dissenting in part) ("A government agency should not be allowed to stonewall an FOIA request without some penalty for its actions."); see also *Wildlands CPR v. U.S. Forest Serv.*, 558 F.Supp.2d 1096, 1098 (D.Mont. 2008) (finding that if a complainant receives relief "via unilateral change in position by the agency," he is entitled to fees under the federal FOIA statute); *Spokane Research & Def. Fund v. City of Spokane*, 155 Wash.2d 89, 1117, 1125 (2005) (*en banc*) ("[P]ermitting an agency to avoid attorney fees by disclosing the documents after the plaintiff has been forced to file a lawsuit . . . would undercut the policy behind the act." (alteration in original) (quoting *Coal. On Gov't Spying v. King County Dep't. of Publ. Safety*, 59 Wash.App. 856, 801 P.2d 1009, 1013 (1990))).

The Supreme Court went on to hold that "by awarding attorney's fees in these circumstances may serve as an impetus for public bodies to comply with a FOIA request and thus avoid the imposition of an attorney's fee award. See *Soc'y of Prof'l Journalists v. Sexton*, 283 S.C. 563, 324 S.E.2d 313 (1984) (finding attorney's fees may be awarded to encourage agencies to comply with

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FOIA requests.)" *Sloan v. Friends of the Hunley* at page 898. Here it is unmistakable that the plaintiff would have achieved nothing, not even the putative privilege log, but for filing her suit. It was Beaufort County who dictated the litigation path; at any time, either before or after litigation commenced, Beaufort County was free to cooperate with the plaintiff to assist her in getting public documents. Instead it chose the path of maximum resistance even going so far as to label the plaintiff's search for public documents "harassment." Thus the plaintiff is much more of a "prevailing party" as was Sloan in his suit for documents against Friends of the Hunley. Unlike *Sloan*, the public body here gave the plaintiff nothing until the Court required it to do so. As the preamble to the *South Carolina Freedom of Information Act* makes clear, the purpose of the Act is to facilitate a citizen's access to documents, and the Court's refusal to award the plaintiff fees and costs not only represents an abuse of discretion under the *Act*, but also promotes Beaufort County's unlawfulness and provides a shield for illegal acts. It also acts as a chill on any other citizen who may think twice before attempting to hold the government accountable for its violations of F.O.I.A.

Conclusion

In filing this motion for reconsideration, the plaintiff is mindful of the extraordinary effort placed upon the Special Referee who is drafted involuntarily into her position as judicial officer and then called upon to evaluate the conduct of persons who are in a position to affect or influence her livelihood. This selflessness is doubly burdensome when the Court drafts a lawyer to serve as an adjudicator who is then called upon to judge the conduct of government officials in her own community. The reason the State compensates judges is to insulate them from financial pressures that could flow from reaching unpopular decisions. Therefore, the plaintiff recognizes the difficulty and burden placed upon a special referee inherent in the procedure established by the facts raised in this case, but the facts are that the County erected a series of barriers to the plaintiff's F.O.I.A. requests and did not provide sufficient responses until after the plaintiff filed suit. As set forth in Sloan II, the plaintiff materially prevailed in a trial for an injury the General Assembly defines as an "irreparable harm." Therefore, under the discretionary standard established by the Supreme Court in *Sloan II*, the plaintiff is entitled to fees and costs. Moreover she is entitled to e-mails sent and received by the

County Administrator as well as e-mails of Councilmembers who chose to communicate about County business through private, non-governmental communications.

Respectfully submitted,

November 19, 2020

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT	)	Civil Action No. 2019-CP-07-00818

MARE BARACCO,	)	
	)	
Plaintiff,	)	
	)	
-vs-	)	**MOTION FOR RECONSIDERATION BY BEAUFORT COUNTY**
	)	
BEAUFORT COUNTY,	)	
	)	
Defendant.	)	
	)	

TO: THOMAS R. GOLDSTEIN, ESQ., Attorney for Plaintiff:

YOU WILL PLEASE TAKE NOTICE that Defendant, BEAUFORT COUNTY, by and through its undersigned counsel, will move before Erin D. Dean, Esq., appointed Special Referee for Beaufort County, South Carolina, pursuant to Rule 59(e), SCRCP, to reconsider, alter or amend the Order of the Special Referee dated November 13, 2020 (the "***Order***"), pursuant to SCRCP 59(e) and on the following grounds:

A. WHETHER PUBLIC BODY MAY CHARGE FOR REDACTIONS:

In the Order, the Special Referee concludes that a public body's attempt to charge fees by the public body's legal department for "reviewing **and redacting** the records" were both "problematic" and "inappropriate" as such fees would necessarily be for "the examination and review to determine if the documents are subject to disclosure." (*Order*, p. 7)(double emphasis added). FOIA permits public bodies to recover a reasonable fee for the cost of having an employee of the public body search, retrieve, **and redact** public records in response to a valid FOIA request. *See* S.C. Code Ann. § 30–4–30(B)(double emphasis added). The hourly fee for this service "shall not exceed the prorated hourly salary of the lowest paid employee who, in the reasonable discretion of the custodian of the records, has the necessary skill and training to perform the request." *Id.*

In response to FOIA Request No. 3 and FOIA Request No. 4, the County estimated a total of 30 hours would be required for the County's legal department and/or administrative departments to "sort" the responsive documents at the rate of $72.00-an-hour. As stated in earlier pleadings,

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these estimates were intended to cover costs related to determining whether such records (a) were responsive to the request, and (b) should be redacted in whole or in part.

For years South Carolina limited local governments to recovering fees only for the cost of the "search and retrieval" of public records in response to a FOIA request, with such costs "not to exceed the actual cost of searching for or making copies of records." *See* S.C. Code Ann. § 30–4–30(B)(2016). In 2017, in response to the increasing demands and costs falling upon local governments, Section 30-4-30(b) of the Freedom of Information Act was amended to replace the foregoing language in the following manner (with areas **underlined** as being new additions and portions ~~**stricken through**~~ as deletions):

> ~~(b)~~(B) The public body may establish and collect fees ~~not to exceed the actual cost of searching for or making copies of records~~ as provided for in this section. The public body may establish and collect reasonable fees not to exceed the actual cost of the search, retrieval, and redaction of records. The public body shall develop a fee schedule to be posted online. The fee for the search, retrieval, or redaction of records shall not exceed the prorated hourly salary of the lowest paid employee who, in the reasonable discretion of the custodian of the records, has the necessary skill and training to perform the request. Fees charged by a public body must be uniform for copies of the same record or document and may not exceed the prevailing commercial rate for the producing of copies. Copy charges may not apply to records that are transmitted in an electronic format. If records are not in electronic format and the public body agrees to produce them in electronic format, the public body may charge for the staff time required to transfer the documents to electronic format. However, members of the General Assembly may receive copies of records or documents at no charge from public bodies when their request relates to their legislative duties. The records must be furnished at the lowest possible cost to the person requesting the records. Records must be provided in a form that is both convenient and practical for use by the person requesting copies of the records concerned, if it is equally convenient for the public body to provide the records in this form. Documents may be furnished when appropriate without charge or at a reduced charge where the agency determines that waiver or reduction of the fee is in the public interest because furnishing the information can be considered as primarily benefiting the general public. Fees may not be charged for examination and review to determine if the documents are subject to disclosure. ~~Nothing in this chapter prevents the custodian of the public records from charging a reasonable hourly rate for making records available to the public nor requiring a reasonable deposit of these costs before searching for or making copies of the records~~ A deposit not to exceed twenty-five percent of the total reasonably anticipated cost for reproduction of the records may be required prior to the public body searching for or making copies of records.

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S.C. Code Ann. § 30–4–30(B)(2016). One of the key additions of the 2017 FOIA amendments was the explicit allowance for the recovery of fees for "redaction."

Thus, operating under the revised FOIA, the time spent redacting public records in response to a FOIA request is expressly compensable per the Freedom of Information Act. *Id.*; (Def. Memo. Of Law, p. 9). While the Act permits charging for the redaction of records, it also provides that "[f]ees may not be charged for examination and review to determine if the documents are subject to disclosure."[1]

In her Order, the Special Referee appears to recognize the singular prohibition; however, the Order fails to acknowledge the newly created right in favor of the public body (*i.e.,* the right to collect costs related to redactions). While these two sections of FOIA arguably conflict given the inherent obligation to analyze and review records as part of the redaction process, there is a reasonable interpretation that reconciles them.

This interpretation recognizes the public body's two separate review/disclosure obligations under FOIA. Upon receipt of a FOIA request, a public body has ten (10) days to acknowledge receipt of the request and to inform the requestor as to whether the public body has any "public records" that are the subject of the request. S.C. Code Ann. § 30–4–30(C). This initial determination as to the availability of any such records contains an inherent review and examination process:

> This determination must constitute the final opinion of the public body as to the public availability of the requested public record, however, the determination is not required to include a final decision or express an opinion as to whether specific portions of the documents or information may be subject to redaction according to exemptions provided for by Section 30-4-40 or other state or federal laws.

Id. If there are responsive documents in the possession of the public body, the public body has the obligation to produce them within approximately thirty (30) calendar days, during which time the documents may be reviewed and redacted in accordance with the Act. *Id.*

Under this interpretation, the Act's prohibition on charging for "examination and review" applies *exclusively* to the review of the public records during the initial 10-day acknowledgement

[1] S.C. Code Ann. § 30–4–30(B). The unintended byproduct of not allowing the costs of review to be recovered by the public body is the financial incentive to delegate the review of potentially sensitive material to those not in a position of trust and/or expertise. The vetting of attorney-client privileged material should be handled by the County attorney; however, the legal department, given the advanced training of its members, will often consist of some of the highest paid personnel within the County.

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period required by FOIA. In other words, the public body could not charge for the time it takes to determine whether it will comply with a FOIA request and/or whether there are any responsive documents during the initial ten-day period; however, it could charge for the time spent reviewing and redacting responsive public records.

This interpretation finds support in the text of the Act: "Fees may not be charged for examination and review to determine if the documents are *subject to disclosure*." S.C. Code Ann. § 30–4–30(B)(emphasis added). By its very nature, the process by which exempt material is separated from non-exempt material must be subsequent to the determination of whether the underlying public records are even subject to the disclosure requirement of Section 30-4-30(A)(1) of the Act. In redacting material, the public body is not making a determination as to whether the documents are subject to disclosure; rather, it is analyzing whether portions of such documents ***may be*** exempted from disclosure per Section 30-4-40 of the Act.

Any other reasonable interpretation of these provisions would render the Act hopelessly contradictory as analyzing records for disclosure determinations is an essential part of the redaction process. When a statute is ambiguous, the Court considers the terms of the statute and employs the rules of statutory interpretation. *Wade v. Berkeley County*, 348 S.C. 224, 229, 559 S.E.2d 586, 588 (2002) (*citing Lester v. South Carolina Workers' Comp. Comm'n*, 334 S.C. 557, 514 S.E.2d 751 (1999)). Under South Carolina's rules of statutory construction, a reviewing court "must presume the legislature did not intend a futile act, but rather intended its statutes to accomplish something." *Denene, Inc. v. City of Charleston*, 352 S.C. 208, 212, 574 S.E.2d 196, 198 (2002) (*citing TNS Mills, Inc. v. South Carolina Dep't of Revenue*, 331 S.C. 611, 503 S.E.2d 471 (1998)).

"Under the 'last legislative expression' rule, where conflicting provisions exist, the last in point of time or order of arrangement, prevails." *Ramsey v. County of McCormick*, 306 S.C. 393, 397, 412 S.E.2d 408, 410 (1991). "In accordance with the principle that the last expression of the legislative will is the law, where conflicting provisions are found in the same statute, or in different statutes, the last in point of time or order of arrangement prevails." *Feldman v. S.C. Tax Comm'n*, 203 S.C. 49, 51, 26 S.E.2d 22, 24 (1943). "[L]ater legislation supersedes earlier laws addressing the identical issue." *Whiteside v. Cherokee Sch. Dist. No. One*, 311 S.C. 335, 340, 428 S.E.2d 886, 889 (1993). Given the General Assembly's amendment to FOIA in 2017 through the addition of the term "redaction" and the expansion of a public body's right to recover the actual costs related

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thereto, the last legislative expression rule would hold that the time spent reviewing documents *as part of the redaction process* is compensable under FOIA.

Once again, this interpretation is consistent with South Carolina public policy. South Carolina has routinely recognized the admirable goal of limiting taxpayer burden. Public money pays for the creation of the public records, the maintenance of them, the storage of them, and, ultimately, their production pursuant to a FOIA request. Requiring extensive retrieval, review and production of tens of thousands of documents annually in response to FOIA requests conflicts with this goal when local governments cannot recover ***the actual*** direct cost of numerous and expensive FOIA requests. If the local government cannot recover these costs from the individual requestors, many of whom are using these documents for their personal benefit, the financial burden will inevitably fall upon the local taxpayers. For these reasons, the Defendant respectfully requests that the Special Referee reconsider her Order and determine that fees related to redactions are appropriate and that redactions may be completed by the public body's legal department when such documents may contain sensitive and exempt information.

B. WHETHER DEBRA REGECZ WAS AN AGENT OF THE COUNTY FOR PURPOSES OF THE ATTORNEY-CLIENT PRIVILEGE:

In holding that Beaufort County waived privilege by communicating with Debra Regecz, the County's contractually retained real estate broker, the Special Referee relied upon the failure of the County to have a clear and unambiguous written agreement of agency. To the best of the Defendant's knowledge, such a standard has not previously been required in South Carolina. The law does not require a clear written agency agreement for establishing privileged person status; rather, it depends of the nature of the communication and the client's expectation that it remain confidential. *State v. Love*, 275 S.C. 55, 59, 271 S.E.2d 110, 112 (1980); *see also United States v. Kovel*, 296 F.2d 918, 921 (2d Cir. 1961) (finding that an accountant's presence while the client communicated with legal counsel did not destroy the privilege because the accountant's presence was useful "for the effective consultation between the client and the lawyer"); *AVX Corp. v. Horry Land Co.*, No. 4:07-CV-3299-TLW-TER, 2010 WL 4884903, at 7-8 (D.S.C. Nov. 24, 2010) (acknowledging the *Kovel* doctrine).

As noted by the South Carolina Supreme Court, multiple aspects of a real estate transaction are considered the practice of law in this state and regulated as such. *See State v. Buyers Service Co., Inc.*, 292 S.C. 426, 430, 357 S.E.2d 15, 17 (1987). As the representative of one of the parties

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to the transaction, a realtor must have the freedom to communicate directly with legal counsel to ensure that any such actions taken on behalf of the respective party complies with the law.

South Carolina has a robust "agency exception" to the waiver of the attorney-client privilege. *See State v. Thompson*, 329 S.C. 72, 75, 495 S.E.2d 437, 438-39 (1997). The attorney-client privilege belongs solely to the client and can only be waived by the client. *State v. Love*, 275 S.C. 55, 271 S.E.2d 110 (1980). "Although a client may waive his attorney-client privilege, the waiver must be distinct and unequivocal." *State v. Hitopoulus*, 279 S.C. at 551, 309 S.E.2d at 749.

The facts clearly illustrate that any waiver of privilege was neither distinct nor unequivocal. Both the realtor and the client have similar interests in obtaining legal advice necessary to ensure the closing takes place as intended. The Order's reliance on the nonexistence of a contractual principal-agent relationship disregards the common interests of the Defendant and its realtor. Allowing the absence of clear contractual language establishing a principal-agent relationship to eradicate the attorney-client privilege thus stands contrary to South Carolina law and public policy. For these reasons, the Defendant respectfully requests that the Special Referee reconsider her Order and determine that Debra Regecz was a privileged third party for purposes of the attorney-client privilege and that the Defendant's redaction of such documents was appropriate and legal under the South Carolina Freedom of Information Act.

WHEREFORE, for the reasons stated herein, Defendant, BEAUFORT COUNTY, would respectfully request that the Special Referee reconsider her November 13, 2020, Order as indicated herein.

This Motion is based on the pleadings, the testimony at the hearing, and the applicable law, as well as any other evidence, or memorandum of law that Defendant may submit to the Court at or prior to a hearing on this Motion. The undersigned hereby affirms that he, prior to filing the above motion, has communicated, orally or in writing, with the Plaintiff or her counsel, and has attempted in good faith to resolve the matter contained in this motion, or that such consultation would serve no useful purpose, or could not timely be held, pursuant to SCRCP Rule 11(a).

Respectfully submitted,

Hilton Head Island, South Carolina
November 23, 2020.

s/ E. Richardson LaBruce
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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BEAUFORT	)	CASE NO.: 19-CP-07-00818
Mare Baracco,	)	
	)	
Plaintiff,	)	
v.	)	
	)	**MEMORANDUM OF LAW IN OPPOSITION TO COUNTY'S MOTION FOR RECONSIDERATION**
	)	
County of Beaufort,	)	
	)	
Defendant.	)	

Beaufort County filed its motion for reconsideration on November 23rd, urging this Court to reverse its entire judgment entered November 13, 2020. In its motion, the County inverts the rules of statutory construction to support an assertion that the County **can** charge a citizen seeking public documents fees for a "review of documents" even though the statute specifically prohibits such charges. The County seeks to avoid this specific prohibition by expanding the definition of "redaction" to include "review." Because the statute does not allow charges for reviewing documents, the County claims the General Assembly unintentionally created a conflict in §30-4-30(b). To do this, the County conflates "redaction" for which it can charge a requestor, with an "examination of records to determine their release," for which it cannot charge a requestor. Specifically, the County grounds its theory by emphasizing a single sentence, which it reads in isolation and out of context: "The fee for the search, retrieval, or redaction of records shall not exceed the prorated hourly salary of the least paid employee who, in the reasonable discretion of the custodian of the records, has the necessary skill and training to perform the request."

The plaintiff has no quarrel with this sentence or its application to the County's obligation to provide documents and assess fees to requestors, but that sentence has no bearing on the issue presently before the Court. In the present case, by reading a single sentence in isolation and

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applying it to a different subject, the County stretches its interpretation of a single sentence to create a distorted play-doh facsimile of the statute as a whole. When the *Freedom of Information Act* addresses "redactions" in § 30-4-30(b), it addresses redactions, not examination of documents. The redactions contemplated by the General Assembly in § 30-4-30(b) are the type of redactions routinely expurgated from public documents, such as the names of minors, social security numbers, financial account numbers, *etc.* See Rule 41.2, *South Carolina Rules of Civil Procedure*, "Privacy Protection for Filings": "Redaction. A person filing a document in paper or electronic format shall not include, or will redact where inclusions is necessary the following person identifying information . . ."

This case implicates no such "personal identifying information," and the County is trying to stretch the definition of "redaction" to encompass "attorney-client privilege." This it cannot do. Rather, as part of a pattern of erecting numerous obstacles to impede the plaintiff's access to public documents, the County violates the basic tenets of the *F.O.I.A.*: "The General Assembly finds that it is vital in a democratic society that public business be performed in an open and public manner so that citizens shall be advised of the performance of public officials and of the decisions that are reached in public activity and in the formulation of public policy." § 30-4-15, S. C. Code, Ann.[1] To avoid the "transparency" required of government officials, the County substituted a 2-step process to impede the plaintiff's request for public documents. First, it imposed unlawful charges for **review of documents**—charges the General Assembly forbids. After the plaintiff filed suit under the *Freedom of Information Act*, then the County's shifted its position and its rationale to invoking "attorney-client privilege." As the record in this case demonstrates, the local government officials' animus for the plaintiff is clear, and this animus fueled its efforts to thwart her application to review

[1] This is why government officials attempt to subvert both the *F.O.I.A.* and the *Record Retention Act* by using private e-mail correspondence. The County issues each official a government provided e-mail account for a reason.

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public documents. (H. L. Mencken reportedly said that every citizen's greatest fear is that she will be noticed by the government.) The assertion of "attorney-client privilege" is not encompassed by the definition of "redaction," and the assertion of privilege has nothing to do with "redactions" as that term is routinely utilized by Courts and the *Rules of Civil Procedure*. The County makes its stand on its claim of attorney-client privilege, not on its desire to protect against the disclosure of personal information, but rather that every communication from anyone that includes the County Attorney in the address chain invokes the privilege of private communication between attorney and client. In creating the *Freedom of Information Act*, the General Assembly treats the two issues separately and differently in the same section upon which the County relies. As a result, the County has to find a "conflict" rather than adhering to the rules of statutory construction that require statutes to be read as a whole and harmonized. The General Assembly specifically prohibits the County's claim that it can charge the plaintiff fees for examining documents for attorney client privilege. Eight sentences after the sentence relied on by the County, is the following: **"Fees may not be charged for examination and review to determine if the documents are subject to disclosure."** (emphasis added). The County attempts to avoid this statutory prohibition by reclassifying an assertion of "attorney-client privilege" into the category of "redactions." In order to do this, the County manufactures a "conflict" in the statute.[2] The County urges this Court to find a conflict in the statute and rewrite it to favor the County. So, when the County writes at page 3 the Court failed to appreciate "the newly created right in favor of the public body," the "newly created right" exists if, and only if, the County conflates the definition of "redaction" into a new category that encompasses "attorney-client privilege." Such an assertion is nonsense, especially in light of the well-developed body of law in South Carolina that the *Freedom of Information Act* is remedial

[2] This logical exercise is hilariously portrayed in an Old Spice commercial when the husband-and-wife tussle over lavender deodorant, arguing over the interpretation of the language of the label: "just for men."

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legislation afforded liberal interpretation to promote access to government documents. A putative conflict in the statute is mere gossamer. Applying the words in their ordinary meaning yields no conflict, and the Court is required not only to give the words their plain and ordinary meaning, but also to read the statute as a harmonious whole:

"[W]ords in a statute must be construed in context," and "the meaning of particular terms in a statute may be ascertained by reference to words associated with them in the statute." *S. Mut. Church Ins. Co. v. S.C. Windstorm & Hail Underwriting Ass'n*, 306 S.C. 339, 342, 412 S.E.2d 377, 379 (1991). "The language must also be read in a sense which harmonizes with its subject matter and accords with its general purpose." *Hitachi Data Sys. Corp. v. Leatherman*, 309 S.C. 174, 178, 420 S.E.2d 843, 846 (1992). "If a statute's language is plain and unambiguous and conveys a clear and definite meaning, there is no occasion for employing rules of statutory interpretation and the court has no right to look for or impose another meaning." *Miller v. Doe*, 312 S.C. 444, 447, 441 S.E.2d 319, 321 (1994).
Eagle Container Co., L.L.C. v. County of Newberry, 379 S.C. 564, 666 S.E.2d 892 (2008)

The County inadvertently gives away the game in footnote 1 where it argues that the Court must adopt the County's suggested resolution of a putative "conflict" because only the highest paid County employees, *i.e.* its lawyers, can review documents for attorney-client privilege. This footnote has two unintended consequences. First, it drives home the point for the plaintiff that attorney-client privilege is not a matter of "redaction," but rather the assertion of a legal privilege, for which the County cannot charge the plaintiff. This is also a strategy rejected by our Supreme Court in *Evening Post Publishing Company v. Berkeley County School District*, quoted below. Second, and more importantly, the County demonstrates how easily it can thwart the *F.O.I.A.* and any citizen's request for documents by claiming it has to subject the documents to its highest paid employees for review of attorney-client privilege. The County also feigns concern for the taxpayers, but as our Supreme Court has held repeatedly, the *Freedom of Information Act* exists to protect those same taxpayers! On pages 4-5, the County warns the Court that forcing it to release public documents will expose the County to citizen demands for transparency, and the costs for fulfilling these requests will be passed on to the taxpayers. In the well-developed body of *F.O.I.A.*

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case law in South Carolina, the appellate courts have never used a const analysis to justify a decision to prevent public access because of the costs involved. Justifying its conduct under the guise of protecting taxpayers is both an astonishing act of chutzpah as well as a particularly weak logical argument.[3] First, if local governments were transparent in their actions, there would be no cost in scouring its records for an infinitely pliable definition of "redactions." (By contrast, every time Charleston County writes a check, it is posts it online, so the County incurs no expense in fulfilling requests for County expenditures.) If Beaufort County's justification were correct, a citizen's access to public documents is a chimera, which is like a criminal defendant claiming he should be freed because the taxpayers will have to pay for his prosecution and housing. The County tacitly recognizes it marches into a logical cul-de-sac on page 4 when it writes: "In redacting material, the public body is not making a determination as to whether the documents are subject to disclosure; rather, it is analyzing whether portions of such documents **may be** exempted from disclosure per Section 30-4-40 of the Act." That is exactly right, and those are the charges the statute specifically prohibits, and exactly why there is no conflict between "**redactions**" on the one hand, and determinations "**if the documents are subject to disclosure**" on the other. Even the County recognizes there is a distinction between "redactions" and what "may be" exempt from disclosure. It can charge for the former, but not the latter. The County seeks to create a "conflict" by torturing the language, where there is none when applying the well-known rules of statutory construction.

Of course, the more fundamental issue, discussed more fully in the plaintiff's November 19, 2020 Motion for Reconsideration, is the dubious proposition that anyone can send an e-mail to the

[3] Both the history books and the law books are overflowing with stupid governmental decisions later declared invalid by the Courts. In Charleston County, Charleston County Council fired the County Attorney when he told Council it could not display the Ten Commandments in Council Chambers. Council Chair Tim Scott, now Senator Tim Scott, called a press conference to record him affixing the Ten Commandments to Council Chambers. No journalists or photographers were around when a judge ordered the County to take them down and pay the plaintiff's lawyers their attorney's fees. Episodes like this are too numerous to catalogue.

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County Attorney from a private e-mail address and claim that communication to be protected by attorney-client privilege. Unless the County is prepared to make its legal department automatic counsel for every correspondent, then all communications to the County attorney are not automatically covered by attorney-client privilege by including her in an e-mail exchange. The Supreme Court struck down this assertion in *Evening Post Publishing Company v. Berkeley County School District*, 392 S.C. 76, 708 S.E.2d 745 (2011):

> Finally, we note the policy considerations involved in this case support our decision that summary judgment was improper at this early stage in the proceedings. The General Assembly, by the clear language of the statute, believes FOIA should be broadly construed to allow the public to gain access to public records. The interest in confidentiality expressed through the attorney-client privilege should not trump the public's right to know at this juncture.
> (Supreme Court reversed grant of summary judgment to school district)

The County asserts a second ground for reversal; to wit, a real estate agent who sold a parcel of real estate to the County is a protected client of the County's legal department. The contention that the Court improperly determined that a real estate agent is a client of the County Attorney and thus covered by attorney-client privilege is a highly dubious proposition. Beaufort County deals with hundreds if not thousands of vendors encompassing the gamut from paper towels to continuing education. The concept that a real estate agent is covered by attorney-client privilege with the County Attorney is a novel theory, and the County gets high marks for creativity. The County comes close to recognizing the weakness of its assertion on page 5, where the County concedes that the relationship "depends on the nature of the communication and the client's expectation it remains confidential." (emphasis in original) The plaintiff accepts this correct statement of law, but where the parties disagree is: (1) the County's astonishing assertion that its acquisition of real property is "confidential," and (2) the Supreme Court already disposed of this issue in *Evening Post Company v. Berkeley County School District, supra*. Whether Debra Regecz was an agent for the County, the property owner, or both is irrelevant to an analysis of the *Freedom of Information Act* especially

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because the transaction was completed. A Beaufort County employee might assert a more plausible claim to attorney-client privilege than a third-party vendor, but even County employees are not shielded from the application or reach of the *F.O.I.A.* Certainly, the *Freedom of Information Act* provides exemptions to the County for **pending** negotiations, § 30-4-30(5), S. C. Code, Ann., but the plaintiff knows of no case law, policy, or reason why a completed real estate acquisition remains confidential. In fact, the *Freedom of Information Act* specifically classifies such completed transactions as public records:

(5) Documents of and documents incidental to proposed contractual arrangements and documents of and documents incidental to proposed sales of purchases of property; however:

(a) these documents are not exempt from disclosure once a contract is entered into or the property is sold or purchased except as otherwise provided in this section.

§ 30-4-40(E), S. C. Code, Ann.

It is astonishing that Beaufort County believes it can keep the negotiations leading up to the completed acquisition of real property secret after the closing. The County asserts without basis in fact or law that the real estate agent became the County Attorney's client because she received a commission in a real estate transaction, a point that the County, once again, tacitly concedes is incorrect: "the Defendant respectfully requests that the Special Referee reconsider her Order and determine that Debra Regecz was a **privileged third party** for purposes of the attorney-client privilege." (Motion at page 6, emphasis added) The extension of the reach of attorney-client privilege to a "privileged third party" would come as a shock to any court. If there is a case anywhere in America establishing third party beneficiaries of attorney-client privilege, the plaintiff is unable to discover it. ("An attorney-client relationship is based upon principles of agency and thus, two factors are essential in establishing such a relationship: (1) the attorney must be authorized to act for the client, and (2) the client must exercise control over the attorney." *7 Am. Jur.2d* "Attorneys at Law," § 137 Under the County's theory of vicarious attorney-client privilege, every time it orders a new batch of legal pads, it has a new client.

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In erecting barriers to the plaintiff's access to public documents, the County violated the clear provisions in the *F.O.I.A.* in order to frustrate the Plaintiff's request and to deny her the documents she requested and was entitled to receive. The South Carolina Supreme Court is clear that government should not be allowed to "stonewall" the Plaintiff's request without facing a penalty for its actions. See *Sloan v Friends of the Hunley*, 393 S.C. 152, 711 S.E.2d 895 (2011):

When a public body frustrates a citizen's FOIA request to the extent that the citizen must seek relief in the courts and incur litigation costs, the public body should not be able to preclude prevailing party status to the citizen by producing the documents after litigation is filed. See *Litchfield Plantation Co. v. Georgetown County Water & Sewer Dist.*, 314 S.C. 30, 34, 443 S.E.2d 574, 576 (1994) (Toal, J., concurring in part, dissenting in part) ("A governmental agency should not be allowed to stonewall an FOIA request without some penalty for its actions."); see also *Wildlands CPR v. U.S. Forest Serv.*, 558 F. Supp. 2d 1096, 1098 (D. Mont. 2008) (finding that if a complainant receives relief "via . . . unilateral change in position by the agency," he is entitled to fees under the federal FOIA statute); *Spokane Research & Def. Fund v. City of Spokane*, 117 P.3d 1117, 1125 (Wash. 2005) (*en banc*) ("[P]ermitting an agency to avoid attorney fees by disclosing the documents after the plaintiff has been forced to file a lawsuit . . . would undercut the policy behind the act." (alteration in original) (quoting *Coal. on Gov't Spying v. King County Dep't of Pub. Safety*, 801 P.2d 1009, 1013 (Wash. Ct. App. 1990))).

We believe this approach is in harmony with legislative intent, as expressed in the preamble to our FOIA statute:

The General Assembly finds that it is vital in a democratic society that public business be performed in an open and public manner so that citizens shall be advised of the performance of public officials and of the decisions that are reached in public activity and in the formulation of public policy. Toward this end, provisions of this chapter must be construed so as to make it possible for citizens, or their representatives, to learn and report fully the activities of their public officials at a minimum cost or delay to the persons seeking access to public documents or meetings. S.C. Code Ann. § 30-4-15 (emphasis added). Honoring legislative intent as expressed in FOIA by awarding attorney's fees in these circumstances may serve as an impetus for public bodies to comply with a FOIA request and thus avoid the imposition of an attorney's fee award. See *Soc'y of Prof'l Journalists v. Sexton*, 283 S.C. 563, 324 S.E.2d 313 (1984) (finding attorney's fees may be awarded to encourage agencies to comply with FOIA requests).

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Conclusion

For the foregoing reasons, the plaintiff renews her request for relief set forth in her November 19, 2020, Motion for Reconsideration for the reasons and case law set forth therein. The plaintiff respectfully requests that the Court order the release of all the documents sought by the plaintiff and to hold a hearing on the amount of attorney's fees and costs that should be awarded to the plaintiff for bringing this action to force the County to comply with its obligations under the *South Carolina Freedom of Information Act*.

December 17, 2020

/s/ Thomas R. Goldstein
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THE UNDERSIGNED HEREBY CERTIFIES THAT A TRUE COPY OF THE FOREGOING PLEADING HAS BEEN SERVED UPON OPPOSING COUNSEL BY MAILING A COPY PROPERLY ADDRESSED WITH SUFFICIENT POSTAGE AFFIXED THERETO THIS 17th DAY OF DECEMBER, 2020.

BY: /s/ Thomas R. Goldstein

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STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT)	Civil Action No. 2019-CP-07-00818

MARE BARACCO,)	
)	
Plaintiff,)	**DEFENDANT BEAUFORT COUNTY'S BRIEF IN OPPOSITION TO THE MOTION FOR RECONSIDERATION OF THE PLAINTIFF**
)	
-vs-)	
)	
BEAUFORT COUNTY,)	
)	
Defendant.)	

The Defendant, BEAUFORT COUNTY, by and through its undersigned counsel, respectfully submits this Brief in opposition to the Plaintiff's *Motion for Reconsideration* dated November 19, 2020.

A. THE USE OF PRIVATE EMAIL AS WAIVER OF ATTORNEY-CLIENT PRIVILEGE:

The Plaintiff contends that the use of personal email by a public official constitutes a waiver of the attorney-client privilege. The law does not support this contention. Private email accounts of public officials are not summarily subject to public disclosure; rather, courts across the country have determined that context is key. South Carolina is no exception. Whether an email from a public official's private account constitutes a "public record" subject to disclosure will depend on whether the email relates to public business.

The Freedom of Information Act's deliberately broad definition of "public record" reinforces that the content of the communication will generally control over the medium. *See* S.C. Code Ann. § 30-4-20(c) (defining public records as "books, papers, maps, photographs, cards, tapes, recordings, or other documentary materials regardless of physical form or characteristics prepared, owned, used, in the possession of, or retained by a public body"). As codified, FOIA's definition of "public record" is designed to encompass all records that relate to public business, not just those records that are created and/or stored on publically-owned communication systems. At no point relevant to this action has Beaufort County challenged the proposition that a public

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official's private emails are subject to the Freedom of Information Act when such emails are used to conduct public business.

Similarly, the exemptions set forth in S.C. Code Ann. § 30-4-40 are not limited to a particular narrow subset of public records (*e.g.,* email from official government accounts); rather, much like the disclosure obligations of FOIA, the exemptions' applicability is based on the content of the communication, not the medium used. Neither the South Carolina version of the Freedom of Information Act nor, to the best of the County's knowledge, any similar state or federal public records counterpart distinguishes the applicability of the attorney-client privilege on the basis of the medium used. If the public record contains attorney-client privileged material, the privileged information may be exempt from disclosure.

Finally, a substantial portion of the Plaintiff's claims have involved alleged violations of the South Carolina Public Records Act, S.C. Code Ann. § 30-1-10, *et seq.*, as an additional basis for challenging the privileged nature of certain email communications and asserting various FOIA violations. The Public Records Act does not create any explicit private right of action in the event of a violation, nor does it remotely apply to eliminate privilege as suggested by the Plaintiff. *See Doe v. Marion*, 373 S.C. 390, 396-97, 645 S.E.2d 245, 248 (2007) (finding that when language regarding civil liability is missing from a statute that contains administrative penalties, it indicates the legislative intent that a violation thereof does not give rise to a private cause of action). For these reasons, the *Motion for Reconsideration* should be denied.

B. EVIDENCE OF HARASSMENT IN RECORD:

The Plaintiff's *Motion for Reconsideration* seemingly requests that the Special Referee reconsider her decision that neither party acted with improper motivation "with regard to the FOIA requests before the Court for consideration." (Order, p. 14-15). The grounds for this reconsideration: the County's alleged failure to produce "a scintilla of evidence" showing the Plaintiff's harassment of the County. (Pl. Mot. for Reconsideration, p. 2). Given the Court's determination that the Plaintiff **did not act** with improper motivation in making the at-issue FOIA requests, this issue seems adequately resolved.

To the extent that the Plaintiff challenges the Special Referee's findings regarding the County's motivations, the record is clear and the Special Referee's decision is sound. From the outset of this action, the Plaintiff has focused her efforts on outlining and detailing the apparently

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contentious relationship between the Plaintiff and former representatives of Beaufort County stemming from an animal-control incident involving the Town of Port Royal in 2012. Importantly, the individuals involved in 2012, 2013, and/or 2014, which apparently lie at the heart of the Plaintiff's claims of "animus" and "hostility," are no longer employed by the County and, in some cases, have been employed elsewhere for years. (Pl. Memo. Of Law, p. 10). Further, the prior incident is not remotely related to the requests at issue nor does it have any bearing on this matter.

The County appreciates that Ms. Baracco's history with former County employees and representatives likely influences her perception of actions taken by the County. As is evident from the pleadings and the correspondence on file, the Plaintiff appears to sincerely believe that ill motivations and/or personal vendettas drive the decisions made by Beaufort County and its counsel in this case. Nevertheless, the Plaintiff failed to establish or provide any factual support for her contention that the decisions made by the County in regards to these particular FOIA requests in 2019 were, in any way, shaped by her interactions with former County employees or officials over five years earlier.

The County has consistently challenged and objected to the relevancy of the Plaintiff's exhibits intended to show "evidence of animus" by the County. (Pl. Mot. for Reconsideration, p. 3). As noted by the County in its *Pre-Trial Brief*:

> The issues before the Court are solely legal; nevertheless, much of the Plaintiff's focus to date has been detailing past interactions with County officials. Many of the Plaintiff's proposed exhibits and intended witness testimony are wholly irrelevant and immaterial to the issues at hand. This matter should be decided on the relevant facts and the appropriate law, not inappropriate commentary between the parties and their counsel.

(Def. Pre-Trial Brief, p. 7). More importantly, **even the Plaintiff** has consistently agreed that the issues involved in this litigation are solely legal and that any "evidence of animus" is immaterial and "unnecessary in evaluating this, or any other F.O.I.A. case." (Pl. Mot. for Reconsideration, p. 3). For these reasons, the Plaintiff's *Motion for Reconsideration* should be denied.

C. DUAL CAPACITY OF THOMAS KEAVENY:

The Plaintiff's *Motion for Reconsideration* also raises the argument that an in-house attorney cannot assume a secondary role – even in an interim or secondary capacity – within the

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same organization and retain the protections of the attorney-client privilege. Although perhaps a novel question in the public body context, this argument has been regularly rejected in the corporate context. In particular, the South Carolina Rules of Professional Conduct accept that attorneys may serve organizational clients in more than one role. *See* SCRPC 1.7, cmt. 33 ("A lawyer for a corporation or other organization who is also a member of its board of directors should determine whether the responsibilities of the two roles may conflict.").

Contrary to the Plaintiff's assertions, nothing within South Carolina case law or the Rules of Professional Conduct would render "all communications directed to [Thomas Keaveny] during this period of time [unprotected] from the attorney/client privilege because he [was] prohibited from acting as counsel for Beaufort County while acting as the Chief Executive Officer of the [County]." (Pl. Mot. for Reconsideration, p. 4). While there is no dispute that serving an organization in more than a single capacity can create complications - in particular for attorneys - the broad proposition presented by the Plaintiff lacks any legal foundation.

As this Court correctly determined, the context and content of the communication is key to determining whether the privilege is applicable: Was the individual acting in his capacity as an attorney for the organization, or was he acting in his capacity as an administrative official? The Plaintiff argues that because the County disclosed the vast majority of applicable documents without redaction the Plaintiff can "logically infer" that the **single** document at issue (CountyFOIA#1___00273) also lacked privilege. The Plaintiff's logical inference relies on the hollow theory that the County deliberately withheld this one document from disclosure as "cover for unlawful attempts to circumvent the open meetings law," while releasing an email that the Plaintiff, in the same paragraph, describes as "both an unethical and shocking violation of § 3-4-70(c)." (Pl. Mot. for Reconsideration, p. 5).

At best, the Plaintiff's argument is mere speculation on the contents of the aforementioned document. The Court, however, does not need to rely on speculation. Following an *in camera* review by this Court, it was confirmed that the single document at issue (CountyFOIA#1___00273) was (a) written by Mr. Keaveny in his capacity as County Attorney and (b) subject to the attorney-client privilege unless otherwise waived. (Order, p.12)(The Court ultimately ruled that the County had waived the privilege by copying a third party contractor on the correspondence.). For these reasons, the Plaintiff's *Motion for Reconsideration* should be denied.

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D. AWARD OF ATTORNEY'S FEES:

The Plaintiff's *Motion for Reconsideration* asks the Special Referee to award the Plaintiff her attorneys' fees under S.C. Code Ann. § 30-4-100(b) as the "prevailing party" and pursuant to *Sloan v. Friends of the Hunley* ("*Hunley II*"), 393 S.C. 152, 711 S.E.2d 895 (2011). As set forth below, the Plaintiff's reliance on *Hunley II* is misplaced and the Special Referee was within her discretion to deny attorneys' fees based on the full facts presented. *See Litchfield Plantation Co., Inc. v. Georgetown County Water & Sewer Dist.*, 314 S.C. 30, 443 S.E.2d 574 (1994) (finding that Special Referee did not err in refusing to award attorneys' fees to prevailing party in FOIA dispute); *see also, Campbell v. Marion County Hosp. Dist.*, 354 S.C. 274, 580 S.E.2d 163 (S.C. App. 2003)(finding that the "decision on whether to award attorneys' fees is discretionary in nature" but reversing denial of attorney's fees award as "the court erred in basing its decision to deny attorney's fees on its erroneous belief that [prevailing party] was not entitled to attorneys' fees where the issue was novel"). "The specific amount of attorneys' fees awarded pursuant to a statute authorizing reasonable attorneys' fees is left to the discretion of the trial judge and will not be disturbed absent an abuse of discretion." *Kiriakides v. Sch. Dist. of Greenville Cty.*, 382 S.C. 8, 20, 675 S.E.2d 439, 445 (2009).

At issue is S.C. Code Ann. § 30-4-100(B), which, as amended in 2017, provides that "[if] a person or entity seeking relief under this section prevails, he may be awarded reasonable attorney's fees and other costs of litigation specific to the request. If the person or entity prevails in part, the court may in its discretion award him reasonable attorney's fees or an appropriate portion of those attorney's fees." It is undisputed that the Plaintiff did not prevail on all counts; thus, the pertinent portion of Section 30-4-100(b) is the second sentence, which provides for a discretionary award of attorneys' fees when a party prevails in part, but not any costs of litigation.

Even assuming for the sake of argument that the Plaintiff prevailed in part as to its claim of waiver of privilege by copying a third party contractor on attorney-client privileged communications, the Special Referee's analysis would not be complete. In determining the amount of reasonable attorneys' fees to award pursuant to statute, the Special Referee must consider the following six factors and make specific findings of fact on the record for each. *Burton v. York Cty. Sheriff's Dep't.*, 358 S.C. 339, 358, 594 S.E.2d 888, 898 (Ct. App. 2004).

1. Nature, Extent and Difficulty of the Case.

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From the outset of this action, Beaufort County has recognized that the Freedom of Information Act and its related matters are complex, heavily regulated, and can present numerous legal issues. This case and the issues before the Special Referee were the result of the extremely difficult and unique challenges posed by the interplay between the Freedom of Information Act and the attorney-client privilege in the governmental context.

2. **Time Necessarily Devoted to the Case**.

The only evidence before the Court is the *Affidavit* filed by Plaintiff's counsel as part of the request for attorneys' fees. According to this *Affidavit* dated October 7, 2020, Plaintiff's counsel has spent 47.90 hours prosecuting this action; however, the time entries submitted by the Plaintiff consist of relatively vaguely defined tasks and block billing, both of which impede opposing counsel and the court's reasonableness review. *See Two Men & A Truck/Int'l, Inc. v. A Mover Inc.*, 128 F. Supp. 3d 919, 925 (E.D. Va. 2015). As a result, it is nearly impossible for defense counsel and the Special Referee to determine the reasonableness of the time spent on each task and which tasks were related to the areas in which the Plaintiff may have prevailed in part.

"Where the documentation of hours is inadequate, [the court] may reduce the award accordingly .... [T]he fee applicant bears the burden of establishing entitlement to an award and documenting the appropriate hours expended and the hourly rate." *Hensley v. Eckerhart*, 461 U.S. 424, 433-37 (1983). The insufficiently detailed time records submitted by the Plaintiff preclude meaningful review by the Court and the County to determine whether the time expended was reasonably necessary, redundant, or excessive. For example, Plaintiff seeks to recover for a three-hour billing entry to "research memorandum of law, organize exhibits." (Pl. Aff. of Att'y Fees, Ex. A). Without more specificity, the Court cannot possibly determine the reasonableness of this fee. This level of detail is not the exception but rather the standard throughout the invoice. As a result, the Special Referee was correct in declining to award any attorneys' fees to the Plaintiff; however, should the Special Referee reconsider an award based on the Plaintiff's *Motion for Reconsideration*, the award should be substantially reduced to eliminate any fees associated with work not completed by the Plaintiff's attorney and work only documented by vague, duplicative, and/or bulk time entries.

3. **Professional Standing of Counsel**.

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While the County concurs with the Special Referee's decision to not award any attorneys' fees to the Plaintiff, the County recognizes the professional standing of Plaintiff's counsel as an excellent and accomplished litigator with years of experience.

4. **Contingency of Compensation**.

Contingency of compensation is irrelevant in this action as it is not a contingency fee case.

5. **Customary Legal Fees for Similar Service**.

The hourly rate of $275.00 for which the Plaintiff seeks to recover is nearly four (4) times the amount of the hourly legal charge ($72.00) that the Plaintiff decried as "excessive" in her *Amended Complaint* and throughout the course of this litigation. Nevertheless, the County acknowledges that the Special Referee, as an attorney practicing in similar fields and in a similar location as Plaintiff's counsel, has the knowledge and discretion to determine whether $275.00 an hour is an appropriate and customary rate for legal services.

6. **Beneficial Results Obtained**.

In her *Motion for Reconsideration*, the Plaintiff relies upon the South Carolina Supreme Court's decision in *Sloan v. Friends of the Hunley* ("*Hunley II*") to justify her claim for attorneys' fees. *Sloan v. Friends of the Hunley* ("*Hunley II*"), 393 S.C. 152, 711 S.E.2d 895 (2011). In pertinent part, the *Motion for Reconsideration* quotes select portions of *Hunley II* to create the impression that a party who "successfully prosecutes an action [under FOIA] … prevailing on the main issue, even though not the extent of the contention [and] is the one in whose favor the decision or verdict is rendered and judgment entered," is entitled to be awarded his/her attorneys' fees.

As an initial matter, the Special Referee's *Order* makes clear that the Plaintiff did not prevail on the main issue in this litigation. In fact, the Plaintiff failed to prevail on the vast majority of her claims. The sole issue upon which the Plaintiff prevailed according to the *Order* was the narrow issue of whether copying a third-party real estate agent on a communication with in-house counsel constituted a waiver of attorney-client privilege. The Court's ruling in favor of the Plaintiff impacted only a small subset of the documents at issue and constitutes a far cry from "prevailing on the main issue," which, as alleged by the Plaintiff, is the trigger that requires an award of attorneys' fees.

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Further, the Plaintiff's interpretation of *Hunley II* eliminates the Special Referee's discretion in determining whether to award attorneys' fees, an interpretation in stark contrast to the unambiguous statutory language. The Plaintiff contends that Section 30-4-100 of FOIA must be construed as a punitive statute, designed to punish public bodies and public officials for all manner of transgressions, no matter how slight, provided that the prosecuting party is capable of prevailing on just one of many different claims. Such a theory rejects our Supreme Court's acknowledgment that a special referee may decline to award any attorneys' fees to a prevailing party given the discretionary nature of S.C. Code Ann. § 30-4-100(b). *See Litchfield Plantation Co., Inc. v. Georgetown County Water & Sewer Dist.*, 314 S.C. 30, 443 S.E.2d 574 (1994) (finding that Special Referee did not err in refusing to award attorneys' fees to prevailing party); *but see Sloan v. Dep't of Revenue*, 409 S.C. 551, 762 S.E.2d 687, 689 (2014)("As the prevailing party under these circumstances, the trial court erred in not awarding Sloan his reasonable attorney's fees and costs."). Contrary to Plaintiff's claims, the explicit and codified purpose of FOIA is public disclosure, not discipline.

Additionally, the Plaintiff alleges that she is the prevailing party as "it is unmistakable that the plaintiff would have achieved nothing, not even the putative privilege log, but for filing her suit." (Pl. Mot. for Reconsideration, p. 9). This allegation is not supported by the uncontroverted facts of this case. The Court's *Order* recognizes that "Beaufort County produced the documents responsive to FOIA No. 1 on March 21, 2019," along with refunding a portion of the Plaintiff's deposit. These documents produced by the County in response to FOIA No. 1 were the sole basis of the Plaintiff's claims of improper redactions and exemptions, a claim upon which the Plaintiff was unable to prevail except to a very limited extent.

The Plaintiff also relies upon *Hunley II* for the claim that she was the prevailing party despite the Special Referee finding that "there has been no violation of the Act relative to the fees." (Order, p. 8). The *Motion for Reconsideration* does not challenge the Special Referee's conclusion that the County did not violate FOIA; rather, she claims she should nonetheless be entitled to attorneys' fees as a "prevailing party" under *Hunley II. Hunley II,* 393 S,C, 152, 711 S.E.2d at 897.

In *Hunley II*, the Supreme Court determined that while **the public body's voluntary production** of records after the initiation of litigation may moot the case, the individual litigant may still be considered the prevailing party for the purposes of attorneys' fees. *Id.* In this case, however, the Special Referee did not find that the Plaintiff's claims were mooted due to action of

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the public body; rather, it was the Plaintiff's own actions that mooted the claims. (Order, p. 7-8). The Plaintiff did not challenge the fees assessed as part of FOIA No. 1 and, despite the *Motion for Reconsideration's* repeated references to the "$12,000" estimate provided by the County in response to FOIA No. 2, the Plaintiff abandoned this request by voluntarily amending the scope of the request **on the same day she received the County's estimate** and well before this action was filed. (Order, p. 5).

Similarly, the Plaintiff's own actions mooted her claims against the County as to FOIA Request No. 3 and FOIA Request No. 4. After the initiation of litigation, the Plaintiff dramatically reduced the scope of her two outstanding FOIA requests. For instance, the documents produced in response to FOIA Request No. 3 were reduced from over 650 pages to 167 pages as a result of the Plaintiff's amended request. Unlike the facts set forth in *Hunley II*, the public body's actions after the initiation of litigation did not moot the Plaintiff's claims. Instead, it was the voluntarily action of the Plaintiff. For these reasons, the Special Referee did not abuse her discretion in denying the Plaintiff any attorneys' fees. If, however, the Special Referee should reconsider an award based on the Plaintiff's *Motion for Reconsideration*, the award should be substantially reduced to eliminate any fees associated with work not completed by the Plaintiff's attorney in furtherance of those limited grounds upon which the Special Referee determines that the Plaintiff prevailed.

CONCLUSION:

For the foregoing reasons, the Defendant, BEAUFORT COUNTY, would respectfully request that the Special Referee deny the Plaintiff's *Motion for Reconsideration*.

Respectfully submitted,

Hilton Head Island, South Carolina
January 8, 2021.

s/ E. Richardson LaBruce
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ELECTRONICALLY FILED - 2021 Jan 18 11:57 AM - BEAUFORT - COMMON PLEAS - CASE#2019CP0700818

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BEAUFORT	)	CASE NO.: 2019-CP-07-00818
Mare Baracco,	)	
	)	
Plaintiff,	)	
versus	)	
	)	**REPLY TO COUNTY'S MEMORANDUM**
	)	
County of Beaufort,	)	
	)	
Defendant.	)	

TO E. RICHARDSON LABRUCE, ATTORNEY FOR THE DEFENDANT:

The plaintiff offers this brief Reply to the County's Memorandum filed January 8, 2021. In its Memorandum, the County asserts four main points:

A) When government officials communicate with the County from their private e-mail, they are not acting in their official capacity as legislators.

Throughout its January 8, 2021 brief, the County takes a claustrophobic view of the purpose and application of the *Freedom of Information Act*. The purpose of the *Freedom of Information Act* is announced in § 30-4-15: "vital in a democratic society that public business be performed in an open and public manner. The construction courts universally apply to it are fully briefed and does not need to be repeated here. Rather, in reply to the County's assertion that Councilmembers corresponding with the government from their private e-mail addresses are "privileged," the plaintiff makes three undisputable points:

The first point is the undeniable observation that Beaufort County asserts a blatant disregard for the purpose and requirements of the Act, what the Courts call its "spirit" and "letter." The County ignores the fact that the e-mails placed in evidence by the plaintiff in support of her application demonstrate that the Council members were doing exactly what the *Act* prohibits. They were either conducting secret Council meetings out of the view of the public, or they were soliciting legal advice about upcoming Council business, in other words, an illegal executive session. Council members are

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free to solicit and receive legal advice about County business, but they have to announce the specific purpose:

> (b) Before going into executive session the public agency shall vote in public on the question and when the vote is favorable, the presiding officer shall announce the specific purpose of the executive session. As used in this section, "specific purpose" means a description of the matter to be discussed . . .
>
> § 30-4-70, S. C. Code

When Council members include their lawyer on e-mails from their private e-mail, they cannot possibly be seeking legitimate legal advice. What they are doing is an obvious subterfuge around to the transparency requirements of the *Act*, and this Court should not give them a free pass, especially where the Supreme Court has already informed Council members that including a lawyer in their communications does not transform them into attorney-client privilege. *Evening Post Publishing Company v. Berkeley County School District*, 392 S.C. 76, 708 S.E.2d 745 (2011)

The second point is this: When members of Council are elected to their positions, they do not forfeit their identity as citizens. Just as lawyers do not stop being persons by being licensed, Council members do not stop being people when elected to office. A lawyer cannot escape a speeding ticket by demanding immunity from the application of traffic laws as an officer of the Court. As the County correctly notes: "The *Freedom of Information Act's* deliberately broad definition of 'public record' reinforces that the content of the communication will generally control over the medium." (County's Brief at page 1) The plaintiff agrees with this statement, and when members of County Council made their voluntary decisions to communicate with government officials from their private e-mails, they voluntarily chose to communicate as private citizens and not as members of the Council, and they cannot reasonably expect that attorney client privilege attaches to such communications. Throughout this litigation, the County, like Perseus confronting Medusa, refuses to look into the face of the *Act* and its specific prohibition over using electronic communications to circumvent the requirement for

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open meetings. § 30-4-70(c), S. C. Code, Ann.: "No . . . electronic communication may be used in circumvention of the spirit of requirements of this chapter. . ." The County's flouting of this prohibition is evident in Plaintiff's Exhibit 9. Stu Rodman's July 18, 2018 e-mail is as embarrassing and egregious example of a *F.O.I.A.* violation as can be imagined. But then so are Exhibits 10 and 11. There, five members of Council and the County Attorney held an electronic meeting and mapped out their plan to implement a hiring decision out of public sight. This behavior is exactly what the *Freedom of Information Act* is intended to prevent and throws some light on the County's extremely narrow—and unsupported—interpretation of the *F.O. I.A.*

Thirdly, even the County's privilege log illuminates the County's duplicity when it comes to making records available. The County claimed exemptions for documents sent to third party, non-employees (privilege log 141-143, 144-154, 175-190, which involved FEMA information, and 249-254). When, for example, Paul Sommerville, who was then the Council chair, communicated with Tom Keaveny from his private e-mail, what County business were they conducting? Mr. Keaveny is not Mr. Sommerville's private lawyer. Further, one of the emails contained a completely redacted government contract. This document cannot be covered by attorney client privilege under any interpretation of the *F.O.I.A.* Yet the County persists that such communications are simultaneously public **and** private, a self-refuting proposition.

Lawyers are zealous advocates for clients and judges are neutral and detached magistrates, but neither one is required to shed common sense at the Courthouse steps, and it is a self-evident axiom the only reason a sitting legislator utilizes private email to engage in allegedly "protected" communications is to avoid the requirement of openness mandated by the Act. In essence, the County's argument is the same argument rejected by the Supreme Court in *Evening Post Publishing Company v. Berkeley County School District*, 392 S.C. 76, 708 S.E.2d 745 (2011) where school officials were conducting electronic meetings and attempting to shield themselves by copying the lawyer. That is exactly the same situation raised here. Looking at the evidence in the light most favorable to the County, they concede they were involved in an illegal executive session.

In summary, the County's argument is self-refuting. The County provides an official

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government e-mail account to each member to serve as the platform to conduct County business for a purpose. The County does this in order to conform to the *Freedom of Information Act* and the *Records Retention Act*, and Council members must accept responsibility for their decisions to eschew the government mechanism to conduct government business, and they cannot expect the Court to bail them out of illegal conduct because they did it on their home computer. When they choose to communicate with the County as private citizens, they cannot claim simultaneously the privilege of unreviewable communications unless they concede they are involved in illegal executive sessions.

B) The plaintiff produced copious evidence of animus.

The plaintiff is not sure of the County's point of this argument. The plaintiff brought a claim under the *Freedom of Information Act*, not a suit for tort claims. (The plaintiff did bring a separate tort suit against the County for violation of her rights, and that matter was independently settled.) Nonetheless, the record in this case demonstrates the County's animus for the plaintiff. See plaintiff's exhibits 12, 13, 14, 16, 17, 18, 19—"My honest take on this is that their adversaries are using bogus legal strategies to harass and intimidate them." The purpose of plaintiff's animus evidence is not to support a claim for damages or fulfill an element of her *F.O.I.A.* claim. Rather, it demonstrates that the County's program to thwart the plaintiff's access to public records, initially by overcharging her and thereafter advancing shifting rationales for resisting disclosure do not arise from some principled interpretation of the *Freedom of Information Act*. And as the discussion above makes clear, Beaufort County officials are brazen when it comes to violating the law. The evidence of animus demonstrates that the County was motivated not by its fidelity to the *Freedom of Information Act*, but rather to its articulated purpose to deploy government resources to preempt plaintiff's request and to thwart what should have been a routine request for documents. The public policy of the *Act* is to inhibit bad governmental conduct by forcing government to operate in the open. The evidence here demonstrates just how entrenched government officials are in avoiding public scrutiny, and it is for that reason that the evidence of animus is important. The evidence produced here does not depict government officials trying only to operate free from citizen oversight; it demonstrates government officials taking affirmative acts to makes sure their decisions do not come into the sunshine. The evidence of the

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County's bad faith puts plaintiff's *F.O.I.A.* claim in context. It is one thing to have a good faith debate about the parameters of the *Freedom of Information Act*, but it is quite another to circulate an e-mail to every local government to exhort them to get on the same page of overcharging the plaintiff. See, for example, Exhibit 17: "What I would like to know is whether the municipalities may be thinking about taking a similar approach. . . . For anyone that is not familiar with this matter or the requester feel free call me or send questions my direction. We have been in litigation with Ms. Baracco regarding the dangerous dog determination for a couple years and currently the matter is pending before the court of appeals. s/ Allison C. Coppage, assistant County Attorney." It is worth recalling that many of these bad actors are still on the scene and are now emboldened to disregard their duties under the *F.O.I.A.* because they are escaping without consequence for their actions. As the newspapers document *passim*, misconduct in government offices is not an isolated phenomenon, and the *Freedom of Information Act* is the most important bulwark against such misconduct. The relief to aggrieved citizens provided by the *Act* is minimal, so courts must be vigilant in enforcing its terms less the almost toothless tiger lose her few remaining teeth.

In evaluating Beaufort County's response to the *F.O.I.A.* requests in this case, like any governmental decision, it looks radically different if a facially legal action is taken for the purpose of animus. Consider the same decision with different motivations:

1) I am sorry we cannot admit you because the class is full.

2) I am sorry we cannot admit you because we have too many Asians.

The conclusion in the two decisions is identical, but no court would treat them as equally protected governmental conduct. Evidence of animus does not give the plaintiff additional remedies or require additional elements of proof to demonstrate the *F.O.I.A.* violations—all it does is answer the question: Is the County adhering to its responsibilities under *F.O.I.A.* in good faith?

C. The Dual Capacity of Thomas Keaveny is not subsumed under licensed attorney.

1) The County's contradiction

2) The "dual capacity" assertion does not shield Administrator's communications.

The plaintiff submits this issue has been exhaustively briefed, but in the County's recent filing,

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it contradicts itself. Moreover, even though the parties agree on the law, they draw mutually exclusive conclusions. The County contends that Keaveny' s "dual capacity" shields his communications as Administrator, while the plaintiff contends that once he accepted the role of Administrator, he ceased being legal counsel by operation of the rules governing the conduct of lawyers.

1) **The County's contradiction**.

After the plaintiff made her application for government records, the County resisted on a number of grounds, including the ground that communications from Tom Keaveny were protected by the attorney client privilege. (The inapplicability of attorney-client privilege is fully briefed and will not be repeated here. Here, the plaintiff demonstrates merely the County's contradiction.) When the plaintiff filed suit under the *F.O.I.A.* to obtain public records, the County responded by creating a "privilege log" in response. First the County refused to reveal the recipients of the e-mails, and after the Court required them to provide this information, then the County conceded that Keaveny' s e-mails as County Administrator were not exempt. There, for the first time, the County conceded, for example, that the Keaveny Interim Administrator emails 155-168 were not exempt. (See privilege log, page 2.) Now the County reverses course, arguing that Keaveny' s "dual capacity" allows him to claim privilege. The County asserts that when the County's Administrator, Tom Keaveny, acted in a dual capacity as County Administrator/County Attorney, every communication is protected by attorney-client privilege. The Court should not allow the County to shift its legal position after the fact, which is further evidence of the County's bad faith.

2) The defendant asserts that a lawyer can act in a dual capacity, but when she does, she is no longer acting as a lawyer.

Paradoxically, the County makes the plaintiff's argument for her in citing *South Carolina Rules of Professional Conduct*, Rule 1.7., comment 33. Reliance on this section does not support the County's legal position because the comment makes clear that a lawyer cannot serve in a dual capacity as a "director" "if there is a material risk that the dual role will compromise the lawyer's independence of professional judgement." Here, the independence of professional judgment is destroyed because

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the lawyer's role as chief governmental official "destroys" the independence of his legal advice. (This dual capacity legal issue is very much a current debate in a different context: Can a President pardon himself?) The "dual capacity" applied to plaintiff's request under the *F.O.I.A.* is like trying a case when the opposing party is the judge and the jury. By definition, when a lawyer is advising herself, she is no longer "independent."

A County Administrator is the chief administrative government official of the County Government. Keaveny's duties in holding the position of administrator do not involve acting in a legal capacity, but rather to administer the day-to-day business of the County government. (See Rule 3.7 "Lawyer as Witness, which prohibits lawyers from acting in cases in which they are a witness.) In essence, by advancing the "dual capacity" theory, the County asks this Court to apply Keaveny' s "dual capacity" to narrow the scope of the *Freedom of Information Act* to cloak every Administrator's communication in privilege because he happens to be licensed to practice law. Such a narrow reading of the *Freedom of Information Act* is in direct conflict with every appellate decision regarding the scope of the *F.O.I.A.* Even the statute refutes this position. See § 30-4-15, S. C. Code. Exemptions to the Act should be narrowly construed to ensure public access to documents. *Seago v. Horry County*, 378 S.C. 414, 663 S.E.2d 38 (2008). (Remanded case to trial court to determine proper copying fee for copyrighted G.I.S. information) In every filing with the Court in this case, the County has urged the narrowest possible reading of the *F.O.I.A.*, which is in conflict with the well-developed body of case law on this subject. In short, Keaveny' s "dual capacity" has no bearing on the issue before the Court. Once he accepted the position of Administrator, he stepped out of his role as County Attorney and cannot shield routine communications on the grounds that he is giving himself advice.

D) Award of Attorney's fees

This legal issue is fully briefed in prior memos, and there is no point in making repetitious arguments in reply to the County. The County correctly identifies the factors courts are required to evaluate in making discretionary awards, but the County misses the point completely in whether the plaintiff is a prevailing party. Before the plaintiff got counsel involved, the County wanted to charge her over $12,000.00 for public records in violation of the *Freedom of Information Act* and its own

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ordinances. It wanted to charge her $72.00 an hour for its legal department to review all the e-mails—and remember, these are e-mails from Councilmembers from their private e-mail accounts—to determine if they were subject to release, a charge specifically prohibited by statute: "Fees may not be charged for examination and review to determine if the documents are subject to disclosure." § 30-4-30(B), S. C. Code, Ann. This record demonstrates that Beaufort County employed every dilatory and obstructionist tactic at hand, which when combined with the evidence of open hostility for the plaintiff, demonstrates she was a substantially prevailing party. As the Supreme Court said in *Sloan v. Friends of the Hunley (Hunley II*), 393 S.C. 152, 711 S.E.2d 895 (2011):

> When a public body frustrates a citizen's FOIA request to the extent that the citizen must seek relief in the courts and incur litigation costs, the public body should not be able to preclude prevailing party status to the citizen by producing the documents after litigation is filed. See *Litchfield Plantation Co. v. Georgetown County Water & Sewer Dist*., 314 S.C. 30, 34, 443 S.E.2d 574, 576 (1994) (Toal, J., concurring in part, dissenting in part) ("A governmental agency should not be allowed to stonewall an FOIA request without some penalty for its actions."); see also *Wildlands CPR v. U.S. Forest Serv.*, 558 F. Supp. 2d 1096, 1098 (D. Mont. 2008) (finding that if a complainant receives relief "via . . . unilateral change in position by the agency," he is entitled to fees under the federal FOIA statute); *Spokane Research & Def. Fund v. City of Spokane*, 117 P.3d 1117, 1125 (Wash. 2005) (*en banc*) ("[P]ermitting an agency to avoid attorney fees by disclosing the documents after the plaintiff has been forced to file a lawsuit . . . would undercut the policy behind the act." (alteration in original) (quoting *Coal. on Gov't Spying v. King County Dep't of Pub. Safety*, 801 P.2d 1009, 1013 (Wash. Ct. App. 1990))).

Once again, the importance of plaintiff's animus evidence comes into play because it demonstrates why the County adopted its harsh posture with her. Therefore, for the reasons set forth in her original motion for reconsideration, the plaintiff submits that the Court abused its discretion in refusing to award fees.

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Conclusion

For the reasons set forth in her November 19, 2020, motion for reconsideration, the plaintiff prays that the Court revise its Final Order and require the County to produce the requested public documents and to award the plaintiff fees and costs as the prevailing party.

Respectfully submitted,

/s/Thomas R. Goldstein_____

January 18, 2021

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ELECTRONICALLY FILED - 2021 Jan 19 10:45 AM - BEAUFORT - COMMON PLEAS - CASE#2019CP0700818

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BEAUFORT	)	CASE NO.: 2019-CP-07-00818
Mare Baracco,	)	
	)	
Plaintiff,	)	
versus	)	
	)	**REPLY TO COUNTY'S MEMORANDUM**
	)	**FILED JANUARY 15, 2020**
County of Beaufort,	)	
	)	
Defendant.	)	

On January 15, 2021, the County filed a memorandum of law urging the Court to reverse its decision that the realtor, Debra Regecz is not a client of the County Attorney. There, the Counting advocates that the under the "*Koval*" doctrine, the Court erred in failing to find that Debra Regecz's communications to the County are protected by attorney client privilege.

The County relies on two primary criminal cases, *U. S. v. Koval*, 296 F.2d 918 (2nd Circuit 1961), and *State v. Love*, 275 S.C. 55, 272 S.E. 2d 110 (1980). Neither of these cases support the County's position, and the only useful realization derived from the County's most recent filing is that it demonstrates how passionate local governments are with taxpayers' money in obstructing citizens who question governmental activities.

In *State v. Love*, the Court of General Sessions convicted a Richland County Magistrate for corruption, literally "obstruction of justice," including obtaining goods under false pretenses and conspiracy. The conviction rested in part upon conversations between the corrupt judge and a local lawyer. The appellant contended that the conversations should not have been allowed into evidence as they were protected by attorney client privilege. Without relying upon the "*Koval*" doctrine, the Supreme Court affirmed the convictions noting that not only does the privilege belong to the client, which in our case would be Debra Regecz and not the County, but also:

> In order to establish the privilege, it must be shown that the relationship between the parties was that of attorney and client and that the communications were of a confidential nature. In general, the burden of establishing the privilege rests upon the party asserting it.

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State v. Love at page 112

Here, the County asserts a privilege which it is (1) not authorized to assert (2) over a subject matter—the County's purchase of real estate—that cannot be stretched to encompass matters of attorney client privilege. When Beaufort County acquires a parcel of real estate, that is a matter of quintessential public interest, and there is nothing in the case law cited by the County that supports an assertion that every vendor is protected by attorney-client privilege because it provides a service or material to the County.

As for the "*Koval*" doctrine, that case, and its eponymous doctrine, also arose out of a criminal prosecution. There, an accountant, Koval, employed by a law firm, refused to answer questions about a client's capital gains returns. After the judge informed him he was not entitled to assert a privilege, he still refused to answer, and the Court held him in contempt, sentencing him to jail for a year. On appeal, after considering the issue, and relying on the 7 elements identified by *Wigmore on Evidence* as the controlling factors, the Second Circuit remanded the case back to the trial judge "to conduct his preliminary inquiry into the existence of the privilege with the jury excused."

In short, if the County is advancing the "*Koval*" doctrine in good faith and not as just the latest manifestation of its contempt for Mare Baracco, then the Court is required to summon Debra Recquesz before the Court—because the privilege, if it exists, belongs to her—and ask her if she is claiming that Tom Keaveny was her lawyer and if she was (1) seeking legal advice, (2) from a professional "in his capacity as such"; (3) engaged in communications relating to the purpose of seeking his legal advice, (4) made in confidence, (5) by Debra Resgecz, (6) and she demands that these communications be permanently protected, (7) by the County. *Koval, op. cit.*, citing *8 Wigmore, Evidence*, § 2301; Annot., 53 A.L.R. 369 (1928). Anyone reading this far, even without knowing the underlying facts, knows the County's assertion is in bad faith. Debra Reqecz is a realtor, and her service to the County is no different from a vendor who provides the legal department with legal pads. The only conclusion that flows from the County's January 15, 2021 filing is that the County is proving the remark attributed to H. L. Menken that every citizen fears she will be noticed by the government. The assertion that a real estate agent becomes the client or, as *Koval* held, the confidential, essential

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third party employee of the County is so far-fetched as to become self-refuting, and the assertion of such a spurious claim reinforces the plaintiff's original statement: there is not a case anywhere that supports the County's assertion that a real estate agent becomes a client of the County Attorney's office. The assertion that such communications are privileged demonstrates how "vital in a democratic society that public business be performed in an open and public manner so that citizens shall be advised of the performance of public officials and of the decisions that are reached in public activity and in the formulation of public policy." § 30-4-15, "Findings and purpose" S. C. Code, Ann.

Conclusion

For the reasons set forth in her November 19, 2020, motion for reconsideration, the plaintiff prays that the Court revise its Final Order and require the County to produce the requested public documents and to award the plaintiff fees and costs as the prevailing party. The justification for the imposition of fees against the County is now more apparent after its latest filing.

Respectfully submitted,

January 19, 2021

/s/Thomas R. Goldstein
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STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED
MAR 22 2021
SC Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Erin D. Dean, Special Circuit Judge

CASE NO.: 2019-CP-07-00818

Mare Baracco,.....,,,,,,,,,,,,,,,Appellant,

v

County of Beaufort,.....Respondent.

NOTICE OF APPEAL

Mare Baracco appeals the orders of the Honorable Erin Dean, dated November 13, 2020 and March 2, 2021, received by counsel on March 2, 2021.

March 19, 2021

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STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED
MAR 22 2021
SC Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Erin D. Dean, Special Circuit Judge

CASE NO.: 2019-CP-07-00818

Mare Baracco,.....,,,,,,,,,,,,,,,Appellant,

v

County of Beaufort,.....Respondent.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on the Respondent, Beaufort County by depositing a copy of it in the United States mail, postage prepaid on March 19, 2021, addressed to its attorney of record, E. Richardson LaBruce, Finger, Melnick & Brooks, P.A., P. O. Box 24005, Hilton Head Island, South Carolina 29925-4005 and also by providing a copy by electronic means.

March 19, 2021

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Erin D. Dean, Special Referee

Case No.: 2019-CP-07-00818

Mare Baracco, Appellant-Respondent,

v.

Beaufort County, Respondent-Appellant.

NOTICE OF APPEAL

Beaufort County appeals the Orders of the Honorable Erin D. Dean dated November 13, 2020, and March 2, 2021. Respondent-Appellant received a notice of appeal from Appellant-Respondent on March 19, 2021.

March 23, 2021

s/ E. Richardson LaBruce
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In the Court of Common Pleas for the
State of South Carolina, County of Beaufort

Case No.: 2019CP0700818

Mare Baracco,
Plaintiff(s),
vs.
County of Beaufort,
Defendant(s).

Transcript of Record

HEARING HELD VIA WEBEX

June 2, 2020
Beaufort, South Carolina
11:15 a.m. - 11:40 a.m.

BEFORE:
The Honorable P. Buckner

APPEARANCES

REPRESENTING THE PLAINTIFF:

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Belk, Cobb, Infinger & Goldstein, P.A.

PO Box 71121

Charleston SC 294151121

REPRESENTING DEFENDANT(S):

E. Richardson LaBruce, Esquire

PO Box 24005

Hilton Head Island SC 299254005

PROCEEDINGS

THE COURT: This is an initial hearing in this matter. It is 2019 at 818 in Beaufort. Present before me is Tommy Goldstein for the plaintiff and it is Mis -- I hope that I am pronouncing this right. Tommy, you correct me. Baracco?

MR. GOLDSTEIN: Yes, Judge.

THE COURT: B-A-R-A, Mona, C-C-O. Now I have lost Mona on the screen so let me make sure she is still -- let's wait a minute she might have run to the restroom.

THE COURT REPORTER: No, you have got me, Judge. The charger didn't plug in good, I had to make sure.

THE COURT: Okay. Let me know when you are ready.

THE COURT REPORTER: Okay. Go ahead.

THE COURT: You ready now, Mona?

THE COURT REPORTER: I am ready.

THE COURT: All right. 2019 at 818, Mr. Goldstein for the plaintiff. And Mr. LaBruce is present by video for the defendant, which is County of Beaufort. First thing, Mr. Goldstein, we are holding this status conference by WebEx because of the Corona virus. Any objection to the WebEx hearing from the plaintiff?

MR. GOLDSTEIN: None, Your Honor.

THE COURT: Any objection from the defendant, Mr. LaBruce?

MR. LABRUCE: No, Your Honor.

THE COURT: All right. Our court reporter is Mona Manley, M-A-N-L-E-Y. Any objections to the qualifications of the court reporter from the plaintiff?

MR. GOLDSTEIN: None, Your Honor.

THE COURT: From the defendant?

MR. LABRUCE: None, Your Honor.

THE COURT: All right. Now, I have read -- I haven't read all of the exhibits. It's impossible for me to do that with the amount of hearings that we are doing a day right now. And we are doing them every 15 to 20 minutes. However, this case obviously is document intensive, both of you know that. And it requires scrutiny of the documents. And in order -- the documents Mr. Richardson -- Mr. LaBruce, I'm confident that the documents are located in Beaufort County; is that correct?

MR. LABRUCE: That's correct, Your Honor.

THE COURT: And where are they located? Because I have got to think about Mr. Goldstein and his client as I think about a way to proceed here, because we obviously need to establish some standards of how this is going to be handled.

MR. LABRUCE: They are, to the best of my

knowledge, they are both -- there are paper copies at the county building, as well as electronic copies because they --

THE COURT: The county building is located in the City of Beaufort?

MR. LABRUCE: It is, Your Honor.

THE COURT: All right. And I think, clearly, this case begs for me to appoint a special referee located in Beaufort. Absolutely, as both of you know, Rule 53 -- a lot of people think that Rule 53 means that you have to consent to a special referee, that is not true. The rule says that where the parties consent, or if it's a default or a foreclosure, that it can be referred to a special referee. But in all other actions the Court may, upon application of a party or upon its own motion, direct a reference of some or all of the causes of action in the case to a special referee.

Now, I realize in referring it, that is also a cost. But I'm trying to minimize the cost here by utilizing somebody in Beaufort who would be independent in this matter. Because, frankly, we need to, and the Court needs to make that decision. Because, frankly, we need somebody completely independent because of the issues here. The issues that I see are, one, I think

that the Freedom of Information Act, obviously, is a good thing for our state. I think that I can understand a governmental entity wanting to have the county attorney review documents as to whether or not privilege exists.

On the other side of that fence, Mr. LaBruce, I think it is a little bit too much money for you to tell some person in the county that they should pay an IT person $72 an hour. So, there is obviously a dispute about the amount. I'm not saying that an attorney's fee, if an attorney has to do it, wouldn't be reasonable at $72, but I'm not sure an IT person would. So, we have got issues as to the reasonableness of fees. We also have an issue as to the attorney client privilege.

My feeling is that we need to establish where the referee can physically look at all of the documents, you raise your objections under the statute to the documents, and you notify Mr. Goldstein exactly what objections you are making so that he knows and the referee knows. You understand that, Mr. LaBruce, you understand that?

MR. LABRUCE: I do, Your Honor. I do.

THE COURT: And then the referee holds a hearing, after having a chance to review the documents, that can

reach the merits. Because the referee really needs to see the documents first and see what the objections are before she gets y'all and -- or he gets y'all in front of them to decide this. All of which should be conducted in Beaufort.

Now, Tommy, I am not suggesting that you have to be present when they are reviewed, but I want you to know you have the right to be present when they are reviewed, if you and your client wish to do so.

All right. Here is what we are going to do, because I have got to go to my next hearing. Mona, you can hear me all right?

THE COURT REPORTER: Yes, sir.

THE COURT: All right. The statute, first of all, wants you to put in here that this hearing is being held -- and I am going to do my own order, so I want y'all to listen. The hearing is being held pursuant to 30-4-100(a) of our code. I'm unable to make any type of final ruling at this initial hearing; therefore, in order to establish a scheduling order to conclude this action, this action has been delayed because of the health of Mr. Goldstein. In fact, it was delayed, it appears to me, from last summer of '19, the summer of 2019, until Mr. Goldstein wrote a letter to Judge Mullen in late January of 2020 saying that he was

healthy enough to resume and appreciated the courtesies that the Court had shown him.

I didn't get a memorandum from Beaufort County until yesterday, and then Mr. Goldstein at 8:00 this morning, filed a counter reply memorandum. It's clear to me that we need to refer this to a special referee. I'm going to appoint Erin Dean of the Beaufort County Bar as special referee. Her office is located in Beaufort. She will have immediate access to the records.

I'm going to require that you do the following, Mr. LaBruce: You will see and notify Ms. Dean of the location of the records. She will then notify both sides when she intends to come review the records. You will also notify her of what objections under the statute you have to the records. You will also advise her to exactly how much money, because I see that there was a very open-ended request. The second request for records went all the way back to 2013, which generated the largest bill.

Now, you are going to have to generate -- you are going to have to provide the special referee with the exact amount you intend to charge and the hourly rate and the reasons therefore. The special referee will then decide the reasonableness of the fee and whether

or not any exceptions under the Freedom of Information Act apply.

Both you, Mr. LaBruce, and you Mr. Goldstein, have the absolute right to watch the special referee review the records, but she can do it without anyone present if y'all agree. And then she will conduct a hearing on the merits once she's had a chance to review those records. And that hearing she can do possibly after reviewing the records by WebEx if we cannot open back up the courtroom by the time this occurs.

Does everyone understand my ruling? Any questions from you, Tommy?

MR. GOLDSTEIN: No, sir.

THE COURT: Can't hear you. Your microphone got off.

MR. GOLDSTEIN: No.

THE COURT: Any questions from you, Mr. LaBruce?

MR. LABRUCE: No, sir, Your Honor.

THE COURT: All right. Now, I want to make sure y'all understand that I want the issues narrowed for Ms. Dean. I trust her very much, Erin is a very capable lawyer. Tommy, she practices with Ned Tupper. I assume you know Ned.

MR. GOLDSTEIN: Yes, sir.

THE COURT: All right. And I have had her -- in

fact, y'all ask her about the time that I had this contentious litigant from -- I have forgotten where -- but it involved property on Hilton Head, Mr. LaBruce, one of the plantations down there, over horseback riding. I locked Ms. Dean -- I appointed her mediator and locked her in the jury room in Beaufort and told her that she couldn't come out until we had the matter resolved. It took 12 days, but she got it resolved. That is why I have great faith in her. Ask her about that experience, Tommy, when you see her.

MR. GOLDSTEIN: Yes, sir.

THE COURT: She's very kind and wonderful to have in court. I think a lot of her as a lawyer and a person. She will be excellent for this. All right. Now, I will write an order consistent with the ruling I have placed on the record so we can move this matter forward. Thank y'all for your time and your patience today. And we will get a special referee appointed.

Now, I'm going to require that you provide her, Mr. LaBruce, with all of this information within 30 days. Copying Mr. Goldstein and his client so he knows what your position is. And advise her of the location of all of the documents so she's free to go down to the county building, take a look at them. And she will be charging you time, and each of you will pay one-half of

the fee of the special referee. That way we can get it done where it doesn't take all of this amount of time.

Thank y'all very much. Please stay safe. Tommy, I'm glad that you recovered. Bless your heart. I don't want to see you have to go through any open heart surgery, or anyone else.

Mr. LaBruce, no matter what anybody says, we have got more cases in South Carolina now than we have had at any time since the virus broke out. Frankly -- and we had six deaths yesterday. That is why we are not having jury trials. We cannot ensure the safety of jurors. I can't even ensure the safety of my court reporter at this point.

My doctor tells me, just so y'all know, I asked him if I should be tested and he said, not unless you are symptomatic. And he also replied, until we get a vaccine he's not sure anybody is safe. How old are you, Tommy?

MR. GOLDSTEIN: I will be 67.

THE COURT: I'm 71 and I am diabetic, so my doctor says I'm in the ventilator category.

MR. GOLDSTEIN: Yeah, I am with you, I am there too.

THE COURT: So be real careful if you have an underlying medical condition. Thank y'all for your

time. I will prepare my own order. Hope everybody has a great day.

MR. GOLDSTEIN: Thank you, Judge.

MR. LABRUCE: Your Honor, if I may, just one clarification if you don't mind.

THE COURT: Yes, sir.

MR. LABRUCE: Because of the way that these documents were compiled, a lot of them were emails, mail strings, so 248 pages worth of documents.

THE COURT: That is just one exhibit. Your exhibit yesterday was not 248, it was 284, Mr. LaBruce.

MR. LABRUCE: Yes, sir, Your Honor. And looking at the -- I believe that exhibit was filed by the plaintiff.

THE COURT: I understand that. But I have got to know -- I have to have her know what is in dispute. Mr. Goldstein, you are going to have to prepare within 30 days also -- I am going to put it in for both of you. You are going to have to also give her what documents you are actually requesting. Because you made four requests, and some of them look like they are amendments of earlier requests.

MR. GOLDSTEIN: That is right. I'll do that.

THE COURT: All right. I want you to do that within 15 days. And then response within 30 to

Ms. Dean. And I will do an order today appointing her special referee. You understand?

MR. LABRUCE: Yes, sir.

THE COURT: That way we can get this matter moving and it's not sitting. Thank y'all very much. Everybody, have a great day. The record is closed. Mona, we will go to the next one.

(Hearing concluded.)

CERTIFICATE

STATE OF SOUTH CAROLINA:

COUNTY OF BEAUFORT:

I, MONA L. MANLEY, Court Reporter, certify that I was authorized to and did stenographically report the foregoing proceedings and that the transcript is a true and complete record of my stenographic notes.

DATED this 21st day of June, 2021.

Mona L. Manley /s/

MONA L. MANLEY
Official South Carolina Court Reporter
Circuit Reporter for the 14th Circuit
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IN THE COURT OF COMMON PLEAS
FOR THE STATE OF SOUTH CAROLINA
BEAUFORT COUNTY

TRANSCRIPT OF PROCEEDINGS
SEPTEMBER 23, 2020

MARE BARACCO,

Plaintiff,

vs. CASE NO. 2019-CP-07-00818

COUNTY OF BEAUFORT,

Defendant.

SPECIAL REFEREE: ERIN DEAN

TIME: 10:00 AM

LOCATION: VIA VIDEOCONFERENCE
CHARLESTON, SC

REPORTED BY: MACKENZIE ALLEN
CLARK & ASSOCIATES, INC.
CHARLESTON, SC 29415
843-762-6294
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THE COURT: Good morning. Thank you for being here. We are here today to hold the merits hearing in the case of Mare Baracco versus the County of Beaufort, which has civil action number 2019-CP-07-00818. The parties have submitted a joint exhibit list which contains 22 exhibits that are already entered into the record.

The Court also has submitted its own exhibit list, which has four exhibits. Three of the four are submitted into the record. The fourth exhibit, Exhibit 4, are the unredacted FOIA request responses, which I will retain under seal until such time as another tribunal request to review them.

If you would please, starting with counsel for the plaintiff, announce your appearances and who is with you.

MR. GOLDSTEIN: Thank you, Judge. Tommy Goldstein for the plaintiff. With us via whatever this web hookup is called is Mare Baracco, the plaintiff.

THE COURT: Good.

MR. LABRUCE: Good morning, Your Honor. Richardson LaBruce on behalf of Beaufort

County.

THE COURT: All right. And the order appointing me as special referee, of course, is part of the Court's file, but I do think it's important for the purposes of the transcript to just acknowledge that Judge Buckner ordered me to serve as special referee to make a determination with regard to all cause of action in this matter via his order, which was filed in the Court of Common Pleas on June 3, 2020. That's what brings us here today.

I also would like to put on the record that before beginning this merits hearing, I've certainly had an opportunity to read all of the pleadings, all the submissions of both counsel, the case law that counsel has supplied to me, as well as various e-mails trying to help us with logistics and sorting through this before we got to this point.

I think at this point I would ask each side if they wanted to make a brief opening statement, and then I believe Mr. Goldstein did want to have Ms. Baracco testify. So if that suits everyone, that's how we'll start.

MR. LABRUCE: And if I may, Your

Honor, just to jump in. And I apologize about interjecting here so early on. We had discussed a stipulation as to facts. I think the vast majority of the facts are going to be represented by the joint exhibits. And I think that that handles just about all of them. The County could call Mr. Keaveny as a witness, if necessary. He is, I believe, working from home today.

If we can agree to just a few additional facts that I neglected to incorporate within a separate agreement obviously with Mr. Goldstein's approval, but related just primarily to Mr. Keaveny being a licensed attorney in the State of South Carolina and being employed with Beaufort County since May 11, 2015. And this is -- (Technical interruption.) -- prior to that.

So if there's no objection, I would prefer to just -- (Technical interruption.) -- as we go, and if there's any objection to any of these facts that I hope we can stipulate to or take judicial notice of in advance.

THE COURT: Mr. Goldstein -- I'm sorry. You're done?

MR. LABRUCE: I am.

THE COURT: Mr. Goldstein, do you

have an objection to those facts as recited by Mr. LaBruce?

MR. GOLDSTEIN: No, with one small amendment.

THE COURT: Okay.

MR. GOLDSTEIN: I will stipulate to all of those facts, and I think the Court can take judicial knowledge of them even if I weren't -- (Technical interruption.) But I would like to add one small thing, and I don't think there will be any dispute about this, that from July 20, 2008, until October 15, 2008, Mr. Keaveny was acting as -- acting as County administrator.

THE COURT: Mr. LaBruce, your position on that?

MR. LABRUCE: So when Mr. Keaveny was appointed as interim County administrator, he continued to retain his role as County attorney until -- until -- and he was -- that interim County administrator position was taken away. So he was acting in a dual capacity at that point to kind of fill that gap. But otherwise, I certainly take notice of the fact that he was serving in two capacities at that time.

THE COURT: Okay. That being said, the stipulated facts, Mr. Goldstein, if you wanted to make a brief opening statement, that's fine or we can take testimony. Your preference.

MR. GOLDSTEIN: I am going to make a brief opening statement. I'll tell you why. Not because you require any clarification or edification. I think we can also stipulate that I'm not the sharpest tool in the shed. But I do want to make a brief opening remark and only because I think it narrows the issue and will speed this process along is the only reason I'm doing it. I'm not doing it because I need to tell you what the law is.

You probably know this is not my first rodeo with FOIA. I've handled quite a number of these. And there's a common theme that runs throughout them, including this case. And this case can be understood with reference to Section 30-4-70 of the Freedom of Information Act. That's the section that governs public meetings. And Subsection C is very brief. And with your indulgence, I'm just going to read it because I think it captures this whole case and accelerates your decision-making process.

Subsection C says, no chance meeting and -- I'm going to ask the court reporter to give me a signal if I go too fast. It says, no chance meeting, social meeting, or electronic communication may be used in circumvention of the spirit of the requirements of this chapter to act upon a matter over which the public body has supervision, control, jurisdiction, or advisory power.

And in that section -- and I bet you I've handled 50 of these FOIA cases. And that is -- I don't think I've ever handled one that that wasn't the issue in the case. And it's no different here. I understand the redactions, and I understand why they're claiming they're redacting them. But based on what Ms. Baracco learned in her other lawsuit plus piecing together the surrounding e-mails, I mean, it's clear what they're redacting.

Now, of course, you can see them. I can't. But it's clear that what they're redacting is their -- Beaufort County, like all of them, they tend to tee up their meetings by e-mail prior to having a meeting. And that's what these redactions are. These redactions are

Paul Sommerville lining up the votes and getting everything ready so that the public meeting comes just as a pretext. The real meeting is taking place in these redacted e-mails.

And as you know from our brief -- and I don't need to read you our brief, and poor Mr. LaBruce doesn't need to listen to me one second longer. I know he's tired of me. Mr. Keaveny can or cannot act in a duel capacity. I'm going to leave that an unsettled question. But once he assumed the position of County administrator, he's acting as County administrator. So whether he's allowed to act in a dual capacity or not I think is irrelevant. As County administrator, he's not acting as the lawyer.

But unfortunately, even though he's the lawyer for the County and attorney-client privilege is entitled to protection under the law, there is no attorney-client privilege for a violation of the law. You can't have an attorney -- I can't advise a client on the best manner to rob a bank. That communication is not protected. So these guys are exchanging these e-mails. And we can tell from the context in

which they're redacted that a lot of them have to do with how to get rid of applicants for the County administrator position. And they're engineering the decision in order to get Josh Gruber back.

Well, under the section I just read you, that's not proper. Moreover, they included a number of people in the e-mails that are not County employees. Moreover -- and I'll make two more points, and then I'll be quiet. Two more points. The acquisition of the two parcels of real estate after the County took a look at it, Christopher Inglese -- and it's in our exhibits. I think it's Number 14. I may be getting the number wrong. But the County concluded that the acquisition was improperly handled and was not, quote, authorized, end quote.

Well, there's no attorney-client privilege for that. And including third parties who are not County employees waives any attorney-client privilege that could exist especially when the County has established numerous times that it's improper for a County counsel member to quote, direct, a County employee. So once they're bringing third parties

in, there can be no attorney-client privilege.

And I'll let Ms. Baracco just walk you through the exhibits which flesh out the story a little bit. But that's all I want to say by way of opening, unless you have any questions.

THE COURT: No. I understand your position. Mr. LaBruce, I'm happy to have a brief opening statement on behalf of the County.

MR. LABRUCE: Thank you, Your Honor. And thank you, Mr. Goldstein. I know you say I've got to be tired of listening to your voice, but that couldn't be further from true. It's been a pleasure working with you. I've enjoyed this. I've enjoyed it tremendously working with you on this case. I'm going to get to this issue, and I will try to keep it as brief as possible, which is not necessarily my strong suit as I'm sure the Court knows from reading our briefs.

Really before you today, there's an important opportunity to shape what I see as two very underdeveloped areas of the Freedom of Information Act, areas that haven't had an opportunity to be interpreted to date and really need to be interpreted so that either the County

can confirm that what they're doing is the proper procedure or what they did after is the proper procedure or confirm that they need to modify what their process is.

I think it's clear in looking at the documents that have been produced and the briefs on record that in handling these types of FOIA -- especially as they get bigger and bigger, the requests get larger and larger -- the County is forced to always compete with two equally unappealing options because it basically breaks down into two primary issues with these and the scope of the redactions under the exception.

So when you look at it from a fee perspective, the County has a very difficult choice to make. It's either eliminate their opportunity to recover the actual direct costs that are spent in reviewing thousands -- hundreds of pages, thousands of pages of records or face a suit for potentially exceeding what constitutes a reasonable fee. And ultimately, what is reasonable for making a FOIA should be in the discretion first and foremost in the County. If you look at how they make the determination of reasonableness, they're the ones who get to set

the rights. So if the County finds it reasonable, it's reasonable subject to court oversight, which is what we have here today. The plaintiff in a couple of different areas has described the scope of the redactions and the review by the County legal department as quote, unproductive work. The South Carolina Attorney General disagrees. And there's an October 15, 1986 reading that says, when a request under the act is received by an agency, each document requested must be reviewed in its entirety to determine whether any or all of the documents are subject to disclosure.

And that was a -- that's essentially what the County has to go through on each of these cases. And the bigger and the more loaded these records requests are, the County has employees that are spending countless hours reviewing these documents. And that's coming out of the taxpayers' pockets. And that is an obviously important concern just like promoting transparency with government documents as well.

As far as the second question which really gets down to the scope of legal exemption, the legal counsel exemption, we have provided

exhausting briefs on this matter. But again, you have that sort of issue where you have these two competing public policies. You have the state-recognized goal of lending taxpayer burden by eliminating the extensive review of tens of thousands of documents. And you also have, again, that goal of transparency. That's why there is that raw exemption, at least in our opinion, under FOIA.

It's not limited to the attorney-client privilege. The general assembly could have very easily said all attorney-client privilege matters are exempt. All work product is exempt. But they didn't. They said correspondence of legal counsel to a public body. And certainly, the plaintiff has presented their position on that. Again, that balancing of factors as you can see with some of the arguments that you have today about waiver. We have those competing interests. Do we try to redact to eliminate a potential waiver issue, or do we overly redact and potentially risk violating FOIA?

Different attorneys can disagree about whether something is subject to the attorney-client privilege or whether something

should be redacted. Attorneys obviously have different opinions on those issues in this case. And so you have those competing public policy interests and competing issues that are even more compressed because of this condensed time line in which they have to respond.

So it's really important that we get that feedback from the Court today as to what the responsibilities are, where we're acting appropriately, where we may not be acting appropriately, if that's the case. And as far as the waiver issue, in looking through the documents that were produced, there's been some discussion as to whether Mr. Keaveny was serving as district County attorney or interim County administrator from July 20, 2018, to October 15, 2018. The documents that were produced, I believe, only would be a single document during that time frame to which any redactions were applied. And that was just a small one-sentence redaction that -- (Technical interruption.)

There's a one-sentence redaction in that document, and that was given the Bates Number County FOIA Number 1000273. And if you look at

the e-mail exchange below, it's a reference to an e-mail that was written while Mr. Keaveny was serving as County attorney and referencing an opinion that he provided as part of that.

Additionally, with Ms. Regecz, the realtor who was working with the County, the law is clear on what necessarily -- when third parties are going to be considered privileged persons to protect these types of communications. In our opinion, we have a realtor who is representing the purchasing acquisition sale of real property interests. You need someone who you can communicate with, have open lines of -- have an open line of communication with them so that they can adequately represent the County's interest so they can help determine time frames so that they can find the best property for the County to be able to build what the County needs to build, and that will require the exchange of some confidential information.

In this case, the County does not believe that Ms. Regecz was an unassociated or unaffiliated third party. Those communications were never intended to be waived. And while I know intent is not necessarily the standard,

certainly they intended that these documents remain confidential in these communications. And that does play into it, whether the intent was that these documents remain confidential.

And finally, just to briefly address the attorney's fees and the damages claims, as to this court's damages, we believe that's a separate section of FOIA. As far as attorney's fees, those are permissive. They are at the discretion of the trial court.

And to address, I guess, one other issue that was raised by Mr. Goldstein in his opening, electronic meetings. Electronic meetings and chance communications between members and counsel, that was not raised in the Complaint. That wasn't raised in the amended Complaint. That hasn't been briefed necessarily to date other than perhaps in the pretrial briefs submitted less than a week ago by the plaintiff.

That is an entirely different issue that we haven't had an opportunity to look into necessarily, that we haven't been able to review or consider. And it's, in our opinion, not appropriate consideration at this time. And with that, I'll turn it over to the Court. Thank you.

THE COURT: Thank you both. And when we get done, you'll have an opportunity to sum it up at the end of this if you so choose. Mr. Goldstein, as the plaintiff, go ahead and present any testimony or evidence that you want me to consider.

MR. GOLDSTEIN: I would call Mare Baracco as our witness.

THE COURT: Madam Court Reporter, can you please swear in the witness?

MARE BARACCO,

having been first duly sworn, was examined and testified as follows:

EXAMINATION

BY MR. GOLDSTEIN:

Q. May it please the Court. Mare, since you are now on the witness stand as it were, would you state your full name and address for the court reporter, please?

A. Mare Baracco. I guess I should add Deckard to that, which is my married name. 1006 Madrid Avenue, Port Royal, South Carolina 29935.

Q. Well, you've already answered my third question on my outline. Are you married?

A. Yes, I am.

Q. And how about your education? Can you give us a brief summary of your education?

A. I have a bachelor's degree in criminal justice and law enforcement science. I am also certificated by the Army Corps of Engineers. And I'm a government contractor.

Q. And in your capacity as a government contractor, are you familiar with the Freedom of Information Act?

A. Yes.

Q. Do you have an interest in local government?

A. I developed an interest in local government, yes.

Q. Why did you develop an interest in local government?

A. Well, in July of 2012 -- I'll be very brief. I was accused of an ordinance violation by a neighbor of having my dog at large. I had a hearing at the Port Royal Municipal Court. It was actually presided by Judge Tupper. It was a jury trial, and I was acquitted of wrongdoing. My neighbor, though, had some heavy political connections, and she used them to have Beaufort County, the Town of Port Royal, Beaufort County

Sheriff's Office, and the Town of Port Royal Police Department essentially join together and have the case extended to the Beaufort County Magistrate Court so that I could be retried for the same violation.

And subsequently, I began requesting FOIA because I believe that I was involved in some kind of Kafkaesque nightmare where there were other forces behind the scenes that were creating something unlawful. I made numerous FOIA requests, and they were all denied or I was given excessive charges. I did get some e-mails -- private e-mails from the Town of Port Royal which led me to believe that all of what I just said to you is correct.

So I subsequently sued Beaufort County for abusive process and conspiracy. And we received over 7,000 e-mails in response to our discovery requests. So all of the discovery was encrypted. It's interesting, in the same Citrix ShareFile that we all have that we're able to open, mine were all encrypted. So I had to have a professional printer open and print each one. It was almost $6,000 just to do that when obviously if it was the same program it could

have been easily opened the way these were. And the e-mails revealed that every hearing that I had before the magistrate was a result of ex parte communications. And that the hearing --

MR. LABRUCE: Your Honor, I'm going to have to object to --

MR. GOLDSTEIN: He doesn't have to object. I'll move on to the next question.

THE COURT: Okay.

Q. Let me move on to the next question, which really, this is what I was getting at. Are you familiar with the FOIA procedures, is what I was trying to get at?

A. Yeah. Sorry. I was making the point that it took me a really long time to get e-mails that I had been seeking for a long time. So I was really just trying to establish that I had already been acquitted of something that somehow I found myself in whole other court and I had contended that that was improper.

Q. And so are you familiar with the process for making a FOIA request?

A. Yes.

Q. Are you familiar with the charges set by local ordinances and state statutes regarding

FOIA requests?

A. Yes.

Q. Did you make a FOIA request -- and I'll try to speed things along. Did you make four FOIA requests of Beaufort County?

A. Yes.

Q. Those are the subject of this case?

A. I'm sorry?

Q. Those four FOIA requests are the subject of this case?

A. Yes.

Q. Do you have the exhibits in front of you?

A. Yes.

Q. Now, just for the Court's edification to try to summarize things a little bit, how many FOIA requests did you make?

A. I made -- well, I actually made four, but one was a --

Q. Amendment?

A. -- an amendment of one because the costs was so exorbitant, I revised it.

Q. So before the Court are really -- there was a FOIA request, then a second FOIA request that then got narrowed to a third FOIA request,

and then a fourth having to do with Alice Howard; is that correct?

A. Yes.

Q. Now, I think if we speed things along since this is a little difficult being on a computer. I'm hoping it will speed things along. Do you have the exhibits in front of you?

A. Yes.

Q. Can you just very briefly go through the 22 exhibits and explain to the Court the significance of each one? And a lot of these are not controversial, so it should only take a second.

A. The reason I requested, asked for the FOIA? Is that what you're asking me?

Q. What got you started, right. What was your initial request for?

A. I asked for property information, e-mails about two -- two sales or purchases of property in Beaufort County.

Q. And are those known as the Bostick Circle and the Broad River properties?

A. Yes.

Q. So now looking at the exhibits, just take us through the sequence of events and tell

the Court what you asked for and what the County's response was.

A. Okay. I asked for e-mails relating to the two property transactions between specific individuals and the realtor.

Q. Wait. Can I interrupt you for a second? It just occurred to me --

MR. GOLDSTEIN: Judge, these are already in evidence; is that correct?

THE COURT: That is correct, yes.

MR. GOLDSTEIN: Yeah, then I can speed things along then.

Q. Ms. Baracco, I'm going to approach it a little differently to speed things up if that's okay with you.

A. Sure.

Q. Exhibit 1 is your original request for the two parts?

(Exhibit No. 1 was marked for identification.)

A. Yes.

Q. Exhibit 2 is the County's response?

(Exhibit No. 2 was marked for identification.)

A. Correct.

Q. And did they fulfill your request for the information regarding the --

(Technical interruption.)

A. I received 276 pages. But first of all, I believe that I was overcharged because half of it was redacted. And I thought I was charged more than that I should have been anyway because I got it on a flash drive. And they were missing e-mails between a couple of the principal people. So I was questioning why half of it was redacted and any completely blacked out. So I felt like I was definitely overcharged for that reason, and I wanted to know why they were redacted, because I had specifically made the request after the County published information that the defendant had already determined that the property transaction was unauthorized. So I couldn't understand why anything was redacted.

Q. All right. Now, as for the charges, Beaufort County publishes its FOIA charges on its home web page; is that correct?

A. Yes.

Q. And they published the charges as being $7 for a flash drive?

A. Correct.

Q. And then $14 for assembly; is that correct?

MR. LABRUCE: And, Your Honor, I'm going to object as obviously leading the witness as to the answer.

MR. GOLDSTEIN: He's right. He's right. I'll withdraw the question. I'll start over. He's right. I got excited. I'm in the wrong.

THE COURT: Okay.

Q. Does Beaufort County publish its FOIA charges on its home web page?

A. Yes.

Q. Do you know what those charges are as published?

A. Yes.

Q. What are they?

A. Well, as of yesterday, which is when I checked because I knew the hearing was today and I just wanted to see if there was any changes. It was the same as it was when I made the request, which is $14 an hour for the lowest-priced person and $7 for a flash drive. And then there were other charges for maps and things that are not related to what I asked for.

Q. Is that what Beaufort County charged you --

A. No.

Q. -- on FOIA number one?

A. No.

Q. What did they charge you?

A. They just said that my payment was going to be -- the estimate was $124.66. And then when I came to pick up the flash drive -- I came there in person. They said I was due a refund of $53.66. And I didn't get any explanation as to -- I should say that I -- if I may tell the Court that I find it unproductive when I'm at the FOIA office and they don't answer any questions. So the reason why it was $124 and why I got a refund of $53.66, I don't get an explanation for anything.

THE COURT: Okay.

(Exhibit No. 3 was marked for identification.)

Q. And then Exhibit Number 3 was an e-mail from Monica Spells who was the assistant County administrator; is that correct?

A. Yeah. Her description on the Beaufort County website said she is in charge of the

Freedom of Information system or she's the administrator of the Freedom of Information system. So I thought she would be the person I should ask questions to.

Q. And Exhibit 3 is her response to you, correct?

A. Yes.

Q. And by the way, before I forget. Since you filed this suit, have you been able to obtain documents as a result of filing this suit that the County did not otherwise provide to you?

A. Yes.

Q. Okay.

A. I have.

(Exhibit No. 4 was marked for identification.)

Q. Now, Exhibit 4, that's your second FOIA request, correct, for the series of e-mails?

A. Yes.

Q. And that's one that the County told you would cost you 12 grand, correct?

A. Yes.

Q. And Exhibit 4 is your request for -- I'm sorry.

(Exhibit No. 5 was marked for

identification.)

Q. Exhibit 5 is your request for a breakdown of how they calculate it, correct?

THE COURT: Six.

A. Yes.

Q. And as a result of that, you never -- I'm leading again. I'm sorry. As a result of that, did you revise your second FOIA request to narrow it?

A. Yes.

Q. Is that Exhibit 5?

A. Hold on one second.

Q. That's where you requested any and all e-mails to/from/between psommerville@hargray.com and the following e-mail?

A. Correct.

Q. Why were you zeroed in on Paul Sommerville -- psommerville@hargray.com? Why were you interested in that particular address?

A. The same private e-mail addresses for council people were coming up in some other e-mails that I had gotten, some other FOIAs. In one of the exhibits, when we get to it, I can enlarge upon that a little bit further.

Q. Okay.

A. So that's why I asked for that e-mail.

(Exhibit No. 6 was marked for identification.)

Q. And then Exhibit 6 is your inquiry asking for clarification on the breakdown of costs, correct?

A. Yes.

(Exhibit No. 7 was marked for identification.)

Q. Exhibit 7 is your final FOIA request for Alice Howard; is that correct?

A. Yes.

(Exhibit No. 8 was marked for identification.)

THE COURT: Tommy, I think at least according to the list, you might be off by one because on my joint exhibit list, Exhibit 8 is the March 31, 2019, FOIA request for Alice Howard's e-mails.

MR. GOLDSTEIN: I must be off by one then.

THE WITNESS: It's my Exhibit 7. I have it under Exhibit 7. That was my request, and then Exhibit 8 was their reply to me. That's what I have here.

MR. GOLDSTEIN: Okay. That's what I have as well.

Q. Let me ask you this since this -- this is sort of awkward since we're all on the computer. What do you have as your Exhibit 9?

A. Is that to me?

Q. Yeah, that's to you.

A. Oh, I'm sorry.

Q. What do you have as Exhibit 9?

A. There's an e-mail between -- from Stu Rodman's private e-mail to Paul Sommerville's private e-mail, Jerry Stewart's and Alice Howard's private e-mail copied to Tom Keaveny.

Q. And is that the one that begins, starting assumptions?

A. Yes. Correct.

MR. GOLDSTEIN: Judge, is that what you have for Number 9?

THE COURT: No. They're off by one. I'm looking at the joint Exhibit list that was sent yesterday. And the same e-mail that she's referring is listed as Number 10 on my list. Mr. LaBruce, what is it on yours?

MR. LABRUCE: My list reflects what Mr. Goldstein and Ms. Baracco are going through.

I'm wondering if the question is Exhibit 1 on our list was the --

MR. GOLDSTEIN: Oh, the summary.

MR. LABRUCE: -- the summary.

MR. GOLDSTEIN: I wasn't assigning a number to the summary because it's already filed with the Court. I was just providing that to you, Your Honor, as a convenient index.

THE COURT: All right.

MR. GOLDSTEIN: So the summary -- Page 1, the summary, that is already on file as Exhibit 1 to the Complaint. And I was just resending it as an index. I thought it would be a convenient thing to go back to.

THE COURT: Okay. We're good.

(Exhibit No. 9 was marked for identification.)

Q. So now, Exhibit Number 9, the e-mail that you were just describing, tell us the significance of that.

A. This is an e-mail I had received prior to my request for these e-mails. And the date on it, which is 7/18, was very keen in terms of my reviewing it because there was a meeting on 7/23 for a vote on the new County administrator. And

this is also the second search for a County administrator. As a taxpayer, we paid for these searches.

And the first search was halted because -- and this is just from articles and the newspaper quoting council people, that there was interference with -- they were alleging there was interference with the first search in trying to seek a candidate of their preference, and that these things were going on behind the scenes.

Q. So my question is, do you have any explanation as to why Exhibit 9, the July 18, 2018, e-mail from Stu Rodman to Paul Sommerville, Jerry Stewart, Alice Howard, and Tom Keaveny, do you have an explanation as to why this document is not redacted?

A. Is that my question?

Q. Yeah. Do you know?

A. I would say to the Court -- and you know, I don't have any special knowledge of what goes on internally at Beaufort County. But on their --

MR. LABRUCE: Your Honor, I'm going to need to object because this calls for speculation as to why --

MR. GOLDSTEIN: I'll withdraw the question.

THE COURT: Thank you.

Q. Exhibit 9 is not redacted. Is that correct, Ms. Baracco?

A. Correct.

(Exhibit No. 10 was marked for identification.)

Q. Let's go to Exhibit 10. Is Exhibit 10 another example of an unredacted e-mail?

A. Yes.

(Exhibit No. 11 was marked for identification.)

Q. Exhibit 11 --

A. May I explain the --

Q. Absolutely.

A. Can I explain a little bit of this e-mail for the Court?

Q. Sure.

THE COURT: The content of the e-mail I can read, but if there's something about the -- if you know something about how it was presented to you or why it was redacted or unredacted, I'm happy to hear that.

THE WITNESS: There was a

meeting -- and again, I had been to quite a few of these council and committee meetings. And there was a meeting that was scheduled for 9/25/2018 which was to discuss two items. Well, it ended up being one item, which was the -- it was called the personal services contract, which again, was something that was an issue with Beaufort County about this personal contract that was relative to Mr. Gruber, why he left his contract. You may have read about it.

And so the meeting was not until four days from the date of this e-mail. And you know, I think -- obviously I'm reading it, and I certainly understand the topic of this e-mail. And my position is that I'm just about transparency of what is happening with our local government. And this, to me, was an example of a meeting about the meeting, about how the meeting was going to proceed. And it was, again, separate and apart from a discussion with all of council about how the meeting was going to proceed.

THE COURT: Okay.

(Exhibit No. 12 was marked for identification.)

Q. Let's move on to Exhibit 12. Exhibit 12 is -- at the beginning, it says, March 9, 2015, is the date. Do you have that document in front of you?

A. So not this other e-mail then?

Q. No. I moved on to Exhibit 12.

A. Got it.

MR. LABRUCE: Your Honor, we've tried to be very accommodating with issues of relevancy and what all can be introduced into evidence because as the judge you have a great deal of discretion with the relevancy. But Exhibit 12 and Exhibit 13, as we go through, they're not relevant to the issues in this case. The e-mails are what they are. They say what they say. And there again, irrelevant to these issues. And so we want to make sure that we put that objection on the record. Thank you.

THE COURT: I'm going to overrule the objection only to the point that I believe the plaintiff is trying to establish a motive. And so I think for that purpose, I'll allow them in. But that objection is noted.

MR. GOLDSTEIN: Thank you, Your Honor.

Q. Exhibit 12, Ms. Baracco, your Exhibit 12, does it say at the top -- very top from Lawrence McElynn?

A. McElynn.

Q. Okay. So we're on the same --

A. Yep.

Q. We're on the same page. And if you would explain the significance of that. This was filed in your other lawsuit against the County, correct?

A. Correct.

Q. And what's the significance of this?

A. Again, I was simply going to council and asking why I wasn't getting documents that I had FOIA'd for. And I was simply asking the council to determine why I was having such a difficult time in explaining the situation that I was in within Beaufort County and that I was really just trying to get information about some documents that formed the basis of these other hearings.

And this particular e-mail, after I had come to this meeting, I learned that there was another hearing that had been -- that was going to be convened at which I was the subject. And Mr. McElynn was at the time the chief magistrate

of the Magistrate Court. And Richard Brooks was the judge that was hearing the case in which I subsequently was sentenced to jail. So these, again, came to me after the fact. I did not know that while I was going before council and asking questions in a transparent manner that things were going on behind the scenes that were already sort of a fait accompli.

And I should note for the Court that that jail sentence was subsequently dismissed with a settlement of my other case.

Q. Is it fair to say that this line of e-mails, the reason that you want the Court to review them because you were the subject of these e-mails? Is that why they're in evidence?

A. Because I was the subject of the e-mails and because there was so many e-mails of which I was the subject, as you'll see going forward, which part of the basis of my asking for these e-mails are the subject of this hearing.

THE COURT: Okay. Thank you.

(Exhibit No. 13 was marked for identification.)

(Exhibit No. 14 was marked for identification.)

Q. Exhibit 14, is that a report prepared by Christopher Inglese?

A. Oh, I'm sorry. You said 14?

Q. 14, yeah, because 12 and 13 are the same -- 14, is that the report prepared by Christopher Inglese?

A. Yes. That was subsequent to the October 2018 community services meeting that I was present at when the subject of purchasing Bostick Circle and the 429 Broad River Boulevard topic were being presented. It was tied in after the facts presentation to the committee that they had not heard or gotten the information, had not known about the realtor and things like that. So I was actually present at the October meeting. And this was the subsequent report after that committee meeting.

Q. And according to the County, what conclusions did they reach with regard to the acquisition of Bostick Circle and 429 Broad River Road?

A. The assistant County attorney on Page 2 stated that, after thoroughly reviewing the record of council meetings and inquiring of appropriate staff members, I concluded that

nothing in the record demonstrates council's prior approval for nor knowledge of the specific purchase of 1 Bostick Circle as required by County Code Section 2-514 and 2-509. And then he subsequently said that, taking the statement into consideration --

Q. Is it fair to say the County concluded that the purchase was unauthorized?

MR. LABRUCE: Objection, Your Honor.

(Overlapping.)

A. -- statement by the assistant County attorney, yes.

THE COURT: Madam Court Reporter, did you get my response?

THE REPORTER: No, ma'am. Can you repeat it, please?

THE COURT: Yeah, I just said I agree with Mr. LaBruce's objection that the document speaks for itself with regard to the --

MR. GOLDSTEIN: I agree, Judge. The document does speak for itself.

(Exhibit No. 15 was marked for identification.)

Q. Now, Exhibit 15, was that Mr. Weaver's

explanation to you about the efficacy of the Beaufort County FOIA response team?

A. Correct.

(Exhibit No. 16 was marked for identification.)

Q. Now, Exhibit 16, you put that in evidence for what reason?

A. I had learned that in part from the 7,000 plus e-mails and some other e-mails that I had gotten that there was an effort to conduct intel on me and that the County had taken steps to investigate me. And I was I want to say surprised when I saw this e-mail. But I thought when it said from Alice Howard then you might find this interesting just for your intel, it sort of fit in line with the fact that I felt as though these governmental entities were personally pursuing me for reasons I found really astonishing. And I was actually really kind of frightened by it, to be honest with you.

(Exhibit No. 17 was marked for identification.)

Q. Exhibit 17, is that -- did you put that into evidence regarding the amounts charged by Beaufort County for FOIA responses?

A. Yes. If you'll note -- for the Court's attention on this e-mail, if you notice the date, this was June of 2014.

THE COURT: Correct.

A. And this is when I initially -- I was actually between attorneys then. I was trying to get information that I had been led to believe would be exculpatory. And so I had sent a FOIA to Beaufort County and to municipalities of Port Royal, Bluffton, and the City of Beaufort. And of course, I didn't know at the time I sent the e-mail, I didn't get this until my discovery in the other case. But I didn't know that they were all communicating with one another about my specific FOIA.

Q. Okay.

(Overlapping.)

A. -- to charge me, which was -- the County's charge for information was $35,500. And they were requiring a 50 percent deposit up front.

MR. LABRUCE: And, Your Honor, again, I'm going to have to object to this in particular as to relevancy. It's also arguably some other grounds as well. But from a relevancy

standpoint, this is all well before the amendments to the Freedom of Information Act governing deposits. And it has no probative value in this particular case, nor does it impact a potential motive or anything of that nature.

So we've been trying to give a lot of leeway, and I think this line of discussion has moved a little bit beyond.

THE COURT: In response to the objection, I would say certainly I understand the objection. The document has been admitted into evidence, and so it is part of our record for this hearing. And so I will let Ms. Baracco's testimony stand. But, again, like the other one, the document does speak for itself, and it has been admitted into evidence in the case. I'm going to overrule your objection at this point.

MR. LABRUCE: Thank you, Your Honor.

(Exhibit No. 18 was marked for identification.)

Q. Mr. Baracco, Exhibit 18 --

A. Yes.

Q. The judge is right. Of course, these documents do speak for itself. But what is it

that you want the Court to take away from Exhibit 18? Why do you think it's relevant or probative?

A. Well, I guess I would say to the Court that -- and I would go back a little bit to my initial -- when I began my testimony. So going back a few years, I didn't have any intersection with Beaufort County at all. I was just happily going about my life. All of a sudden, this intense -- I was noticed by the government, I guess. And most people don't want to be noticed.

And so all I was doing was exercising, as a citizen, my right to FOIA documents. And I was doing it in an appropriate manner. I was doing it lawfully. I was doing it very politely. But I couldn't have known -- I don't think anybody -- a citizen could have known about what was going on behind the scenes and the multiple people that had taken an interest in making sure I didn't get anything.

Q. Well, let me ask a follow-up question. In the County's elegantly composed reply brief -- pretrial brief, the County characterizes your FOIA requests as quote, trolling, end quote, the government. Does that term "trolling" mean

anything to you? I mean, do you know what that word means?

A. I'm not even on social media. I don't even have a Facebook account. So I'm assuming from my general understanding of the word -- no. I mean, I'm just a single -- I'm just an ordinary person. I'm not anybody extraordinary. I was just simply trying to get documents and really just get out from under what was, to me, an overwhelming situation. And I think that I'm actually -- this entire experience has been very expensive and very generally upsetting.

But I do believe that as a community if you see something wrong, you have to say it, and you have to, I guess like John Lewis said, cause good trouble. I'm not trying to be a bother to the County or to anybody, but I do think something is terribly wrong here. And I think as a community member I have a responsibility. And that's all I'm -- that's my only purpose.

MR. LABRUCE: Your Honor, I've got to object to that last question. I wanted to provide Ms. Baracco an opportunity to answer, but the quote provided by Mr. Goldstein did not accurately reflect what was in the brief. It

wasn't trolling the local government. It was quote, to troll through public records, which is a completely different connotation.

THE COURT: Noted. Thank you.

(Exhibit No. 19 was marked for identification.)

Q. Ms. Baracco, Exhibit 19, what do you want the Court to take away from Exhibit 19?

A. This was very surprising to read that the defendant would -- a representative of the defendant would feel that they needed to write to one of our state senators and let them know that the defendant was persecuting my family and abusing their power. It was very hard to read this because it has been a persecution. And that's not my words. That's the defendant saying that.

So I just wanted to let the Court know that I'm not doing anything improper in asking for documents.

(Exhibit No. 20 was marked for identification.)

Q. Exhibit 20 was Mr. Weaver's explanation to you about the charges and how they're computed so far; is that correct?

A. Actually, that was an e-mail that was sent to me. It was -- while I got the public explanation of how fabulous the Beaufort County FOIA system is and how sophisticated it is and all that sort of stuff, behind the scenes, Mr. Weaver was giving a completely different explanation, clearly, in this e-mail to a councilman's question about these fees.

And in fact, he says on the first page, he calls what they were doing a botch. He said, I have handled that botch from a managerial standpoint. So clearly there was something that was wrong with the way they were responding to me, the way I read this. And they also -- he also acknowledged that they used their personal -- a combination of personal e-mail accounts and an account provided by Beaufort County in the course of conducting business. You know, that was the defendant's acknowledgment.

THE COURT: Okay.

(Exhibit No. 21 was marked for identification.)

Q. And 21, is that more of the same kind of evidence? In other words, context evidence?

A. Yes. And just for the Court's

information, hopefully the Court can see that I was making every effort to just get information from council. I was coming to council meetings. I was asking questions. I did not know that my e-mails were being sent to the people that were determining whether or not I was going to go to jail or not. This was a complete surprise to see my e-mail being sent up to the judges.

(Exhibit No. 22 was marked for identification.)

Q. And then the final exhibit, 22, is that a copy of all of the amounts that you've paid to the County in fulfillment of your FOIA requests?

A. These are just from 2019 -- the ones I filed through April of 2019, and then I filed my suit. And that was that.

Q. And the total of those is $726.22; is that correct?

A. Yes.

Q. Now, you had to hire a lawyer to bring this FOIA case?

A. Yes.

Q. Did you enter into an agreement for an hourly rate for a lawyer to represent you in this case?

A. I did.

Q. And do you know what that hourly rate is?

A. You know, I don't have the -- I don't actually have that agreement in front of me.

Q. Okay.

A. Can I stipulate that my attorney can tell you what it is?

(Overlapping.)

Q. And how many documents have you already received as a result of bringing this action that you did not previously get in response to your FOIA requests?

A. How many additional ones did I get?

Q. Yeah.

A. Well, if you count the 167 redacted, Paul Sommerville's private e-mails, and then there was just last week, Mr. Richardson, I know that you sent a -- it was the closing document for 429 Broad River Boulevard. I think there was 10 pages.

Q. Okay.

A. Otherwise, I didn't get any of the other documents that went with the closing documents. I just wanted to say that.

Q. Did you use your best efforts to resolve the dispute before you decided to invoke the Court's jurisdiction?

A. I did.

Q. And which steps did you take prior to hiring a lawyer to try to resolve the disagreement?

A. I repeatedly e-mailed Beaufort County, specifically Monica Spells and Mr. Weaver and asked for an explanation or breakdown of the $12,000 fee and also why I was being charged the $72 an hour. And subsequently, Ms. Spells said she had forwarded my questions to the legal department and that they were going to get back to me, and then nobody ever got back to me.

Q. Do you believe that the County has treated you fairly in your request for documents?

A. No, I do not.

Q. In what way has the County treated you unfairly?

A. Well, I believe that they are unfairly redacting documents because they don't want me or possibly others to see what they're talking about. I believe they have egregiously overcharged me $72 an hour for -- to have the

County attorney review and redact e-mails. I don't believe that I am -- I should be charged that. And there's nothing that posted in the fees from Beaufort County that says anything about that -- that all e-mails have to be reviewed by an attorney at $72 an hour to review to see if there's privileged information.

I'm not trying to vex the County in any way. I simply asked for things that I believe I have a right as a citizen to see and that our community has a right to see. I didn't ask specifically for anything that was under or in litigation or the subject of any litigation. I asked for documents about an administrator -- that involved an administrator search that already closed, a real estate transaction that was determined by the defendant to be unauthorized to begin with, and just people's personal e-mail accounts to government accounts, which I believe given that Mr. Weaver acknowledged they're using the private e-mails that that would be something that we have a right to see, because I think that's the intent of the transparent, open government that we all expect and that we're all paying for.

Q. I have one final question, and then I'm going to turn you over to Mr. LaBruce. And before I ask this question, I want to apologize to Mr. LaBruce and to the Court for misquoting the brief. And I'm going to use the correct language. I apologize for saying trolling, and I should have said trolled through public documents.

At any time in your request, did you attempt to troll through public documents?

A. No.

MR. GOLDSTEIN: If you would, please answer any questions that Mr. LaBruce may have. And thank you very much.

CROSS EXAMINATION

BY MR. LABRUCE:

Q. Good morning.

A. Hello.

Q. This is our first time getting to speak. My name is Richardson LaBruce. I'm with Finger, Melnick, Brooks in Hilton Head, and we are representing Beaufort County in this matter. I will be brief on cross.

You claim that you are very familiar with FOIA and you've had some -- and you've

started to take a personal interest in submitting requests to Beaufort County and other local governments pursuant to FOIA; is that correct?

A. Yes.

Q. How many FOIA requests have you sent to Beaufort County?

A. Over -- can you be more specific?

Q. So let's say since you started submitting FOIA requests to the County, let's say two thousand -- or at least since 2016. How many FOIA requests have you sent to Beaufort County?

A. I'm not sure because if I didn't get a response, I would send the same FOIA again. You know what I'm saying? I explained earlier, I wasn't getting documents. So I'm not sure if you're referring to that. So I can't say how many.

Q. Can you estimate how many FOIA requests you've sent to Beaufort County?

A. No. I don't recall.

Q. Looking at Exhibit 22, there are a number of different County receipts and checks that reflect money being paid for FOIAs. The first one, receipt number 32, says FOIA Number

2019-000529. To the best of your knowledge, is that FOIA at issue in this case?

A. No.

Q. So the next page is receipt number 27, 2/21/2019. You have two different FOIAs, 2019-231 and 2019-220?

A. Uh-huh.

Q. To the best of your knowledge, are either of those FOIAs involved in this one?

A. Yes, the 231.

Q. Moving on. Number 26, FOIA 2019-189. Is that involved in this case?

A. No.

Q. Receipt number 25, FOIA 2019-203. Is that involved in this case?

A. No.

Q. And receipt number 24, FOIA 2017-97 and 2019-136, are either of those involved in this litigation?

A. No. I mean, I do know what those are in reference to.

Q. Again, I'm just trying to get an idea of how many FOIAs you've submitted. So how many FOIAs do you estimate that you've submitted since 2019 to Beaufort County?

A. I'm not sure. But I think just to answer your question, if I may tell the answer to the Court. Some of these were because BCGOV.net encompasses e-mails from the Sheriff's Department as well as Beaufort County. So while one would think ideally if you did an e-mail to BCGOV.net as a government e-mail, you would get the same reply. But as it happens, if you do an e-mail to the Sheriff's Department for the same e-mail that you would to Beaufort County, you get two different results.

So at least two of these had to do with -- because my case had not settled -- my case didn't settle until June of 2020. So some of these were because I would -- I was sending a FOIA to the Sheriff's Department, but I wasn't getting the same e-mails I was getting from the County. So I had to do separate e-mails and then try to match everything up. So that is part of maybe what you're asking, Mr. LaBruce, if that makes sense.

THE COURT: I think the question was how many.

A. I don't know, because like the ones between the Sheriff's Department and Beaufort

County, I did three to the Sheriff's Department, and they claimed they didn't have what I was asking for. And then I went to the County, and then they provided them. So it was confusing. And I had to try to -- I wasn't getting -- I wasn't getting the documents from the government system with one FOIA is what I'm saying.

Q. You claim that you received a FOIA production of approximately 7,000 pages; is that correct?

A. It was 7,483, I believe.

Q. And that was received from Beaufort County?

A. That was the discovery actually from Beaufort County.

Q. That was discovery in litigation?

A. Right.

Q. So that wasn't through FOIA but through discovery?

A. Well, actually, a lot of the documents that were in the discovery were documents that I had FOIA'd for in 2014 and 2015 that ended up being provided through the discovery.

Q. So some of the exhibits that you referenced earlier -- let's go with Exhibit 11

because that's the one I opened up to.

A. Hold on. Let me get that. Okay.

Q. So you received that via the discovery process as far as your litigation?

A. No, no.

Q. This is the e-mail --

A. No. I didn't receive this one through the discovery. This was through a FOIA that I had received when I asked for personal e-mails because there were personal e-mails that were in my discovery. So I just asked for separate FOIAs because the personal e-mails -- because as I was referencing earlier when I said that there was -- there were e-mails that they were doing intel on me and then there were private e-mails. And I was just -- you know, I was alarmed by that. I had no idea that I was going to be getting these e-mails when I asked for that.

Q. So what we've described as FOIA request number two and FOIA request number three and FOIA request number four in this action, those were all FOIA requests related to personal e-mails from a six-year period as to different things. Which FOIA request did you receive this particular document, Number 11, and was that a

separate FOIA request for personal e-mails?

A. That was a previous FOIA request for personal e-mails, correct. If I might just speak to the Court about these Alice Howard ones. Alice Howard is my representative regarding Port Royal. And I couldn't get any help from Alice Howard, and I never understood why until I got some of these e-mails. And I didn't know about the e-mails from her to the town manager about doing intel. And again, one of the reasons I'm asking for the e-mails was I just was alarmed that there was like an active investigation of me by council members. I couldn't understand that.

Q. Do you know if -- I know you couldn't remember your attorney's hourly rate. Do you happen to recall if it's over $72 an hour?

A. Oh, I don't know -- do I know if my attorney's over $72 an hour? Oh, definitely. Yes. For sure.

Q. And that's what the County was charging for their attorney to review records; is that correct?

A. According to the reply I got, they said it was $72 an hour. I don't know how it was calculated.

Q. And you also claimed that yesterday you looked at the County's website to determine what the current rate of the FOIA fees are?

A. Yes.

Q. Did you look and determine what the rate of the FOIA fees were when you received the replies back in 2019?

A. Yes. I actually took screenshots of the FOIA fees back then. I have it on my phone. It's the same. It hasn't changed.

Q. So you also claimed that you received additional documents by virtue of this action. By filing this action, you received documents that the County hadn't provided you otherwise; is that correct?

A. Yes, the ones that I described.

Q. And that was, again, the 167 redacted documents in response to, I believe, what we've styled FOIA request number three?

A. Yes. Correct.

MR. LABRUCE: And those are -- I'm just going to the Court's exhibit list. Those are the revised redacted documents provided by defendant, Beaufort County, on 9/3/2020 Freedom of Information Act request number 2019-459.

That's a portion of exhibit list -- of Court's Exhibit 3, correct?

THE COURT: Yes.

Q. And similarly, the other documents were -- the other document that you received was the agreement -- the brokerage agreement with Ballenger Realty and Beaufort County; is that correct?

A. Yes. And if I might say what I said earlier was, my understanding was that I was supposed to get -- from 429 Broad River Boulevard, it would have been an appraisal and other e-mails involving that transaction, but I only just recently got the closing documents. I don't know where the other documents are.

MR. LABRUCE: And, Your Honor, at this point, I would like to request the Court take judicial notice of the fact that Court's exhibit list 3 and the documents that the plaintiff claims were provided to her as a result of filing this lawsuit were provided at the request of the Court so that you could properly review those documents in accordance -- and review the exemptions.

THE COURT: Yes. Noted. Thank

you.

Q. I think probably one final question, Ms. Baracco. Do you have an idea of how many pages worth of documents you've received from Beaufort County over the last five years as part of FOIA requests?

A. Are you counting the FOIA within the discovery documents or not that?

Q. I'm counting just through FOIA requests that you have filed with Beaufort County.

A. I honestly don't know because like I said some of them were from BCGOV.net and from the Sheriff's Office, so I don't know if I'm supposed to count those or not.

Q. It would be safe to say that it's thousands and thousands of pages?

A. No. Safe not to assume that at all.

Q. So the 7,000 pages that you received earlier, that was again -- that was part of a FOIA request?

A. No. That was discovery from my other case. But some of the e-mails that I asked for in 2014 and '15 that I didn't get ended up because of discovery being included in those e-mails. So I don't know -- does that count?

I'm not sure if that counts.

MR. LABRUCE: If you'll give me just one moment to review my notes. I don't think I have any other questions, but I would just like to make sure.

Your Honor, we have no further questions.

THE COURT: Ms. Baracco, while you're under oath and technically on the stand, I just have one question for you. If I understood your testimony, the only payment that's part of Exhibit 22 that is for documents received in this litigation is a portion of receipt number 27; is that correct?

THE WITNESS: Just hold on, please, Your Honor.

THE COURT: Sure. Take your time.

THE WITNESS: Yes. That's the one that I paid for, and they just charged me for the two at the same time. So yes, that's correct.

THE COURT: And to the best of your knowledge, have you actually paid the fee for any of the other FOIA requests that are at issue in our case besides the one that's reflected in that page of Exhibit 22?

THE WITNESS: No. No, I have not.

THE COURT: Thank you for the clarification. Tommy, anything in redirect?

MR. GOLDSTEIN: Yes, Judge. Just very briefly. Less than one minute.

REDIRECT EXAMINATION

BY MR. GOLDSTEIN:

Q. Just to be clear, Ms. Baracco --

A. Yes.

Q. -- you received e-mails in your discovery requests that you had previously requested but not received?

A. Correct. Yes.

MR. GOLDSTEIN: That's it.

THE COURT: Thank you. Thank you for your testimony. Mr. Goldstein, do you have any other witnesses or evidence to put into the record?

MR. GOLDSTEIN: Well, I have evidence. I was going to submit an affidavit of attorney's fees and a bill. But normally in the past, I don't do that until the Court has made a ruling on whether the FOIA is properly brought or not, because if you decide the FOIA is not properly maintained, then we don't reach

attorney's fees. But you tell me how you want me to do it. I'll go ahead and submit it now. It may take me a couple days to put it together.

THE COURT: Yeah, let's go ahead and submit it.

MR. GOLDSTEIN: Well, now what I normally do is submit an affidavit with the bill attached to it. But then Mr. LaBruce, of course, would have the right to cross examine me should he desire to do so. So I'll just put it together and send it to Your Honor and a copy to Mr. LaBruce, and then he can decide if he wants to cross examine me. If that's okay. That's how we've done it in the past.

THE COURT: Right. I think I'm interested to see what the bills are relative to some of these issues. And so I think it will be helpful to go through the various legal issues in the case. And then if a determination is made that the plaintiff is entitled to attorney's fees, maybe we can just do a quick reconvene and Mr. LaBruce can submit any evidence that he would like in response to that issue and the opportunity to cross examine, if that works for everyone.

MR. GOLDSTEIN: That's fine with me. Now, I don't know how -- that's all the evidence on behalf of the plaintiff. I don't know how -- if you want me to make -- there's certain motions that are required by the rules to preserve appellate rights. And so I don't know as special referee if I'm supposed to make a motion to you or -- I mean, how does that work?

THE COURT: I think you probably do need to go ahead and put the motions on the record. But before we get to that, I want to get Mr. LaBruce's weigh in on the attorney's fees.

MR. GOLDSTEIN: Okay. Sure.

THE COURT: Not the issue itself, but just how -- the logistics of handling it.

MR. LABRUCE: If Your Honor determines that attorney's fees to either party are appropriate in this case, I think that's probably the best way to handle it is submitting affidavits after this hearing is over, and we can reconvene to discuss those particular affidavits if necessary.

THE COURT: Mr. Goldstein, since you have rested your case, are there any motions that you need to make?

MR. GOLDSTEIN: No, not on behalf of the plaintiff at this time. No.

THE COURT: Mr. LaBruce, anything on behalf of Beaufort County before I get into the questions that I have for you guys?

MR. LABRUCE: Yes, ma'am, Your Honor. And obviously this is, again, to preserve appellate rights, a motion for a directed verdict. So we move for a directed verdict. The plaintiff has failed to establish its claims -- or her claims under the Freedom of Information Act. The elements of improper fees from Beaufort County as a public body subject to FOIA -- although there wasn't a clear stipulation, we will stipulate that we are a public body subject to FOIA.

The plaintiff failed to produce any sort of evidence that the fees presented by the County were not reasonable. They did not present any evidence that they did not reflect the actual costs to search for -- (Inaudible.) -- or the redaction of the records, nor did they provide any sort of evidence about the prorated hourly salary to the lowest paid employee, who, in the reasonable discretion of the custodian of the

records, had that necessary skill.

They didn't question the fact that the attorneys would have the necessary skill and question to be able to review these documents to determine whether they were subject to disclosure and whether that $72 an hour fee was reasonable. We also make a directed verdict on the fact that in the letter to us dated July 28, 2020 -- this is a letter from your office to both Mr. Goldstein and myself requesting certain additional information that the plaintiff disclaimed that there was any sort of claim as to the fees on FOIA request number one. And then FOIA request numbers two, three, and four, no fees have been charged by the County to date. None have been collected by County to date. All that was provided was a reasonable estimate based on the anticipated cost of production. And there was no testimony as to the anticipated cost of production.

As far as the improper redactions, we move for a directed verdict on that issue as well. While Beaufort County is a public body subject to FOIA, the documents are public records as defined within the Freedom of Information Act.

The authority to exempt all of those documents comes from the -- comes from counsel that the redacted documents were subject to the attorney-client privilege. Obviously, that's going to be your -- (Inaudible.) -- based off of your review. But certainly, there was nothing presented by the plaintiff that would argue that those have been to any degree waived or -- that the attorney-client privilege or that the correspondence of legal counsel and exemptions should not apply to authorize the redactions that were made by Beaufort County in response to FOIA request number one and then later FOIA request number three.

THE COURT: All right.

MR. LABRUCE: And then finally, just for the record, about the compensatory damages, there's nothing -- nothing provided -- no facts suggested about compensatory damages by the plaintiff. And then again, as to attorney's fees, a directed verdict on attorney's fees because they're permissible only for the prevailing side. In any event that the Court grants a directed verdict one or both of those motions, then obviously attorney's fees should

not be granted. Thank you, Your Honor.

THE COURT: Yes. Thank you, Mr. LaBruce. I have listened carefully to all of the directed verdict motions, but I'm going to deny them at this time so that I can consider all of the evidence before I make my ruling. I appreciate that.

Anything further, Mr. Goldstein, for motion purposes before I ask my questions of you guys?

MR. GOLDSTEIN: No, ma'am.

THE COURT: Mr. LaBruce, in your motion you cleared up one of my questions because I couldn't quite get a handle on what she had actually been charged and what she had paid. And so outside the motion for a directed verdict, if you could just reiterate that for me.

MR. LABRUCE: Absolutely, Your Honor. So the only part to date was FOIA request number one, and it was a total -- I believe it was $71. It was $71. And it was based off of an initial estimate that was later reduced based off of the actual time it costs to produce the documents, which again, that's what FOIA does. You give a reasonably anticipated expense, take

25 percent, and then if you get in there and you discover that it's less, you can do the reduction.

No payments have been made for FOIA requests number two, number three, or number four. FOIA request number two obviously was later revised. And all of that was provided for the estimates of the reasonably anticipated cost of production that the County tries to provide in advance.

THE COURT: And so is it the County's intent to bill Ms. Baracco for what they produced in FOIA number three? And of course, we haven't produced documents for FOIA number four. Do you know relative what the fees are to those two?

MR. LABRUCE: We anticipate -- I don't know. I can provide what I expect. We provided what the costs were for the production in those letters for FOIA request number three. Again, it was a relatively -- and I believe that's Court Exhibit Number 2.

THE COURT: Right.

MR. LABRUCE: We provided that. I have no idea whether the County is going to try

to collect that as part of getting it. I would assume so because again, the goal is to treat all taxpayers the same way.

THE COURT: And then there was an estimate for number four, which again, the documents have not been produced based on some logistical discussions between the two of you and myself. But that charge is 389.99; is that correct? That was what was in your letter?

MR. LABRUCE: Yes, ma'am. I believe so.

THE COURT: All right.

MR. LABRUCE: And to answer that question, I would assume, again, that the County would charge those because it's another FOIA request, and it's about uniformity.

THE COURT: I did want to ask the County again relative to the request for compensatory damages, you cited to the fact that the plaintiff was not making a claim under 30-4-110. And your interpretation of the statute was that unless the plaintiff had a cause of action under that particular section of the statute, they were not entitled to compensatory damages. And so I just wanted you to flesh that

out for me a little bit.

MR. LABRUCE: Absolutely, Your Honor. So compensatory damages were added to 30-4-110. And both 30-4-110 and 30-4-100 were part of those 2017 amendments to the Freedom of Information Act. As I understand it, it would have to be an action for declaratory judgment or some other claim for a violation of FOIA. So they provided two different procedures to go through, one under 30-4-110 and then one under 30-4-100. This case is clearly proff, and it's stated in the Complaint that it's being brought under 30-4-100, which has a very limited release section in 30-4-100B regarding responsible attorney's fees. And that is discretionary.

Had that actually been brought under the different code section of 30-4-110 there, there is a -- the ability to award compensatory damages. I believe that is in Section C2. And it also has that the Court may order equitable relief as considered appropriate and also the attorney's fees. This action, again, was not brought under that section, and therefore, the County did not necessarily provide some of its defenses that it would have otherwise had

available to it under that section.

And that's where we got a little bit in in our brief about the good faith defense in our attempts to try to resolve this.

THE COURT: Mr. Goldstein, I would like to hear your position on that too, please.

MR. GOLDSTEIN: Yes, ma'am. Mr. LaBruce brings up -- and of course your questions go to the heart of the onion. When local governments circumvent the purposes of the open meetings law, they often do it by electronic communications, as we've seen in this case a number of times. And Mr. LaBruce is correct. You can bring in an action for that. However, there's a one-year statute of limitations on that.

So this action isn't brought under that section to set aside votes taken during council meetings. This is an action brought for failure to produce public documents. The purpose of citing Section C of the 100 section is to -- goes to the County's motive as to why they're redacting documents. And as for costs, yeah, he's right. She didn't pay the cost. They told her she had to pay 12 grand, and she didn't do

that. I agree with that. So yeah, she didn't pay the $12,000 and we're asking for a refund of that. Instead, she brought this lawsuit.

As a result of this lawsuit, she got the documents -- not all of them -- but she got a lot of the documents that she was seeking to get. So she's already -- even without a decision from Your Honor, she's still a prevailing party under the statute because they gave documents that they weren't willing to give her when she went by herself without a lawyer.

But more importantly, you have the unredacted documents, and now you have the unenviable task, which you didn't ask for, of going through them and deciding whether or not they are or are not properly redacted. The reason we put into evidence all of those surrounding e-mails is to show the County's animus from Ms. Baracco as a further explanation of why these redactions are taking place. The umbrella of attorney-client privilege is very broad. And if you send a letter to a lawyer and you claim attorney-client privilege, well, that's the Evening Post. That's what Berkeley County said in the Evening Post.

Finally, let me talk about compensatory damages. Now we talk about the rules of statutory construction. As every Supreme Court case on FOIA said, this is a remedial legislation that's supposed to be liberally construed in order to provide transparency. Mr. LaBruce characterized it as trolling throughout public documents. That's not what it is at all. She's asking for specific documents.

So in summary, yeah, she didn't pay the 12 grand, but they charged her. They told her you pay 12 grand or you're not getting the documents. It's a FOIA violation. The requesting of her to pay their attorney's fees for reviewing e-mails from a private e-mail involving non County employees, that's a FOIA violation. So a local government can justify anything it does. And Mr. LaBruce makes very convincing argument, but that is not in the spirit or the letter of FOIA. So I don't know if I answered your question directly or not.

THE COURT: I think you've got your point.

MR. LABRUCE: Your Honor, if I may briefly provide a little bit of a response only

as to compensatory damages. That Section 30-4-110, again, it is limited. 30-4-110(A) is a new procedure that allows public body. So if Beaufort County had brought this case and said that the request number two was overly broad or overly burdensome, which it might well have done had not the request been revised, because, again, it was six years' worth of e-mails, and there was no specificity of the subject matter. It was just six years' worth of e-mails between approximately 36 people if you look at all the different configurations.

If the County had brought that, the code allows the general assembly to determine that an individual who prevails in one of those actions is entitled to compensatory damages, and that makes sense. If you look at, frankly, the bargaining power or the financial power of the local government versus the vast majority of individuals, there's certainly more power and more financial means within the local government. And that is the basis for 30-4-110 and the compensatory damages.

It was never intended to allow an individual to bring suit against a public body

and then be awarded compensatory damages or actual damages as requested in the Complaint.

THE COURT: Great. Thank you.

MR. GOLDSTEIN: Can I make one brief reply to that? I just want to say remember, in 2017 they amended it. They added compensatory damages. Do you remember what it said before the amendment? It was a violation. So that's a pretty good indication of where the general assembly was on it. But anyway, enough said on that.

THE COURT: With regard to Ms. Regecz, the County did provide a copy of a sales agreement contract for the 429 Broad River property. I did not see one for 1 Bostick Circle. Does one exist for that property?

MS. BARACCO: Yes. I have that already. It's in the public records file.

MR. LABRUCE: Your Honor, to the best of my knowledge, I don't believe there was a separate brokerage agreement on that one. That's as far as I know. But if Ms. Baracco has one --

THE COURT: Do you want to look, because it's going to matter?

MR. LABRUCE: Absolutely.

THE COURT: Okay.

MS. BARACCO: Your Honor, I'm sorry. What I meant was there's a -- it was in the newspaper, the agreement, the sales agreement -- the executed sales agreement and the accompanied documents to that. That was published in the paper. Is that what you were asking?

THE COURT: No. I'm asking the attorneys about the seller listing agreement between the County --

MS. BARACCO: I don't have that.

THE COURT: Thank you.

Mr. LaBruce, I'll give you a little bit of time to see if you can find that because it will make a difference.

MR. LABRUCE: Absolutely, Your Honor. And again, I don't believe that there was a separate sales agreement for that, but I will verify. In neglect on my part, that agreement likely should have been part of the joint exhibit list since it was submitted to the Court. And if there's no objection from Mr. Goldstein, I would like to move to make that I guess Exhibit 23 on the joint exhibit list.

(Exhibit No. 23 was marked for identification.)

THE COURT: Mr. Goldstein, do you have an objection to that?

MR. GOLDSTEIN: Well, I would like to see it, but I don't think so.

THE COURT: He sent it. It's the document that he sent via e-mail maybe last Friday.

MR. LABRUCE: I think so. About 10 days ago or so.

MR. GOLDSTEIN: Okay. Then I have no objection. I thought you-all were talking about a new document.

MS. BARACCO: Isn't that -- that's a different property, right, that you sent? 429 Broad River Boulevard? Is that what you asked or it's 1 Bostick?

THE COURT: We have the listing agreement for 429. Mr. LaBruce is going to do a search to see if a separate agreement exists for 1 Bostick, and if so, provide it to everyone. And then I just had a couple specific questions about some of the redactions, Mr. LaBruce. So if we could look at Exhibit 1. And the -- it's in

the privileged log. The one I have is the very first one on the privileged log for FOIA request number one. And those are Bates-labeled 7 through 77. And so these are generally involving the lot that's at issue. And so my question is, was a deed assigned from the seller to Beaufort County for the property in question? And if it was, how do these particular documents fall outside of the FOIA statute 30-4-45A which talks about potential sales contracts are exempt from disclosure until such time as a deed is issued?

MR. LABRUCE: Yes, ma'am. And you said 30-4-45A?

THE COURT: Yes. Correct, sir.

MR. LABRUCE: And for some reason I'm seeing it as -- I apologize. I'm seeing it as -- is it 30-4-40? I misheard. 45A instead of -- I was looking at the wrong --

THE COURT: Do you see it now?

MR. LABRUCE: I do. Yes, ma'am.

THE COURT: Okay.

MR. LABRUCE: So the incidentally proposed contractual arrangement in the matter specifically exempted from disclosure by state law. So the public body is required to exempt

from disclosure certain information. However, those documents -- that provides again -- it doesn't exempt things that may otherwise be entitled to privilege and otherwise entitled to the attorney-client protection.

This is just to say that after a certain period of time has passed or after the -- (Technical interruption.) -- then they can no longer withhold information that had to do with negotiations, which again, makes sense from a practical standpoint. You want to be able to retain some confidentiality during the negotiation process. But also, once that -- once those negotiations are finalized and the deal is finalized, certain information should be disclosed, and that's any sort of negotiations for third parties.

THE COURT: Right.

MR. LABRUCE: The documents in question that were redacted did not have to do necessarily with those types of negotiations, but rather, again, communication and revisions to the contract that may, in fact, affect future transactions down the line. And so I believe that's why they were redacted.

THE COURT: And, Mr. Goldstein, I recognize you don't have the benefit of seeing the documents, but just curious if you want to weigh in on my question with regard to that.

MR. GOLDSTEIN: I think it's in our brief. Once the transaction is closed, it's public. There's no confidentiality in a closed transaction. While negotiating? Absolutely. But once the transaction is complete, it's all in the public domain.

THE COURT: And now if we can move to the privileged log for FOIA number three. And I'm looking -- just let me know when you've got the log pulled up.

So my question comes with the redaction of page numbers 95 through 138. And, Mr. LaBruce, it goes more towards the documents that are 96 forward as opposed to 95. Included in this redacted sectioning are executed contracts. And so I'm curious as to why they were not produced.

MR. LABRUCE: Page 95 is a brief e-mail that was from Mr. Keaveny to Paul Sommerville regarding an executed copy of a certain contract. It does not have to do with

the purchase or sale of real property as discussed in 30-4-45A, but rather, that a separate -- a separate contract that perhaps had a specific request for that contract -- some other reason why it should have been redacted or be deemed confidential, whether there's any confidentiality provision in there or any sort of trade secret information, I think it would have been disclosed.

I think the issue was that it was attached as part of a chain e-mail communications, and that was the basis for the redaction.

THE COURT: Again, Mr. Goldstein, recognizing you don't have the benefit of seeing the documents, do you have any comments regarding that issue?

MR. GOLDSTEIN: Well, I don't have them in front of me, of course, so I can't see who the list of recipients are.

THE COURT: It's an attachment. You did get revised redactions. It's County FOIA number three, Page 95. And it's dated July 26, 2018. It's from Tom Keaveny, and it's to Paul Sommerville. But those are the -- and then

there's attachments. And so my question is really was as to the attachments as opposed to the e-mail itself.

MR. GOLDSTEIN: If attachments are to contracts that have been completed, those contracts are in the public domain. It's only during negotiation that they're privileged.

THE COURT: Thank you. And then the next one is the one right underneath that, which has got Bates labels 000139 through 000140. And my question, Mr. LaBruce, is whether or not the individual that is the subject of that attachment was one of the three final candidates for the job or not?

MR. LABRUCE: Yes, ma'am, Your Honor, I believe that he was. And the redactions included within that were not limited to -- obviously not limited to correspondence or work products of legal counsel for a public body, but it also included phone numbers, Social Security numbers, and a lot of personal-identifying information that would have been -- would have been redacted and should have been redacted otherwise subject to the limitations set forth in the City of Columbia case.

THE COURT: Right. But my review was that the entire document that's found on 140 was redacted.

MR. LABRUCE: Yes, ma'am, Your Honor. And the reason that the entire document was redacted was because it was an attachment with an e-mail sent from -- communications from or to the legal department. And that's why it was redacted in its entirety instead of just doing the redaction of the private information.

THE COURT: Okay. And again, same caveat we've had, Mr. Goldstein. I know you don't have the opportunity to see the document, but are you able to comment on the question?

MR. GOLDSTEIN: Yes, I am. First of all, I agree with Mr. LaBruce 100 percent. They should never release Social Security numbers. I got a telephone call from the Supreme Court one time about that that caused me to jump in my car and drive at a high rate of speed to Columbia. So I know what can happen. So sure, they take out the Social Security and the phone numbers. Of course. But once they've narrowed down their selection to three finalists, that's all public information. And also, if you look at

a lot of the unredacted stuff that they have provided us since Ms. Baracco filed her Summons and Complaint, there's a lot of personal-identifying information in there that should have been redacted.

Now, I'm not going to make any complaints about it. I'm going to do my best to keep that to myself, having received that call from the Supreme Court one day. And I don't want anybody else to get that call. But other than Social Security and the phone numbers, if he's a finalist, they can't redact that. That's all public domain.

THE COURT: Thank you. And then the one final batch of redaction documents I had a question about is found on Page 2 of the privileged log about halfway down. It's the documents with Bates label 000175 and 000190. Let me know when you get there.

MR. LABRUCE: Yes, ma'am.

THE COURT: My question is, who is Elizabeth Ryan and who does she work for?

MR. LABRUCE: So Elizabeth Ryan --

MR. GOLDSTEIN: I can answer that.

MR. LABRUCE: She is part of -- I'm

trying to remember the -- EMD is the --

MR. GOLDSTEIN: Emergency management.

MR. LABRUCE: And again, without revealing any client confidences, obviously this was a communication dealing with declaring state of emergency. And that's why she was copied on that as an agency -- member of that agency. And she was communicating with the council and making sure that the state of emergency was drafted and brought forth.

THE COURT: But she's employed by the State; is that correct?

MR. LABRUCE: Yes, ma'am, Your Honor. She is not employed by the County, to the best of my knowledge.

THE COURT: And the reasons behind the redactions at 175 to 190 is, of course, you know, work product and attorney-client privilege. And so I guess my question is, is there another exemption that the County is asserting over these particular set of documents besides attorney-client privilege?

MR. LABRUCE: No, ma'am, Your Honor. It's just the broad correspondence or

work products of legal counsel for a public body. But no, there was no other exemption that would have applied to this.

THE COURT: And, Mr. Goldstein, now somewhat hearing what the background of these particular documents are, do you have a comment to my question?

MR. GOLDSTEIN: Yes. Clearly, not redacted. They're communicating with a state agency about -- obviously from the context, it's about Beaufort County's emergency preparedness. And I can't imagine why in the world they would want to redact that or how that would possibly be covered -- (Technical interruption.) We're right back to the Evening Post case now.

THE COURT: And that's all of the questions that I had on the particular redactions from the Court's perspective. I don't have any further questions or inquiries of the parties or the plaintiff herself, but I'm happy to hear any sort of summations that you guys want to give.

MR. GOLDSTEIN: Well, Judge, on behalf of the plaintiff, we don't have a summation. I can tell you that I am prepared right now to go through every single redacted

e-mail and give you my theory on why it should not be redacted. I think that would be redundant and that would be a burden on your time, especially since you were involuntarily drafted into this position. But again, I'll just wind up by saying we're right back to the Evening Post case. Just because you copy a lawyer on an e-mail doesn't make it protected by attorney-client privilege.

It has to be conveying confidential information. It has to be about pending litigation or something that's anticipated as being pending litigation. And, of course, I haven't seen the e-mails, but I can tell from the context in which they appear that it had nothing to do with pending litigation or anticipated litigation or anything having to do with attorney-client privilege. So I think they're being improperly withheld because I think they'll prove embarrassing to the County for violation of the electronic communication provision.

So while Mr. LaBruce is correct that we're not bringing an action under that section, it informs the reason for the redaction and pierces through the pretext to show you what the

County is really up to. And I know this is tough for you because you live in Beaufort County. I wouldn't want to be in your position. But anyway, we certainly thank you for being willing to serve involuntarily.

THE COURT: Thank you.

Mr. LaBruce, any summation or closing?

MR. LABRUCE: Yes, ma'am, Your Honor. And again, just brief. I would like to once again reiterate my thanks for your service. We know it was involuntary. And matter of fact, I would like to thank both Ms. Baracco and Mr. Goldstein for their professionalism throughout this and their willingness to accommodate the County due to a changeover in staff. So I really do thank them.

As far as this action and the issues that are before the Court, focusing on the attorney-client privilege aspect of it, we've obviously briefed the Court on what's its literal interpretation, this correspondence of legal counsel for a public body. If you look just at the document that you just most recently addressed, the County FOIA number three, 175 through 190, you take that little interpretation

of a correspondence of legal counsel for a public body, there's no requirement that the correspondence be to another -- a member of the public body or a representative of the County.

That literal interpretation is -- sets that standard. The general assembly could have easily stated attorney-client privilege information, work product, but they didn't, and they kept it broad. And in our opinion, there is at least a reasonable justification for that to eliminate the expensive and time-consuming review of attorneys to make sure that there's not this inadvertent waiver, that there is not an inadvertent waiver of attorney-client privilege information, that we're not inadvertently releasing things that should not be released for the benefit of the taxpayers.

If the Court decides to not take that literal interpretation and determines that it only applies to the attorney-client privilege information and correspondence and only through work product, I think it's essential that we reiterate, although this may have been slightly abandoned by the plaintiff through this case, is that the protections awarded to a governmental

body are no less robust than those to a private client.

The governmental bodies are entitled to protection for the attorney-client privilege. They are entitled to be -- a governmental representative should be able to communicate with their in-house counsel without fear of it being released because they're dealing with huge issues on a daily basis from employment to criminal matters to contracts that we see here and to all sorts of other matters. They're dealing with people's personal tax information.

And so there has to be some level of oversight on what is produced upon a FOIA request. Certain things still retain criminal charges if they're produced, including any sort of tax information that reveals what the -- what business license income may be or what a -- some tax information. There's all sorts of criminal liability that's out there for people who are, frankly, just trying to view these records.

We believe that the County has acted in good faith on this case and through all of these actions. We certainly appreciate Ms. Baracco's position and understand how her past interaction

with County officials could certainly color -- color what was going to be -- (Technical interruption.)

As we discussed previously, many of the individuals who are involved in those initial encounters with Ms. Baracco are no longer at the County, from the former County administrator to the former interim County administrator to the former County attorney and the former assistant County attorney. There's been a lot of turnover. And to a certain extent, they are trying to ride that ship and make sure that what's being done is appropriate through the Freedom of Information Act.

We hope that the Court will provide -- will find in our favor that everything was done properly. We believe that it was done properly, the redactions were proper. And to the extent that they weren't, we hope that the Court will provide us adequate guidance on how to best deal with these issues of competing public policy from this point onward. Thank you, Your Honor.

THE COURT: If there's nothing else, I thank both Mr. Goldstein and Mr. LaBruce for getting us through this morning for this

merits hearing. I certainly want to thank Ms. Baracco for taking her time to be with us through this hearing as well.

MS. BARACCO: Thank you.

THE COURT: I have in my notes that Mr. Goldstein is to produce an affidavit of attorney's fees and his bills, and that Mr. LaBruce is going to look for and let us know whether or not there is a separate listing agreement for the 1 Bostick Circle property. And those are the follow-ups that I have written down. Does that cover everything that you guys had written down for follow-up as well?

MR. GOLDSTEIN: Yes, ma'am.

MR. LABRUCE: I have one other follow-up I need to do, which is to provide Exhibit 23 to Clark and Associates.

THE COURT: Yes. Good. If there's nothing else, then we will conclude the hearing, and I will wait for your supplemental materials and get to work.

(The hearing was adjourned at 12:03 PM.)

CERTIFICATE OF REPORTER

I, MacKenzie Allen, Court Reporter and Notary Public in and for the State of South Carolina at Large, do hereby certify that I correctly reported the within-entitled matter and that the foregoing is a full, true and correct transcription of my shorthand notes of the testimony and/or other oral proceedings had in the said matter.

I further certify that I am neither related to nor counsel for any party to the cause pending or interested in the events thereof.

Witness my hand, I have hereunto affixed my official seal this 16th day of June, 2021, at Charleston, Charleston County, South Carolina.

MACKENZIE R. ALLEN

My commission expires
August 30, 2029

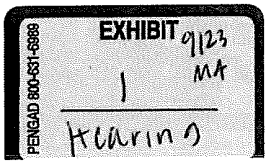
pURSUANT TO S.C. CODE §30-2-50

(A) A person or private entity shall not knowingly obtain or use Personal information obtained from a state agency, a local government, or other political subdivision of the State for commercial solicitation directed to any person in this State.

(D) A person knowingly violating the provisions of subsection (A) is guilty of a misdemeanor and, upon conviction, must be fined an amount not to exceed five hundred dollars or imprisoned for a term not to exceed one year, or both."

New Freedom of Information Act Request

First Name:	Mare
Last Name:	Baracco
Company:	n/a
Mailing Address:	n/a
City:	Beaufort
State:	SC
Zip Code:	00000
Phone Number:	000-000-0000
Email Address:	maremailmmm@yahoo.com
Pref. Method of Delivery:	Email (less than 10mb)
Information Requested:	Under the South Carolina Freedom of Information Act, 30-4-10, et seq., please provide copies of documents relative to the October 8, 2018 Community Services Meeting, attached. Thank you, Mare Baracco 1. See page 4 of the attached, paragraph 4. Please provide any documents (a resolution/record of vote/other) denoting any approval by either the DSN Board or County Council approving the sale of the Broad River property referenced, and any documentation from County Council for approval for



the deputy county administrator, Joshua Gruber, to enter into contracts to sell real property.

2. See page 4 and 5 of the attached, paragraph 5. Please provide all documentation from the realtor search referenced, including, but not limited to, a summary and/or report of the eight lots referenced and how the lot selection process was conducted. And, copies of all emails to/from the realtor, Debra Regecz, to the following email addresses relative to this search for DSN lots/real property for these homes, and 1 Bostick Circle:

jgruber@bcgov.net
tkeveaney@bcgov.net
msutton@bcgov.net
blove@bcgov.net
bcody@bcgov.net
dthomas@bcgov.net

3. See page 5 of the attached, paragraph 3. Please provide all emails to/from realtor Debra Regecz, to the following email addresses regarding drainage issues/fill/soil engineer discussions/soil testing for 1 Bostick Circle:

jgruber@bcgov.net
tkeveaney@bcgov.net
msutton@bcgov.net
blove@bcgov.net
bcody@bcgov.net
dthomas@bcgov.net

(FOIA request originally received by Mary Ellen Keough on 2/10/19 at 12:23 a.m. via email. Form data input by Bill Lisbon, FOIA Specialist, Records Management Department, Beaufort County)

Attachments

October 8 2018 Community Services Meeting.pdf

Re: ^_Beaufort^_ ^_County^_ ^_FOIA^_ ^_Request^_ ^_2019^_-^_000231^_

From: Mare Baracco (maremailmmm@yahoo.com)

To: bcfoia@bcgov.net

Date: Monday, February 11, 2019, 2:48 PM EST

01/01/2017 - 08/06/2018

Sent from my iPhone

On Feb 11, 2019, at 2:10 PM, bcfoia <bcfoia@bcgov.net> wrote:

Dear Requester,

Thank you for submitting your Freedom of Information Act (FOIA) Request. This is to confirm that Beaufort County Government has received your request under the Freedom of Information Act. Your request will be researched in the order in which it was received and as expeditiously as possible.

When it has been determined, we will inform you if any or all of your request are matters exempt from disclosure* and/or if there is a cost associated with the preparation of your data**.

Because your FOIA request requires us to potentially search millions of archived emails, our Information Technology Department asks requesters to provide the specific date range you'd like us to search. Please let me know these parameters as soon as possible so we can begin processing your request.

Your Beaufort County Freedom of Information Act case number is: 2019-000231

Sincerely,

Bill Lisbon, FOIA Specialist

Mary Ellen Keough, Director

Beaufort County Records Management

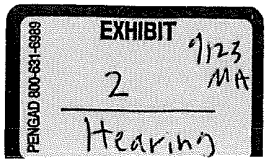
PO Drawer 1228

Beaufort, SC 29901

843-255-7200

bcfoia@bcgov.net

<image001.jpg>



RE: Beaufort County FOIA Request ^_2019^_-^_000231^_

From: Spells, Monica (mspells@bcgov.net)

To: maremailmmm@yahoo.com

Cc: bcfoia@bcgov.net; maryellenk@bcgov.net

Date: Thursday, May 2, 2019, 5:01 PM EDT

Hi Mrs. Baracco,

Good afternoon. I just forwarded your correspondence to our Legal Department (843-255-2055) for follow up. My office was not involved in the redactions.

Thank you.

Monica N. Spells, ICMA-CM

Assistant County Administrator

Beaufort County Government, SC

843-255-2354 (Office)

To sign up for news from Beaufort County Administration, click here.

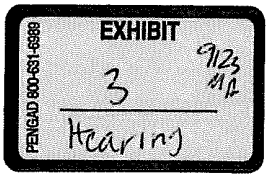
Watch and Listen | Email Us | Call Us | Meet County Council | Get Involved

Beaufort County | Post Office Drawer 1228 | Beaufort, SC 29901

From: Mare Deckard <maremailmmm@yahoo.com>
Sent: Thursday, May 2, 2019 12:50 PM
To: bcfoia <bcfoia@bcgov.net>; Keough, MaryEllen <maryellenk@bcgov.net>; Spells, Monica <mspells@bcgov.net>
Subject: Re: Beaufort County FOIA Request 2019-000231

Dear Ms. Keough and Ms. Spells,

Please see the reply, below, from BCFOIA May 1st, re my question as to FOIA 2019-000231, specifically #2 and #3, and the redactions (attached). In an effort to amiably resolve my concern, what is the County claiming as their rationale under FOIA and the SC Records and Retention Act for the redactions?
I look forward to your reply, Mare B.



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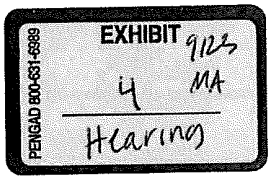
New Freedom of Information Act Request

First Name:	Mare
Last Name:	Baracco
Company:	n/a
Mailing Address:	n/a
City:	Beaufort
State:	SC
Zip Code:	00000
Phone Number:	000-000-0000
Email Address:	maremailmmm@yahoo.com
Pref. Method of Delivery:	Email (less than 10mb)
Information Requested:	Under the South Carolina Freedom of Information Act, 30-4-10, et seq., please provide copies of the following. Thank you, Mare Baracco 1. All Emails from January 1, 2013 - today: sturodman@gmail.com to/from and between any of the following email addresses: gkubic@bcgov.net; jgruber@bcgov.net; tkeveaney@bcgov.net; tvaux@bcgov.net; pjtanner@bcgov.net;



acoppage@bcgov.net; mhatfield@bcgov.net; rbrooks@bcgov.net; lmcellyn@bcgov.net; psommerville@hargray.com; mhatfield@bcgov.net; vwillis@portroyal.org; brianb@bcgov.net

2. All Emails from January 1, 2013 - today:

psommerville@hargray.com to/from and between any of the following email addresses: gkubic@bcgov.net; jgruber@bcgov.net; tkeveaney@bcgov.net; tvaux@bcgov.net; pjtanner@bcgov.net; acoppage@bcgov.net; mhatfield@bcgov.net; rbrooks@bcgov.net; lmcellyn@bcgov.net; srodman@gmail.com; mhatfield@bcgov.net; vwillis@portroyal.org; brianb@bcgov.net

3. All Emails from January 1, 2013 - today:

bjhillster@gmail.com to/from and between any of the following email addresses: gkubic@bcgov.net; jgruber@bcgov.net; pjtanner@bcgov.net; acoppage@bcgov.net; mhatfield@bcgov.net; srodman@gmail.com; mhatfield@bcgov.net; psommerville@hargray.com; brianb@bcgov.net

(FOIA request originally received by bcfoia@bcgov.net on 3/10/19 at 10:35 p.m. via email. Form data input by Bill Lisbon, FOIA Specialist, Records Management Department, Beaufort County)

Subject: Re: Beaufort County FOIA Request 2019-000385

From: Mare Baracco (maremailmmm@yahoo.com)

To: bcfoia@bcgov.net;

Date: Monday, March 18, 2019 12:10 PM

Please send me a breakdown as to how this total fee was calculated. Thanks, Mare B

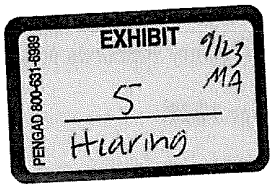
Sent from my iPhone

On Mar 18, 2019, at 12:07 PM, bcfoia <bcfoia@bcgov.net> wrote:

Dear Requester,

Thank you for submitting your Freedom of Information Act (FOIA) Request. Beaufort County is in receipt of your request for records pursuant to the South Carolina Freedom of Information Act. Your Case Number is 2019-000385.

Pursuant to Section 30-4-30 (b) of the South Carolina Code of Laws, Beaufort County is entitled to charge a fee for the actual costs incurred in producing public records pursuant to a South Carolina Freedom of Information Act request which is inclusive of both staff time and required materials/media.



The **estimated total** for this request is $12,079.00.

167 hours estimated for I.T. to search and compile emails @ $72.00/hour = $12,024.00

3 hours estimated for Records Management to compile and redact emails @ $16.00/hour = $48.00
1 flash drive = $7.00

Beaufort County requires a **deposit of 25%** of the estimated total to be collected before work will continue on this FOIA. Upon receipt of your check or money order in the amount of **$3,019.75**, we will resume gathering your requested information and will subsequently forward to you a new fee response indicating the remaining balance once that process is complete. Upon Records Management receiving the full amount due, we will provide you with the information found in response to your request.

Please make check or money order payable to ***Beaufort County Treasurer*** mail to:

Beaufort County FOIA Services

c/o Records Management

Post Office Drawer 1228

Beaufort, SC 29901-1228

To expedite this process, ***please include your case number on the check or money order.***

Please contact me if you have any questions.

Sincerely,

Whitney Snyder, FOIA Specialist

Mary Ellen Keough, Director

Beaufort County Records Management

PO Drawer 1228

Beaufort, SC 29901

843-255-7200

bcfoia@bcgov.net

<image001.jpg>

pURSUANT TO S.C. CODE §30-2-50

pURSUANT TO S.C. CODE §30-2-50

(A) A person or private entity shall not knowingly obtain or use Personal information obtained from a state agency, a local government, or other political subdivision of the State for commercial solicitation directed to any person in this State.

(D) A person knowingly violating the provisions of subsection (A) is guilty of a misdemeanor and, upon conviction, must be fined an amount not to exceed five hundred dollars or imprisoned for a term not to exceed one year, or both."

New Freedom of Information Act Request

First Name:	Mare
Last Name:	Baracco
Company:	n/a
Mailing Address:	n/a
City:	Beaufort
State:	SC
Zip Code:	00000
Phone Number:	000-000-0000
Email Address:	maremailmmm@yahoo.com
Pref. Method of Delivery:	Email (less than 10mb)
Information Requested:	Any/all emails to/from or between psommerville@hargray.com and the following email addresses, from 1/1/2013 - today: gkubic@bcgov.net; jgruber@bcgov.net; tkeveaney@bcgov.net

(FOIA request originally received by bcfoia@bcgov.net on 3/18/19 at 12:25 p.m. via email. Form data input by Bill Lisbon, FOIA Specialist, Records Management Department, Beaufort County) ,

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Attachments

- image001.jpg (9.55KB)

pURSUANT TO S.C. CODE §30-2-50

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(D) A person knowingly violating the provisions of subsection (A) is guilty of a misdemeanor and, upon conviction, must be fined an amount not to exceed five hundred dollars or imprisoned for a term not to exceed one year, or both."

From: Mare Baracco <maremailmmm@yahoo.com>
Sent: Monday, March 25, 2019 3:30 PM
To: bcfoia <bcfoia@bcgov.net>
Subject: Re: Beaufort County FOIA Request 2019-000459

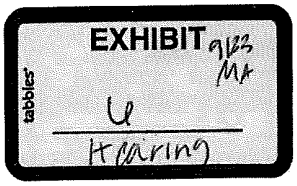
How has this Fee been determined? Please provide a breakdown of the cost, thank you.

Mare Baracco

Sent from my iPhone

On Mar 25, 2019, at 3:14 PM, bcfoia <bcfoia@bcgov.net> wrote:

> Dear Requester,
>
> Thank you for submitting your Freedom of Information Act (FOIA) Request. Beaufort County is in receipt of your request for records pursuant to the South Carolina Freedom of Information Act. Your Case Number is 2019-000459.
>
> Pursuant to Section 30-4-30 (b) of the South Carolina Code of Laws, Beaufort County is entitled to charge a fee for the actual costs incurred in producing public records pursuant to a South Carolina Freedom of Information Act request which is inclusive of both staff time and required materials/media.
>
> The **estimated total** for this request is $611.26.



Beaufort County requires a **deposit of 25%** of the estimated total to be collected before work will continue on this FOIA. Upon receipt of your check or money order in the amount of **$152.82**, we will resume gathering your requested information and will subsequently forward to you a new fee response indicating the remaining balance once that process is complete. Upon Records Management receiving the full amount due, we will provide you with the information found in response to your request.

Please make check or money order payable to ***Beaufort County Treasurer*** mail to:

Beaufort County FOIA Services

c/o Records Management

Post Office Drawer 1228

Beaufort, SC 29901-1228

To expedite this process, ***please include your case number on the check or money order***.

Please contact me if you have any questions.

Sincerely,

Whitney Snyder, FOIA Specialist

Mary Ellen Keough, Director

Beaufort County Records Management

PO Drawer 1228

Beaufort, SC 29901

843-255-7200

bcfoia@bcgov.net

<image001.jpg>

Subject: Beaufort County FOIA Request 2019-000459

From: bcfoia (bcfoia@bcgov.net)

To: maremailmmm@yahoo.com;

Date: Monday, March 25, 2019 3:35 PM

Dear Requester,

Provided below is a breakdown of the estimated fee.

0.25 hours estimated for I.T. to search and compile emails @ $49.07/hour = $12.26

8 hours estimated for Legal/Admin to sort emails @ $72.00/hour = $576.00

1 hour estimated for Records Management to redact emails and compile @ $16.00/hour = $16.00

1 flash drive = $7.00

Sincerely,

Whitney Snyder, FOIA Specialist

Mary Ellen Keough, Director

Beaufort County Records Management

PO Drawer 1228

Beaufort, SC 29901

843-255-7200

bcfoia@bcgov.net

BC Logo

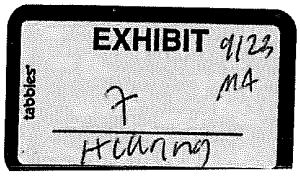
ELECTRONICALLY FILED - 2019 Apr 10 2:01 PM - BEAUFORT - COMMON PLEAS - CASE#2019CP0700818

(A) A PERSON OR PRIVATE ENTITY SHALL NOT KNOWINGLY OBTAIN OR USE PERSONAL INFORMATION OBTAINED FROM A STATE AGENCY, A LOCAL GOVERNMENT, OR OTHER POLITICAL SUBDIVISION OF THE STATE FOR COMMERCIAL SOLICITATION DIRECTED TO ANY PERSON IN THIS STATE.

(D) A PERSON KNOWINGLY VIOLATING THE PROVISIONS OF SUBSECTION (A) IS GUILTY OF A MISDEMEANOR AND, UPON CONVICTION, MUST BE FINED AN AMOUNT NOT TO EXCEED FIVE HUNDRED DOLLARS OR IMPRISONED FOR A TERM NOT TO EXCEED ONE YEAR, OR BOTH."

New Freedom of Information Act Request

First Name:	Mare
Last Name:	Baracco
Company:	n/a
Mailing Address:	n/a
City:	Beaufort
State:	SC
Zip Code:	00000
Phone Number:	000-000-0000
Email Address:	maremailmmm@yahoo.com
Pref. Method of Delivery:	Email (less than 10mb)
Information Requested:	Under the South Carolina Freedom of Information Act, 30-4-10, et seq., please provide copies of the following All emails from howardaq@hargray.com from January 1, 2015 - present, either to or between any or all these email addresses, below - Thank you, Mare Baracco gkubic@bcgov.net jgruber@bcgov.net psommerville@bcgov.net srodman@bcgov.net tvaux@bcgov.net tkeveaney@bcgov.net (FOIA request originally received by Mary Ellen Keough on 3/31/19 at 11:52 p.m. via email. Form data input by Bill Lisbon, FOIA Specialist, Records Management Department Beaufort County)



Beaufort County FOIA Request ^_2019^_-^_000575^_

From bcfoia (bcfoia@bcgov.net)

To maremailmmm@yahoo.com

Date Tuesday, April 2, 2019, 9:37 AM EDT

Dear Requester

Thank you for submitting your Freedom of Information Act (FOIA) Request Beaufort County is in receipt of your request for records pursuant to the South Carolina Freedom of Information Act Your Case Number is 2019-000575

Pursuant to Section 30-4-30 (b) of the South Carolina Code of Laws Beaufort County is entitled to charge a fee for the actual costs incurred in producing public records pursuant to a South Carolina Freedom of Information Act request which is inclusive of both staff time and required materials/media

The estimated total for this request is $1617 14

0 33 hours estimated for I T to search and compile emails @ $30 74/hour = $10 14

22 hours estimated for Legal/Admin to sort emails @ 372 00/hour = $1584 00

1 hour estimated for Records Management to compile and redact emails (if necessary) @ $16 00/hour = $16 00
1 flash drive = $7 00

Beaufort County requires a deposit of 25% of the estimated total to be collected before work will continue on this FOIA Upon receipt of your check or money order in the amount of $404.29 we will resume gathering your requested information and will subsequently forward to you a new fee response indicating the remaining balance once that process is complete Upon Records Management receiving the full amount due we will provide you with the information found in response to your request

Please make check or money order payable to *Beaufort County Treasurer* mail to

Beaufort County FOIA Services

c/o Records Management

Post Office Drawer 1228

Beaufort, SC 29901-1228

To expedite this process *please include your case number on the check or money order*

Please contact me if you have any questions

Sincerely

Whitney Snyder FOIA Specialist

Mary Ellen Keough Director

Beaufort County Records Management

PO Drawer 1228

Beaufort SC 29901

843-255-7200

bcfoia@bcgov.net

PURSUANT TO S.C CODE §30-2-50

EXHIBIT 9/23 MA 8 Hearing tabbies

Date : 7/18/2018 9:34:09 PM
From : "Stu Rodman"
To : "Sommerville, Paul" , "Jerry Stewart" , "Howard, Alice G."
Cc : "Keaveny, Thomas"
Subject : Search

All,

My strategy for your consideration:

Starting assumptions:

1. 10 Members present
2. AO is the preferred candidate by dissenters
3. WS is weak and it is highly unlikely that he would be inadvertently hired

Action #1: Stu Motions (explaining that my intent is to disqualify him) that WS be hired, such that 6 votes would be required to hire him.

Expected outcome: WS is disqualified with perhaps only 2 or 3 Members voting to hire him.

I reject starting with hiring JG, as the likely outcome (with anything less than 6 confirmed votes) is that JG is disqualified, a position that would be difficult to reverse.

Action #2: Stu observes (laying out my previously arguments that JG is a candidate and having the Parliamentarian confirm such) that JG is a candidate, which might invite a contrary Motion, with one of two outcomes, namely:

1. Chair and the Parliamentarian rule it out of order, or
2. If voted on, it fails for the lack of 6 votes.

At that point we would have two candidates, JG & OS.

While a forced vote might elect one or the other, the more likely outcome is that both candidates go down 5-5 with hurt feeling.

Action #3: Jerry Motions to go into Executive Session and see if we can resolve this somewhat Mexican stand-off.

It might be well received by the dissenters not feeling they lost on parliamentary maneuvering.

We might agree that we unanimously support the candidate with 6 votes.

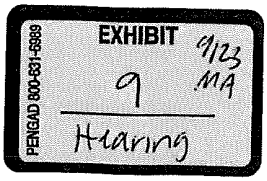
Action #4: Reconvene in public session taking one of two actions.

1. Unanimously support hiring the 6 vote candidate, or
2. Let it get messy.

Let's discuss.

Cheers,

Stu



From : "Stu Rodman"
To : "Sommerville, Paul" , "Jerry Stewart"
Cc : "Keaveny, Thomas"
Subject : Committee Members & Contentious issues

Paul,

I seldom get political but the pro and anti factions fall as follows with you voting:

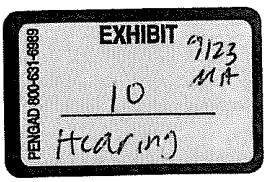
	Gang of 5	Gang of 6
Executive Committee	4 (JS, AH, SR, & PS)	2 (BF & GD)
Finance Committee	3 (JS, SR, & PS)	5 (RC, MC, GD, BF, & SF)
Community Services	3 (AH, TV, & PS)	4 (RC, MC, SF, & YG)

As such, I strongly recommend that the DSN and Personal Services Contract issues be channeled through an Executive Session of the Executive Committee as these issues will most likely spin out of control at the Finance & Community Services Committees.

The public argument, if questioned, is that the issues span multiple committees.

Cheers,

Stu



Date : 9/25/2018 11:34:04 PM
From : "Stu Rodman"
To : "Sommerville, Paul" , "Jerry Stewart"
BCc : tkeaveny@bcgov.net
Subject : Administrator

Paul and Jerry,

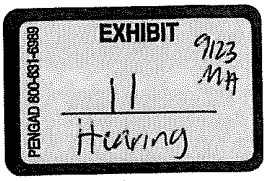
Observations:

1. Problems are opportunities.
2. The right solution is Josh for the County and his career.
3. He will come for say $225K with the Towns's blessing, and the gang of 6 can be broken.
4. Jerry and I are both capable of running the County, I would support Jerry if he wanted it, I would do it only as a last, last resort, and we both have baggage with some members.
5. We need to work this through the Executive Committee where we have 4 of 6 votes, where GD will probably come along giving us 5, and BF is the most likely of the gang of 6 to break ranks giving us 6 of 6.
6. The best short term solution is Gary who can orchestrate bringing Josh back and is a master with the press and the public.

Recommendation: A meeting of the three of us with Gary and Tom to set a strategy for bringing Josh back.

Cheers,

Stu



ELECTRONICALLY FILED - 2020 Feb 24 10:06 AM - BEAUFORT - COMMON PLEAS - CASE#2017CP0700389

From: McElynn, Lawrence P. <lmcelynn@bcgov.net>
Sent: Monday, March 09, 2015 12:40 PM
To: Brooks, Richard
Subject: Fwd: Mare Baracco

Regards.

Lawrence P McElynn
Chief Judge
The Summary Court of South Carolina
Beaufort County

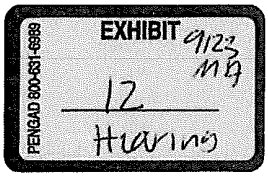
Sent from my Verizon Wireless 4G LTE smartphone

-------- Original message --------
From: "Kubic, Gary"
Date:03/09/2015 12:35 PM (GMT-05:00)
To: "McElynn, Lawrence P."
Subject: Fwd: Mare Baracco

FYI, gkubic

Gary Kubic iPhone
Beaufort County Council

Begin forwarded message:



From: Gary Kubic <gkubic@bcgov.net>
Date: March 6, 2015 at 1:56:01 PM EST
To: Paul Sommerville <psommerville@bcgov.net>
Cc: Rick Caporale <rcaporale@bcgov.net>, Joshua Gruber <jgruber@bcgov.net>, "Coppage, Allison" <acoppage@bcgov.net>
Subject: Mare Baracco

I am writing in response to a series of recent opinions that my staff and I have received regarding the case of Mare Baracco.

Some of the recent opinions suggest that the county should not pursue this matter any further.

This suggestion is one suggestion that we cannot do.

The court has issued an order which cites both a State statute and a county ordinance that the defendant, Mare Baracco, is required to follow.

Our legal department has received sworn affidavits from the Port Royal Chief of Police and the Port Royal Town Manager stating that the defendant is not in compliance with the order of the court.

The county's fiduciary responsibility and duty to the court requires that these affidavits be forwarded to the court for their judicial review.

I expect that the court with these affidavits will schedule a hearing to assess Mare Baracco's compliance to original order.

It is my suggestion that any member of our community or any elected representative who wants to submit testimony or evidence about this case should do so at this hearing.

I hope this information helps in our understanding of what the county is required to do in this matter.

Thanks, gkubic

GARY KUBIC

Beaufort County Administrator
South Carolina
bcgov.net

843-255-2006 (Office)
843-812-7605 (Mobile)
843-255-9403 (Fax)
gkubic@bcgov.net

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ELECTRONICALLY FILED - 2020 Feb 24 10:06 AM - BEAUFORT - COMMON PLEAS - CASE#2017CP0700389

From: McElynn, Lawrence P. <lmcelynn@bcgov.net>
Sent: Wednesday, March 18, 2015 10:00 AM
To: Sproatt, Rod
Subject: RE: Hearing

For sure

Regards,

Lawrence P McElynn
Chief Judge
The Summary Court of South Carolina
Beaufort County

Sent from my Verizon Wireless 4G LTE smartphone

-------- Original message --------
From: "Sproatt, Rod"
Date:03/18/2015 9:45 AM (GMT-05:00)
To: "McElynn, Lawrence P."
Subject: RE: Hearing

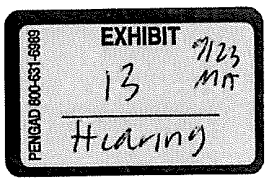
"RC" should check the credibility of his source.

From: McElynn, Lawrence P.
Sent: Wednesday, March 18, 2015 8:57 AM
To: Sproatt, Rod
Subject: Fwd: Hearing

Regards,

Lawrence P McElynn
Chief Judge
The Summary Court of South Carolina
Beaufort County

Sent from my Verizon Wireless 4G LTE smartphone



-------- Original message --------
From: "Caporale, Rick"
Date:03/17/2015 9:23 PM (GMT-05:00)
To: Mare Baracco Deckard ,"Sommerville, Paul"
Cc: "McBride, William" ,"Dawson, Gerald" ,"Fobes, Steve" ,"Bensch, Cynthia" ,"Stewart H. Rodman" ,"Vaux, Tabor" ,"Howard, Alice G." ,"Stewart, Jerry" ,"Rodman, Stewart" ,Skip Hoagland ,Ashley Landess ,Lisa Kindwall ,Cris Steele ,"Brittany L. Shane" ,Mark Lett ,apcolumbia@ap.org,Weston Newton ,Kristina Wetzel ,"Flewelling, Brian" ,"Gruber, Joshua" ,"Coppage, Allison" ,"Mary B. Lohr" ,"Kubic, Gary" ,"McElynn, Lawrence P."
Subject: RE: Hearing

Ms. Baracco:

What you may be seeing are two of the faces of government; in this case, one wearing the look of indifference and the other the mask of law.

RC

Rick Caporale
District 8
Beaufort County Council
Cell: (843) 683-1771

From: Mare Baracco Deckard [maremailmmm@yahoo.com]
Sent: Tuesday, March 17, 2015 2:53 AM
To: Sommerville, Paul
Cc: McBride, William; Dawson, Gerald; Fobes, Steve; Caporale, Rick; Bensch, Cynthia; Stewart H. Rodman; Vaux, Tabor; Howard, Alice G.; Stewart, Jerry; Rodman, Stewart; Skip Hoagland; Ashley Landess; Lisa Kindwall; Cris Steele; Brittany L. Shane; Mark Lett; apcolumbia@ap.org; Weston Newton; Kristina Wetzel; Flewelling, Brian; Gruber, Joshua; Coppage, Allison; Mary B. Lohr; Kubic, Gary
Subject: Hearing

Dear Chairman Sommerville,

We arrived home to more "doorknockers" and documents in the mail, relative to yet *another* hearing your county attorney scheduled.

As you may recall, I appeared before Council this past Monday May 9, and spoke briefly. I also asked a single question, and that was "Please provide proof this "*Notice*" is legitimate and that it was promulgated through the legal process".

To date, I have not received *any* documentation to substantiate the legality of this "*Notice*", which we contested, *for the very same reasons,* on July 9, 2012.

Before the County commits *one more penny* to what will be the *ninth* hearing on this matter, it would be prudent to substantiate this extremely questionable document. It's a more than reasonable request. Mare Baracco

ELECTRONICALLY FILED - 2020 Feb 24 10:06 AM - BEAUFORT - COMMON PLEAS - CASE#2017CP0700389

ELECTRONICALLY FILED - 2020 Feb 24 10:06 AM - BEAUFORT - COMMON PLEAS - CASE#2017CP0700389

From: McElynn, Lawrence P. <lmcelynn@bcgov.net>
Sent: Thursday, March 12, 2015 11:07 AM
To: Sproatt, Rod; Garst, Stephanie; Brooks, Richard
Subject: Fwd: Recent Paper

Fyi

Regards,

Lawrence P McElynn
Chief Judge
The Summary Court of South Carolina
Beaufort County

Sent from my Verizon Wireless 4G LTE smartphone

-------- Original message --------
From: "Kubic, Gary"
Date:03/12/2015 10:50 AM (GMT-05:00)
To: Mare Baracco Deckard
Cc: "Gruber, Joshua" ,"Coppage, Allison" ,"Bensch, Cynthia" ,"Caporale, Rick" ,"Fobes, Steve" ,"Rodman, Stewart" ,"Flewelling, Brian" ,"McBride, William" ,"Sommerville, Paul" ,"Stewart, Jerry" ,"Howard, Alice G." ,"Dawson, Gerald" ,psomerville@bcgov.net,"McElynn, Lawrence P."
ubject: Re: Recent Paper

Mare Baracco Deckard:

After reading your email, I feel it is necessary to advise you that your questions should be address to the Magistrate Court.

It is the Magistrate Court that manages and maintains the official court records.

It is also the Magistrate Court that determines whether a hearing on a judicial matter is necessary.

You should make a request to the Magistrate Court for copies of your file (your file includes the affidavits) and/or dircct to the court any questions that you may have regarding the legal proceedings set by it.

The response that you receive from the Magistrate Court will then represent the official records of the court regarding your case.

I hope this helps you.

Thanks, gkubic

On Mar 12, 2015, at 8:56 AM, Mare Baracco Deckard <maremailmmm@yahoo.com> wrote:

Dear Mr. Gruber,

I'm hoping you can provide clarity to a few questions I have regarding a hearing I understand has been, or is being, scheduled.

First, is it possible for me to have a copy of the written Order this hearing is to be based upon? And, I would like to see any affidavits that support a complaint against me, in the interest of fairness.

Also, what kind of hearing is this, exactly? By that, I mean what type of judicial process or avenue of adjudication is this hearing classified as and also, what is my designation/role in this process?

I would appreciate a prompt response, so I may review these documents as soon as possible. if you are not available to answer, I'd be fine with Ms. Coppage responding. Given her participation in this matter to date, her reply is welcome.

Thank you, Mare B.

GARY KUBIC

Beaufort County Administrator
South Carolina
bcgov.net

843-255-2026 (Office)
843-812-7605 (Mobile)
843-255-9403 (Fax)
gkubic@bcgov.net

ELECTRONICALLY FILED - 2020 Feb 24 10:06 AM - BEAUFORT - COMMON PLEAS - CASE#2017CP0700389

ELECTRONICALLY FILED - 2019 Apr 10 2:01 PM - BEAUFORT - COMMON PLEAS - CASE#2019CP0700818

(A) A PERSON OR PRIVATE ENTITY SHALL NOT KNOWINGLY OBTAIN OR USE PERSONAL INFORMATION OBTAINED FROM A STATE AGENCY, A LOCAL GOVERNMENT, OR OTHER POLITICAL SUBDIVISION OF THE STATE FOR COMMERCIAL SOLICITATION DIRECTED TO ANY PERSON IN THIS STATE.

(D) A PERSON KNOWINGLY VIOLATING THE PROVISIONS OF SUBSECTION (A) IS GUILTY OF A MISDEMEANOR AND, UPON CONVICTION, MUST BE FINED AN AMOUNT NOT TO EXCEED FIVE HUNDRED DOLLARS OR IMPRISONED FOR A TERM NOT TO EXCEED ONE YEAR, OR BOTH."

New Freedom of Information Act Request

First Name:	Mare
Last Name:	Baracco
Company:	n/a
Mailing Address:	n/a
City:	Beaufort
State:	SC
Zip Code:	00000
Phone Number:	000-000-0000
Email Address:	maremailmmm@yahoo.com
Pref. Method of Delivery:	Email (less than 10mb)
Information Requested:	Under the South Carolina Freedom of Information Act, 30-4-10, et seq., please provide copies of the following. Thank you, Mare Baracco

1. All Emails from January 1, 2013 - today:

slurodman@gmail.com to/from and between any of the following email addresses: gkubic@bcgov.net; jgruber@bcgov.net; tkeveaney@bcgov.net; tvaux@bcgov.net; pitanner@bcgov.net; acoppage@bcgov.net; mhatfield@bcgov.net, rbrooks@bcgov.net, lmcellyn@bcgov.net; psommerville@hargray.com; mhatfield@bcgov.net, vwillis@portroyal.org; brianb@bcgov.net

2. All Emails from January 1, 2013 - today:

psommerville@hargray.com to/from and between any of the following email addresses: gkubic@bcgov.net; jgruber@bcgov.net; tkeveaney@bcgov.net; tvaux@bcgov.net; pitanner@bcgov.net; acoppage@bcgov.net; mhatfield@bcgov.net, rbrooks@bcgov.net; lmcellyn@bcgov.net; srodman@gmail.com; mhatfield@bcgov.net; vwillis@portroyal.org brianb@bcgov.net

3. All Emails from January 1, 2013 - today:

bihillster@gmail.com to/from and between any of the following email addresses. gkubic@bcgov.net; jgruber@bcgov.net, pitanner@bcgov.net; acoppage@bcgov.net; mhatfield@bcgov.net; srodman@gmail.com; mhatfield@bcgov.net; psommerville@hargray.com; bnanb@bcgov.net

(FOIA request originally received by bcfoia@bcgov.net on 3/10/19 at 10.35 p m via email Form data input by Bill Lisbon, FOIA Specialist, Records Management Department, Beaufort County)

Memorandum

DATE: December 12, 2018

TO: John Weaver, Esq., Interim County Administrator

COPY: County Council Community Services Committee via Alice Howard, Chair
Monica N. Spells, Assistant County Administrator, Civic Engagement and Outreach, William Love, Executive Director, Beaufort County Disabilities and Special Needs

FROM: Christopher S. Inglese, Assistant County Attorney CSI

SUBJECT: Purchase of 1 Bostick Circle Parcel

SUMMARY OF FACTS

In recent years, the County's Disabilities and Special Needs Department (DSN) has been engaged in a fundamental shift in the way those in need are served by DSN due to state directives. Unfortunately, the process has revealed in some areas of Beaufort County, community resistance to placing DSN homes in certain neighborhoods. DSN staff have faced numerous challenges in locating new homes to better house those they serve.

The shift led to the proposed sale of the Port Royal Community Residential Facility ("the Port Royal property") via Beaufort County Council Resolution 2017-1 (attached as Exhibit A). This facility, which averages fourteen (14) DSN consumers, is aging and no longer meets the needs of those it serves. The State had the facility constructed more than 20 years ago as an Intermediate Care Facility. The facility is institutional in nature and contrary to current state program standards.

Under current state directives, DSN typically houses no more than four (4) consumers per home. Therefore, the County determined that three (3) new homes were needed to accommodate the individuals currently residing at the Port Royal property. Prior to discussion of these three (3) homes, DSN had identified the need for one (1) home based on its growing waiting list for residential services, for a total of four (4) homes needed.

DSN utilized the County's Purchasing Department for assistance in identifying the new home sites. This process led to the procurement and approval for construction of three (3) new DSN homes.

EXHIBIT 9/25 MA 14 Hearing

PENGAD 800-631-6989

DSN staff next began the search for a site for a fourth home and ultimately pursued the purchase of an undeveloped lot at 1 Bostick Circle. The DSN budget had funds available for a site in its Building Acquisitions line and ultimately the Interim County Administrator at the time of the lot purchase did execute the necessary documents for the purchase of 1 Bostick Circle.

The purchase is memorialized by a deed filed in the Beaufort County Register of Deeds at Book 3645 and Page 1772, filed February 20, 2018 and executed February 3, 2018 (attached as Exhibit B). The County purchased the property for $34.000. The former Interim County Administrator, who also served as "Special Counsel" executed the necessary documents for the purchase and stamped the deed as "Approved for Recording" on behalf of the Beaufort County Attorney. Neither the Purchasing Director, nor staff in the Legal Department, were notified of the purchase in advance. The Finance Department wired the necessary purchasing funds based on Code Section 2-509 which authorizes the Administrator's spending authority up to $50.000.

On October 8, 2018, Community Services Committee discussed the purchase and ultimately asked for a legal opinion regarding the purchase of 1 Bostick Circle. On November 13, 2018, the Committee went into Executive Session for the purpose of receiving legal advice regarding the referenced purchase.

ISSUES

1. At issue, is a provision of the Beaufort County Code of Ordinances Section 2-514 Exemption for real Property which states in pertinent part, "(b) [W]ith **prior approval of the county council**, the purchase of real property for governmental use shall be negotiated by the county administrator" (**emphasis added**). Additionally, Section 2-509 states "[U]pon request of the county council and **subject to its approval** of each transaction, perform all delegable functions in connection with acquisition and disposal of real property" (**emphasis added**).

   After thoroughly reviewing the record of council meetings, and inquiring of appropriate staff members, I concluded that nothing in the record demonstrates council's *prior approval* for, nor knowledge of, the specific purchase of 1 Bostick Circle as required by County Code Sections 2-514 and 2-509.

2. Beaufort Code Section 2-510 articulates the remaining issues. In summary, the Code acknowledges ratification of an unauthorized contract at the time the Administrator executes the contract. I imagine this provision exists to protect innocent third parties from being damaged because of technical, procurement errors. Additionally, the Code requires the following in the instance of an unauthorized contract:
   a. The department head shall prepare a written statement of facts; and
   b. What corrective action is being taken to prevent another occurrence; and
   c. What action is being taken against the individual responsible for committing the act; and
   d. Document that the price paid is fair and reasonable.

Taking these in the order listed, the statement of facts is provided herein pursuant to the request of the committee and on behalf of the Department Head. I have prepared the statement of

facts, because it is unclear from the Code, which Department Head is to prepare the statement of facts. Furthermore, the Community Services Committee requested that I make written findings pursuant to the Code Section 2-510.

Next, the corrective action needed is to pursue a full time, real estate professional on staff to assist all departments with their real estate and property management needs. A professional, staff position will help to ensure that County code requirements are met, because the licensed real estate professional will be subject to principal/agent loyalty as well as the employer/employee loyalty, thus always acting in the County's best interest. Furthermore, a real estate professional can assist the County in numerous ways beyond compliance with County codes, including but not limited to purchases such as those made through the Rural and Critical Lands Program, real estate sales/purchases for the Facilities Department and elected officials, negotiating and drafting leases, managing property management logistics/work orders and more.

Third, there is no available disciplinary action to be taken against the former Interim County Administrator for failing to follow County procedures, as he is no longer employed by Beaufort County.

Fourth, the appraisal is attached as Exhibit C. The appraisal values the property at $35,000 and demonstrates that "the price paid is fair and reasonable."

CONCLUSION

The property is owned by the County. The controversy surrounding the property has two elements. First, the unauthorized purchase by the former Interim County Administrator. The County should provide a staff position for a licensed real estate professional that can assist all departments with their real estate purchases and property management needs. There is no available disciplinary action available against the former Interim County Administrator because he is no longer employed by the County. The price paid for the property is fair and reasonable as demonstrated by the independent appraisal.

The second element is the apparent resistance from the Battery Creek neighborhood to a DSN home at 1 Bostick Circle. County Council should make a decision to either sell the property or move forward with construction of the DSN home. County Council should be cautioned against selling the property because of the perception of discrimination and probable violation of Federal laws that will most certainly be attached to such an action. Staff's recommendation is to move forward with the proposed DSN home, which we are confident will stand as another exemplary property serving DSN consumers.

----- Forwarded Message -----
From: Weaver, John <jweaver@bcgov.net>
To: maremailmmm@yahoo.com <maremailmmm@yahoo.com>
Sent: Wednesday, March 27, 2019, 4:51:31 PM EDT
Subject: FW: FOIA 2019-000385

My apology, I intended the Md. to be **Ms**.

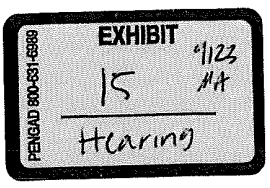
From: Weaver, John
Sent: Wednesday, March 27, 2019 4:50 PM
To: 'maremailmmm@yahoo.com' <maremailmmm@yahoo.com>
Subject: FW: FOIA 2019-000385

Md. Baracco - As you may/may not know, Beaufort County perhaps has the most sophisticated FOIA system of any county or municipality in South Carolina, including both manpower and electronic capabilities. I have complete confidence in that department and in the management oversight provided by Ms. Spells. I provide you with a response as to your inquiry of last Monday and find it to be satisfactory. Certainly you are free to contact Council with your concern, which you have done; although I tell you that neither Council nor county staff nor I have any significant impact on what can and cannot be done with FOIA inasmuch as the requirements are dictated by South Carolina statutory law. John Weaver

---

From: Spells, Monica <mspells@bcgov.net>
Sent: Monday, March 25, 2019 11:10 PM
To: Weaver, John <jweaver@bcgov.net>
Subject: FOIA 2019-000385

Sir,



From: Howard, Alice G. <ahoward@bcgov.net>
Sent: Thursday, March 12, 2015 2:15 PM
To: Van Willis
Subject: FW: island packet letters
Attachments: barrocco island packet ltrs 03.2015.pdf

Van
You might find this interesting just for your intel.
Thank you
Alice

Alice G. Howard
Beaufort County Council
District 4 - Beaufort/Town of Port Royal/Shell Point/Parris Island
Vice Chairman-Natural Resources Committee
Email: ahoward@bcgov.net
Office Phone: (843) 255-2202

From: Kubic, Gary
Sent: Thursday, March 12, 2015 9:01 AM
To: #COUNCIL
Cc: Gruber, Joshua; Coppage, Allison
Subject: island packet letters

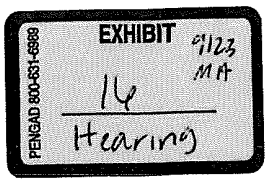
A few days ago, I received this information which I believe was intended for members of council. It is a series of five published letters by the Island Packet authored by Mare Deckard (Baracco).

gkubic

GARY KUBIC

Beaufort County Administrator
South Carolina
bcgov.net

843-255-2026 (Office)
843-812-7605 (Mobile)
843-255-9403 (Fax)
gkubic@bcgov.net



From: William B. Harvey III <bharvey@harveyandbattey.com>
Sent: Wednesday, June 11, 2014 10:59 AM
To: Coppage, Allison
Subject: RE: Mare Barraco FOIA Request

Hi Allison. I don't see anything in this letter directed to the City of Beaufort that would require response. Please correct if I am mistaken. Sounds like a mess, and I don't care to volunteer involvement LOL.

William B. Harvey, III
HARVEY & BATTEY, PA
1001 Craven Street
Post Office Drawer 1107
Beaufort, South Carolina 29901
843-524-3109
843-524-6973 fax

Confidentiality Notice: This message is intended exclusively for the individual or entity to which it is addressed. This communication may contain information that is proprietary, privileged, confidential or otherwise legally exempt from disclosure. If you are not the named addressee, you are not authorized to read, print, retain, copy or disseminate this message or any part of it. If you have received this message in error, please notify the sender immediately either by phone (843-524-3109) or reply to this e-mail and delete all copies of this message.

CIRCULAR 230 DISCLOSURE: TO ENSURE COMPLIANCE WITH REQUIREMENTS IMPOSED BY THE IRS, WE INFORM YOU THAT ANY U.S. FEDERAL TAX ADVICE CONTAINED IN THIS COMMUNICATION (INCLUDING ANY ATTACHMENTS) IS NOT INTENDED OR WRITTEN TO BE USED, AND CANNOT BE USED, FOR THE PURPOSE OF (I) AVOIDING PENALTIES UNDER THE INTERNAL REVENUE CODE OR (II) PROMOTING, MARKETING OR RECOMMENDING TO ANOTHER PARTY ANY TRANSACTION OR MATTER ADDRESSED HEREIN. THIS ADVICE MAY NOT BE FORWARDED (OTHER THAN WITHIN THE TAXPAYER TO WHICH IT HAS BEEN SENT) WITHOUT OUR EXPRESS WRITTEN CONSENT.

From: Coppage, Allison [mailto:acoppage@bcgov.net]
Sent: Wednesday, June 11, 2014 8:34 AM
To: mlohr@hghpa.com; William B. Harvey III; tfinger@fingerlaw.com
Subject: Mare Barraco FOIA Request

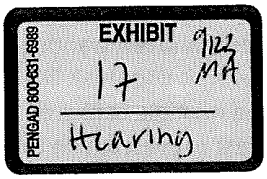
Dear all –

I hope this finds you doing well. I am writing in reference to the attached FOIA request from Mare Barraco. It is my understanding that each of your respective municipalities has received a similar request. We currently have our PIO looking at what is readily available online and what will take staff time & resources to gather. Based on the extensive nature of the request we are considering requiring a 50% deposit before processing the entire response. What I would like to know is whether the municipalities may be thinking about taking a similar approach. The County would like to respond similarly to the other parties so that there can be no issues later on about us not providing an adequate response.

For anyone that is not familiar with this matter or the requester feel free call me or send questions my direction. We have been in litigation with Ms. Barraco regarding the dangerous dog determination for a couple years and currently the matter is pending before the court of appeals.

Again, I appreciate your time and if I can be of any assistance please do not hesitate to contact me.

Allison C. Coppage
Assistant County Attorney
Beaufort County Legal Department



From: Coppage, Allison <acoppage@bcgov.net>
Sent: Monday, June 23, 2014 8:40 AM
To: William B. Harvey III
Cc: Scott Dadson (sdadson@cityofbeaufort.org); Ivette Burgess (iburgess@cityofbeaufort.org); Kathy Todd
Subject: RE: Mare Barraco FOIA Request

We have contacted each of our department heads and the employees that would have the information requested in this request. I am currently finalizing our response. We are directing her to online resources where we can, but because of the number of emails, staff time and resources etc involved the request could run close to $35,000 according to our PIO.

I will be happy to share our response once finalized, but I wanted to give you an update.

Allison C. Coppage
Assistant County Attorney
Beaufort County Legal Department

From: William B. Harvey III [mailto:bharvey@harveyandbattey.com]
Sent: Wednesday, June 11, 2014 3:42 PM
To: Coppage, Allison
Cc: Scott Dadson (sdadson@cityofbeaufort.org); Ivette Burgess (iburgess@cityofbeaufort.org); Kathy Todd
Subject: RE: Mare Barraco FOIA Request

You are correct. The city manager sent me the letter directed to the City. Generally, we charge $35 per hour for staff research time. I have no idea how much staff time it would take to compile the information requested, but we generally estimate the amount and ask for an advance check before responding to a request like this. Let me know how the County is proceeding.

William B. Harvey, III
HARVEY & BATTEY, PA
1001 Craven Street
Post Office Drawer 1107
Beaufort, South Carolina 29901
843-524-3109
843-524-6973 fax

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From: Coppage, Allison [mailto:acoppage@bcgov.net]
Sent: Wednesday, June 11, 2014 1:11 PM
To: William B. Harvey III
Subject: RE: Mare Barraco FOIA Request

I definitely understand not wanting to get involved as dealing with this has been about as much fun as chasing one's own tail. However, it does look like you all may be requested to respond. The attached letter was included in our packet which consisted multiple copies of the same request we got to every municipality and surrounding County. (she makes the same request of everyone in the cc).

Let me know if you have any questions.

Thanks

Anthony W. Barrett
Town of Bluffton
Town Manager
843.706.4500
abarrett@townofbluffton.com
bluffton
HEART OF THE LOWCOUNTRY

This email and any files transmitted with it are confidential and intended solely for the use of the individual or entity to whom they are addressed. If you have received this email in error please notify the originator of the message.

Any views expressed in this message are those of the individual sender.

From: Barrett, Anthony
Sent: Tuesday, June 10, 2014 4:35 PM
To: Terry Finger (tfinger@fingerlaw.com)
Cc: Reynolds, Joey (jreynolds@townofbluffton.com); Joe Manning (jmanning@townofbluffton.com)
Subject: FW: FOIA Request from Mare Baracco

Chief: This is the FOIA request I was speaking of. Anyone we may have arrested?

Anthony W. Barrett
Town of Bluffton
Town Manager
843.706.4500
abarrett@townofbluffton.com
bluffton
HEART OF THE LOWCOUNTRY

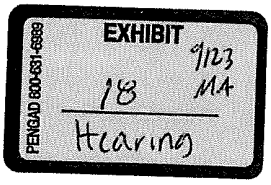
This email and any files transmitted with it are confidential and intended solely for the use of the individual or entity to whom they are addressed. If you have received this email in error please notify the originator of the message.

Any views expressed in this message are those of the individual sender.

From: Barrett, Anthony
Sent: Tuesday, June 10, 2014 3:27 PM
To: Terry Finger (tfinger@fingerlaw.com)
Cc: Mayor & Council; morlando@townofbluffton.com; Chapman, Kim; Lunceford, Sandra
Subject: FOIA Request from Mare Baracco

FOR YOUR INFORMATION AND REVIEW: Mayor and Council Members: Today we received in a US Priority Mail envelope a FOIA request that is certainly a fishing expedition. Fishing for what I do not know but it so broad. And look at who was copied on the last page.

Terry will review and let us all know what steps will need to be taken about this matter.



Anthony W. Barrett
Town of Bluffton
Town Manager

From: Caporale, Rick <rcaporale@bcgov.net>
Sent: Sunday, March 29, 2015 7:09 PM
To: Tom Davis
Subject: RE: Dangerous Animal Notice

Tom:

I wanted to add a reminder that no official has fought harder than I have to save animal lives in Beaufort County. When we were killing 6,000 of them a year at our "shelter," it wasn't an issue on anyone's radar -- except mine.

Although the persecution of the Baracco-Deckard family has been characterized and defended as a matter of public safety, there does not appear to be any logical or legal reason to perpetuate or prolong the current abuse of power.

In any event, I continue to seek some opinion or insight from you as to the merits or the issues in this matter. Thanks.

RC

Rick Caporale
District 8
Beaufort County Council
Cell: (843) 683-1771

From: Caporale, Rick
Sent: Tuesday, March 24, 2015 9:21 PM
To: Tom Davis
Subject: Dangerous Animal Notice

http://www.scstatehouse.gov/code/t47c003.php

Tom:

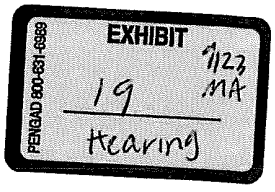
I have a problem. I am trying to track down the state statute to justify what County has perpetrated against two otherwise decent citizens of the Town of Port Royal. My take is these folks are not especially popular and, perhaps, don't have the connections to ensure their rights are not being trampled by an over-zealous County government.

What I am being told (by Josh Gruber) is that the "simple fact that their dog killed another dog" justifies the "Dangerous Animal Notice" with which they were served by Beaufort County. It has caused them no end of trouble, expense and aggravation. My honest take on this is that their adversaries are using bogus legal strategies to harass and intimidate them.

All I would ask is that you would review the statute I have attached. I cannot find anything in it that would justify Gruber's interpretations or the strictures that have been placed on the defendants via the magistrate's courts. I am also attaching a FOIA'd document that, from my perspective, further supports my contention that this whole scenario smells like a put-up job. Somebody called somebody.

In my judgment, this is exactly the kind of over-reaching, oppressive government behavior that you have always railed against. Thanks.

Rick



ELECTRONICALLY FILED - 2020 Feb 24 10:06 AM - BEAUFORT - COMMON PLEAS - CASE#2017CP0700389

RE: Information Request
Covert, Michael
Sent: Wednesday, March 27, 2019 4:34 PM
To: Weaver, John; Covert, Michael
Importance: High

My Rebuttal

Thank you John for reaching back out to me.

I must say, that this is the first set of FOIA charges I have EVER seen that were this magnanimous. It begs the question— "How is, or are, the general ordinary "John and Jane Doe" supposed to be able to afford to ask for and receive FOIA information? Under these constraints, I think it suffices to say not-that-many. If as a government body of the people, we are to be able or responsible to provide equitable and fair information for the have's and the have not's, I would respectfully request we look into the charging system we have in place, to ensure we aren't discriminating against any "body" of people based upon their financial ability or lack thereof.

Thank you again John....

Michael E Covert
Beaufort County Councilman
District 7

From: Weaver, John
Sent: Wednesday, March 27, 2019 2:18 PM
To: Covert, Michael
Subject: Information Request

His Response

Mike – based on your inquiry, I have researched the issue and provide you with the following responses. JOHN

1. In the attachments, and the email itself, there are several differing FOIA "fees" laid out here for what appears to be the same thing (IT) and those fees seem to be rather excessive. It is my understanding that we are to charge the "lowest hourly rate that applies to preparing FOIA documents"— correct?

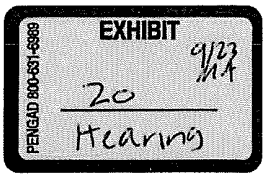
   As part of recommendations from SLED to tighten all controls over all of our information technology systems, especially those that tie to criminal justice information, the County has restricted the email search permission to only the IT Director and another senior manager in that department. A previous staff member no longer employed with the County previously searched emails at an hourly rate of $25. Staff did not update this information on their end. I have handled that botch from a managerial standpoint. The current hourly rate of the IT Director is $49.07 and the hourly rate of the other manager is $30.74. The primary email searcher is the senior manager and the IT Director is the secondary email searcher. Their availability coupled with FOIA response deadlines determines who conducts the search.

   If requested emails involve elected and appointed officials, historically, the Legal Department/County Attorney reviews these emails prior to release to ensure that privileged information is not released inadvertently.

   Staff currently uses an estimated minimum time of one minute per email for the County Attorney to review these emails. The current hourly rate of the County Attorney is $72.

2. In one set of documents, the redaction seems to be the totality of the emails and I am not understanding the "why's" of this. The sender of the email references there being third party and non-governmental emails which— I tend to agree— should not be redactable under FOIA regulations.

   The Legal Department/County Attorney determines redactions and will have to address this question. My understanding is that some elected officials use a combination of personal email accounts and an account provide by Beaufort County in the course of conducting business with other individuals using Beaufort County accounts.



Scanned by CamScanner

ELECTRONICALLY FILED - 2020 Feb 24 10:06 AM - BEAUFORT - COMMON PLEAS - CASE#2017CP0700389

From: McElynn, Lawrence P. <lmcelynn@bcgov.net>
Sent: Wednesday, March 18, 2015 10:00 AM
To: Sproatt, Rod
Subject: RE: Hearing

For sure

Regards,

Lawrence P McElynn
Chief Judge
The Summary Court of South Carolina
Beaufort County

Sent from my Verizon Wireless 4G LTE smartphone

-------- Original message --------
From: "Sproatt, Rod"
Date:03/18/2015 9:45 AM (GMT-05:00)
To: "McElynn, Lawrence P."
Subject: RE: Hearing

"RC" should check the credibility of his source.

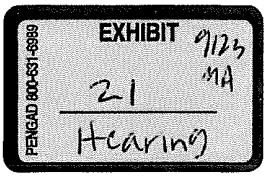
From: McElynn, Lawrence P.
Sent: Wednesday, March 18, 2015 8:57 AM
To: Sproatt, Rod
Subject: Fwd: Hearing

Regards,

Lawrence P McElynn
Chief Judge
The Summary Court of South Carolina
Beaufort County

Sent from my Verizon Wireless 4G LTE smartphone

-------- Original message --------
From: "Caporale, Rick"
Date:03/17/2015 9:23 PM (GMT-05:00)
To: Mare Baracco Deckard ,"Sommerville, Paul"
Cc: "McBride, William" ,"Dawson, Gerald" ,"Fobes, Steve" ,"Bensch, Cynthia" ,"Stewart H. Rodman" ,"Vaux, Tabor" ,"Howard, Alice G." ,"Stewart, Jerry" ,"Rodman, Stewart" ,Skip Hoagland ,Ashley Landess ,Lisa Kindwall ,Cris Steele ,"Brittany L. Shane" ,Mark Lett ,apcolumbia@ap.org,Weston Newton ,Kristina Wetzel ,"Flewelling, Brian" ,"Gruber, Joshua" ,"Coppage, Allison" ,"Mary B. Lohr" ,"Kubic, Gary" ,"McElynn, Lawrence P."
Subject: RE: Hearing



Ms. Baracco:

What you may be seeing are two of the faces of government; in this case, one wearing the look of indifference and the other the mask of law.

RC

Rick Caporale
District 8
Beaufort County Council
Cell: (843) 683-1771

From: Mare Baracco Deckard [maremailmmm@yahoo.com]
Sent: Tuesday, March 17, 2015 2:53 AM
To: Sommerville, Paul
Cc: McBride, William; Dawson, Gerald; Fobes, Steve; Caporale, Rick; Bensch, Cynthia; Stewart H. Rodman; Vaux, Tabor; Howard, Alice G.; Stewart, Jerry; Rodman, Stewart; Skip Hoagland; Ashley Landess; Lisa Kindwall; Cris Steele; Brittany L. Shane; Mark Lett; apcolumbia@ap.org; Weston Newton; Kristina Wetzel; Flewelling, Brian; Gruber, Joshua; Coppage, Allison; Mary B. Lohr; Kubic, Gary
Subject: Hearing

Dear Chairman Sommerville,

We arrived home to more "doorknockers" and documents in the mail, relative to yet *another* hearing your county attorney scheduled.

As you may recall, I appeared before Council this past Monday May 9, and spoke briefly. I also asked a single question, and that was "Please provide proof this "*Notice*" is legitimate and that it was promulgated through the legal process".

To date, I have not received *any* documentation to substantiate the legality of this "*Notice*", which we contested, *for the very same reasons,* on July 9, 2012.

Before the County commits *one more penny* to what will be the *ninth* hearing on this matter, it would be prudent to substantiate this extremely questionable document. It's a more than reasonable request. Mare Baracco

ELECTRONICALLY FILED - 2020 Feb 24 10:06 AM - BEAUFORT - COMMON PLEAS - CASE#2017CP0700389

RECEIPT No. 32

Date: 4/1/2019

Amount Received: $ _____

[M] Check, No. 4864
[ ] Money Order, No. _____

For: FOIA # 2019-000529

Money Received by: [signature]

MARECORP INC
PH. 843-321-1101
1006 MADRID AVE
PORT ROYAL, SC 29835

4864
63-8448/2631
022

4/1/2019
Date

Pay to the Order of Beaufort County
Two Hundred Eight 20/100
$ 208.23
Dollars

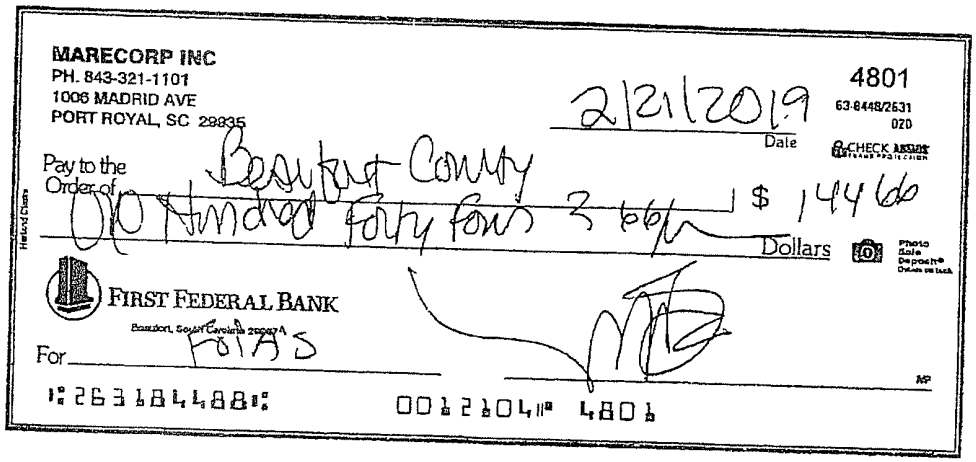
FIRST FEDERAL BANK
Port Royal, South Carolina 29935

For 0529 FOIA

⑆263184488⑆ 001210⑈ 4864

PENGAD 800-631-6989
EXHIBIT
7/23
Hearing 22

0350



MARECORP INC
PH. 843-321-1101
1006 MADRID AVE
PORT ROYAL, SC 29935

2/21/2019
Date

4801
63-8448/2631
020

Pay to the Order of Beaufort County
One Hundred forty four 3 66/100 $ 144 66
Dollars

FIRST FEDERAL BANK
Beaufort, South Carolina 29902-A

For FOIA'S

⑈263184488⑈ 001210411⑈ 4801

Date: 2-21-19 RECEIPT No. 27

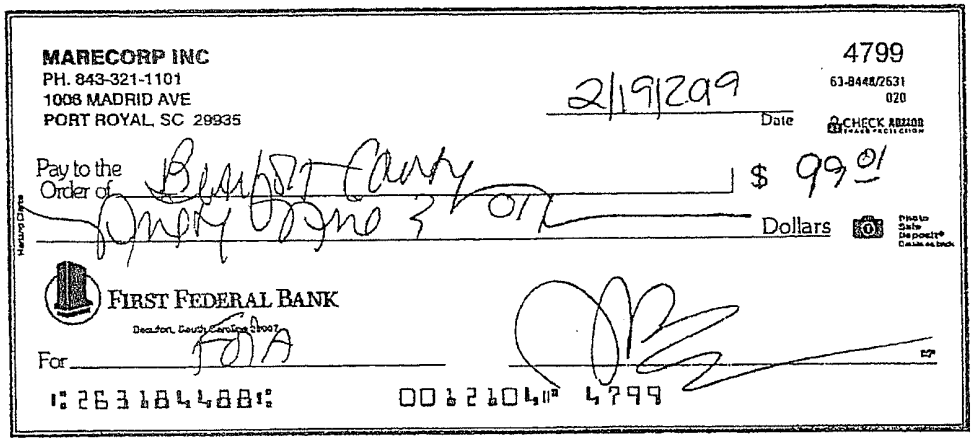
Amount Received: $ 144.66

[V] Check, No. 4801
[ ] Money Order, No. _____

For: FOIA's 2019-000231 & 2019-000220

Money Received by: Walter J Sup

0351



MARECORP INC
PH. 843-321-1101
1006 MADRID AVE
PORT ROYAL, SC 29935

4799
61-8448/2631
020

2/19/2019
Date

Pay to the Order of Beaufort County $ 99.01

Dollars

FIRST FEDERAL BANK
Beaufort, South Carolina 29902

For FOIA

⑆263184488⑆ 0016210⑈ 4799

CASH RECEIPT

Number 026

Date 2/19/2019

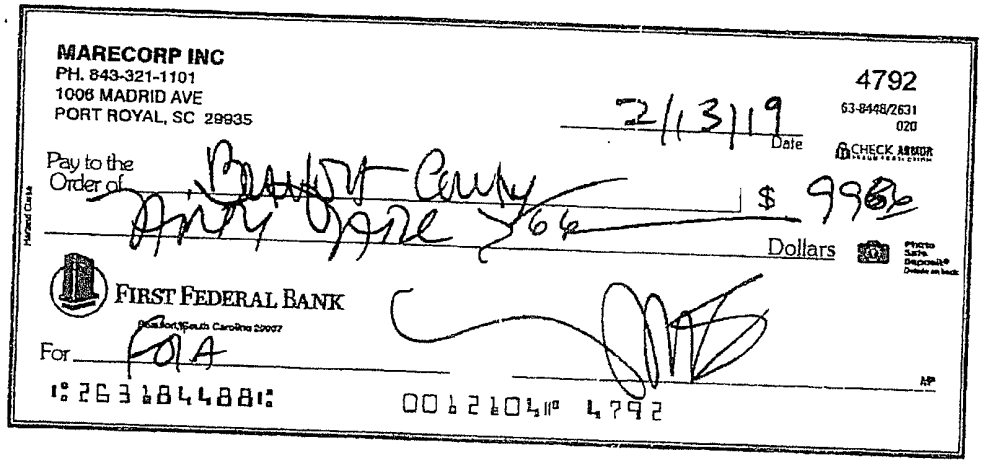
From Marc Baracco

Amount $ 99.01 Dollars

Purpose FOIA 2019-000189

☐ Cash ☑ Check / Money Order

Signed



MARECORP INC
PH. 843-321-1101
1006 MADRID AVE
PORT ROYAL, SC 29935

4792
63-8448/2631
020

2/13/19
Date

Pay to the Order of Beaufort County $ 99.66

Dollars

FIRST FEDERAL BANK
Port Royal, South Carolina 29907

For FOIA

⑆263184488⑆ 00121041" 4792

0353

CASH RECEIPT

Number 025

Date 2-13-19

From Mare Baracco

Amount $99.66 - full estimate $ 99.66 Dollars

Purpose FOIA Request 2019-000203

☐ Cash ☒ Check / Money Order

Signed

CASH RECEIPT

Number 024

Date 2/6/19

From Mare Baracco

Amount $181.66 $ 181.66 Dollars

Purpose FOIA 2017-000097 - $7.00 ✓
FOIA 2019-000136

☐ Cash ☒ Check / Money Order Signed

These are the same / I paid the extra 7.00
↑ same ↓

MARECORP INC
PH. 843-321-1101
1006 MADRID AVE
PORT ROYAL, SC 29935

4782
03-8448/2631
020

2/6/19 Date

Pay to the Order of Beaufort County $ 174.66

One Hundred Seventy Four and 66/100 Dollars

FIRST FEDERAL BANK

For FOIA

⑆263184488⑆ 001210⑈ 4782

0354

ARTICLE 20
ORDER OF DOCUMENTS

The following are incorporated into and made a part of this Agreement by reference:

a) RFP and Bid response.

ARTICLE 21
TOTAL AGREEMENT

This Agreement constitutes the entire contract between the parties hereto. No representations, warranties or promises pertaining to this Agreement have been made or shall be binding upon any of the parties, except as expressly stated herein.

This Agreement shall be construed in accordance and governed by the laws of the State of South Carolina.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first above written.

WITNESSES:

Cheryl Harris

Amy Burdett

BEAUFORT COUNTY, a political Subdivision of the State of South Carolina

Signature:

Name: Gary Kubic, County Administrator
P. O. Drawer 1228
Beaufort, SC 29901-1228
Phone: 843-255-2026
Fax: 843-255-9403
Date: 3/28/2017

WITNESSES:

Suzanne Plank

Loneliva Rae

Ballenger Realty, Inc.

Signature:
Name: Everett Ballenger
Address: 613 Carteret St
Phone: 843-379-1400
Fax: 843-379-1401
Date: 4/19/17

EXHIBIT 9/23 MR
23
Hearing
PENGAD 800-631-6989

[redacted]

EXHIBIT C

EXCLUSIVE RIGHT TO SELL AGREEMENT
LISTING AGREEMENT

In consideration of the covenants herein contained, Beaufort County,
Sole Property Owner(s) (hereinafter called "**OWNER**") and Ballenger Realty, Inc,
Real Estate Company (hereinafter called "**BROKER**"), agree as follows:

For the period of time beginning on _____, _____, and ending at midnight on _____,
_____, Owner hereby grants to Broker the sole and exclusive right to sell the real property known as:

Lot 12 Block _____ Section _____ Subdivision Colonial Terrace

Address 429 Broad River Blvd

Tax Map # R100 028 00A 0252 0000 City Beaufort Zip 29906-9447

County of Beaufort, State of South Carolina.

The real estate described herein includes all improvements, fixtures, appurtenances, and the additional property, if any, described here. Dishwasher

1. CONSENT TO DISCLOSED DUAL AGENCY/DESIGNATED AGENCY: (INITIAL APPLICABLE CHOICES)

_____ Seller acknowledges receiving an explanation of the types of agency relationships that are offered by the brokerage and a South Carolina Disclosure of Real Estate Brokerage Relationships form at the first practical opportunity at which substantive contact occurred between the agent and the seller.

Owner acknowledges that after entering into this written agency contract, Broker might request a modification in order to act as a **dual agent** or a **designated agent** in a specific transaction.

Owner asked:

_____ Permission to act as a dual agent will not be considered.

_____ Permission to act as a dual agent may be considered at the time I am provided with information about the other party to a transaction. If Owner agrees, Owner will execute a separate written **Dual Agency Agreement.**

_____ Permission to act as a designated agent will not be considered.

_____ Permission to act as a designated agent may be considered at the time I am provided with information about the other party to a transaction. If Owner agrees, Owner will execute a separate written **Designated Agency Agreement.**

2. COMPENSATION TO OTHER BROKERAGES:

Owner acknowledges Broker has advised Owner of Broker's general company policy regarding cooperating with and compensating other Brokerages. Owner authorizes listing Broker to compensate other Brokerages as legally required in the following amounts of U.S. dollars and or percentage of gross sales price:

Buyer Agency _____ % and or $_____; Transaction Brokerage (Non Agency) _____ % and or $_____;
Sub Agency _____ % and or $_____; Other _____.

3. TERMS: As follows:

A. Broker agrees to employ Broker's best efforts to sell or to secure a contract for the sale of the property for a price of One Hundred Twenty-Nine Thousand Nine Hundred Dollars ($ 129,900) and in return Owner agrees to pay Broker a fee of $_____ or a commission of 6 % of gross sales price if Broker, Owner, another broker, or any other person or company produces a Buyer who is ready, willing, and able to purchase the property on the terms described above or on any terms acceptable to Owner. Owner understands that Broker shall pay cooperating brokers a fee of $_____ or a commission of 3 % of gross sales price. Owner and Broker agree that there shall be no variation or exception in the amount of the fee or commission to be paid, unless specified under Paragraph 27. The brokerage fee shall be earned, due and payable when an agreement to purchase, option, exchange, lease or trade is signed by Owner. However, if Owner shall fail or refuse to sell the described property for the price and terms set forth herein, or if Owner shall fail or refuse to complete the sale of such property under any written Agreement to Buy and Sell Real Estate to which Owner has agreed, Broker's full fee shall be due and payable by Owner.

[___] OWNER, [___] OWNER, AND [ ] BROKER HAVE READ THIS PAGE.

Ballenger Realty, 613 Carteret Street Beaufort, SC 29902 Phone: (843)379-1400 Fax: (843)379-1401 Beaufort County

Owner agrees to pay all costs, including reasonable attorney's fees, which may be incurred by Broker in the collection of a fee due by Owner under this Agreement.

Broker agrees to defer the commission until the closing date or extension thereof stated in the agreement or until default by Owner. Deferral is agreed to solely as an accommodation to Owner and such deferral shall in no way be construed as a waiver of the brokerage fee. Closing Attorney is hereby irrevocably directed to deduct and pay said Broker's fee from the proceeds of the sale.

If the property is sold within 90 days of the expiration or termination of this Agreement (which shall be the "protection period") to a Buyer to whom the property was shown by Owner, Broker, another broker, or any other person or firm during the term of this Agreement, Broker's full fee shall be payable by Owner. The protection period shall be terminated if Owner enters into a listing agreement with another broker during the protection period.

B. For purposes of this Agreement, a sale shall be defined as any transfer of a legal, equitable or beneficial interest in the subject property, whether for money or in exchange of other property, and shall include, but not be limited to, any transfer of the ownership interest in any corporation, limited partnership, partnership, or other entity.

4. **EARNEST MONEY:** Owner authorizes and designates Escrow Agent, as designated by the sales agreement, to accept and hold on behalf of Owner any earnest money or escrow deposit made in accordance with the terms of any agreement to buy and sell real estate for the property. In the event of default or forfeiture by a prospective buyer, Owner will reimburse Escrow Agent any costs incurred by Escrow Agent including attorney's fees as a result of the release of payment to Owner of any of the earnest money deposited, and such reimbursement may be made by Broker from the earnest money deposit. All earnest money will be deposited in Escrow Agent's escrow account.
OWNER UNDERSTANDS THAT, UNDER ALL CIRCUMSTANCES, INCLUDING DEFAULT, BROKER WILL NOT DISBURSE EARNEST MONEY TO EITHER PARTY UNTIL BOTH PARTIES HAVE EXECUTED AN AGREEMENT AUTHORIZING THE DISBURSEMENT OR UNTIL A COURT OF COMPETENT JURISDICTION HAS DIRECTED A DISBURSEMENT.

5. **SIGNS:** Owner grants to Broker the exclusive right to display "For Sale," "Under Contract," "Sale Pending," (or other similar) signs on the property and to remove other such signs.

6. **BROKER'S DUTY:** Broker agrees to employ the best efforts of Broker and Broker's agents and staff to secure a contract of sale for the described property upon such terms as may be agreeable to Owner. Broker's efforts shall include directing the efforts of Broker's organization to bring about the sale, advertising the described property as Broker deems advisable in those advertising media of merit customarily used in the area, furnishing such additional information as is necessary to cooperating real estate brokers and assisting such brokers in effecting a sale of property, and keeping Owner informed as to the progress of Broker's efforts in finding a Buyer for the described property. Owner understands the Broker makes no representation or guarantee as to the sale of the property. Upon the termination or completion of this Agreement, Broker shall keep confidential all information received during the course of this Agreement which was made confidential by written request or instructions from the client, except as provided for under South Carolina law.

7. **BROKER LIABILITY LIMITATION:** *Owner agrees Broker provided Owner with benefits, services, assistance, and value in bringing about this Contract. In consideration and recognition of the risks, rewards, compensation and benefits arising from this transaction to Broker, Owner agrees that he shall pay Broker's attorney fees and that Broker, shall not be liable to Owner, in an amount exceeding that Broker's Compensation by reason of any act or omission, including negligence, misrepresentation, errors and omission, or breach of undertaking, except for intentional or willful acts. This limitation shall apply regardless of the cause of action or legal theory asserted against Broker, unless the claim is for an intentional or willful act. This limitation of liability shall apply to all claims, losses, costs, damages or claimed expenses of any nature from any cause(s), except intentional or willful acts, so that the total liability of Broker shall not exceed the amount set forth herein. Owner will indemnify and hold harmless and pay attorneys fees for Broker from breach of contract, any negligent or intentional acts or omissions by any Parties, Inspectors, Professionals, Service Providers, Contractors, etc. including any introduced or recommended by Broker. Owner agrees that there is valid and sufficient consideration for this limitation of liability and that Broker is the intended third-party beneficiary of this provision.*

8. **OWNER'S DUTY:** Owner agrees as follows:

A. To furnish Broker with complete and reliable information concerning ownership and the operation of the property, and any encumbrances or liens affecting the property; and

B. To inform Broker of any inquiries (including inquiries from other brokers) or negotiations concerning the sale of the property; and

C. To permit inspection and showing of the property by Broker, Broker's Agents, Subagents, Buyer's Agent, and by such agents, subagents and prospective buyers as deemed reasonably necessary by Broker, and to cooperate in the scheduling and carrying out of such showings and inspections as is necessary; and

D. To permit the offering for sale of the property to prospective buyers without regard to age, sex, race, creed, color, religion, national origin, handicap or familial status; and

E. To permit Broker to incur, or pay on behalf of Owner reasonable expenses for repairs, inspection, utilities, maintenance, or similar expenses not to exceed $ _____ for each separate expense, and to reimburse Broker, as necessary, upon receipt of the statement of expenses; and

F. To allow closing attorney to pay Broker's compensation in an amount equal to the compensation provided above from Owner's proceeds at time of closing; and

G. To grant to Broker the authority and approval to list and publish all sales data pertaining to the sale and closing of the hereinabove described property. Owner understands and acknowledges that sales data are published for the use and information of the members of all the Boards/Associations of REALTORS® and the Multiple Listing Services (MLS) of which Broker is a member; for their use of same in marketing and selling of all properties listed in said publication; and

H. To permit Broker to take photographs of the Owner's property described herein for advertising and marketing purposes in any advertising medium of the Broker's choice. Owner understands and acknowledges that all marketing materials, including but not limited to photographs, brochures, and websites, developed for the sale of the subject property shall remain the property of the Broker; and

I. To convey marketable title to the buyer in fee simple free from all liens except those stipulated herein, subject to existing zoning and government restrictions, applicable owner's association assessments and restrictive conditions and covenants of record which do not materially affect the present use of the property; and

J. To authorize Owner's attorneys and the settlement agent to furnish to Broker copies of the final HUD-1 settlement statement for the transaction prior to the closing date; and

K. Not to deal directly with prospective buyers of this property during the period of this agency and shall refer any inquiries received directly and immediately to the Broker; and

L. To authorize the Broker, in response to inquiries from buyers or cooperating brokers, to divulge the existence of offers on the property; and

M. To furnish Broker with written instructions regarding the confidentiality of information upon termination or completion of this Agreement which was received during the course of this Agreement in accordance with South Carolina law.

9. PROPERTY INFORMATION/SELLER'S PROPERTY DISCLOSURE STATEMENT: Owner warrants that, to Owner's knowledge, there are no material defects, hidden or obvious, in or on the property, which have not been disclosed to Broker in writing. Owner further warrants that Owner has reviewed and completed a Seller's Property Disclosure Statement, as required by South Carolina Code of Laws, as amended, Section 27-50-10, et.seq., attached to and made a part of this Agreement, and that all such information is accurate to the best of Owner's knowledge. If the Owner discovers, after his delivery of a disclosure statement to a Buyer, a material inaccuracy in the disclosure statement or the disclosure is rendered inaccurate in a material way by the occurrence of some event or circumstance, the owner shall correct promptly the inaccuracy by delivering a corrected disclosure statement to the Buyer or make reasonable repairs necessitated by the occurrence before closing. An owner who knowingly violates or fails to perform any duty prescribed by any provision of this article or who discloses any material information on the disclosure statement that he knows to be false, incomplete, or misleading is liable for actual damages proximately caused to the Buyer and court costs. Owner agrees to defend, indemnify, and hold harmless the Broker, Broker's agents, or subagents, including indemnification for attorney's fees and court costs, from any and all claims arising out of any information or omission of information presented to Broker by Owner. Owner agrees to disclose to the Broker any known latent defects of the herein described property which are not readily ascertainable upon view including land, improvements, and personal property to be conveyed, and to hold said Broker harmless for any liabilities or damages arising from such defects. Owner will not hold Broker liable for the Owner's refusal or failure to provide a prospective purchaser with a disclosure statement. Owner agrees to allow Broker to provide copies of the disclosure statement to prospective buyers. The Owner understands and agrees that Broker has fully met the requirements of Section 27-50-70 of the South Carolina Code of Laws, as amended.

10. DISCLOSURE: Owner authorizes Broker to disclose information about the property to Broker's agents, subagents, prospective buyers, and all inquiring parties. Such disclosure shall be in accordance with Broker's company policy. Owner hereby authorizes anyone having a lien against the property including the mortgage holder, to disclose complete information about the lien to Broker and Closing Attorney or Agent.

11. TAXES: Owner covenants and agrees to comply with the provisions of the South Carolina Code Section 12-8-580 (as amended) regarding withholding requirements of owners who are not residents of South Carolina as defined in the said statute. The payment of rollback taxes, if applicable, and past personal property taxes, if applicable, shall be negotiated between the Owner and any prospective buyer.

12. COASTAL TIDELANDS & WETLANDS ACT: In the event the property is affected by the provisions of the South Carolina Coastal Tidelands & Wetlands Act (Section 48-39-10, et. seq., South Carolina Code of Laws), an addendum will be attached to the sales agreement incorporating the required disclosures. The payment of any necessary surveys shall be negotiated between the Owner and any prospective buyer.

13. MULTIPLE LISTING SERVICE: The property [X] shall be [ ] shall not be entered into the Multiple Listing Services of which Broker is a member, which shall constitute an offer of cooperating brokerage to all members of the listing service. Owner agrees that Broker may compensate an agent representing the buyer from the fee described above.

14. LOCKBOX: Owner [X] agrees [ ] does not agree for a MLS lock box to be installed on the property to facilitate showing and inspection of the property. Owner acknowledges and agrees that neither Broker, nor Broker's agents, subagents, or anyone showing the property through the MLS, shall be responsible for any damage to, or loss of personal property, or to the realty, except such damage or loss as may be caused by the negligence of such party.

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Owner further acknowledges that Broker nor MLS is an insurer against the loss of personal property and agrees to release Broker and MLS from any responsibility therefore.

15. INTERNET MARKETING: Owner [X] agrees [ ] does not agree that the listing may be placed in electronic marketing mediums including, but not limited to, the internet, MLS Internet Data Exchange (IDX) program or other similar on-line computer services and to share listing data, including the property address, with other members of MLS for marketing and advertising purposes only. Owner further agrees to permit other real estate firms who belong to any listing service of which Broker is a member to advertise the listing on the internet in accordance with the listing service rules and regulations.

16. OTHER OFFERS: Owner understands that the Broker's responsibility to present offers to purchase to the Owner for Owner's consideration terminates at the closing of the subject property or expiration of this Agreement, whichever occurs first.

17. MARKETING THE PROPERTY: The Broker shall not continue marketing the property after an offer has been accepted, unless requested in writing by the Owner to do so.

18. NO CONTROL OF COMMISSION RATES OR FEES: The Broker's compensation for services rendered in respect to any listing is solely a matter of negotiation between the Broker and the Owner and is not fixed, controlled, suggested, recommended, or maintained by the board/association, the MLS, or by any persons not a party to the listing agreement. The subagency compensation paid by the Listing Broker to a Cooperating Broker or Buyer's Broker in respect to any listing is established by the Listing Broker in Broker's offer of subagency, and is not fixed, controlled, suggested, recommended or maintained by the board/association, the MLS or by any persons other than the Listing Broker.

19. MAINTENANCE: Owner agrees to maintain the property, including lawn, shrubbery, and grounds until the day of closing or possession, whichever occurs first. Owner also warrants that all heating, air conditioning, electrical, and plumbing systems as well as built-in or appurtenant equipment or appliances shall be in operative condition on the day of closing or possession, whichever occurs first. Unless otherwise agreed herein, Owner shall deliver the premises to the Buyer with no broken panes; no torn or missing door screens or window screens; and with no missing or broken hardware, lighting, or plumbing fixtures.

20. AGREEMENT TO SELL: When a Buyer is found for said property, the Owner shall enter into a written sales agreement which will contain the terms and conditions of sale, the customary provisions as to the examination of the title, the curing of any defects in title, the prorations of taxes, rents, and applicable property expenses.

21. LEAD-BASED PAINT: For dwellings built before 1978, and as required by applicable law, a Disclosure of Information on Lead-Based Paint and Lead-Based Paint Hazards (the "Disclosure" must be signed by Owner and attached to this Agreement. Owner represents that either (1) the improvements on the property were all constructed after December 31, 1977, or (2) the Disclosure has been fully completed and is attached to this Agreement. Owner agrees to provide Broker with any such additional information or reports as may come to Owner's possession during the term of this Agreement. Owner acknowledges that Broker has informed Owner of the Owner's obligations to provide a buyer of the property with the pamphlet "Protect Your Family from Lead in Your Home," to provide information to a buyer of the property with copies of available records and reports with respect to the property and lead-based paint and lead-based paint hazards, all pursuant to 42USC4582(d), as amended.

22. MEDIATION CLAUSE: Any dispute or claim arising out of or relating to this Agreement, the breach of this Agreement or the services provided in relation to this Agreement, shall be submitted to mediation in accordance with the Rules and Procedures of the Dispute Resolution System of the NATIONAL ASSOCIATION OF REALTORS®. Disputes shall include representations made by Owner or Broker in connection with the services to which this Agreement pertains, including without limitation, allegations of concealment, misrepresentation, negligence and/or fraud. Any agreement signed by the parties pursuant to the mediation conference shall be binding. This mediation clause shall survive for a period of 120 days after the date of the closing.

23. FAIR HOUSING: Owner and Broker agree that this property is offered without regard to race, color, religion, sex, handicap, familial status, or national origin and is listed in full compliance with local, state, and federal fair housing laws.

24. FACSIMILE: The parties agree that this Agreement may be communicated by use of a fax, or other secure electronic means, including but not limited to the Internet, and the signatures, initials and handwritten or typewritten modifications to any of the foregoing shall be deemed to be valid and binding upon the parties as if the original signatures, initials and handwritten or typewritten modifications were present on the documents in the handwriting of each party.

25. ENFORCEMENT: The parties agree that Broker may take action to enforce this Agreement or collect any associated costs, fees, and damages. Owner agrees to reimburse or indemnify or pay all Broker costs in enforcing this Agreement or collecting costs, fees, and damages including any incidental expenses or attorneys fees.

[ ] OWNER, [ ] OWNER, AND [ ] BROKER HAVE READ THIS PAGE.

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26. **SEX OFFENDER/CRIMINAL INFORMATION:** Seller agrees that Broker is not responsible for obtaining or disclosing information in the SC Sex Offender Registry and no course of action may be brought against the Broker for failure to obtain or disclose sex offender or criminal information. Seller agrees that they have sole responsibility to obtain their own sex offender, death, psychological stigma, clandestine laboratory, and crime information from sources (e.g. law enforcement, P.I., web). The Seller may obtain information about the Sex Offender Registry and persons registered with the Registry by contacting the local county Sheriff or other appropriate law enforcement officials.

27. **OTHER TERMS AND CONDITIONS:** _____

THE UNDERSIGNED HEREBY WARRANT THAT THEY OWN THE PROPERTY AND/OR HAVE THE AUTHORITY TO EXECUTE THIS AGREEMENT. THIS IS A LEGALLY BINDING AGREEMENT. OWNER SHALL SEEK FURTHER ASSISTANCE IF THE CONTENTS ARE NOT UNDERSTOOD. OWNER ACKNOWLEDGES RECEIPT OF A COPY OF THIS AGREEMENT AND COPY OF THE SC DISCLOSURE OF REAL ESTATE BROKERAGE RELATIONSHIPS FORM. OWNER AGREES TO RECEIVE COMMUNICATIONS FROM BROKER AT THE EMAIL ADDRESS, PHONE AND FAX NUMBER LISTED BELOW.

IN WITNESS WHEREOF, this Agreement has been duly executed by the parties.

Owner: Beaufort County _____ Date _____ Time _____

Email: _____ Phone: _____ Fax: _____

Witness: _____ Date _____ Time _____

Owner: _____ Date _____ Time _____

Email: _____ Phone: _____ Fax: _____

Witness: _____ Date _____ Time _____

Owner's Mailing Address: _____

Real Estate Firm: Ballenger Realty, Inc Phone: 843-379-1400

By: Debra J Regecz Date 3-24-2017 Time _____

C-843-263-7010

The foregoing form is available for use by the entire real estate industry. The use of the form is not intended to identify the user as a REALTOR®. REALTOR® is the registered collective membership mark which may be used only by real estate licensees who are members of the NATIONAL ASSOCIATION OF REALTORS® and who subscribe to its Code of Ethics. Expressly prohibited is the duplication or reproduction of such form or the use of the name "South Carolina Association of REALTORS®" in connection with any written form without the prior written consent of the South Carolina Association of REALTORS®. The foregoing form may not be edited, revised, or changed without the prior written consent of the South Carolina Association of REALTORS®.

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[redacted]

EXHIBIT G

SOUTH CAROLINA DISCLOSURE OF REAL ESTATE BROKERAGE RELATIONSHIPS

South Carolina Real Estate Commission
PO BOX 11847, Columbia, S.C. 29211-1847
Telephone: (803) 896-4400 Fax: (803) 896-4427
http://llr.sc.gov/POL/REC/

Pursuant to South Carolina Real Estate License Law in S.C. Code of Laws Section 40-57-370, a real estate licensee is required to provide you a meaningful explanation of agency relationships offered by the licensee's brokerage firm. This must be done at the first practical opportunity when you and the licensee have substantive contact.

Before you begin to work with a real estate licensee, it is important for you to know the difference between a broker-in-charge and associated licensees. The broker-in-charge is the person in charge of a real estate brokerage firm. Associated licensees may work only through a broker-in-charge. **In other words, when you choose to work with any real estate licensee, your business relationship is legally with the brokerage firm and not with the associated licensee.**

A real estate brokerage firm and its associated licensees can provide buyers and sellers valuable real estate services, whether in the form of basic **customer** services, or through **client**-level agency representation. The services you can expect will depend upon the legal relationship you establish with the brokerage firm. It is important for you to discuss the following information with the real estate licensee and agree on whether in your business relationship you will be a **customer** or a **client**.

You Are a Customer of the Brokerage Firm

South Carolina license law defines customers as buyers or sellers who choose NOT to establish an agency relationship. The law requires real estate licensees to perform the following ***basic duties*** when dealing with ***any*** real estate buyer or seller as customers: ***present all offers in a timely manner, account for money or other property received on your behalf, provide an explanation of the scope of services to be provided, be fair and honest and provide accurate information, provide limited confidentiality, and disclose "material adverse facts" about the property or the transaction which are within the licensee's knowledge.***

Unless or until you enter into a written agreement with the brokerage firm for agency representation, you are considered a "customer" of the brokerage firm, and the brokerage firm will not act as your agent. As a customer, you should not expect the brokerage firm or its licensees to promote your best interest.

Customer service does not require a written agreement; therefore, you are not committed to the brokerage firm in any way unless a transaction broker agreement or compensation agreement obligates you otherwise.

Transaction Brokerage

A real estate brokerage firm may offer transaction brokerage in accordance with S.C. Code of Laws Section 40-57-350. Transaction broker means a real estate brokerage firm that provides customer service to a buyer, a seller, or both in a real estate transaction. A transaction broker may be a single agent of a party in a transaction giving the other party customer service. A transaction broker also may facilitate a transaction without representing either party. The duties of a brokerage firm offering transaction brokerage relationship to a customer can be found in S.C. Code of Laws Section 40-57-350(L)(2).

You Can Become a Client of the Brokerage Firm

Clients receive more services than customers. If client status is offered by the real estate brokerage firm, you can become a client by entering into a written agency agreement requiring the brokerage firm and its associated licensees to act as an agent on your behalf and promote your best interests. If you choose to become a client, you will be asked to confirm in your written representation agreement that you received this agency relationships disclosure document in a timely manner.

A ***seller becomes a client*** of a real estate brokerage firm by signing a formal listing agreement with the brokerage firm. For a seller to become a client, this agreement must be in writing and must clearly establish the terms of the agreement and the obligations of both the seller and the brokerage firm which becomes the agent for the seller.

A ***buyer becomes a client*** of a real estate brokerage firm by signing a formal buyer agency agreement with the brokerage firm. For a buyer to become a client, this agreement must be in writing and must clearly establish the terms of the agreement and the obligations of both the buyer and the brokerage firm which becomes the agent for the buyer.

Ballenger Realty, 613 Carteret Street Beaufort, SC 29902 Phone(843)379-1400 Fax: (843)379-1401 Beaufort County
Debra Regecz Produced with ZipForm® by zipLogix 18070 Fifteen Mile Road, Fraser, Michigan 48026 www.zipLogix.com

SOUTH CAROLINA DISCLOSURE OF REAL ESTATE BROKERAGE RELATIONSHIPS

South Carolina Real Estate Commission
PO BOX 11847, Columbia, S.C. 29211-1847
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http://llr.sc.gov/POL/REC/

If you enter into a written agency agreement, as a client, the real estate brokerage has the following ***client-level duties: obedience, loyalty, disclosure, confidentiality, accounting, and reasonable skill and care.*** Client-level services also include advice, counsel and assistance in negotiations.

Single Agency

When the brokerage firm represents only one client in the same transaction (the seller or the buyer), it is called single agency.

Dual Agency

Dual agency exists when the real estate brokerage firm has two clients in one transaction – a seller client and a buyer client. At the time you sign an agency agreement, you may be asked to acknowledge whether you would consider giving written consent allowing the brokerage firm to represent both you and the other client in a disclosed dual agency relationship.

Disclosed Dual Agency

In a disclosed dual agency, the brokerage firm's representation duties are limited because the buyer and seller have recognized conflicts of interest. Both clients' interests are represented by the brokerage firm. As a disclosed dual agent, the brokerage firm and its associated licensees cannot advocate on behalf of one client over the other, and cannot disclose confidential client information concerning the price negotiations, terms, or factors motivating the buyer/client to buy or the seller/client to sell. Each Dual Agency Agreement contains the names of both the seller client(s) and the buyer client(s) and identifies the property.

Designated Agency

In designated agency, a broker-in-charge may designate individual associated licensees to act solely on behalf of each client. Designated agents are not limited by the brokerage firm's agency relationship with the other client, but instead have a duty to promote the best interest of their clients, including negotiating a price. The broker-in-charge remains a disclosed dual agent for both clients, and ensures the assigned agents fulfill their duties to their respective clients. At the time you sign an agency agreement, you may be asked to acknowledge whether you would consider giving written consent allowing the brokerage firm to designate a representative for you and one for the other client in a designated agency. Each Designated Agency Agreement contains the names of both the seller client(s) and the buyer client(s) and identifies the property.

It's Your Choice

As a real estate consumer in South Carolina, it is your choice as to the type and nature of services you receive.

- You can choose to remain a customer and represent yourself, with or without a transaction broker agreement.
- You can choose to hire the brokerage firm for representation through a written agency agreement.
- If represented by the brokerage firm, you can decide whether to go forward under the shared services of dual agency or designated agency or to remain in single agency.

If you plan to become a client of a brokerage firm, the licensee will explain the agreement to you fully and answer questions you may have about the agreement. Remember, however that until you enter into a representation agreement with the brokerage firm, you are considered a customer and the brokerage firm cannot be your advocate, cannot advise you on price or terms, and only provides limited confidentiality unless a transaction broker agreement obligates the brokerage firm otherwise.

The choice of services belongs to you – the South Carolina real estate consumer.

Acknowledgement of Receipt by Consumer:

Signature _____ Date _____

Signature _____ Date _____

THIS DOCUMENT IS NOT A CONTRACT.
This brochure has been approved by South Carolina Real Estate Commission for use in explaining representation issues in real estate transactions and consumer rights as a buyer or seller. Reprinting without permission is permitted provided no changes or modifications are made.

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Ballenger Realty

Attorney Transmittal

Date Faxed: _____

613 A Carteret Street
Beaufort, SC 29902
(843) 379-1400 Office
(843) 379-1401 Fax

Closing Date: Sept. 18 2017 **Contract Date:** 8-23-2017

Sales Price: $90,000 **Earnest Money:** 1,000

EMD Held By: _____ **EMD Delivery Method:** Check - Buyers AH

PROPERTY ADDRESS 429 Broad River Blvd

CITY Beaufort COUNTY Beaufort STATE SC ZIP 29902

DMP R100 028 00A 0252 0000

LOT 12 BLOCK _____ SECTION _____ SUBDIVISION Col Terrace

ACREAGE _____

BUYERS NAME Jerome Cuppia

ADDRESS _____

TELEPHONE: OFC _____ / HOME _____ / FAX _____ /CELL _____

ATTORNEY _____

ADDRESS _____

TELEPHONE: OFC _____ / FAX _____

LENDER _____ PHONE: _____ FAX: _____

SELLERS NAME Beaufort County

ADDRESS _____

TELEPHONE: OFC _____ / HOME _____ / FAX _____ /CELL _____

ATTORNEY Beaufort

ADDRESS _____

TELEPHONE: OFC _____ / FAX _____

HOME INSPECTION **Company Requested by Buyer:** _____ **Due by:** _____
To be Ordered by: [ ] Buyers R. E. Agent [ ] Sellers R.E. Agent [ ] Buyers Atty [ ] Seller's Atty

CL100: Company Requested: _____ **Due by:** _____
To be Ordered by: [ ] Buyers R. E. Agent [ ] Sellers R.E. Agent [ ] Buyers Atty [ ] Seller's Atty

TERMITE BOND [YES]_____ [NO]_____ **COMPANY** _____

NEW SURVEY REQUESTED [YES]_____ [NO]_____ **Company:** _____
To be Ordered by: [ ] Buyer [ ] Buyers Atty [ ] Seller [ ] Seller's Atty

CONTINGENCIES: _____

SEPTIC CONTINGENCY – PRELIMINARY APPROVAL DUE BY: _____

ADDITIONAL COMMENTS _____

COMMISSION SPLIT:

Listing Agency / Agent: Ballenger / Deb Reseez % 3

Selling Agency / Agent: Keller Williams / Shane Chambers % 3

Referral Agency / Agent: _____ / _____ % _____

AGREEMENT/CONTRACT: TO BUY AND SELL REAL ESTATE (RESIDENTIAL)

1. PARTIES: This legally binding Agreement ("Contract") To Buy and Sell Real Estate is entered into by:

Buyer(s), Jerome Cuppia ("Buyer"), and

Seller(s), Beaufort County ("Seller").

(A) "Party" - defined as either Buyer or Seller, "Parties" defined as both Buyer and Seller.
(B) "Brokers" are licensed South Carolina brokers-in-charge, their associated real estate licensees, and their subagents.
(C) "Closing Attorney" - is the licensed South Carolina attorney selected by Buyer to coordinate the transaction and Closing. TBD,
(D) "Effective Date" - the final date upon which a Party to the negotiation places the final and required signatures and/or initials and date on this Contract and Delivers Notice to cause this Contract to be binding on all Parties.
(E) "Business Day" - a 24 hour period (Monday/Tuesday/Wednesday/Thursday/Friday) beginning at 10 AM and counted from 10 AM of the first Business Day following the appropriate date (Effective Date, Closing Date, stated date, Notice Delivery date). Business Days shall not begin, end, or include any Saturday, Sunday, or Federal legal holiday.
(F) "Good Funds" - is the transfer of the required amount of United States Dollars (USD) within any required timeframe.
(G) "Time" - all time stated shall be South Carolina local time. **Time is of the essence with respect to all provisions of this Contract stipulating time, deadline, or performance periods.**

☐ BUYER ☐ SELLER IS A SOUTH CAROLINA REAL ESTATE LICENSEE

2. PURCHASE PRICE: $90,000.00 Ninety Thousand

Payable by transfer of Good Funds via ☐ Finance or ☐ a combination of Finance and Cash USD or ☒ Cash USD.
Verification of Cash available for Closing is ☐ attached ☐ not attached ☒ to be Delivered before 08/25/2017.
The sale of Buyer's real property ☐ is ☒ is not a contingency for Purchase and terms ☐ are ☐ are not attached.

3. PROPERTY: Seller will sell and Buyer will buy for the Purchase Price any and all lot or parcel of land, appurtenant interests, improvements, landscape, systems, and fixtures if any thereon and further described below ("Property"). Seller agrees to maintain the Property and any personal property conveying in same operable condition, including any landscaping, grounds and any agreed upon repairs or replacements, from the Effective Date through Closing subject to normal wear and tear. Buyer acknowledges opportunity to inquire about owners association issues, common area issues, condominium master deed issues, assigned parking/storage areas, memberships, and lease issues prior to signing Contract. Leasing issues and items see Adjustments (e.g. tenants, rents, deposits, documents, alarm systems, satellite equipment, roll carts).

Address 429 Broad River Blvd Unit #

City Beaufort State of South Carolina

Zip 29906-9447 County of Beaufort

Lot 12 Block Section/Phase Subdivision COL TERRACE

Other Tax Map R100 028 00A 0252 0000

Parties agree that no personal property will transfer as part of this sale, except described below and/or ☐ in attachment(s):
ALL ITEMS PER MLS #152372 TO CONVEY AT NO ADDITIONAL COST

4. CONVEYANCE/CLOSING/POSSESSION: "Closing" occurs when Seller conveys Property to Buyer and occurs no later than 5 PM on or before September 18, 2017 ("Closing Date") with an automatic extension of 10 business days for an unsatisfied contingency through no fault of either party. Conveyance shall be fee simple made subject to all easements, reservations, rights of way, restrictive covenants of record (provided they do not make the title unmarketable or adversely affect the use/value of the Property in a material way) and to all government statutes, ordinances, rules, permits, and regulations. Seller agrees to convey marketable title with a properly recorded

[ ] BUYER [ ] BUYER [ ] SELLER [ ] SELLER HAVE READ THIS PAGE

Keller Williams Realty, 36 Wm Pope Dr. Ste 203 Bluffton, SC 29909
Phone: (843)252-1274 Fax: Shae Chambers Helms

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TRANSACTIONAL INFORMATION:

ESCROW AGENT ACKNOWLEDGEMENT SIGNATURE: _____

ESCROW AGENT NAME (BROKER IN CHARGE/OTHER): BUYER'S CLOSING ATTORNEY

DESCRIBE ESCROW AGENCY (BROKERAGE/LAW FIRM/OTHER): _____

ESCROW AGENT CONTACT INFO: _____

_____

LICENSEE: SHAE CHAMBERS HELMS SC LICENSE # 78358 EXPIRES _____

BROKER IN CHARGE: ALAN COYNE SC LICENSE # 7163 EXPIRES _____

BROKERAGE COMPANY NAME: KELLER WILLIAMS REALTY

INVOLVED AS: ☒ BUYER AGENT ☐ SELLER SUBAGENT ☐ DUAL AGENT ☐ BUYER DESIGNATED AGENT*
☐ CUSTOMER REPRESENTATIVE ☐ TRANSACTION BROKERAGE _____

MEMBERS OF BEAUFORT COUNTY ASSOCIATION/BOARD OF REALTORS®

NOTICE ADDRESS: 36 Wm Pope Dr. Ste #203 Bluffton, SC 29909

NOTICE EMAIL/FAX: SHAE.CHAMBERS@GMAIL.COM

MOBILE PHONE: (843) 252-1274 OFFICE PHONE: _____

OTHER: _____

_____

LICENSEE: Debra Regecz SC LICENSE # 51688 EXPIRES 6-30-18

BROKER IN CHARGE: Everett Ballenger SC LICENSE # 2208 EXPIRES 6-30-19

BROKERAGE COMPANY NAME: Ballenger Realty

INVOLVED AS: ☒ SELLER AGENT ☐ SELLER SUBAGENT ☐ DUAL AGENT ☐ SELLER DESIGNATED AGENT*
☐ CUSTOMER REPRESENTATIVE ☐ TRANSACTION BROKERAGE _____

MEMBERS OF Beaufort ASSOCIATION/BOARD OF REALTORS®

NOTICE ADDRESS: 601 Carteret St. 29902

NOTICE EMAIL/FAX: _____

MOBILE PHONE: 263-7010 OFFICE PHONE: 379-1400

OTHER: _____

_____

***DESIGNATED AGENCY - THE BROKER-IN-CHARGE AND ALL ASSOCIATED LICENSEES, EXCEPT THE DESIGNATED AGENTS, ARE DUAL AGENTS.**

[1cc] BUYER [____] BUYER [DP] SELLER [____] SELLER HAVE READ THIS PAGE

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429 Broad River

general warranty deed free of encumbrances and liens except as herein stated; and in name(s): TBD

and ownership type determined by Buyer. The deed shall be delivered to the Closing Attorney's designated place on or before the Closing Date no later than 10 AM. Seller agrees to pay all statutory deed recording fees. Parties agree the Brokers shall have access to the closing and relevant documents; and the Brokers shall be given copies of the settlement statement prior to Closing for review. Seller shall convey possession of a vacant and reasonably clean Property, free of debris, along with all keys, codes, any remote controls, available documents (e.g. manuals, equipment warranties, service information) and similar ownership items to Buyer at Closing.

5. EARNEST MONEY: Total $ 1,000.00 (USD) Earnest Money is paid as follows: $ _____ accompanies this offer and $ 1,000.00 will be paid within 3 Business Days after Effective Date and Earnest Money is in the form of ☒ check ☐ cash ☐ other (e.g. wire) _____ to be a Credit to Buyer at Closing or disbursed only as Parties agree in writing or by court order or by Contract or as required for Closing by Closing Attorney. Buyer and seller authorize BUYER'S CLOSING ATTORNEY as Escrow Agent to deposit and hold and disburse earnest money according to the terms of this Contract, the law, and any regulations. Broker does not guarantee payment of a check or checks accepted as earnest money. Parties direct escrow agent to communicate reasonable information confirming receipt and status of earnest money upon a Broker request.

THE PARTIES UNDERSTAND AND AGREE THAT UNDER ALL CIRCUMSTANCES INCLUDING DEFAULT, ESCROW AGENT WILL NOT DISBURSE EARNEST MONEY DEPOSIT TO EITHER PARTY UNTIL BOTH PARTIES HAVE EXECUTED AN AGREEMENT AUTHORIZING THE DISBURSEMENT OR UNTIL A COURT OF COMPETENT JURISDICTION HAS DIRECTED A DISBURSEMENT OR AS AGREED UPON IN THIS CONTRACT. UNLESS OTHERWISE AGREED UPON IN WRITING, THE PARTIES AGREE THAT THE ESCROW AGENT SHALL DISBURSE THE EARNEST MONEY TO THE BUYER UNLESS THERE IS A DISPUTE. PARTIES AGREE THAT A DISPUTE IS DEFINED SOLEY TO MEAN ONLY THAT THE SELLER OR SELLER'S ATTORNEY HAS FILED A LEGAL ACTION TO DETERMINE DISTRIBUTION OF THE EARNEST MONEY WITH A COURT OF COMPETENT JURISDICTION AND SERVED THE LEGAL ACTION'S SUMMONS AND COMPLAINT UPON THE ESCROW AGENT NO LATER THAN 30 BUSINESS DAYS AFTER THIS CONTRACT'S STATED CLOSING DATE. FIVE YEARS AFTER CLOSING DATE, ESCROW AGENT MAY DISBURSE EARNEST MONEY TO SOUTH CAROLINA TREASURER AS UNCLAIMED PROPERTY. EARNEST MONEY WILL NOT BE DISBURSED UNTIL DETERMINED TO BE GOOD FUNDS. IF LEGAL ACTIONS OCCUR, NONPREVAILING PARTY AGREES TO INDEMNIFY ESCROW AGENT'S FEES, COURT COSTS AND ATTORNEY FEES. IF INTERPLEADER IS TO BE UTILIZED, PARTIES AGREE THAT $ zero SHALL BE PAID TO THE ESCROW AGENT AS COMPENSATION BEFORE ESCROW AGENT INITIATES COURT OF COMPETENT JURISDICTION PROCEEDINGS ON EARNEST MONEY.

6. TRANSACTION COSTS: Buyer's transaction costs include all costs and closing costs resulting from selected financing, pre-paid recurring items, insurance (mortgage insurance, title insurance lender/owner, flood, hazard) discount points, all costs to obtain information from or pertaining to any owners association (aka certificate of assessment), interest, non-recurring closing costs, title exam, FHA/VA allowable costs, fees and expenses of Buyer's attorney, contractually required real estate broker compensation, and the cost of any inspector, appraiser, or surveyor. Seller's transaction costs include deed preparation, deed recording costs, deed stamps/tax/recording costs calculated based on the value of the Property, all costs necessary to deliver marketable title and payoffs, satisfactions of mortgages/liens and recording, property taxes pro-rated at Closing, contractually required real estate broker compensation, and fees and expenses of Seller's attorney.

At Closing, Seller will pay Buyer's transaction costs not to exceed $ N/A OR _____% of purchase price, whichever is higher, which includes non-allowable costs first and then allowable costs (FHA/VA). Buyer is responsible for any Buyer's transaction costs exceeding this amount. If the amount exceeds the actual amount of those costs or amount allowed by Lender, then any excess funds will revert to Seller. Seller will also provide or pay for all of Seller's transaction costs. If no Closing, Buyer is responsible for Buyer's transaction costs and Seller responsible for Seller's transaction costs.

Private/public transfer fees and any costs similar to transfer fees (e.g. capital contributions, conservancy fees, estoppel fees, or otherwise named but similar fees paid to the owners association) are the ☒ Seller's or ☐ Buyer's transaction costs.

Unless otherwise agreed upon in writing, Buyer will pay Buyer's transaction costs and Seller pay Seller's transaction costs.
N/A

7. FINANCE: Buyer's obligation under this Contract ☐ is ☒ is not contingent upon obtaining financing of a ☐ 30 year or ☐ 15 year or ☐ other _____ purchase money loan at reasonable prevailing market terms with loan(s) equal in amounts to a minimum _____ % and maximum _____ % of the Purchase Price or Appraised Value

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whichever is lower ("Financing Contingency"). Financing Contingency expires at Closing ("Financing Period"). Buyer must make timely good faith efforts to apply for and obtain financing while refraining from contrary actions ("Financing Effort"). In a timely manner, Buyer shall inform Seller and Brokers of pertinent financing issues and authorize Buyer's Lender to disclose pertinent loan information to Seller and Brokers ("Financing Disclosure"). Buyer shall apply for financing within N/A Business Days from the Effective Date and shall Deliver Notice to Seller of reasonable pre-final loan approval that contains no unreasonable credit, income, or asset conditions within N/A Business Days from the Effective Date (no repairs required prior to this Notice). Final loan approval occurs when Lender funds loan(s). If a Lender subsequently declines or fails to approve financing, the Buyer shall notify the Seller and Brokers as soon as possible. If the Seller and Brokers are notified of inability to obtain financing during the Financing Period, either Party may terminate this Contract by Notice and Earnest Money shall be returned to the Buyer.
Lender (may change): N/A ☐FHA ☐VA ☐Conventional ☐Seller ☐Other _____. An FHA VA Financing Addendum ☐ is ☐ is not attached. Additional financing terms ☐ are ☐ are not attached.

8. REPAIR PROCEDURE:

Parties agree upon Repair Procedure unless a Due Diligence Addendum is agreed upon and part of this Contract.

(A) All Repair Procedure Inspections shall be completed by n/a, _____. In the event repairs are necessary to place the heating systems, air conditioning systems, electrical systems, plumbing systems, water supply systems, water waste systems to be conveyed in operative condition, to make the roof free of leaks, to address environmental concerns and to make the improvements structurally sound (Repair Requests); the Seller shall be Delivered Notice in writing of the specific defects or deficiencies **no later than 2 Business Days after the Repair Procedure Inspection date mentioned above**. If the Buyer fails to notify the Seller within this timeframe, Buyer shall have waived any and all rights under terms of this section. If Lender's commitment requires any additional inspections or certifications, these are to be provided by the Buyer. Buyer at Buyer's expense shall have the privilege and responsibility of inspecting the structure, square footage, environmental concerns including but not limited to mold, radon gas, lead based hazards including lead based paints, wetlands study, appurtenant buildings, heating systems, air conditioning systems, electrical systems, plumbing systems, water supply systems, water waste systems, as well as, appurtenant equipment or appliances.

(B) No later than N/A Business Days after the date of the Delivered Notice of the Repair Requests, Seller shall Deliver Notice agreeing or not agreeing to make repairs in the Buyer's Repair Requests. The costs of all repairs to heating systems, air conditioning systems, electrical systems, plumbing systems, water supply systems, water waste systems making these systems operable, make roof free of leaks, address environmental concerns, and to make the improvements structurally sound to be paid by Seller ("Seller Paid Repairs"). **If the Seller agrees to make all the Seller Paid Repairs, the Parties agree to proceed under Contract.** The repairs to any other items are the sole responsibility of the Buyer.

If the Seller does not agree to make all the Seller Paid Repairs, the Buyer shall within **2 Business Days** choose any of the following options: (1) accept the Property in its present condition, (2) negotiate with the Seller for the payment of these repairs/price or (3) terminate this Contract by Delivered Notice and receive their Earnest Money. **IF BUYER FAILS TO ACCEPT, RENEGOTIATE, OR TERMINATE CONTRACT BY DELIVERED NOTICE WITHIN 2 BUSINESS DAYS: The Buyer agrees to buy and Seller agrees to sell the Property AS IS. Parties agree "As Is" means Buyer buys the Property for the Purchase Price while Seller maintains the Property from the Effective Date through Closing subject to normal wear without repair or replacement and sells the Property for the Purchase Price unless otherwise agreed upon in writing by the Parties in this Contract.** The obligations of the Seller for repairs terminate upon Closing.

IF A DUE DILIGENCE ADDENDUM IS SIGNED, DATED AND TIMED BY ALL PARTIES; THE PARTIES AGREE THAT THE LANGUAGE IN THE DUE DILIGENCE ADDENDUM SHALL REPLACE THE REPAIR PROCEDURE LANGUAGE IN THIS SECTION AND THE PARTIES AGREE THAT THIS TRANSACTION SHALL BE CONDUCTED IN ACCORDANCE WITH THE DUE DILIGENCE ADDENDUM WHICH GRANTS THE BUYER A UNILATERAL RIGHT TO INSPECT THE PROPERTY AND TERMINATE FOR ANY REASON WITH WRITTEN NOTICE AND PAYMENT OF A FEE IN A PERIOD.

9. INSPECTION/REINSPECTION RIGHTS: Buyer and SC licensed and insured inspectors ("Inspectors") reasonably perform any reasonable ultimately non-destructive examination and make reasonable record of the Property with reasonable Notice to Seller through Closing including investigations of off-site conditions and any issues related to the Property at Buyer Expense ("Inspections"). Buyer and persons they choose may make reasonable visual observations of Property.

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Sellers will make the Property accessible for Inspection and not unreasonably withhold access, unless otherwise agreed in writing by the Parties. Seller will keep all utilities operational through Closing unless otherwise agreed:
[x] Seller grants Buyer permission to connect utilities, pay for utilities, and hire professionals (e.g. electricians, plumbers) to safely connect and operate the utilities during the Inspections
Other _____ **☐ see attached.**

Buyer will hold harmless, indemnify, pay damages and attorneys fees to Seller and Brokers for all claims, injuries, and damages arising out of the exercise of these inspection rights. Seller will hold harmless, indemnify, pay damages and attorneys fees to Brokers for all claims, injuries, and damages arising out of the exercise of these inspection rights. Brokers recommend that Parties obtain all inspections as soon as possible. Brokers recommend that Parties and Inspectors use insurance to manage risk.

10. APPRAISED VALUE:

☐ This Contract is contingent upon the Property being valued according to the Lender's appraisal or other appraisal as agreed upon by the Parties ("Appraised Value") for the Purchase Price or higher. If the Parties are made aware that the Appraised Value is less than the Purchase Price and the Seller Delivers Notice to the Buyer within 5 Business Days or Closing (whichever earliest) of an amendment to reduce the Purchase Price to the Appraised Value, the Parties agree to proceed to Closing under terms of this Contract with the Purchase Price amended to be the Appraised Value. If Seller is aware and refuses to reduce as stated above, Buyer may proceed to Closing or terminate this Contract by Delivering Notice of Termination to the Seller whereupon the Earnest Money will be returned to Buyer.

[x] This Contract is **not** contingent upon the Property being valued at an Appraised Value according to the Lender's appraisal or other appraisal as agreed upon by the Parties for the Purchase Price or more.

11. WOOD INFESTATION REPORT: If the Property to be sold has been previously occupied, this Contract is contingent upon the ☐ Buyer ☐ Seller having the Property inspected at their expense by a qualified/licensed/bonded pest control operator selected by the ☐ Buyer ☐ Seller and Delivery to Closing of a CL100 Wood Infestation Report dated no earlier than 30 calendar days prior to Closing and no later than N/A calendar days prior to Closing. If the Buyer is responsible for having the Property inspected as indicated above, but does not have the Property timely inspected for the report's required Delivery time frame, the Buyer waives any and all rights under the terms of this section. The Seller makes no warranties with regard to matters covered by such infestation report or any other improvement unless specifically stated in this Contract.

If the infestation report reveals the presence or indication of or damages by termite infestation or other wood destroying organisms, Seller shall remedy such deficiencies and shall furnish the Buyer with an infestation report by a qualified/licensed/bonded pest control operator (dated no earlier than 30 calendar days prior to Closing) that the Property is free from infestation or any damage herein mentioned; or documentation that the infestation has been treated and damage has been repaired as appropriate in a workmanlike manner on or before closing and reported by an appropriate licensee. State law and regulations control CL100 issues. If the Seller does not make the repairs and treatment, the Buyer shall have the option to (1) accept the Property in its present condition, (2) negotiate with the Seller for the payment of these repairs and treatment, or (3) terminate this Contract by Delivering Notice of Termination to the Seller whereupon the Earnest Money will be returned to Buyer. If the Property to be sold has not been previously occupied, Seller shall certify that the Dwelling has been treated by soil poisoning for the prevention of termites and other wood destroying organisms and shall provide at Closing to the Buyer a written certification from a qualified/licensed/bonded pest control operator. The obligations of the Seller under this Section terminate after the Closing.

12. SURVEY, TITLE EXAMINATION, ELEVATION, INSURANCE: Brokers recommend Buyer have Property surveyed, title examined, elevation/wetlands determined, and appropriate insurance (e.g. flood, hazard, liability, owner's title) effective at Closing. Unless otherwise agreed upon in writing by Parties, Buyer to obtain new insurance policies by Closing and Seller may cancel existing insurance after Closing. Flood Insurance, if required by Lender or at Buyer's option, shall be assigned to Buyer with permission of carrier and premium prorated to Closing. Buyers are solely responsible to investigate pricing, availability, coverage, and requirements of insurance (e.g. flood, hazard, liability) for the property prior to signing Contract.

13. SURVIVAL: If any provision herein contained which by its nature or effect is required to be observed, kept, or performed after Closing, it will survive the Closing and remain binding upon for the parties hereto until fully observed, kept or performed.

14. HOME WARRANTY COMPANY OPTIONAL COVERAGE ("HWC"): Parties agree that a Home Warranty ordered by N/A with at least twelve months of coverage after Closing Date ☐ will ☐ will not be provided by Closing and $ N/A will be paid by N/A to the Home Warranty Company. Buyer to pay any deficit and surplus reverts to payor. Proposed HWC and type of HWC: N/A.

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15. FIRE OR CASUALTY OR INJURY: In case the Property is damaged wholly or partially by fire or other casualty prior to Closing, Parties will have the right for 5 Business Days after Notice of damage to Deliver Notice of Termination to other Party. If Party does not Deliver Notice of Termination, the Parties proceed according to the Contract and Seller is to be responsible to (1) repair all damage, (2) remit to Buyer an amount sufficient for repairs, or (3) assign to Buyer the right to all proceeds of insurance and remit any deductible amount applicable to such casualty. If Buyer or Inspections caused the damage, Buyer is responsible for indemnifying Seller for damages. Brokers and Parties should ensure that they are protected by appropriate risk management strategies such as insurance.

16. SC RESIDENTIAL PROPERTY CONDITION DISCLOSURE STATEMENT ("CDS") [check one]:

☐ Buyer and Seller agree that Seller has Delivered prior to this Contract, a CDS to Buyer, as required by SC Code of Laws Section 27-50-10 et seq. If after delivery, Seller discovers a CDS material inaccuracy or the CDS becomes materially inaccurate due to an occurrence or circumstance; the Seller shall promptly correct this inaccuracy (e.g. delivering a corrected CDS to the Buyer/making reasonable repairs prior to Closing). Buyer understands the CDS does not replace Inspections. Buyer understands and agrees the CDS contains only statements made by the Seller. Parties agree the Brokers have met requirements of SC Code 27-50-70 and Brokers are not responsible or liable for any information in the CDS. CDS is not a substitute for the Buyers and Inspectors inspecting the Property (related issues/onsite/offsite) "Property issues" for all needs.

☒ Buyer and Seller agree that Seller will **NOT** complete nor provide a CDS to Buyer in accordance with SC Code of Law, as amended, Section 27-50-30, Paragraph (13). Buyers have sole responsibility to inspect Property Issues for all their needs.

17. LEAD BASED PAINT/LEAD HAZARDS: If Property was built or contains items created prior to 1978, it may contain lead based hazards and Parties agree to sign "Disclosure of Information of Lead Based Paint and/or Lead Hazards" forms and give copies to Brokers. Parties acknowledge receiving and understanding the EPA pamphlet "Protect Your Family From Lead in Your Home." For their protection, Buyers should conduct/obtain Inspections of all Property Issues per their needs.

18. SEX OFFENDER/CRIMINAL INFORMATION: Parties agree that Brokers are not responsible for obtaining or disclosing information in the SC Sex Offender Registry and no course of action may be brought against any Brokers for failure to obtain or disclose sex offender or criminal information. Buyer and Seller agree that they have sole responsibility to obtain their own sex offender, death, psychological stigma, clandestine laboratory, and crime information from sources (e.g. law enforcement, P.I., web). The Buyer may obtain information about the Sex Offender Registry and persons registered with the Registry by contacting the local county Sheriff or other appropriate law enforcement officials.

19. TRUST ACCOUNT INTEREST/CHARITABLE CONTRIBUTION: According to the South Carolina Real Estate Commission regulations and South Carolina laws, any interest earned from deposit to Closing on Buyer's earnest money deposit belongs to Buyer. It is understood that Broker ☐ may ☒ may not place deposited earnest monies into an interest bearing trust account. If Buyer's earnest money deposit is deposited into an interest bearing trust account, Parties agree that Broker will retain all interest earned in said account and may contribute some or all to a charitable enterprise.

20. SC INCOME TAX ON NON-RESIDENT GAIN AND COMPLIANCE AND USA FEDERAL INCOME TAX: Seller and Buyer will comply with the provisions of South Carolina laws [e.g. 12-8-580 (as amended)] regarding state income tax withholding requirements if the Seller is not a resident or has not filed South Carolina state income tax returns. Seller and Buyer will comply with United States of America federal income tax laws. Seller and Buyer should discuss tax laws and minimization actions with their qualified tax advisor. Parties will comply with all local, state, federal laws, and any rules.

21. ENTIRE AND BINDING AGREEMENT (MERGER CLAUSE): Parties agree that this Contract expresses the entire agreement between the parties, that there is no other agreement, oral/otherwise, modifying the terms; and this Contract is binding on Parties and principals, heirs, personal representatives, successors, and assigns. Illegal provisions are severable.

22. ADJUSTMENTS: Buyer and Seller agree to settle or prorate, annually or as appropriate; as of Closing Date: (A) utilities and waste fees issued after Closing which include service for time Property was owned/occupied by Seller (B) real estate taxes and owner association fees/assessments for the calendar year of Closing (C) any rents, deposits, fees associated with leasing (D) insurance, EMS service, fuel/consumables, and assessments. Closing Attorney shall make tax proration based on the available tax information deemed reliable by the Closing Attorney. Should the tax or tax estimate or proration later become inaccurate or change, Buyer and Seller shall make any financial adjustments between themselves once accurate tax information is available. This section survives Closing. Buyer is solely responsible for minimizing the Buyer's taxes and obtaining tax minimization procedural information including related legal counsel and financial counsel. Special assessments approved prior to Closing shall be the responsibility of the Seller. Special Assessments approved after Closing shall be the responsibility of the Buyer.

23. DEFAULT:

(A) If Seller defaults in the performance of any of the Seller's obligations under this Contract ("Default"), Buyer may:

(i) Deliver Notice of Default to Seller and terminate Contract; and

(ii) Pursue any remedies available to Buyer at law or equity; and
(iii) Recover attorneys' fees and all other direct costs of litigation if Buyer prevails in any action against Seller.
(B) If Buyer defaults in the performance of any of the Buyer's obligations under this Contract ("Default"), Seller may:
(i) Deliver Notice of Default to Buyer and terminate Contract; and
(ii) Pursue any remedies available to Seller at law or equity; and
(iii) Recover attorneys' fees and all other direct costs of litigation if Seller prevails in any action against Buyer.
(C) If either/both Parties default, Parties agree to sign an escrow deposit disbursement agreement or release agreement.
(D) Parties may agree in writing to allow a Cure Period for a default. If within the Cure Period, either Party cures the Default and Delivers Notice, Parties shall proceed under the Contract.

24. MEDIATION: Mediation is an alternative dispute resolution system and may help avoid potentially expensive and lengthy litigation. The mediation participants voluntarily decide their settlement with the mediator facilitating their decisions and documentation of the settlement. Mediation is not binding arbitration. The mediator does not decide the outcome. The mediation participants make their own decisions include reaching or not reaching a settlement. Any dispute, claim, breach, or services issues relating to this Contract shall be submitted to mediation in accordance with the Procedures of the Dispute Resolution System of the NATIONAL ASSOCIATION OF REALTORS® (info@SCREALTORS.org 1-803-772-5206). Disputes include representations made by any Party, Broker, person or entity in connection with the sale, purchase, financing, condition or any other aspect of the Property, including without limitation allegations of concealment, misrepresentation, negligence or fraud. Any agreement signed by the Parties pursuant to mediation is binding. This mediation clause shall survive the Closing. The following matters are excluded from mediation herein: (a) judicial or non-judicial foreclosure or other action or proceeding to enforce a deed of trust, mortgage, or land contract; (b) an unlawful detainer action; (c) the filing or enforcement of a mechanic's lien; (d) any matter which is within the jurisdiction of a probate court; (e) the filing of an interpleader action or other action to resolve earnest money disputes. The filing of a judicial action to enable the recording of a notice of pending action, for order of attachment, receivership, injunction, or other provisional remedies, shall not constitute a waiver of the right to mediate under this provision, nor shall it constitute a breach of the duty to mediate.

25. NON-RELIANCE CLAUSE (NOT A MERGER CLAUSE NOR EXTENSION OF A MERGER CLAUSE): Parties execute this Contract freely and voluntarily without reliance upon any statements, representations, inducements, promises, or agreements by Brokers or Parties except as expressly stipulated or set forth in this Contract. If not contained herein, such statements, representations, inducements, promises, or agreements shall be of no force or effect. Parties acknowledge that Brokers are being retained solely as licensed real estate agents and not as any attorney, tax/financial advisor, appraiser, surveyor, engineer, mold or air quality expert, home inspector, or other professional service provider.

26. BROKER DISCLAIMER: Parties acknowledge that Brokers give no warranties or representations of any kind, expressed or implied as to: (1) condition of the Property, including but not limited to termites, radon, mold, asbestos, moisture, environmental issues, water, waste, air quality, HVAC, utilities, plumbing, electrical or structure, etc. (2) condition of the Property, survey or legal matters, square footage (3) off site conditions (4) schools (5) title including but not limited to easements, encroachments, projections, encumbrances, restrictions, covenants, setbacks, and the like (6) fitness for a particular purpose of the Property or the improvements (7) zoning ordinances and restrictions (8) projected income, value, marketability, taxes, insurance, or other possible benefits to Buyer. Parties consent that their Brokers may communicate with them via any means; and use or disclose information not made confidential by written instruction of Parties.

27. BROKERS COMPENSATION: Parties direct Closing Attorney to use settlement funds to collect and disburse Brokers Compensation to Brokers in accordance with agreements and document compensation on the settlement statement. If a Party disputes Brokers Compensation, that Party agrees to retain a South Carolina law firm to escrow only the disputed amount of Brokerage Compensation until the dispute is resolved by a written agreement signed by that Party and the Affected Broker, arbitration award, or court order. Party requesting the escrow shall pay all costs for escrow. If the dispute is not resolved within 180 days of Closing, the escrow shall be disbursed to the Broker. Parties agree that Brokers are third party beneficiaries to this Contract and have standing to seek remedies at law and equity. Parties represent that their only enforceable agency and/or non-agency agreements are with the Brokers disclosed in this Contract. Parties consent to Brokers possibly receiving compensation from the HWC and/or others if compensation is paid by in accordance with laws and REALTOR® ethics. NOTICE: THIS IS TO GIVE YOU NOTICE THAT BROKERS HAVE/WILL/MAY RECEIVE COMPENSATION FROM HWC/OTHERS FOR REFERRAL/PROCESSING. YOU ARE NOT REQUIRED TO PURCHASE A HWC OR SIMILAR RESIDENTIAL SERVICE CONTRACT AND IF YOU CHOOSE TO PURCHASE SUCH COVERAGE YOU ARE FREE TO PURCHASE IT FROM ANOTHER PROVIDER.

28. ATTACHMENTS, OTHER CONTINGENCIES, TERMS, AND/OR STIPULATIONS: There may be attachments to this Contract. The most recent changes, amendments, attachments, contingencies, stipulations, addendum, additions, exhibits, or writings, agreed to by the Parties; is evidence of the Parties' intent and agreement and shall control any Contract language conflicts. Parties shall initial and date Contract changes. If any documents are attached as addenda,

amendments, attachments, or exhibits considered part of this Agreement, such documents can be further identified or described here: _____

29. NOTICE AND DELIVERY: Notice is any unilateral communication (e.g. offers, counteroffers, acceptance, termination, requests for better terms, and associated addenda/amendments) from one Party to the other. Notice to/from a Broker representing a Party is deemed Notice to/from the Party. All Notice, consents, approvals, counterparts, and similar actions required under Contract must be in paper or electronic writing and will be effective as of delivery to the Notice address/email/fax written below and awareness of receipt by Broker ("Delivered") unless Parties agree otherwise in writing.

30. PARTIES ARE SOLELY RESPONSIBLE FOR OBTAINING LEGAL ADVICE PRIOR TO SIGNING THIS CONTRACT AND DURING THE TRANSACTION. REAL ESTATE LICENSEES RECOMMEND OBTAINING LEGAL COUNSEL. Due to potential criminal activity, parties are solely responsible to verify all wiring instructions with law firm/bank. Parties acknowledge receiving, reading, reviewing, and understanding: this Contract, the SC Disclosure of Real Estate Brokerage Relationships form, any agency agreements, and copies of these documents. Parties acknowledge having time and opportunity to review all documents and receive legal counsel from their attorneys prior to signing Contract.

31. EXPIRATION OF OFFER: When signed by a Party and intended as an offer or counter offer, this document represents an offer to the other Party that may be rescinded any time prior to or expires at 5 ☐ AM ☒ PM on August 23, 2017 unless accepted or counter-offered by the other Party in written form Delivered prior to such deadline: _____

IN WITNESS WHEREOF, this Contract has been duly executed by the Parties as true to the best of their knowledge/belief. If signee is not a Party, appropriate legal documents (e.g. Power of Attorney, Corporate Authorization) are ☐ attached or ☐ to be Delivered within _____ Business Days.

Parties shall initial and date all changes in this Contract and initial all pages.

BUYER: JCuppia 08/23/2017 0:37:55 Jerome C Cuppia **Date:** _____ **Time:** _____

BUYER: _____ **Date:** _____ **Time:** _____

_____ **Date:** _____ **Time:** _____

_____ **Date:** _____ **Time:** _____

NOTICE ADDRESS/EMAIL/FAX: _____

SELLER: [signature] **Date:** 8-23-17 **Time:** _____

SELLER: Agent for Beaufort County **Date:** _____ **Time:** _____

_____ **Date:** _____ **Time:** _____

_____ **Date:** _____ **Time:** _____

NOTICE ADDRESS/EMAIL/FAX: _____

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