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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

The Honorable Carmen T. Mullen, Circuit Court Judge
Circuit Court Case No. 2022-CP-07-01978

Appellate Case No. 2025-000615

Broad Creek Development, LLC,

Appellant,

v.

Beaufort County,

Respondent.

**RECORD ON APPEAL
VOLUME 12 (Pages 3839-3853)**

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STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT)	
TMS: R552 010 000 0648 0000	)	CASE NO. 2022-CP-07-01978
R552 010 000 0649 0000)	
)	
BROAD CREEK DEVELOPMENT, LLC,	)	PLAINTIFF/LANDOWNER’S
	)	MEMORANDUM IN OPPOSITION
Plaintiff/Landowner,	)	TO DEFENDANT/CONDEMNOR’S
	)	MOTION TO SET MATTER FOR
v.	)	TRIAL AS A PRIORITY MATTER
)	
BEAUFORT COUNTY,)	
)	
Defendant/Condemnor.)	
_____)	

Plaintiff/Landowner Broad Creek Development, LLC (“Broad Creek”) opposes Defendant/Condemnor Beaufort County’s (“Beaufort County” or “County”) Motion to Schedule this Matter for Trial as a Priority Matter for the following reasons.

INTRODUCTION

For convenience of the Court, Broad Creek incorporates herein by reference the factual and procedural background set forth in its February 21, 2023 memorandum opposing the County’s previous motion for priority, as well as in its memorandum in opposition to the County’s motion for complex designation.

Beaufort County filed its current motion for priority trial date less than one month after its previous motion for statutory priority was denied by this Court. Broad Creek asserts it has not completed discovery for this case, due in large part to the County’s half-hearted commitment to the discovery process. The County’s commitment to cooperate with opposing counsel, provide full and fair answers to interrogatories, produce requested documents, schedule depositions, and narrow the issues through motion practice, would be ample measures to propel the case forward.

The County's repeated Motions for Priority are incongruous with its pattern of evasiveness and delay, and furthermore are an abuse of judicial economy.

ARGUMENT

I. On February 27, 2023, Judge Mullen Denied the County's Previous Motion for Priority.

The County has moved repeatedly for a priority designation in this case, albeit under different covers, to hastily force a trial for which neither party will be prepared. Beaufort County's most recent Motion for Priority, arguing the S.C. Eminent Domain Procedures Act provided grounds, was denied by Judge Mullen on February 27, 2023, and this Motion was filed *eleven (11) days* later on March 10, 2023.

Having run out of any plausible legal basis for its request, the County now resorts to moving for priority under Rule 40(h), SCRPC, which does not contemplate or grant parties an ability to move for priority designation. Instead, it provides that the Chief Administrative Judge, with the clerk, is responsible for setting all nonjury matters for disposition, and that priority in scheduling hearings on nonjury matters "shall be given to all motions designated Priority Matter which includes emergency matters, discovery motions, and all requests for Scheduling Orders[.]" Rule 40(h), SCRPC.

Here, the County misconstrues the rule. Its motion quotes part of the rule's final sentence, omitting the beginning clause, "Provided, however," which refers to the foregoing portions discussing matters previously designated as priority. *See* Rule 40(h), SCRPC. Thus, the 120-day reference is a backstop to prevent the immediate scheduling of trials in matters already designated priority.

Additionally, the rule does not *require* matters be scheduled for trial after 120 days or give parties the right to demand trials be scheduled in matters in which the parties have just begun the

discovery process. Such a rule or right would contravene all principles of justice and fair play in our judicial system.

There is no ground that supports, or even allows, Condemnor's request for a priority trial date, and certainly no reason provided for this Court to reverse its previous decision to deny the same request.

II. The County Seeks to Impose Prejudice and Undue Burden on Broad Creek by Repeatedly Demanding an Immediate Trial, While at the Same Time Not Complying with Its Discovery Obligations.

The County continues to request that this matter be set for trial as a priority matter, yet behind the scenes, participates very slowly in the discovery process. Its conduct clearly contravenes the principles and mandates set forth by the courts in South Carolina.

“The gist and gravamen of the discovery rules mandate full and fair disclosure to prevent a trial from becoming a guessing game or one of ambush for either party.” *Scott v. Greenville Hous. Auth.*, 579 S.E.2d 151, 158 (Ct. App. 2003) (internal citation omitted. Parties have an affirmative duty “to answer interrogatories and respond to requests to produce . . . [and] must disclose all evidence, or at least the existence of evidence, that relates to the case, not only evidence which they intend to use at trial.” *CFRE, LLC v. Greenville Cty. Assessor*, 395 S.C. 67, 83, 716 S.E.2d 877, 885 (2011). Such disclosure *reduces* trial time, and strain on judicial resources, by eliminating issues already proven and streamlining proceedings solely to issues remaining to be decided (*Scott*, 579 S.E.2d at 156), while still ensuring a final decision made “on the merits after a full and fair hearing,” *Reed v. Clark*, 277 S.C. 310, 316, 286 S.E.2d 384, 388 (1982) (internal citation omitted).

A. The County's Document Production and Discovery Responses Are Deficient.

The County's written responses to Broad Creek's initial discovery requests, served a month after the deadline, were deficient and/or incomplete, as set forth in the undersigned's March 16,

2023, correspondence to County's counsel attached hereto as **Exhibit A**. Therein, Broad Creek requested the deficiencies be cured on or before March 27, 2023. To date, no supplemental discovery or response to this letter has been received.

Evidencing the County's incomplete document production, third-party subpoena production has yielded correspondence with County employees, as well as surveys, site plans, proposals, and other documents which were requested in discovery but not produced by the County, or included in its privilege log.

B. The County Has Not Been Responsive to Deposition Scheduling Requests.

During a telephone conference among the parties' counsel on March 3, 2023, Broad Creek requested dates when Beaufort County's designated witness(es)/employees would be available for its Rule 30(b)(6) deposition. As of this writing, the County has not offered any dates for consideration, but instead has delayed the process by questioning the proposed examination topics. *See Exhibit B* attached hereto, March 27, 2023, email correspondence from County's counsel.

Similarly, during the aforementioned March 3 conference, the parties agreed that the deposition of Landowner would be taken by the County on March 24, 2023. However, the County cancelled the deposition on March 16, 2023, and has not replied to Landowner's offering of new dates for rescheduling.

Although the County states in its motion that it "anticipate[s] [P]laintiff can call three of four witnesses," and take "four or so" depositions, the County did not ask Landowner which witnesses it would depose and incorrectly assumes the scope of Landowner's evidence gathering. The County's interrogatory responses listed *19 individuals* who are witnesses to the facts of this case. Even at an aggressive pace of two depositions per month, it could take more than a year to depose all of them. In addition to the appraisers and County employees which the County listed

as witnesses, third-party vendors and contractors, who have provided information through the subpoena process may require deposition as well.

III. Broad Creek Has Been Diligent in Conducting Discovery.

Broad Creek has sought to expedite discovery in this matter via all available methods. Within weeks of the County filing its responsive pleading, Broad Creek served its initial written discovery requests in this matter. It has timely responded, and supplemented its responses, to the County's initial discovery requests. Utilizing all of the written discovery tools at its disposal, Broad Creek served a number of subpoenas and FOIA requests for documents on third-parties, some of which have yielded documents that should have been, but were not, produced by the County and others which are still outstanding.

Most recently, in response to information obtained during discovery, Broad Creek served its second sets of requests for admission and production on the County on March 23, 2023. If the County requires two full months to serve responses and documents to Broad Creek's second requests to produce, as it did with the first set, this will further confirm the County's repetitive requests for priority are only window dressing requested to hinder Broad Creek's ability to pursue its claims.

Broad Creek has provided available dates for the deposition of its Rule 30(b)(6) witness, proposed topics for the County's Rule 30(b)(6) deposition, and requested available dates for the taking of the same. As of this filing, it is still awaiting the County's responses to the foregoing.

IV. To Adequately Prepare for Trial, Broad Creek Needs to Complete Third-Party Discovery, Depose the County and Its Witnesses, and Conduct Follow-Up Discovery. The Case Could Also Benefit from Motions Practice to Narrow the Triable Issues.

The County will not be prejudiced by allowing Plaintiff/Landowner its constitutionally guaranteed right to due process through full and fair discovery of the facts and issues in this case.

Litigants are granted rights under the South Carolina Rules of Civil Procedure to obtain information and evidence relating to the claims and defenses alleged, such rights also benefitting the Court so as not to waste judicial resources. Additionally, the Court's rules provide for motions practice, such as those contemplated under Rule 56(d), SCRPC, which allows identification of issues actually in dispute and narrowing of the issues to be tried.

A key component of the discovery process is the taking of depositions. As set forth *supra*, Broad Creek has been unable to schedule the taking of depositions of the County or County officials/employees. It cannot adequately prepare for trial without conducting the same, or without completing third-party discovery, such as that relating to appraisers, vendors, and ferry owners/operators.

Accordingly, Broad Creek must be allowed to complete the *full and fair discovery* it is entitled to by the rules of civil procedure, such that it can pursue its claims via its constitutional right to a fair and just trial of the issues.

V. A Reasonable Scheduling Order is Appropriate in this Case.

Consistent with its ongoing attempt to diligently pursue discovery, and in recognition that a reasonable scheduling order is appropriate, Broad Creek previously proposed deadlines for such an order to opposing counsel. However, the County has not provided scheduling deadlines it finds amenable or otherwise indicated it wishes to consent to such an order.

Broad Creek's proposed scheduling order for the Court's consideration is attached hereto as **Exhibit C.**

CONCLUSION

For the foregoing reasons, Defendant/Condemnor Beaufort County's Motion to Set a Priority Date for Trial should be denied.

s/Richard D. Bybee, Esq.

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PLAINTIFF/LANDOWNER**

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March 29, 2023



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March 16, 2023

VIA U.S. MAIL AND EMAIL

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RE: *Broad Creek Development, LLC v. Beaufort County*
Case No. 2022-CP-07-1978
Bybee & Tibbals File No. 1139-00001

Dear Chris:

We, as counsel for Plaintiff Broad Creek Development, LLC's ("Plaintiff"), are in receipt of Defendant Beaufort County's ("County" or "Condemnor") answers and supplemental answers to Plaintiff's First Set of Interrogatories, and its Responses to Plaintiff's First Requests to Produce to the County. Having had adequate time to review the County's responses and document production, this letter serves to identify the deficiencies in the County's discovery responses, in the hope that these issues can be resolved without the necessity of Court intervention.

As an initial matter, please provide the County's sworn verification of its answers to Plaintiff's interrogatories, as required under Rule 33(a), SCRPC. *See* Rule 33(a), SCRPC ("Each interrogatory shall be answered separately and fully in writing under oath . . . The answers are to be signed by the person making them, and the objections signed by the attorney making them.")

Also of broader import, the County must withdraw all of its objections to individual requests, as well as its 11 general objections asserted in each set of responses. As stated in our letter dated January 6, 2023, the County waived any objections it may have had because it failed to timely serve its responses. *See* Rules 33(a), 34(b), 37(d)(2), SCRPC; *see generally* *CFRE, LLC v. Greenville Cty. Assessor*, 395 S.C. 67, 83, 716 S.E.2d 877, 885 (2011); Fed. R. Civ. P. 33(b)(4). Deficiencies existing in the County's specific responses are addressed below.

Answers to Interrogatories

EXHIBIT A

Interrogatory No. 2: In responding to this request for “plats, sketches, plans, specifications, planning documents, site selection criteria, or other” documents or ESI relating to the claims or defenses in this case, Condemnor refers to 7,088 pages of production. However, the County’s production did not include any plats, plans, specifications, planning documents or site criteria. Further, Condemnor produced a proposal from Alliance Consulting Engineers (Alliance) which stated there were 3 designs, however only 2 were produced. This omission raises the presumption that more documents and correspondence exist that have not been produced. Additionally, the County must either supplement its answer to state that many of the requested materials do not exist, or produce the plans, specifications, and site criteria in its possession, custody, or control. Because Plaintiff is entitled to this information under Rule 26(b), SCRCP, the County must supplement its answer to identify such plats, plans, specifications, planning documents or site criteria, or, alternatively, state that none exist.

Interrogatory No. 4: Plaintiff’s interrogatory no. 4 requested identification of all appraisers assigned or engaged by the County to estimate the subject property’s fair market value, as well as any review appraisers engaged to review other persons’ appraisals. The County’s response is deficient as it fails to identify any review appraiser. In the event that the County did not engage any review appraiser to review appraisals of this property, it must supplement its answer to state as much.

Interrogatory No. 9: The County failed to particularly identify any public or private sources of funding that it has used or will actually be using for the planning, design, property acquisition or construction of all or part of its project at issue – which is the information requested in interrogatory no. 9. Because Plaintiff is entitled to this information under Rule 26(b), SCRCP, the County must supplement its answer to identify such sources of funding and the amount(s) funded, or, alternatively, state that no sources of funding have been utilized or secured/earmarked for the project.

Interrogatory No. 14: After Condemnor responded to Plaintiff’s request to identify marine design engineers or contractors who were consulted for the project at issue, Plaintiff subpoenaed McSweeney Engineers, LLC (McSweeney) file, an entity Condemnor identified in response. The subpoena response revealed that McSweeney engaged a third party, F&ME Consultants, to perform the subject work, meaning Condemnor failed to fully answer the interrogatory and provide all responsive information. Additionally, Condemnor must supplement its production to provide all non-privileged documents, correspondence, and/or ESI which relate to third parties the County has hired, or otherwise engaged for services or proposals involving the identification, acquisition, permitting, and/or construction of a ferry embarkation facility in Beaufort County.

Interrogatory No. 15: In answering this interrogatory, Condemnor only provided Requests for Proposals (RFPs) and submissions for ferry service providers. As a result, Condemnor did not answer the interrogatory because it did not provide any RFPs or Requests for Qualifications (RFQs) advertised for design services for any portion of the Project – as required by the Beaufort County Purchasing Ordinance, or procurement code, e.g., the provisions contained in Chapter 2, Article VII, Division 4 of the Beaufort County Code of Ordinances. Because Plaintiff is entitled

to this information under Rule 26(b), SCRCPC, the County must supplement its answer to identify such RFPs or RFQs, or, alternatively, state that none have been issued.

Interrogatory No. 16: Condemnor failed to respond to this interrogatory. It must provide an answer stating whether it intends to enter into a design-build or a design-bid contract for the subject project (and the process to approve any contract award), or, alternatively, state that the County is unaware of which type of contract it will enter into.

Interrogatory No. 21: Condemnor's answer provides no information responsive to this request – information relating to any forecasted phases the County intends to employ for the Project, including the manner and timing in which the project was or will be phased, the number of phases, how it decided on and any reasons for any such forecasted phases or segments, and any studies which support the same.

Interrogatory No. 25: It is entirely unclear why Condemnor responded in the manner that it did to interrogatory no. 25. Seeking identification of the County's planning and condemnation *process* utilized for past road or other condemnation projects, the County provided the name of a County employee. Obviously, because a person is not a process, the County must supplement its response to provide an answer.

Interrogatory No. 32: Condemnor's Motion for Leave to File an Amended Complaint does not change its obligation to respond to the Interrogatory. Additionally, Condemnor does not describe how or when it provided its "valid appraisal" to Plaintiff.

Interrogatory No. 33: Condemnor's answer sidesteps Landowner's interrogatory by asserting an additional defense in response than the one at issue in the request. Condemnor attempts to conflate the issue of standing with its sixth defense, which alleged that even if Condemnor did not comply with SCEDPA, Landowner must show prejudice or damage. Accordingly, Condemnor must identify all facts and information supporting its contention that Plaintiff lacks standing, as well as its contention that Plaintiff must prove prejudice to succeed in its claims.

Interrogatory No. 34: Condemnor failed to identify any pre-filing statutory rights which are and continue to be available to Plaintiff, as Condemnor's seventh defense alleges. Condemnor instead recites post-filing rights available in a valid condemnation action which is not stayed by a challenge action.

Interrogatory No. 35: Condemnor did not respond to this interrogatory's request for facts and information supporting its defenses of waiver, laches, or estoppel, nor does it make any generic conclusory statements relating to any waiver or laches defense.

Interrogatory No. 36: In its response, the County stated it must conduct discovery to ascertain any information supporting its allegation that Plaintiff has acted in bad faith. This is entirely inadequate and contradicts the County's filings and representations made in this case. Moreover, its motion for complex case designation states that the County will rely on witnesses from the County at trial, and that no discovery remains to be conducted by the County besides one or two

depositions. Accordingly, the County's answer to this interrogatory, or lack thereof, indicating it is not aware of any facts or information supporting its contention that Plaintiff acted in bad faith, evidences either a violation of South Carolina's rules of discovery, or a need for the Court to strike this allegation made by the County.

Requests to Produce ("RTP")

RTP No. 3: The County's documents produced and written response to this request for documents, correspondence, and ESI relating to this case's subject matter are deficient. Responsive materials, including those generated by, or sent to or from, from County Council member, County employees, or any other witness have not been produced. This is evidenced by the numerous non-privileged emails Plaintiff obtained through the subpoena process that were not produced by the County. Accordingly, the presumption is created that the County is in possession, custody, or control of additional responsive documents.

RTP No. 6: The County's response does not identify, and its production does not include, any documents containing review appraisals or market studies, as requested in RTP no. 6. The County must produce such documents if they exist, or, alternatively, supplement its response to state that no review appraisals have been conducted.

RPT No. 9: It appears that one of the three designs from Alliance Consulting Engineers, as detailed in its proposal produced by the county, is not included in the County's document production. In addition, the County's response and production omitted any materials relating to the County's relationship with F&ME Consultants, or the work performed or proposed by F&ME (*see supra* re response to interrogatory no. 14). Based on these omissions, Plaintiff requests that the County perform a diligent search of its records in order to produce all materials relating to third parties hired or engaged by or on behalf of the County for services or proposals involving the identification, acquisition, permitting, and/or construction of a ferry embarkation facility in Beaufort County.

RTP No. 10: The County produced no permits, permit applications, or correspondence between the County and any permitting authorities. However, a November 15, 2022, email from Hank Amundson to David Wilhelm states, "I can't find an email that I remember seeing of what you sent to and received from Alex Pinckney." Alex Pinckney is a Project Manager in the Beaufort Office of the Critical Area Permitting Section of the Ocean & Coastal Resource Management (OCRM) division of the South Carolina Department of Health and Environmental Control (SCDHEC). Accordingly, it appears that the County is in possession, custody, or control of additional responsive documents and correspondence that have not been produced.

RTP No. 11: The County's production did not include any of the requested documents or correspondence relating to marine design engineers, site criteria, site studies, restricted appraisals, or professional opinions on or relating to the foregoing. Omissions noted above, including the McSweeney / F&ME, OCRM, and the third Alliance design documents, raise the presumption that responsive documents and correspondence exist that have not been produced.

Christopher L. Murphy, Esq.
March 16, 2023
Page 5

We are happy to work with you to resolve these issues without the necessity of Court intervention. However, Plaintiff will reluctantly be forced to move to compel the County does not supplement its responses and production, or otherwise cure the deficiencies noted herein, by March 27, 2023.

Please do not hesitate to contact us if you have any questions or wish to discuss further.

Kind regards,

BYBEE & TIBBALS, LLC



Richard D. Bybee

ELECTRONICALLY FILED - 2023 Mar 29 4:55 PM - BEAUFORT - COMMON PLEAS - CASE#2022CP0701978

EXHIBIT A

R. p. 3850

Richard Bybee

From: Christopher L. Murphy <cmurphy@rlattorneys.com>
Sent: Monday, March 27, 2023 2:36 PM
To: Richard Bybee; Jeff Tibbals
Cc: Christopher L. Murphy
Subject: FW: Broad Creek (Challenge Action)

Rick and Jeff:

I am putting together a folks for your 30(b)(6) depo and am not sure what you are looking for with request no. 12

- 12. Facts, information, materials, and matters related to and concerning any defenses to the Complaint, set forth or alleged by the Town in its pleadings or filings in this case.

We alleged a few affirmative defenses which are legal in nature and self exclamatory. There are no witnesses outside of attorney/client relationship that can explain them. Thus no one will be addressing that no. If you are looking for somethings specific, then I am happy to accommodate if possible.

Christopher L. Murphy, Esquire
Admitted in South Carolina
(please excuse typos - I have fat fingers and never learned to type)
146 Fairchild Street, Suite 130
Charleston, SC 29492

cmurphy@rlattorneys.com
direct line 843-800-1187
cell 843-926-0146

Contact Information



ALBUQUERQUE | BAKERSFIELD | BURBANK | CHARLESTON | DALLAS | DENVER | FT LAUDERDALE | HIDALGO COUNTY (THE VALLEY) | HOUSTON | JACKSON | JACKSONVILLE | LAS VEGAS | LOS ANGELES | MIAMI | ORANGE COUNTY | ORLANDO | PHOENIX | RIVERSIDE | SACRAMENTO | SALT LAKE CITY | SAN ANTONIO | SAN DIEGO | SARASOTA | TAMPA | LONDON, UK

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT	)	CASE NO. 2022-CP-07-01978
TMS: R552 010 000 0648 0000)	
R552 010 000 0649 0000)	
)	
BROAD CREEK DEVELOPMENT, LLC,)	
)	
Plaintiff/Landowner,	)	PROPOSED SCHEDULING ORDER
)	
v.)	
)	
BEAUFORT COUNTY,)	
)	
Defendant/Condemnor.)	
_____)	

Pursuant to Rule 40(e) of the South Carolina Rules of Civil Procedure, the parties consent to the following Consent Scheduling Order. In an effort to manage the discovery, motions, and trial for the above referenced matter, the parties consent to the following:

1. Identification of all expert witnesses shall be completed no later than **August 24, 2023**.
2. Discovery shall be completed no later than **September 24, 2023**. All written discovery requests shall be served at such time as to afford the responding party the full time provided under the applicable rule of the South Carolina Rules of Civil Procedure.
3. Mediation shall be completed on or before **October 24, 2023**.
4. All dispositive motions shall be filed on or before **November 24, 2023**.
5. All pre-trial briefs shall be filed on or before **February 1, 2024**.
6. This case shall be set for trial on or after **March 1, 2024**.

This scheduling order may be altered or amended by written consent of all parties, with the exception of the trial date, which shall not be altered unless so ordered by the Court.

AND IT IS SO ORDERED.

[JUDGE’S SIGNATURE PAGE TO FOLLOW]

RECEIVED

May 13 2026

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

The Honorable Carmen T. Mullen, Circuit Court Judge
Circuit Court Case No. 2022-CP-07-01978

Appellate Case No. 2025-000615

Broad Creek Development, LLC

Appellant,

v.

Beaufort County

Respondent.

RULE 210(g) CERTIFICATE

I, the undersigned counsel for Appellant, pursuant to Rule 210(g), SCACR, certify that the Record on Appeal Volume 12 contains all material proposed to be included by any of the parties and not any other material.

Respectfully submitted,

s/ Jeffrey S. Tibbals

Jeffrey S. Tibbals (SC Bar No. 72628)

BYBEE & TIBBALS, LLC

1100 Queensborough Blvd., Suite 202

Mt. Pleasant, SC 29464

Tel: (843) 881-1623

*Attorney For Appellant Broad Creek
Development, LLC*

May 13, 2026

R. p. 3853