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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

G. D. Morgan, Judge

Appellate Case No. 2024-000727

Letchworth Properties, LLC
Appellant,

v.

City of Greer and City of Greer
Board of Zoning Appeals
Respondents.

RETURN OF APPELLANT

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Attorney for Appellant

Letchworth Properties, LLC

Appellant, by its undersigned counsel, hereby submits this Return to Respondents' "Objection to Appellant's Designation of Matter", wherein Respondents move this Court, pursuant to South Carolina Code Section 6-29-840, to strike certain matters from being included in the Record on Appeal. For the reasons stated below, Respondents' Motion should be denied.

INTRODUCTION

Letchworth Properties, LLC ("Appellant") purchased a former railroad depot in the City of Greer, South Carolina ("City"). The deed to the property came with a restrictive covenant requiring public parking on Appellant's property.¹

CSX Transportation ("CSXT") maintains an active railroad track on right of way that abuts Appellant's property. The track is a mere fifteen feet from the property line, including the public parking lot. Notwithstanding the ultrahazardous nature of the active rail line, no public security fencing was in place to protect the public in the downtown business district from the active rail line. The hazardous condition was exacerbated by City-sponsored/directed mass trespass onto CSXT property during City-wide events, a phenomenon that led inexorably to spillover trespass onto Appellant's property and from Appellant's property onto the CSXT right of way.

Recognizing the need for security fencing on its property, Appellant offered the City a permanent easement for parking in 2018 in exchange for the City's construction of protective

¹ Deed from the Greenville County Redevelopment Authority into Appellant's Grantor, Station One Partnership, LLC (the restriction runs with the land).

fencing and warning signs in the public parking lot.² Appellant's offer was rejected for unknown reasons.

When no agreement was forthcoming, Appellant hired a contractor to construct what it believed to be an esthetically pleasing (powder coated, chain link) security fence, four feet in height, between Appellant's property and the railroad. With the permission of CSXT and in furtherance of rail safety, a section of the fence was constructed on the CSXT right of way to avoid violating the deed restriction pertaining to the public parking lot.

Appellant's contractor began construction of the fence on July 19, 2022. On August 2, 2022, fifteen days after starting construction and on the final day of fence construction, Petitioner received a text notification from the planning department stating the fence failed to comply with regulations and would have to come down. Facing the prospects of removing and replacing the fence it had already paid for with a conforming fence costing roughly three times that of the fence constructed or having no security fence at all, Petitioner filed a request for a hardship variance with the Greer Board of Zoning Appeals ("Board") on August 19, 2022.³

The Board conducted a public hearing on the matter on September 12, 2022, in which Petitioner argued it satisfied each element required for a hardship variance under the South Carolina Comprehensive Planning and Enabling Act of 1994 and additionally the fence, as

² Email to City Attorney, Daniel Hughes, dated March 30, 2018 proposing an Easement for Public Parking to replace the deed restriction (requiring, *inter alia*, the City erect "signage and fencing necessary to warn the public and prevent trespassing onto the railroad track/right-of-way from the parking area").

³ Transcript Board Hearing, p. 12, ll. 21-23, p. 1-15; Appellant's Supp. Brief, Part A, p. 18.

constructed, was consistent with the public purpose of the City's zoning code in promoting the safety, health and the general welfare. After a hearing lasting less than one hour, in which Appellant was denied the right to challenge planning staff's clearly erroneous statements of fact and law, the Board summarily rejected the variance. The decision prompted Appellant's appeal to the circuit court and ultimately to the Court of Appeals.

PROCEDURAL BACKGROUND

Following denial of the variance, the Board issued a document entitled "Official Action" which was served on Appellant by certified mail on September 15, 2022. Appellant served and duly filed its Notice of Appeal to the Greenville County Circuit Court on September 28, 2022 in conformance with the thirty-day time limit prescribed by S.C. Code § 6-29-820. The Board's final decision, "Findings of Fact and Conclusions of Law", was filed with the circuit court over three months later on February 8, 2023.

The matter was heard by the Honorable G. D. Morgan in the Greenville County Circuit Court on January 10, 2024. Present before the Court were Daniel R. Hughes, attorney for the Respondents, City of Greer ("City") and City of Greer Board of Zoning Appeals ("Board") and J. Marshall Lawson, attorney for the Appellant, Letchworth Properties, LLC. The Court denied the Appeal by issuing a Form 4 Order, filed January 22, 2024, and by formal, written Order, filed February 5, 2024. Appellant filed a Motion to Reconsider Judgement and Alter or Amend the Order on February 12, 2024, which the court also denied.

Appellant appealed the matter to this Court on July 9, 2024. After initial briefings and filing of Appellant's Designation of Mater to be Included in the Record on Appeal, Respondents filed a Motion to Strike certain items from the Designation on October 7, 2024. Respondents' Motion was rejected by the Court via a letter to counsel on October 9, 2024 for failure to comply with Rule

240 of the Appellate Court Rules. Respondents filed an amended Motion to Strike with the Court on October 11, 2024, prompting Appellant's Motion for a Stay, filed on October 14, 2024 and Appellant's Return to the Motion to Strike, filed October 18, 2024.

Pursuant to Section 6-29-840 of the South Carolina Code, Respondents seek to strike various documents in support of issues Appellant argues it either presented to the Board or in the alternative which Appellant was denied the right to present to the Board at the hearing or was not required to present to the Board for lack of subject matter jurisdiction, to wit:

1. DOM Number 13, Deed containing a restrictive covenant for public parking on Appellant's property (attached herein as **Exhibit A**).
2. DOM Number 14, Appellant's offer to the City of an easement for public parking to allow for the construction of security fencing in the public parking lot (attached herein as **Exhibit B**).
3. DOM Number 17, Email and Letter to City Council which Appellant hereby agrees to strike.
4. DOM Number 18, Email from CSXT confirming City Sponsored Trespass on its property (attached herein as **Exhibit C**).
5. Amended DOM Number 1, Section 1:1 (Public Purpose) of Appendix A to the City of Greer Zoning Code (attached herein as **Exhibit D**).
6. Amended DOM Number 2, Federal Railroad Administration Report on the hazards of trespass on railroad rights of way (title page and table of contents attached herein as **Exhibit E**).

ARGUMENTS

Rules and statutes regarding issue preservation such as Rule 210(c), SCACR are designed to prevent issues being litigated on appeal that should have been litigated and ruled on at trial. While these rules are imminently reasonable in the context of legal proceeding, they are less so when applied to a quasi-judicial proceeding such as a hearing before a board of zoning appeals.

The latter lacks the procedural safeguards of discovery and evidentiary standards that allow the record to be fully developed in the trial court.

Moreover, if a party objects at trial but is not allowed to state an objection in full or does not receive a ruling on the objection, the party may “cure” the deficiency by addressing the matter in a Rule 59(e) motion to reconsider. By contrast, there is no procedure for “curing” a board’s refusal to hear or rule on an objection in order to preserve the issue for appeal. In the present matter, the record shows Appellant repeatedly objected to staff’s erroneous factual and legal representations to the Board but was not allowed to state the nature and substance of those objections.⁴

A major justification for rules regarding issue preservation is the avoidance of surprise wherein a party raises an issue on appeal that could have been raised in the trial court. But what if a party was on notice of an issue the party later seeks to strike?

Here, City planning staff instructed the Board at the hearing that Appellant had the right to construct fencing anywhere on its property:

That is not saying that they cannot have a fence. Staff fully supports them having a fence. This is not pertaining to the railroad. It is purely about the architectural detail, and again, what our downtown overlay requires.

Respondents’ unqualified representations to the Board and subsequently to the circuit court, however, were made with the City’s actual notice of the deed restriction prohibiting fence construction in the public parking lot. Moreover, the City had at least constructive notice of Section 6-29-1145 of the South Carolina Local Government Comprehensive Planning and Enabling Act of

⁴ Appellant’s Reply Brief, pp. 7-9 (citing Board Transcript, p. 49, ll. 2-23, p. 50, ll. 1-23, p. 51, ll. 1-16, p. 52, ll. 10-14).

1994 (“1994 Comprehensive Act”), making it unlawful to grant a permit over a restrictive covenant the City was aware of.⁵

Respondents also seek to strike an email pertaining to the trespass issue that materially affected Appellant’s property prior to fencing, an issue raised to the Board and amply briefed to the circuit court. The email in question simply confirms the fact of trespass, an adjudicative fact which the City of Greer is acutely aware of notwithstanding protestations to the contrary. Moreover, the agency (Federal Railroad Administration) report Respondents seek to strike simply addresses the risks of trespass on railroad property, a fact generally known within the jurisdiction of the court and not subject to reasonable dispute.

In *Hormel v. Helvering*, Justice Black succinctly stated the appellate court's choice of foregoing the judicially created general rule regarding error preservation in order to prevent an erroneous outcome in an individual case:

Rules of practice and procedure are devised to promote the ends of justice, not to defeat them. A rigid and undeviating judicially declared practice under which courts of review would invariably and under all circumstances decline to consider all questions which had not previously been specifically urged would be out of harmony with this policy. Orderly rules of procedure do not require sacrifice of the rules of fundamental justice.⁶

Appellant is cognizant of the fact South Carolina courts are not bound by the federal rules governing exceptions to the general rule regarding issue preservation. In the present matter, however, Appellant believes the documents Respondents seek to strike support issues Appellant either raised to the tribunals below or fall into well recognized exceptions to the rules governing

⁵ S.C. Code Ann. § 6-29-310, et seq.

⁶ Rhett R. Dennerline, Pushing Aside the General Rule in Order to Raise New Issues on Appeal 64 Indiana Law Journal 4, 988, 993 (1989) (citing Hormel v. Helvering, 312 U.S. 552 (1941)).

issue preservation under South Carolina law. Additionally, and most importantly, Appellant was denied its constitutional right to present its objections to the Board, rendering the record incomplete through no fault of Appellant. The only effective remedy for that wrong is remand to the circuit court for remand to the Board for a hearing comporting with basic due process.

I. EXCEPTIONS TO THE RULES GOVERNING PRESERVATION OF ERROR.

A. Subject Matter Jurisdiction.

A trial court's lack of subject matter jurisdiction may be raised at any time.⁷ The trial and appellate courts have a duty to raise the issue on their own if it has not been raised by either of the parties.⁸ Under the 1994 Comprehensive Act, a board of zoning appeals has no original jurisdiction pertaining to the administration of the zoning laws of the jurisdiction it represents. Its jurisdiction is appellate only.⁹

The Georgia Court of Appeals addressed the scope of a board's jurisdiction in *Scott v. Minnix*.¹⁰ There, the property owner, Minnix, applied to the county board of zoning appeals for a special use permit under the county zoning ordinance. The board found in favor of the application and granted a special use permit. Plaintiffs appealed the ruling to the Superior Court which upheld the grant.

⁷ Jean Hoefer Toal et al., APPELLATE PRACTICE IN SOUTH CAROLINA (2d ed. 2002) (citing *Carter v. State* 329 S.C. 355, 495 S.E.2d 733 (1998)).

⁸ *Id.* (citing *Amisub of South Carolina, Inc. v. Passmore*, 316 S.C. 112, 447 S.E.2d 207 (1994)).

⁹ *See* S.C. Code Ann. § 6-29-800 (2003) (referring only to appeals); S.C. Code Ann. § 6-29-800(A)(2) (prescribing a board's power "... to hear and decide appeals for variance from the requirements of the zoning ordinance when strict application of the provisions of the ordinance would result in unnecessary hardship").

¹⁰ *Scott v. Minnix*, 95 Ga. App. 589, 98 S.E.2d 196 (Ga. App. 1957).

The Court of Appeals overruled the lower court, finding the board lacked jurisdiction over the permit's issuance. In considering the extent of a board's jurisdiction pursuant to the applicable Georgia enabling act (counterpart to South Carolina's 1994 Comprehensive Act), the Court found as follows:

In exercising the above-mentioned powers such Board, may, in conformity with the provisions of this Act, reverse or affirm, wholly or partly or may modify the order, requirement decisions or determination appealed from and may take such order, requirement, decision and determination as ought to be made, and to that end shall have all the powers of the officer or agency from whom the appeal is taken. Thus, it can be seen that under the act creating it, the board of zoning appeals has no original jurisdiction pertaining to the administration of the zoning laws of Clayton County. Its jurisdiction is appellate only. Applications for exceptions to and permitted uses under the zoning laws of Clayton County cannot be applied for directly to the board of zoning appeals.¹¹

The Court went on to hold that because "[t]he Clayton County Board of Zoning Appeals did not have the power and jurisdiction to proceed as it did and, therefore, the Superior Court of Clayton County did not have jurisdiction in an appeal from such void proceedings as to the merits of such proceedings."¹² The Court, accordingly, ordered "[t]he judgment of the superior court is reversed with direction that it dismiss the appellate proceedings with direction that the board of zoning appeals vacate its order granting the use petitioned for by A. R. Minnix."¹³

Here, the City of Greer's planning staff was barred by S.C. Code Section 6-29-1145 from issuing a permit for a use on a parcel of land (public parking lot) which would violate a private restrictive covenant the City possessed actual knowledge of. The Board, accordingly, had no jurisdiction as an appellate body to rule on Appellant's request for a variance.

¹¹ Id. at 591.

¹² Minnix, 95 Ga. App. at 591.

¹³ Id. at 592.

If the Board lacked original jurisdiction, as argued, the Greenville County circuit court sitting in its appellate capacity also lacked jurisdiction to rule on the merits of the appeal.¹⁴ The circuit court's upholding of the Board's denial of a variance as to the fencing in the public parking should, therefore, be reversed as null and void.

Notwithstanding the Board's lack of jurisdiction over Appellant's right to construct fencing in the public parking lot, Appellant's arguments regarding security fencing as constructed, including the section of fencing on CSXT right of way, stand as argued. And as argued below, this Court has the right to consider the documents Respondents seek to strike in support of those arguments.

B. Judicial Notice.

An appellate court may take judicial notice of adjudicative and legislative facts even though they may not have been raised to the trial court. Rule 201, SCRE governs judicial notice of adjudicative fact. The pertinent part of the Rule state:

(a) Scope of Rule. This rule governs only judicial notice of adjudicative facts.

(b) Kinds of Facts. A judicially noticed fact must be one not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.¹⁵

Several of the items Respondents seek to strike are either generally known within the territorial jurisdiction of the court or capable of accurate and ready determination by resort to

¹⁴ Id. at 591 ("Since the board of zoning appeals was without jurisdiction in this matter as it stood and since its proceedings were nugatory and void because of such lack of jurisdiction the Superior Court of Clayton County was likewise without jurisdiction to rule on the merits of the appeal.").

¹⁵ S.C. R. Evid. 201(a)–(b).

sources whose accuracy cannot reasonably be questioned. Moreover, a court may take judicial notice of adjudicative legislation in the form of zoning regulations enacted pursuant to state law.¹⁶

i. Deed Restriction.

A court is entitled to take judicial notice of an adjudicative fact (in this case a duly recorded deed) whose accuracy cannot reasonably be questioned and where judicial notice of the fact is requested by a party. For example, *In the Matter of The Foreclosure of The Deed of Trust of Ormsby King Hackley*, the North Carolina Court of Appeals addressed a deed not included in the record but recorded in a county's register of deeds. Pursuant to North Carolina Gen. Stat. § 8C-1, Rule 201(b) (2009), which mimics South Carolina's Rule 201 of the South Carolina Rules of Evidence, a judicially noticed fact must be one not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned." The Court further noted Rule 201(d) requires a court to "take judicial notice if requested by a party and supplied with the necessary information."¹⁷

The Court of Appeals took judicial notice of the deed, reasoning the fact that the foreclosure sale did occur and the property was conveyed by the trustee was "capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned," specifically the Trustee's Deed.¹⁸

¹⁶ Massey v. War Emergency Co-op. Ass'n, 209 S.C. 292, 299, 39 S.E.2d 907, 912 (1946).

¹⁷ See N.C. R. Evid. 201(b); see also, S. C. R. Evid. 201.

¹⁸ In the Matter of The Foreclosure of The Deed of Trust of Ormsby King Hackley, 713 S.E.2d 119 (N.C. App. 2011) (Citing N.C. Gen. Stat. § 8C-1, Rule 201(b)).

In *Masters v. Rodgers Development Group*, this Court declined to take judicial notice of a deed but that case dealt with a default judgment wherein the defendant failed to make any form of answer to a complaint involving a mechanics lien. The court held judicial notice following a default judgment is more strictly circumscribed than in other cases. Moreover, the court found "[t]he recitals would not be conclusive of whether Stevenson was a purchaser for value."¹⁹

Here, there is no dispute as to the existence or accuracy of the duly recorded deed or the restriction for public parking contained therein. The deed is, therefore, conclusive as to an adjudicative fact and should be admitted into the record on appeal.

ii. Section 1:1 (Public Purpose) of Appendix A to the Greer Code of Laws.

Respondents seek to strike the public purpose of the Greer zoning code embodied in Section 1:1 of the Appendix A to the Code. A court, however, is entitled to take judicial notice of rules and regulations promulgated by an agency pursuant to applicable statutes.

Section 1-23-60 of the South Carolina Code of Laws states that “[u]less otherwise specifically provided by statute, filing and publication of a document or regulation in the State Register as required or authorized by this article is sufficient to give notice of the contents of the document or regulation to a person subject to or affected by it. The publication of a document filed in the office of the Legislative Council creates a rebuttable presumption:

(1) That it was duly issued, prescribed or promulgated subject to further action required under this article; (2) That it was filed and made available for public inspection at the day and hour stated in the printed notation thereon required under Section 1-23-30; and (3) That the copy on file in the Legislative Council is a true copy of the original.”²⁰

¹⁹ *Masters v. Rodgers Development Group*, 321 S.E.2d 194, 283 S.C. 251 (S.C. App. 1984).

²⁰ S.C. Code Ann. § 1-23-60 (2023).

The statute goes on to state, “[t]he contents of filed documents shall be judicially noticed and, without prejudice to any other mode of citation, may be cited by volume and page number or the numerical designation assigned to it by the Legislative Council.”²¹

In *Martin v. Bay*, this Court held the Master correctly took judicial notice of the Charleston County Zoning and Land Development Regulations. In reaching its decision, the court cited *Massey v. War Emergency Co-op. Ass'n*, wherein the Supreme Court of South Carolina held it was proper to take judicial notice the rules and regulations promulgated by an agency pursuant to applicable statutes.²²

Here, the applicable statute (Local Government Comprehensive Planning and Enabling act of 1994) falls within the scope of S.C. Code § 1-23-60 regarding judicial notice as a “duly issued, prescribed or promulgated” Act.²³ Both counties and municipalities are authorized to adopt zoning and land development ordinances pursuant to the Act and Section 1:2 of Appendix A to the Greer zoning code categorically states “[t]he provisions of this ordinance are adopted under authority of the South Carolina Local Government Comprehensive Planning and Enabling Act of 1994, S.C. Code title 6, chapter 29.”

Consistent with the ruling in *Martin*, this Court is entitled to take judicial notice of Section 1:1 of Appendix A to the Greer Code of Laws as “regulations promulgated by an agency pursuant

²¹ *Id.* (emphasis added).

²² *Martin v. Bay*, 400 S.C. 140, 153, 732 S.E.2d 667, 674 (S.C. App. 2012) (citing *Massey v. War Emergency Co-op. Ass'n*, 209 S.C. 292, 299, 39 S.E.2d 907, 912 (1946)).

²³ Section 6-29-310, *et seq.*

to applicable statutes.”²⁴ Moreover, Appellant raised the text of Section 1:1 with specificity to the Board.²⁵

iii. FRA Report on Railroad Trespass.

The Federal Railroad Safety Act of 1970 gave the Federal Railroad Administration (“FRA”) the authority to regulate railroad safety.²⁶ The publication Respondents seek to strike is a public document addressing the profound safety issues arising from trespass on railroad property.²⁷ The danger of trespass on railroad property is a fact obvious to anyone in the court’s jurisdiction and is not subject to reasonable dispute. Moreover, the underlying issue of trespass was raised to the Board and circuit court. The Court is, accordingly, entitled to take judicial notice of the report.²⁸

iv. CSXT Email.

Throughout this litigation, Appellant raised the issue of trespass affecting Appellant’s property which Appellant argues threatened public safety and contributed to an unnecessary hardship to Appellant.²⁹ Respondents continue to deny the existence of trespass in the face of overwhelming photographic and video evidence to the contrary showing hundreds of cars parked

²⁴ Martin, 400 S.C. at 153.

²⁵ Appellant’s PPT Presentation, slide 46 (“[The] fence is consistent with the public purpose of the code [as embodied in] Article 1 Purpose, Authority, Section 1:1, Purpose: The zoning regulations and districts as herein set forth are designed ... to secure safety from fire, panic, and other danger [and] to promote health and the general welfare ...”).

²⁶ See 49 U.S.C. §20109.

²⁷ See Federal Railroad Administration (2018), National Strategy to Prevent Trespassing on Railroad Property, Washington, DC: USDOT, (citing 1,100 pedestrian deaths from trespassing in 2017, alone).

²⁸ Rule 201, S.C. R. Evid.

²⁹ See, e.g., Appellant’s PPT Presentation to Board, slide 30; Board Transcript, p. 14, ll. 15-23, p 15, ll. 1-8.

in the CSXT right of way during City-wide events, some within inches of moving trains. Moreover, Respondents raised no defense to trespass at the Board hearing and only a conclusory denial on appeal.³⁰

Respondents should not now be allowed to strike an email from a CSXT attorney to Appellant's counsel simply confirming the fact of trespass by stating the City did not have the railroad's permission to direct public parking on its right of way.³¹ There is no dispute regarding the email's authenticity or meaning. As such, it is a conclusive adjudicative fact and this Court should take judicial notice thereof.

II. DENIAL OF APPELLANT'S CONSTITUTIONAL RIGHT TO DUE PROCESS.

Quasi-judicial proceedings are not controlled by strict rules of evidence and procedure. Nevertheless, certain standards of basic fairness must be adhered to in order to afford due process. Consequently, a quasi-judicial decision based upon the record is not conclusive if minimal standards of due process are denied.³² The parties must be able to present evidence, cross-examine witnesses, and be informed of all the facts upon which the board acts.³³

³⁰ Respondents' Initial Brief, p. 10, ll. 7-15 ("Furthermore, as to Appellant's claims that it suffers from unnecessary trespass because the City of Greer "sponsors trespass," this claim is nonsensical and not supported by the record.").

³¹ See (email from Kim Rice Bongiovanni, Esq., Assistant General Counsel for CSXT, dated January 8, 2024 stating "CSXT has not granted the City the right to use CSXT railroad ROW for parking. Likewise, we have not granted the City jurisdiction over our rail operations"); see also, S.C. Code § 58-17-4095 (stating in relevant part that no person may park or operate a vehicle on a railroad right-of-way where there are existing tracks unless the person has authority from the railroad which owns the right-of-way and a person violating the provisions of this section, upon conviction, shall pay a fine of not more than two hundred dollars or serve a term of imprisonment for not more than thirty days in jail).

³² See Morgan v. United States, 298 U.S. 468, 480-81, 56 S. Ct. 906, 911-12, 80 L. Ed. 1288 (1936); Western Gillette, Inc. v. Arizona Corp. Comm'n, 121 Ariz. 541, 592 P.2d 375 (Ct.App.1979).

³³ See In re Vora, 354 S.C. 590, 595, 582 S.E.2d 413, 416 (2003) ("Due process requires (1) adequate notice; (2) adequate opportunity for a hearing; (3) the right to introduce evidence; and (4) the right to confront and cross-examine witnesses."); see also, Turik v. Town of Surf City, 642

The city's recommendations to staff were not provided to Appellant until the hearing, several of which lacked factual or legal support. And the Board repeatedly denied Appellant its right to rebut those instructions in a compressed hearing lasting under an hour.³⁴ Moreover, the City waited to file its final decision until three months after Appellant was required to file its appeal, leaving Appellant with only a garbled transcript with which to argue its Petition.

Respondents' denial of Appellant's right to due process was raised with specificity to the circuit court in Appellant's Petition for Appeal, Supplemental Brief, at the Hearing and in the Motion to Reconsider.³⁵ In its Order (drafted by Respondents' counsel), the circuit court inexplicably found "... there was no hindrance of Appellant's right to present its case." Appellant is at a loss to understand what act Respondents and the circuit court believe Appellant was required to perform to make an objection sufficient to preserve error and the Order states none. Was Appellant's counsel required to stand on his head and recite magic words like "due process" or otherwise attempt to badger the Board into submission by requesting rebuttal ad infinitum?

Respondents cite no case law in support of a party reciting magic words at a hearing to obtain its right to articulate its objections to testimony and South Carolina law is clear that once

S.E.2d 251, 182 N.C. App. 427 (N.C. App. 2007) ("When reviewing a decision of a municipal board the circuit court should: (1) review the record for errors of law; (2) ensure that procedures specified by law in both statute and ordinance are followed; (3) ensure that appropriate due process rights of the petitioner are protected, including the right to offer evidence, cross-examine witnesses, and inspect documents; (4) ensure that the decision is supported by competent, material, and substantial evidence in the whole record; and (5) ensure that the decision is not arbitrary and capricious."); Jennings v. Dade County, 589 So.2d 1337 (Fla. App. 1991); Coral Reef Nurseries, Inc. v. Babcock Co., 410 So.2d 648, 652 (Fla. 3d DCA 1982).

³⁴ See, e.g., Appellant's Reply Brief, pp. 7-9 (citing Board Transcript, p. 49, ll. 2-23, p. 50, ll. 1-23, p. 51, ll. 1-16, p. 52, ll. 10-14) (The record shows Appellant was denied its right to rebut staff's erroneous conclusions of law and fact at least three times at the hearing).

³⁵ Appellant's Petition for Appeal, p. 6-7; Appellant's Sup. Brief, Part B, p. 23-26; Appellant's Motion for Reconsideration, p. 7-8; Circuit Court Hearing Transcript, p. 9, ll. 15-25, p. 10, ll. 1-25, p. 11, ll. 1-11).

an objection has been overruled, it is not necessary to continue objecting to preserve error for appellate review.³⁶ Respondent's denial of Appellant's right to present its case in full should, at a minimum, require remand to the circuit court for further remand to the Board for a hearing *de novo* comporting with due process.

CONCLUSION

The law cannot stand for the proposition that a board of zoning appeals may deny an applicant its right to present its objections to a board of zoning appeals at a public hearing and then argue on appeal certain matters be stricken because they were not raised to the board. Nor can the law be used to maintain a wrong without a remedy, especially where that wrong affects a property owner's right to address an ultrahazardous condition abutting its property impacting public safety. For the reasons stated above, Respondents' Motion to Strike Appellant's Designation of Matter should be denied.

Respectfully submitted,

/s/ J. Marshall Lawson

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October 18, 2024

³⁶ Toal, *supra* note 6, at 67 (citing *City of Columbia v. Myers*, 278 S.C. 288, 294 S.E.2d 787 (1982); *State v. Holliday*, 333 S.C. 332, 509 S.E.2d 280 (Ct. App. 1998).

EXHIBIT A

Grantee's Address: 101 East North St.
Suite A, Greenville, SC 29601

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

1285 PAGE 427

KNOW ALL MEN BY THESE PRESENTS, THAT GREENVILLE COUNTY REDEVELOPMENT AUTHORITY

JAN 2 4 11 PM '87

in consideration of Twenty Three Thousand Five Hundred and No/100 (\$23,500.00) Dollars,
the receipt of which is hereby acknowledged, have granted, bargained, sold, and released, and by these presents do grant, bargain, sell and release unto STATION ONE PARTNERSHIP, its successors and assigns, forever:

ALL that piece, parcel or lot of land situate, lying and being in the State of South Carolina, County of Greenville, City of Greer, being known as the Greer Depot, as shown on a plat by W. R. Williams, Jr., dated August 21, 1981, revised May 14, 1984, and having the following metes and bounds, to-wit:

COMMENCE at the intersection of the south line of Randall Street and the west line of Depot Street; thence S. 12°15' E. 2.5 feet to the point of beginning; thence continuing S. 12°15' E 69.30 feet to a point; thence S 59°43' W 19.80 feet to a point; thence S 61°24' W 95.80 feet to a point; thence S 64°24' W 98.90 feet to a point; thence S 67°36' W 95.50 feet to a point in the east line of Trade Street; thence N 11°15' W 67.50 feet along said east line of Trade Street to a point; thence N 67°36' E 80.60 feet to a point; thence N 64°24' E 95.30 feet to a point; thence N 61°24' E 105.40 feet to a point; thence N 59°43' E 28.00 feet to the point of beginning. (Continued on Back)

together with all and singular the rights, members, hereditaments and appurtenances to said premises belonging or in any wise incident or appertaining, to have and to hold all and singular the premises before mentioned unto the grantee(s), and the grantee(s)'s heirs or successors and assigns, forever. And, the grantor(s) do(es) hereby bind the grantor(s) and the grantor(s)'s heirs or successors, executors and administrators to warrant and forever defend all and singular said premises unto the grantee(s) and the grantee(s)'s heirs or successors and against every person whomsoever lawfully claiming or to claim the same or any part thereof.

WITNESS the grantor(s)'s hand(s) and seal(s) this 31st day of December 19 86

SIGNED, sealed and delivered in the presence of:

GREENVILLE COUNTY REDEVELOPMENT AUTHORITY (SEAL)

By: *[Signature]* (SEAL)

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

PROBATE

Personally appeared the undersigned witness and made oath that (s)he saw the within named grantor(s) sign, seal and as the grantor(s)'s act and deed, deliver the within written deed and that (s)he, with the other witness subscribed above, witnessed the execution thereof.

SWORN to before me this 31st day of December 19 86

Notary Public for South Carolina

My commission expires 5/23/87

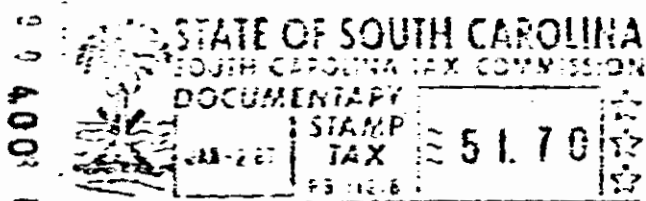
STATE OF SOUTH CAROLINA
COUNTY OF

NO RENUNCIATION OF DOWER REQUIRED

I, the undersigned Notary Public, do hereby certify unto all whom it may concern, that the undersigned wife (wives) of the above named grantor(s) respectively, did this day appear before me, and each, upon being privately and separately examined by me, did declare that she does freely, voluntarily, and without any compulsion, dread or fear of any person whomsoever, renounce, release and forever relinquish unto the grantee(s) and the grantee(s)'s heirs or successors and assigns, all her interest and estate, and all her right and claim of dower of, in and to all singular the premises within mentioned and released.

GIVEN under my hand and seal this

19



GREENVILLE OFFICE SUPPLY CO. INC.

(CONTINUED ON NEXT PAGE)

11-285-020-4-13

Derivation: This being the same property conveyed unto the Greenville County Redevelopment Authority by virtue of a deed from Seaboard System Railroad, Inc., recorded in Deed Book 1230, at page 914, on January 14, 1985. Being a part of right of way acquired by deed dated July 3, 1912, recorded in Deed Book 12, at page 368, and being adjacent to the other portion of property.

The above described property is subject to the following deed restrictions:

1. At such time as the Purchaser seeks to sell its property, it shall, at the option of the Authority, acting on behalf and in concert with the City of Greer, include the adjacent land used for parking in any sales contract.
2. Any parking spaces or lots constructed on the above described property shall at all times be open and available to the public.

RECORDED JAN 2 1987 at 4:11 P.M.

27998

X 27998X ✓

DOUGLAS P. DENTON, JR.

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

GREENVILLE COUNTY
REDEVELOPMENT AUTHORITY

TO

SPATION ONE PARTNERSHIP

TITLE TO REAL ESTATE

I hereby certify that the within Deed has been this

2nd day of Jan. 19 87

at 4:11 P.M. recorded in Book 1285 of

Deed page 427 of

Lewis J. Harbuck

Register of Deeds Greenville County

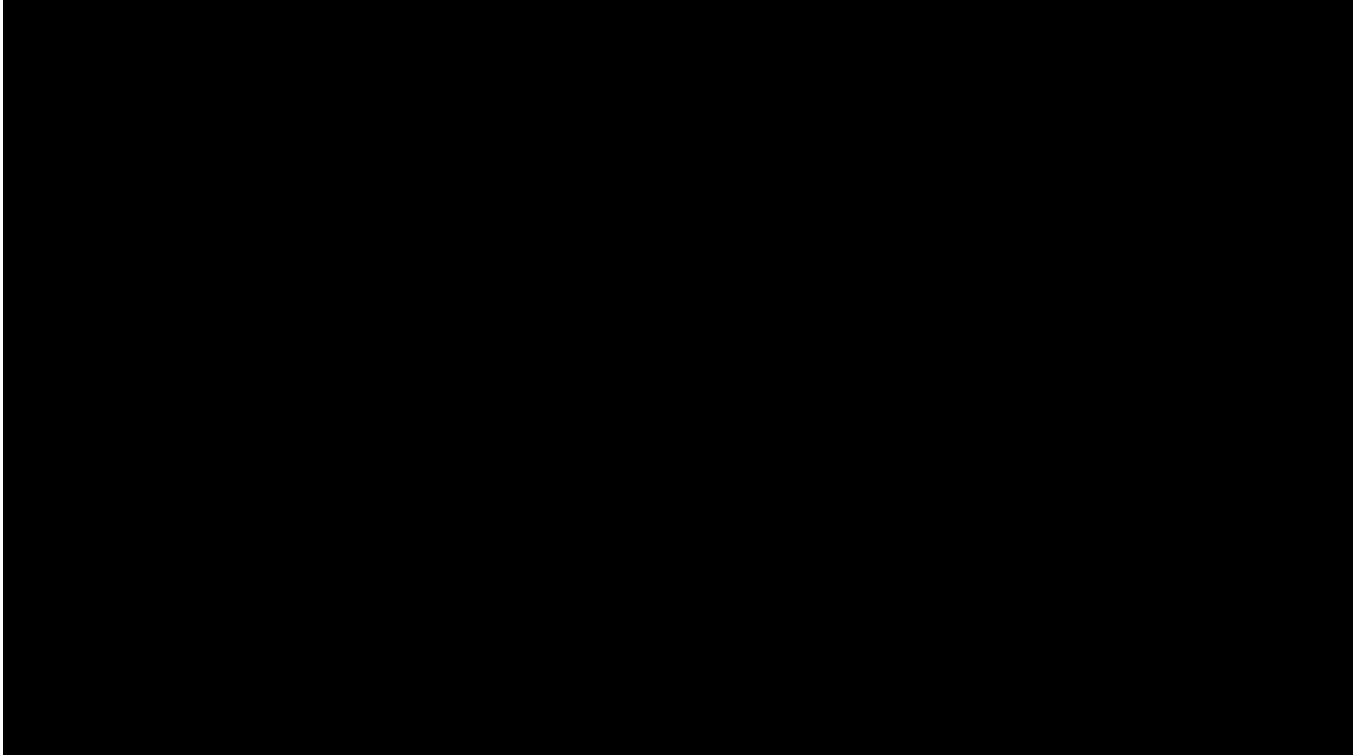
I hereby certify that the within Deed has been this

day of

19 recorded in Book page

Auditor County

EXHIBIT B



From: Marshall Lawson [mailto:marshall.lawson@wcrscorp.com]
Sent: Friday, March 30, 2018 7:19 AM
To: 'dhughes@dugganhughes.com'
Subject: FW: Easement Agreement

Daniel:

For some reason, this did not leave my outbox yesterday. Please see below.

Kindest regards,

Marshall

J. Marshall Lawson
General Counsel
Western Carolina Railway Service Corporation
Historic Greer Depot
300 Randall Street, Suite A
Greer, South Carolina 29651-3410
Tel: (864) 334-5374

Visit us on the web at: www.wcrscorp.com

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contain information which is legally privileged or otherwise exempt from disclosure. They are intended solely for the use of the individual or entity to whom this e-mail is addressed. If you are not one of the named recipients or otherwise have reason to believe that you have received this message in error, please immediately notify the sender and delete this message immediately from your computer. Any other use, retention, dissemination, forwarding, printing, or copying of this e-mail is strictly prohibited.

From: Marshall Lawson [<mailto:marshall.lawson@wcrscorp.com>]
Sent: Thursday, March 29, 2018 1:54 PM
To: 'dhughes@dugganhughes.com'
Subject: Easement Agreement

Daniel:

As mentioned in today's conversation, please find attached a draft of the proposed Easement Agreement (perpetual term) between the City of Greer and Letchworth Properties, LLC, for public parking. Notwithstanding what we believe to be ambiguous language in the covenant of public use embodied in Deed from GCRA into Station One Partnership (especially the lack of a cognizable property description), we acknowledge the existence of the Restriction and state that Letchworth is amenable to public parking on the parcel identified in the proposed Agreement, provided the parties can agree to certain conditions/restrictions on such use.

Please examine and let me know if you have any questions or reservations about the terms. Or in the alternative, please feel free to make any proposed changes to the Word version of the Agreement (sans exhibits) in Track Changes.

Letchworth reserves the right to make any changes as to substance or form upon notice to and approval of the City and prior to execution.

I look forward to your response.

Kindest regards,

Marshall

J. Marshall Lawson
General Counsel
Western Carolina Railway Service Corporation
Historic Greer Depot
300 Randall Street, Suite A
Greer, South Carolina 29651-3410
Tel: (864) 334-5374

Visit us on the web at: www.wcrscorp.com

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between Grantor's property and City-owned parking on the North, said portion being part of a larger parcel consisting of 0.464 acres bearing a Tax Map number of G020000401300 and having a street address of 300 Randall Street, Greer, South Carolina.

1.2 Termination of Deed Restriction. This permanent easement for vehicle parking and right-of-way use supersedes any previous agreement, restriction, or easement for public parking, including the Deed Restriction found in the Deed from the Greenville County Redevelopment Authority into Station One Partnership, filed January 2, 1987 and recorded in Deed Book 1285 at Page 427 of the Greenville County Register of Deeds.

2. Use and Compliance.

2.1 CITY's Right of Ingress and Egress. CITY shall have the right of ingress and egress to and from said Easement Area for the purpose of exercising the rights hereby granted.

2.2 Use by CITY. CITY may use the Easement Area for the purpose of operating and maintaining a public parking lot on a no-fee parking basis. In conformance therewith, CITY shall be authorized to set time limits on public parking and enforce parking ordinances, rules and regulations.

2.3 Use by GRANTOR. CITY hereby specifically acknowledges and agrees that GRANTOR shall have the right to Three (3) Parking Spaces within the Easement Area which shall be reserved for the exclusive use of GRANTOR and its invitees and guests at all times and marked as RESERVED by CITY. The location of such parking spaces shall be selected solely by GRANTOR. CITY acknowledges and agrees that GRANTOR shall also retain the right of ingress and egress and rights of maintenance and passage onto the entire Property at all times.

2.4 Utilities. CITY acknowledges and agrees that it will not interfere with any utilities for repair and inspection thereof or other appurtenances to the Easement Area.

3. Property Condition; CITY Improvements.

3.1 Property Condition. CITY represents that the Easement Area, the title thereto, any subsurface conditions thereof, and the present uses thereof have been examined by the CITY. CITY accepts the same in the condition in which they now are, without representation or warranty, expressed or implied, in fact or by law, by GRANTOR, and without recourse to GRANTOR as to the title thereto, the nature, condition or usability thereof, or the uses to which the Easement Area may be put.

3.2 CITY Improvements. Any structural improvements to the Easement Area shall be for public parking purposes only and not for any habitable purpose. Such structural improvements are subject to the written approval of GRANTOR. CITY shall provide GRANTOR written requests for said improvements which shall include detailed descriptions of the proposed improvements. GRANTOR shall respond in no less than thirty (30) days in writing of approval or disapproval. Improvements to the Easement Area shall remain the property of the GRANTOR unless agreed to in writing between the CITY and GRANTOR. All improvements made by CITY to the Easement Area

are subject to all applicable codes, ordinances and laws, including the Americans with Disabilities Act.

4. Repairs, Maintenance.

4.1 No Waste. CITY shall, at its sole expense, take good care of the Easement Area and shall not do or suffer any waste with respect thereto and CITY shall promptly make all necessary or desirable Repairs to the Easement Area. The term "**Repairs**" means all reasonable repairs and maintenance necessary to keep the Easement Area in good condition and includes, without limitation, replacements, restoration and renewals when necessary. CITY shall keep and maintain any paved areas, sidewalks, curbs, parking lots, and lawn areas in a clean, safe and orderly condition, and free of accumulation of dirt and rubbish.

4.2 Adequate Drainage. CITY agrees to construct and maintain an adequate surface drainage system from the Easement Area to prevent the discharge of surface and other drainage water upon the nearby railroad right-of-way or Grantor's remaining property.

4.3 No Obligation by GRANTOR. GRANTOR shall not have any liability or obligation to furnish or pay for any services or facilities of whatsoever nature or to make any Repairs or alterations of whatsoever nature in or to the Easement Area, including but not limited to structural repairs, or to maintain the Easement Area in any manner. CITY acknowledges that GRANTOR shall have no responsibility for management of the Easement Area.

5. Dangerous and Hazardous Conditions.

It is understood by CITY that the Easement Area is located proximate to an active railroad right-of-way and track and that persons and property, whether real or personal, on the Easement Area could be in danger of injury, death or destruction incident to the operation of the track by the operating railroad, including, without limitation, the risk of derailment, fire, or inadequate clearance and CITY accepts this Grant subject to such dangers, and acknowledges that its indemnification obligations hereunder extend to and include all such risks. CITY shall be responsible for erecting signage and fencing necessary to warn the public and prevent trespassing onto the railroad track/right-of-way from the parking area. Failure of the CITY to erect such signage or fencing will not constitute a waiver of the covenants of CITY contained herein or of GRANTOR's right to recover for and be indemnified and defended against such damages to Property, and injury to or death of persons that may result therefrom.

6. Liability.

6.1 Release and Indemnity. Liability of CITY is governed by the South Carolina Tort Claims Act, S.C. Code Ann. § 15-78-10 et seq., as now or hereafter amended. Nothing in this Agreement shall be construed as a waiver of any provision of the Act. To the fullest extent permitted by applicable law, CITY agrees to be responsible for and to defend and save harmless GRANTOR, GRANTOR's parent companies, subsidiaries, affiliates, GRANTORs, lessor, GRANTORs, and subsidiaries of parent companies, (collectively the "GRANTOR's Related Entities") and GRANTORs and GRANTOR's Related Entities' officers, directors, members, shareholders, lenders

agent and employees (collectively the “GRANTOR Entities”) against all claims (including but not limited to claims for bodily injury, death or Property damages), economic losses, liabilities, costs, injuries, damages, actions, mechanic’s liens, losses and expenses (including but not limited to reasonable attorney’s fees and costs) to whomever, including, but not limited to, GRANTOR’s agents, workmen, servants or employees, or whatsoever occurring (collectively, “Claims”) arising out of or relating to CITY’s or the Public’s use or occupancy of the Easement Area, unless for damage caused solely by GRANTOR’s negligence. To the fullest extent permitted by applicable laws, CITY hereby waives and releases the GRANTOR Entities from any Claims arising out of or relating in any way to the CITY’s or Public’s use or occupancy of the Easement Area.

6.2 Assumption of Risk. CITY’s business and personal property, tenant improvements, and trade fixtures shall be located at the Easement Area at CITY’s risk, and CITY hereby releases GRANTOR from any claims for loss or damage to CITY’s real or personal property, except to the extent any such loss or damage is caused solely by the negligence of GRANTOR or its officials, employees or contractors.

7. Assignment.

It is understood that this Grant of an Easement is perpetual in duration, runs with the land, and shall inure to the benefit of Grantor, City, their heirs, successors, and permitted assigns, provided, however, that CITY shall not have any right to assign its rights under this Grant.

8. Liens.

CITY shall promptly pay, discharge and release of record any and all liens, charges and orders arising out of any construction, alterations or repairs, suffered or permitted to be done by CITY on the Property. GRANTOR is hereby authorized to post any notices or take any other action upon or with respect to the Property that is or may be permitted by law to prevent the attachment of any such liens to the Property; provided, however, that failure of GRANTOR to take any such action shall not relieve CITY of any obligation or liability under this Section or any other Section of this Grant.

9. Insurance.

9.1 Coverage. CITY shall procure and maintain, at all times and at its expense, in a form and with insurance company acceptable to GRANTOR:

(a) Commercial General Liability for the Property. Such coverage shall (a) have a single limit of not less than \$2,000,000.00 for each occurrence (or such greater amount over time so as to be commercially reasonable) and provide aggregate coverage of \$4,000,000.00, (b) cover CITY’s contractual liability hereunder, (c) cover CITY and GRANTOR for liability arising out of work performed by any third parties for CITY in or about the Premises, (d) name GRANTOR as additional insured, and (e) be considered primary and noncontributory, regardless of any insurance carried by GRANTOR. In addition, CITY’s policy shall be endorsed to reflect Contractual Liability Insurance specifically relating to the indemnity provision of this Agreement. Any exclusion for construction or demolition activities conducted with 50 feet of the nearby railroad tracks shall be

deleted from CITY's policy. Any property insurance maintained by CITY on its furniture, fixtures, equipment and personal property shall include a waiver of subrogation in favor of GRANTOR.

(b) Workers Compensation Insurance in satisfaction of statutory requirements of South Carolina. Also, Employers' Liability Insurance having limits of not less than \$500,000.00 each accident, \$500,000.00 per disease-each employee.

(c) Automobile Liability Insurance having a combined single limit of not less than \$500,000.00 per occurrence. Said policy shall name GRANTOR as an additional insured and shall include a severability of interests provision.

9.2 Proof of Insurance. CITY shall deliver certificates of insurance evidencing the insurance required hereinabove to GRANTOR simultaneously with the execution of this Grant, which certificates shall reflect that the policies shall not be canceled without at least thirty (30) days prior notice to GRANTOR. All insurance certificates should be delivered to GRANTOR via email to GRANTOR's General Counsel, Marshall Lawson at marshall.lawson@wcrscorp.com, simultaneously with the execution of this Grant by CITY. The minimum limits of insurance provided for hereunder are not intended to be a limitation on the liability of CITY hereunder and shall not waive GRANTOR's right to seek a full recovery from CITY.

9.3 Certification. CITY represents that this Grant has been thoroughly reviewed by CITY's insurance agent(s)/broker(s), who have been instructed by CITY to procure the insurance coverage required by this Grant.

9.4 Modification. Not more frequently than once every five years, GRANTOR may reasonably modify the required insurance coverage to reflect then-current risk management practices in the GRANTOR industry and underwriting practices in the insurance industry.

9.5 Contractors. If any portion of construction or maintenance work on the Property is to be contracted by CITY, CITY shall require the contractor to provide and maintain the insurance coverages set forth herein, naming GRANTOR as an additional insured, and shall require that the contractor shall release, defend and indemnify GRANTOR to the same extent and under the same terms and conditions as CITY is required to release, defend and indemnify GRANTOR herein.

9.6 Failure to Comply. Failure to provide evidence of insurance as required by this section shall entitle, but not require, GRANTOR to terminate this Grant immediately. Acceptance of a certificate that does not comply with this section shall not operate as a waiver of CITY's obligations hereunder.

9.7 No Limitation on Liability. The fact that insurance (including, without limitation, self-insurance) is obtained by CITY shall not be deemed to release or diminish the liability of CITY including, without limitation, liability under the indemnity provisions of this Property Grant.

For purposes of this section, GRANTOR shall mean "Letchworth Properties, LLC", and its parents, subsidiaries, successors, assigns and affiliates.

10. Termination of Grant.

Notwithstanding its perpetual nature, this Grant shall terminate at such time as either of the following may occur ("**Termination Events**"):

(a) as a result of a Taking by a legally constituted authority for any public use or purpose, in which case this Grant shall terminate as of the date of such Condemnation.

(b) GRANTOR or a GRANTOR's affiliates shall require the Property (or any portion thereof) for Railroad purposes or activities and GRANTOR or the GRANTOR affiliate delivers written notice thereof ("**Termination Notice**") to CITY, in which case this Property Grant (or such portion thereof as is described in the Termination Notice) shall terminate effective as of the date which is 180 days after the Termination Notice has been sent.

11. Default.

If CITY shall fail to fulfill or perform any of these Grant agreements and provisions, and if said nonfulfillment or nonperformance shall continue for a period of thirty (30) days after written notice has been given by the GRANTOR to the CITY, then upon expiration of said thirty (30) days after written notice has been given by the GRANTOR to the CITY, then upon the expiration of said thirty (30) days, but not before, the CITY shall be in default under this Grant. Upon default, it shall be lawful and an option for the GRANTOR to declare a termination of this Grant and to retake possession of the Property as one of its remedies. Such default period shall not exceed ten (10) days for matters posing risk to safety of the public or others using or passing on the Property.

12. Signs.

Any signs placed upon the Property will be placed in accordance with applicable sign code provisions or other approvals. Signs will not interfere with GRANTOR's operations, or infringe on GRANTOR's registered Trademarks or Service Marks.

13. Consents and Approvals.

Whenever in this Grant, GRANTOR's consent or approval is required, such consent or approval shall be in GRANTOR's sole and absolute discretion. If GRANTOR delays or refuses such consent or approval, such consent or approval shall be deemed denied, and CITY in no event will be entitled to make, nor will CITY make, any claim, and CITY hereby waives any claim, for money damages (nor will CITY claim any money damages by way of set-off counterclaim or defense) based upon any claim or assertion by CITY that GRANTOR unreasonably withheld or unreasonably delayed its consent or approval.

14. Governing Law.

All questions concerning the interpretation or application of provisions of this Property Grant shall be decided according to the substantive laws of the State of South Carolina.

15. Force Majeure.

Except as may be elsewhere specifically provided in this Grant, if either party is delayed or hindered in, or prevented from the performance required under this Grant (except for payment of monetary obligations) by reason of earthquakes, strikes, lockouts, labor troubles, failure of power, riots, insurrection, war, acts of God or other reason of the like nature not the fault of the party delayed in performance of its obligation, such party is excused from such performance for the period of delay. The period for the performance of any such act will then be extended for the period of such delay.

16. Entire Agreement/Modification.

This Grant, including the exhibits attached hereto, is the full and complete agreement between GRANTOR and CITY with respect to all matters relating to Grant of the Property and supersedes any and all other agreements between the parties hereto relating to Grant of the Property. If this Property Grant is a reissue of an existing agreement held by CITY, including a Grant arising from a Deed Restriction, this Grant shall supersede and cancel the previous Restriction, Grant or Grants, without prejudice to any liability accrued prior to cancellation. This Grant may be modified only by a written agreement signed by GRANTOR and CITY.

17. Rule of Construction.

Each party and its counsel has participated in the review and revision of this Agreement, and any rule of construction to the effect that ambiguities are to be construed against the drafting party shall not apply in interpreting this Agreement, and the language in this Agreement shall be interpreted as to its fair meaning and not strictly for or against any party.

18. No Third Party Beneficiary Rights.

This Grant is not intended to create, nor shall it in any way be interpreted or construed to create any third party beneficiary rights in any person not a party hereto, unless otherwise expressly provided herein.

19. No Gift or Dedication.

Nothing contained in this Agreement shall be deemed to be a gift or dedication of any portion of the Property to the general public, it being the intent of the parties that the Easement granted in this Agreement be limited to the purposes expressed herein.

20. Notices.

Any notice or documents required or permitted to be given hereunder by one party to the other shall be in writing and the same shall be given or shall be deemed to have been served and given if (i) delivered in person to the address hereinafter set forth for the party to whom the notice is given, (ii) placed in the United States mail, certified - return receipt requested, addressed to such party at the address hereinafter set forth, (iii) deposited into the custody of any reputable overnight

carrier for next day delivery, addressed to such party at the address hereinafter set forth, (iv) sent by facsimile transmission (if a machine generated confirmation is generated with the transmission); or (v) sent by email with "read receipt" received. Any notice mailed as above shall be effective upon its deposit into the custody of the U. S. Postal Service or such reputable overnight carrier, as applicable; all other notices shall be effective upon receipt. From time to time, either party may designate another postal address, facsimile number, or email address for purposes of this Grant by giving the other party not less than fifteen (15) days' advance written notice of such change of address in accordance with the provisions hereof.

If to GRANTOR:

Steven C. Hawkins, President
Letchworth Properties, LLC
Historic Greer Depot
300 Randall Street, Suite A
Greer, South Carolina 29651-3410
steven.hawkins@wcrscorp.com

If to CITY:

Brandon McMahan, Zoning Coordinator
City of Greer
301 East Poinsett Street
Greer, South Carolina 29651-3708
bmcman@cityofgreer.org

21. Counterparts.

This Grant may be executed in multiple counterparts, each of which shall, for all purposes, be deemed an original but which together shall constitute one and the same instrument, and the signature pages from any counterpart may be appended to any other counterpart to assemble fully executed documents, and counterparts of this Grant may also be exchanged via electronic facsimile machines and any electronic facsimile of any party's signature shall be deemed to be an original signature for all purposes.

22. Relationship.

Notwithstanding anything else herein to the contrary, neither party hereto shall be construed or held, by virtue of this Grant, to be the agent, partner, joint venturer, or associate of the other party hereto, it being expressly understood and agreed that the relationship between the parties hereto is and at all times during the Term of this Grant, shall remain that of GRANTOR and CITY.

23. Severability.

If any clause or provision of this Property Grant is illegal, invalid or unenforceable under present or future laws effective during the Term, then and in that event, it is the intention of the

parties hereto that the remainder of this Property Grant shall not be affected thereby, and it is also the intention of the parties to this Property Grant that in lieu of each clause or provision of this Grant that is illegal, invalid or unenforceable, there be added, as a part of this Grant, a clause or provision as similar in terms to such illegal, invalid or unenforceable clause or provision as may be possible and be legal, valid and enforceable.

24. Option to Purchase.

If CITY determines that it no longer has need of the Easement Area for public parking, as determined in its sole and absolute discretion, CITY shall notify GRANTOR in writing of same (“**Disposition Notice**”). GRANTOR shall have an option to purchase CITY’s entire interest in the Easement Area and this Agreement and to terminate this Agreement on the terms and conditions set forth in this **Section 24**. Said option to purchase shall be exercisable within sixty (60) days following the Disposition Notice by delivery to CITY of a written notice of intent to exercise the option (the “**Acquisition Notice**”), shall run with the land, and shall benefit any successor or assignee of Grantor and shall be binding upon any successor or assignee of CITY’s rights and interest herein. Grantor’s purchase price (the “**Purchase Price**”) shall be the fair market value of CITY’s easement rights under this Agreement at the time Grantor delivers to CITY a written notice of intent to exercise the option (the “**Acquisition Notice**”), with fair market value determined based upon the highest and best use of CITY’s easement rights at that time other than for Prohibited Uses.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals, effective the day and year first written.

Witness for GRANTOR:

LETCWORTH PROPERTIES, LLC

By: _____
Print/Type Name: Steven C. Hawkins
Print/Type Title: President

[Corporate Seal]

Witness for CITY:

CITY OF GREER

By: _____
Print/Type Name: _____
Print/Type Title: _____

[Municipal Seal]

From: [Bongiovanni, Kim](#)
To: lawsonlaw@att.net
Cc: [Vazquez, Luis](#)
Subject: RE: [E] Conference Call
Date: Monday, January 8, 2024 10:14:11 AM

EXHIBIT C

Marshall, CSXT has not granted the City the right to use CSXT railroad ROW for parking. Likewise, we have not granted the City jurisdiction over our rail operations. This is the extent of CSXT involvement in your case.

By copy to my colleague Luis Vazquez, he can work with your client on a potential license agreement. Kim

Kim Rice Bongiovanni

Assistant General Counsel

CSX Transportation, Inc., 500 Water Street, J150, Jacksonville, FL 32202

☎ Phone: 904-359-1233 | 📠 Fax: 904-357-7660 | ✉ E-Mail: kim_bongiovanni@csx.com

From: lawsonlaw@att.net <lawsonlaw@att.net>
Sent: Monday, January 8, 2024 10:07 AM
To: Bongiovanni, Kim <Kim_Bongiovanni@CSX.com>
Subject: RE: [E] Conference Call

You don't often get email from lawsonlaw@att.net. [Learn why this is important](#)

This Message Is From an External Sender

This message came from outside your organization.

Dear Kim:

Please see attached.

Kindest Regards,

J. Marshall Lawson, Esq.

Managing Member

The Lawson Law Firm, LLC

(803) 730-3510

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EXHIBIT D

[Sec. 94-155. - Penalties.CODE COMPARATIVE TABLE - 1982 CODE](#)

- **Appendix A - ZONING^[1]**

[Share Link to section](#)[Print section](#)[Download \(Docx\) of sections](#)[Email section](#)

Footnotes:

--- (1) ---

Editor's note— Printed herein is the zoning ordinance of the city, Ordinance of April 13, 1999, adopted by the city council on that date. Amendments to the ordinance are indicated by parenthetical history notes following amended provisions. The absence of a history note indicates that the provision remains unchanged from the original ordinance. Obvious misspellings and punctuation errors have been corrected without notation. For stylistic purposes, headings and catchlines have been made uniform. Additions made for clarity are indicated by brackets.

- **ARTICLE 1. - PURPOSE, AUTHORITY**

[Share Link to section](#)[Print section](#)[Download \(Docx\) of sections](#)[Email section](#)

- **Sec. 1:1. - Purpose.**

[Share Link to section](#)[Print section](#)[Download \(Docx\) of sections](#)[Email section](#)

The zoning regulations and districts as herein set forth have been made in accordance with a comprehensive plan and are designed to lessen traffic congestion; to secure safety from fire, panic, and other danger; to promote health and the general welfare; to provide adequate light and air; to prevent the overcrowding of land; to avoid undue concentration of population; to facilitate the adequate provisions of transportation, water, sewerage, schools, parks, and other public requirements. Such regulations have been made with reasonable consideration, among other things, to the character of each district and to its peculiar suitability for particular uses, and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout the City of Greer.

- **Sec. 1:2. - Authority.**

[Share Link to section](#)[Print section](#)[Download \(Docx\) of sections](#)[Email section](#)

The provisions of this ordinance are adopted under authority of the South Carolina Local Government Comprehensive Planning Enabling Act of 1994, S.C. Code title 6, chapter 29.

EXHIBIT E

Report to Congress

National Strategy to Prevent Trespassing on Railroad Property



October 2018

Federal Railroad Administration
U.S. Department of Transportation

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National Strategy to Prevent Trespassing on Railroad Property

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Abbreviations in this Report

AIS	Abbreviated Injury Scale
CRISI	Consolidated Rail Infrastructure and Safety Improvements
FRA	Federal Railroad Administration
FY	Fiscal Year
VSL	Value of a Statistical Life

RECEIVED

Oct 18 2024

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

G. D. Morgan, Jr., Circuit Court Judge

Appellate Case No. 2024-000727

Letchworth Properties, LLC..... Appellant,

v.

City of Greer, South Carolina, and Greer Board of Zoning Appeals..... Respondents.

PROOF OF SERVICE

THE LAWSON LAW FIRM, LLC
J. Marshall Lawson (SC Bar No. 17020)
The Lawson Law Firm, LLC
4329 Kilbourne Road
Columbia, SC 29206
Phone: (803) 730-3510
Email: marshall@lawsonlawsc.com

*Attorney for Appellant
Letchworth Properties, LLC*

I, J. Marshall Lawson, do hereby certify that I served Appellant's RETURN TO RESPONDENTS' OBJECTION TO APPELLANT'S DESIGNATION OF MATTER on the following counsel of record for Respondents via electronic mail (see attached email) to counsel's AIS E-mail address on October 18, 2024.

Daniel R. Hughes, Esq.
Duggan & Hughes, LLC
457-B Pennsylvania Avenue
Greer, SC 29650
(864) 334-2500
dhughes@dugganhughes.com

Respectfully submitted,

By: /s/ J. Marshall Lawson
J. Marshall Lawson (SC Bar No. 17020)
The Lawson Law Firm, LLC
4329 Kilbourne Road
Columbia, SC 29206
Phone: (803) 730-3510
Email: marshall@lawsonlawsc.com

Attorney for Appellant

Letchworth Properties, LLC

Columbia, South Carolina
October 18, 2024

The Lawson Law Firm, LLC

**4329 Kilbourne Road
Columbia, South Carolina 29206
(803) 730-3510
marshall@lawsonlawsc.com**

October 18, 2024

RECEIVED
Oct 18 2024
SC Court of Appeals

SENT VIA EMAIL: ctappfilings@sccourts.org

The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
1220 Senate Street
Columbia, South Carolina 29201

RE: **APPELLANT'S RETURN TO RESPONDENTS' OBJECTION TO APPELLANT'S DESIGNATION OF MATTER:** Letchworth Properties, LLC v. City of Greer and City Greer Board of Zoning Appeals, Appellate Case No. 2024-000727

Dear Ms. Kitchings:

Attached for filing is Appellant's Return to Respondents' Objection to Appellant's Designation of Matter and Proof of Service in the matter referenced above. A check for the filing fee in the amount of \$50.00 will be deposited in today's mail.

Please let me know if you have questions or comments.

Sincerely,

/s/ J. Marshall Lawson

The Lawson Law Firm, LLC

Attachment(s) as stated

cc: Daniel Hughes, Esquire