THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Daniel M. Coble, Circuit Court Judge

Case No. 2020-CP-40-04769

In the House, LLC, ...Respondent,

v.

Richland County, City of Columbia, and the South Carolina Department of Transportation,

of whom the South Carolina Department of Transportation is .....Appellant.

NOTICE OF APPEAL

Appellant, the South Carolina Department of Transportation, appeals the Orders of the Honorable Daniel M. Coble dated September 29, 2025 (Trial *Order* and judgment, written notice received September 29, 2025), November 6, 2025 (*Form 4* Order denying in part and granting in part Appellant's post-trial motions, written notice received November 6, 2025) and December 30, 2025 (Formal *Order* on Appellant's post-trial motions, written notice received December 30, 2025). To the extent Judge Coble's December 30, 2025, *Order Granting in Part Richland County's Motion for Election and Denying Motion to Alter or Amend, Motion for New Trial and Remittitur* (written notice received December 30, 2025) contains findings or holdings adverse to

and binding on this Appellant, that order is hereby appealed as well. Copies of the Orders on appeal are attached hereto.

January 15, 2026

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PROOF OF SERVICE

I certify that, on the date set forth below, I have served the *Notice of Appeal* on counsel of record by e-mail and by United States First Class Mail, with sufficient postage affixed, addressed as follows:

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Columbia, South Carolina
January 15, 2026

STATE OF SOUTH CAROLINA **COUNTY OF RICHLAND**	)	**IN THE COURT OF COMMON PLEAS**
In the House, LLC, Plaintiff, -vs- Richland County, City of Columbia, and the South Carolina Department of Transportation. Defendants.	)	Civil Action No.: 2020-CP-40-04769 **ORDER**

THIS MATTER came before the Court for a bench trial on August 11, 2025. The Court heard evidence and arguments from the parties from August 11 through August 15, 2025, and the trial continued from August 20 through August 22, 2025. Having heard the evidence at trial, and for the reasons stated herein, the Court renders judgment for the Plaintiff and makes the following findings of fact and conclusions of law[1]:

FINDINGS OF FACT

1. The Plaintiff, In the House, LLC, is the owner of a commercial building located at 2965 North Main Street commonly known as the Trestle building (the "Property").

2. Chris Barczak ("Mr. Barczak") is the principal of In the House, LLC, which is a real estate brokerage.

3. Mr. Barczak is a licensed real estate broker and licensed residential appraiser.

4. Mr. Barczak purchased the Trestle Building in 2004 for $175,000 as an investment and a form of retirement.

5. Mr. Barczak made approximately $700,000 in improvements on the property since its purchase.

6. On or about May 20, 2016, the Defendants, the City of Columbia ("City"), and Richland County ("County") entered into an Intergovernmental Agreement ("IGA") for the

[1] To the extent any of the following findings of fact constitute conclusions of law, they are adopted as such, and to the extent any of the following conclusions of law constitute findings of fact, they are so adopted.

"widening and improving of North Main Street." (hereinafter, the "Project"). A recital to the IGA notes, "the Penny Project and the Tiger Grant Project are inextricably linked in terms of planning, design, right of way acquisition, bidding and construction." (Ex. 1)

7. The project was funded by a federal Tiger Grant for $10 million and the County Penny Tax program for $30 million.

8. The project was built in phases and the phase adjacent to the Trestle Building was Phase IA2.

9. On February 7, 2014, The South Carolina Department of Transportation ("SCDOT") and Richland County entered in a Cooperative Intergovernmental Agreement (IGA-25-14) for the Richland County Penny Tax Program. This agreement outlines responsibilities for project planning, design, right-of-way acquisition, construction, and maintenance. SCDOT standards and specifications are to be followed, and SCDOT retains authority for approval at various project stages. ("Umbrella Agreement").

10. The North Main Street Project is one of the projects included in the schedule for this agreement. North Main Street is owned by SCDOT.

11. On April 12, 2016, the SCDOT and Richland County executed a Fourth Supplemental Agreement to the Umbrella Agreement, specifically applying it to the North Main Street Project.

12. Each of the Defendants had roles in the North Main Street project but it was undeniably a joint project.

THE CITY

13. Kim Toney testified that the City was the developer of the project and was responsible for the design and right of way acquisition.

14. The City hired Parsons Brinkerhoff to do the design that was then approved by the SCDOT and subject to SCDOT specifications.

15. The City was responsible for right of way acquisition and hired Pan, Inc. to assist with right of way acquisition.

16. The City had sole responsibility for compliance with the terms and conditions of the Tiger River Grant Agreement. (Ex. 1, ¶4)

THE COUNTY

17. The County was responsible for managing all aspects of the construction in the North Main Project. The County had oversight of all construction.

18. The County hired Richland County PDT to perform certain duties for the County on the Project. The County also hired LJ Contractors, Inc. ("LJ") as general contractor for the North Main Project.

19. The contract with LJ states "County" means County of Richland, a public body politic and corporate and political subdivision of the State of South Carolina, or the Richland PDT."

20. The contract with LJ provides that at the request of the County, the contractor shall provide other work related to the Project that is not within the scope of work provided for in this Agreement.

21. All work by LJ was subject to inspection and test by the County and SCDOT. Furthermore, LJ had to correct or re-perform without charge any Work found by the County not to conform to the Agreement's requirements.

22. In its agreement with SCDOT, the County was responsible for right of way issues and impact. Also, in its agreement with SCDOT, the County had to coordinate with SCDOT during the construction of the work.

SCDOT

23. SCDOT owns North Main Street and ultimately is responsible for its maintenance.

24. The North Main Street Project was required to be developed and constructed to SCDOT standards.

25. SCDOT had the right to review the design plans and provide comments.

26. The Project will be turned over to, be maintained by and ultimately benefit SCDOT when accepted.

27. SCDOT owned the "staging" lot uphill and south of the southern lot immediately adjacent to Mr. Barczak's property. Mr. Barczak presented evidence that mud and silt originated at this lot and flowed downhill to his lot.

28. SCDOT and the County have the right to inspect all work by the contractor.

29. The Permission Agreement executed in this case by Mr. Barczak was granted to SCDOT on an SCDOT form.

30. As the project involved federal funds through a Tiger Grant, the SCDOT required the County to apply for and receive Local Public Agency Status and file monthly reports and answer questions about the Project.

31. The County and the SCDOT shall jointly conduct a final inspection of the Project.

32. According to the testimony of Kim Toney, all the Defendants, the City, the County and SCDOT had weekly or bi-weekly meetings through March 2020 on the project.

RIGHT OF WAY/PERMISSION AGREEMENT

33. In November 2015, David Link ("Link") and Keena Edwards reached out to Mr. Barczak by email about securing a Permission Agreement ("Agreement") for the Project. Link was employed by Pan, Inc. who the City of Columbia hired to assist in right of way acquisition. They provided Mr. Barczak schematic plans for his tract.

34. Mr. Barczak responded noting his concern about the drastic two feet rise in the sidewalk adjacent to his property. Prior to the project, the front part of the Trestle Building lot was relatively flat, and its sidewalks connected to the sidewalk adjacent to North Main Street. Multiple witnesses testified that storm water from Mr. Barczak's property would flow into North Main street.

35. Link discussed Mr. Barczak's concerns with Michael Sheu at the City of Columbia. Link suggested they could add language in the Agreement.

36. On January 20, 2016, Link and Sheu met with Mr. Barczak at the property to discuss his concerns. One of his concerns was the elimination of the drainage permission which according to Link's notes, the City agreed it could eliminate.

37. Mr. Barczak testified that he did not want drains on his property because of their appearance and that he did not want to have to maintain them.

38. On January 29, 2016, Link sent Mr. Barczak a revised Agreement for review. On February 23, 2016, Mr. Barczak signed the revised Agreement. (Ex. 12). The Agreement included the following "Special Provisions" which are at issue in this litigation:

- It is understood and agreed that the 24' drive entrance left of approximate survey station 54+50 (current drive location) will be tied back in smoothly with the new construction of North Main Street. The drive will be reconnected in a manner to avoid a slope causing a ramp effect….
- It is understood and agreed that the property will be graded to the existing concrete apron at the entrance of the building. The area disturbed will be sodded with emerald zoysia.

Further, any landscaping items disturbed will be replaced and the sprinkler system will be repaired and returned to as good or better condition.

- Construction will tie in smoothly with landscape wall located at the south end of the property and the two concrete entry sidewalks will be replaced. (Ex. 12).

39. The sidewalks and certain landscaping items have not been replaced nor has the sprinkler system been repaired and returned to as good or better condition.

40. The construction is not tied in smoothly with the landscape wall and the property is not properly graded to the concrete apron.

41. Mr. Barczak provided photographs showing his previous sidewalks ending in the side of the embankment and people during a public event on North Main Street helping each other climb up the hill of the embankment in leaving the property.

FLOODING/WATER INTRUSION

42. The construction commenced, and by October 29, 2018, the grading was being completed in front of The Property. Mr. Barczak expressed his concerns about the height of the grade, not only for aesthetics, but also for handicapped accessibility, landscape maintenance, drainage, and safety concerns.

43. On November 13, 2018, Mr. Barczak emailed Hugh Wilson of LJ, Inc. (the contractor for the County and various city officials) that residual muddy water was in The Property.

44. On or about November 15, 2018, Jason Patterson, PE (the Resident Construction Engineer with Richland County PDT) had a site visit with Hugh Wilson and others. He commented on the site visit observations that that the build-up on North Main Street blocks approximately 0.10 Acres on Tract 52 (South of The Property); prior to construction, this area would flow into North Main Street to a catch basin. The buildup has blocked this area from reaching North Main Street.

45. Mr. Patterson prepared a graphic exhibit (Exhibit 90) in which he showed this area (colored in blue) immediately South and above The Property with the box callout, "[a]pproximate Area from Richland GIS Contours that is trapped by roadway embankment (Approx. .10 acre)."

46. Dan Creed, P.E., the Plaintiff's expert, corroborated Mr. Patterson's testimony. He testified that–based on the topography–it was foreseeable that water would be trapped by the

elevated highway and channeled to the Property. He further testified that was the purpose of installing a drain inlet south of the Property.

47. Mr. Barczak testified that prior to construction he had a single water intrusion event, several years prior to the Project, which is why he installed a French drain along the southern border of his building. He testified that, during the 2015 Columbia catastrophic rain event, The Property did not flood; yet after the Project, the first-floor, front area flooded repeatedly.

48. Mr. Barczak offered numerous photographs of the flooding of his property with mud, silt and the water intrusion onto the first floor of his building. The record is replete with emails from Mr. Barczak notifying the Defendants of this problem and requesting relief.

49. In an effort to mitigate the damage to furniture stored in the area, Hugh Wilson, the County Contractor from LJ, placed furniture on blocks to elevate it above the water level.

50. Ms. Sabrina Odom (then President of the North Main Street Business Association) corroborated Mr. Barczak's testimony. Her office was on the first floor of The Property, and her desk is visible in photographs offered into evidence. Like Mr. Barczak, she testified that prior to the Project, she had no problem with flooding, but that after the Project, she came to the office expecting to use a mop. Further, prior to her departure during rain events, she placed chairs on top of the desks.

51. On March 15, 2019, Hugh Wilson with LJ, Inc. (the County contractor) submitted RFI No. 13 (Request for Information) to Jason Patterson, the resident construction engineer. Hugh Wilson observed that several tracts in Phase IA2 that previously drained to the roadway were blocked due to the build-up. He further noted that at tract 53 (The Property) no provisions have been made to address the water that is now flowing to, and being trapped, on portions of his property. Based on his review of the cross sections, water at the toe of the proposed slope from portions of tract 205 and all of tract 52, flow down gradient to the Trestle Building property. To further complicate the issue, there are two short walls on the south end of this property that trap water; the water builds up and flows back towards the building. There are no provisions in the plans to address these walls (although portions of the walls are within the new right of way) nor are there any provisions in the plans to address water that is being trapped between the new toe of slope and The Property. (Ex. 80).

52. Hugh Wilson asked for specific instructions: 1) Dealing with the runoff from tract 52 and portions of tract 205 that flows to tract 52; 2) How to handle the two walls at the south end of tract 52 that currently trap water causing some flow back towards the building; 3)How to handle the water that is trapped between the toe of the proposed fill slope and the Trestle Building; 4) How to connect the two existing concrete sidewalks in front of the Trestle Building to the new concrete sidewalk.

53. Hugh Wilson testified that he did not receive a response to RFI No. 13, and that this may have been the only RFI to which he did not receive a response.

54. The flooding continued until the County (through contractor LJ) installed a storm water drain on Tract 52 (the property to the South of Mr. Barczak) about December 2019[2]. Uncertainties exist as to whether this is a permanent solution (the drain is not on The Property) and who will maintain it.

BARCZAK MITIGATION

55. Mr. Barczak took action to mitigate the damage caused by the flooding and requested that the Defendants assist him with these costs. These were temporary measures until full replacement could be negotiated with the Defendants.

56. On November 11, 2019, Mr. Barczak paid Christopher Nance with C&B Drainage Systems $2,132.50 to excavate at the left front of the building and to waterproof along the foundation wall.

57. On December 27, 2019, Mr. Barczak paid Riverside Renovations, LLC $6,000 to demolish and excavate on the side of the building, remove the old drainage line, and build a retaining wall for approximately 60 feet.

58. Mr. Barczak also purchased $659.89 in materials for these efforts.

DROP INLET IN PARKING LOT

59. LJ installed a drop inlet in the first parking space of Mr. Barczak's parking lot.

60. Kim Toney testified that the inlet was installed at the direction of Richland County or pursuant to its plans.

61. Conflicting testimony exists as to whether Mr. Barczak agreed to its installation on his property.

[2] The date of the installation of the drain inlet in not clear as will be discussed later in this opinion.

62. The original design plans called for it to be placed within the right of way in the driveway to the parking lot.

63. Hugh Wilson of LJ testified that it would not be effective at its planned location in the driveway; and that after discussing the issue with Jason Patterson and Mr. Barczak, they decided to move it to the parking space location.

64. Mr. Barczak was adamant that he never wanted or agreed to an inlet in that location and that any discussions with Mr. Wilson or Patterson were misconstrued.

65. Mr. Barczak's version of events is corroborated by other evidence. First, Mr. Link's notes indicate that after a meeting with Mr. Barczak the City could eliminate the drainage permission. Second, when Mr. Barczak saw the heavy equipment digging the hole for the inlet, he immediately objected and asked for the equipment to be removed from his property.

66. There is no written document authorizing the installation of the drainage inlet in that location.

67. This court finds that the drop inlet was installed in the parking lot without Mr. Barczak's permission.

DAMAGES

68. The flooding and water intrusion into The Property caused by the trapped water from the roadway embankment caused continuous and substantial damage to Mr. Barczak.

69. In addition to the costs incurred in mitigation, Mr. Barczak testified that he disposed of furniture and other items damaged by the water. He provided evidence of a family heirloom–a Credenza–with the wood paneling peeling off. He estimated the these damages to be $3,000.

70. Mr. Barczak testified that mud and silt from the project filled the French drain bordering the south of the Trestle Building rendering it inoperable. Testimony shows that prior to the project the French drain was operable. He testified that he maintained this drain; Roger Williamson, the maintenance employee for the Trestle Building, corroborated this testimony.

71. Photographic evidence depicts the mud from the project flowing to The Property to the South and testimony shows that mud from the project filled the French Drain. This is supported by a preponderance of the evidence.

72. Mr. Barczak testified, and the evidence shows, that water in front of building that used to flow into the street now ponds on his property and is trapped by the roadway embankment. This is consistent with the observations of Hugh Wilson stated in RFI No. 13.

73. Mr. Barczak testified that he observed cracks in his foundation and the southeastern corner of his building which he attributed to water intrusion undermining the foundation.

74. Mr. Barczak also testified that a parking space was damaged in the form of a depression in a parking space left when Dominion Energy or its contractors put a powerline underground. This was under the construction oversight of Richland County. Mr. Barczak further testified the runoff area in the northwest corner of the parking lot has been damaged and remains damaged today.

75. Currently the slope adjacent to North Main Street in front of The Property is covered in grass but has no steps or access from the sidewalk. There is no retaining wall. The existing sidewalks dead in the slope. The landscaping has not been replaced, the sprinkler system has not been fixed; according to Mr. Barczak, water still ponds in that area and drainage is still an issue.

BARCZAK PROPOSALS AND ESTIMATES

76. By letter (dated May 5, 2020), Michael Niermeier directed Mr. Barczak to pursue his claims with the City of Columbia and stated the County placed the contractor, LJ Construction, on notice of his concerns. (Exhibit 76(b)).

77. Mr. Barczak obtained fee quotes from a landscape architect, Mark Cotterill, and civil engineer, Dan Creed, to assess the stormwater and drainage issue and the issue with the Project. He emailed two proposals to the City on August 26, 2020. The City, in a joint letter (dated September 15, 2020) to Mr. Barczak and another owner, declined assistance stating "[u]nfortunately, we are not able to participate in the funding of the design or construction of improvements on your private property." (Ex. 76(a)).

78. Mr. Cotterill prepared a preliminary site plan for Mr. Barczak and was paid $1,500. (Exhibit 99)

79. Using this site plan, David Marion, President of Chason Landscaping, prepared a proposal dated May 1, 2024, including the following:

- Remove the existing concrete in the front of the building and the masonry wall at the end of the building;
- Grade and remove excess fill between the walk and the building to establish grade below finish floor and positive drainage away from the building;
- Form and pour a cast in place concrete retaining wall across the end and parallel to Main Street;
- Form and pour an 8' wide set of concrete steps with cheek walls and grooved edge treads;
- Provide and install two rail tube handrails with the length of the wall Steel tubing with a black powder coated finish;
- Install a 4" trench drain at the base of the wall the length of the wall;
- Install a 6" drain line to support the trench drain and tie into the existing catch basin on the other side of the entry drive;
- Repair the curb and asphalt after crossing the entry drive with the drain line;
- Form and pour 427sf of Flat concrete work per the attached sketch. Concrete is in light blue;
- Prep and sod the lawn per the attached sketch. Lawn is in green;
- Install automatic irrigation for the lawn;
- Utilize the existing water source;
- Haul off and dispose of off site all waste, removed materials, etc…

80. Expert witness Mr. Marion estimated the costs at $136,336. Since the estimate was a little over a year old by the time of trial, Mr. Marion estimated the costs increased by about 5% for a total of $143,152.80. On this same proposal, based on the landscaping in the Cotterill plan, Mr. Marion quoted $7,314 for installing trees and shrubs.

81. In a separate proposal, Mr. Marion also provided estimates for the replacement of Mr. Barczak's French Drain and waterproofing to the south side of his building. This estimate was $28,081. In the same proposal, he provided an estimate for paving over the existing parking lot and striping the parking spaces for $46,639.

82. The Defendant's expert, Raulston Travis, P.E. provided three separate estimates. First, he provided an estimate for regrading the front lot only to slope away from the building. This would cost $16,151.18. Mr. Travis believes that a drainage system was not necessary once the drop inlet was installed to the south of Mr. Barczak's property.

83. Second, Mr. Travis provided an estimate for the installation of steps from the public sidewalk along North Main Street to Mr. Barczak's lot and entrance. The estimate for this work totaled $18,707.22.

84. Finally, Mr. Travis provided a combined estimate for grading and a storm drainage system. This system would include a drop inlet, a yard inlet, and a trench drain. The total cost estimate for the grading and storm drainage system was $32,422.14.

85. Michael Wilson of Cantey Foundation Specialist provided an estimate for the repair and stabilization to the southeast corner area of the Trestle Building. The proposal calls for the installation of 4 push piers to support the foundation. The costs for this stabilization are $10,689.50. Mr. Wilson included a separate quote to replace the French Drain for $21,295.10.

86. The court finds that the substantial foundation erosion caused by the continuous flooding for over a year is a direct and proximate cause to the destabilization of the southeast corner of the Trestle Building, and that the Cantey quote is a reasonable estimate to stabilize the foundation.

LOST RENT

87. Mr. Barczak testified, and the evidence shows that Mr. Barczak attempted to rent the front portion of the property to a tenant but could not due to the flooding caused by the Project.

88. Mr. Barczak expressly notified the Defendants of this issue in his emails.

89. Ms. Odom, who occupied the space for the North Main Street Business Association, testified to elevating chairs on the desks and that she expected to mop the floors after a rain event.

90. The Defendants offered requests for admission that show Mr. Barczak reported rental income did not change; however, if Mr. Barczak had been able to secure a tenant, then his reported income would have reflected that but could not due to the constant flooding of the first floor of the Trestle Building by the Project.

91. There are two factual issues which the court must decide to determine the amount of lost rent. First, the court must decide for what length of time Mr. Barczak was prevented from reasonably renting the property. Second, what is the appropriate rental amount.

92. As to the second issue, Mr. Barczak offered the expert appraisal testimony of Deborah Tripp. Deborah Tripp conducted a rental survey of similar properties and compared the

rental amount per square foot as applied to each of the two parts of the building. (Tripp Appraisal, pp. 88-90).

93. Deborah Tripp concluded that the Front Office could rent for 11.00 SF[3];

94. Thus, for 5,000 feet of rental space the annual loss, net rental income would be $55,000 annually and $4,583 per month.

95. Varying testimony exists as to when it was reasonable for Mr. Barczak to resume renting the front office of the Trestle Building[4]. There is a consensus that the flooding was greatly reduced when a drop inlet was installed just south of Mr. Barczak's property on Tract 52 by Richland County and LJ. The exact time this occurred is uncertain.

96. The evidence presented provides some reliable markers. In his Rule 32(a)(5) testimony, Mr. Barczak states that "we are going into month number 9 in June 2019" (Pg. 177 (13-17)). He stated that "There are also photos showing flooding in the office on June 9, 2019" (Exhibit 68a). The record also reflects that Mr. Wilson, with LJ, submitted a proposed change order for the drop inlet on May 10. 2019. In November and December 2019, Mr. Barczak continued damage mitigation from flooding by the Project; he installed a trench around the corner of his building and waterproofed the area. (Exhibits 71 and 72). He also emailed Kimberly Toney (January 9, 2020) stating, "I had to start because I couldn't secure a tenant until I had dry space." (Exhibit 70) Finally, Mr. Barczak testified that the front space remained mostly dry by this point.

97. Thus, the court finds that from October 2018 until December 27, 2019, Mr. Barczak was unable to rent his building due to flooding caused by the Project.

98. Computing lost rent at $4,583 x 15 months is $68,745 in lost rent.

99. The court's findings differ from Ms. Tripp's findings in a few ways: 1) the court applied the rental analysis to only the front 5,000 square feet (which does not include the rear space nor the 2nd floor which was not for rent; 2) the court does not believe it is appropriate to provide a present value discount since Mr. Barczak would have already received this rent; and 3)

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[3] Mr. Barczak testified in his Rule 32(a)(5) designation to $6,100 month which would be about 14.64SF. (pg. 213)

[4] Mr. Barczak testified he keeps the front entrance locked with a sign on the door because of the ditches, incomplete sidewalks, limited use of front access. He testified he was making around a $1000 a month for the front portion of the building from mid 2020 through his other tenant consigning furniture at their risk until he can have the work completed; instead of the market rent.

Ms. Tripp limited her calculations to eight months based on what she perceived to be the deposition testimony, but as set forth above, the evidence at trial shows Fifteen (15) months is an appropriate time.

DIMINUTION IN VALUE/IMPACT

100. Ms. Tripp determined the property value before the impact of the Project was $1,080,000.

101. Ms. Tripp determined the Project impacts as: the total of the physical damage, rent loss during flooding, site improvements acquired, and stigma. This resulted in a total reduction in value of $154,605.

102. Mr. Barczak testified as the owner of the property that it was worth at least $875,00-$900,000 based on the purchase price and what he invested in improving the property.

103. Ms. Tripp assigned a 5% stigma value ($48,705) to the property related to the continuous flooding for a year. She explained that stigma is an adverse market perception of a property that had detrimental conditions. In this case, continuous flooding of the property. Her appraisal cited a study of properties in a flood zone and also her personal knowledge and experience with appraising Coldstream properties in Columbia that a stigma value of 9-18% applied. She further testified that the range of values listed for Coldstream and the study were too high for this property, but a 5% stigma value was appropriate. She described this as very conservative.

104. The Defendants offered the testimony of their expert, Charles Crider, to refute the claim of stigma. Mr. Crider testified that stigma is rare and should not be applied to cases where the property could be repaired.

105. Mr. Barczak testified that in addition to the repairs, reimbursement, and lost rent, that he believed a 5% figure was appropriate. He pointed out that his property was now in a hole and not as visible, that he could not erect an advertising sign, lack of ADA accessibility and loss of functional utility of front yard space. He also noted that he was now reliant on a third party to monitor and clean a drain to protect his property.

106. The court finds that 5% stigma impact damages are warranted. Ms. Tripp testified that stigma involves risk perception which could remain even after repairs are made. She further testified that the 5% figure was low and conservative in her expert opinion. Further,

Mr. Barczak, as the owner of the property, has valid points as to the permanent impact of the taking on his property.

CONCLUSIONS OF LAW

INVERSE CONDEMNATION[5]

107. Both Article I, § 13 of the South Carolina Constitution and the Fifth Amendment to the United States Constitution provide that private property shall not be taken for public use without the payment of "just compensation."[6]

108. "An inverse condemnation occurs when a government agency commits a taking of private property without exercising its formal powers of eminent domain." *Ray v. City of Rock Hill*, 428 S.C. 358, 365–66, 834 S.E.2d 464, 468 (Ct. App. 2019) (quoting *Hawkins v. City of Greenville*, 358 S.C. 280, 290, 594 S.E.2d 557, 562 (Ct. App. 2004)).

109. The elements of inverse condemnation are: (1) an affirmative, positive, aggressive act on the part of the governmental agency; (2) a taking; (3) the taking is for a public use; and (4) the taking has some degree of permanence. *Rolandi v. City of Spartanburg*, 294 S.C. 161, 363 S.E.2d 385 (Ct. App. 1987); *See Marietta Garage, Inc. v. S.C. Dep't of Pub. Safety*, 352 S.C. 95, 101, 572 S.E.2d 306, 308 (Ct. App. 2002). The Court removed the last element: 'degree of permanence'. *See Byrd v. City of Hartsville*, 365 S.C. 650, 657 620 S.E.2d 76, 79 (2005) ("[W]e remove the element 'some degree of permanence,' for it conflicts with the principle that government must compensate for even a temporary taking.") (citations omitted).

110. "Determining whether government action affects a taking requires a court to examine the character of the government's action and the extent to which this action interferes with the owner's rights in the property as a whole." *Hardin v. S.C. Dep't of Transp.*, 371 S.C. 598, 605, 641 S.E.2d 437, 441 (2007) (citing *Penn Central*, 438 U.S at 130–31, 98 S.Ct. 2646).

111. "The constitutional prohibition against taking private property for public use without just compensation must have been intended to protect all the essential elements of ownership which make property valuable, including, of course, the right of user, and the right of enjoyment." *See Kline v. City of Columbia*, 249 S.C. 532, 537, 155 S.E.2d 597 (S.C. 1967) (citations omitted).

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[5] In a jury trial the judge will determine whether a claim for inverse condemnation has been established and then the issue of compensation is submitted to the jury. As this is a non-jury case, the court handles both.

[6] The Fifth Amendment's takings clause applies to the actions of state governments through the due process clause of the Fourteenth Amendment to the United States Constitution.

112. This court has previously adopted and adhered to "the broadest possible view of 'what is a taking' and has construed the least actual 'damage' to be a 'taking' . . . . *Webb v. Greenwood County*, 229 S.C. 267, 92 S.E.2d 688. (citations omitted).

113. In this case, the Plaintiff alleged takings by the government in at least three forms: First, the North Main Street Project and the elevation of the road trapped and concentrated water on to his land flooding his building and trapping water in his front lot. Second, by elevating the road two feet in front of his property, it impaired his easement of access to North Main Street. Third, the government improperly installed a drop inlet in his parking lot without his permission.

114. This Court concludes that the second basis, impairment of access, must be denied because the Permission/Slope Agreement signed by Mr. Barczak authorized the government to erect the slope which impairs access.

115. However, the court concludes that by the preponderance of the evidence, the Plaintiff has established the elements of inverse condemnation for the other two claims.

116. It has long been recognized in South Carolina that "the casting of water on adjoining premises by some act of the governmental authority in the course of making improvements to a public way constitutes a taking of property in violation of Article I, Section 17, of the Constitution." *Kline v. City of Columbia*, 249 S.C. 532 at 536.

117. For instance, in *Milhous v. State Highway Department*, the South Carolina Supreme Court held that the landowner had cause of action against the state for damage to his land resulting from the obstruction of natural flow of surface waters caused by the state's raising of the grade of the highway roadbed. *Milhous v. State Highway Dep't*, 8 S.E.2d 852, 856 (1940). Similarly, in *Spradley v. South Carolina State Highway Department*, the South Carolina Supreme Court found a plaintiff "could recover just compensation for the taking and damaging" of her land "caused by the dumping and spilling of surface water" upon the plaintiff's land as a result of highway improvement. *Spradley v. South Carolina State Highway Dep't*, 256 S.C. 431, 437, 182 S.E.2d 735, 738 (1971). In *Spradley,* the Highway Department failed to provide proper drainage. *Id.*

118. Moreover, the Court of Appeals upheld a verdict for a property owner who brought an inverse condemnation action against a town for flood damage he sustained during heavy rain following reconstruction of adjoining street. *Newsome v. Town of Surfside Beach*, 300 S.C. 14, 16, 386 S.E.2d 274, 275 (Ct. App. 1989). The town's reconstruction raised the level of

the street approximately seventeen inches. *Id.* During a storm and unusually high tide after the road reconstruction, the road dammed excess water and caused the water to congregate at the lowest piece of land along the road, which was in the plaintiff's house. *Id.* The Court of Appeals held in *Newsome* that "[f]rom this evidence the jury could have easily concluded that the building up of [the street] satisfied the requirement of an overt or positive action by the Town necessary to prove a taking under a cause of action for inverse condemnation." *Id.*

119. In this case, there was ample testimony that the elevation of the road from North Main Street Project trapped water and cast it, mud and silt in concentrated amounts onto Mr. Barczak's property flooding his front yard and intruding into the Trestle Building. This satisfies the element for (1) an affirmative, positive, aggressive act on the part of the governmental agency under South Carolina case law.

120. Jason Patterson observed in his field notes and in a graphic exhibit (Exhibit 90) that the embankment trapped approximately a .10 acre of water that would normally flow into North Main Street.

121. Dan Creed, the Plaintiff's expert engineer, corroborated this and testified that it was foreseeable from the topography map that water would be trapped by the embankment and flow to Mr. Barczak's property. He further opined this was why the drop inlet was installed to the south of Mr. Barczak's property.

122. This was further corroborated by Hugh Wilson who testified in his unanswered RFI No. 13 about these exact issues.

123. Finally, Mr. Barczak provided numerous photographs documenting the flooding water, mud and silt flowing down to his property from the Project including the lot owned by the SCDOT and used as a staging area for construction.

124. As noted above in facts, this flooding damaged the Plaintiff's property and interfered with the Plaintiff's rental of the front part of his building (5,000 Sf). This flooding also traps water in his front lot. The continuous and concentrated flooding satisfies the element for a taking. South Carolina law is clear that regarding inverse condemnation claims, there is no distinction between "taking" and "damaging." *See South Carolina State Highway Dep't v. Wilson*, 254 S.C. 360, 366-67, 175 S.E.2d 391, 395 (1970) (holding, "within the purview of this constitutional provision, there is no distinction between 'taking' and 'damaging' and that the least damage to property constitutes a taking within the purview of the Constitution."); *see also*

Spradley v. South Carolina State Highway Dep't, 256 S.C. 431, 182 S.E.2d 735 (1971) (ruling, "In the construction of this Article of our Constitution, we do not recognize a distinction between 'taking' and 'damaging'. A deprivation of the ordinary beneficial use and enjoyment of one's property is equivalent to the taking of it and is as much a 'taking' as though the property was actually appropriated.").

125. Finally, there is no debate that the North Main Street Project was for a public use and involved substantial public funding.

126. This court concludes that the Defendants' acts in constructing an embankment and trapping water which was concentrated onto Mr. Barczak's land is a taking under Article I, § 13 of the South Carolina Constitution and the Fifth Amendment to the United States Constitution entitling In the House, LLC to just compensation.

127. The court also concludes that the placement of a drop inlet in the first parking space without Mr. Barczak's permission is a physical taking of the property under Article I, § 13 of the South Carolina Constitution and the Fifth Amendment to the United States Constitution entitling In the House, LLC to just compensation.

128. Having concluded that there was a taking the court must also decide who was responsible for the taking. For the reasons discussed below, the court concludes that both Richland County and SCDOT are responsible for the taking.

129. Richland County was responsible for overall management and construction oversight for the project. They had weekly and biweekly meetings with all the stakeholders in the project including SCDOT, the contractor, and the City of Columbia.

130. Richland County hired LJ to construct the North Main Street project in accordance with the design plans and SCDOT specifications.

131. Richland County's contract with LJ provides that at the request of the County, the contractor shall provide other work related to the Project that is not within the scope of work provided for in this Agreement.

132. All work by LJ was subject to inspection and test by the County and SCDOT. Furthermore, LJ had to correct or re-perform without charge any Work found by the County not to conform to the Agreement's requirements.

133. When asked about stormwater drainage cast on adjacent property, Kimberly Toney of Richland County testified that while that normally was the contractor's responsibility, "But, of course, we have to oversee that." "We" being Richland County.

134. In its agreement with SCDOT, the County was responsible for right of way issues and impact. Also, in its agreement with SCDOT, the County had to coordinate with SCDOT during the construction of the work.

135. The SCDOT owns North Main Street and ultimately is responsible for its maintenance within its rights of way. The results of this multi-million dollar project will be turned over to and ultimately accepted by SCDOT including the roadway embankments which trapped the water and concentrated on the Trestle Building property.

136. The North Main Street Project had to be developed and constructed to SCDOT standards. SCDOT had the right to review the design plans and provide comments.

137. There was evidence that the mud and silt flowed downhill from a SCDOT property that was used as a staging area for the construction.

138. The Permission Agreement executed in this case by Mr. Barczak was granted to SCDOT on an SCDOT form.

139. As the project involved federal funds through a Tiger Grant, the SCDOT required the County to apply for and receive Local Public Agency Status and file monthly reports and answer questions about the Project.

140. Both the County and the SCDOT jointly conduct a final inspection of the Project.

141. LJ is labelled as an independent contractor in its agreement with Richland County, but the court concludes Richland County has a greater degree of control over LJ, than a typical contractor. "It is well established that the terms of a contractual agreement are not conclusive in determining the association between two parties where there is evidence outside the contract establishing an agency relationship. *Hubbard v. Rowe*, 192 S.C. 12, 5 S.E.2d 187 (1939). *See also Thompson v. Ford Motor Co.*, 200 S.C 393, 21 S.E.2d 34 (1942). "It is not the descriptive name employed, but the nature of the business and the extent of authority given and exercised, which is determinative." *Jones v. General Motors Corporation*, 197 S.C. 129, 14 S.E.2d 628, 631 (1941)"

142. Furthermore, for the reasons and cases discussed below, the court concludes that Richland County and SCDOT are liable for inverse condemnation even if LJ was an independent contractor.

INDEPENDENT CONTRACTORS ARE NOT A SHIELD FOR INVERSE CONDEMNATION CLAIMS

143. Richland County argues it should not be held liable in inverse condemnation because it acted through independent contractors, LJ and Richland County PDT. While the court has already concluded that LJ is not a truly independent contractor, and doubts Richland County, PDT is one. ("County" means County of Richland, a public body politic and corporate and political subdivision of the State of South Carolina, or the Richland PDT.)(LJ Contract). This status does not shield a government agency from its constitutional duty in an inverse condemnation case.

144. Several cases from other jurisdictions[7] have established that a governmental entity cannot hide behind an independent contractor to avoid liability for inverse condemnation. This makes logical sense because a private entity can never be liable for inverse condemnation. Thus, a public body could evade its constitutional responsibility by using independent contractors.

145. In *Fulton County v. Woodside*, 155 S.E.2d 404, 223 Ga. 316, 321 (Ga. 1967), the court stated, "For these reasons Fulton County and the State Highway Department cannot escape their constitutional responsibility to compensate for the taking or damaging of petitioner's property on the ground that the parties who did the actual taking or damaging were independent contractors."

146. The reasons cited by the court in *Fulton County*, "Several decisions from the highest appellate courts of foreign jurisdictions have followed this rule in cases similar to this one. In *Sherlock v. Mobile Co.*, 241 Ala. 247, 249(3), 2 So.2d 405, 407 (1941) it was held: 'The county cannot avoid liability to property owners for property taken or for injury done, within the meaning of § 23 and § 235 of the Constitution, by authorizing the work to be done by a third

[7] While there does not appear to be a clear case in South Carolina on point, in *South Carolina State Highway Dept. v. Moody*, 226 S.E.2d 423, 267 S.C. 130, 135 (S.C. 1976) the court states, "If an independent contractor, in constructing a road or improving the same, trespasses beyond the right-of-way and causes damages to a landowner, relief to the landowner is available by way of a common law action for damages. Such an action may be instituted against the contractor, or against the highway department, or against the two, depending on the facts. This we refer to as inverse condemnation."

person acting by the county's authority, whether such third person be an agent or an independent contractor.' (*Emphasis supplied*). *See also Republic Iron & Steel Co. v. Barter*, 218 Ala. 369, 118 So. 749 (1928). In *Kelley v. Falangus*, 63 Wash.2d 581, 388 P.2d 223 (1964) the court held that owners of supporting land could not, by delegation of duties to a private independent contractor, escape the constitutional responsibility for damage to adjoining lands caused by removal of lateral support. The Washington Court cited one of its previous decisions as follows: '* * * the state could not delegate to a private independent contractor the liability for such damaging (i.e. the removal of lateral support) any more than the state could so delegate its power of eminent domain.' *State v. Williams*, 12 Wash.2d 1, 14, 120 P.2d 496 (1941).

147. "The municipality cannot shift or evade liability by procuring or permitting another to do the work". C*ity of Colorado Springs v. Stark*, 57 Colo. 384, 386, 140 P. 794 (Colo. 1914).

148. Thus, case precedent, in Georgia, Colorado, Minnesota, Michigan Alabama, Washington, and probably other jurisdictions all hold that the government cannot avoid liability to property owners for property taken or for injury done... by authorizing the work to be done by a third person acting by the government's authority, whether such third person be an agent or an independent contractor.

149. The *Stark* court cited the equitable principle, " it was primarily for the safety, benefit and convenience of the public, and the city is in the first instance, under the well-settled rule in this jurisdiction, clearly and unquestionably liable for damage to private property occasioned by its construction, on the highly equitable and wholesome principle that since the benefit is general the cost incurred to obtain it should be generally distributed." *City of Colorado Springs v. Stark*, 57 Colo. 384, 388, 140 P. 794 (Colo. 1914).

150. This principle applies equally to Richland County and SCDOT. While Richland County, with its construction oversight and management of the Project may have been more directly involved, SCDOT, in effect, used Richland County and its contractors to provide the public benefit and therefore should not be able to avoid its constitutional duty to pay just compensation for the taking of private property.

JUST COMPENSATION

151. The court must now determine the amount of just compensation for the inverse condemnation.

152. [T]he amount that the governmental agency should pay a landowner in order to adequately compensate the landowner for a taking of his property is called just compensation. It is that amount of money which would ... put the landowner in as good a position monetarily as he was prior to the taking of the property. ... He's entitled to have the full equivalent of the value of such use at the time of the taking ... And this is probably the heart of what just compensation is: The measure of damages from the taking is the difference in the value of the landowner's land before the taking and after the taking. *Burke v. S.C. Dep't of Transp.*, 429 S.C. 319, 838 S.E.2d 534 (Ct. App. 2020)(noting this was a traditional jury charge).

153. As recited in detail in the factual findings of this order, this court, the Plaintiff and Mr. Barczak offered before and after calculations of the values of the property for the taking by the Defendants.

154. Ms. Tripp concluded the diminution in value was $154,605 consisting of lost rent, physical damage to the property, and stigma.

155. Mr. Barczak testified that in addition to the repairs, reimbursement, and lost rent, that he believed a 5% figure was appropriate (which based on his pre-project estimate of $875,000 -900,000 would be $45,000).

156. It is important to note that once a taking is found, the court must look at the impact of the project as a whole, and not just the actual taking. *S.C. Dep't of Transp. v. Powell*, 424 S.C. 206, 818 S.E.2d 433 (2018).

157. The court concludes just compensation for the taking is the lost rent ($68,745[8]); the 5% stigma impact damages ($48,705); the Marion quote[9] for the front lot tie in and drainage ($143,152.80) the Marion quote for replacement of the French drain ($28,081), the Cantey quote for foundation stabilization ($10,689.50), reimbursement for the property damage ($3,000) and

[8] The Plaintiff is also entitled to interest at 8% on the rent. Burke v. S.C. Dep't of Transp., 429 S.C. 319, 838 S.E.2d 534 (S.C. App. 2020)

[9] The Marion quote effectively replaces the Creed and Cotterill estimates. Also included in this quote and not broken our separately are the quotes for stairs and concrete pavers which are not technically inverse condemnation damage but damages awarded against the same entities under the breach of contract/declaratory judgment causes of action for the special provisions.

the costs of mitigation during the taking: C&B Drainage Systems ($2,123,50), Riverside Renovations, LLC ($6,000) and $659.89 in materials.

158. The court concludes that these damages reflect the diminution in value and impact on the Trestle Building property caused by taking and are appropriate just compensation to the Plaintiff for the taking by the Defendants. These damages and estimates are reasonable and supported by the preponderance of the evidence.

159. The Plaintiff is also entitled to reimbursement of attorney's fees, costs and expenses pursuant to S.C. Code Ann. §28-11-30. As the parties stipulated at trial, a separate hearing will be held after Plaintiff's counsel served an affidavit as to attorney's fees and costs on Defendants counsel for review. This shall be done within fifteen (15) days of the date of this order.

NEGLIGENCE

160. Negligence is the failure to use due care. *Sales v. South Carolina Department of Transportation*, 2016 WL 3607225 (Ct. App. 2016). To prove a cause of action for negligence, a plaintiff must show "(1) the defendant owes a duty of care to the plaintiff; (2) the defendant breached that duty by a negligent act or omission; (3) the defendant's breach was the actual and proximate cause of the plaintiff's injury; and (4) the plaintiff suffered an injury or damages." *Roddey v. Wal-Mart Stores E., LP*, 415 S.C. 580, 589, 784 S.E.2d 670, 675 (2016) (citing *Madison ex rel. Bryant v. Babcock Ctr., Inc.,* 371 S.C. 123, 135, 638 S.E.2d 650, 656 (2006)).

161. In South Carolina regarding water law, "(1) a landowner must not handle surface water in such a way as to create a nuisance, and (2) he must not by means of a ditch or other artificial means collect surface water and cast it in concentrated form upon the lands of another." *Johnson v. Williams*, 238 S.C. 623, 633, 121 S.E.2d 223, 228 (1961). "It is well settled that a landowner has no right to obstruct the flow of water in a natural watercourse, so as to back it up on the lands of an adjoining landowner to his damage." *Id.*

162. "To show proximate cause, a plaintiff must show both causation in fact and legal cause." *Roddey*, 415 S.C. at 590, 784 S.E.2d at 675-76 (citing *Madison,* 371 S.C. at 146, 638 S.E.2d at 662). "A plaintiff proves causation in fact by establishing that the injury would not have occurred 'but for' the defendant's negligence, and legal cause by establishing foreseeability." *Id.* "Foreseeability is determined by looking at the natural and probable consequences of the complained of act, although it is not necessary to prove that a particular

event or injury was foreseeable." *Id.* "The defendant's negligence does not have to be the sole proximate cause of the plaintiff's injury; instead, the plaintiff must prove the defendant's negligence was at least one of the proximate causes of the injury." *Id.*

163. Under the South Carolina Torts Claims Act, "[t]he State, an agency, a political subdivision, and a governmental entity are liable for their torts in the same manner and to the same extent as a private individual under like circumstances, subject to the limitations upon liability and damages, and exemptions from liability and damages, contained [in the Act.]" S.C. Code Ann. § 15-78-40.

164. Richland County owed a duty to adjacent landowners to construct North Main Street in such a way that it would not unreasonably damage the Plaintiff's land and unreasonably interfere with its use and enjoyment of the property during the construction process.

165. Richland County breached this duty and was negligent by trapping the surface stormwater and channeling it in concentrated amounts on the Plaintiff's land. There was ample evidence of this as set forth in this court's discussion of the inverse condemnation claim including the site observations, graphic exhibit and testimony of Jason Patterson, the testimony and photographs of the Plaintiff, the testimony of Plaintiff's expert Dan Creed, and the testimony and RFI No. 13 of Hugh Wilson.

166. As a direct and proximate result of the concentration and flooding of his property, the Plaintiff suffered actual, consequential and special damages.

167. Dan Creed testified that based on the topography map, it was foreseeable that the roadway embankment would trap water that used to flow in the street and be channeled to Mr. Barczak's property. Indeed, Jason Patterson specifically identified this exact problem within a few weeks after construction has reached the Trestle Building.

168. The County is not exempted from liability under S.C. Code Ann. § 15-78-60(15), which states, "governmental entities are not liable for the design of highways and other public ways." The highway design exception under § 15-78-60(15) does not apply to Plaintiff's claims. First, the trapping and concentration of water due to the embankment is outside the roadway itself and is a function of the topography and the failure of the Richland County to account for it during the construction process. (See Hugh Wilson, RFI No. 13).

169. Second, even if the exemption did apply, it does not provide any protection after the governmental entity is on notice of the condition. "Although Department of Transportation

(DOT) has design immunity under Tort Claims Act (TCA), such immunity does not extend to maintenance issues after the DOT has notice of a hazardous condition." W*right v. South Carolina Department of Transportation* (App. 2022) 2022 WL 2444703; *Hawkins v. City of Greenville,* 358 S.C. 280, 594 S.E.2d 557 (Ct. App. 2004).

170. Here, Mr. Barczak notified the County through emails starting in October 2018, and Jason Patteron had site observation in November 16, 2018 specifically noting the problem. The County, despite actual notice, did not address the problem by providing a drop inlet in the property to the south of Mr. Barczak until over a year later.

171. The damages for the County's negligence in flooding the Plaintiff's property are the same as those under inverse condemnation with one addition.

172. In addition to this damage, there was also testimony that a third party company buried the power utility line going to Mr. Barczak's property resulting in a depression in the parking space. The County had oversight of this construction. Mr. Marion provided a quote to pave and stripe the whole parking lot ($46,639) but not just the damaged space.

173. The court concludes that reaving the whole parking lot is not warranted; however, 1/3 of that amount, or $15,546 is appropriate to repair the parking space, tie that part of the parking lot into the driveway which will be disrupted by the drainage repair and to repair the asphalt around the drop inlet installed in the parking lot.

TRESPASS

174. The elements of an actionable trespass are (1) an affirmative act, (2) invasion of land must be intentional, and (3) harm caused must be the direct result of that invasion. *Id.* Intent in the context of trespass does not require malice or a specific purpose to harm. It is sufficient that the defendant intended the act that caused the invasion, even if they did not intend the resulting damage. *Snow v. City of Columbia*, 305 S.C. 544, 553, 409 S.E.2d 797, 802 (Ct. App. 1991).

175. In other words, "intent is proved by showing that the defendant acted voluntarily or that he knew or should have known the result will follow from his act." *Id.* (citing *Snakenberg v. Hartford Casualty Insurance Co.,* 299 S.C. 164, 383 S.E.2d 2 (Ct.App.1989). "The gist of trespass is the injury to possession, and generally either actual or constructive possession is sufficient to maintain an action for trespass." *Hawkins*, 358 S.C. at 266, 594 S.E.2d at 566.

176. Defendants committed an intentional affirmative act and acted voluntarily in erecting the embankment which trapped the water causing water to flow onto Mr. Barczak's property as described herein.

177. It is undisputed the Defendants intended for the roadway grading to be raised, as shown through case law, intention of the act that causes the invasion is sufficient.

178. As discussed in the previous causes of action, it was foreseeable that based on the topography, the elevation of the roadway would result in the trapping and trespass of water on to Mr. Barczak's land.

179. As a direct and proximate result of this continuous trespass, the Plaintiff has suffered damages as set forth in the previous causes of action, except the pavement damage.

180. Plaintiff is awarded the same damages as for the inverse condemnation.

S.C. Code Ann. § 5-31-450

181. The court has ruled that this statute is not applicable to the facts of this case.

182. The court notes that SCDOT owns North Main Street and not the City of Columbia, and that the water damage and intrusion to Mr. Barczak's property is not from the street but from being trapped by the roadway embankment.

BREACH OF SPECIAL PROVISIONS

183. As set forth in the findings of fact, Mr. Barczak did not require his property to be condemned but negotiated a Revised Permission Agreement with the SCDOT which included several special provisions which were important to Mr. Barczak.

184. This agreement was with the SCDOT, but there was testimony that the provisions were to be completed by Richland County (See Hugh Wilson RFI No. 13).

185. Aside from the temporary installation of zoysia grass, none of the special provisions have been completed despite demand.

186. There was evidence that Richland County attempted to comply with some of the provisions in the agreement. Exhibit 95 was an email by Jason Patterson to Johnathan Eichelberger by presenting a Tract 53 Plan Sheet which showed various slope ratios of 2:1, 4:1, and 6:1 onto Mr. Barczak's property along with some stairs and replacement shrubs. Mr. Barczak rejected this proposal.

187. The problem with this proposal is that the ratios would have resulted in property sloping toward Mr. Barczak's building and Mr. Barczak did not want the drain inlets in his front

yard. David Link the right of way agent specifically noted in his field notes that the City could eliminate the drainage permissions.

188. Using a site plan prepared by Mark Cotterill, David Marion, President of Chason Landscaping, prepared a proposal dated May 1, 2024, including the following:

> Remove the existing concrete in the front of the building and the masonry wall at the end of the building; Grade and remove excess fill between the walk and the building to establish grade below finish floor and positive drainage away from the building; Form and pour a cast in place concrete retaining wall across the end and parallel to Main Street; Form and pour an 8' wide set of concrete steps with cheek walls and grooved edge treads; Provide and install two rail tube handrails with the length of the wall Steel tubing with a black powder coated finish;
> Install a 4" trench drain at the base of the wall the length of the wall;
> Install a 6" drain line to support the trench drain and tie into the existing catch basin on the other side of the entry drive; Repair the curb and asphalt after crossing the entry drive with the drain line; Form and pour 427sf of Flat concrete work per the attached sketch.
> Prep and sod the lawn per the attached sketch.
> Install automatic irrigation for the lawn; Utilize the existing water source;
> Haul off and dispose of off site all waste, removed materials, etc…

189. Mr. Marion estimated the total costs at $136,336. Since the estimate was a little over a year old by the time of trial, Mr. Marion estimated the costs increased by about 5% for a total of $143,152.80.

190. On this same proposal, based on the landscaping in the Cotterill plan, Mr. Marion quoted $7,314 for installing trees and shrubs.

191. Mr. Marion's proposal satisfies the special provisions of the contract.

192. The Defendant's expert, Raulston Travis, P.E. provided three separate estimates. First, he provided an estimate for regrading the front lot only to slope away from the building. This would cost $16,151.18. Second, Mr. Travis provided an estimate for the installation of steps from the public sidewalk along North Main Street to Mr. Barczak's lot and entrance. The estimate for this work totaled $18,707.22. Finally, Mr. Travis provided a combined estimate for grading and a storm drainage system. This system would include a drop inlet, a yard inlet, and a trench drain. The total cost estimate for the grading and storm drainage system was $32,422.14.

193. There are several differences between the two experts' estimates. Mr. Marion's quote includes a retaining wall between North Main Street and the front lawn of the Trestle Building which he testified would result in more functional, useable space. He also said it would help in maintenance. Mr. Travis's estimate does not include any pavers only grading and

Mr. Travis's drainage estimate includes one large yard drainage inlet and one drop inlet; whereas Mr. Marion's quote is for a trench inlet by the retaining wall. Finally, Mr. Travis's quotes do not include any landscaping (except sod) or replacement for the sprinkler system or trees and shrubbery.

194. The court finds that Mr. Marion's quote and credible expert testimony is the most applicable to satisfy the intent and terms of the special provisions of the Revised Permission Agreement and awards judgment to the Plaintiff in breach of contract in the amount of $143,152.80 primary quote and $7,314 for installing trees and shrubs.

DECLARATORY JUDGMENT

195. S.C. Code Ann. § 15-53-20 provides in relevant part, "Courts of record within their respective jurisdictions shall have power to declare rights, status and other legal relations whether or not further relief is or could be claimed. The declaration may be either affirmative or negative in form and effect. Such declarations shall have the force and effect of a final judgment or decree.

196. In this case, the court has determined the rights and liabilities of the parties under the various causes of action pled by the Plaintiff; however one matter remains that was requested by the Plaintiff and is necessary in order to award the parties complete relief.

197. Mr. Barczak testified that the drain to the south of his property is poorly maintained which would substantially reduce its effectiveness in causing water to concentrate and flood the Trestle Buildings. All the experts (Dan Creed, Jason Patterson, Hugh Wilson, and even Raulston Travis) testified this drain was essential in keeping excess stormwater from draining onto Mr. Barczak's property.

198. However, it appears from the testimony that this drain is not within the SCDOT right of way and that there is no written agreement with landowner where his drain is located.

199. Mr. Barczak has indicated he is willing to maintain this drain to protect his property.

200. Therefore, it is hereby ordered and declared that the Defendants SCDOT and Richland County shall negotiate, prepare and execute a written easement agreement with the property owner where the south drain is located whereby Mr. Barczak can maintain the drain.

WHEREFORE, having fully adjudicated this matter and set forth its findings of fact and conclusions of law, the court orders the following:

The Plaintiff shall have judgment against the Defendants Richland County and SCDOT, jointly and severally, in the principal amount of $311,156.69 for the cause of action for inverse condemnation. (See ¶ 157 incorporated by reference). The Plaintiff shall submit an affidavit to Defendants' counsel within fifteen (15) days as to Plaintiff's attorney's fees and costs. Thereafter, a hearing will be scheduled if the parties cannot agree on the reasonable award of attorney's fees and costs;

The Plaintiff shall have judgment against Richland County in the principal amount of $326,702.69 (see ¶ 171-73 incorporated by reference) for negligence;

The Plaintiff shall have judgment against Richland County in the principal amount of $311,156.69 (see ¶ 180 incorporated by reference) for continuous trespass;

The Plaintiff shall have judgment against Richland County and SCDOT for breach of the special provisions and by declaratory judgment in the amount of $150,466.80 (see ¶ 194 incorporated by reference);

The Defendants SCDOT and Richland County shall negotiate, prepare and execute a written easement agreement with the property owner where the south drain is located whereby Mr. Barczak can maintain the drain. (See ¶ 200 incorporated by reference).

IT IS SO ORDERED.

Richland Common Pleas

Case Caption: In The House Llc vs City Of Columbia , defendant, et al

Case Number: 2020CP4004769

Type: Order/Other

So Ordered

s/ Daniel Coble, 2774

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Richland
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2020CP4004769

In The House Llc
PLAINTIFF(S)

South Carolina Department Of Transportation et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☑ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **STAYED DUE TO BANKRUPTCY**

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☑ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

This matter is before the Court on Defendants' Motion to Amend, Motion to Stay, Motion for New Trial Absolute, Motion for New Trial Remittitur, and Motion for Election of Remedies (the Motions), which were timely filed on October 9 & 10, 2025. The Motion asks this Court to alter, amend, or reconsider its Order, entered September 29, 2025. The Court received Plaintiff's post-trial brief in response to the Motions on October 20, 2025. After reviewing the applicable law and considering arguments raised in the Motions and brief, Motion to Amend, Motion to Stay, Motion New Trial Absolute, and Motion New Trial Remittitur are all DENIED. *see page 2*

ORDER INFORMATION

This order ☑ ends ☐ does not end the case. ☑ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 11/06/2025 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

Motion for Election of Remedies is GRANTED.
Plaintiff shall submit formal order within 10 days.
The Court rules on these motions without oral argument.

Richland Common Pleas

Case Caption: In The House Llc vs City Of Columbia , defendant, et al

Case Number: 2020CP4004769

Type: Order/Electronic Form 4

So Ordered

s/ Daniel Coble, 2774

STATE OF SOUTH CAROLINA	)	**IN THE COURT OF COMMON PLEAS**
	)	
COUNTY OF RICHLAND	)	**CA NO.: 2020-CP-40-04769**
In the House, LLC,	)	
	)	**ORDER GRANTING IN PART SOUTH**
Plaintiff,	)	**CAROLINA DEPARTMENT OF**
	)	**TRANSPORTATION'S MOTION FOR**
-vs-	)	**ELECTION OF REMEDIES AND**
	)	**DENYING MOTIONS TO ALTER OR**
Richland County, City of Columbia,	)	**AMEND OR FOR A NEW TRIAL**
and the South Carolina Department	)	**ABSOLUTE OR FOR A NEW TRIAL**
of Transportation,	)	**REMITTITUR**
	)	
Defendant(s).	)	

This matter came before me by way of several post-trial motions filed by the South Carolina Department of Transportation (SCDOT) on October 9, 2025. The SCDOT filed motions for election of remedies, to alter or amend this Court's order dated September 29, 2025, for a new trial or for a new trial absolute. After carefully considering the motions and supporting briefs, the Court grants the motion for election of remedies in part and denies the other post-trial motions.

The Court tried this case and heard the presentation of evidence over almost eight days of testimony with eighteen (18) witnesses and well over one hundred (100) exhibits. Thereafter, each of the parties submitted lengthy, detailed orders including findings of fact and conclusions of law in support of their respective positions and what they contended was proven at trial. The court entered judgment for the Plaintiff in a

detailed twenty-nine page order with findings of fact and conclusions of law on September 29, 2025.

MOTION FOR ELECTION OF REMEDIES

"Election of remedies involves a choice between different forms of redress afforded by law *for the same injury* or different forms of proceeding on the same cause of action." *Austin v. Stokes-Craven Holding Corp.*, 387 S.C. 22, 56, 691 S.E.2d 135, 152-53 (2010)(*emphasis added*) (*quoting Taylor v. Medenica*, 324 S.C. 200, 218, 479 S.E.2d 35, 44 (1996)). "It is the act of choosing between inconsistent remedies allowed by law on the *same set of facts*." *Taylor*, 324 S.C. at 218, 479 S.E.2d at 44-45. "The basic purpose of election of remedies is to prevent double recovery for a single wrong.

In its return to the Defendants'[1] motions, the Plaintiff acknowledges that it is not entitled to multiple recoveries *for the same injury* and that the Plaintiff is not seeking multiple recoveries *for the same wrong*. The Plaintiff further acknowledged to the extent that its damage overlaps in certain causes of action that it is limited to a single recovery. However, the Court differs from the Defendants as to what must be elected and how overlapping damages should be handled.

The Court agrees that as between the causes of action for trespass, inverse condemnation and negligence, that the Plaintiff should elect as these claims are for the same injury; however, since negligence includes damages for partial paving of the

[1] Richland County also filed post-trial motions.

parking lot, which is a distinct injury not included in the other causes of action, then that is not a double recovery so any election other than negligence would leave a claim for negligence in that amount. See Order ¶ 173 (1/3 of paving, $15,546). Since of these three causes of action, only inverse condemnation applies to SCDOT, no election is required as to SCDOT from these three causes of action.

The Court concludes that the Plaintiff does not have to elect between its cause of action related to breach of the special provisions in the slope agreement and the other causes of action as this is a different injury and different wrong from the other causes of action discussed above. The Marion quote is a measure of the amount of damage for breach of the special provisions of the contract. It is not an award of the Marion quote itself. However, the Court acknowledges that the Marion quote is included in the damages for the other three causes of action for which an election will be required including inverse condemnation as to SCDOT; therefore to avoid a double recovery, any recovery by the Plaintiff shall apply equally to satisfy the judgments for both the breach of special provisions, inverse condemnation and such other remedy as may be elected by the Plaintiff (except the distinct injury for negligence discussed above.)

MOTION TO ALTER OR AMEND

Affirmative Aggressive Act

Like the County, SCDOT is seeking to recast this case as a mere failure to act to avoid liability for inverse condemnation. The Court denies this attempt.

SCDOT cites *Hawkins v. City of Greenville*, 358 S.C. 280, 594 S.E.2d 557 (Ct. App. 2004); however this case is distinguishable. In *Hawkins*, the court found as follows:

In the present case, Hawkins has failed to allege any affirmative acts by the City which damaged the ServiceMaster property or otherwise diminished his rights in the property. Most of the City's "acts" he avers support his inverse condemnation claim are *merely failures to act*. Specifically, Hawkins asserts the City improperly *allowed* the development of neighboring parcels of commercial property which altered the elevation of the area and added strain to the Laurel Creek drainage pipes beyond their capacity and then failed to replace these pipes. The South Carolina cases addressing inverse condemnation are uniform in requiring that the claim be proved by "affirmative, positive, aggressive" acts by the governmental agency. Allegations of mere failure to act are insufficient. Hawkins, 358 S.C. at 291

Likewise, the limited affirmative acts found by the court in *Hawkins* are wholly different in the kind and quality of the evidence. The court held, "The only affirmative acts Hawkins cites as forming the basis of his inverse condemnation claim are the replacement of the double-box culvert with the large arched pipe in Laurel Creek in 1994 and the installation of the riprap material along the banks of the creek in 1997. The record contains no evidence that either of these acts caused the flooding of the ServiceMaster property in 1997. Hawkins' own expert testified that the installation of the large arched pipe likely improved the drainage situation in the stormwater basin Emphasis added.

This is not a mere failure to act case. The evidence is clear that Richland County for the benefit and under the ultimate approval of SCDOT constructed an elevated roadbed that trapped water and channeled it onto Mr Barczak's property. Richland

County and SCDOT didn't merely "allow" the berm to be built, they built it as required by SCDOT.

Several cases not cited by SCDOT in their motion are more closely, if not directly on point. It has long been recognized in South Carolina that "the casting of water on adjoining premises by some act of the governmental authority in the course of making improvements to a public way constitutes a taking of property in violation of Article I, Section 17, of the Constitution." *Kline v. City of Columbia*, 249 S.C. 532 at 536. In *Milhous v. State Highway Department,* the South Carolina Supreme Court held that the landowner had cause of action against the state for damage to his land resulting from the obstruction of natural flow of surface waters caused by the state's raising of the grade of the highway roadbed. *Milhous v. State Highway Dep't*, 8 S.E.2d 852, 856 (1940). Similarly, in *Spradley v. South Carolina State Highway Department*, the South Carolina Supreme Court found a plaintiff "could recover just compensation for the taking and damaging" of her land "caused by the dumping and spilling of surface water" upon the plaintiff's land as a result of highway improvement. *Spradley v. South Carolina State Highway Dep't*, 256 S.C. 431, 437, 182 S.E.2d 735, 738 (1971). In *Spradley*, the Highway Department failed to provide proper drainage. *Id.* Moreover, the Court of Appeals upheld a verdict for a property owner who brought an inverse condemnation action against a town for flood damage he sustained during heavy rain following

reconstruction of adjoining street. *Newsome v. Town of Surfside Beach*, 300 S.C. 14, 16, 386 S.E.2d 274, 275 (Ct. App. 1989). The town's reconstruction raised the level of the street approximately seventeen inches. *Id.* During a storm and unusually high tide after the road reconstruction, the road dammed excess water and caused the water to congregate at the lowest piece of land along the road, which was in the plaintiff's house. *Id.* The Court of Appeals held in *Newsome* that "[f]rom this evidence the jury could have easily concluded that the building up of [the street] satisfied the requirement of an overt or positive action by the Town necessary to prove a taking under a cause of action for inverse condemnation." *Id.*

On page 16 of its brief, the SCDOT cites a trio of cases for the overly broad proposition that "every single reported South Carolina case recognizing a physical taking involves the governmental entity that actually undertook to construct the project or improvements at issue." However, none of the trio of cases cited by SCDOT appear to have involved intergovernmental projects where one or more governmental entity constructed a project for the benefit of another. In each of those cases, it appears that a single governmental entity took action to benefit itself. SCDOT cites to *Owens v. S.C. State Highway Dep't*, 239 S.C. 44, 121 S.E.2d 240 (1961) in support of its position, but that case is materially different in several important ways. First, unlike the present case, the SCDOT was adversarial to the United States Government which eventually constructed

the relocated road using the United States Corp of Engineers. "The appellant [SCDOT] refused to close this portion of the highway, even though request therefor was made by the United States Government." *Owens* was always a federal project and not a state and local project. Second, as stated in the case, "that the appellant [SCDOT] has no title whatsoever to the said highway, its roadbed, or any of the rights of way pertaining thereto." The exact opposite is true in this case as it is undisputed that SCDOT owned North Main Street as part of its inventory before the project ever started and would be the beneficiary of the improvements made to the road. Third, the Court noted in that case that there was an absence of any evidence indicating that appellant [SCDOT] "contracted in any way" for the construction of the same. In short, the Court found that the only involvement in that case was preparing a relocation survey.

In this case, the SCDOT had intergovernmental agreements with Richland County related to the project. They had the rights of inspection and attended bi-weekly meetings during construction according to the testimony of Kimberly Toney. SCDOT had the right to review the design plans and provide comments. SCDOT and the County had the right to inspect all work by the contractor. The Permission Agreement executed in this case by Mr. Barczak was granted to SCDOT on an SCDOT form. Through their LPA arrangement, Richland County had to provide SCDOT with monthly reports and answer their questions. Their contract provided that the County and the SCDOT shall jointly conduct a final inspection of the Project. Many of the items

which the Court found were not present in *Owens* are present in this case. The conduct of SCDOT in this case was far more extensive then merely preparing a survey for the suggested relocation of the road on a federal project.

Two more points are worth noting in this case. First, the case was brought as a negligence case and not as a taking case. It was only after SCDOT filed a motion for non-suit after the conclusion of Plaintiff's case, the trial judge stated the only way this case could be maintained is as a takings case. Therefore, the Plaintiff did not prepare and present the case as a takings case. Second, the trial judge submitted " a question of fact for the determination of the jury whether or not the appellant constructed or took part in the construction of said roadway." *Owens v. S.C. State Highway Dep't*, 239 S.C. 44, 121 S.E.2d 240, 243 (1961)(Emphasis added.)

The Court also incorporates by reference paragraphs 143-150 of its order.

As to paragraphs 9-10[2] of SCDOT's motion, the evidence showed that SCDOT owned the lot and that it was used by LJ as a staging area for equipment. Rule 201(d), SCRE, explicitly states that "a court shall take judicial notice if requested by a party and supplied with the necessary information." Rule 201(d), SCRE(emphasis added) S.C. Code Ann. § 19-5-10 provides that certified copies of public records "must be received in evidence" in lieu of the original, further supporting their admissibility and the

[2] SCDOT filed both a lengthy motion and a memorandum. Paragraph referenced are to the numerical assignments of error in the motion to amend.

mandatory nature of judicial notice when the requirements are met. S.C. Code Ann. § 19-5-10 (emphasis added). Judicial notice is proper at any point in the litigation. See Rule 201(f), SCRE ("Judicial notice may be taken at any stage of the proceeding.").

The evidence showed in both photographs and eyewitness testimony by Mr. Barczak that mud and silt flowed downhill from this lot to the Trestle Building lot. SCDOT claims this was not argued in the pleadings, but trials are organic and as evidence is developed during trial, this is proper to be pursued and admitted. This was not a new theory at trial but additional evidence that the Defendants channeled mud and silt to Mr. Barczak's property.

SCDOT and the Permission Agreement

SCDOT argues that there is "no evidence" that SCDOT is a party to the Slope/Permission Agreement. The agreement itself specifically names SCDOT as the party to which the Slope/Permission was granted and the agreement was signed on a standard SCDOT form (SCDOT R/W Form 803). Also, the agreement contains the following provision, "All right of way agreements must be in writing and are subject to rejection **by the South Carolina Department of Transportation**." There is no dispute that the area covered by the slope agreement will be under SCDOT jurisdiction and control. While the City of Columbia through its agent, David Link negotiated the agreement, the Court has already held that the City of Columbia is not liable under the contract.

The Court has recognized the general principle that an agent is not liable to be sued upon contract made by him on behalf of his principal if the name of his principal is disclosed and made known to the person contracted with at the time of entering into the contract. *Thomas v. Delta Enterprises, Inc.*, 302 S.C. 351, 352, 396 S.E.2d 122, 123 (Ct. App. 1990). The liability, if any, is that of the principal alone. *Skinner & Ruddock, Inc. v. London Guarantee & Acc. Co.*, 239 S.C. 614, 619, 124 S.E.2d 178, 180 (1962).

The SCDOT also asserts the dead doctrine of lack of privity. First, the Court has found that the Plaintiff was in privity with SCDOT as they are named in the document. Second, our courts have consistently held that doctrine is not favored. "The erosion of the concept of privity has been a legal phenomenon for more than a decade, and this Court has not been reluctant to contribute to its demise. .... [L]ack of privity as a defense to a cause of action has been of questionable vitality in South Carolina. Today, we seek to still all whispers of its continued existence." *Kennedy v. Columbia Lumber and Mfg. Co., Inc.*, 299 S.C. 335, 345, 384 S.E.2d 730 (S.C. 1988).

It is telling that both Richland County and SCDOT have raised lack of privity as a defense and the City of Columbia has been dismissed. Ms. Tripp in her testimony and based on her extensive experience with condemnations lamented the lack of information and clarity given an owner in the right of way process. It would be unfair and unjust to allow SCDOT, who clearly has the ultimate power over the project and will be its ultimate beneficiary, to avoid contractual liability without anyone else being

responsible. If SCDOT believes another entity is responsible, then it could have cross-claimed for indemnification.

SCDOT also argues that the Plaintiff refused to allow the contractual conditions to be fulfilled. The Court did not view the evidence that way. The Plaintiff did not refuse to allow the contractual conditions to be fulfilled. SCDOT argues that Mr. Barczak was offered options to complete the work which he rejected. The Court addresses this in the order, where the court held,

> There was evidence that Richland County attempted to comply with some of the provisions in the agreement. Exhibit 95 was an email by Jason Patterson to Johnathan Eichelberger by presenting a Tract 53 Plan Sheet which showed various slope ratios of 2:1, 4:1, and 6:1 onto Mr. Barczak's property along with some stairs and replacement shrubs. Mr. Barczak rejected this proposal. The problem with this proposal is that the ratios would have resulted in property sloping toward Mr. Barczak's building and Mr. Barczak did not want the drain inlets in his front yard. David Link, the right of way agent specifically noted in his field notes that the City could eliminate the drainage permissions.

(Order, ¶186-187)

Not only would the greater slope ratios slope toward the building, but they would also occupy a significant portion of the front yard, which was a functional, usable space before. Mr. Barczak was not forced to simply take whatever interpretation of alleged compliance was offered. Furthermore, there was little evidence of additional negotiation or attempts to satisfy these conditions. Mr. Barczak testified he was willing to negotiate on these matters, but the Defendants were not.

As the Court found in the order, "The sidewalks and certain landscaping items have not been replaced, nor has the sprinkler system been repaired and returned to as good or better condition. The construction is not tied in smoothly with the landscape wall and the property is not properly graded to the concrete apron. Mr. Barczak provided photographs showing his previous sidewalks ending in the side of the embankment and people during a public event on North Main Street helping each other climb up the hill of the embankment in leaving the property." (Order, ¶39-41). The court concludes that the Plaintiff did not refuse compliance, but only partial and unreasonable compliance.

Drop Inlet in Parking Lot

As to paragraph 14, and the installation of the catch basin on the property in the parking lot, the testimony showed that it did appear in the plans, but just not at that location, it was in the driveway. Ms. Toney testified that SCDOT had direct approval of all change orders. (Toney, p.49, 10-11) There is no evidence whether the new location for this drop inlet went through the change order process.

Contractors and Constitutional Duty In Inverse Condemnation

As to paragraphs 15-17, the Court incorporates by reference ¶143-150 of the court's order. SCDOT argues that this was not pled and should not be included in the order. However, the Plaintiff pled that both SCDOT and Richland County were liable

for inverse condemnation for the project and SCDOT has denied responsibility, in part, by arguing third parties are responsible. This case law makes it clear that entities cannot avoid their constitutional responsibilities by shifting the blame to contractors (independent or not.)

Declaratory Judgment

SCDOT artificially limits the court's power to declare affirmative relief among the parties and the liberal policy of the declaratory judgment act. The declaration may be either affirmative or negative in form and effect. Such declarations shall have the force and effect of a final judgment or decree. S.C. Code § 15-53-20. The Act is to be liberally construed and administered to achieve its intended purpose "to settle and to afford relief from uncertainty and insecurity with respect to rights, status and other legal relations." S.C. Code Ann. § 15–53–130 (2005).

The Plaintiff specifically requested in its Second Amended Complaint for the Court to declare "the responsibility for the maintenance of the drain installed to the South of the Property." ¶40(e). There is no question that through a change order (which was subject to SCDOT approval), that the parties had no qualms in dealing with the third-party landowner to install the drain inlet on Tract 52 to the South of Mr. Barczak's property. All the experts in the case testified it was essential that this drain is properly maintained to limit the water channeled on to Mr. Barczak's property.

Kim Toney testified in her deposition and through the Rule 32(a)(5) testimony that there was an agreement, but she was not sure if it was written. (Toney, pg. 47, lines 22-25) No such agreement was ever produced to the Plaintiff or offered in evidence at trial. SCDOT testified that the outlet did not appear to be within the SCDOT right of way. Thus, there is a clear uncertainty regarding who will maintain the drain that is essential in minimized the flooding on Mr. Barczak's property.

Mr. Barczak testified that the drain was not being maintained and that the weeds and shrubs were so overgrown that it would be difficult to even find the drain. So any agreement to maintain by the Defendants was clearly ineffectual. Thus, the Court was well within its judicial declaratory powers to declare affirmative relief requiring Richland County (who has already dealt with this landowner) and SCDOT to secure an access easement allowing Mr. Barczak to maintain this drain to protect his property.

In its post trial motions, SCDOT argues that "if the County asks SCDOT to accept responsibility for either catch basin, SCDOT would at a minimum require that a maintenance easement first be obtained." This, of course is what Mr. Barczak requested and the Court ordered, except that the maintenance easement for the south inlet be granted to Mr. Barczak and not the SCDOT.

Stay of Enforcement of Affirmative Declaratory Relief

The Plaintiff stipulated and did not seek enforcement on its judgment during the Court's consideration of these post-trial motions. However, the Court denies the stay of

injunctive relief pending resolution of any appeal. As the trial testimony bore out, the adequate functioning of the drain installed on the property to the south of the Plaintiff is essential to limiting the flow of water onto the Plaintiff's property. Multiple experts testified to this. Further, the evidence showed that there was no written agreement as to its maintenance and that the property was not in the SCDOT right of way. An appeal, if filed, could last up to two years and this certainly would prejudice the Plaintiff if the drain were not maintained during this period. Neither SCDOT or Richland County has offered a plan or assurance how this drain would be maintained and the Plaintiff's property protected during the pendency of any appeal.

Therefore, the Court denies this request and orders that the parties comply with the terms of the order.

Causation of Water Intrusion

There was ample evidence to support causation from the North Main Street project. (Order, ¶116-123)

On or about November 15, 2018, Jason Patterson, PE (the Resident Construction Engineer with Richland County PDT) had a site visit with Hugh Wilson and others. He commented on the site visit observations that that the build-up on North Main Street blocks approximately 0.10 Acres on Tract 52 (South of The Property); prior to construction, this area would flow into North Main Street to a catch basin. The buildup has blocked this area from reaching North Main Street. Mr. Patterson prepared a

graphic exhibit (Exhibit 90) in which he showed this area (colored in blue) immediately South and above The Property with the box callout, "[a]pproximate Area from Richland GIS Contours that is trapped by roadway embankment (Approx. .10 acre)."

Dan Creed, P.E., the Plaintiff's expert, corroborated Mr. Patterson's testimony. He testified that the elevated road bed trapped the water and based on the topography– it was foreseeable that water would be trapped by the elevated highway and channeled to the Property. He further testified that was the purpose of installing a drain inlet south of the Property.

The County and SCDOT seem to suggest that the magic words "to a reasonable degree of engineering certainty" had to be stated. The Court disagrees. In determining whether particular evidence meets this test it is not necessary that the expert actually use the words "most probably." *Gamble v. Price*, 289 S.C. 538, 347 S.E.2d 131 (Ct. App. 1986). It is sufficient that the testimony is such "as to judicially impress that the opinion ... represents his professional judgment as to the most likely one among the possible causes...." *Norland v. Washington General Hospital*, 461 F.2d 694, 697 (8th Cir. 1972) In this case, the Court was judicially impressed by Dan Creed's testimony that the elevated bank from the project was the most likely cause of the flooding of Mr. Barczak's property. Indeed, there was virtually no other alternative evidence presented as to causation.

Mr. Barczak testified that prior to construction he had a single water intrusion

event, several years prior to the Project, which is why he installed a French drain along the southern border of his building. He testified that, during the 2015 Columbia catastrophic rain event, The Property did not flood; yet after the Project, the first-floor, front area flooded repeatedly. Mr. Barczak offered numerous photographs of the flooding of his property with mud, silt and the water intrusion onto the first floor of his building. The record is replete with emails from Mr. Barczak notifying the Defendants of this problem and requesting relief. Ms. Sabrina Odom (then President of the North Main Street Business Association) corroborated Mr. Barczak's testimony. Her office was on the first floor of The Property, and her desk is visible in photographs offered into evidence. Like Mr. Barczak, she testified that prior to the Project, she had no problem with flooding, but that after the Project, she came to the office expecting to use a mop. Further, prior to her departure during rain events, she placed chairs on top of the desks.

On March 15, 2019, Hugh Wilson with LJ, Inc. (the County contractor) submitted RFI No. 13 (Request for Information) to Jason Patterson, the resident construction engineer. Hugh Wilson observed that several tracts in Phase IA2 that previously drained to the roadway were blocked due to the build-up. He further noted that at tract 53 (The Property) no provisions have been made to address the water that is now flowing to, and being trapped, on portions of his property. Based on his review of the cross sections, water at the toe of the proposed slope from portions of tract 205 and all of tract 52, flow down gradient to the Trestle Building property. To further complicate

the issue, there are two short walls on the south end of this property that trap water; the water builds up and flows back towards the building. There are no provisions in the plans to address these walls (although portions of the walls are within the new right of way) nor are there any provisions in the plans to address water that is being trapped between the new toe of slope and The Property. (Ex. 80).

As to paragraph 39, the Court references the trial testimony of Chris Barczak and Michael Wilson, and Exhibit 103;

As to paragraphs 40, the installation of the catch basin on the property in the parking lot, it did appear in the plans, but just not at that location, it was in the driveway. Ms. Toney testified that SCDOT had direct approval of all change orders. (Toney, p.49, 10-11) There is no evidence whether the new location for this drop inlet went through the change order process. Contrary to SCDOT's asserting, the evidence does not show that Mr. Barczak agreed to the installation or location.

Damages

SCDOT, like the County, is focused on establishing an arbitrary specific date for the taking when the evidence is clear that the flooding was continuous and occurred over time. Ms. Tripp, who is a highly qualified MAI appraiser testified that she did not think picking a 2018 valuation date was appropriate given the ongoing nature of the flooding and impact on the property. She testified that she had performed hundreds of condemnation appraisals including many for the SCDOT. Likewise, it does not make

logical sense to limit repair estimates to the 2018–2019 time frame when the relevant issue is how much it would cost to repair the property now. The Defendants had ample time to repair the property back then but refused to do so or provide the Plaintiff with sufficient funds to do so. Mr. Barczak testified he could not afford to do more than the mitigation efforts he performed.

As for the interest, the Court only awarded interest as to the unpaid rent which has a definite time frame. (Order, pg. 21 ftn. 8).

Personal Property

Mr. Barczak, as the owner of the personal property testified as to the items he has stored in the area, which was damaged by the flooding, one of which was his mother's credenza. He offered pictures showing that the furniture had to be placed on blocks, and pictures of the credenza with the veneer peeling. An estimate as to value of his property may be stated by the owner of household goods, wearing apparel and personal effects. 2 Jones on Evidence, 4th Ed.,15 Sec. 386, page 728; 3 Wigmore on Evidence, 3rd Ed., Sec. 716, page 48. "In the case of *Howell v. State Highway Department,* 167 S.C. 217, 166 S.E. 129, we held that it was proper for a landowner to give his estimate of the total amount of damage sustained by him on the taking of his land for a road, cutting down a bank, destruction of trees, and depreciation in value of his remaining property. Certainly, if it was proper for the owner of land to estimate the total amount of his damages, the same rule accords the owner of personal property the

right to give his estimate as to the value thereof. We think it was proper for the respondent to give his estimate of the reasonable value of his personal property lost in the fire." *Nelson v. Coleman Co.*, 249 S.C. 652, 660, 155 S.E.2d 917, 921 (1967). The Court awarded the Plaintiff $3,000 which is supported by Mr. Barczak's testimony.

Mitigation Work

SCDOT does not contest the amount of the invoices claimed by the Plaintiff for the mitigation work, or that they were incurred, but the alleged lack of proof that this work and associated invoices were caused by actionable conduct by SCDOT. The Court incorporates by reference its previous findings and conclusions of SCDOT liability for inverse condemnation and the invoices claimed by Mr. Barczak were the direct and proximate result of the flooding.

Costs Estimates for additional work

The Court concludes its appropriate to date the estimate of repair as close to when they will be performed as some arbitrary historical date. To hold otherwise would unfairly undercompensate the Plaintiff and not provide just compensation. In the context of property damage and repair, measuring the cost at the date of the trial (or as close to it as you can) recognizes the economic reality that restoration requires current funds. If an owner is only awarded the historical cost, they are guaranteed to be unable to complete the repair in an inflationary environment, resulting in under-compensation. This problem is intertwined with the plaintiff's duty to mitigate losses.

While a plaintiff is generally expected to repair damage promptly, if the plaintiff's financial stringency or lack of means prevents them from undertaking immediate repairs—especially when the government has refused to acknowledge the taking or compensate them—then courts may assess damages at the date repairs could reasonably commence. This approach prevents the government from benefiting from its own refusal to pay or from the victim's financial inability to fund the restoration in advance of litigation. This is especially true when the court is not awarding interest on the cost of repair damages. The goal is just compensation. *See Inflation and the Law of Torts and Contracts*, Ottawa Law Review, Vol. 14, pg. 465, discussing *Dodd Properties v. Canterbury City Council*, 1 All E.R. 928, [1980]

Tripp Appraisal

SCDOT's analysis of the Tripp appraisal is confusing since the court only awarded the lost rent and stigma damages from the Tripp appraisal, not the other items the SCDOT discussed in its memorandum.

Ross Travis Estimates

SCDOT argues that the Court should adopt the estimate of its expert, Ross Travis, and ignore the testimony and proposals of the Plaintiff's experts Dan Creed, and David Marion; however, the Travis quote is insufficient to provide the Plaintiff with just compensation. As the Court notes in the order, "There are several differences between the two experts' estimates. Mr. Marion's quote includes a retaining wall between North

Main Street and the front lawn of the Trestle Building which he testified would result in more functional, useable space. He also said it would help in maintenance. Mr. Travis's estimate does not include any pavers only grading and Mr. Travis's drainage estimate includes one large yard drainage inlet and one drop inlet; whereas Mr. Marion's quote is for a trench inlet by the retaining wall. Finally, Mr. Travis's quotes do not include any landscaping (except sod) or replacement for the sprinkler system or trees and shrubbery." Order, ¶ 193-194.

The constitution calls for just compensation, not the cheapest compensation. The Marion quote was not extravagant and used concrete, not brick pavers, and did not include a pergola. It provided the maximum amount of functional space which Mr. Barczak had invested in prior to the project and eliminated the drain inlets which Mr. Barczak specifically said he did not want. It will be easier to maintain. Mr. Travis' quote would leave Mr. Barczak with a drain field containing two drop inlets and little to no utility. David Marion was a highly qualified and experienced expert who gave compelling testimony about his quote and what was needed. The Court carefully listened to the expert witness testimony and found this quote appropriate.

Loss Rental Value

As for the lost rental calculations, Ms. Tripp did a thorough rental analysis based on comparable properties and provided a basis for her opinion. Ms. Tripp's expert opinion set the rental value at 11.00sf or $4,583 a month. Mr. Barczak testified that it

was approximately $6,100 per month and contrary to the SCDOT's assertion he was competent to testify. He was licensed residential real estate appraiser, and while this was commercial property, he owned and rented it. Thus, Ms. Tripp's rental value is within the range of the evidence submitted to the court, and there is no evidence that winding back the clock two years would have made a substantial difference. The Defendants offered no evidence to contradict the lost rental value, other than the Plaintiff's responses to Requests for Admission which only reflect actual rental income and not what was lost or could have been earned. Also, SCDOT argues that the temporary loss of rental value did not affect the entire building, the Court agreed as it only awarded lost rent for the front portion of 5,000 square feet which is supported by the testimony at trial. (Order, ¶99)

The Court carefully reviewed the evidence presented and how it calculated the lost rent in the order, there is no basis to alter or amend the order and the award of lost rent was fully in this Court's discretion. (Order, ¶ 87-99).

Stigma/diminution in value

The evidence for stigma damage is fully supported by Ms. Tripp's and Mr. Barczak's testimony. Ms. Tripp specifically rejected the argument that if the property were repaired, there would be no stigma because it is based on risk perception. Ms. Tripp had specifically studied and valued properties which were subject to flooding and stigma. She testified that she thought the 5% figure was conservative and low.

Further Mr. Barczak testified about the permanent impact on his property. He pointed out that his property was now in a hole and not as visible, that he could not erect an advertising sign, lack of ADA accessibility and loss of functional utility of front yard space. As owner of the property he was competent to testify to value. (See Order, ¶103-106)

SCDOT argues that Mr. Crider's testimony was more credible, but the Court evaluated the witnesses and their testimony and like many cases both experts presented their expert opinions; however, this Court concludes stigma should be awarded.

The SCDOT also suggests since this is commercial property that Mr. Barczak would not have to disclose the prior flooding into the front part of his building under the Residential Property Disclosure Act, but the Act is not the only reason a party would have to disclose the flooding. Mr. Barczak as a broker and residential appraisal would know that the failure to disclose a material fact like prior flooding in the building could lead to future lawsuit on this basis. The Court's order on this issue is supported by the evidence and does not need to be amended. (Order, ¶ 100-106).

MOTION FOR A NEW TRIAL ABSOLUTE

The Court did not err in permitting Mr. Barczak to testify regarding the market and rental value of the property and this is not a basis for a new trial. As the property owner, Mr. Barczak is qualified to provide such testimony. South Carolina courts have consistently held that property owners are competent to testify about the value of their

property. In *Austin v. Stokes-Craven Holding Corp.*, the Supreme Court of South Carolina stated, "ordinarily a property owner, who is familiar with his property and its value, may give his estimate of its value or the damage inflicted upon it even though he is not an expert." *Austin v. Stokes-Craven Holding Corp.*, 387 S.C. 22, 43, 691 S.E.2d 135, 146 (2010) (citing *Barton v. Superior Motors, Inc.*, 309 S.C. 491, 494, 424 S.E.2d 524, 526 (Ct. App. 1992). Unless the owner's lack of qualification is so complete that their testimony is entirely worthless, it is for the jury to assess the weight of the testimony. *Id.* Additionally, "a property owner is competent to estimate their property's value as a matter of law." *Gauld v. O'Shaugnessy Realty Co.*, 380 S.C. 548, 561, 671 S.E.2d 79, 87 (Ct. App. 2008); *see also Hill v. City of Hanahan*, 281 S.C. 527, 316 S.E.2d 681 (Ct. App. 1984) (in an inverse condemnation proceeding, a property owner's testimony that she was knowledgeable about real property in her neighborhood and believed her property to be 75,000 dollars was admissible). Lastly, challenges to a property owner's qualifications to testify about the value of their property go to the weight of the testimony, not its admissibility. (*See previous cited cases.)*

SCDOT penalizes Mr. Barczak because he has appraisal knowledge and skills as a property owner. This is part of who he is as an owner, and he never represented that he was giving his testimony as an expert commercial appraiser.

It also was not error to allow Mr. Barczak to testify about his personal observations of how the surface water behaved on and around his property both before

and after the North Main Street Project. Opinion testimony from a lay witness is admissible if it is: (a) rationally based on the perception of the witness, (b) helpful to the determination of a fact in issue, and (c) does not require special knowledge, skill, experience, or training. Rule 701, SCRE. Here Mr. Barczak, as the owner and developer of the property, personally observed the surface water on the front lot drain into the street before the project and be trapped by the road embankment after the project. Likewise, he observed that the water from the land to his South also drained into the street before the project, but after the project drained down hill dragging mud and silt with it. He also could testify based on his own personal experience and knowledge that the property only flooded once before the project even during the 1000-year flood interval but repeatedly flooded after the project. Mr. Barczak's testimony was consistent with the other testimony of Jason Patterson and Dan Creed.

There was also no error in allowing Dan Creed to testify as to causation. He was designated as an expert prior to trial; the Defendants subpoenaed his file which included the Baxter Survey and topography map. They took his deposition which included Plaintiff's Exhibit 97 as an Exhibit to the deposition which contains Mr. Creed's site observation that "The drop inlet constructed on the property to the south very near the common property line and road right of way appears to have been added to the scope of the roadway improvement project in order to divert runoff forced to travel along the right of way into the roadway drainage system before it is discharged

onto the subject parcel. There was no surprise or prejudice to his opinion and it was corroborated by the County's own witness Jason Patterson. See Exhibits 90 and 91.

There was no error in permitting Mr. Cantey with Cantey Foundation to testify as an expert witness. The Court incorporates by reference the Plaintiff's response to the motion in limine. In short, the Plaintiff's identified a foundation specialist (Mount Valley) as an expert witness early in the litigation. Subsequently, the Plaintiff deciding to use a different foundation expert but he retired, leading to Michael Wilson, Cantey Foundation Specialist. The Defendants had this quote from a 4th supplemental document production since October 25, 2023 which includes Mr. Wilson's name, email address and phone number and a detailed description of the proposed work. There is no prejudice or surprise. The motion for a new trial absolute is denied.

.MOTION FOR A NEW TRIAL NISI REMITTITUR

There is no reason or basis for the Court to reduce the judgment awarded the Plaintiff. The judgment awarded is not unduly liberal and is fully supported by the evidence presented at trial. The judgment is fundamentally fair. The order is based on quotes from qualified experts witnesses and is necessary to restore the Plaintiff to as good a position as he was prior to the taking and to give Mr. the Barczak the benefit of his bargain when he agreed to allow the government to use his property. The Ross Travis quote is insufficient. As Mr. Creed testified to in his deposition, he would not be comfortable with a grading only solution. Also as discussed at trial it included two

drains which Mr. Barczak did not want and would turn his front yard into a drain field. The Marion quote in contract meets the criteria of the Special Provisions, provides less intrusive drainage solutions, and preserves the front yard for use by Mr. Barczak. The motion for new trial nisi remittitur is denied.

THEREFORE, IT IS HEREBY ORDERED:

The motion for election is granted in part. The Plaintiff does not have to elect between inverse condemnation and breach of the special provisions in the permission agreement as this is a different injury and different wrong from inverse condemnation; however, to avoid a possible double recovery, any recovery by the Plaintiff shall apply equally to satisfy the judgments for both the breach of special provisions and inverse condemnation. SCDOT'S motions to alter or amend, motion for a new trial absolute, and motion for new trial nisi remittitur are denied.

IT IS SO ORDERED.

Richland Common Pleas

Case Caption: In The House Llc vs City Of Columbia , defendant, et al

Case Number: 2020CP4004769

Type: Order/Other

So Ordered

s/ Daniel Coble, 2774

STATE OF SOUTH CAROLINA	)	**IN THE COURT OF COMMON PLEAS**
	)	
COUNTY OF RICHLAND	)	**CA NO.: 2020-CP-40-04769**
In the House, LLC,	)	
	)	
Plaintiff,	)	
	)	**ORDER GRANTING IN PART**
-vs-	)	**RICHLAND COUNTY'S MOTION FOR**
	)	**ELECTION AND DENYING MOTION**
Richland County, City of Columbia,	)	**TO ALTER OR AMEND, MOTION FOR**
and the South Carolina Department	)	**NEW TRIAL AND REMITTITUR**
of Transportation,	)	
	)	
Defendant(s).	)	

This matter came before me by way of post-trial motions filed by the Richland County and SCDOT on October 9, 2025.[1] Richland County filed motions for election of remedies, to alter or amend this Court's order dated September 29, 2025, for a new trial absolute and remittitur. After carefully considering the motions and supporting briefs, the Court grants the motion for election of remedies in part and denies the other post-trial motions.

The Court tried this case and heard the presentation of evidence over almost eight days of testimony with eighteen (18) witnesses and well over one hundred (100) exhibits. Thereafter, each of the parties submitted lengthy, detailed orders including findings of fact and conclusions of law in support of their respective positions and what they contended was proven at trial. The Court entered judgment for the Plaintiff in a

[1] The court issued a separate order as to SCDOT's motions.

detailed twenty-nine page order with findings of fact and conclusions of law on September 29, 2025.

MOTION FOR ELECTION OF REMEDIES

"Election of remedies involves a choice between different forms of redress afforded by law *for the same injury* or different forms of proceeding on the same cause of action." *Austin v. Stokes-Craven Holding Corp.*, 387 S.C. 22, 56, 691 S.E.2d 135, 152-53 (2010)(*emphasis added*) (*quoting Taylor v. Medenica*, 324 S.C. 200, 218, 479 S.E.2d 35, 44 (1996)). "It is the act of choosing between inconsistent remedies allowed by law on the *same set of facts*." *Taylor*, 324 S.C. at 218, 479 S.E.2d at 44-45. "The basic purpose of election of remedies is to prevent double recovery for a single wrong.

In its return to the Defendants'[2] motions, the Plaintiff acknowledges that it is not entitled to multiple recoveries *for the same injury* and that the Plaintiff is not seeking multiple recoveries f*or the same wrong*. The Plaintiff further acknowledged to the extent that its damage overlaps with certain causes of action that it is limited to a single recovery. However, the Court differs from the Defendants as to what must be elected and how overlapping damages should be handled.

The Court agrees that as between the causes of action for trespass, inverse condemnation and negligence, that the Plaintiff should elect as these claims are for the same injury and seek almost the same damages; however, since negligence includes

[2] SCDOT also filed post-trial motions.

damages for partial paving of the parking lot, which is a distinct injury not included in the other causes of action, then that is not a double recovery so any election other than negligence would leave a claim for negligence in that amount. Order ¶173 (1/3 of paving, $15,546).

The Court concludes that the Plaintiff does not have to elect between its cause of action related to breach of the special provisions in the slope agreement and the other causes of action as this is a different injury and different wrong from the other causes of action discussed above. The Marion quote is a measure of the amount of damage for breach of the special provisions of the contract. It is not an award of the Marion quote itself. However, the Court acknowledges that the Marion quote is included in the damages for the other three causes of action for which an election will be required; therefore to avoid a double recovery, any recovery by the Plaintiff shall apply equally to satisfy the judgments for both the breach of special provisions, inverse condemnation and such other remedy as may be elected by the Plaintiff (except the distinct injury for negligence discussed above.)

STAY OF EXECUTION

The Plaintiff stipulated and did not seek enforcement on its judgment during the Court's consideration of these post-trial motions. However, the Court denies the stay of injunctive relief pending resolution of any appeal. As the trial testimony bore out, the adequate functioning of the drain installed on the property to the south of the Plaintiff

is essential to limiting the flow of water onto the Plaintiff's property. Multiple experts testified to this. Further, the evidence showed that there was no written agreement as to its maintenance and that the property was not in the SCDOT right of way. An appeal, if filed, could last up to two years and this certainly would prejudice the Plaintiff if the drain were not maintained during this period. Neither SCDOT nor Richland County offered any plans or assurance on how this drain would be maintained and the Plaintiff's property protected during the pendency of any appeal.

Therefore, the Court denies this request and orders that the parties comply with the terms of the order.

COUNTY'S MOTION TO AMEND

1. Inverse Condemnation

The County attempts to recast its actions to try and fit in the mold of a "failure to act" case so it would not be liable for an affirmative, positive, aggressive act. The County first cites *Hawkins v. City of Greenville*, 358 S.C. 280, 594 S.E.2d 557 (Ct. App. 2004); however this case is clearly distinguishable In *Hawkins*, the court found as follows:

In the present case, Hawkins has failed to allege any affirmative acts by the City which damaged the ServiceMaster property or otherwise diminished his rights in the property. Most of the City's "acts" he avers support his inverse condemnation claim are *merely failures to act*. Specifically, Hawkins asserts the City improperly allowed the development of neighboring parcels of commercial property which altered the elevation of the area and added strain to the Laurel Creek drainage pipes beyond their capacity and then failed to replace these pipes. The South Carolina cases addressing inverse condemnation are uniform in requiring that the claim be proved by "affirmative, positive, aggressive" acts by the governmental agency. Allegations of mere failure

to act are insufficient. *Hawkins*, 358 S.C. at 291

Likewise, the limited affirmative acts found by the court in *Hawkins* and noted by the County in their motion are wholly different in the kind and quality of the evidence. The court held, "The only affirmative acts Hawkins cites as forming the basis of his inverse condemnation claim are the replacement of the double-box culvert with the large arched pipe in Laurel Creek in 1994 and the installation of the riprap material along the banks of the creek in 1997. The record contains no evidence that either of these acts caused the flooding of the ServiceMaster property in 1997. Hawkins' own expert testified that the installation of the large arched pipe likely improved the drainage situation in the stormwater basin *Emphasis added.*

This is not a mere failure to act case. The evidence is clear that Richland County for the benefit *and* under the ultimate approval of SCDOT constructed an elevated roadbed that trapped water and channeled it onto Mr Barczak's property. Richland County didn't merely "allow" the berm to be built, they built it.

Several cases not cited by the County in their motion are more closely, if not directly on point. It has long been recognized in South Carolina that "the casting of water on adjoining premises by some act of the governmental authority in the course of making improvements to a public way constitutes a taking of property in violation of Article I, Section 17, of the Constitution." *Kline v. City of Columbia*, 249 S.C. 532 at 536.

In *Milhous v. State Highway Department,* the South Carolina Supreme Court held that the landowner had cause of action against the state for damage to his land resulting from the obstruction of natural flow of surface waters caused by the state's raising of the grade of the highway roadbed. *Milhous v. State Highway Dep't,* 8 S.E.2d 852, 856 (1940).

Similarly, in *Spradley v. South Carolina State Highway Department,* the South Carolina Supreme Court found a plaintiff "could recover just compensation for the taking and damaging" of her land "caused by the dumping and spilling of surface water" upon the plaintiff's land as a result of highway improvement. *Spradley v. South Carolina State Highway Dep't,* 256 S.C. 431, 437, 182 S.E.2d 735, 738 (1971). In *Spradley,* the Highway Department failed to provide proper drainage. *Id.*

Moreover, the Court of Appeals upheld a verdict for a property owner who brought an inverse condemnation action against a town for flood damage he sustained during heavy rain following reconstruction of adjoining street. *Newsome v. Town of Surfside Beach,* 300 S.C. 14, 16, 386 S.E.2d 274, 275 (Ct. App. 1989). The town's reconstruction raised the level of the street approximately seventeen inches. *Id.* During a storm and unusually high tide after the road reconstruction, the road dammed excess water and caused the water to congregate at the lowest piece of land along the road, which was in the plaintiff's house. *Id.* The Court of Appeals held in Newsome that "[f]rom this evidence the jury could have easily concluded that the building up of [the

street] satisfied the requirement of an overt or positive action by the Town necessary to prove a taking under a cause of action for inverse condemnation." *Id.*

Next, the County cites to *Marlowe v. S.C. Dep't of Transportation*, 446 S.C. 309, 919 S.E.2d 553 (2025), to argue that there is not sufficient evidence of causation to hold the County liable under inverse condemnation. However, both the facts and the proof of causation are materially different between *Marlowe* and this case.

In *Marlowe*, the property at issue flooded two times. As noted by the Supreme Court,

> While the Project was ongoing, the home flooded twice-once in October 2015 and again in October 2016. In October 2015, the greatest four-day precipitation total recorded in the region was 23.35 inches, corresponding to a return interval of greater than 1000 years. Flooding in the area was catastrophic, and the Marlowes were forced to move out and begin extensive repairs with assistance from the Federal Emergency Management Agency and personal loans. At the time of the 2015 flood, the existing two-lane road remained in place, and the new wider and elevated roadbed had been constructed, but the new larger culvert had not been completed.
>
> In October 2016, around eight weeks after the Marlowes were able to move back into their home, Hurricane Matthew passed over the South Carolina coast and brought significant rainfall. The greatest 4-day precipitation total recorded in the region surrounding the Marlowes' home was 13.7 inches, corresponding to a return interval of between 200 to 500 years. The home flooded again, and the Marlowes again had to move out. The installation of the new culvert was not completed at the time Hurricane Matthew flooded the home.

Thus, it was an obvious issue as to whether the flooding was caused by the historic rainfall interval of greater than 1000 years and the hurricane, or the road project by SCDOT. Ironically, Mr. Barczak testified that his property did not flood during this same, 1000-year rainfall interval. The Court further noted that, "there must be evidence

that would allow the fact finder to determine, without speculating, how much of the flooding was caused by the construction of the new roadway. However, the evidence, even including Gregorie's "substantial contributor" testimony, does not rise above speculation on the causation issue. Gregorie could only testify there was "a possibility" the flooding of the Marlowes' home would not have occurred if the new roadway had not been constructed as it was." *Id.*

This "mere possibility" evidence - trying to separate damages caused by historic flooding and a hurricane- is quite different than the clear evidence provided by Mr Baczak at trial and noted by the court in its order:

On or about November 15, 2018, Jason Patterson, PE (the Resident Construction Engineer with Richland County PDT) had a site visit with Hugh Wilson and others. He commented on the site visit observations that that the build-up on North Main Street blocks approximately 0.10 Acres on Tract 52 (South of The Property); prior to construction, this area would flow into North Main Street to a catch basin. The buildup has blocked this area from reaching North Main Street. Mr. Patterson prepared a graphic exhibit (Exhibit 90) in which he showed this area (colored in blue) immediately South and above The Property with the box callout, "[a]pproximate Area from Richland GIS Contours that is trapped by roadway embankment (Approx. .10 acre)."

Dan Creed, P.E., the Plaintiff's expert, corroborated Mr. Patterson's testimony. He testified that the elevated road bed trapped the water and based on the topography– it was foreseeable that water would be trapped by the elevated highway and channeled to the Property. He further testified that was the purpose of installing a drain inlet south of the Property.

The County and SCDOT seem to suggest that the magic words "to a reasonable degree of engineering certainty" had to be stated. The Court disagrees. In determining whether particular evidence meets this test it is not necessary that the expert actually use the words "most probably." *Gamble v. Price*, 289 S.C. 538, 347 S.E.2d 131 (Ct. App. 1986). It is sufficient that the testimony is such "as to judicially impress that the opinion ... represents his professional judgment as to the most likely one among the possible causes...." *Norland v. Washington General Hospital*, 461 F.2d 694, 697 (8th Cir.1972) In this case, the Court was judicially impressed by Dan Creed's testimony that the elevated bank from the project was the most likely cause of the flooding of Mr. Barczak's property. Indeed, there was virtually no other alternative evidence presented as to causation. Mr. Barczak testified that prior to construction he had a single water intrusion event, several years prior to the Project, which is why he installed a French drain along the southern border of his building. He testified that, during the 2015 Columbia catastrophic rain event, The Property did not flood; yet after the Project, the first-floor, front area flooded repeatedly. Mr. Barczak offered numerous photographs of

the flooding of his property with mud, silt and the water intrusion onto the first floor of his building. The record is replete with emails from Mr. Barczak notifying the Defendants of this problem and requesting relief.

Ms. Sabrina Odom (then President of the North Main Street Business Association) corroborated Mr. Barczak's testimony. Her office was on the first floor of The Property, and her desk is visible in photographs offered into evidence. Like Mr. Barczak, she testified that prior to the Project, she had no problem with flooding, but that after the Project, she came to the office expecting to use a mop. Further, prior to her departure during rain events, she placed chairs on top of the desks.

On March 15, 2019, Hugh Wilson with LJ, Inc. (the County contractor) submitted RFI No. 13 (Request for Information) to Jason Patterson, the resident construction engineer. Hugh Wilson observed that several tracts in Phase IA2 that previously drained to the roadway were blocked due to the build-up. He further noted that at tract 53 (The Property) no provisions have been made to address the water that is now flowing to, and being trapped, on portions of his property. Based on his review of the cross sections, water at the toe of the proposed slope from portions of tract 205 and all of tract 52, flow down gradient to the Trestle Building property. To further complicate the issue, there are two short walls on the south end of this property that trap water; the water builds up and flows back towards the building. There are no provisions in the

plans to address these walls (although portions of the walls are within the new right of way) nor are there any provisions in the plans to address water that is being trapped between the new toe of slope and The Property. (Ex. 80). Eventually, the County installed a drop inlet to try and capture this water.

The court denies the motion to amend on these grounds.

Finally, Richland County, despite all the evidence to the contrary tries to minimize its role in the project to avoid its constitutional obligations. However, this court correctly concluded that Richland County was responsible. The County was responsible for managing all aspects of the construction in the North Main Project. The County had oversight of all construction. They had weekly and biweekly meetings with all the stakeholders in the project including SCDOT, the contractor, and the City of Columbia. Richland County hired LJ to construct the North Main Street project in accordance with the design plans and SCDOT specifications. Richland County's contract with LJ provides that at the request of the County, the contractor shall provide other work related to the Project that is not within the scope of work provided for in this Agreement. All work by LJ was subject to inspection and test by the County and SCDOT. Furthermore, LJ had to correct or re-perform without charge any Work found by the County not to conform to the Agreement's requirements. When asked about stormwater drainage cast on adjacent property, Kimberly Toney of Richland County

testified that while that normally was the contractor's responsibility, "But, of course, we have to oversee that." "We" being Richland County.

Furthermore, as noted in this court's order, numerous courts have held that governmental entities cannot avoid their constitutional duty to pay just compensation by using contractors. (See Order, ¶ 143-150). The court denies the motion to amend on this ground.

Drain Inlet in Parking Lot

Richland County contends the Court erred in finding a taking in the installation of a drain inlet on his property without permission. Basically, the County is asking the Court to change its mind about conflicting testimony. As the Court concluded in the order:

"The original design plans called for it to be placed within the right of way in the driveway to the parking lot. Hugh Wilson of LJ testified that it would not be effective at its planned location in the driveway; and that after discussing the issue with Jason Patterson and Mr. Barczak, they decided to move it to the parking space location. Mr. Barczak was adamant that he never wanted or agreed to an inlet in that location and that any discussions with Mr. Wilson or Patterson were misconstrued. Mr. Barczak's version of events is corroborated by other evidence. First, Mr. Link's notes indicate that after a meeting with Mr. Barczak the City could eliminate the drainage permission. Second, when Mr. Barczak saw the heavy equipment digging the hole for the inlet, he immediately objected and asked for the equipment to be removed from his property. There is no written document authorizing the installation of the drainage inlet in that location." Order, ¶59-67

Mr. Barczak and Mr. Link both testified about Mr. Barczak not wanting drainage on his property and that he wanted this eliminated. Mr. Barczak also testified about this incident with the machinery on his property. He did not want the drainage on his

property because of maintenance responsibility as well as aesthetics. The Defendants are quick to argue that the Slope Agreement is a standard SCDOT form that Link used because the City did not have a form. If that is the case, then the boilerplate language at the top right corner of the page, is just that. The court denies reconsideration of this issue.

Allegations of Insufficient Damages for Inverse Condemnation

Inexplicably, the County argues that the continuous flooding of Mr. Barczak's property and building, for 15 months is "simply not of constitutional magnitude." This argument is contrary to applicable law and the facts of this case.

South Carolina law is clear that with regard to inverse condemnation claims, there is no distinction between "taking" and "damaging." See *South Carolina State Highway Dep't v. Wilson*, 254 S.C. 360, 366-67, 175 S.E.2d 391, 395 (1970) (holding, "within the purview of this constitutional provision, there is no distinction between taking and damaging and that the least damage to property constitutes a taking within the purview of the Constitution.") (*Emphasis added*); *see also Spradley v. South Carolina State Highway Dep't*, 256 S.C. 431, 182 S.E.2d 735 (1971) (ruling, "In the construction of this Article of our Constitution, we do not recognize a distinction between 'taking' and 'damaging'. A deprivation of the ordinary beneficial use and enjoyment of one's property is equivalent to the taking of it and is as much a 'taking' as though the property was actually appropriated.").

"The constitutional prohibition against taking private property for public use without just compensation must have been intended to protect all the essential elements of ownership which make property valuable, including, of course, the right of user, and the right of enjoyment. *Kline vs. City of Columbia*, 249 S.C. 532, 537, 155 S.E.2d 597 (1967) "South Carolina has taken the broadest possible view of 'what is a taking' and has construed the least actual 'damage' to be a 'taking. *Webb v. Greenwood County*, 229 S.C. 267, 92 S.E.2d 688 (S.C. 1956).

As reflected in this Court's order, the continuous flooding of Mr. Barczak's property caused more than a slight inconvenience for Mr. Barczak. The flooding was so frequent that LJ had to put the furniture on blocks. Sabrina Odom testified that she routinely came in after a rain expecting to have to mop up the floor from water and to putting chairs on the desk when she left. Mr. Barczak testified that he could not rent the front part of his building. The mere fact that he could still rent other parts of this building does not make the taking of the rest "not of constitutional magnitude." He also testified to damage to furniture, which was stored there, including his mother's credenza. There was testimony that his French drain was clogged and needed to be replaced. There was also testimony to structural damage to the SE corner of his building.

The Court denies the motion to amend based on the claim that the damages are "simply of not constitutional magnitude."

Breach of Contract

Richland County argues that it is not responsible for breach of the special provisions in the Slope Agreement, because there is no privity of contract between Richland County and the Plaintiff. This argument lacks merit for several reasons.

First, both other Defendants in this case, the City of Columbia and SCDOT, argued and offered testimony that Richland County was responsible for fulfilling the special provisions. Second, it is undisputed that Richland County was responsible for managing and oversight of construction. Third, Kimberly Toney, Richland County's witness, testified that it was Richland County's responsibility. Consider the following testimony from her Rule 32(a)(5) Designation which was read into evidence:

- Pg. 69, Lines 2-6 & 13-25
  - **15 ...It is understood and agreed that**
  - **16 · · · · the property will be graded to the existing**
  - **17 · · · · concrete apron at the entrance building. · The**
  - **18 · · · · area disturbed will be sodded with Emerald**
  - **19 · · · · Zoysia. · Further, any landscaping items disturbed**
  - **20 · · · · will be replaced and the sprinkler system will be**
  - **21 · · · · repaired and returned to as good or better**
  - **22 · · · · condition. · Construction will tie in, quote,**
  - **23 · · · · smoothly with the landscape wall located to the**
  - **24 · · · · south of the property and the concrete entry**
  - **25 · · · · sidewalks -- the two concrete will be repaired –**

- Pg. 70, Lines 1-2 & 5-18
  - 1 · · · · **replaced. · I'm sorry.· So, whose responsibility**
  - **2 · · · · is it to ensure that that's done?**
  - 5 · A.· · We make sure that the, we, as in the County,

- ·6· · · · makes sure that, because we're managing the
- ·7· · · · construction part, we make sure that the
- ·8· · · · contractor addresses these items.
- ·9· ·**Q.· ·So, would that be a punch list item on the thing**
- **10· · · · like we talked before?**
- 11· ·A.· ·Well, this isn't necessarily a punch list item,
- 12· · · · but we just make sure that as they're working,
- 13· · · · getting to this tract, that these items are
- 14· · · · addressed.· If it becomes -- as we're getting
- 15· · · · into landscape or as we're getting to certain
- 16· · · · features on it, that it gets done.
- 17· ·**Q.· ·Okay.· And we, again, Richland County?**
- 18· ·A.· ·Yes.· Sorry.

Finally, to the extent that the County is relying on lack of privity as a defense, our courts have consistently held that doctrine is not favored. "The erosion of the concept of privity has been a legal phenomenon for more than a decade, and this Court has not been reluctant to contribute to its demise. .... [L]ack of privity as a defense to a cause of action has been of questionable vitality in South Carolina. Today, we seek to still all whispers of its continued existence." *Kennedy v. Columbia Lumber and Mfg. Co., Inc.*, 299 S.C. 335 345, 384 S.E.2d 730 (S.C. 1988). While admittedly those cases focused on implied warranties in the sale of a home, the policy is equally applicable, if not more so here: the unequal bargaining power, the lack of knowledge, reality over technicality.

For all these reasons, the Court denies the motion to amend liability for breach of contract.

Finally, the County argues that Barczak was offered options to complete the work which he rejected. The court already addresses this in the order, where the court held,

There was evidence that Richland County attempted to comply with some of the provisions in the agreement. Exhibit 95 was an email by Jason Patterson to Johnathan Eichelberger by presenting a Tract 53 Plan Sheet which showed various slope ratios of 2:1, 4:1,
and 6:1 onto Mr. Barczak's property along with some stairs and replacement shrubs. Mr. Barczak rejected this proposal.

The problem with this proposal is that the ratios would have resulted in property sloping toward Mr. Barczak's building and Mr. Barczak did not want the drain inlets in his front yard. David Link the right of way agent specifically noted in his field notes that the City could eliminate the drainage permissions.

(Order, ¶186-187)

Not only would the greater slope ratios slope toward the building, but they would also occupy a significant portion of the front yard, which was functional, useable space before. Mr. Barczak was not forced to simply take whatever interpretation of alleged compliance was offered. Furthermore, there was little evidence of additional negotiation or attempts to satisfy these conditions.

As the Court found in the order, "The sidewalks and certain landscaping items have not been replaced, nor has the sprinkler system been repaired and returned to as good or better condition. The construction is not tied in smoothly with the landscape wall and the property

is not properly graded to the concrete apron. Mr. Barczak provided photographs showing his previous sidewalks ending in the side of the embankment and people during a public event on North Main Street helping each other climb up the hill of the embankment in leaving the property." (Order, ¶39-41).

The County also argues that the Plaintiff's claim is barred by the statute of frauds as being a contract that was not performed within one year. This is a back door effort to reinstate the concept of privity because there is a writing, but it is not signed by Richland County. The court also concludes that the contract was capable of being performed within one year, therefore the statute does not apply. If there is a possibility that a contract might be performed within one year, the statute of frauds is not a bar to enforcement of the contract. *Roberts v. Gaskins,* 327 S.C. 478, 484, 486 S.E.2d 771, 774 (Ct.App.1997).

Declaratory Judgment

The County's argument artificially limits the court's power to declare affirmative relief among the parties and the liberal policy of the declaratory judgment act. The declaration may be either affirmative or negative in form and effect. Such declarations shall have the force and effect of a final judgment or decree. S.C. Code § 15-53-20. The Act is to be liberally construed and administered to achieve its intended purpose "to settle and to afford relief from uncertainty and insecurity with respect to rights, status and other legal relations." S.C. Code Ann. § 15–53–130 (2005).

The Plaintiff specifically requested in its Second Amended Complaint for the court to declare "the responsibility for the maintenance of the drain installed to the South of the Property." ¶40(e). There is no question that through a change order, Richland County had no qualms in dealing with the third-party landowner to install the drain inlet on Tract 52 to the South of Mr. Barczak's property. All the experts in the case testified it was essential that this drain is properly maintained to limit the water channeled on to Mr. Barczak's property.

Kim Toney testified in her deposition and through the Rule 32(a)(5) testimony that there was an agreement, but she was not sure if it was written. (Toney, pg. 47, lines 22-25) No such agreement was ever produced to the Plaintiff or offered in evidence at trial. SCDOT testified that the outlet did not appear to be within the SCDOT right of way. Thus, there is a clear uncertainty regarding who will maintain the drain that is essential in minimized the flooding on Mr. Barczak's property.

Mr. Barczak testified that the drain was not being maintained and that the weeds and shrubs were so overgrown that it would be difficult to even find the drain. So any agreement to maintain by the Defendants was clearly ineffectual. Thus, the Court was well within its judicial declaratory powers to declare affirmative relief requiring Richland County (who has already dealt with this landowner) and SCDOT to secure an access easement allow Mr. Barczak to maintain this drain to protect his property.

Just Compensation Damages

The Court's order sets forth the determination of the various damages in detail and how they were calculated. See Order ¶ 77-106; 151-159, therefore, the Court will not simply repeat them here.

The County is fixated on establishing a fixed taking date when the evidence shows that the flooding was continuous and occurred over time. Ms. Tripp, who is a highly qualified MAI appraiser testified that she did not think picking an arbitrary 2018 valuation date was appropriate given the ongoing nature of the flooding and impact on the property. She testified that she had performed hundreds of condemnation appraisals including many for the SCDOT.

As for the lost rental calculations, Ms. Tripp did a thorough rental analysis based on comparable properties and provided a basis for her opinion. Ms. Tripp's expert opinion sets the rental value at 11.00sf or $4,583 month. Mr. Barczak testified that it was approximately $6,100 per month and contrary to the County's assertion he was competent to testify. He was licensed residential real estate appraiser, and while this was commercial property, he owned and rented it. Thus, Ms. Tripp's rental value is well within the range of the evidence submitted to the court, and substantially lower than the owner's testimony. There is no evidence that winding back the clock two years would have made a substantial difference. The Defendants offered no evidence to contradict the lost rental value, other than the Plaintiff's responses to Requests for

Admission which only reflect actual rental income and not what was lost or could have been earned.

As for the length of time for the lost rent, this was thoroughly covered by the Court in its order. "The evidence presented provides some reliable markers. In his Rule 32(a)(5) testimony, Mr. Barczak states that "we are going into month number 9 in June 2019" (Pg. 177 (13-17)). He stated that "There are also photos showing flooding in the office on June 9, 2019" (Exhibit 68a). The record also reflects that Mr. Wilson, with LJ, submitted a proposed change order for the drop inlet on May 10. 2019. In November and December 2019, Mr. Barczak continued damage mitigation from flooding by the Project; he installed a trench around the corner of his building and waterproofed the area. (Exhibits 71 and 72). He also emailed Kimberly Toney (January 9, 2020) stating, "I had to start because I couldn't secure a tenant until I had dry space." (Exhibit 70) Finally, Mr. Barczak testified that the front space remained mostly dry by this point. Thus, the Court finds that from October 2018 until December 27, 2019, Mr. Barczak was unable to rent his building due to flooding caused by the Project. (See Order, ¶95-97)

The evidence for stigma damage is fully supported by Ms. Tripp's and Mr. Barczak's testimony. Ms. Tripp specifically rejected the argument that if the property were repaired, there would be no stigma because it is based on risk perception. Further Mr. Barczak testified about the permanent impact on his property. He pointed out that his property was now in a hole and not as visible, that he could not erect an advertising

sign, lack of ADA accessibility and loss of functional utility of front yard space. As owner of the property he was competent to testify to value. (See Order, ¶ 103-106)

The Court did not err by awarding David Marion's quote. Mr. Marion was highly qualified expert in drainage and outdoor landscaping. Mr. Marion's statement was itemized reflecting the work to be done and its costs. The County offers no evidence how the Marion quote includes costs unrelated to any taking or breach of contract. There is no reason for Mr. Marion to date the repair costs back to 2018-2019 as the relevant figure is what it costs today. The Plaintiff should not be penalized with increased costs because the Defendants dragged the matter out this long. Mr. Barczak did not have the funds to repair back in 2018-2019 which is why he specifically asked for help from the Defendants but received none.

The court did not ignore Ross Travis estimate but it fails to properly compensate the Plaintiff for his loss and to adequately implement the special provisions of the contract. The Travis quote implements two drains on Mr. Barczak's property which he does not want and has already rejected. It also fails to adequately tie in to the existing walls. This is not mere aesthetics as the Marion quote uses cheaper concrete and not block or tile and the trenches and retaining wall allow more use of the front yard of the Trestle Building. Under the Travis quote, the slope would just be a drain field.

The additional estimates for the French drain and landscaping are not unrelated to the project and are supported by the preponderance of the evidence. Again the quotes for repair should not be historically based.

The Cantey foundation estimate is proper and supported by the evidence. The Defendant had this quote since October 25, 2023 as well as Mr. Wilson's contact information. The Court incorporates by reference the Plaintiff's response to the Defendants' motion in limine.

The excavation invoices were clearly efforts at mitigation, Its ironic that the County asserts a defense of failure to mitigate damages, and then argues about the invoices for mitigation when presented. There is ample evidence that the furniture was damaged due to the flooding caused by the construction project. There is the direct testimony of Mr. Barczak. There is the numerous pictures. There is the contractor placing the furniture on blocks to try to mitigate damage.

The evidence shows that both the County and SCDOT are responsible for the taking. (See Order, ¶128-150). The court is not required to apportion liability between the government entities, only that each entity is responsible for acts which satisfy the elements of a taking. The the Court has done this in the order.

The case of *S.C. Dep't of Transp. v. Powell*, 424 S.C. 206, 818 S.E.2d 433 (2018) is applicable. That case holds that once a taking is established, then damages are not limited to the property taken but must consider the project as whole. While *Powell* did

involve a direct condemnation, the principal applies equally to inverse condemnation (once a taking is established).

Trespass

The County contests its liability for trespass primarily based on the allegations that there was simply no evidence that the County *intentionally* caused the intrusion of water onto Plaintiff's property. However, as set forth in this court's order, "Intent in the context of trespass does not require malice or a specific purpose to harm. It is sufficient that the defendant intended the act that caused the invasion, even if they did not intend the resulting damage. *Snow v. City of Columbia,* 305 S.C. 544, 553, 409 S.E.2d 797, 802 (Ct. App 1991). In other words, "intent is proved by showing that the defendant acted voluntarily or that he knew or should have known the result will follow from his act." Id. (*citing Snakenberg v. Hartford Casualty Insurance Co.*, 299 S.C. 164, 383 S.E.2d 2 (Ct.App.1989). Defendants committed an intentional affirmative act and acted voluntarily in erecting the embankment which trapped the water causing water to flow onto Mr. Barczak's property. Furthermore, the Plaintiff's expert, Dan Creed, testified that this flooding was foreseeable based on the topography.

The County contends that while this was foreseeable by an expert, it was not foreseeable by the County; however, the evidence shows that Jason Patterson prepared an exhibit (Exhibit 90) and sent an email (Exhibit 91) on November 16, 2018 to numerous people including officials with Richland County which clearly shows this

impact and yet the property continued to flood for another year. The Court denies the motion to amend as to trespass.

Negligence

The County seeks to avoid liability for negligence by pointing its fingers at the other Defendants, one of whom the Court has dismissed as not being liable. The County claims that "there is no evidence that Richland County was negligent" in the management and oversight of the construction which led to the damages claimed by the Plaintiff. However, the evidence shows that it was foreseeable that the elevation of the roadway would trap the surface water and channel it on to Mr. Barczak's property. See testimony of Dan Creed. As discussed previously with trespass, Jason Patterson with the Richland County PDT (which under the County's contract with LJ is also defined as Richland County) specifically advised County officials about this water being trapped in an email (Ex. 91) and graphic exhibit (Exhibit 90) yet did nothing for over a year while the Trestle Building repeatedly flooded.

The County also throws in that it should have the same design immunity. This will be discussed under the next argument where the County argues about its alleged immunities under the South Carolia Tort Claims Act. (SCTCA).

South Carolina Tort Claims Act

The County argues that it has immunity to the causes of action for trespass and negligence under various sections of the SCTCA. The Court notes "[t]he burden of

establishing a limitation upon liability or an exception to the waiver of immunity under the Tort Claims Act is upon the governmental entity asserting it as an affirmative defense." *Steinke v. S.C. Dep't of Labor, Licensing & Regulation*, 336 S.C. 373, 393, 520 S.E.2d 142, 152 (1999) The Plaintiff will address each of these alleged exceptions to immunity claimed under S.C. Code Ann. §15-78-60 in turn.

Design Immunity 15-78-60(15)

The Court notes that the County goes to great lengths to argue that it was not responsible for the design, therefore it should not now be able to claim design immunity. Second, even if the County could claim design immunity, the damage caused to the Plaintiff was the result of trapped water off the roads and highways and design immunity does not apply. This section applies to highways, roads, streets, causeways, bridges, or other public ways. Finally, the law is clear that design immunity does not apply after notice of the problem. "Although Department of Transportation (DOT) has design immunity under Tort Claims Act (TCA), such immunity does not extend to maintenance issues after the DOT has notice of a hazardous condition.". *Wright v. South Carolina Department of Transportation* (App. 2022) 2022 WL 2444703. *Hawkins v. City of Greenville*, 358 S.C. 280, 594 S.E.2d 557 (Ct. App. 2004) As noted above, the County was on notice as early as November 16, 2018, by the email and graphic exhibit about the trapped water problem being channeled on to Mr. Barczak's property. Hugh Wilson raised the same

issue specifically with Kim Toney and Jason Patterson in RFI No. 13 (Exhibit 80) to which the County never answered.

The County also cites to *Marlowe v. S.C. Dep't of Transportation*, 441 S.C. 319, 332, 893 S.E.2d 21, 28 (Ct. App. 2023), abrogated on other grounds, No. 2023-001808, 2025 WL 909152 (S.C. Mar. 26, 2025), reh'g denied (Sept. 10, 2025) (*citing to Hawkins*, 358 S.C. 280) as to discretionary immunity. However, that only applies when there is evidence the County weighed competing choices and alternatives and made a choice. There is no evidence of that here.

Inspection S.C. Code Ann. §15-78-60(13)

Under that section, a governmental entity is not liable for a loss resulting from "regulatory inspection powers or functions, including failure to make an inspection, or making an inadequate or negligent inspection, of any property to determine whether the property complies or violates any law, regulation, code, or ordinance or contains a hazard to health and safety." The County presented no evidence of a *regulatory inspection* to determine whether the property complies or violates any law, regulation, code, or ordinance or contains a hazard to health and safety. Furthermore, there was an inspection by Jason Patterson and others which revealed the problem. There is no allegation by the Plaintiff that Richland County was negligent or trespassed because of a failed inspection. This exception does not apply and it did, the County failed in its burden of proof.

Other than an employee S.C. Code Ann. §15-78-60(20)

Finally, the County claims it's not responsible for the actions of its Contractor Hugh Wilson or L-J, Inc. First, the Plaintiff argued that the County had an independent duty from its contractor due to its overall management and oversight responsibilities not to concentrate and discharge water on to the Plaintiff's property and then to take action after notice of the problem. Ms. Toney recognized this duty when she testified,

- **Q.· ·Well, who's responsible on this project for**
- ·5· · · **stormwater runoff issues?**
- ·6· · · · · ·MR. WREN:· Object to form.· You can answer.
- ·7· ·A.· ·That would be, during construction, it would
- ·8· · · probably be, more than likely, the -- it's kind
- ·9· · · of tricky because during construction, we
- 10· · · typically say that it's the under the -- it's
- 11· · · under the ownership, so to speak, of the
- 12· · · contractor.· And it's the contractor's
- 13· · · responsibility is what we tend to think.· But, of
- 14· · · course, we have to oversee that.· But we
- 15· · · typically say the contractor is the one that
- 16· · · maintains that.
- 17· ·Q.· ·**And you say we have to oversee that, --**
- 18· ·A.· ·I'm sorry.
- 19· ·**Q.· -- you mean Richland County?**
- 20· ·A.· ·Yes.· I'm sorry.· I have to keep remembering
- 21· · · that.

The County itself has a common law duty not to concentrate and discharge surface water on the Trestle building property. This issue came up in the case of *Madison ex rel. Bryant v. Babcock Center*, 634 S.E.2d 275 (S.C. 2006). In that case, the Court held,

"Department asserts it is not liable for the torts of its independent contractor, Babcock Center, pursuant to S.C .Code Ann. § 15-78-60(20) (2005), which provides that a governmental entity is not liable for an "act or omission of a person other than an employee including but not limited to the criminal actions of third persons." … "We find this position unpersuasive because Department owes a common law duty of care directly to Appellant. The fact an independent contractor provided services to Appellant or the fact a third party may have committed a criminal act in harming Appellant does not affect the existence of Department's duty. If both Department and Babcock Center independently owe a duty of care to Appellant — even if Department's primary role is ensuring that its contractors manage and operate programs properly and provide appropriate care to clients — either may be held liable for negligence without regard to the other."

Furthermore, the record shows Hugh Wilson and L-J, Inc. tried to help Mr. Barczak and specifically requested help from the County (RFI No. 13) which was not answered. Finally, as noted by the Court in its order, the County exercised a greater degree of control over LJ than a typical contractor. (Order, ¶141).

The Court denies the motion to amend on this ground and concludes that the County failed to prove its affirmative defenses of immunity under S.C. Code Ann. §15-78-60.

Waiver/Estoppel/Unclean Hands

The County argues that Mr. Barczak is estopped from asserting the causes of action raised in the complaint based on executing a Slope Permission agreement over two years before construction began near his property. This claim lacks merit. There is no evidence of any false representation or concealment of material facts by Mr. Barczak, or that he intended that the County or other Defendants rely on such facts. Mr. Barczak did not have actual or constructive knowledge that the County would trap water and

repeatedly flood his property. The County certainly had and did acquire knowledge of the true facts when Jason Patterson notified it that the road embankment trapped water and channeled it onto Mr. Barczak's property. Nothing in the Slope Agreement gives the County the reasonable reliance it could flood Mr. Baczak's property based on the Agreement. Mr. Barczak fulfilled all his obligations under the Slope Agreement, the County and SCDOT did not. If anyone was prejudiced, it was Mr. Barczak.

As for laches, the record is replete from the onset of the flooding with Mr. Barczak notifying the County and seeking its help in resolving the problem. It was only after it was clear that the County would not help that Mr. Barczak was forced to file this suit. This is not unreasonable delay or sleeping on rights.

MOTION FOR NEW TRIAL ABSOLUTE

The Court did not err in permitting Mr. Barczak to testify regarding the market and rental value of the property and this is not the basis for a new trial. As the property owner, Mr. Barczak is qualified to provide such testimony. South Carolina courts have consistently held that property owners are competent to testify about the value of their property. In *Austin v. Stokes-Craven Holding Corp.*, the Supreme Court of South Carolina stated, "ordinarily a property owner, who is familiar with his property and its value, may give his estimate of its value or the damage inflicted upon it even though he is not an expert." *Austin v. Stokes-Craven Holding Corp.*, 387 S.C. 22, 43, 691 S.E.2d 135, 146 (2010) (citing *Barton v. Superior Motors, Inc.*, 309 S.C. 491, 494, 424 S.E.2d 524, 526 (Ct.

App. 1992). Unless the owner's lack of qualification is so complete that their testimony is entirely worthless, it is for the jury to assess the weight of the testimony. *Id.* Additionally, "a property owner is competent to estimate their property's value as a matter of law." *Gauld v. O'Shaugnessy Realty Co.*, 380 S.C. 548, 561, 671 S.E.2d 79, 87 (Ct. App. 2008); *see also Hill v. City of Hanahan*, 281 S.C. 527, 316 S.E.2d 681 (Ct. App. 1984) (in an inverse condemnation proceeding, a property owner's testimony that she was knowledgeable about real property in her neighborhood and believed her property to be 75,000 dollars was admissible).

Lastly, challenges to a property owner's qualifications to testify about the value of their property go to the weight of the testimony, not its admissibility. (*See previous cited cases.)*

The County tries to penalize Mr. Barczak simply because he has appraisal knowledge and skills as a property owner.

It was not error to allow Mr. Barczak to testify about his personal observations of how the surface water behaved on and around his own property both before and after the North Main Street Project. opinion testimony from a lay witness is admissible if it is: (a) rationally based on the perception of the witness, (b) helpful to the determination of a fact in issue, and (c) does not require special knowledge, skill, experience, or training. Rule 701, SCRE. Here Mr. Barczak, as the owner and developer of the property, personally observed the surface water on the front lot drain into the street before the project and be trapped by the road embankment after the project. Likewise,

he observed that the water from the land to his South also drained into the street before the project, but after the project drained down hill dragging mud and silt with it. He also could testify based on his own personal experience and knowledge that the property only flooded once before the project even during the 1000-year flood interval but repeatedly flooded after the project. Mr. Barczak's testimony was consistent with the other testimony of Jason Patterson and Dan Creed.

There was no error in allowing Dan Creed to testify as to causation. He was designated as an expert prior to trial; the Defendants subpoenaed his file which included the Baxter Survey and topography map. They took his deposition which included Plaintiff's Exhibit 97 as an Exhibit to the deposition which contains Mr. Creed's site observation that "The drop inlet constructed on the property to the south very near the common property line and road right of way appears to have been added to the scope of the roadway improvement project in order to divert runoff forced to travel along the right of way into the roadway drainage system before it is discharged onto the subject parcel. There was no surprise or prejudice to his opinion and it was corroborated by the County's own witness Jason Patters. See Exhibits 90 and 91.

There was no error in permitting Mr. Cantey with Cantey Foundation to testify as an expert witness. The Court incorporates by reference the Plaintiff's response to the Defendants' motion in limine. In short, the Plaintiff identified a foundation specialist (Mount Valley) as an expert witness early in the litigation. Subsequently, the Plaintiff

deciding to use a different foundation expert but he retired, leading to Michael Wilson, Cantey Foundation Specialist. The Defendants had this quote from a 4th supplemental document production since October 25, 2023 which includes Mr. Wilson's name, email address and phone number and a detailed description of the proposed work. There is no prejudice or surprise.

MOTION FOR NEW TRIAL REMITTITUR

There is no reason or basis for the Court to reduce the judgment awarded the Plaintiff. It is not unduly liberal and is fully supported by the evidence presented at trial. The order is based on quotes from qualified experts witnesses and is necessary to restore the Plaintiff to as good a position as he was prior to the taking and to give Mr. the Barczak the benefit of his bargain when he agreed to allow the government to use his property. The Ross Travis quote is insufficient. As Mr. Creed testified to in his deposition, he would not be comfortable with a grading only solution. Also, as discussed at trial it included two drains which Mr. Barczak did not want and the proposed solution would turn his front yard into a drain field. The Marion quote in his contract meets the criteria of the Special Provisions, provides less intrusive drainage solutions, and preserves the front yard for use by Mr. Barczak.

THEREFORE, IT IS HEREBY ORDERED:

The motion for election is granted in part and as to Richland County, the Plaintiff shall elect between the remedies of inverse condemnation, trespass and negligence

within ten (10) days of entry of this order. The Plaintiff shall retain a negligence judgment against Richland County for 1/3 of the paving costs, as this is a distinct injury not included in the other causes of action, and not a double recovery so any election other than negligence would leave a judgment for negligence in that amount. Order ¶173 (1/3 of paving, $15,546).

The Plaintiff does not have to elect between these causes of action and breach of the special provisions in the permission agreement as this is a different injury and different wrong from the other causes of action discussed above; however, to avoid a double recovery, any recovery by the Plaintiff shall apply equally to satisfy the judgments for both the breach of special provisions, inverse condemnation and such other remedy as may be elected by the Plaintiff (except the distinct injury for negligence discussed above.)

Richland County's motion to amend, motion for a new trial absolute and for remittitur, are denied.

IT IS SO ORDERED.

Richland Common Pleas

Case Caption: In The House Llc vs City Of Columbia , defendant, et al

Case Number: 2020CP4004769

Type: Order/Other

So Ordered

s/ Daniel Coble, 2774