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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.

APPELLANT’S MOTION TO SUPPLEMENT THE RECORD

J. Marshall Lawson (SC Bar No. 17020)
The Lawson Law Firm, LLC
4329 Kilbourne Road
Columbia, South Carolina 29206
Phone: (803) 730-3510

Attorney for Appellant

Letchworth Properties, LLC

MOTION TO SUPPLEMENT THE RECORD

NOW COMES, Appellant, Letchworth Properties, LLC, by and through counsel, and hereby respectfully moves the Court, pursuant to SCARC Rule 212, for leave to supplement the record based on Respondents’ material misrepresentations of fact to this court and the tribunals below. In support of this Motion, Appellant would show the following:

PROCEDURE

That following Appellant’s request for a hardship variance which Respondents summarily denied, Appellant appealed the matter to the Greenville County Circuit Court which upheld the denial, prompting appeal to the South Carolina Court of Appeals. Following the filing of final briefs and record, the case was designated as ready for consideration. On June 26, 2025, Appellant requested a stay to pursue settlement negotiations which the court granted in an Order dated July 18, 2025.

FACTS

1. That in 1987, the City of Greer, South Carolina (“City”), acting pursuant to a deed restriction for public parking, constructed a public parking lot on the premises of the Historic Greer Depot (“HGD”) in what is now the City’s downtown overlay district.¹
2. That pursuant to said construction activities, the City extended the parking lot beyond the HGD property line and onto CSXT railroad right of way. It is unknown whether the City sought or obtained CSXT’s permission to encroach upon its property.
3. That the City’s extension of parking and the connector onto CSXT property placed the parking lot within inches of an active rail line.

¹ (At that time, title to the property was held by Appellant’s predecessor, Station One Partnership).

4. That notwithstanding the ultrahazardous condition created by placing a public parking lot in close proximity to an active rail line, the City chose not to erect a security fence or barrier of any type to prevent the public from entering onto the active rail line from the public parking lot.²

5. That following Appellant's purchase of the HGD property in 2017, Appellant requested the City construct a fence between the public parking lot and CSXT track in the interest of public safety which the City ignored.³

6. That in lieu of the City acting, Appellant took it upon itself to construct a security fence between the public parking lot and the CSXT track.⁴

7. That Appellant was forced to locate the fence on CSXT right of way instead of its own property to avoid interfering with Respondents' encroachments onto CSXT property.⁵

8. That on the 14th and final day of fence construction in downtown Greer (two blocks from Respondents' offices), a member of the City's planning department (apparently without determining whose property the fence was located on) texted Appellant the fence failed to conform to the City's fence ordinance and would have to come down.⁶

² Record, pp. 54, 55, 89, 126, ll. 8-23, 127, ll. 1-8, 192, ll. 1-25, p. 193, ll. 1-19 (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).)

³ Email to City Attorney, Daniel Hughes, dated March 30, 2018 (proposing 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).

⁴ Record, p. 121, ll.-23, p. 122, ll. 2-20; p. 126 ll. 15-23; p. 127, ll. 1-8.

⁵ Record, p. 94, p. 98 (Footnote 10) (Appellant's agreement with CSXT can be revoked at any time, with or without cause. Appellant maintains it should not have to construct security fencing on another's property to protect its invitees or the public in a public parking lot).

⁶ Record, p. 122, ll. 21-23, p. 123, ll. 1-15, p. 193, ll. 14-25, p. 194, ll. 1-12.

9. That the City thereafter served Appellant as the “owner or occupier” of the property with an enforcement action, requiring removal of the fence.⁷

10. That Appellant is neither the owner nor occupier of the CSXT right of way.⁸

11. That in an effort to finally settle the litigation before this court, Appellant presented an offer of settlement to the City on July 24, 2025, wherein Appellant would remove all nonconforming fencing on its property and the fence on CSXT right of way in exchange for the City granting Appellant the right to construct conforming replacement fencing entirely on Appellant’s property, including the public parking lot located thereon.⁹

12. That the aforementioned offer of settlement was contingent upon the City taking the necessary steps to relocate/reorient those sections of the parking lot and connector it extended onto CSXT right of way in order to conform with the proposed location of Appellant’s fence.¹⁰

13. That an agreement in conformance with the terms of settlement would have brought Appellant into full compliance with the Greer fence code, rendering the enforcement action against it null and void, provided much needed security fencing between the public parking lot and the CSXT right of way, and removed the City’s dangerous and possibly unlawful encroachments onto CSXT property.

⁷ Record, p. 98.

⁸ Record, p. 98.

⁹ Exhibit A (Proposed Settlement Agreement and Resolution).

¹⁰ Id.

14. That on August 14, 2025, Respondents rejected Appellant's offer of settlement without explanation or clarification of the Respondents' position, providing only the following terse and confusing response:

I did discuss the settlement proposal with the City and they are not interested other than for your client to remove the non-compliant fencing. *I never said that your client has a right to construct compliant fencing "anywhere."* I did say that your client has the right to construct a fence as allowed by the regulations.¹¹

15. That on August 15, 2025, Appellant requested clarification of Respondents' position but received no substantive response.¹²

16. That on August 26, 2025, Appellant again requested clarification of Respondents' position but received no substantive response.¹³

ARGUMENT

Respondents' apparent intention to deny Appellant the right to have a security fence on part or all of its property constitutes a dramatic change in position from what Respondents represented to the Board, the trial court and the South Carolina Court of Appeals, wherein Respondents unqualifiedly stated Appellant's right to have a fence, to wit:

(a) Board of Zoning Appeals. The planning director instructed the Board of Zoning Appeals at the hearing as follows:

*We talked about what criteria you have to meet to get a variance. 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.*¹⁴

¹¹ Exhibit B (Respondent's Rejection of Settlement dated August 14, 2025).

¹² Exhibit C (Appellant's Initial Request for Clarification dated August 15, 2025).

¹³ Exhibit D (Appellant's Final Request for Clarification dated August 25, 2025).

¹⁴ Record, p. 140, ll. 6-13.

(b) Trial Court. Respondents repeated the representation to the trial court, stating:

And, more importantly, the City is not prohibiting the Appellant from having a fence for whatever reasons it deems proper, whether it be for safety, aesthetics, or otherwise. Rather, the City is merely regulating the type of fence – consistent with the stated purpose of the Downtown District set forth in Section 5:18.1¹⁵

(c) South Carolina Court of Appeals. Respondents repeated the representation in their

Reply Brief:

Furthermore, as discussed below, and which bears mentioning over and over, the Fence Regulations do not prevent the appellant from having a fence. It merely regulates the type of fence.¹⁶

and again, in their Final Brief:

Furthermore, the fence regulations do not prevent Appellant from having a fence, only the type of fence.¹⁷

That, at no time prior to August 14, 2025, did Respondents inform Appellant of any intention to deny Appellant the right to construct a security fence anywhere on its property, only that Appellant was required to comply with the type and composition of fencing required by the City's fence ordinance.¹⁸ Now, at this late stage of litigation, Respondents contend they "... never said [Appellant] has a right to construct compliant fencing 'anywhere' on its property." As mentioned above, Appellant's requests for clarification of the City's position went unanswered.

¹⁵ Record, p. 44.

¹⁶ Respondents' Reply Brief, p. 10, ll. 16-18.

¹⁷ Respondents' Final Brief, p. 11, ll. 14-15.

¹⁸ (Respondents made reference to the deed restriction for public parking in its initial brief at p. 10, ll. 2-3, but even there, Respondents went out of their way to tell the court there was no impediment to fencing: "[t]he deed restriction does not preclude fencing. Rather, it requires public spaces on the property to be available to the public.") (This statement does not appear in Respondents' Final Brief).

SCARC Rule 212(a) states: “If anything material to either party is omitted from the record on appeal ... the appellate court may direct that the omission ... be corrected. Supplemental materials filed under Rule 212(b) are to be included in an Appendix to the Record on Appeal.

One of the key elements required for a hardship variance under the Local Government Comprehensive Planning and Enabling Act of 1994 (“Act”) is an unreasonably restriction on the owner’s utilization of its property.¹⁹ Respondents’ apparent intent to deny Appellant the right to construct security fencing on part or all of its property is a hardship not of Appellant’s making that materially impacts public safety, insurance coverage and liability, any and all of which would unreasonably restrict utilization of the property. A denial of Appellant’s right to protect its property with a replacement fence is, therefore, highly material and relevant to this proceeding.

Respondents’ change of position only became known to Appellant upon receiving Respondents’ cryptic dismissal of Appellant’s offer of settlement. Nothing in the Greer zoning code supports Respondents denial of Appellant’s right to construct fencing anywhere on its property but that even if the City believed it had some valid ground for refusing to grant Appellant a fence permit, it had the duty to inform Appellant and the Board of that position at the Board hearing, certainly not after final briefing and submittal of the record on appeal to the South Carolina Court of Appeals.

Respondents successfully moved this court to strike a variety of arguments and facts from the record they did not want this court to hear on the basis they were not raised to the Board at the hearing. The City should not now be allowed to omit from the record a position materially different from what it presented to the Board.

¹⁹1994 Comprehensive Act, § 6-29-800 (A)(c).

CONCLUSION

For the reasons stated above, Respondents' misrepresentations have materially prejudiced Appellant's case at all levels of this proceeding. Wherefore, Appellant respectfully moves the Court for leave to supplement the record or, in the alternative, for remand to the circuit court for a hearing addressing Respondents' change of position.

Respectfully submitted,

/s/ J. Marshall Lawson

J. Marshall Lawson (SC Bar No. 17020)
The Lawson Law Firm, LLC
4329 Kilbourne Road
Columbia, South Carolina 29206
Phone: (803) 730-3510

Attorney for Appellant

September 19, 2025

EXHIBIT A
SETTLEMENT AGREEMENT

THIS AGREEMENT is entered into this _ day of June, 2025, by and between Letchworth Properties, LLC (the “Company”) and the City of Greer, South Carolina (the “City”).

WHEREAS, the Company is the owner and renovator of the Historic Greer Depot in downtown Greer; and

WHEREAS, the Company constructed security fencing on its property to protect guests and the public from an active rail line abutting Company’s property; and

WHEREAS, the Company constructed a section of the security fencing on CSXT right of way to avoid interfering with two public parking spaces the City constructed on the CSXT right of way; and

WHEREAS, the City brought an enforcement action against Company for failure to comply with the Greer zoning code regarding fence type/material in the City’s Downtown Overlay District; and

WHEREAS, the Company brought suit against the City and the City’s Board of Zoning Appeals regarding the denial of a variance from the fence regulations which litigation is currently pending in the South Carolina Court of Appeals; and

WHEREAS, Letchworth seeks to settle the aforementioned litigation by agreeing to remove all noncompliant fencing on its property and neighboring CSXT right of way in exchange for the City granting Company right to construct security fencing on its property in the east parking lot; and

WHEREAS, the parties have agreed to settle the differences between them.

NOW, THEREFORE, in consideration of these presents and for good and valuable consideration as herein described, the parties agree as follows:

1. The City agrees to modify the deed restriction applicable to Company's property to allow for Company's construction of compliant security fencing in the east parking lot.
2. The City agrees to make necessary changes to the parking and location of the drive connecting the parking lot with Depot Street pursuant to Company's construction of security fencing in the east parking lot
3. The Company agrees to remove all sections of nonconforming security fencing located on its property and the neighboring CSXT right of way.
4. The City agrees to allow Company a period of six (6) months following City's modification of the deed restriction for Company to remove noncompliant security fencing on its property and that of the CSXT right of way, to construct compliant security fencing on its property in the east parking lot and at Company's option, construct compliant fencing in the remaining sections of its property.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized officials on the day and year first above mentioned.

Letchworth Properties, LLC

City of Greer, South Carolina

by: _____
President

by: _____
City Manager

RESOLUTION NO. _____

A RESOLUTION AUTHORIZING THE SETTLEMENT OF LETCHWORTH PROPERTIES, LLC V. CITY OF GREER AND GREER BOARD OF ZONING APPEALS AND AUTHORIZING THE CITY MANAGER TO EXECUTE NECESSARY DOCUMENTS

WHEREAS, the City of Greer (the "City") is currently engaged in litigation styled as *Letchworth Properties, LLC v. City of Greer and Greer Board of Zoning Appeals*, pending in the South Carolina Court of Appeals (the "Litigation"); and

WHEREAS, the City has been offered a settlement in the Litigation; and

WHEREAS, the City Council has determined that it is in the best interests of the City to accept the settlement offer and resolve the Litigation;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF GREER THAT:

1. The City Council hereby authorizes the settlement of the Litigation on the terms and conditions as set forth in the settlement agreement (the "Settlement Agreement") attached hereto as Exhibit A.
2. The City Council hereby authorizes and directs the City Manager to execute the Settlement Agreement and any other documents necessary to effectuate the settlement, including but not limited to releases, payment instructions, and other related documents.
3. The City Council further authorizes the City Attorney to take all actions necessary to implement and finalize the settlement.
4. This resolution shall take effect immediately upon its adoption.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF GREER THIS [___] DAY OF JUNE, 2025.

[Signatures of Council Members]

[Printed Names of Council Members]

[City Clerk]

[Date]

EXHIBIT B

Marshall Lawson

From: Daniel Hughes <dhughes@dugganhughes.com>
Sent: Thursday, August 14, 2025 11:18 AM
To: Marshall Lawson
Subject: Re: Appellate Case No. 2024-000727: Settlement Offer

Marshall,

I am sorry I did not get back to you sooner. I did discuss the settlement proposal with the City and they are not interested other than for your client to remove the non-compliant fencing.

I never said that your client has a right to construct compliant fencing "anywhere." I did say that your client has the right to construct a fence as allowed by the regulations.

Thanks, Daniel

Daniel R. Hughes
Duggan & Hughes, LLC
457-B Pennsylvania Avenue (29650)
P.O. Box449
Greer, SC 29652
(864) 334-2500 (main)
(864) 879-0149 (fax)
www.dugga.ohughes.com

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From: Marshall Lawson
Sent: Thursday, August 14, 2025 10:39 AM
To: Daniel Hughes
Subject: Appellate Case No. 2024-000727: Settlement Offer

Daniel:

Please see attached.

kindest Regards,

J. Marshall Lawson, Esq.

Managing Member

The Lawson Law Firm, LLC

(803) 730-3510

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EXHIBIT C

The Lawson Law Firm, LLC

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

August 15, 2025

SENT VIA EMAIL

Daniel R. Hughes, Esq.
Duggan & Hughes, LLC
PO Box 449
Greer, SC 29652
dhughes@dugganhughes.com

RE: SECURITY FENCE REMOVAL AND REPLACEMENT

Daniel:

Letchworth intends to remove all sections of security fencing on its property and replace them with fencing compliant with the City's fence code over a period of six (6) months following the City's issuance of the necessary permits, e.g., construction and zoning. That plan includes removal of a section of fencing on CSXT right of way and its replacement with a compliant security fence across your deed restriction at the previously described location in the parking lot (attached). As mentioned, this will only take a few feet of parking space beyond what the City extended onto CSXT property.

- Does the City oppose this plan?
- If so, what is the objection and where does the City propose the fence be located?
- On a related note, does the City believe no security fencing is necessary between the public parking lot and the CSXT rail line?

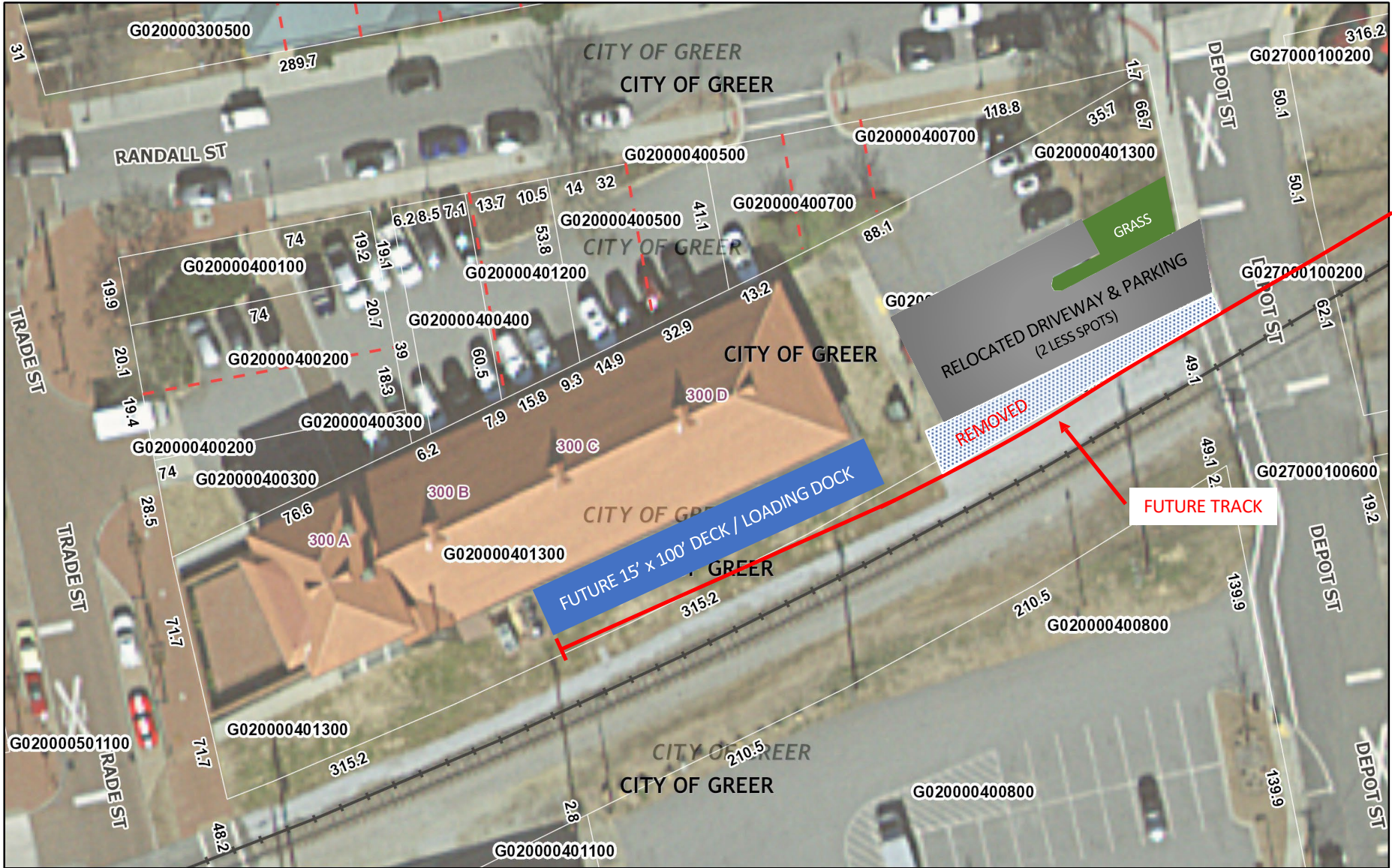
We look forward to the City's position in the matter. If no response to this letter is received within 10 days, Letchworth will consider the City to have no objection to the plan.

Yours very truly,

J. Marshall Lawson
J. Marshall Lawson
Managing Member
The Lawson Law Firm, LLC

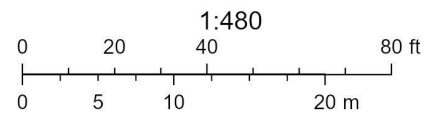
Attachment

Greenville County, SC



March 9, 2023

FUTURE



Greenville County GIS Division, Greenville, South Carolina, Greenville County GIS Division, Greenville, South Carolina 29601, Greenville County,

EXHIBIT D

From: [Marshall Lawson](#)
To: ["Daniel Hughes"](#)
Bcc: ["Steven Hawkins"](#); ["Cheryl R. Hawkins"](#)
Subject: RE: Appellate Case No. 2024-000727: Settlement Offer
Date: Tuesday, August 26, 2025 10:09:00 AM

Daniel:

Your statement the City is only interested in my client's removal of fencing signals the City's unwilling to settle litigation on the terms offered by Letchworth. The statement, however, leaves my client completely in the dark regarding the City's position as to what permits, if any, it is willing to grant regarding replacement fencing. At worst it could be interpreted as the City's intention to bar replacement fencing in toto.

I respectfully request you provide a statement of the City of Greer's position by providing clear and non-ambiguous answers to the following questions:

1. Is the City categorically stating it will not grant Letchworth a permit to construct a fence anywhere on its property in the parking lot under any circumstances?
2. Does your client intend to grant Letchworth a permit for a compliant replacement fence on CSXT right of way abutting the parking lot?
3. Does your client intend to grant Letchworth a permit for compliant replacement fencing on its property outside the parking lot?
4. If the City grants my client the right to go forward with fence replacement, how long would it have to complete the project?

We need an understanding of the City's position to know how to proceed.

I look forward to your response.

Kindest Regards,

J. Marshall Lawson, Esq.
Managing Member
The Lawson Law Firm, LLC
(803) 730-3510

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From: Daniel Hughes <dhughes@dugganhughes.com>
Sent: Monday, August 25, 2025 7:00 AM
To: Marshall Lawson <marshall@lawsonlawsc.com>
Subject: Re: Appellate Case No. 2024-000727: Settlement Offer

Marshall,

I do not believe this proposal is any different than the first proposal, right? The City was not interested in that proposal.

Daniel

Daniel R. Hughes
Duggan & Hughes, LLC
457-B Pennsylvania Avenue (29650)
P.O. Box 449
Greer, SC 29652
(864) 334-2500 (main)
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www.dugganhughes.com

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Please see attached.

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*J. Marshall Lawson, Esq.
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