

STATE OF SOUTH CAROLINA

) IN THE COURT OF COMMON PLEAS

COUNTY OF BERKELEY

) CIVIL ACTION NO. 2026-CP-08-00822

Cainhoy Land & Timber, LLC; Seven Sticks, LLC; Tract 7, LLC; Tract 1 Timber, LLC, and Ack Ack, LLC.

Plaintiffs,

V.

Commissioners of Public Works of the City of
Charleston, d/b/a Charleston Water System,

Defendant.

**ANSWER AND COUNTERCLAIMS OF
DEFENDANT COMMISSIONERS OF
PUBLIC WORKS OF THE CITY OF
CHARLESTON, D/B/A CHARLESTON
WATER SYSTEM**

Defendant Commissioners of Public Works of the City of Charleston, d/b/a Charleston Water System, (“CWS” herein) answers the allegations contained in Plaintiffs’ Complaint above-captioned as set forth herein and counterclaims against the above-named plaintiffs (the “Plaintiffs”):

INTRODUCTION

Plaintiffs seek a declaration to extend the duration of certain arms-length contracts with CWS dated December 19, 1995.¹ As their bases, Plaintiffs assert the Permit Extension Joint Resolutions of 2010 and 2013 (collectively, the “Joint Resolutions”) extended the negotiated thirty (30) year duration of the PLJ Agreements by nine (9) years. See Exhibits 2 and 3 to the Complaint. The Joint Resolutions suspended the running of the vesting period for “PERMITS” and regulatory

¹ Plaintiffs attached these 1995 agreements as Exhibit 1 and Exhibit 1A to the Plaintiffs' complaint (the "Complaint"), but these copies do not include the exhibits to the agreements. CWS has attached copies of the agreements, with exhibits, to this Answer and Counterclaim as Exhibit 1 and Exhibit 2 (collectively, the "PLJ Agreements"). The agreements were executed by all parties as of December 22, 1995.

approvals by DHEC and local governments. The Joint Resolutions do not apply to arms-length contracts, like the PLJ Agreements, negotiated by experienced counsel and resulting from a legislative act of the governing body of a local government. Nothing in the Joint Resolutions shows any intent to retroactively amend such contracts, and the South Carolina Constitution requires that “all laws concerning local government shall be liberally construed in their favor.” S.C. Const. art. VIII, § 17.

The PLJ Agreements expressly provide for the expenditure of public funds by CWS to install water and wastewater infrastructure over the course of thirty (30) years. Absent the PLJ Agreements, Plaintiffs, not CWS, would be responsible for installing and paying for this infrastructure. If the General Assembly intended the Joint Resolutions to apply to contracts involving the expenditure of local government funds, then the General Assembly would have complied with sections 2-7-76 and 2-7-100 of the South Carolina Code by ordering and reviewing a fiscal or revenue impact statement. It did not. As a result, Plaintiffs’ argument that the Joint Resolutions should impact contracts involving the public fisc would render the Joint Resolutions invalid for their failure to comply with sections 2-7-76 and 2-7-100.

However, it is clear from the express language of the Joint Resolutions that they are not applicable to any matters beyond “PERMITS” or regulatory approvals. The PLJ Agreements are neither permits nor regulatory approvals—they are legislative acts. The Joint Resolutions are not applicable to any economic development or contractual funding agreements adopted by legislative act and could not be so applicable.

Plaintiffs are not seeking additional time to enjoy permits or regulatory approvals, nor is CWS attempting to deny Plaintiffs access to these services, as Plaintiffs allege. In fact, a 2023 amendment to the PLJ Agreements, ignored by Plaintiffs, emphasizes that CWS would still

provide water and wastewater services after the PLJ Agreements expired. The difference is that Plaintiffs would have to bear the expenses that other private developers incur to install such infrastructure.

Plaintiffs seek a disingenuous windfall in this action. They seek an order requiring CWS to fund the *cost* to “provide the water and wastewater system” for any development of their property. Plaintiffs seek to obtain an Order requiring CWS to continue to fund the development beyond the thirty (30) year term in the PLJ Agreements, which terminated on December 22, 2025. In effect, this would shift the burden of paying for such infrastructure from the Plaintiffs to CWS’s existing ratepayers. The rest of Charleston would be subsidizing the future infrastructure for the development. CWS is not liable to fund any further infrastructure costs associated with the subject property, and Plaintiffs make no claim of any controversy existing related to any permit or regulatory approval.

For all the reasons set forth herein, Plaintiffs’ action should be dismissed, judgment entered in favor of CWS as set forth herein, and CWS awarded its costs and fees.

FOR A FIRST DEFENSE
(General Denial)

Each and every allegation of the Complaint not hereinafter specifically admitted, qualified, or explained is denied.

FOR A SECOND DEFENSE
(Answers to Plaintiffs’ Specific Allegations)

1. The allegations of Paragraph 1 of the Complaint reference legal provisions to which no response is required and such laws speak for themselves.
2. CWS admits Paragraph 2 upon information and belief.

3. CWS denies Paragraph 3 as stated. CWS is a commissioners of public works created by the City of Charleston in accordance with sections 5-31-210 through -270 of the South Carolina Code and Sec. 30-3 of the Code of Ordinances of the City of Charleston. CWS provides water and wastewater services within its service areas. CWS is a local government governed by its commissioners. Three of the commissioners are publicly elected under section 5-31-210 of the South Carolina Code. Pursuant to section 5-31-220 of the South Carolina Code, the Mayor of the City of Charleston serves ex officio as a fourth commissioner, and the Chair of the City of Charleston's Committee on Water Supply services ex officio as a fifth member of the Commission.

4. CWS admits so much of Paragraph 4 as alleges CWS does not have governmental taxing authority but asserts CWS receives payments from certain local governmental entities that may include tax revenues. CWS further asserts CWS operations are funded by revenue from rates and fees charged for water and wastewater service, interest-bearing investments and revenue bond proceeds, as well as impact fees charged for new connections to CWS water and wastewater systems that can only be used for capital improvements related to growth. CWS denies the remainder of Paragraph 4 as stated and asserts that CWS net position is not unrestricted.

5. CWS admits Paragraph 5 of the Complaint.

6. CWS admits there is no other litigation between the parties but denies the remainder of Paragraph 6. Plaintiffs' request for declaratory relief, if granted, would effectively result in the Court requiring CWS to reimburse Plaintiffs for infrastructure expenses incurred by Plaintiffs with respect to the property described in Exhibits 1 and 2 to this Answer and Counterclaim (the "Property"). Such relief would require CWS to expend public funds over and above those agreed to by CWS under the terms of the PLJ Agreements.

7. CWS denies Paragraph 7 of the Complaint. The agreements attached as Exhibit 1 and Exhibit 1A to the Complaint do not include the exhibits to those agreements. CWS asserts that Exhibit 1 and Exhibit 2 to this Answer and Counterclaim, attached hereto and incorporated herein by reference, include the PLJ Agreements with exhibits. CWS further asserts the parties entered into an agreement amending the PLJ Agreements (the “2023 Amendment”) that reaffirmed the thirty (30) year term of the PLJ Agreements, which expired on December 22, 2025, with no further extensions. The 2023 Amendment is attached hereto and incorporated herein by reference as Exhibit 3.

8. CWS admits the area commonly known as “Cainhoy” is located in Berkeley County, South Carolina, but denies the remaining portions of Paragraph 8 of the Complaint, as worded. CWS asserts that portions of “Cainhoy” are owned by third parties, but the Property was owned by Plaintiffs’ predecessors-in-title at the time the PLJ Agreements were executed. CWS further asserts that the City of Charleston annexed a portion of the Property in 1991, with other annexations involving portions of the Property occurring thereafter through December 27, 1995, by Ordinance 1995-612. Ordinance 1995-612 contained a scrivener’s error that was corrected on January 23, 1996, by Ordinance 1996-010.

9. CWS denies Paragraphs 9, 10, 11, 12, 13, and 14 of the Complaint as stated. CWS asserts the PLJ Agreements speak for themselves, as does CWS’s enabling legislation, the South Carolina Constitution, section 2-7-73 of the South Carolina Code, section 2-7-110 of the South Carolina Code, and the Joint Resolutions. CWS denies any allegations to the contrary.

10. CWS denies Paragraphs 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, and 25 as stated, craves reference to the Permit Extension Joint Resolution of 2010, and denies all allegations or inferences to the contrary. CWS asserts the PLJ Agreements speak for themselves, as does CWS’s

enabling legislation, the South Carolina Constitution, section 2-7-73 of the South Carolina Code, and section 2-7-110 of the South Carolina Code. CWS denies any allegations to the contrary.

11. CWS denies Paragraphs 26, 27, 28, 29, 30, 31, and 32 as stated and craves reference to the Permit Extension Joint Resolution of 2013 and denies all allegations or inferences to the contrary. CWS asserts the PLJ Agreements speak for themselves, as does CWS's enabling legislation, the South Carolina Constitution, section 2-7-73 of the South Carolina Code, and section 2-7-110 of the South Carolina Code. CWS denies any allegations to the contrary.

12. With respect to the allegations in Paragraph 33 of the Complaint, CWS craves reference to the Permit Extension Joint Resolution of 2013, which speaks for itself. CWS specifically alleges that even a broad reading of the Joint Resolutions neither requires nor authorizes the Joint Resolutions to be applied to the negotiated duration of the PLJ Agreements. CWS also alleges that this section of the Permit Extension Joint Resolution of 2013 would violate Article VIII, Sec. 17 of the South Carolina Constitution if this section were applied to the PLJ Agreements.

13. With respect to the allegations in Paragraphs 34, 35, 36, 37, and 38 of the Complaint, CWS craves reference to the South Carolina Local Government Development Agreement Act, codified at section 6-31-10 through -160 of the South Carolina Code (the "Act"), which speaks for itself. CWS specifically asserts that the PLJ Agreements are not development agreements adopted in accordance with the Act. To the extent that Plaintiffs contend that the PLJ Agreements were adopted pursuant to the Act, then CWS asserts that the PLJ Agreements are invalid because they were not approved by ordinance of the governing body, they did not receive two (2) public hearings, and they do not generally comply with any of the other required procedures and provisions in the Act.

14. CWS denies the allegations in Paragraph 39 of the Complaint.

15. Paragraph 40 of the Complaint states a conclusion of law, to which no response is required.

16. With respect to the allegations in Paragraphs 41, 42, 43, and 44 of the Complaint, CWS admits that the Attorney General issued an opinion interpreting the Joint Resolutions as applying to CWS's agreements with the Plaintiffs' predecessor-in-title, but CWS lacks sufficient knowledge and belief to know exactly what evidence the Attorney General's office considered or received. CWS was not involved in the opinion of the Attorney General's office. CWS received notice of the request and decision only after the opinion had been issued. Upon information and belief, the Attorney General's office historically does not make findings of fact and does not provide for any briefing or commentary prior to issuing an opinion, and the Attorney General's office acted in accordance with such precedent in making this opinion. CWS denies that the opinion of the Attorney General's office is correct.

17. As to all legal conclusions and allegations, CWS asserts that no response is required.

18. The allegations of Paragraph 45 constitute legal arguments and conclusions to which no response is required. CWS specifically denies that the Attorney General's opinions are the only authority on this matter.

19. CWS denies the allegations and prayer in Paragraph 46 of the Complaint.

20. With respect to the allegations in Paragraphs 47, 48, and 49 of the Complaint, CWS craves reference to the referenced orders and denies any remaining allegations in Paragraphs 47, 48, and 49 of the Complaint.

21. CWS craves reference to the PLJ Agreements in response to Paragraph 50 and denies any assertions to the contrary. Further, CWS asserts the 2023 Amendment reaffirmed the thirty (30) year term that expired on December 22, 2025, with no further extensions. CWS also specifically asserts that Plaintiffs misread the force majeure clause in the PLJ Agreements by stating that “Unlike most Force Majeure clauses, *which address* payment obligations or *performance obligations*, the Cainhoy Force Majeure clause addressed only extensions of the agreement.” (Emphasis added). The force majeure clause states, in pertinent part, that “[t]he *time for performance* by any party of any term or provision of this Agreement *shall be deemed extended by time lost due to delays resulting from acts of God . . .*.” It is thus a typical, run-of-the-mill force majeure clause that allows either party’s *delay in performance* caused by any of the force majeure events to be extended.

22. In response to Paragraph 51 of the Complaint, CWS denies that any notice of any delay was ever given to CWS and CWS has no knowledge of any such delay. CWS further asserts no claim for any delay was made by Plaintiffs until 2025 at which time Plaintiffs made a blanket claim lacking in any specificity. Further, CWS asserts that no such delay claims were made when the parties reached agreement in 2023 and the parties reconfirmed that CWS had no obligation beyond the termination date of December 22, 2025, as set forth in Exhibits 1-3 to this Answer and Counterclaim, with no further extensions.

23. Paragraph 52 of the Complaint asserts legal conclusions and assertions to which no response is required.

24. CWS lacks sufficient information to form a belief as to Paragraph 53 and therefore denies Paragraph 53 of the Complaint.

25. Paragraph 54 of the Complaint asserts legal conclusions and assertions to which no response is required.

26. Paragraphs 55 and 56 assert certain legal conclusions to which no response is required. CWS is not aware of a November 11, 2025, formal letter but asserts that, in 2025, Plaintiffs made a claim to extend the duration of the Agreement and CWS rejected the claim. CWS alleges that the PLJ Agreements expired on December 22, 2025. The remainder of Paragraphs 55 and 56 are denied as stated.

27. CWS denies Paragraph 57 of the Complaint.

28. CWS admits Paragraph 58 of the Complaint.

29. CWS denies Paragraphs 59 and 60 of the Complaint to the extent required but these contain Plaintiffs' prayer for relief.

FOR A THIRD DEFENSE
(Invalid Resolutions)

The Joint Resolutions do not apply to the PLJ Agreements and, to the extent they could be construed to apply, they would be invalid for failure of the legislature to comply with sections 2-7-76 and 2-7-110 of the South Carolina Code as no fiscal or revenue impact statement was affixed to the Joint Resolutions.

FOR A FOURTH DEFENSE
(Inapplicability of Resolutions)

The Joint Resolutions, if valid, (which CWS asserts they are not) apply only to PERMIT EXTENSIONS by local government and DHEC (now SCDES) and do not in any way apply to contract provisions related to the expenditure of funds by any local government or any local government funding agreement.

FOR A FIFTH DEFENSE
(No Justiciability Controversy)

No justiciability controversy exists as to any permit or approval for the Court to adjudicate.

FOR A SIXTH DEFENSE
(Reaffirmation and Estoppel)

Plaintiffs and CWS entered into the 2023 Amendment, which provides, in pertinent part:

“Term. The Parties acknowledge and agree that the CWS Obligations arise under the PLJ Agreements... the CWS Obligations shall automatically terminate, and CWS shall have no further reimbursement or other payment obligations or liabilities with respect to the Cainhoy Properties, other than the payment of any approved payment applications for CWS work completed prior to the termination date...”

This subsequent agreement reconfirms the termination date of December 22, 2025.

FOR A SEVENTH DEFENSE
(Laches)

Since the initial discussions associated with the Property’s annexation into the City of Charleston in the early 1990’s, Plaintiffs’ predecessors-in-title intended to delay any development for at least fifteen (15) years. This intention was reaffirmed by Plaintiffs in 2014, as set forth in Plaintiffs’ agreements with the City of Charleston at that time. In fact, upon information and belief, Plaintiffs did not even begin development of the Property until at least 2015. Plaintiffs’ decision to delay beginning the development of the Property is, in fact, the sole reason for the delay in development and none was attributable to CWS, the recession, COVID, or any delay for any permit or regulatory approval. To the extent Plaintiffs now argue that the PLJ Agreements should be extended, Plaintiffs’ neglect and lack of diligence in their development of the Property has resulted in prejudice to CWS.

FOR AN EIGHTH DEFENSE
(The Agreements are Invalid)

Exhibits 1 and 2 to this Answer and Counterclaim are invalid, ultra vires and unenforceable because they abdicate Defendant's statutory responsibility to act for the public welfare to a private party who has no duty to give the public welfare any deliberation. The PLJ Agreements cannot bind future governing boards of CWS and impute too much authority to a private party and are void as a matter of public policy.

Defendant CWS counterclaims against the Plaintiffs as follows:

1. Each and every allegation contained in the Answer above is reasserted herein.

FOR A FIRST COUNTERCLAIM

2. Plaintiffs initiated this action asserting that the Joint Resolutions "suspended the term of the Cainhoy agreement... and (3) the new expiration date for the water and wastewater infrastructure agreement on Cainhoy is December 29, 2034."

3. CWS asserts that neither of the Joint Resolutions apply to the PLJ Agreements, including the Agreements attached to this Answer and Counterclaim as Exhibits 1 and 2 and the 2023 Amendment, attached hereto and incorporated by reference as Exhibit 3.

4. The Joint Resolutions only extended deadlines for permits and regulatory approvals.

5. The Joint Resolutions do not apply to legislative acts, and the adoption of the PLJ Agreements by CWS arose from a legislative act—not a permit or regulatory approval process.

6. The Joint Resolutions do not apply to funding under any contract or development agreement and/or are invalid for failure to comply with sections 2-7-76 and 2-7-110 of the South Carolina Code because no fiscal or revenue impact statement was affixed to the Joint Resolutions.

7. For the foregoing reasons, CWS is entitled to a declaratory judgment by the Court that the Joint Resolutions do not apply to nor extend the deadline of December 22, 2025, contained in the PLJ Agreements with Plaintiffs.

8. For the foregoing reasons, to the extent the Court finds that the Joint Resolutions are otherwise applicable to the PLJ Agreements, CWS is entitled to a declaratory judgment by the Court that the Joint Resolutions are invalid for failure to comply with sections 2-7-76 and 2-7-110 of the South Carolina Code.

FOR A SECOND COUNTERCLAIM

9. To the extent the Court concludes that the Joint Resolutions and PLJ Agreements should be interpreted and construed as advocated by Plaintiffs, Exhibits 1 through 3 to the Answer and Counterclaim are invalid, ultra vires, and unenforceable because they abdicate CWS's statutory authority to act for the public welfare to a private party.

10. Further, to the extent the Court concludes that the Joint Resolutions and PLJ Agreements should be interpreted and construed as advocated by Plaintiffs, Exhibits 1 through 3 to the Answer and Counterclaim are invalid because they purport to bind future governing boards of CWS and impute too much authority to a private party and are void as a matter of public policy.

11. To the extent the Court should adopt Plaintiffs' interpretation and construction of the Joint Resolutions to the PLJ Agreements, CWS is entitled to a Declaration by the Court that Exhibits 1 through 3 are invalid and void.

FOR A THIRD COUNTERCLAIM

12. The Court is constitutionally required to construe the Joint Resolutions in favor of local governments.

13. The Joint Resolutions purport to require the Court to construe the provisions of the Joint Resolutions to effectuate the purposes of the Joint Resolutions.

14. CWS is entitled to a declaratory judgment that the Joint Resolutions are unconstitutional to the extent they would permit a Court to construe the Joint Resolutions against a local government.

FOR A FOURTH COUNTERCLAIM

15. At the time of the PLJ Agreements, Plaintiffs' predecessors-in-title anticipated waiting at least fifteen (15) years to begin development of the Property.

16. In 1996, Plaintiffs' predecessors-in-title entered into development agreements with the City of Charleston, which recited that the Property would not be developed for at least the first fifteen (15) years.

17. In 2014, Plaintiffs or their predecessors-in-title anticipated that development of the Property would not begin until at least 2015.

18. CWS performed any and all obligations under the PLJ Agreements in a timely manner between December 19, 1995, and December 22, 2025.

19. Plaintiffs and their predecessors-in-title had no obligation to develop the Properties during the duration of the PLJ Agreements.

20. Plaintiffs and their predecessors-in-title waited until at least 2015 to commence the development of the Property or any portion thereof.

21. No force majeure, as defined in the PLJ Agreements, delayed the performance of any of Plaintiffs' obligations under the PLJ Agreements.

22. COVID did not delay the performance of any of Plaintiffs' obligations under the PLJ Agreements.

23. The force majeure clause does not authorize Plaintiffs to extend the duration of the PLJ Agreements.

24. The PLJ Agreements expired, at the latest, on December 22, 2025.

25. For the foregoing reasons, CWS is entitled to a declaratory judgment that the force majeure clause in the PLJ Agreements did not extend the duration of the PLJ Agreements beyond December 22, 2025.

Wherefore, having fully answered the Complaint and counterclaimed, CWS prays for an Order of the Court:

1. Dismissing the Complaint;
2. Denying the Plaintiffs' any of the relief requested in the Complaint, including but not limited to denying the Plaintiffs' request for a declaratory judgment extending the duration of the PLJ Agreements;
3. Declaring that neither of the Joint Resolutions apply to the PLJ Agreements, including the agreements attached to this Answer and Counterclaim as Exhibits 1 and 2, and the 2023 Amendment, attached hereto and incorporated by reference as Exhibit 3;
4. Declaring that the Joint Resolutions only extended deadlines for permits and regulatory approvals;
5. Declaring that the Joint Resolutions do not apply to legislative acts, such as the adoption by the PLJ Agreements by CWS's board;
6. Declaring that the Joint Resolutions do not apply to arms-length contracts negotiated by experienced attorneys;

7. Declaring that the Joint Resolutions must constitutionally be construed in favor of local governments;
8. Declaring that the Joint Resolutions do not apply to nor impact funding under any contract or development agreement;
9. Declaring that, to the extent the Joint Resolutions apply to or impact funding under any contract or development agreement, the Joint Resolutions are invalid for failure to comply with sections 2-7-76 and 2-7-110 of the South Carolina because no fiscal or revenue impact statement was affixed to the Joint Resolutions;
10. Declaring that, to the extent the Joint Resolutions and PLJ Agreements should be interpreted and construed as advocated by Plaintiffs, Exhibits 1 through 3 to the Answer and Counterclaim are invalid, ultra vires, and unenforceable because they abdicate CWS's statutory authority to act for the public welfare to a private party.
11. Declaring that, to the extent the Court concludes that the Joint Resolutions and PLJ Agreements should be interpreted and construed as advocated by Plaintiffs, Exhibits 1 through 3 to the Answer and Counterclaim are invalid because they purport to bind future governing boards of CWS and impute too much authority to a private party and are void as a matter of public policy.
12. Declaring that the Joint Resolutions are unconstitutional to the extent they would permit a Court to construe the Joint Resolutions against a local government;
13. Declaring that the force majeure clause does not authorize Plaintiffs to extend the duration of the PLJ Agreements or the 2023 Amendment;

14. Declaring that the force majeure clause in the PLJ Agreements did not extend the duration of the PLJ Agreements or the 2023 Amendment beyond December 22, 2025;
15. For an award of costs to CWS pursuant to § 15-53-100, Code of Laws; and
16. For such other and further relief as the Court may deem equitable and just.

Respectfully submitted,

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April 22, 2026
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