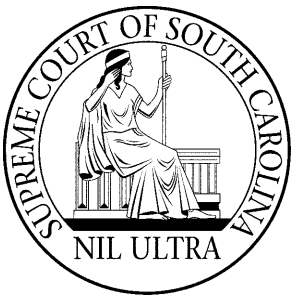

OPINIONS

OF

THE SUPREME COURT

AND

COURT OF APPEALS

OF

SOUTH CAROLINA

ADVANCE SHEET NO. 35
September 14, 2017
Daniel E. Shearouse, Clerk
Columbia, South Carolina
www.sccourts.org

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THE STATE OF SOUTH CAROLINA
In The Supreme Court

In the Matter of Jacob Leon Parrott, Respondent.

Appellate Case No. 2017-001451

Opinion No. 27736
Submitted August 25, 2017 – Filed September 14, 2017

DEFINITE SUSPENSION

Lesley M. Coggiola, Disciplinary Counsel, and C. Tex Davis, Jr., Senior Assistant Disciplinary Counsel, both of Columbia, for Office of Disciplinary Counsel.

Jacob Leon Parrott, of Myrtle Beach, *Pro Se*.

PER CURIAM: In this attorney disciplinary matter, respondent and the Office of Disciplinary Counsel (ODC) have entered into an Agreement for Discipline by Consent (Agreement) pursuant to Rule 21 of the Rules for Lawyer Disciplinary Enforcement (RLDE) contained in Rule 413 of the South Carolina Appellate Court Rules (SCACR). In the Agreement, respondent admits misconduct and consents to discipline ranging from a public reprimand to a definite suspension not to exceed nine months. Respondent requests the sanction be made retroactive to the date of interim suspension,[1] but understands that if the Court declines to apply the sanction retroactively, the validity or enforceability of the Agreement is not affected. ODC does not oppose the request.

Respondent has agreed to pay the costs incurred by ODC and the Commission on Lawyer Conduct in the investigation and prosecution of this matter. Respondent

[1] Respondent was placed on interim suspension by order dated December 29, 2016. *In re Parrott*, 419 S.C. 1, 795 S.E.2d 457 (2016).

has also agreed, as a condition of discipline, to enter into a two year monitoring contract with Lawyers Helping Lawyers and file annual reports of his compliance with the contract with the Commission on Lawyer Conduct.

We accept the Agreement and suspend respondent from the practice of law in this state for nine months, not retroactive. The facts, as set forth in the Agreement, are as follows.

Facts

In August 2016, respondent was arrested and charged with voyeurism pursuant to S.C. Code Ann. § 16-17-470(B) (2015) after he used a cell phone to take a picture up a woman's skirt in a grocery store. He was 56 years old at the time. Respondent failed to inform the Commission on Lawyer Conduct in writing within fifteen days of the arrest. Respondent represents he reviewed the rule regarding self-reporting an arrest and consulted with an attorney, but concluded he did not have a duty to self-report.

In January 2017, the charge was remanded to the municipal court contingent upon respondent pleading guilty to assault and battery, third degree. The following month, respondent pled guilty as agreed and was sentenced to pay a fine of $776.

By way of an affidavit in mitigation, respondent states he is an alcoholic in active recovery and attends Alcoholics Anonymous (AA) five to seven times a week. Respondent states he had been sober for approximately 235 days as of the date of the affidavit - May 15, 2017. He also attends a follow-up care program at Coastal Recovery Center where he is completing their intensive outpatient treatment program. He has provided a letter from the Center regarding his continued participation in outpatient treatment and stating respondent appears to be committed to "life-long recovery in abstinence based recovery principles."

Respondent explains that he progressed from being a social drinker to an alcoholic in 2013 and began attending AA "off and on" at that point, with some periods of sobriety, including one twenty-month period. At the time, he was living in Northern Virginia and had the support of sober friends and an AA sponsor. Respondent states he was "highly successful" while working in the Northern Virginia/DC area where he "excelled" in positions with Westlaw/Thomson Reuters. However, when Thomson Reuters downsized, respondent lost his job.

He took and passed the Virginia bar examination and established a solo practice in Northern Virginia, while maintaining his license to practice law in South Carolina. However, in August 2015, respondent moved from Virginia to Myrtle Beach to care for his elderly mother. He took a job with a criminal defense firm, but left their employ in January 2016. Respondent neglected to participate in AA after he relocated and soon relapsed, "culminating with binge drinking in the summer of 2016." At his family's insistence, he scheduled himself to be checked in to an inpatient treatment facility. However, on the day he was scheduled to report to the treatment facility, he was charged with the crime that is the basis of this disciplinary action. Respondent was highly intoxicated at the time of the incident and when he checked in to the treatment facility later that day. He completed a twenty-eight day inpatient program followed by two months of intensive outpatient treatment. Respondent has submitted a letter from the treatment facility regarding his participation in treatment while hospitalized.

Respondent notes that in nearly thirty-four years of practice as an assistant solicitor and a private practitioner, no client or any other party has lodged any type of complaint against him relating to his work.

In 1997, this Court imposed a four month suspension on respondent after he pled guilty to simple assault and battery for pulling down a woman's bathing suit while she was sunbathing at the beach in 1994. *In re Parrott*, 325 S.C. 162, 480 S.E.2d 722 (1997). The opinion notes respondent had been involved in a similar incident in 1989, but was not prosecuted. Respondent covered his face in both incidents and fled when the women put up a struggle. He had no prior connections with either woman. In mitigation, respondent offered the testimony of a psychiatrist who testified respondent was suffering from "an adjustment disorder with mixed emotions and problems with conduct." The psychiatrist opined a "psychosexual development arrest" caused the assaults. It was also the psychiatrist's opinion respondent was "developmentally arrested at the adolescent stage and his acts showed the type of sexually immature behavior normally associated with that stage." The psychiatrist believed respondent's developmental problems occurred because of family problems when respondent was growing up, that the acts would not recur, and that respondent was responding well to treatment and counseling.

Respondent acknowledges his prior disciplinary history, but points out he had no further instances of such behavior since the offense in 1994. He states that since that time, his career and personal life have been rewarding, noting he "largely raised" his three daughters on his own when they were younger.

Law

Respondent admits that his criminal conduct reflects adversely on his honesty, trustworthiness, and/or fitness as a lawyer and that the criminal act involved moral turpitude in violation of Rules 8.4(b) and (c) of the Rules of Professional Conduct (RPC), Rule 407, SCACR. Respondent further admits his failure to notify the Commission on Lawyer Conduct of his arrest constituted a violation of Rule 8.3(a), RPC, which requires a lawyer arrested for or charged by way of indictment, information or complaint with a serious crime to inform the Commission on Lawyer Conduct in writing within fifteen days of being arrested or charged. Rule 1.0(o), RPC, defines a serious crime as including a crime which reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects.

Finally, respondent admits he is subject to discipline pursuant to the following Rules for Lawyer Disciplinary Enforcement, Rule 413, SCACR: Rule 7(a)(1) (it shall be a ground for discipline for a lawyer to violate or attempt to violate the Rules of Professional Conduct or any other rules of this jurisdiction regarding professional conduct of lawyers); Rule 7(a)(4) (it shall be a ground for discipline for a lawyer to be convicted of a crime of moral turpitude or serious crime); and Rule 7(a)(5) (it shall be a ground for discipline for a lawyer to engage in conduct tending to pollute the administration of justice or to bring the courts or the legal profession into disrepute or conduct demonstrating an unfitness to practice law).

Conclusion

We hereby suspend respondent from the practice of law in this state for nine months from the date of this opinion. Respondent shall pay the costs incurred by ODC and the Commission on Lawyer Conduct in the investigation and prosecution of this matter. Respondent shall also enter into a two year monitoring contract with Lawyers Helping Lawyers and file annual reports of his compliance with the contract with the Commission on Lawyer Conduct.

Within fifteen days of the date of this opinion, respondent shall file an affidavit with the Clerk of Court showing that he has complied with Rule 30, RLDE, Rule 413, SCACR.

DEFINITE SUSPENSION.

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

THE STATE OF SOUTH CAROLINA
In The Supreme Court

In the Matter of Michael Mark McAdams, Respondent.

Appellate Case No. 2017-000732

Opinion No. 27737
Heard June 15, 2017 – Filed September 14, 2017

DISBARRED

Lesley M. Coggiola, Disciplinary Counsel, and C. Tex Davis, Jr., Senior Assistant Disciplinary Counsel, both of Columbia, for the Office of Disciplinary Counsel.

Michael Mark McAdams, of Myrtle Beach, *pro se*.

PER CURIAM: Between September 2006 and July 2009, Respondent Michael Mark McAdams participated in a fraudulent investment scheme along with co-defendants Robert Dane Freeman and Charles Lowell Walker. The Office of Disciplinary Counsel (ODC) brought formal disciplinary charges against McAdams after he pled guilty to one count of wire fraud conspiracy as a result of his participation in the scheme. Because McAdams failed to file any response to the formal charges, all the allegations contained therein are deemed admitted. Rule 24(a), RLDE, Rule 413, SCACR. The sole matter before the Court is determining the appropriate sanction. We accept the recommendation from the Commission on Lawyer Conduct (the Commission) and order McAdams be disbarred and assessed the costs of the proceedings in this matter.[1]

[1] McAdams failed to appear at the proceeding before this Court despite having been ordered to do so.

FACTUAL BACKGROUND

While a partner in a Myrtle Beach law firm, McAdams joined with Freeman and Walker to create an entity known as Global Holdings Group, LLC (GHG). McAdams and his co-defendants purported to engage in international financial investments and solicited funds from wealthy individuals for high-yield, unregulated transnational investment opportunities. McAdams used his status and position of confidence as an attorney to identify and target wealthy individuals for solicitation of investment opportunities, while also bolstering the credibility of GHG. During the course of the enterprise, McAdams became aware that the investments were fraudulent and that the solicited funds were not being used as promised, but he continued to use his position as an attorney to solicit funds for GHG. Rather than engaging in any investment transactions, McAdams and his co-defendants used the solicited funds to pay for personal expenses and to make lulling payments to previous investors in an effort to perpetuate the fraud.

Eventually, a federal investigation ensued, and in 2014 McAdams was charged with three counts of wire fraud, one count of wire fraud conspiracy, and one count of international money laundering. McAdams subsequently pled guilty to the one count of wire fraud conspiracy in exchange for dismissal of the remaining charges. As conditions of the plea deal, McAdams agreed, *inter alia*, to further cooperate with the Federal Government in the prosecution of his co-defendants, and to pay restitution totaling $3,327,494.11.

Following the criminal investigation and subsequent plea agreement, ODC filed formal disciplinary charges against McAdams in September 2016, and the Commission's disciplinary panel (the Panel) held a hearing the following February. Based on McAdams' role in the investment scheme and his failure to participate in the disciplinary proceedings, the Panel found him in violation of the Rules of Professional Conduct (RPC) contained in Rule 407, SCACR. The nature of the violations are three-fold. First, after being notified that ODC was conducting an investigation into allegations of misconduct in 2009, McAdams failed to submit any written response, failed to comply with a subpoena for documents, and failed to appear to respond to questions under oath as directed. Based on this failure to cooperate, McAdams was placed on interim suspension by this Court in April 2010. After learning of McAdams' guilty plea, ODC began conducting a new investigation in July 2016, but McAdams again failed to submit any written response. The Panel found this failure to cooperate was in violation of Rule 8.1(b), RPC, Rule 407,

SCACR. Second, the Panel found the conduct giving rise to McAdams' indictment and guilty plea was in violation of Rules 8.4(b), (d) & (e), RPC, Rule 407, SCACR. Lastly, after this Court issued an order for McAdams to reimburse the Lawyers' Fund for Client Protection for the services rendered by an attorney appointed to protect McAdams' former clients, the Panel found he has failed to make any payments, in violation of Rule 8.4(e), RPC, Rule 407, SCACR.

As a result of the aforementioned findings of misconduct, the Panel determined McAdams is subject to discipline for violating the following Rules for Lawyer Disciplinary Enforcement: Rule 7(a)(1) (violating the Rules of Professional Conduct); Rule 7(a)(3) (willfully violating an order of the Supreme Court and willfully failing to appear, respond, or comply as directed by disciplinary authorities); Rule 7(a)(4) (conviction of a crime of moral turpitude); and Rule 7(a)(5) (engaging in conduct tending to bring the legal profession into disrepute or conduct demonstrating an unfitness to practice law). Rule 413, SCACR.

DISCUSSION

Because McAdams has been found in default, the factual allegations against him are deemed admitted and the sole question remaining for the Court to determine is whether to impose the Panel's recommended sanction. *See In re Jacobsen*, 386 S.C. 598, 606, 690 S.E.2d 560, 564 (2010). Although we are not bound by the findings of the Panel, its recommendation is entitled to great weight. *Id.*

In this case, we accept the Panel's findings and recommendations *in toto*. While McAdams presented no mitigating evidence, we agree with the Panel's consideration of aggravating factors, namely McAdams' lack of cooperation in the disciplinary investigation, failure to answer the formal charges, and failure to appear at the disciplinary hearing. *See In re Tullis*, 375 S.C. 190, 192, 652 S.E.2d 395, 395–96 (2007) (explaining the Court gives substantial weight to an attorney's failure to answer charges or appear at a disciplinary hearing, usually resulting in the most severe sanctions).

Given the nature and magnitude of McAdams' misconduct, his lack of participation in the disciplinary process, and absence of any mitigating factors, we find disbarment to be the appropriate sanction, not retroactive to the date of interim suspension. Further, we order that he pay the costs of the investigation and prosecution of this

matter totaling $683.10 and reimburse the Lawyers' Fund for Client Protection in the amount of $221.66, both within 30 days of the date of this order.

Within fifteen (15) days of the date of this opinion, McAdams shall file an affidavit with the Clerk of Court showing that he has complied with Rule 30 of Rule 413, SCACR, and shall also surrender his Certificate of Admission to the Practice of Law to the Clerk of Court.

DISBARRED.

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

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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

v.

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

Appellate Case No. 2015-001175

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS

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

Opinion No. 27738
Heard January 12, 2016 – Filed September 14, 2017

REVERSED

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

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

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

I. Factual and Procedural History

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

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

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[1] Sloan is a citizen, resident, taxpayer, and registered elector of South Carolina.

[2] S.C. Const. art. X, §§ 5, 11.

[3] SCDOT determined the bridges "are in good condition with just some minor problems."

(1) The bridges are neither part of the State highway system nor are they owned or maintained by the City of Aiken;

(2) The request to inspect the bridges came from a city councilman, not from the City of Aiken;

(3) Prior to the inspection, SCDOT personnel made a direct inquiry to the City of Aiken and verified that the bridges were private property;

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

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

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

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

The Court of Appeals affirmed, concluding Petitioners did not have standing and the action did not fall under any exception to the mootness doctrine. *S.C. Pub. Interest Found.*, 412 S.C. at 24-28, 770 S.E.2d at 402-04. The Court of Appeals

[4] *See* S.C. Code Ann. § 57-3-110 (2006) (providing SCDOT may, upon request, assist government authorities in supervising the construction of roads and bridges under certain circumstances).

based its conclusion solely on its belief that SCDOT "conducted its own audit and concluded its own actions were improper." *Id.* at 24, 770 S.E.2d at 402. The Court of Appeals declined to reach the issues of whether Respondents' conduct was *ultra vires* or unconstitutional based on its disposition of the justiciability issues. *Id.* at 28, 770 S.E.2d at 404. This Court granted certiorari to review the decision of the Court of Appeals.

II. Standard of Review

When reviewing a grant of summary judgment, appellate courts apply the same standard that governs the trial court under Rule 56(c), SCRCP, which provides that summary judgment is proper when there is no genuine issue as to material fact and the moving party is entitled to judgment as a matter of law. *USAA Prop. & Cas. Ins. Co. v. Clegg*, 377 S.C. 643, 653, 661 S.E.2d 791, 796 (2008); Rule 56(c), SCRCP. This Court reviews all ambiguities, conclusions, and inferences arising in and from the evidence in a light most favorable to the non-moving party below. *Willis v. Wu*, 362 S.C. 146, 151, 607 S.E.2d 63, 65 (2004).

III. Discussion

A. Whether Petitioners have standing to bring their claim.

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

1. Constitutional Standing

A party has constitutional standing if he can show: (1) he suffered an invasion of a legally protected interest, which is concrete and particularized, and actual or imminent; (2) a causal connection between the injury and the challenged conduct; and (3) it is likely the injury will be redressed by a favorable decision. *Youngblood v. S.C. Dep't. of Soc. Servs.*, 402 S.C. 311, 317-18, 741 S.E.2d 515, 518 (2013). Here, Petitioners are unable to show they suffered a concrete and particularized injury distinct from that shared by other taxpayers; therefore, we find Petitioners do

not have constitutional standing. *See Freemantle v. Preston*, 398 S.C. 186, 193, 728 S.E.2d 40, 44 (2012) (recognizing that a taxpayer's injuries are "common to all citizens and taxpayers . . . [which thereby] defeats the constitutional requirement of a concrete and particularized injury").

2. Public Importance Standing

Unlike with constitutional standing, a party is not required to show he has suffered a concrete or particularized injury in order to obtain public importance standing. *S.C. Pub. Interest Found. v. S.C. Transp. Infrastructure Bank*, 403 S.C. 640, 645, 744 S.E.2d 521, 524 (2013). Nor must he "show he has an interest greater than other potential plaintiffs." *Davis v. Richland Cnty. Council*, 372 S.C. 497, 500, 642 S.E.2d 740, 742 (2007). Requiring otherwise would undermine the purpose of public importance standing, which is to "[a]llow[] interested citizens a right of action in our judicial system when issues are of significant public importance to ensure[] . . . accountability and the concomitant integrity of government action." *Sloan v. Greenville Cnty.*, 356 S.C. at 551, 590 S.E.2d at 349. However, as this Court recognized:

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

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

[5] *See ATC S.*, 380 S.C. at 199, 669 S.E.2d at 341 ("Of course zoning is a matter of public importance, but the same may be said of most legislative and executive actions.").

of the dispute is needed for future guidance. . . . [T]he need for future guidance generally dictates when [public importance standing] applies."). Applying this test to the case at hand, we find Petitioners have established public importance standing.

The issue of whether SCDOT may inspect bridges within private, gated communities is one of public importance as it involves both the conduct of a government entity and the expenditure of public funds. *See Sloan v. Sch. Dist. of Greenville Cnty.*, 342 S.C. 515, 523, 537 S.E.2d 299, 303 (Ct. App. 2000) (recognizing that there is a "public interest involved i[n] the prevention of the unlawful expenditure of money raised by taxation"). A further indicator of the issue's importance is that, as even the dissent recognizes, a decision on the merits of the issue may "have far-reaching . . . consequences for the safety of our citizens." Additionally, future guidance is needed since there is no judicial guidance addressing the issue and there is evidence SCDOT will inspect this type of property in the future. When asked during oral argument whether SCDOT would inspect bridges located on private property again, SCDOT replied "Yes, if we have the time." Although a close call, we find the policy concerns that we must balance in determining whether to confer public importance standing weigh in Petitioners' favor given the factors already mentioned and the issue involved implicates both statutory and constitutional provisions. Accordingly, we hold Petitioners have public importance standing. A contrary holding would essentially render a law superfluous if we deem the conduct it prohibits too insignificant to ensure the law is enforced.[6]

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[6] We note that this Court has granted Sloan public importance standing in at least six other cases. *See S.C. Pub. Interest Found. v. S.C. Transp. Infrastructure Bank*, 403 S.C. 640, 744 S.E.2d 521 (2013) (granting Sloan public importance standing in order to consider whether the statute that governs the composition of the South Carolina Transportation Infrastructure Bank's Board of Directors is constitutional); *Sloan v. Dep't of Transp.*, 379 S.C. 160, 666 S.E.2d 236 (2008) (finding Sloan had public importance standing to challenge SCDOT's alleged misuse of a statutory emergency procurement provision); *Sloan v. Hardee*, 371 S.C. 495, 640 S.E.2d 457 (2007) (applying public importance standing to decide whether certain SCDOT Commissioners were lawfully appointed); *Sloan v. Wilkins*, 362 S.C. 430, 608 S.E.2d 579 (2005) (determining Sloan was entitled to public importance standing to challenge whether an act violated the one subject provision of the South Carolina Constitution); *Sloan v. S.C. Dep't of Transp.*, 365 S.C. 299, 618 S.E.2d 876 (2005) (holding Sloan had public importance standing to dispute the propriety of the procurement procedure SCDOT used to award contracts for certain construction projects); *Sloan v. Sanford*, 357 S.C. 431, 593 S.E.2d 470 (2004) (conferring public

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

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

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

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

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

"A case becomes moot when judgment, if rendered, will have no practical legal effect upon the existing controversy." *Sloan v. Greenville Cnty.*, 380 S.C. 528, 535, 670 S.E.2d 663, 667 (Ct. App. 2009). There are three exceptions to mootness. "First, if the issue raised is capable of repetition but generally will evade review, the appellate court can take jurisdiction." *Sloan v. Greenville Cnty.*, 380 S.C. at 535, 670 S.E.2d at 667. "Second, an appellate court may decide questions of imperative and manifest urgency to establish a rule for future conduct in matters of important public interest." *Curtis v. State*, 345 S.C. 557, 568, 549 S.E.2d 591, 596 (2001). "Finally, if a decision by the trial court may affect future events, or have collateral

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importance standing to determine whether the governor may hold a commission in the Air Force Reserve).

consequences for the parties, an appeal from that decision is not moot, even though the appellate court cannot give effective relief in the present case." *Id.*

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

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

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

C. Whether SCDOT's inspection was unlawful.

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

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

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

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[7] Specifically, Petitioners raised, verbatim, the following issues in their brief:

1. When the Department of Transportation expended public funds to assist a private citizen in his dispute with the developer of a private, gated community, did the courts below err in failing to rule that the expenditure violated the South Carolina Constitution, Article X, Sections 5 and 11?

2. When a private citizen in a dispute with the developer of a private, gated community asked the Department of Transportation for professional engineering assistance, did the courts below err in ruling that the request for assistance came from a municipality?

from enjoying the use of the bridges. Thus, because it did not serve a public purpose, we find the inspection was unconstitutional.

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

> The Department of Transportation shall have the following duties and powers:
>
> instruct, assist, and cooperate with the agencies, departments, and bodies politic and legally constituted agencies of the State in street, highway, traffic, and mass transit matters when requested to do so, and, ***if requested by such government authorities, supervise or furnish engineering supervision for the construction and improvement of roads and bridges***, provided such duties do not impair the attention to be given the highways in the state highway system.

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

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

IV. Conclusion

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

REVERSED.

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

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

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

Even assuming Sloan has public interest standing, I respectfully disagree with the majority's analysis and conclusion. I believe today's decision will have far-reaching negative consequences for the safety of our citizens,[8] in that the majority unreasonably constrains the authority and discretion of Respondent South Carolina Department of Transportation (DOT) in the discharge of its constitutional and statutory duty to build and maintain a safe roadway system for the use of the public. *See* S.C. Const. art. XII, § 1 (authorizing the General Assembly to establish agencies to protect the public health, safety, and welfare and to set the limits within which those agencies may operate); S.C. Code Ann. § 57-3-110 (2006) (listing DOT's powers and responsibilities); *see also Leonard v. Talbert*, 222 S.C. 79, 83, 71 S.E.2d 603, 604 (1952) ("Subject to constitutional limitations, the state has *absolute control* of the highways, including streets, within its borders, even though the fee is in the municipality. Such power of *supervision* and control may be exercised directly by the legislature or may be delegated by it to subordinate or local governmental agencies . . . ." (emphasis added) (citation and

[8] The majority references my "far-reaching negative consequences" statement as "[a] further indicator of the issue's importance" justifying Sloan's public importance standing. Not so. My comment is addressed to the impact of what I believe is the Court's clearly erroneous decision today on the merits.

internal quotation marks omitted)); *cf. S.C. State Highway Dep't v. Harbin*, 226 S.C. 585, 597–98, 86 S.E.2d 466, 472 (1955) (recognizing that "under its police power [the General Assembly] has full authority in the interest of public safety" to establish both the conditions under which a person may be permitted to operate a motor vehicle and the grounds on which that permit may be revoked).

The majority presents the issue in this case in a myopic and misleading way, essentially asking whether public funds may be spent for a private purpose. Framing the issue in that manner leads to the self-evident conclusion, which is, of course, that public funds may not be spent for a private purpose. However, misstating the question presented to the Court obscures the real issue and attributes to DOT a position it does not assert, as DOT has never contended it may spend "public funds for a private purpose."

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

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[9] S.C. Code Ann. § 57-3-110(7) (authorizing DOT to assist local governments so long as such assistance does not interfere with DOT's obligations to the state highway system).

[10] School buses regularly travel the roads within Woodside Plantation, which in 2011 had approximately 4,000 residents (a population that is expected to double to 8,000 residents).

[11] The majority also finds fault with the request for assistance from a member of the Aiken City Council. Councilman Reggie Ebner made the request via email to then-Representative Tom Young. Councilman Ebner signed the email "Reggie Ebner, City of Aiken Councilman for District 4." Representative Young forwarded the request to DOT and referred to the councilman as a constituent. We are told the request lacked "sufficient color of authority." I respectfully disagree.

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

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

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

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

Id. § 57-3-110(7).

I draw three conclusions, important for the resolution of this case, from the language in section 57-3-110(7). First, because DOT may only provide engineering support to local governments when doing so does not interfere with DOT's obligations to state highways, DOT's primary responsibility is clearly to the state highway system. *See id.* Second, by giving DOT discretion to assist local

governments, subsection (7) necessarily authorizes DOT to provide assistance to local governments for roads and bridges *outside of* the state highway system. *See id.* Third, although subsection (1) limits DOT's power to "lay out, build, and maintain" to "*public* highways and bridges," subsection (7) speaks only of "roads and bridges" generally, indicating the restriction in subsection (1) does not apply when DOT provides assistance under subsection (7). *Id.* § 57-3-110(1), (7) (emphasis added); *see, e.g.*, *State v. Sweat*, 386 S.C. 339, 351, 688 S.E.2d 569, 575 (2010) ("A statute should be so construed that no word . . . shall be rendered surplusage . . . ." (citation and internal quotation marks omitted)). The legislature, in my judgment, thus struck a balance between ensuring DOT focused on the state highway system and giving DOT discretion to provide for the safety of roads and bridges outside of that system.

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

In the instant case, DOT spent a *de minimis* amount of time and money for a manifestly public purpose, the type of conduct expressly permitted by section 57-3-110(7).[12] Therefore, in my view, the trial court's decision granting DOT's motion

[12] One of the flaws in the report of the Office of the Chief Internal Auditor is the implication that DOT acted unlawfully merely because "[t]he bridges [in Woodside Plantation] are neither part of the State highway system nor are they owned or maintained by the City of Aiken." As discussed above, the notion that DOT's authority and assistance may never be offered beyond "the State highway system" is contrary to section 57-3-110(7)'s express terms. Moreover, the City of Aiken clearly has an interest in ensuring the safety and integrity of privately owned bridges along public ways within its corporate limits. *See Vaughan v. Town of Lyman*, 370 S.C. 436, 442, 635 S.E.2d 631, 634 (2006) ("Our Court has long recognized that a municipality has a duty to maintain its streets. (citation omitted)); *Floyd v. Town of Lake City*, 231 S.C. 516, 522, 99 S.E.2d 181, 184 (1957) (discussing a statute allowing an individual to recover from a municipality for "damage[s] [caused] by reason of a defect in any street, causeway, bridge[,] or public way . . . within the limits of any city or town" and noting a city's "duty to

for summary judgment should be affirmed. But a majority of the Court believes otherwise, under the guise that DOT spent "public funds for a private purpose." We are thus left with DOT no longer having either authority or discretion to provide assistance to local governments on matters critical to the safety of the traveling public. The result the Court reaches today is contrary both to law and, most regrettably, to DOT's public safety goals, as defined by the legislature.

I dissent.

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maintain its streets and other public ways in reasonable repair for the purpose of travel" (citation and internal quotation marks omitted)).

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

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

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

Accordingly, I would affirm the Court of Appeals.

The Supreme Court of South Carolina

In the of Matter Mark F. Dahle, Petitioner.

Appellate Case Nos. 2016-001630 and 2016-001767

ORDER

On July 25, 2011, the Court suspended Petitioner from the practice of law for one year pursuant to the reciprocal disciplinary provisions of Rule 29 of the Rules for Lawyer Disciplinary Enforcement (RLDE) found in Rule 413 of the South Carolina Appellate Court Rules (SCACR). *In the Matter of Dahle*, 393 S.C. 576, 713 S.E.2d 617 (2011). On June 8, 2012, the Court administratively suspended Petitioner for failure to comply with continuing legal education requirements. Petitioner has now filed a Petition for Reinstatement pursuant to Rule 33, RLDE, and a Petition for Reinstatement pursuant to Rule 419(e), SCACR.

After thorough consideration of the entire record, the Court grants both Petitions for Reinstatement.

s/ Donald W. Beatty C.J.

s/ John W. Kittredge J.

s/ Kaye G. Hearn J.

s/ John Cannon Few J.

s/ George C. James, Jr. J.

Columbia, South Carolina
September 14, 2017

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Lisa McKaughan, Individually and as the Personal Representative of the Estate of William Farr, Appellant,

v.

Upstate Lung and Critical Care Specialists, P.C. and Sau-Yin Wan, M.D., Respondents.

Appellate Case No. 2015-001828

Appeal From Spartanburg County
J. Mark Hayes, II, Circuit Court Judge

Opinion No. 5515
Heard February 15, 2017 – Filed September 14, 2017

REVERSED

Jordan Christopher Calloway, of McGowan Hood & Felder, LLC, of Rock Hill, for Appellant.

Andrew F. Lindemann, of Davidson & Lindemann, PA, of Columbia; and Ashby W. Davis and David Lee Williford, II, both of Davis, Snyder, Williford & Lehn, P.A., of Greenville, for Respondents.

LOCKEMY, C.J.: In this medical malpractice action, Lisa McKaughan, individually and as personal representative of the estate of her father, William Farr, alleges the circuit court erred by directing a verdict in favor of Critical Care

Specialists and Dr. Sau-Yin Wan (collectively Respondents). McKaughan also alleges the circuit court improperly excluded the testimony of her expert as unreliable. We reverse.

FACTS

On January 11, 2010, Dr. Sau-Yin Wan, a pulmonologist, examined William Farr, a lifelong smoker with complaints of trouble breathing. During Dr. Wan's examination, she ordered a chest x-ray. Dr. Wan interpreted the x-ray herself and determined Mr. Farr suffered from hyperinflation, meaning there was too much air in Mr. Farr's lungs. Dr. Wan specifically looked for nodules in the lungs, which would signal cancer, but did not find any. Dr. Wan diagnosed Farr with dyspnea, COPD, nondependent tobacco use disorder, and hypoxemia. None of these diagnoses indicated the presence of cancer. Dr. Wan recommended Farr stop smoking and instructed him to return to the clinic in six months in order to determine if he stopped smoking. Mr. Farr did not return for his follow-up appointment.

Following his initial consultation with Dr. Wan, Farr had continuing trouble breathing. McKaughan scheduled an appointment for her father to see Dr. Ronald Littlefield on October 6, 2010. On October 7, 2010, Dr. Littlefield ordered an x-ray of Farr's chest. The x-ray showed a large mass in Farr's right lung. Dr. Littlefield referred Farr to the Lung and Chest Medical Associates for further evaluation.

Eventually, doctors diagnosed Farr with a nine-centimeter primary lung cancer in his right lung. Doctors removed Farr's cancer in December 2010, and he began chemotherapy and radiation after the surgery.

Farr subsequently developed a tumor in his left lung in August 2011. Doctors biopsied the tumor and found it was cancerous in April 2012. Doctors diagnosed him with stage four lung cancer, with a three to six month prognosis. Farr died on June 19, 2012. His death certificate lists metastatic lung cancer as the cause of death.

McKaughan filed a lawsuit on May 30, 2013 against Respondents alleging medical malpractice in their care of her father. She alleged Respondents caused her father's death by failing to diagnose his lung cancer during the January 2010 appointment.

The case proceeded to trial on July 27-29, 2015. After McKaughan presented her case, Respondents requested the trial court direct a verdict in their favor. Respondents alleged McKaughan failed to present sufficient evidence of a breach of a standard of care or that any breach caused Farr's death. The trial court denied Respondents' motion on the standard of care issue, but granted their motion because it did not believe McKaughan presented sufficient evidence of causation. The trial court found McKaughan failed to present evidence of how the cancer metastasized from the right lung to the left lung, meaning the jury would have to speculate as to the method of metastasis. This appeal followed.

STANDARD OF REVIEW

"When reviewing a trial court's ruling on a directed verdict motion, this court will reverse if no evidence supports the trial court's decision or the ruling is controlled by an error of law." *Burnett v. Family Kingdom, Inc.*, 387 S.C. 183, 188, 691 S.E.2d 170, 173 (Ct. App. 2010). "When reviewing the trial court's decision on a motion for directed verdict, this court must employ the same standard as the trial court by viewing the evidence and all reasonable inferences in the light most favorable to the nonmoving party." *Id*. "The trial court must deny a directed verdict motion where the evidence yields more than one inference or its inference is in doubt." *Id*.

LAW/ANALYSIS

A medical malpractice plaintiff must prove, by a preponderance of the evidence:

> (1) The presence of a doctor-patient relationship between the parties;
>
> (2) Recognized and generally accepted standards, practices and procedures which are exercised by competent physicians in the same branch of medicine under similar circumstances;
>
> (3) The medical or health professional's negligence, deviating from generally accepted standards, practices, and procedures;

(4) Such negligence being the proximate cause of the plaintiff's injury; and

(5) An injury to the plaintiff.

Jamison v. Hilton, 413 S.C. 133, 140-41, 775 S.E.2d 58, 62 (Ct. App. 2015) (quoting *Brouwer v. Sisters of Charity Providence Hosps.*, 409 S.C. 514, 521, 763 S.E.2d 200, 203 (2014)).

"When one relies solely upon the opinion of medical experts to establish a causal connection between the alleged negligence and the injury, the experts must, with reasonable certainty, state that in their professional opinion, the injuries complained of most probably resulted from the defendant's negligence." *Id*. at 141, 775 S.E.2d at 62 (quoting *Hoard ex rel. Hoard v. Roper Hosp.*, 387 S.C. 539, 546, 694 S.E.2d 1, 5 (2010)). "The reason for this rule is the highly technical nature of malpractice litigation." *Ellis v. Oliver*, 323 S.C. 121, 125, 473 S.E.2d 793, 795 (1996). "When expert testimony is the only evidence of proximate cause relied upon, the testimony must provide a significant causal link between the alleged negligence and the plaintiff's injuries, rather than a tenuous and hypothetical connection." *Hilton*, 413 S.C. at 141, 775 S.E.2d at 62 (quoting *Hoard*, 387 S.C. at 546-47, 694 S.E.2d at 5). "Only on the rarest occasion should the trial court determine the issue of proximate cause as a matter of law." *Burnett*, 387 S.C. at 191, 691 S.E.2d at 175.

Dr. Barry Singer, an expert in medical oncology and hematology, examined Farr's medical records and testified those records indicate the right lung tumor was a stage 2B lung cancer with no metastases. Singer testified the right lung cancer was a bronchoalveolar type adenocarcinoma. According to Singer, adenocarcinoma means a tumor that develops in the glands. Specifically, Singer stated the cancer was adenocarcinoma with papillary features.

Singer's review of the pathology report compiled after Farr's 2010 surgery indicated the right lung cancer was 9x8.5x5 centimeters. Singer described the tumor as "quite large." Singer testified the tumor was likely two to three centimeters in size in January 2010.

Singer testified the larger a tumor is, the more likely it is to have spread. According to Singer, "as cancer grows, cells break off all the time. The body's

immune system is able to generally prevent them taking hold and growing [what] we call a metastasis, but the more surface area, the more area cells [have] to break off." Singer asserted the prognosis for a larger tumor is no different from a small tumor "until the actual metastasis occurred. When a recurrence occurs, then the patient, in lung cancer, generally is going to die." Singer testified his recommended treatment for Farr's cancer would not have included chemotherapy and radiation had it been discovered in January 2010 instead of October 2010. Singer testified it was his opinion that, more likely than not, had Farr's cancer been diagnosed in January 2010, Farr would have survived the cancer.

Singer stated he believed Farr's cancer metastasized from the right lung to the left lung. Singer noted the tumor cells that were removed from Farr's right lung were within one millimeter of the resection, meaning "there's a great risk that cells may have been left after the surgery." Singer opined these close margins were the reason for Farr's chemotherapy and radiation following surgery, to ensure any cells that were left were destroyed.

Singer explained the tumor on Farr's left lung was also an adenocarcinoma, but with primarily lepidic and acinar patterns. According to Singer, "as an adenocarcinoma, knowing they can have a multitude of variance in terms of appearance, that it's, to me, it would, 95 percent of the time be the same cancer" as the right lung. Singer stated the tumors contain the same cells, but different types of cells were predominate. Singer testified he would expect to see a metastasis in primary lung cancer within one-and-a-half to two years.

Singer did not find the difference between the papillary primary cancer in the right lung and the lepidic and acinar patterns in the left lung extraordinary. Singer testified that cancers are not uniform and "metastases in primaries don't often have the exact same histology." Singer further opined, "[The primary] may be predominance of one type and then metastasis [sic] because that's the most aggressive form of the tumor versus the primary." Singer testified, to a reasonable degree of medical certainty, Farr's cancer spread from his right lung to his left lung.

On cross-examination, Singer acknowledged the surgeons checked the margins around the tumor for signs of cancer cells and did not find any. The surgeons also looked at the lung itself for further signs of cancer, but did not discover any. Singer acknowledged that lymph nodes taken during the surgery tested negative for

cancer cells, and there did not appear to be any vascular involvement. Singer also recognized Farr continued to smoke following his surgery. Finally, Singer acknowledged that if Farr did not die of the right lung cancer, and the right lung cancer did not spread to the left, but the left cancer was in fact a new cancer, Respondents would not be responsible for his death.

On redirect, Singer testified he has seen several thousand patients with lung cancer during his career. Singer stated a patient can have a metastasis with negative margins and no lymph node involvement. According to Singer, surgical resection does not remove every cancer cell from a patient, and "even in patients with pathologic Stage, Stage 1 lung cancer, where every node is negative and every margin is negative, 30 percent die because they have metastatic disease that turns up within a year or two." Singer testified, in his opinion, it is more likely than not that Farr was part of the 30 percent who die without lymph node involvement.

At the close of McKaughan's case, Respondents moved for a directed verdict, arguing she had not introduced any evidence of how the cancer metastasized from the right lung to the left. Respondents argued McKaughan's failure to prove a method of metastasis constituted a failure to prove causation.

McKaughan argued she does not have to prove the mechanism of spread, only that the tumor did in fact spread. McKaughan noted, "A lot of times, in a cancer spread, Your Honor, there is no evidence" of how the cancer spread.

The trial court detailed its belief that McKaughan had the responsibility to prove how the cancer got from one lung to the other. The trial court stated, "I'm just not convinced that it's enough for a doctor to come in and look at the end result and say okay, this cancer's the same as the other cancer, it met–it metastasized and not say well, how did it–that happen." McKaughan again asserted, "How something happens is not our burden." Respondents again asserted McKaughan must prove the method by which the cancer metastasized in order to prove causation.

The trial court found McKaughan had not presented sufficient evidence to prove how the cancer metastasized from one lung to the other. The trial court then granted Respondents' motion for directed verdict, reasoning that allowing the jury to deliver a verdict in this case would require them to "engage in improper speculation in [determining] how this cancer got from one side to the other."

We find the trial court imposed too high a burden on McKaughan to prove how the cancer spread from one lung to the other. In this highly technical field, where there may not be clear markers indicating by what method a cancer spreads, it was an error of law to direct a verdict in favor of Respondents because Dr. Singer did not definitively indicate by what method the cancer metastasized. *See Hilton*, 413 S.C. at 141, 775 S.E.2d at 62 ("When expert testimony is the only evidence of proximate cause relied upon, the testimony must provide a significant causal link between the alleged negligence and the plaintiff's injuries, rather than a tenuous and hypothetical connection." (quoting *Hoard*, 387 S.C. at 546-47, 694 S.E.2d at 5)). If a plaintiff presents an expert who testifies, to a reasonable degree of medical certainty, and with supporting scientific evidence, that the plaintiff's cancer is a metastasis, the plaintiff has met its burden to overcome a directed verdict.

Under this standard, we believe Singer presented sufficient evidence for the jury to determine that Farr's cancer metastasized from his right lung to his left lung. *Burnett*, 387 S.C. at 188, 691 S.E.2d at 173 ("The trial court must deny a directed verdict motion where the evidence yields more than one inference or its inference is in doubt."). Singer's testimony indicates his professional opinion that the cancer in Farr's right lung metastasized to his left lung, even though the margins surrounding the tumor and the lymph nodes were negative for cancer cells. Singer noted cancer cells were found within one millimeter of the edge of the lung resection following the 2010 surgery. According to Singer, these close margins indicated "there's a great risk that cells may have been left after the surgery." Further, Singer testified surgical resections do not remove all cancer cells, and 30% of patients with negative margins and no lymph node involvement subsequently have a recurrence of cancer. Based on his experience, Singer testified he was 95% sure the adenocarcinoma in Farr's left lung was the same adenocarcinoma from Farr's right lung, based in part on when the second tumor appeared. We believe Singer's testimony alone provided a basis by which the jury could have found the cancer metastasized from the right lung to the left lung. This evidence was sufficient to overcome Respondent's motion for a directed verdict.[1]

[1] Because we reverse the trial court's order granting Respondents' motion for a directed verdict, we decline to address McKaughan's arguments regarding expert testimony that was excluded as unreliable. *See Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (ruling an

CONCLUSION

Accordingly, the decision of the trial court is

REVERSED.

HUFF and THOMAS, J.J., concur.

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appellate court need not review remaining issues when its determination of a prior issue is dispositive of the appeal).

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Charleston County Assessor, Appellant,

v.

University Ventures, LLC, Respondent.

Appellate Case No. 2015-001106

Appeal From The Administrative Law Court
Shirley C. Robinson, Administrative Law Judge

Opinion No. 5516
Heard January 25, 2017 – Filed September 14, 2017

AFFIRMED IN PART AND REVERSED IN PART

Bernard E. Ferrara, Jr., Joseph Dawson, III, Austin Adams Bruner, and Johanna Serrano Gardner, all of North Charleston, for Appellant.

Morris Arthur Ellison and William Thomas Dawson, III, both of Womble Carlyle Sandridge & Rice, LLP, of Charleston, for Respondent.

KONDUROS, J.: In this tax reassessment case, the Charleston County Assessor (the Assessor) appeals the administrative law court (ALC) finding the assessed value for 2011 of property owned by University Ventures LLC was incorrect. The Assessor contends the ALC erred in determining (1) the reassessment cycle at

issue began in 2005 and (2) the property should be valued as a vacant lot. We affirm in part and reverse in part.

PROCESS FOR ASSESSMENT OF REAL PROPERTY

This case involves the procedure for tax assessment of property in South Carolina. We provide an overview of the law governing tax assessment prior to discussing the facts.

The South Carolina Constitution directs the General Assembly to create the method by which property in South Carolina should be taxed. *See* S.C. Const. art. X, § 6. ("The General Assembly shall establish, through the enactment of general law . . . the method of assessment of real property within the State that shall apply to each political subdivision within the State."); *Simkins v. City of Spartanburg*, 269 S.C. 243, 247, 237 S.E.2d 69, 71 (1977) ("[A]ssessment means the value placed upon property for the purpose of taxation by officials appointed for that purpose."). Accordingly, the General Assembly has established the process through which property is to be assessed through statutory scheme. "All property must be assessed uniformly and equitably throughout the State." S.C. Code Ann. § 12-43-210(A) (2014).

Additionally, the legislature has dictated that reassessment[1] happen once every five years. *See* S.C. Code Ann. § 12-43-217(A) (2014) ("Notwithstanding any other provision of law, once every fifth year each county or the State shall appraise and equalize those properties under its jurisdiction."). It has also provided: "Property valuation must be complete at the end of December of the fourth year . . . . In the fifth year, the county or State shall implement the program and assess all property on the newly appraised values." *Id.* Additionally, "[n]o reassessment program may be implemented in a county unless all real property in the county, including real property classified as manufacturing property, is reassessed in the same year." S.C. Code Ann. § 12-43-210(B) (2014). Section 12-43-217(B) allows the implementation of the five-year-reassessment program to be postponed one year. *See* S.C. Code Ann. § 12-43-217(B) ("A county by ordinance may postpone for not

[1] Reassessment is defined as "[a]n official revaluation of property, often repeated periodically, for the levying of a tax." *Assessment*, Black's Law Dictionary (10th ed. 2014).

more than one property tax year the implementation of revised values resulting from the equalization program provided pursuant to subsection (A).").

The amount the value of real property can be increased for each five-year reassessment is limited to 15%. *See* S.C. Const. art. X, § 6 ("Each political subdivision shall value real property by a method in which the value of each parcel of real property, adjusted for improvements and losses, does not increase more than fifteen percent every five years unless . . . an assessable transfer of interest[2] occurs."); S.C. Code Ann. § 12-37-3140(B) (2014) ("Any increase in the fair market value of real property attributable to the periodic countywide appraisal and equalization program implemented pursuant to [s]ection 12-43-217 is limited to fifteen percent within a five-year period to the otherwise applicable fair market value. This limit must be calculated on the land and improvements as a whole.").

> However, this limit does not apply to the fair market value of additions or improvements[3] to real property in the year those additions or improvements are first subject to property tax, nor do[es it] apply to the fair market value of real property when an assessable transfer of interest occurred in the year that the transfer value is first subject to tax.

§ 12-37-3140(B). A new structure cannot "be listed or assessed for property tax until it is completed and fit for the use for which it is intended," which is shown "by the issuance of the certificate of occupancy or the structure actually is occupied if no certificate is issued." S.C. Code Ann. § 12-37-670 (2014).

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[2] "'Assessable transfer of interest' means a transfer of an existing interest in real property that subjects the real property to appraisal." S.C. Code Ann. § 12-37-130(4) (2014).

[3] "'Additions' or 'improvements' mean an increase in the value of an existing parcel of real property because of: (a) new construction; (b) reconstruction; (c) major additions to the boundaries of the property or a structure on the property; (d) remodeling; or (e) renovation and rehabilitation, including installation." S.C. Code Ann. § 12-37-3130(1) (2014).

FACTS/PROCEDURAL HISTORY

On December 5, 2006, University Ventures purchased vacant land located in North Charleston for $1,253,224. In April of 2008, University Ventures received a building permit and began construction on the land of a 115-room Hampton Inn and Suites, with the construction cost estimated at $7,952,998. The hotel was completed, and a certificate of occupancy was issued on April 22, 2009. The Assessor issued a 2010 tax assessment for the property with a value of $8,180,000, which University Ventures did not challenge.

The Assessor conducted a reassessment with a uniform date of value of December 31, 2008. On May 21, 2009, Charleston County Council adopted an ordinance[4] providing for the postponement of the implementation of the 2010 revised values resulting from the next county-wide equalization program until 2011.[5]

The Assessor sent a notice of reassessment dated June 30, 2011, to University Ventures, stating the property's fair market value for the 2011 Reassessment was $9,630,000 based on a date of value of December 31, 2008, but was limited by the

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[4] That ordinance stated:

> The implementation of revised values from the 2010 county-wide appraisal and equalization program are hereby directed to be postponed for one property year. The postponement directed applies to all revised values . . . . In accordance with Act No. 93 of 1999, the postponement directed by this Ordinance shall not affect the schedule of the appraisal and equalization program required pursuant to . . . [s]ection 12-43-217.

Charleston County Ord. #1586. The pertinent portion of Act No. 93 amended section 12-43-217 of the South Carolina Code to provide for the postponement of the implementation of the revised valuations for reassessment and equalization by not more than one year. Act No. 93 §12(B), 1999 S.C. Acts 316.

[5] The Assessor refers to the reassessment that was implemented in 2011 as the 2010 Reassessment. We will call it the 2011 Reassessment to avoid confusion with the yearly assessment for 2010.

15% cap on increases in value at $9,407,000.[6] In September 2011, University Ventures objected to the valuation for the property. The Assessor reviewed the valuation and made no adjustment.

University Ventures applied for review by the Charleston County Board of Assessment Appeals (the Board). Following a conference, the Board determined because the hotel was incomplete at the end of 2008, the property should be assessed as vacant land and valued it at $628,439.

The Assessor filed a request for a contested case hearing with the ALC. At the hearing, Walter L. Ziegler, Sr., who was employed by and performed appraisals for the Assessor's Office, testified the property was valued at $404,000 for both the 2008 and 2009 tax bills. He provided that once the hotel was finished in 2009, the Assessor sent University Ventures an assessment dated May 14, 2010, valuing the property at $8,180,000. He testified the tax bill was for hotel, land, and improvements, which were valued at $8,180,000. He further testified that for the county-wide reassessment issued in 2011, the Assessor valued the property at $9,630,000 but the increase was limited to $9,407,000 because of the 15% cap. On cross-examination, Ziegler indicated the last general five-year reassessment done for the county was based on values as of December 31, 2003. He stated he was unsure in what year that reassessment was supposed to have taken place but he knew it was delayed one year. He also noted that assessment was actually implemented in 2005. He further explained reassessment was to be performed every five years according to state statute. However, he testified the next reassessment was supposed to be completed in 2010. He provided it was supposed to be implemented in 2010 and it was delayed until 2011. He recapped that implementation for the reassessments was delayed for 2004 until 2005 and for 2010 until 2011.

Both sides presented real estate appraisal experts who testified as to the value of the property. The Assessor's expert provided a value of the property on December 31, 2008, based on the hypothetical assumption the hotel was complete at that time. He valued it at $8,861,350 for tax assessment purposes. He believed the hotel was 65% to 70% complete on December 31, 2008, but he did not examine the property until 2014. He testified the value of the land alone on December 31, 2008, was $990,000. Alternatively, University Ventures' expert testified the value

[6] $9,407,000 is a 15% increase from the previously assessed value of $8,180,000.

of the land alone on December 31, 2008, was $734,000. He indicated the hotel was 65% complete on December 31, 2008. He placed the hypothetical value of the hotel on December 31, 2008, if it had been complete, at $8,450,000. He testified the actual value of the hotel on that date was $3,959,400. He provided he had never heard of a building being taxed on its value as a partially complete building; he believed property could only be taxed on the value of the land until the building was completed.

Following the hearing, the ALC determined the Assessor had misapplied section 12-43-217 of the South Carolina Code and because the improvements—the hotel—were not completed at the time of the valuation date, the property was appropriately valued as vacant land. The ALC found the preponderance of the evidence supported University Ventures' position the reassessment cycle at issue was comprised of the years 2005, 2006, 2007, 2008, and 2009. The ALC determined the Assessor implemented the reassessment using the wrong years—2006, 2007, 2008, 2009, and 2010. The ALC calculated the value for the land value to be $860,537 by averaging the experts' values of the unimproved land. This appeal followed.

STANDARD OF REVIEW

When a tax assessment case reaches the ALC "as a request for judicial review of [a] County Board of Assessment Appeals decision upholding [an] [a]ssessor's valuation," the proceeding in front of the ALC is a de novo hearing. *Smith v. Newberry Cty. Assessor*, 350 S.C. 572, 577, 567 S.E.2d 501, 504 (Ct. App. 2002); *see also Reliance Ins. Co. v. Smith*, 327 S.C. 528, 534, 489 S.E.2d 674, 677 (Ct. App. 1997) ("[A]lthough a case involving a property tax assessment reaches the AL[C] in the posture of an appeal, the AL[C] is not sitting in an appellate capacity and is not restricted to a review of the decision below. Instead, the proceeding before the AL[C] is in the nature of a *de novo* hearing.").

"In reaching a decision in a contested violation matter, the ALC serves as the sole finder of fact in the *de novo* contested case proceeding." *S.C. Dep't of Revenue v. Sandalwood Soc. Club*, 399 S.C. 267, 279, 731 S.E.2d 330, 337 (Ct. App. 2012). "The Rules of Procedure for the Administrative Law Judge Division require that the AL[C] make independent findings of fact in contested case hearings, and the Administrative Procedures Act clearly contemplates that the AL[C] will make [its] own findings of fact in a contested case hearing." *Reliance Ins. Co.*, 327 S.C. at

534, 489 S.E.2d at 677 (citation omitted). When the evidence conflicts on "an issue, the [c]ourt's substantial evidence standard of review defers to the findings of the fact-finder." *Risher v. S.C. Dep't of Health & Envtl. Control*, 393 S.C. 198, 210, 712 S.E.2d 428, 435 (2011).

> The review of the [ALC]'s order must be confined to the record. The court may not substitute its judgment for the judgment of the [ALC] as to the weight of the evidence on questions of fact. The court of appeals may affirm the decision or remand the case for further proceedings; or, it may reverse or modify the decision if the substantive rights of the petitioner have been prejudiced because the finding, conclusion, or decision is:
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> (a) in violation of constitutional or statutory provisions;
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> (b) in excess of the statutory authority of the agency;
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> (c) made upon unlawful procedure;
>
> (d) affected by other error of law;
>
> (e) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
>
> (f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

S.C. Code Ann. § 1-23-610(B) (Supp. 2016).

"The decision of the [ALC] should not be overturned unless it is unsupported by substantial evidence or controlled by some error of law." *Original Blue Ribbon Taxi Corp. v. S.C. Dep't of Motor Vehicles*, 380 S.C. 600, 604, 670 S.E.2d 674, 676 (Ct. App. 2008). "A reviewing court may reverse or modify an administrative decision if the findings of fact are not supported by substantial evidence." *Risher*, 393 S.C. at 210, 712 S.E.2d at 434. "Substantial evidence is 'evidence which, considering the record as a whole, would allow reasonable minds to reach the conclusion that the administrative agency reached.'" *Se. Res. Recovery, Inc. v. S.C.*

Dep't of Health & Envtl. Control, 358 S.C. 402, 407, 595 S.E.2d 468, 470 (2004) (quoting *Lark v. Bi-Lo*, 276 S.C. 130, 135, 276 S.E.2d 304, 306 (1981)). "Substantial evidence . . . is more than a mere scintilla of evidence." *Original Blue Ribbon Taxi Corp.*, 380 S.C. at 605, 670 S.E.2d at 676.

LAW/ANALYSIS

I. Years in Reassessment Cycle

The Assessor argues the ALC misconstrued South Carolina law and the Charleston County ordinance postponing reassessment when it found the reassessment cycle at issue in the case ended in 2009 instead of 2010. We disagree.

"Questions of statutory interpretation are questions of law, which this [c]ourt is free to decide without any deference to the tribunal below." *Duke Energy Corp. v. S.C. Dep't of Revenue*, 415 S.C. 351, 355, 782 S.E.2d 590, 592 (2016). "The cardinal rule of statutory interpretation is to ascertain and effectuate the intention of the legislature." *Centex Int'l, Inc. v. S.C. Dep't of Revenue*, 406 S.C. 132, 139, 750 S.E.2d 65, 69 (2013) (quoting *Sloan v. Hardee*, 371 S.C. 495, 498, 640 S.E.2d 457, 459 (2007)). "The language of a tax statute must be given its plain and ordinary meaning in the absence of an ambiguity therein." *Duke Energy Corp.*, 415 S.C. at 355, 782 S.E.2d at 592; *see also Lockwood Greene Eng'rs, Inc. v. S.C. Tax Comm'n*, 293 S.C. 447, 449, 361 S.E.2d 346, 347 (Ct. App. 1987) ("A statutory provision should be given a reasonable and practical construction consistent with the purpose and policy expressed in the statute."). "[W]e must follow the plain and unambiguous language in a statute and have 'no right to impose another meaning.'" *Grier v. AMISUB of S.C., Inc.*, 397 S.C. 532, 535-36, 725 S.E.2d 693, 695 (2012) (quoting *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000)). "When a statute's terms are clear and unambiguous on their face, there is no room for statutory construction and a court must apply the statute according to its literal meaning." *Centex Int'l, Inc.*, 406 S.C. at 139, 750 S.E.2d at 69 (quoting *Sloan*, 371 S.C. at 498, 640 S.E.2d at 459). "However, 'the statute must be read as a whole and sections which are part of the same general statutory law must be construed together and each one given effect.'" *CFRE, LLC v. Greenville Cty. Assessor*, 395 S.C. 67, 74, 716 S.E.2d 877, 881 (2011) (quoting *S.C. State Ports Auth. v. Jasper Cty.*, 368 S.C. 388, 398, 629 S.E.2d 624, 629 (2006)).

The legislature has ordered that reassessment happen once every five years: "Notwithstanding any other provision of law, once every fifth year each county or the State shall appraise and equalize those properties under its jurisdiction." S.C. Code Ann. § 12-43-217(A) (2014). The legislature has also mandated: "Property valuation must be complete at the end of December of the fourth year . . . . In the fifth year, the county or State shall implement the program and assess all property on the newly appraised values." *Id.* Further, a reassessment program cannot "be implemented in a county unless all real property in the county . . . is reassessed in the same year." S.C. Code Ann. § 12-43-210(B) (2014). A county can postpone the *implementation* of the five-year-reassessment program for one year. *See* S.C. Code Ann. § 12-43-217(B) (2014) ("A county by ordinance may postpone for not more than one property tax year the implementation of revised values resulting from the equalization program provided pursuant to subsection (A).").

The Assessor contends a reassessment cycle must be viewed prospectively. Therefore, in this case, because the reassessment was to be implemented in 2010 (implementation postponed to 2011), the fifth year of the cycle was 2010, and the new cycle would encompass 2011, 2012, 2013, 2014, and 2015. University Ventures maintains the five-year cycle actually ended in 2009 based on looking back at previous cycles and counting forward, making the cycle at issue in this case 2005, 2006, 2007, 2008, and 2009.[7]

The only evidence in the record about when the five-year cycle began was provided by Ziegler. He testified the previous cycle ended in 2004. This end date

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[7] We note the parties agreed the date of value for the property was December 31, 2008. However, the Assessor's rationale for why that date is proper is flawed. It maintains 2009 is the fourth year of the cycle and tax values can be determined at any time before December 31 of the fourth year. "Ordinarily, '[t]he pertinent date to determine the value of property for a given tax year is December 31st of the preceding year.'" *Charleston Cty. Assessor v. LMP Props., Inc.*, 403 S.C. 194, 199, 743 S.E.2d 88, 91 (Ct. App. 2013) (alteration by court) (quoting *Lindsey v. S.C. Tax Comm'n*, 302 S.C. 274, 275 n.1, 395 S.E.2d 184, 185 n.1 (1990)). However, section 12-43-217(A) clearly states valuation "must be complete at the end of" the fourth year of the reassessment cycle. University Ventures' position—that the fourth year of the cycle was 2008—is correct as further discussed *infra*. The Assessor's attempt to make the 2008 valuation date conform to its reassessment cycle argument is strained and unpersuasive.

is supported by agreement of the Assessor in this court's opinion for *LMP Properties*. *See LMP Props., Inc.*, 403 S.C. at 197, 743 S.E.2d at 89 (providing that at a contested case hearing before the ALC at which the Assessor sought review of the Board's decision, "the parties[, including the Assessor,] agreed that the date for valuing the properties was December 31, 2003, because 2004 was the year of the countywide reassessment"). Additionally, although not binding on us, the ALC has recognized in several cases in which the Assessor was a party that 1999 was a reassessment year, although the Assessor ultimately delayed the implementation by two years to 2001. *See Northbridge Assocs., LLC v. Charleston Cty. Assessor*, 03-ALJ-17-0148-CC (filed Mar. 30, 2004); *Charleston Cty. Assessor v. Bennett*, 02-ALJ-17-0268-CC, n.1 (filed Apr. 29, 2003); *Charleston Cty. Assessor v. Pack Rat Investments*, 02-ALJ-17-0120-CC, n.3 (filed Apr. 29, 2003). The fact that 1999 was a reassessment year supports Ziegler's testimony that 2004 was the end of the subsequent reassessment cycle.

The Assessor's repeated pattern of delaying the implementation year for reassessment has resulted in confusion and inconsistency because it has created a six-year cycle. However, the statute is clear the delay only applies to the implementation; any delay should have no impact on the five-year reassessment cycle. The confusion over which value to use for the hotel seems to have arisen in part from the Assessor delaying the 1999 reassessment to 2001, instead of 2000. The Assessor caused the problem by confusing *the permissible one-year delay in implementation* with an impermissible delay in starting *the clock running* on the five-year cycle. The only evidence in the record supports the ALC's determination the Assessor incorrectly calculated the five-year reassessment period and the relevant period actually ended in 2009. The evidence further supports the ALC's finding the Assessor's reasoning for its actions unconvincing. Therefore, we affirm these findings.

II. Value of Property for 2011 Tax Reassessment

The Assessor contends the ALC erred in valuing the property as a vacant lot for the purposes of the 2011 Reassessment. We agree.

"All property must be valued for taxation at its true value in money . . . ." S.C. Code Ann. § 12-37-930 (2014). True value

> is the price which the property would bring following reasonable exposure to the market, where both the seller and the buyer are willing, are not acting under compulsion, and are reasonably well informed of the uses and purposes for which it is adapted and for which it is capable of being used.

Id.

The fair market value is determined at the later of:

> (a) the base year[8] . . . ;
> (b) December thirty-first of the year in which an assessable transfer of interest has occurred;
> (c) as determined on appeal; or
> (d) as it may be adjusted as determined in a countywide reassessment program conducted pursuant to [s]ection 12-43-217, but limited to [a 15% increase].

S.C. Code Ann. § 12-37-3140(A)(1) (2014). "[T]he fair market value of subsequent improvements and additions to the property" must be added to this value. S.C. Code Ann. § 12-37-3140(A)(2) (2014). A new structure cannot "be listed or assessed for property tax until it is completed and fit for the use for which it is intended," which is shown "by the issuance of the certificate of occupancy or the structure actually is occupied if no certificate is issued." S.C. Code Ann. § 12-37-670 (2014).

"Questions of statutory interpretation are questions of law, which this [c]ourt is free to decide without any deference to the tribunal below." *Duke Energy Corp.*, 415 S.C. at 355, 782 S.E.2d at 592. "The cardinal rule of statutory interpretation is to ascertain and effectuate the intention of the legislature." *Centex Int'l, Inc.*, 406 S.C. at 139, 750 S.E.2d at 69 (quoting *Sloan*, 371 S.C. at 498, 640 S.E.2d at 459). "The language of a tax statute must be given its plain and ordinary meaning in the absence of an ambiguity therein." *Duke Energy Corp.*, 415 S.C. at 355, 782 S.E.2d

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[8] "For purposes of determining a 'base year' fair market value pursuant to this section, the fair market value of real property is its appraised value applicable for property tax year 2007." S.C. Code Ann. § 12-37-3140(C) (2014).

at 592; *see also Lockwood Greene Eng'rs, Inc.*, 293 S.C. at 449, 361 S.E.2d at 347 ("A statutory provision should be given a reasonable and practical construction consistent with the purpose and policy expressed in the statute."). "However, regardless of how plain the ordinary meaning of the words in a statute, courts will reject that meaning when to accept it would lead to a result so plainly absurd that it could not have been intended by the General Assembly." *Duke Energy Corp.*, 415 S.C. at 355, 782 S.E.2d at 592. "If possible, the [c]ourt will construe a statute so as to escape the absurdity and carry the intention into effect." *Id.* "In so doing, the [c]ourt should not concentrate on isolated phrases within the statute, but rather, read the statute as a whole and in a manner consonant and in harmony with its purpose." *Id.*; *see also CFRE, LLC*, 395 S.C. at 74, 716 S.E.2d at 881 ("However, 'the statute must be read as a whole and sections which are part of the same general statutory law must be construed together and each one given effect.'" (quoting *S.C. State Ports Auth.*, 368 S.C. at 398, 629 S.E.2d at 629)).

"[T]he Assessor is required to prove the correctness of the valuation he is seeking; the Assessor is not required . . . to prove the incorrectness of the Board's decision." *Reliance Ins. Co. v. Smith*, 327 S.C. 528, 534, 489 S.E.2d 674, 677 (Ct. App. 1997). "A taxpayer contesting an assessment has the burden of showing that the valuation of the taxing authority is incorrect." *Cloyd v. Mabry*, 295 S.C. 86, 88, 367 S.E.2d 171, 173 (Ct. App. 1988). "Ordinarily, this will be done by proving the actual value of the property. The taxpayer may, however, show by other evidence that the assessing authority's valuation is incorrect. If he does so, the presumption of correctness is then removed and the taxpayer is entitled to appropriate relief." *Id.* at 88-89, 367 S.E.2d at 173 (citation omitted).

Because the 2010 Assessment was the first time the completed hotel was assessed at the value of a completed building—a value University Ventures did not challenge— the 2010 Assessment value would be the proper value to use from that time until the next reassessment. Because the value set when the hotel was complete was more current than the value of what was actually in existence on December 31, 2008—when valuation for county-wide reassessment was performed—there is no reason to change the value during the implementation of reassessment. *See* § 12-37-3140(A)(1) (providing a property's fair market value is the value applicable at the later of certain events). Nothing changed in the time since the hotel was first appraised until the 2011 Reassessment—no Assessable Transfers of Interest or additional improvements occurred.

The hotel could not be valued as an incomplete hotel because of the statutory requirement that a new structure cannot "be listed or assessed for property tax until it is completed and fit for the use for which it is intended." S.C. Code Ann. § 12-37-670(A). Whether it is complete and fit for use is demonstrated "by the issuance of the certificate of occupancy," which did not occur until 2009. S.C. Code Ann. § 12-37-670(B). A hypothetical value of what the hotel would have been worth on December 31, 2008, if it was completed is not the proper value to use for the 2011 Reassessment. It would produce an absurd result for the property to be valued as if a finished hotel were on it when that was not the case. It also would be absurd for the property to be assessed as a completed hotel one year, revert to vacant land for the reassessment year, and then return to the value at which it was originally assessed for the following year's assessment, as the ALC determined should happen.

The value of the completed hotel was calculated at a date after the date of valuation for reassessment. Because its valuation had already been updated and was the most current, it did not need to be reassessed. If reassessed values had gone into effect the year before they did, the value of the completed hotel would have been what was assessed and not changed the following years. The purpose of reassessment is for property values to be up to date but also all evaluated at the same time. However, the statute specifically provides that if a property has improvements or additions, which by definition includes new construction, those improvements are eligible to be assessed once completed. Because the hotel was completed after valuation was finished for other properties in Charleston County, the initial finished value is the correct value to use. Therefore, the ALC erred in valuing the property as vacant land for the 2011 reassessment. Accordingly, that determination is reversed and instead the property should be valued at $8.18 million as it was when it was first completed and assessed.[9]

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[9] The Assessor further maintains the ALC erred when it placed only a land value on the property for the 2011 Reassessment because the property assessment for the previous year included the completed hotel and University Ventures did not appeal that assessment. Based on our decision of the other issues on appeal, we need not address this issue. *See Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (holding an appellate court need not review remaining issues when its determination of a prior issue is dispositive of the appeal).

CONCLUSION

The ALC correctly determined Charleston had delayed its reassessment by more than the one year allowed by the Legislature. However, the ALC erred in setting the value of the property as vacant land and instead the property should be valued at $8.18 million as it was when it was first completed and assessed. Accordingly, the ALC's decision is

AFFIRMED IN PART AND REVERSED IN PART.

LOCKEMY, C.J., and MCDONALD, J., concur.