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SC Court of Appeals

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Bentley D. Price, Circuit Court Judge
Case No. 2019-CP-10-04387
Appellate Case No. 2021-000051

Applied Building Sciences, Inc.,

Appellant,

v.

South Carolina Department of Commerce,
Division of Public Railways,

Respondents.

MOTION FOR LEAVE TO FILE JOINT AMICI CURIAE BRIEF OF SOUTH
CAROLINA DEPARTMENT OF TRANSPORTATION and
MUNICIPAL ASSOCIATION OF SOUTH CAROLINA

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The South Carolina Department of Transportation (“SCDOT”) and the Municipal Association of South Carolina (“MASC”) hereby move, pursuant to Rule 213 and 240 of the South Carolina Appellate Court Rules, to seek leave to file a joint Amici Curiae Brief in support of Appellant, conditionally filed herewith.

In *Voices for Choices v. Ill. Bell Tel. Co.*, 339 F.3d 542 (7th Cir. 2003), Judge Posner noted the appropriateness of amicus curiae briefs in cases “in which the would-be amicus has a direct interest in another case that may be materially affected by a decision in this case; or in which the amicus has a unique perspective or specific information that can assist the court beyond what the parties can provide.” *Id.* at 545; *see also*, *Sossamon v. Greater Gaffney Metro. Utilities Area*, 236 S.C. 173, 113 S.E.2d 534 (1960) (granting permission to file a brief of amicus curiae to the cities of Greenville, Spartanburg, Rock Hill, Charleston and Easley in an action instituted by certain citizens and taxpayers of Cherokee County). SCDOT and MASC both have unique perspectives and will be materially affected by the decision in this case as is further explained below.

SCDOT has “as its functions and purposes the systematic planning, construction, maintenance, and operation of the state highway system and the development of a statewide intermodal and freight system that is consistent with the needs and desires of the public.” S.C. Code Ann. § 57-1-30(A). SCDOT has the duty and power to “acquire such lands, road building materials, and rights-of-way as may be needed for roads and bridges by purchase, gift, or condemnation” S.C. Code Ann. § 57-3-110(2). SCDOT has a further, significant duty to pay just, or fair, compensation to landowners when their private property is acquired for public use. S.C. Const. art I. § 13(A); U.S. Const. Amendment V. Our Court of Appeals has noted that “[t]here is a keen public interest in the stewardship of public funds and a strong need to provide guidance for future procurement decision.” *Sloan v. Greenville County*, 356 S.C. 531, 554, 590 S.E.2d 338,

350 (Ct. App. 2003) (addressing whether or not certain design-build contracts for public projects complied with county procurement code.). This principal applies no less to real property acquisitions than it does to goods and services.

SCDOT has an interest in the particular issues on appeal and a valuable perspective on just compensation because it engages in a large number of property acquisitions to accomplish its responsibilities. SCDOT is possibly the single most active buyer of realty throughout the State and probably the most active condemnor in the State. According to reports generated by the agency, SCDOT engaged in an average of 649 property acquisitions for the years 2017-2022, with an average of over 104 condemnation filings over the same years -- fewer than 20% of the acquisitions.¹

Year	Acquisitions	Condemnations
2017	560	70
2018	634	81
2019	552	126
2020	715	101
2021	676	108
2022	762	142

Furthermore, the “Roads Bill” (Act No. 40) passed by the South Carolina General Assembly in 2017 provided additional funding to SCDOT and the number of road improvement projects and the number of acquisitions will increase as additional funding comes online to reconstruct existing infrastructure systems.² One such current project is the Carolina Crossroads

¹ SCDOT Right of Way Data Management System Reports generated by the SCDOT Assistant Director of Right of Way for Headquarters Support. Reportedly, only about 5% of the condemnations proceed to trial and many of those will be because of clouded titles.

² SCDOT Strategic Plan 2018-2020, Executive Summary

project, which will reconfigure 14 miles of the I-20/26/126 corridor, will be conducted in five phases, and will require substantial property acquisition.

To fulfill its duties and functions, SCDOT must make a good faith determination of just compensation (“cause the property to be appraised”) and offer the appraised amount to the landowner from whom property must be acquired for a public use. S.C. Code Ann. §28-2-70(A). As a steward of public funds, SCDOT must operate efficiently (S.C. Code Ann. § 57-1-30(B)) and with consideration of the financial viability of a public project (S.C. Code Ann. § 57-1-370(B)(8)(a)), while also meeting its Constitutional responsibilities to pay just and fair compensation (S.C. Code Ann. § 57-1-370(E); S.C. Const. art. I § 13(A); U.S. Const. amend V).

In fulfilling its responsibilities and duties, SCDOT must use relevant, objective, and verifiable criteria to arrive at just compensation; that is, an appraisal used by SCDOT to determine just compensation must satisfy the Uniform Standards of Professional Appraisal Practice and the jurisprudence governing eminent domain issues. For SCDOT to use or accept any other criteria would be irresponsible and inconsistent with its fiduciary duties. Similarly, if SCDOT is asked to consider an appraisal obtained by a landowner of just compensation, it must consistently apply those same standards in evaluating that appraisal. In fulfilling its duties of responsibly administering State funds and paying just compensation, SCDOT has an interest in having the appropriate standards applied consistently and fairly in the State’s trial courts.

The Municipal Association also has a fundamental interest in this matter. The MASC is a nonpartisan, non-profit association of the State of South Carolina’s incorporated cities and towns. All 271 incorporated municipalities within the State are members of the Municipal Association. In addition to offering services and programs directly to its member municipalities, the MASC

promotes and represents the collective interests of municipalities throughout the State, both in the General Assembly and in the courts.

Municipalities have the power of eminent domain under several statutory grants. The general municipal right to condemn property for public use is found in S.C. Code Ann. § 5-7-50, which provides that “[a]ny municipality desiring to become the owner of any land or to acquire any easement or right-of-way therein for any authorized corporate or public purpose shall have the right to condemn such land or right-of-way or easement.” With respect to property to be acquired for the construction and operation of public utilities, S.C. Code Ann. § 5-31-410 provides additional authority. Finally, the Eminent Domain Procedure Act, S.C. Code Ann. § 28-2-10, et seq., specifically recognizes that municipalities are among the types of public bodies that are “authorized by law to exercise the power of eminent domain.” S.C. Code Ann. § 28-2-30(18).

Municipalities use this power of eminent domain to develop and provide transportation infrastructure, public utilities, law enforcement facilities, parks, gardens, and a wide variety of other projects to serve the public health, safety, and welfare. As such, municipalities have a substantial and vital interest in the correct determination of municipal rights and responsibilities concerning the exercise of eminent domain. In addition, the citizens of South Carolina’s municipalities have a vital interest in ensuring that the courts apply the proper standards for reestablishment expenses. The costs of acquisitions by eminent domain are ultimately funded by the taxpayers of the state or municipality. Thus, this case presents issues of vital and constitutional importance to the MASC as the ruling will have a direct effect on the damages that municipalities must pay in condemnation cases.

CONCLUSION

SCDOT, MASC, and other entities with the power of condemnation rely on our courts to apply the established standards of property valuation. As more fully set forth in the conditionally filed Amici Curiae Brief, for the past seventy years in South Carolina, the courts have utilized fair market value in determining the amount of just compensation to a landowner in condemnation. Fair market value is defined as the value as willing buyer would pay and willing seller would accept. In the trial of this case, the trial court allowed evidence of valuation that was not based on fair market value. As detailed in the conditionally filed Amici Curiae Brief, that the deviation from the standard of valuation will have a harmful effect on eminent domain in South Carolina.

Respectfully submitted,

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