

**Exhibit 2**

March 7, 2025 Amended Order

Appellant Broad Creek Development, LLC's Notice of Appeal

*Broad Creek Development, LLC*

v.

*Beaufort County*

Beaufort County Court of Common Pleas Case No. 2022-CP-07-01978

Appellate Case No. 2025-\_\_\_\_\_

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF BEAUFORT )  
 )  
TMS: R552 010 000 0648 0000 )  
R552 010 000 0649 0000 )  
 )  
BROAD CREEK DEVELOPMENT LLC, )  
 )  
Plaintiff/Landowner, )  
 )  
vs. )  
 )  
BEAUFORT COUNTY, )  
 )  
Defendant/Condemnor. )  
\_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS  
FOR THE 14th JUDICIAL CIRCUIT

CASE NO: 2022-CP-07-01978

**AMENDED ORDER**



**STATEMENT OF THE CASE**

This Amended Order makes minor changes to my order dated February 18, 2025, pursuant to Broad Creek Development’s Motion to Reconsider, dated February 28, 2025. This action challenges the condemnation by Beaufort County of 4.95 acres of undeveloped private property on Hilton Head Island for the purpose of constructing a permanent ferry embarkation landing and public parking on the mainland to service Daufuskie Island (“Challenge Action”). The Court heard the action non-jury on October 14, 2024. Present at the trial for the Landowner, Broad Creek Development, LLC (“Broad Creek”), were attorneys Jeffrey S. Tibbals and Richard D. Bybee. Representing the Condemnor, Beaufort County (“Defendant,” “Condemnor,” “County”) was attorney Christopher L. Murphy.

The following witnesses presented testimony on behalf of the County:

- David Wilhelm – Beaufort County Public Works Director and former County Capital Projects Director
- Brittany Ward, Esq. – Former Beaufort County Attorney
- Hank Amundson – Beaufort County Special Assistant to the County Administrator and former Special Projects Director

- Jared Fralix, P.E. – Beaufort County Engineer

Testimony on behalf of the Landowners was presented by:

- Cantzon Foster, II, Esq. - Attorney for Broad Creek Development, LLC
- Dean Pierce, Esq. - Manager and Owner of Broad Creek Development, LLC

The following Order is a result of my review of stipulations of fact, the evidence presented during the trial, deposition testimony, documentary evidence, relevant statutory law and case law.

### **FACTS**

This case arises from the condemnation by the County of two parcels of land totaling approximately 4.95 acres, owned by the Landowner, identified by TMS numbers R552 010 000 0649 0000 and R552 010 000 0648 0000. The Notice of Condemnation ("NOC"), dated September 15, 2022, states the purpose is to establish "a permanent embarkation location and public parking on the mainland to facilitate public ferry services to and from Daufuskie Island." The amount tendered in the NOC was \$3.4 million. On September 28, 2022, \$3.4 million was deposited with the Beaufort County Clerk of Court as just compensation for the property. Landowners timely filed this Challenge action on October 12, 2022, staying the underlying Condemnation case and placing the entire project on hold.

By way of background, Beaufort County decided long ago to provide public ferry transportation to and from Daufuskie Island. In 2016, the public ferry operated from Palmetto Bay Marina on Hilton Head. However, Hurricane Matthew struck on October 8, 2016, devastating Palmetto Bay Marina and necessitating the relocation of the mainland embarkation ferry dock. The County did not own the Palmetto Bay site, and the marina owner chose not to continue to allow ferry use after the hurricane. This forced the County to temporarily locate the mainland site at Buckingham Landing, a site the County owned.

On June 11, 2021, the residents of Buckingham Landing filed a lawsuit ("Ware lawsuit") against Beaufort County and the ferry provider, asking the Court to issue an injunction and cease ferry operations at the Buckingham Landing site.

On May 24, 2022, Circuit Court Judge Bentley Price entered a TRO ceasing all ferry operations at Buckingham Landing on Labor Day, September 5, 2022. This gave the County less than four months to approve and fund an alternative site. The County moved to Alter or Amend that Order, and on August 24, 2022, Judge Price entered a second Order stating that the County had shown “sufficient compliance” to satisfy the May 24, 2022 Order, but specifically provided that the Plaintiffs could file a “new Motion for Temporary Injunction after the scheduled mediation of the case on September 9, 2022.”

The *Ware* Plaintiffs renewed their Motion for a Preliminary Injunction, and Circuit Court Judge Courtney Clyburn-Pope, on February 21, 2023, granted a Temporary Injunction in favor of the Plaintiffs prohibiting Beaufort County, the Daufuskie Island Ferry Service, LLC, and the HPCCA Ferry Company, Inc. from operating ferry boats from the Buckingham Landing property as of January 1, 2024. This court ordered deadline gave the County approximately 11 months to relocate the mainland facility or cease providing ferry transportation to Daufuskie Island. As a result of this deadline and the Challenge action in this case, the County was forced to temporarily run the mainland ferry site from Pinckney Island Landing. Although the Pinckney site was considered along with the Broad Creek property, two significant issues prevented the County from relocating to Pinckney permanently. The first is ownership. The Federal Government owns the property, and the lease requires approvals for the construction of any structure on the property. The second issue is the relocation of US 278. As of now, the relocated US 278 corridor will run through the parking lot of Pinckney Island, which I find will negate the County’s efforts to establish adequate parking at the embarkation site.

In the meantime, the County had been considering the Broad Creek Property for a ferry embarkation even before the *Ware* litigation. In the summer of 2021, the County identified the Broad Creek property as a potential replacement site for Buckingham Landing. Beaufort County then hired two appraisers to provide valuation opinions for the property.

George Owen issued his appraisal report on August 12, 2021, estimating the property's value to be \$3.9 million as of that date. Tony Martin followed with his appraisal report on August 20, 2021, estimating the property's value at \$3.4 million as of the same date.

In the summer of 2022, the County, through its attorney, Brittany Ward, contacted the Landowner's attorney, Cantzon Foster, to discuss the purchase of the property. The communications were sparse, and the Landowner made it clear, “[he] did not want to sell the property.”

Landowner and Manager of Broad Creek, LLC, Dean Pierce, confirmed that they planned to develop the property, which is zoned under the LMO as waterfront mixed-use, which allows for 16 multifamily units per acre (in this case, 79 condominiums), and they were not interested in selling the property.

As a result of Broad Creek's refusal to sell the property outright, on September 15, 2022, Beaufort County filed its NOC and Lis Pendens. On September 28, 2022, Foster received the NOC and Lis Pendens through certified mail. On October 6, 2022, the County hired Alliance Engineering to draft conceptual parking plans for the site. Alliance developed two (2) conceptual plans on October 29, 2021. One plan only included the Broad Creek property subject to the Condemnation, and the second included an additional tract of property. Looking at the relevant conceptual plan, the thought process was to use the condemned Property to construct one hundred and ninety-two (192) parking spaces and a 3,200 sq. ft. pavilion in Lot A along with an additional sixty-two (62) parking spaces in Lot B. This totals two hundred and fifty-four (254) parking spaces.

Both County appraisers issued updated appraisals in late 2023 to reflect their estimated value of the Property as of the Date of Condemnation. Mr. Owen issued an updated appraisal on December 1, 2023, estimating the value of the Property to be \$4,370,000. Mr. Martin issued an updated appraisal on December 3, 2023, estimating the value of the Property to be \$3.7 million.

**RELEVANT STATUTORY PROVISIONS**

**S.C. Code Ann. §28-2-70: Appraisal of property; necessity of negotiation; condemnor's right to enter upon land for limited purposes.**

(A) Before initiating a condemnation action, the condemnor shall cause the property to be appraised to determine the amount that would constitute just compensation for its taking and shall make the appraisal available to the landowner.

(B) The condemnor and landowner shall make reasonable and diligent efforts to negotiate an agreement upon the amount of compensation to be paid. The condemnor shall certify to the court that a negotiated resolution of the conflict was attempted prior to the institution of the condemnation action. A failure of any party to comply with this subsection is not a defense to a condemnation action.

(C) The condemnor shall have the authority, after reasonable notice to the landowner, to enter upon the real property in which an interest is proposed to be acquired for the purpose of making a survey, determining the location of proposed improvements, or making an appraisal. In the event a landowner refuses to allow entry, the circuit court may issue an ex parte order enforcing this section. A landowner shall have no cause of action for trespass arising out of the exercise of authority pursuant to this section.

**S.C. Code Ann. §28-2-90: When Condemnor may take possession of property.**

A condemnor may take possession of property:

(3) upon deposit with the clerk of court in the county in which the property to be condemned is situated, the amount stated in the condemnation notice as just compensation for the property, the amount having been determined by the condemnor pursuant to Section 28-2-70(a) before initiating the action;

**S.C. Code Ann. §28-2-230(A): Filing of condemnation notice; deposit of amount of compensation;**

(A) If the landowner rejects or does not accept the amount tendered as just compensation within the thirty-day period, then the condemnor may file the condemnation notice with the clerk of court and deposit with the clerk the amount of just compensation stated in the notice.

(B) The condemnor then shall serve written notice of the action upon the condemnees and may proceed to take possession of the property or interest in the property described in the condemnation notice pursuant to Section 28-2-90.

**S.C. Code Ann. §28-2-280(C)(6): Form and content of condemnation notice.**

(C)(6) specify a location within the county where the property to be taken is situated at which the landowner may inspect the project plans.

**S.C. Code Ann. §28-2-440: Date of valuation; risk of loss.**

In all condemnation actions, the date of valuation is the date of the filing of the condemnation notice.

**S.C. Code Ann. §28-2-470: Proceedings to challenge condemnor's right to condemn.**

An action challenging a condemnor's right to condemn must be commenced in separate proceedings filed in the court of common pleas in the county in which the property or a portion thereof is located. The action must be commenced within thirty days after service of the condemnation notice upon the landowner. All proceedings under the condemnation notice are automatically stayed until the disposition of the action, if any, unless the landowner and the condemnor consent otherwise.

**STANDARD OF REVIEW**

Our courts apply a preponderance of the evidence standard to challenge actions. *Ga. DOT v. Jasper County*, 355 SC 631, 586 S.E.2d 853, 855 (2003), *aff'd as modified*, 311 S.C. 29, 426 S.E.2d 748 (1993) ("An action challenging a condemnation under § 28-2-470 is considered one in equity because it essentially seeks to enjoin the condemnation.") *Ga. DOT v. Jasper Cty.*, 355 S.C. 631, 636 n.3, 586 S.E.2d 853, 855 (2003) (citing *S. Dev. Land and Golf Co. Ltd. v. S.C. Public Serv. Auth.*, 305 S.C. 507, 409 S.E.2d. 428 (Ct. App 1991).

Since challenge actions are inherently equitable, the Court must apply equitable principles when addressing statutory violations. This includes the equitable maxim that emphasizes substance over form while examining the Landowner's procedural claims. The notion "equity looks to substance rather than form" evolved out of judicial regard for that which ought to be done. *Wilkie v. Phila. Life Ins. Co.*, 187 S.C. 382, 393-94, 197 S.E. 375, 380 (1938) in *Regions Bank v. Wingard Props, Inc.*, 394 SC 241, 715 S.E.2d 348 (Ct. App. 2011). This maxim applies by "dispensing with pure formalities which would otherwise defeat the equity." *Id.*; see also *Kerr v. City of Columbia*, 232 S.C. 405, 410, 102 S.E.2d 364, 366 (1958)

in *Regions Bank*, 715 S.E.2d 348. When applying this principle, courts examine the substance and intent of the parties, ensuring a construction that is consistent with that intent. *Harpending v. Reformed Protestant Dutch Church of City of N.Y.*, 41 U.S. 455, 480, 10 L. Ed. 1029 (1842). Once a party establishes an equitable right, the court may set aside strict formalities that would otherwise undermine the equity. *Wilkie*, 187 S.C. at 393, 197 S.E. at 380.

### **ISSUES**

Plaintiff's Complaint sets forth four grounds for its Challenge Action. First, Plaintiff contends that Defendant failed to condemn Landowner's property for a valid public use pursuant to Article 1 § 13 of the South Carolina Constitution. Second, Plaintiff asserts that Defendant acted arbitrarily, abused its discretion, or acted in bad faith with their statutory condemnation power by failing to properly consider project factors as described in *S. Dev. Land*. Third, Plaintiff claims that Defendant failed to consider the criteria, standards, or factors requisite to make a rational decision for the need, necessity, location, or size of this Project. Fourth, Plaintiff alleges that the County failed to strictly comply with "exclusive procedures" of the South Carolina Eminent Domain Procedures Act ("SCEDPA").

### **PUBLIC USE**

Article 1 § 13 of the South Carolina Constitution states that public funds may not be used to condemn property "for any purpose or benefit including, but not limited to, the purpose or benefit of economic development, unless the condemnation is for public use." The "public use implies possession, occupation, and enjoyment of the land by the public at large or by public agencies." *Ga D.O.T. v. Jasper County*, 355 SC 631, 586 S.E.2d 853 (2003). As set forth in *Karesh*, "Mere benefit to the public or permission by the owner for use of the property by the public are not enough to constitute a public use, but it must appear that the public has an enforceable right to a definite and fixed use of the property." *Karesh v. City Council of Charleston*, 247 S.E.2d 342, 271 S.C. 339 (S.C. 1978).

Landowner argues that the County's intention to contract with a private entity to provide the public ferry service renders the Condemnation unconstitutional. Landowner focuses on the "control" that the ferry captain will have over the dock when loading and unloading passengers. Landowner further argues the public will lose "unfettered access" to the dock during the boarding process, which will eliminate the "public use" of the Project and Condemnation. However, the ferry dock will not be located on the property in the Challenge Action. Originally, the County planned to use the Broad Creek Property as a self-contained site. However, the stay forced the County to work around this problem. This required the County to combine three (3) parcels of property. These parcels included a parcel owned by the Town of Hilton Head, the property underneath the bridge, and the hourglass-shaped Broad Creek Property. During the course of the Challenge Action litigation, the County negotiated with the South Carolina Department of Transportation on June 2, 2023, and obtained ownership of the dock of the Cross-Island Boat Landing. The County obtained permits from OCRM for the dock extension on October 6, 2023, and actually constructed the docks. Finally, the County received all necessary permissions from the Town of Hilton Head to use the property for landing purposes, contingent on the parking issue. The Davis and Floyd, P.E. plans demonstrate the design of the two (2) parcels, which would also include parking on the Broad Creek Property. The testimony clearly established the ferry landing would be in operation but for the Challenge Action. The testimony also demonstrates that the Challenge Action is the only issue holding up this project. The County is going to extend the existing public dock on Cross Island so that it can handle a ferry, and the condemned property will be used for public parking and a public pavilion with restrooms.

Here, the County simply procures a ferry service for the public. The ferry service will not lease any portion of the embarkation facility. The ferry boat will use the floating dock for about fifteen (15) minutes on each of its four (4) visits per day for a total of forty-five (45) minutes to one (1) hour per day. While the ferry captain will need to exercise some control while loading and unloading passengers to ensure safety, this ability to "control" the boarding of passengers does not render the Condemnation

unconstitutional. Further, the Court finds that the County plans to use the Property in this challenge action for public parking. The County will own and control the parking lot to be placed on the Broad Creek property, and the public will enjoy access to the parking lot. Based on the above, I find the taking is for a public purpose.

### **PROJECT FACTORS**

In *S. Dev. Land*, the court determined that a Condemnor abused its discretion by condemning property without “weighing and considering” criteria that would show the suitability of the property for the intended use. *S. Dev. Land*, 305 S.C. at 516, 409 S.E.2d at 434 (Ct. App. 1991) (reversed on other grounds). The Court clarified that failing to consider legitimate project factors or lacking project plans that establish a public use can be considered an abuse of discretion in a condemnation case. The Court highlighted that such abuse occurred because the condemning authority did not thoroughly investigate one of the following criteria or legitimate project factors outlined in... *Fla. Power & Light Co. v. Berman*, 429 So.2d 79 (Fla. Dist. Ct. App. 1983), petition denied, 436 So.2d 98 (Fla. 1983): “(1) availability of an alternate route; (2) cost; (3) environmental factors; (4) long-range planning; and (5) safety considerations[.]” The Court focused on the availability of the alternate route factor, concluding that the condemnor failed to consider the cost of its selected power line route when considering alternate route alignments, which constituted an abuse of discretion, rendering the condemnation defective. *Id.*, *S. Dev. Land*, 305 S.C. at 516, 409 S.E.2d at 434 (Ct. App. 1991).

The abuse of discretion framework of *S. Dev. Land* was applied in the 2018 case, *Oien Family Investments, LLC v. Piedmont Municipal Power Agency*, where the court relied on testimony that the condemnor had “considered environmental impact, land use, impact to individual landowners, costs for the route, and visual impact in selecting” the property being condemned, and ultimately chose the most cost-effective option. *Oien Family Invs., LLC v. Piedmont Mun. Power Agency*, 424 S.C. 168, 817 S.E.2d 647 (S.C. App. 2018).

It is important to note that *S. Dev. Land, Florida Power & Light Company*, and *Oien Family Investments, LLC*, all involved utility companies placing lines on large tracts of land. However, this case is distinct because the County is tasked with finding a suitable location for a ferry dock, including both embarkation and parking, which limits the available property options. Additionally, this process needs to be completed within an expedited timeframe due to a court order resulting from the *Ware* litigation.<sup>1</sup>

David Wilhelm, Beaufort County Public Works Director, testified that in 2021, he was asked by the County to do an alternatives evaluation for an embarkation dock. This included "looking at potential alternative sites throughout the County, including marinas, public and private docks, etc. for the ferry embarkation. When asked how this was accomplished, Wilhelm testified, "It starts with GIS mapping, looking at potential properties, trying to assess each property's ability to house the embarkation. When asked what type of criteria were you looking for, his answer was "parking. That's number one. Access to the site, easy on and off of a highway to make it convenient for the public. If the infrastructure was already in place, obviously, if it had a dock in place already that could house the ferry, that would be favorable." Wilhelm also stated he looked at cost analysis, the cost to construct a ferry embarkation, all the infrastructure improvements, the parking, and the dock. He testified he looked at 11 sites. He discussed parking limitations, environmental factors, and other challenges and narrowed their choices to Pickney Island and Broad Creek. Wilhelm testified Pickney Island was not a possibility because of the proposed improvements to the 278 bridges, as its enlargement from the existing bridge and adding a 12-foot pedestrian walkway on the South side would require using much of the existing parking at Pinckney Landing, which was already inadequate at peak times.

Wilhelm testified regarding present parking needs; the County recognized that the 180 parking spaces at Buckingham Landing (90 on-site and 90 park and ride from Tanger Outlet) were insufficient and that at peak tourist season, the 180 parking spots were not adequate. Additionally, throughout the litigation, it

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<sup>1</sup> That order was under appeal at the time.

became evident that the 200 spaces at the temporary Pinckney facility also did not meet current parking needs. Therefore, it is clear that the County requires more than 200 spaces to adequately address its present parking needs, a fact that is not disputed.

Jared Fralix testified that the parking needs at the embarkation are closely related to the developed lots on Daufuskie Island. Currently, there are approximately one thousand (1,000) developed sites and an equal number of undeveloped sites on the Island. As more sites are developed, public service will increase, which means that the County will need to provide additional parking.

Additionally, evidence shows that the County can accommodate a maximum of two hundred fifty-four (254) parking spaces on the entire 4.95 acres of the Broad Creek property. Since the data indicates that two hundred (200) parking spaces do not meet the current needs, this plan allows the County to have about fifty (50) spaces available for any current and future requirements. Landowner contends that the County did not conduct a formal study to assess whether it would need an additional fifty (50) parking spaces or to evaluate the projected growth in demand over the years. First, the law does not require a formal analysis. Second, the Court deadlines did not allow for such a detailed analysis. Third, the County did an internal analysis based on simple facts. Jared Fralix, the Assistant County Administrator of Infrastructure for Beaufort County, testified that a regional planner called LCATS, which developed the regional transportation model in 2010, can provide guidance. He stated this model forecasts transportation-related needs over a thirty (30) year period, anticipating an annual growth rate of 1.19%. Given the current provision of one hundred eighty (180) spaces, Fralix indicated that the County will require two hundred eighty-eight (288) spaces over the next twenty-five (25) years. The evidence already shows that the County requires more than two hundred (200) spaces; therefore, applying the model will likely increase future requirements. Thus, the testimony suggests that the planned 254 spaces are necessary to meet the County's future needs.

The evidence also indicates that the County considered many locations for the embarkation but identified only two suitable locations: Broad Creek and the Pinckney site. However, the Pinckney site has parking limitations, requires special permissions, and may face future negative impacts from the U.S. 278 expansion project. As such, I find the County did not act arbitrarily, with an abuse of discretion, or in bad faith when choosing the Broad Creek property.

### **NEED AND NECESSITY**

Plaintiff also challenges the County's condemnation on the grounds that the attempted taking exceeds the County's demonstrated need and necessity for the Property. "It is well established law that necessity, as well as public use, must always exist in order to warrant the taking of lands, through condemnation, by a grantee of the power of eminent domain. The delegation of the right to exercise that power carries with it the implied condition that it shall be exercised only to the extent found necessary." *Timmons v. S.C. Tricentennial Comm'n*, 254 S.C. 378, 388–89, 175 S.E.2d 805, 810 (1970). "The grantee of the power to condemn must not abuse the discretion confided by the legislature, and spoliage private property by taking, for pretended public use, more than a reasonable necessity requires." *Atkinson v. Carolina Power & Light Co.*, 121 S.E.2d 743, 748, 239 S.C. 150, 158 (1961).

As discussed above, the County currently needs more than 200 parking spaces for the embarkation. Jared Fralix testified that for the Town of Hilton Head to approve a ferry embarkation at Broad Creek Landing, zoning requires a certain amount of parking spaces. He further testified that the Broad Creek property will allow the County to meet those zoning requirements. Thus, the Court finds that the County did not acquire more property than needed or necessary. If anything, the County is likely to need more property, which it can address when the need becomes more critical.

### **STATUTORY VIOLATIONS UNDER THE SCEDPA**

Lastly, the Landowner demands dismissal of the NOC because the County did not strictly comply with the SCEDPA. Landowner argues specifically S.C. Code Ann §28-2-70 was not complied with because the County did not provide the Landowner with the two appraisals before initiating its Condemnation

Action. Mr. Foster understood that the County needed the property due to ongoing litigation and an impending deadline. Additionally, he was aware that County Council on August 8, 2022, had approved a budget for the property. It was also established that the Landowner had no interest in selling the property. Furthermore, the record shows that when the Landowner's counsel requested the appraisal, the County provided it immediately on September 27, 2022, just 12 days after the NOC was filed, and within a day, the NOC was served.

Nothing in the facts indicate that the County withheld the appraisals or failed to provide them upon request. The statute does not place an affirmative duty on the County to send an appraisal. It only states the County must make the "appraisal available." In this case, the Landowner received the \$3.4 million appraisal when requested. The County, through Ward, stated that the County wanted to purchase the subject property at a fair price because it was using taxpayer dollars. Further, the facts show that sending the appraisals to the Landowner would not have made a difference. Mr. Pierce testified he would not accept the \$3.4 million prior to filing and that he would not accept \$4.3 million prior to filing, keeping with the theme he was not selling the property. Therefore, Landowner suffers no damage, prejudice, or loss of any right.

The Landowner also argues the County did not strictly comply with S.C. Code Ann. § 28-2-230, which only permits the filing of a notice of condemnation after the offer of just compensation tendered to the plaintiff is rejected. S.C. Code § 28-2-230(A) states, "[i]f the landowner rejects or does not accept the amount tendered as just compensation within the thirty-day period, then the condemnor may file the Condemnation Notice..." The Landowner argues that the County never made an offer of \$3.4 million to the Landowner, and thus, it never rejected the tendered amount. However, when dealing with the County, the Landowner made it very clear it had no interest in selling. Mr. Pierce testified that he would not have accepted \$3.4 million nor \$4.3 million. During this time, the County also needed to comply with the deadline imposed in the *Ware* litigation. The Court, therefore, finds that the Landowner suffered no harm

because it was made clear by testimony of both parties that the Landowner would not accept any offers prior to the filing of the NOC.

Landowner argues the County did not strictly comply with § 28-2-240(1) by filing a false affidavit, stating the amount tendered in the NOC, \$3.4 million, had been rejected by Landowner when \$3.2 million was the highest amount ever offered to Landowner. All parties agree that the affidavit was incorrect; however, the Court determines that it resulted from a scrivener's error or miscommunication on the County's part. Nevertheless, this error does not harm the Landowner, invalidate any rights, or cause any deprivation. As stated earlier, the Landowner clearly indicated that he would not accept anything prior to the filing of the Condemnation Action. Furthermore, the Landowner had the right to accept the \$3.4 million when it received the NOC and continues to have the option to accept or reject the amount paid to the Clerk of Court. In this case, the Landowner has chosen to reject the offer. Further, the Landowner Dean Pierce testified "the highest and best use for this property is condos on Hilton Head...We're in the business of developing condos...So, of course, I don't want to get rid of it." The Court finds that the County did not strictly comply with § 28-2-240(1). However, the Court also finds this did not result in any harm to Landowner as he was going to challenge the taking regardless, because he intends to build seventy-nine (79) condominiums on the Property.

Landowner claims that the County did not strictly comply with S.C. Code Ann. § 28-2-280(C)(6) by stating in the NOC that it had no plans at the time of filing. According to S.C. Code § 28-2-280, the condemnation notice must specify a location within the county where the property to be taken is located, allowing the landowner to inspect the project plans.

The County needed to comply with court-imposed deadlines in the *Ware* litigation. At the time of filing, the County intended to use the Property as an embarkation and parking site; however, this plan later changed, and the County acquired and received dock extension permits for the existing Cross Island boat

landing. What is needed for final approval by the Town of Hilton Head is adequate parking, which the Broad Creek property provides.

In this case, the County faced a court-ordered deadline and obtained the necessary permits to build the embarkation site, pending the finalization of the Project. The Landowner contends that the County should have had fully developed construction plans before filing a Condemnation Action. However, South Carolina law does not provide guidance to support this claim. The statute requires that the condemnor provide a physical location where the landowner can inspect the project plans, but it does not mandate the level of detail required for those plans. Thus, the Court finds that the County did not violate S.C. Code Ann. § 28-2-280(C)(6).

The Landowner contends that the County did not strictly comply with S.C. Code Ann. § 28-2-440 by failing to update its appraisals to reflect the opinions of value as of the date the NOC was filed. This statute establishes the “date of valuation” for trial purposes in the underlying condemnation action. Once the condemnor files the necessary pleadings, it must ensure that the appraisals utilize the filing date as the “valuation date.” It is important to note that this section of the code pertains to the underlying Condemnation Action and not to the Challenge Action.

The facts show that the County updated the appraisals to the “date of valuation.” The County must file the pleadings, which creates a “valuation date.” After the filing, the County requests that the appraisers update the appraisals to correspond with the date of filing. During the Condemnation trial, the statute permits the parties to submit evidence of value as of the “valuation date.”

Here, Landowner argues that appraisals with proper valuation dates were finally produced over a year into the Challenge Action; however, the Challenge Action that was filed by Landowner has stayed the underlying Condemnation Action for over two years. This statute applies to the underlying Condemnation Action, not the Challenge Action, and therefore does not prejudice the Landowner. The Court finds that the County did not violate S.C. Code Ann. § 28-2-440.

Landowner asserts that the County violated S.C. Code §28-11-10 to 30, 42 U.S.C. §4651 (2) and 31 C.F.R. pt 35 (2021) by not allowing the Landowner to accompany or communicate with the appraiser. S.C. Code Ann. §28-11-10 to 30 deals with parties entitled to relocation assistance. This can include owners, tenants, leasees, and others. However, since the Property is vacant land, it does not qualify for the benefits under relocation assistance. Landowner's counsel confirmed during the hearing that relocation is not an issue.

Landowner cites 42 U.S.C. §4651 (2) and 31 C.F.R. pt 35 (2021) from the Federal Relocation and Acquisition Act and Code of Federal Regulations. However, these statutes are not applicable to the current case because this matter does not involve a federal acquisition. Further, the South Carolina Eminent Domain Act does not require communication between appraisers and landowners.

Additionally, the Landowner cannot demonstrate any prejudice, damage, or loss of rights resulting from not speaking with the appraiser. The key issue is whether the appraisers' valuations would change if they had the opportunity to consult with the Landowner. In this case, the Landowner has not provided any evidence to support this claim. The Court concludes that the County did not violate S.C. Code §§ 28-11-10 to 30, 42 U.S.C. § 4651(2), or 31 C.F.R. pt. 35 (2021).

The Landowner claims that the County violated 49 CFR 24.102 (2005) by failing to inform them of the threat of eminent domain and not making every reasonable effort to negotiate. However, as previously mentioned, this situation does not involve a federal acquisition, and therefore, the cited regulation does not apply. Further, the SCEDPA does not require the County to tell the Landowner the property will be taken by eminent domain if they do not agree to sell.

S.C. Code §28-2-70 requires the County to make reasonable efforts to negotiate an agreement. The facts show that the County attempted to negotiate, but the Landowner refused to engage. Further, S.C. Code §28-2-70(B) states, "A failure of any party to comply with this subsection is not a defense to a condemnation action."

### **CONCLUSION**

I find the County's proposed use of the Property for public parking at the ferry embarkation point is for a valid public use pursuant to Article 1 § 13 of the South Carolina Constitution. Second, I find the County considered project factors as described in *S. Dev. Land*, and did not act arbitrarily, abuse its discretion or act in bad faith given the *Ware* litigation deadline. Third, I find the County adequately considered the criteria, standards, and factors requisite to make a rational decision for the need, necessity, location, and size of this Project. Fourth, I find that while the County's procedure did not strictly adhere to the SCEDPA, the Landowner has proven no harm resulting from the County's deviation, and it would be an extreme remedy for this court to find in favor of the Landowner in this Challenge action and dismiss the Condemnation action for anything less than strict adherence to the procedures unless the statutory law or case law requires it. Here, the Landowner is protected through the valuation process of the SCEDPA.

Finally, because I find for the County in the Challenge Action and find that the Landowner brought the Challenge Action in good faith, no reasonable costs nor litigation expenses will be awarded to either party.

It is further ordered that the underlying condemnation case shall be placed back on the roster and the stay be lifted.

IT IS SO ORDERED!

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Carmen T. Mullen  
Chief Administrative Judge Civil  
Fourteenth Judicial Circuit

March\_\_\_\_, 2025

Beaufort, South Carolina



Beaufort Common Pleas

**Case Caption:** Broad Creek Development, Llc VS Beaufort County

**Case Number:** 2022CP0701978

**Type:** Order/Other

So Ordered

s/Carmen T Mullen 2142