WEDGEFIELD PLANTATION ASSOCIATION
SPECIAL TOWN HALL MEETING
DREDGING THE CANALS A PRESENTATION
AUGUST 5, 2025, 7:00 PM

1 . STATEMENT OF PURPOSE

2. GROUND RULES FOR THE PESENTATION

   * QUESTIONS FROM THE AUDIENCE
   * COMMENTS FROM THE AUDIENCE

3. EXECUTIVE SUMMARY HANDOUT

4. CLEMSON STUDY REVIEW

5. 5 MINUTE MEETING BREAK

7. 2025 FINANCIAL REVIEW

8. FOUNDING DOCUMENTS

9. SUMMARY CONCLUSIONS & RECOMMENATIONS:

ESTABLISH A COMMITTEE OF 9 MEMBERS FROM THE WPA FOR LONG RANGE PLANNING & INTRASTRUCTURE DEVELOPMENT (FOR BEST PRACTICES GOING FORWARD)

RECOMMENDATIONS:

SET UP CANAL REGIME

DEVELOP DIFFERENTIAL ASSESSMENTS

DEVELOP BYLAW AMENDEMENT ON CANAL DREDGING & INFRASTRUCTURE

9. OPEN FORUM QUESTIONS & COMMENTS FROM THEAUDIENCE

10. ADJOURNMENT

WEDGEFIELD PLANTATION ASSOCIATION

DREDGING COST ANALYSIS
2019/2025

	2019		2025	
	WPA	CANAL	WPA	CANAL
Spoil site				
Live Oak	$ 43,000.00		$ 45,133.00	
Earthworks	$ 3,507.09	$ 27,051.66	$ 32,783.45	
Project Management			$ 25,500.00	
Dredging				
Carter	$ 86,244.83	$ 152,455.50		
Brunswick			$ 213,510.00	
Subtotal	$ 132,751.92	$ 179,507.16	$ 316,926.45	$ 433,490.00
TOTAL		$ 312,259.08		$ 750,416.45

WPA MONTHLY

JULY 29, 2025 FINANCIAL REPORT TO THE WPA BOARD

INSTITUTION	ACCT#	BEGINNING	ENDING	RATE	INTEREST	ACCT	MATURES
SOUTH STATE BANK	1473	$ 116,709.00	$ 99,580.51	0.10%	$ 10.67	OPERATING FUND	
SOTH ATLANTIC	2340	$ 3,666.93	$ 1,150.83	0	0	DEBIT CARD	
SOUTH ATLANTIC	2501	$ 15,576.33	$ 1,401.33	0		ARC	
SOUTH ATLANTIC	1185	$ 1,127.80	$ 1,127.93	0.07%	$0.06	MONEYMKT	
TD BANK		$ 239,817.30	$ 240,100.16		$ 602.09	MONEY MKT	7/25/2025
EDWARD JONES	24-1-7	$ 324,350.57	$ 425,504.00	3.65%	$ 991.00	MONEY MKT.	
		$ 50,000.00	$ 50,000.00	4.30%	X	CD	8/20/2025
		$ 150,000.00	$ 150,000.00	4.35%	X	CD	9/15/2025
		$ 175,000.00	$ 175,000.00	4.34%	X	CD	1/27/2026

INVESTMENT FUNDING $1,040,604.16

UPDATED RESERVE ACCOUNTS

RESERVE ACCT	RATE%	BEGINNING	ARC CREDITS	END BALANCE	
ROADS	0.65	382,823.32	$ 35,650.00	$ 418,473.32	
DRAINAGE	0.1	$ 56,904.29	$ 24,350.00	$ 81,254.29	
MARINA	0.03	$ 61,182.69		($9,967)	
EMERGENCY	0.02	$ 94,274.21		$ 94,274.21	
CANAL	0.2	$ 113,034.07		$ 113,034.07	
LANDSCAPING		$10,857.07		$ 10,857.07	$ -
BUILDING		$ 20,000.00		$ 20,000.00	$ -
COMMUNITY DEVELOPMENT		$ 52,269.17		$ 52,099.85	$ -
				$ 780,025.81	$ -

SPECTRUM ENTERPRISE ACCOUNT & FUNDS

INSTITUTION	ACCT	BEGINNING	ENDING			
SOUTH ATLANTIC	4986#	46,467.45	$ 50,425.55	CHECKING		
SOUTH ATLANTIC	5127#	$ 122,292.02	$ 122,715.00	4.20%	CD	8/11/2025

REVISED 7/29/2025
UNADUITED REPORT

WEDGEFIELD PLANTATION ASSOCIATION
ANNUAL BUDGET
2025/2026

OPERATING BUDGET	2025	Adjustments	2025 Revised		2026	
INCOME						
ASSESSMENTS	$ 417,600.00		$ 417,600.00		$ 417,600.00	**NO ASSESSMENT INCREASE**
NON-COLLECTABLE	$ (18,850.00)		$ (18,850.00)		$ (18,850.00)	
BANK INTEEST	$ 1,000.00	$ 24,000.00	$ 24,000.00		$ 24,000.00	
ARC NONREFUNDABLE	$ 1,000.00	$ 59,000.00	$ 60,000.00		$ 20,000.00	
ARC NONREFUNDABLE FEES/FINES	$ 2,000.00		$ 2,000.00		$ 2,000.00	
ASSESSMENT LATE FEES	$ 1,200.00		$ 1,200.00		$ 1,200.00	
LEGAL & LIENS	$ 3,500.00		$ 3,500.00		$ 3,000.00	
MARINA CARD	$ 12,000.00	$ 500.00	$ 500.00		$ 500.00	
SPECTRUM	$ 29,365.00	$10,000	$ 39,365.00		$ 14,500.00	
INSURANCE CLAIM	0	$ 29,587.00	$ 29,587.00	#10	0	
TOTAL REVENUE	$ 448,815.00	$ 123,087.00	$ 558,902.00		$ 463,950.00	
EXPENSES						
ADMINSTRATIVE EXPENSES						
ADVERTISING	$ 250.00		$ 250.00		$ 250.00	
BANK CHARGES	$ 150.00		$ 150.00		$ 150.00	
COLLECTION FEES	$ -		$ -		$ -	
LEGAL FEES	$ 12,000.00	$ 22,000.00	$ 34,000.00	#3	$ 13,000.00	
MANAGEMENT FEES	$ -		$ -		$ -	
NEWSLETTER	$ 500.00		$ 500.00		$ 500.00	
OFFICE SUPPLIES	$ 8,000.00		$ 8,000.00		$ 9,000.00	
POSTAGE	$ 3,000.00		$ 5,000.00		$ 6,000.00	
RESERVE STUDY	$ -		$ -		$ -	
DRAINAGE STUDY	$ 35,000.00	($35,000)	$ -	#4	$ -	
TAX PREPARATION FEES	$ 2,500.00		$ 2,500.00		$ -	
ACCOUNTING	$ 3,500.00		$ -		$ -	
ACCOUNTING CPA	$ 5,000.00		$ 5,000.00		$ 7,000.00	
TRAINING	$ -		$ -		$ -	
WAGES	$ 45,000.00		$ 45,000.00		$ 50,000.00	
PAYROLL EXPENSES	$ 4,000.00		$ 4,000.00		$ 5,000.00	
POSTAGE	$ 3,000.00		$ 3,000.00		$ 4,000.00	
DUES & SUBSCRIPTIONS	$ 50.00		$ 50.00		$ 50.00	
FURNITURE & EQUIPMENT	$ 2,000.00		$ 2,000.00		$ 2,000.00	
EQUIPMENT REPAIR	$ 2,000.00	($1,000)	$ 1,000.00		$	
OFFICE MAINTENANCE	$ 2,500.00		$ 2,500.00		$ 2,500.00	
PRINTING	$ 2,500.00		$ 2,500.00		$ 2,500.00	
SIGNAGE	$ 4,000.00		$ 4,000.00		$ 1,500.00	
WELCOME	$ 3,000.00		$ 3,000.00		$ 3,000.00	
WEBSITE MAINTENANCE	$ 2,500.00		$ 2,500.00		$ 2,500.00	
SPECIAL EVENTS & HOLIDAY	$ 5,000.00		$ 5,000.00		$ 7,500.00	
ARC SUPPLIES	$ 3,000.00		$ 3,000.00		$ 2,000.00	
ANNUAL MEETING	$ 2,500.00		$ 2,500.00		$ 2,500.00	
TOTAL ADMINISTRATION	$ 150,950.00		$ 135,450.00		$ 120,950.00	
FIXED COSTS						
FEDERAL TAXES	$ -	$ 500.00	$ 500.00		$ 3,000.00	
STATE TAXES	$ -		$ 250.00		$ 750.00	
INSURANCE	$ 15,000.00	($6,000)	$ 9,000.00	#5	$ 9,000.00	
PROPERTY TAXES	$ 3,500.00		$ 3,500.00		$ 3,500.00	
COUNTY STORM WATER FEE		$4,784	$ 4,784.00		$ 4,784.00	#14
SECRETARY OF STATE FILING	$ -		$ 250.00		$ 250.00	
WORKERS COMP	$ -		$ -		$ -	
TOTAL FIXED COSTS	$ 18,500.00		$ 18,284.00		$ 21,284.00	
OPERATING COSTS						
GROUND MAINTENANCE & LANDSCAPE	$ 15,000.00		$ 15,000.00	#7	$ 15,000.00	
LANDSCAPING CONTRACT	$ 38,000.00		$ 33,000.00	#6	$ 33,000.00	
PEST CONTROL	$ 1,500.00		$ 1,500.00		$ 1,500.00	
SECURITY SERVICES	$ -	$1,000	$ 1,000.00	#13	$ 2,000.00	#11
REMOVAL SERVICES	$ -		$ -		$ -	
STREET CLEANING	$ -		$ -		$ -	

TELEPHONE & INTERNET	$ 600.00	$ 600.00	$ 600.00
TRASH REMOVAL	$ -	$ -	$ -
UTILITIES	$ 25,000.00	$ 25,000.00	$ 25,000.00
WATER	$ 1,000.00	$ 1,000.00	$ 1,000.00
SPOIL SITE REMEDIATION	$ 5,000.00	$ 5,000.00	$ 5,000.00
MARINA GATE & LANDING	$ 2,000.00	$ 2,000.00	$ 2,000.00
ROAD MAINTENANCE REPAIR (MINOR)	$ 4,500.00	$ 4,500.00	$ 4,500.00
PLANNING & PERMITS	$ -	$ 25,500.00 #12	0
TOTAL OPERATING COSTS	**$ 92,600.00**	**$ 114,100.00**	**$ 89,600.00**
TOTALS OPERATING COSTS	**$ 262,050.00**	**$ 268,834.00 #8**	**231,834**
	$ 448,415.00	**$ 548,902.00**	**$ 463,950.00**
	0 Ins Claim	($29,587) **#1**	$0
	($262,050) **Operating X**	($268,834) **#2**	($231,834)
TOTAL RESERVE ALLOCATION	**$ 186,365.00**	**$ 250,481.00 #9**	**$ 232,116.00**

NOTES		
	1	INSURANCE REVENUE FROM AUTOMOBILE ACCIDENT TO MAIN OFFICE
	2	NET OPERATING EXPENSES
	3	LEGAL EXPENSE ONGOING LAW SUITE RICKETTS/COURTNEY
	4	DRAINAGE STUDY REPLACED BY CLEMSON STUDENT PARTICIPATION
	5	REVISED 2025 WPA INSURANCE
	6	2025/2026 CONTRACTED LANDSCAPE SERVICES
	7	SUBMITTED 2026 LANDSCAPE COMMITTEE BUDGET
	8	REVISED 2025 OPERSTING EXPENSES
	9	REVISED 2025 RESERVE FUND ALLOCATIONS
	10	INSURANCE CLAIM FROM AUTOMOBILE INCIDENT TO MAIN OFFICE
	11	CIVIC SECURITY AT ANNUAL & REGULAR MEETINGS
	12	DREDGING MAINTENANCE CONTRACT REVIEW
	13	SECURITY FOR ANNUAL MEETING & MONTHLY BOARD MTGS. AS NEEDED
	14	GEORGETOWN COUNTY STORM WATER FEE

RESERVE BUDGET

ANTICIPATED RESERVE BALANCE 2026	**1/1/2026**	
TRANSFER FROM OPERATING BUDGET		**$ 208,116.00**
INVESTMENT INTEREST-RESERVES		**$ 24,000.00**
TOTAL -EXPENSES RESERVES		
ANTICIPATED RESERVE BALANCE 12/31/2026		

RESERVE FUND ALLOCATIONS & DEBITS

RESERVES	RESERVE ALLOCATION % 2025	RESERVE ALLOCATION % 2026/2027	2025 RESERVE BALANCE BEGINNING	2025 ALLOCATION ARC	2025 ASSESSMENT ALLOCATION	2025 RESERVE BALANCES	2025 DEBITS	2025 END BALANCE	2026 RESERVE BALANCE CREDITS	2026 RESERVE BALANCES	2026 DEBITS	2026 END BALANCE	2027 CREDITS	2027 RESERVE BALANCES	2027 DEBITS	2027 END BALANCES
ROADS	0.65	0.65	$ 382,823.32	$ 35,650.00	$ 30,000.00	$ 448,473.32	$ (100,000.00)	$ 348,473.32	$ 150,876.00	$ 499,349.32	($125,000)	$ 374,349.32	$ 150,876.00	$ 525,225.32	$(125,000.00)	$ 400,225.32
DRAINAGE	0.10	0.25	$ 56,904.29	$ 24,350.00	$ 20,125.00	$ 101,379.29	$ (20,000.00)	$ 81,379.29	$ 58,029.00	$ 139,408.29	($25,000)	$ 114,408.29	$ 58,029.00	$ 172,437.29	$ (20,000.00)	$ 152,437.29
MARINA	0.03	0.05	$ 61,182.69		$ 14,000.00	$ 75,182.69	$ (70,150.00)	$ 5,032.69	$ 11,606.00	$ 16,638.69		$ 16,638.69	$ 11,606.00	$ 28,244.69		$ 28,244.69
CANALS	0.2	0	$ 113,034.07		$ 126,356.00	$ 239,390.07	$ (239,390.00)	$ -		$ -		$ -				
LANDSCAPE	0	0	$ 10,857.07		$0	$ 10,857.07	$ -	$ 10,857.07		$ 10,857.07	$ -	$ 10,857.00		$ 10,857.00	$ -	$ 10,857.00
BUILDING	0	0	$ 20,000.00		$0	$ 20,000.00	$ -	$ 20,000.00		$ 20,000.00	$ -	$ 20,000.00		$ 20,000.00	$ -	$ 20,000.00
EMERGENCY	0.02	0.02	$ 94,245.65		$0	$ 94,245.65	$ -	$ 94,245.65	$ 4,642.00	$ 98,887.65	$ -	$ 98,887.65	$ 4,642.00	$ 103,529.65	$ -	$ 103,529.65
CAPITAL DEVELOPMENT	0	0.03	$ 52,269.17		$0	$ 52,269.17	$ -	$ 52,269.17	$ 6,963.00	$ 59,232.17	$ -	$ 59,232.17	$ 6,963.00	$ 66,195.17	$	$ 66,195.17
RESERVE TOTALS	100%	100%	$ 791,316.26	$ 60,000.00	$ 190,481.00 #1	$1,041,797.26	$ (429,540.00)	$ 612,257.19	$ 232,116.00	$ 844,373.19	$ (150,000.00)	$ 694,373.12	$ 232,116.00	$ 926,489.12	$(145,000.00)	$ 781,489.12

RESERVE STUDY DIRECT CASHFLOW PROJECTIONS

68% FULL FUNDING	2025#	DIFF+/-
$ 734,936.00	$ 612,257.00	$122,679
72% FULL FUNDING	2026	
$ 916,608.00	$694,373	$ 222,235.00
66% FULL FUNDING	2027	
$ 655,253.00	$781,489	$ 126,236

NOTES 1

RESERVE FUND ALLOCATIONS & DEBITS

RESERVES	RESERVE ALLOCATION % 2025	RESERVE ALLOCATION % 2026/2027	2025 RESERVE BALANCE BEGINNING	2025 ALLOCATION ARC	2025 ASSESSMENT ALLOCATION	2025 RESERVE BALANCES	2025 DEBITS	2025 END BALANCE	2026 RESERVE BALANCE CREDITS	2026 RESERVE BALANCES	2026 DEBITS	2026 END BALANCE	2027 CREDITS	2027 RESERVE BALANCES	2027 DEBITS	2027 END BALANCES
ROADS	0.65	0.65	$ 382,823.32	$ 35,650.00	$ 30,000.00	$ 448,473.32	$ (100,000.00)	$ 348,473.32	$ 150,876.00	$ 499,349.32	($125,000)	$ 374,349.32	$ 150,876.00	$ 525,225.32	$ (125,000.00)	$ 400,225.32
DRAINAGE	0.10	0.25	$ 56,904.29	$ 24,350.00	$ 20,125.00	$ 101,379.29	$ (20,000.00)	$ 81,379.29	$ 58,029.00	$ 139,408.29	($25,000)	$ 114,408.29	$ 58,029.00	$ 172,437.29	$ (20,000.00)	$ 152,437.29
MARINA	0.03	0.05	$ 61,182.69		$ 14,000.00	$ 75,182.69	$ (70,150.00)	$ 5,032.69	$ 11,606.00	$ 16,638.69		$ 16,638.69	$ 11,606.00	$ 28,244.69		$ 28,244.69
CANALS	0.2	0	$ 113,034.07		$ 126,356.00	$ 239,390.07	$ (239,390.00)	$ -		$		$ -				
LANDSCAPE	0	0	$ 10,857.07		$0	$ 10,857.07	$ -	$ 10,857.07		$ 10,857.07	$ -	$ 10,857.00		$ 10,857.00	$ -	$ 10,857.00
BUILDING	0	0	$ 20,000.00		$0	$ 20,000.00	$ -	$ 20,000.00		$ 20,000.00	$ -	$ 20,000.00		$ 20,000.00	$ -	$ 20,000.00
EMERGENCY	0.02	0.02	$ 94,245.65		$0	$ 94,245.65	$ -	$ 94,245.65	$ 4,642.00	$ 98,887.65	$ -	$ 98,887.65	$ 4,642.00	$ 103,529.65	$ -	$ 103,529.65
CAPITAL DEVELOPMENT	0	0.03	$ 52,269.17		$0	$ 52,269.17	$ -	$ 52,269.17	$ 6,963.00	$ 59,232.17	$ -	$ 59,232.17	$ 6,963.00	$ 66,195.17	$	$ 66,195.17
RESERVE TOTALS	100%	100%	$ 791,316.26	$ 60,000.00	$ 190,481.00 #1	$ 1,041,797.26	$ (429,540.00)	$ 612,257.19	$ 232,116.00	$ 844,373.19	$ (150,000.00)	$ 694,373.12	$ 232,116.00	$ 926,489.12	$ (145,000.00)	$ 781,489.12

RESERVE STUDY DIRECT CASHFLOW PROJECTIONS

		DIFF+/-
68% FULL FUNDING	2025#	
$ 734,936.00	$ 612,257.00	$122,679
72% FULL FUNDING	2026	
$ 916,608.00	$694,373	$ 222,235.00
66% FULL FUNDING	2027	
$ 655,253.00	$781,489	$ 126,236

NOTES 1

COVENANTS WHICH "TOUCH AND CONCERN" LAND, AND THEREFORE, RUN WITH THE LAND.

TOUCH AND CONCERN PRINCIPLE (A LEGAL PRINCIPLE THAT DETEMINES WHETHER RESTRUCTIVE COVENANTS OR SERVITUDES ATTACH TO THE LAND

BOARD AUTHORITY TO MAKE ASSESSMENTS:

1. "MOREOVER A CORPORATION MAY EXCERISE ONLY THOSE POWERS WHICH GRANTED TO IT BY LAW, BY ITS CHARTER OR ARTICLES OF INCORPORATION, AND BY ANY BYLAWS MADE PURSUANT THERETO; ACTS AND BEYOND THE SCOPE OF THE POWERS SO GRATNED ARE *ULTRA VIRES*. (**ULTRA VIRES**, THAT SOMETING IS OUTSIDE THE LEGAL POWER OF THE ENITITY OR JURISDICTION.)

A COURT SHOULD BE RELUCTANT TO QUESTION ACTION TAKEN ***INTRA VIRES*** *(THAT SOMETHING IS WITHIN THE LEGAL POWER OF A SPECIFIC ENTITY OR JURISDICTION) BY THE GOVERNING BOARD OF A NON PROFIT CORPORATION.)*

2. **THE BUSINESS JUDGEMENT RULE,"** WITHIN THE CHARTERED AUTHORITY, DIRECTORS HAVE THE FULLEST POWER TO REGULATE THE CONCERNS OF A CORPORATION ACCORDING TO THEIR BEST JUDGEMENT."

"UNDER THE BUSINESS JUDGEMENT RULE, A COURT WILL NOT REVIEW THE BUSINESS JUDGEMENT OF A CORPORATE GOVERNING BOARD WHENIT ACTS WITHIN ITS AUTHORITY AND IT ACTS WITHOUT CORRUPT MOTIVES AND IN GOOD FAITH."

"ARTICLE V, SECTION 1 OF THE BYLAWS PROVIDES," THE BOARD OF DIRECTORS MAY DETERMINE FROM TIME TO TIME THE ANNUAL ASSESSMENT DUE AND PAYABLE TO THE ASSOCIATION BY MEMBERS. ALL LOTS WHETHER IMPROVED OR UNIMPROVED, AND ALL CONDOMINIUM APARTMENTS SHALL BE SUBJECT TO SAME ANNUAL ASSESSMENTS."

SECTION 9 OF THE CONDITIONS, COVENANTS AND RESTRICTIONS APPLICABLE TO SINGLE LOTS ECHOES THE ABOVE SITED PROVISIONS OF THE BYLAWS AND PROVIDES THE MANNER IN WHICH ASSESSMENTS MAY BE COLLECTED..."

"STRICTLT CONSTRUING THE ABOVE PROVISIONS INDICATES THAT BOARD OF DIRECTORS HAS WIDE LATITUDE TO LEVY ASSESSMENTS, "FOR THE GENERAL BEBEFIT OF THE SUBDIVISION."

"I FIND THAT BOARD OF DIRECTORS DECISION TO LEY AN ANNUAL ASSESSMENT INCREASE IS AN *INTRA VIRES* ACT AND THE PURPOSE FOR THE INCTRASE (CANAL

DREDGING) IS WITHIN THE SOUND BUSINESS JUDGEMENT OF THE BOARD. IT IS REASONABLE FOR THE BOARD TO CONSTRUE CANAL DREDGING AS A PRESERVATION OF PROPERTY VALUES, SAFETY, AND AESTHIC APPEAL OF THE SUBDIVISION. IT MATTERS NOT THAT THE CANALS ARE NOT ASSOCIATION COMMON AREA PROPERTY BECAUSE THE DREDGING COULD STILL BE CONSTRUED AS A BEBFIT TO THE ASSOCIATION AT LARGE."

B. VALIDITY OF THE FIVE THOUSAND DOLLAR ASSESSMENT

THE STRICT PARAMETERS FOR WHICH AN INDIVIDUAL ASSESSMENTS MAY BE LEVIED INDICATE THAT THE BOARD WAS WITHOUT EXPRESS AUTHORITY TO LEVY INDIVIDUAL ASSESSMENST FOR THAE PURPOSE OF CANAL DREDGING.

COPY

STATE OF SOUTH CAROLINA

COUNTY OF GEORGETOWN

Wedgefield Plantation Association, Inc.,

Plaintiff,

vs.

William A. Saparito, Jr. and Angela M. Saparito,

Defendants.

(20288.1)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTEENTH JUDICIAL CIRCUIT
C/A NUMBER: 2012-CP-22-1248

ORDER

FILED
GEORGETOWN COUNTY S.C.
2014 NOV 19 PM 1:09
ALMA Y. WHITE
CLERK OF COURT

This matter is before me, as special referee, upon consent agreement of the Parties to consolidate two pending actions regarding the levying and non-payment of assessments for a canal dredging project at Wedgefield Plantation. Having considered the parties' arguments, pleadings, exhibits, and affidavits, I make the following ruling with regard to each of the issues raised.

FINDINGS OF FACT

This case arose out of two separate assessments levied by Wedgefield Plantation Association, Inc. ("WPA") in 2009, both for the purpose of funding a canal dredging project. The first assessment was an individual assessment levied only against the eighty canal-front owners, of which group the Defendants are a part, in the amount of Five Thousand Dollars ($5,000.00). The second assessment was an annual assessment increase in the amount of One Hundred Seventy Five Dollars ($175.00) per year for a five year period levied against all lot owners of WPA.

Defendants disputed the validity of both assessments and refused to make payment of either, prompting the Plaintiff to initiate two separate lawsuits: the magistrate's action (2012CV221050638) for nonpayment of the $5,000.00 individual assessment, and the Common Pleas action (2012-CP-22-01248) for nonpayment of the $175.00/year annual assessment.

Defendants withheld payment of both assessments for two reasons. First, that the assessments were not authorized under the governing documents for WPA; and second, that the canals are not WPA common area property.

CONCLUSIONS OF LAW

A. Validity of the Annual Assessment Increase

"'Restrictive covenants are contractual in nature,' so that the paramount rule of construction is to ascertain and give effect to the intent of the parties as determined from the whole document." *Palmetto Dunes Resort, Div. of Greenwood Dev. Corp. v. Brown*, 287 S.C. 1, 6, 336 S.E.2d 15, 18 (Ct. App. 1985) (internal citations omitted). Restrictive covenants that require grantees to pay assessments for the upkeep of a particular parcel of property are held to be real covenants which "touch and concern" land, and therefore, run with the land. *Queen's Grant II Horizontal Prop. Regime v. Greenwood Dev. Corp.*, 368 S.C. 342, 361, 628 S.E.2d 902, 913 (S.C. Ct. App. 2006). "A restrictive covenant will be enforced if the covenant expresses the party's intent or purpose, and this rule will not be used to defeat the clear express language of the covenant." *Sea Pines Plantation Co. v. Wells*, 294 S.C. 266, 270, 363 S.E.2d 891, 894 (1987) (internal citations omitted).

Moreover, a corporation may exercise only those powers which are granted to it by law, by its charter or articles of incorporation, and by any bylaws made pursuant thereto; acts beyond the scope of the powers so granted are *ultra vires*. *Lovering v. Seabrook Island Property Owners Association*, 289 S.C. 77, 82, 344 S.E.2d 862, 865 (Ct. App. 1986), aff'd as modified, 291 S.C. 201, 352 S.E.2d 707, 708 (1987). "A court should be reluctant to question action taken *intra vires* by the governing board of a non-profit corporation. *See Papalexiou v. Tower West Condominium*, 167 N.J.Super. 516, 401 A.2d 280, 286 (Chanc.Div.1979) ("If the corporate directors' conduct is authorized, a showing must be made of fraud, self-dealing or unconscionable conduct to justify judicial review."). This is especially true where the action taken by the governing board of a non-profit corporation requires the board's business judgment. *Cf.* 18B Am. Jur. 2d *Corporations* § 1486 at 366 (1985) ("Within the chartered authority, directors have the fullest power to regulate the concerns of a corporation according to their best judgment . . . ."). In such instances, the governing board is entitled to have the validity of its *intra vires* action tested by the "business judgment" rule. *See Tiffany Plaza Condominium Association, Inc. v. Spencer,* 416 So.2d 823 (Fla. Dist. Ct. App. 1982) (wherein the court referred to the "good business judgment" of a condominium association in an action by unit owners against the association challenging an assessment made by the association). Under the business judgment rule, a court will not review the business judgment of a corporate governing board when it acts within its authority and it acts without corrupt motives and in good faith. H. HENN, LAW OF CORPORATIONS § 242 at 482–83 (2d. ed. 1970)." *Dockside Ass'n, Inc. v. Detyens,* 291 S.C. 214, 216-17, 352 S.E.2d 714, 716 (Ct. App. 1987) *aff'd,* 294 S.C. 86, 362 S.E.2d 874 (1987).

Wedgefield Plantation Association is governed by restrictive covenants and By-Laws. These authorize and prescribe the method of assessments for its members. Article V, Section 1 of the By-Laws provides "The Board of Directors may determine from time to time the annual assessment due and payable to the Association by members. All lots, whether improved or unimproved, and all condominium apartments shall be subject to the same annual assessment." Section 4 goes on to provide the permissible use of such assessment revenues:

> The funds derived from said assessments shall be used for the payment of common area maintenance expenses of the subdivision and for any other purposes necessary or desirable in the opinion of the Board of Directors for the general benefit of the subdivision. The judgment of the Board of Directors in the

expenditure of said funds shall be final. Provided, however, no assessment funds shall be used for the original construction of subdivision streets, roads, water system, sewer system and canals.

Section 9 of the Conditions, Covenants and Restrictions Applicable to Single Family Lots ("Restrictions") echoes the above-cited provisions of the By-Laws and provides the manner in which assessments may be collected. This includes the authority to lien and to foreclose for nonpayment of annual assessments. This authority is also provided for in Article V, Sections 6 and 7 of the By-Laws.

Strictly construing the above provisions indicates that the Board of Directors has wide latitude to levy annual assessments "for the *general benefit of the subdivision*." Further, the Board has final judgment as to the expenditure of assessments and is only precluded from levying assessments for "*original construction*" of subdivision infrastructure, specifically including canals. This does not prevent the Board from levying assessments for later repairs and or maintenance to infrastructure items.

I find that the Board of Directors' decision to levy an annual assessment increase is an *intra vires* act and the purpose for the increase (canal dredging) is within the sound business judgment of the Board. It is reasonable for the Board to construe canal dredging as a preservation of property values, safety, and aesthetic appeal of the subdivision. It matters not that the canals are not Association common area property because the dredging could still be construed as a benefit to the Association at large[1]. WPA is entitled to judgment and foreclosure against the Defendants in the amount of the Annual Assessment Increase, reasonable attorney's fees, costs of collection and interest.

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[1] The issue of canal ownership was previously adjudicated in civil action number 2009-CP-22-01675, of which the Plaintiff WPA was a Defendant. By Order of the Court dated November 22, 2011, it was held that "the State of South Carolina is the owner of the beds of the canals in the Wedgefield Plantation Association Community of Georgetown County which are the subject of this suit. . . ."

B. Validity of the Five Thousand Dollar Individual Assessment

"The Association is bound to follow the covenants and its own bylaws." *Seabrook Island Prop. Owners Ass'n v. Pelzer*, 292 S.C. 343, 348, 356 S.E.2d 411, 414 (S.C. Ct. App. 1987) (reversing judgment against a homeowner for nonpayment of assessments on the basis that the association had no authority to levy flat fee annual maintenance charges where the governing documents required charges to be based on property values).

In addition to annual assessments, the By-Laws for WPA provide that "individual assessments may be levied by the Board. These relate to architectural review fees, lot maintenance, or any costs incurred, by the Association, in an effort to keep lots up to standards set in these By-Laws and in the deed 'Conditions, Covenants and Restrictions.'" The Restrictions themselves do not mention individual assessments.

The strict parameters for which an individual assessment may be levied indicate that the Board was without express authority to levy individual assessments for the purpose of canal dredging. Individual Assessments are limited to costs for keeping up lots. Clearly, the canals are not within the bounds of individual lots. As it relates to the Individual Assessment of Five Thousand Dollars, I find for the Defendants.

AND IT IS SO ORDERED.

Chip Beverly
Special Referee – Georgetown County

Octr. 30, 2014

Myrtle Beach, South Carolina