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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
Judge Carmen T. Mullen, Circuit Court Judge

Appellate Case No. 2025-000615
Circuit Court Case No. 2022-CP-07-01978

Broad Creek Development, LLC .....Appellant,

v.

Beaufort County .....Respondent.

RESPONDENT'S FINAL BRIEF

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May 18, 2026

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STATEMENT OF THE CASE

The present action challenges the constitutionality of Respondent, Beaufort County's, (hereinafter "the County"), attempt to acquire Appellant Broad Creek Development, LLC's (hereinafter "Landowner") 4.95 acre property, (referred to as the "Helmsman property" or "Property"), by condemnation filed September 15, 2022. (R. pp. 46-50). The County sought to acquire this Property in order to construct a ferry landing on the mainland side in order to continue public transportation to Daufuskie Island (hereinafter "Project"). The County originally planned to construct the necessary infrastructure - parking lot, restrooms and dock within the condemned property, but the plans changed due to issues created by the 'Challenge Action.' (R. p. 1850, lines 12-17; R. p. 1875, lines 9-10).

In response to the Condemnation, Landowner filed a 'Challenge Action' on October 12, 2022, pursuant to S.C. Code § 28-2-470. (R. pp. 53-59). In its 'Challenge Action,' the Landowner argued both constitutional violations and statutory violations with the Project.

Since the Project originally included a single property, the 'Challenge Action' effectively

stayed the entire project which threatened the County's ability to provide public transportation to Daufuskie Island residents, employees and tourists. Six (6) days later, on October 18, 2022, the County filed its initial Answer and later filed its Amended Answer and Request for an Expedited Bench Trial under S.C. Code § 28-2-310 in response. (R. pp. 65-70; R. pp. 71-76). The County filed its Memorandum in Support of Priority on February 22, 2023. Landowner objected to the expedited status and filed a Motion in Opposition on February 21, 2023. (R. pp. 2007-2015). Ultimately, the Court sided with the Landowner and denied the Motion for Priority. (R. pp. 1-6).

On March 23, 2023, the County asked the trial court for a day certain pursuant to SCRCP 40(h). Again, the Landowner opposed any scheduling and filed a Memorandum in Opposition on March 29, 2023, stating, "[t]he 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." (R. p. 3842). In response to the County's motion, the trial court finally issued a Case Management Order on September 7, 2023, which gave the County some guidance for the court to rule on the issues. (R. pp. 7-9). Landowner filed a Motion to Amend the Case Management Order on September 15, 2023, seeking to further extend the trial date. (R. pp. 2040-2042).

Two (2) years later, the trial court heard the matter on October 14, 2024, and issued an initial Order in favor of the County on February 18, 2025, and an amended Order on March 7, 2025, in response to Landowner's Motion to Reconsider. (R. pp. 10-27 & 28-45). The Landowner filed a timely appeal of the trial court's ruling, which continues to put the project on hold.

Ironically, the delay of this case eliminated most, if not all of Landowner's arguments about permitting, due diligence, adequate studies, etc. that it raised in its complaint.

STANDARD OF REVIEW

The County agrees with Landowner that this Court should apply a preponderance of the evidence standard in this action. *Ga. Dep't of Transp. v. Jasper Cnty.*, 355 S.C. 631, 636 n.3, 586 S.E.2d 853, 855 n.3 (2003) ("An action challenging a condemnation under § 28-2-470 is considered one in equity because it essentially seeks to enjoin the condemnation. Accordingly, on review we take our own view of the preponderance of the evidence.") (citing S. *Dev. Land and Golf Co. Ltd. v. S.C. Public Serv. Auth*., 305 S.C. 507, 409 S.E.2d. 428 (Ct. App 1991) ("*S. Dev. Land"*), aff'd in part, rev'd in part on other grounds, 311 S.C. 29, 426 S.E.2d 748 (1993)).

STATEMENT OF FACTS

Long before the underlying action, Beaufort County Council made the decision to provide public transportation via ferry to Daufuskie Island. Thus, the County needed to provide a mainland landing site and an island landing site. The island side landing is not an issue in this litigation.

As to the mainland side landing, the County previously leased a private landing facility, referred to as Palmetto Bay, which Hurricane Matthew destroyed in 2017. This forced the County to move the mainland site to the Buckingham Landing facility. The Buckingham Landing site contained approximately ninety (90) parking spaces on-site (R. p. 1849, lines 6-10). Since the on-site parking did not meet the necessary parking needs, the County procured a Park & Ride service and leased about ninety (90) to one hundred (100) additional parking spaces at the Moss Creek Shopping center. (R. p 1849, lines 11-14). Moss Creek terminated the relationship which forced the County to scramble to arrange a deal with the Tanger Outlet Center. (R. p 1849, lines 15-19). This added about seventy-five (75) to ninety (90) spaces. (R. p 1849, lines 20-23). In total, the Buckingham Landing facility included approximately one hundred and seventy (170) to one hundred and eighty (180) spaces, depending on how the cars

were parked. (R. p. 1849, line 24 – p. 1850, line 1). The uncontested testimony indicates that parking at Buckingham would reach full capacity during peak season and the County would turn people away at times. (R. p. 1853, lines 6-12; R. p. 1850, lines 2-11; R. p. 1980, lines 6-10). Clearly, the County needed to provide more than the one hundred and seventy (170) to one hundred and eighty (180) parking spaces contained at Buckingham Landing.

On June 11, 2021, the residents of the Buckingham neighborhood filed a lawsuit (hereinafter the "*Ware*" matter) to terminate the site as a ferry landing due to issues with the parking, noise and traffic. (R. pp. 2414-2427). On May 22, 2022, Circuit Court Judge Bentley Price ordered the County to design and approve plans for an alternative ferry landing site by September 5, 2022. (R. pp. 2429-2430). This order gave the County less than four (4) months to locate and design an embarkation point on the mainland side of the island.

Beaufort County complied with Judge Price's order and identified the Helmsman property as an alternative site for the mainland ferry landing as ordered. (R. pp. 3277-3278). The County had been looking at the Helmsman property prior to the *Ware* litigation and hired Alliance Consulting Engineers to draft conceptual parking plans for the site. (R. pp. 3270-3272). Alliance developed two conceptual plans on October 29, 2021. (R. pp. 3271-3272). One plan only included the Helmsman property and the second included the Helmsman property plus an additional tract. Here the County would build a three thousand and two hundred (3,200) square foot pavilion, a dock and provide two hundred and fifty-four (254) parking spaces. (R. p. 3271).

Going back to the *Ware* litigation, the court held a hearing on August 3, 2022, to address the County's Motion for Reconsideration of the May 24, 2022 order. (R. pp. 3200-3209). Judge Price wanted to accelerate the process of moving the ferry landing from Buckingham and ordered the County to quickly find an alternative location.

Some of the exchanges of this hearing include:

> The Court: This is a unique situation. All right. Because it deals with a lot of moving parts. It deals with the County, it deals with the residents. We've just got to figure out what Beaufort can and can't do. Can they move the marina or not? (R. p. 3201, lines 15-22).

> Mr. Crowe: Well, the concern from our prospective would be that you issued a conditional injunction and a mandatory injunction that gives us until Labor Day to come up with alternative plans approved by county counsel. So the effect of your order would be to shut down that ferry come day after Labor Day if the County does not have in effect alternative plans that have been approved by county counsel. (R. p. 3201, line 23 – p. 3202, line 14).

> The Court: So that was any nudge to get the county off its rear and try to find an alternative site . . . So what has the County done to this point? (R. 3202, lines 15-20).

After some dialogue, Judge Price commented on the public purpose, the need for the ferry landing, and his reasoning for lifting the temporary injunction.

> The Court: . . . So on Labor Day, I'm not shutting it down. I would never do that because people got to get to and from the island, they've got to make money, the County's got to run a marina. I mean, that just the way life goes, but my plan worked. So, I'm not going to stop on Labor Day. (R. p. 3204, lines 12-18).

> The Court: I did what he wanted me to do was get the County to start moving and y'all did that. So there is no reason for me to punish the County any further. I mean they're doing it. I mean, they're already on the second reading of it. But I've got no problem with that. I will allow them to continue to run it, they'll find an alternative site, they'll - - these people will be happy that they're going to go ahead and develop another spot. The owners will be happy that they get, you know, do another spot. And then, if we need to fight it out later on down the road, we can do it. For right now I think everything is moving in the right direction. (R. p. 3205, line 17 – p. 3206, line 5).

On August 8, 2022, County Council passed a resolution to approve funding for the acquisition of the Helmsman property. (R. p. 3241). Judge Price then issued an order on August 24, 2022, amending his previous order. This order recognized the third and final reading by

County Council to approve funds necessary to purchase the Helmsman property. (R. pp. 3214-3215).

On September 15, 2022, in compliance with Judge Price's order, the County filed the underlying Condemnation Action to acquire Landowner's property. In response, Landowner filed the underlying 'Challenge Action.' The 'Challenge Action' stays the underlying Condemnation pursuant to S.C. Code § 28-2-470. Since the County intended to use the Property as the embarkation site, the 'Challenge Action' effectively halted the entire Project and prevented compliance with the *Ware* court Order.

In response to the Landowner's 'Challenge Action,' the County moved for priority under SC Code § 28-2-310 on October 18, 2022. (R. pp. 71-70). Landowner opposed the motion and the Court eventually denied it on February 27, 2023. This ruling left the project at the mercy of the trial docket and this appeal. As a result, the 'Challenge Action' forced the County to make a decision to either (1) eliminate ferry services pending the ruling on the matter or (2) make alternative arrangements.

To further complicate the matter, on January 23, 2023, the court in the *Ware* litigation issued another Order on February 21, 2023, to shut down the Buckingham Landing site on January 1, 2024. (R. pp. 3229-3240). This gave the County a little more than ten (10) months to construct a new ferry landing on the mainland side. In response to that Order, the County faced a January 1, 2024, court-imposed deadline to relocate the ferry and the complete 'stay' of the Helmsman Landing project via landowner's 'Challenge Action.'

Unable to meet the court's January 1, 2024, deadline, the County temporarily relocated the mainland side embarkation landing to Pinckney Island owned by the U.S. Fish & Wildlife Services. (R. p. 1853, line 18- p. 1854, line 4). Although the County had a prior agreement

with the U.S. Fish and Wildlife Services to use the Pinckney Island Landing, the location presented problems. (R. pp 3108-3112). First, the County could not get in contact with anyone in the Federal Government about the site and eventually reached out to Senator Tim Scott for help on May 10, 2024. (R. p. 3520). Next, the Pinckney property contained about two hundred (200) parking spaces on site, which reached capacity at peak times. (R. p. 1854, lines 15-25). Finally, the Pinckney site falls within the US 278 improvement plan which would reduce the number of parking spaces and access to the site. (R. p. 1985, line 12 – p. 1986, line 7).

Knowing that the Pinckney site could not provide a long-term solution, the County continued to proceed with plans to develop the landing site at the Helmsman property. (R. p. 1850, line 12 – p. 1851, line 5). As stated before, the County planned to use the Helmsman property as self-contained site. However, the 'stay' forced the County to work around this problem. The County addressed this issue by combining three (3) parcels of property. (R. p. 1851, lines 6-20). These parcels included the blue outlined parcel owned by the Town of Hilton Head, the property underneath the Cross Island Bridge and the hourglass shaped property referred to as the Helmsman property. (R. p. 3278). During the course of the 'Challenge Action' litigation, the County made a deal with South Carolina Department of Transportation, ("SCDOT"), on June 2, 2023, to use the property underneath the bridge and obtained ownership of the of the Cross Island Boat Landing property from the Town of Hilton Head. (R. p. 1983, lines 13-17; R. p. 1851, 13 – p. 1852, line 1; R. pp. 3294-3302). The County obtained permits from the Ocean Coastal Resource Management ("OCRM") to extend the boat landing dock on October 6, 2023, and actually paid for the docks at the time of trial. (R. pp. 3359-3367). The only issue holding up the project is the parking issue which is the purpose of the underlying Condemnation. (R. p. 1850, lines 2-25-p.1851, line 2; R. p. 1852, lines 22-24; R. p. 1872, line

21 – p. 1872, line 6; R. p. 1983, line 21 – p. 1984, line 8). The Court can see the Davis & Floyd design the County submitted to the Town of Hilton Head which included three properties for the mainland ferry site. (R. pp. 3590-3519; R. p. 3271). Testimony clearly established the ferry would be operational but for the 'Challenge Action.' (R. p. 1875, lines, 8-10). The testimony also demonstrates that the 'Challenge Action' is the only issue holding up this Project. (R. p. 1852, lines 2-24; R. p. 1872, line 21- p. 1873, line 6; R. p. 1983, line 21- p. 1984, line 8).

The progress the County made during the 'stay' answered all of the hypotheticals posed by Landowner. This delay confirmed that the Helmsman property is the most ideal site for the ferry landing, that the County, can and did, obtain all the necessary permits for the dock and construction of the landing site at the Helmsman property and that the second-best location, Pinckney Island, will not work.

As it stands, the 'stay' is the only barrier to the County opening up the Helmsman Landing facility. (R. p. 1852, lines 2-24; R. p. 1872, line 21- p. 1873, line 6; R. p. 1983, line 21- p. 1984, line 8).

ARGUMENT

I. IN SOUTH CAROLINA, A LANDOWNER MAY CHALLENGE THE "PUBLIC PURPOSE" OF ANY PROJECT AND WHETHER THE CONDEMNING AGENCY ACTED IN "BAD FAITH," "FRAUDULENTLY," OR "WITH CLEAR ABUSE OF DISCRETION" WHEN ACQUIRING THE PROPERTY.

The South Carolina Eminent Domain Act ("Eminent Domain Act") provides two (2) separate and distinct legal procedures. The first being the underlying Condemnation which is the legal procedure for the condemning authority to acquire property. The second legal procedure allows the landowner to challenge the underlying Condemnation pursuant to S.C. Code § 28-2-470. Although limited, the law in South Carolina provides very simple and clear parameters for a landowner to bring a 'challenge' action pursuant to S.C. Code § 28-2-470.

First, the landowner can challenge the “public purpose” or “public use” aspect of the project under *Ga. DOT v. Jasper County*, 355 SC 631, 586 S.E.2d 853 (2003). Here, the Landowner can allege that the project violates the constitutional “public purpose” or “public use” requirement. In this case, Landowner exercised its right to challenge the "public purpose" or "public use" which the County will address.

In addition, S.C. Code § 28-2-470 allows the landowner to raise any other issues associated with the acquisition. However, the Eminent Domain Act does not provide the landowner a private cause of action. Thus, under South Carolina law, it appears that landowner must prove that the condemning authority acted with "bad faith," "fraudulently," or "with clear abuse of discretion" when addressing any issues. *Oien Family Invs., LLC v. Piedmont Mun. Power Agency,* 817 S.E.2d 647, 651 (App. Ct. 2018); *see also S. Dev. Land & Golf v. SC Pub. Serv. Auth.*, 226 S.E. 2d 748.

Landowner seems to agree with the existing law arguing the County must act in "good faith" when acquiring property under the South Carolina Eminent Domain Act. In this case, Landowner presented all its evidence, argued its position, and now simply disagrees with the fact finder. As explained, the trial court applied the proper standard and issued a ruling consistent with equity, the law, and evidence presented.

II. THE COUNTY DID NOT ACT IN “BAD FAITH,” “FRAUDULENTLY,” OR “WITH CLEAR ABUSE OF DISCRECTION” WHEN ACQUIRING THE PROPERTY UNDER THE EMINENT DOMAIN ACT

Landowner argues a number of statutory violations which it alleges would invalidate the underlying Condemnation Action. Specifically, Landowner argues the County:

1) Concealed Appraisals, Violation of S.C. Code Ann. 28-2-70 (Landowner’s Initial Brief §I(D)(1));

2) Failed to Offer Appraised Value, Violation of S.C. Code Ann. §§ 28-2-220 and 28-2-230 (Landowner's Initial Brief §I(D)(2));

3) Filed a False Affidavit, Violation of S.C. Code Ann. § 28-2-240(1) (Landowner's Initial Brief §I(D)(3));

4) Failed to Make Plans Available for Inspection (Because No Plans Existed), Violation of S.C. Code Ann. § 28-2-280(C)(6), (Landowner's Initial Brief §I(D)(4));

5) Failed to Provide an Offer Based Upon the Statutory Date of Valuation, Violation of S.C. Code Ann. § 28-2-440 (Landowner's Initial Brief §I(D)(5)); and

6) Failed to Provide Landowner with Reasonable Notice Prior to Entering Property, Violation of S.C. Code Ann. § 28-2-70(C) (Landowner's Initial Brief §I(D)(6)).

Landowner argues strict compliance with the Eminent Domain Act and that any conflict automatically invalidates the underlying Condemnation. To support this argument, landowner cites S.C. Code Ann. § 28-2-60 which states, "[t]he provisions of this chapter shall constitute the exclusive procedure whereby Condemnation may be undertaken in this State," and cites case law from other jurisdictions. Landowner seems to argue that any single violation of the 'acquisition process' would automatically invalidate the underlying Condemnation. In support of this notion, Landowner cites S.C. Code Ann. § 28-2-70(B) which states;

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

Landowner wants this Court to draw a negative inference from S.C. Code Ann. § 28-2-70(B), arguing that because this subsection explicitly states that a failure to negotiate "is not a defense to a condemnation action," but fails to explain the inverse reading of the statute — that any other violation would create a defense to condemnation. Rather than implying that all other

statutory violations automatically invalidate a condemnation, S.C. Code § 28-2-70(B) serves as a specific legislative exception to the general principle that minor procedural irregularities, absent bad faith, fraud, or clear abuse of discretion, do not automatically halt or invalidate a condemnation action. This specific exception demonstrates the legislature's intent that a procedural non-compliance will not serve as a defense. Conversely, the absence of such explicit "invalidation" language for other sections of the Eminent Domain Act does not mean that every other procedural misstep automatically creates a defense. Instead, it means that the general standard for challenging the right to condemn requires a showing of "bad faith," "fraud," or "clear abuse of discretion" as established by the *Oien* court. *Oien*, 817 S.E.2d 647, 651 (App. Ct. 2018) and *S. Dev. Land & Golf v. SC Pub. Serv. Auth.,* 311 SC 29, 226 S.E.2d 748 (1993). In *Oien*, the Court established a showing of "bad faith," "fraud," or "clear abuse of discretion" as the standard for invalidating a condemnation based on alleged improprieties by condemning authorities. This high standard protects the public interest and prevents landowners from derailing public projects due to technical non-compliance that fails to cause actual prejudice, damage or deprivation of any rights. The explicit language of S.C. Code §28-2-70(B) clarifies that even a failure to negotiate, which might otherwise be argued as a statutory violation, does not rise to the level of an automatic defense.

a. The South Carolina Eminent Domain Act Does Not Create a Private Cause of Action for Landowners.

Strictly speaking, the South Carolina Eminent Domain Act does not state, "[a]ny violation of this section invalidates an underlying condemnation action." S.C. Code § 28-2-10 et seq.

Furthermore, no South Carolina case law asserts that premise. Landowner argues that strict compliance invalidates a condemnation, but at the same time asks this Court to apply a standard that does not exist via the statute.

For guidance, this Court can look at The Uniform Relocation Assistance and Real Property Acquisition Policies Act 42 U.S.C § 4601. The purpose of this federal act uniform policy of real property acquisition practices is, "to ensure that owners of real property to be acquired for federal and federally assisted projects are treated fairly and consistently . . ."

The Court in *Barnhart v. Brinegar* specifically addressed violations of the Uniform Relocation Assistance and Real Property Acquisition Policies Act as a cause of action. *Barnhart v. Brinegar*, 362 F.Supp. 464 (USDC W.D. Missouri 1973). In *Barnhart*, the landowner sought to stop the government's condemnation of their property based on violations of the Federal Act. *Id*. The Government moved to dismiss the challenge action based on the Act itself. Specifically, 42 USC §4602(a) which states, "[t]he provisions of section 301 of title III of this Act [42 USCS § 4651] create no rights or liabilities and shall not affect the validity of any property acquisitions by purchase or condemnation."

The *Barnhart* court dismissed the challenge action after a lengthy analysis of the history of the Act and reviewing four cases which each found that §301 does not create rights in favor of property owners. *Nall Motors, Inc. v. City of Iowa City*, Civil No. 72-47-D (S.D. Iowa, Jan. 2, 1973) (*not reported*); *Martinez v. Department of Housing and Urban Development*, 347 F. Supp. 903 (E.D. Pa. 1972); *Rubin v. Department of Housing and Urban Development*, 347 F. Supp. 555 (E.D. Pa. 1972); *Will-Tex Plastics Mfg., Inc. v. Department of Housing and Urban Development*, 346 F. Supp. 654 (E.D. Pa. 1972).

Because a statutory violation of the Federal Acquisition Act does not invalidate a condemnation, it makes sense that a violation of the S.C. Eminent Domain Act does not invalidate a condemnation action. Instead, it makes more sense that this Court should determine if the County acted with "bad faith," "fraudulently," or "with clear abuse of discretion" when

addressing any statutory violation. *Oien Family Invs., LLC,* 817 S.E.2d, at 651; *see also S. Dev. Land & Golf v. SC Pub. Serv. Auth.*, 226 S.E. 2d, at 748.

b. The Court Must Apply Equitable Principles to the Parties in Equitable Actions.

Despite admitting that the Court should consider 'Challenge Actions' as ones in equity, landowner also asks the Court to ignore equitable principles when ruling on the matter. (Landowner's Initial Brief at p. 20). It appears that Landowner argues that "equitable principles do not apply in equitable matters," but fails to cite any authority to support this theory. In fact, case law holds the opposite. *Regions Bank v. Wingard Props., Inc*., 394 S.C. 241, 247, 715 S.E.2d 348, 351 (Ct. App. 2011) ("Equitable maxims are not binding legal precedent but represent notions and concepts of equity in various situations. The court views maxims only as offers of guidance in equitable cases"). The court in *Regions* explained:

> The principle "equity regards as done that which ought to be done" applies in cases where the party seeking equitable relief establishes a clear obligation based upon a valuable consideration that another do some act which he has failed to perform. The notion "equity looks to substance rather than form" evolved out of judicial regard for that which ought to be done. This maxim applies by dispensing with pure formalities which would otherwise defeat the equity. When applying this principle, courts look to the substance and intent of the parties, and give a construction consistent with such intent. After a party establishes an equitable right, the court may dispense with pure formalities which would otherwise defeat the equity. A court of equity should scrutinize the conduct of the plaintiff with the utmost care, to ascertain he has done everything which ought to have been done to secure the action requested. This maxim has at times guided a court to relieve a party from the consequences of accident, mistake, and fraud. The rule that equity considers as done that which should be done cannot be invoked to create a right contrary to the agreement of the parties.

Regions Bank v. Wingard Props., Inc., 715 S.E.2d 348, at 351.

Landowner takes this argument a step further arguing that any equitable principles only apply to the Landowner and not the County. (Landowner's Initial Brief at p. 21). Again, Landowner does not cite any case law that supports the theory that 'equitable' standards apply to

one party in a case and not another party. Finally, Landowner argues the trial court failed to "balance the equity" in its favor. Regardless of Landowner's position, logic dictates that equitable matters require the courts to apply the same equitable principles to all of the parties. The trial court correctly applied equitable maxims, stating:

> Since challenge actions are inherently equitable, the Court must apply equitable principles when addressing statutory violations. This includes the equitable maxim that emphasizes substance over form while examining the Landowner's procedural claims. The notion "equity looks to substance rather than form" evolved out of judicial regard for that which ought to be done. *Wilkie v. Phila. Life Ins. Co.*, 187 S.C. 382, 393-94, 197 S.E. 375, 380 (1938); *see also Regions Bank v. Wingard Props, Inc.,* 394 SC 241, 715 S.E.2d 348 (Ct. App. 2011). This maxim applies by "dispensing with pure formalities which would otherwise defeat the equity." *Id.*; *see also Kerr v. City of Columbia*, 232 S.C. 405, 410, 102 S.E.2d 364, 366 (1958); *see also Regions Bank*, 715 S.E.2nd 348. When applying this principle, courts examine the substance and intent of the parties, ensuring a construction that is consistent with that intent. *Harpending v. Reformed Protestant Dutch Church of City of N.Y.*, 41 U.S. 455, 480, 10 L. Ed. 1029 (1842). Once a party establishes an equitable right, the court may set aside strict formalities that would otherwise undermine the equity.

Wilkie, 197 S.E. at 380.

In this case, Landowner alleges that the County failed to follow the pre-filing requirements of the South Carolina Eminent Domain Act. The trial court applied equitable principles to determine the alleged pre-filing violations did not injure, prejudice or deprive the landowner of any right. In fact, all of the evidence indicates that following the requirements would not accomplish anything since landowner refused to engage with the County and candidly testified, he would not sell his property to the County.

> Question: And in terms of contact or filing the condemnation, you've been through, you were trying to contact the landowner.
>
> Ward: Repeatedly.

Question: And did you get anywhere in terms of negotiations?

Ward: No.

Question: Did you ever get any type of counter offer back?

Ward: None. (R. p. 1839, line 20 – p. 1840 line 4).

Landowner: Well, we weren't really interested in selling, obviously. (R. p. 1948, lines 5-8).

Landowner: I had no interest in selling it voluntarily for $3.4 million or $3.2 million. I wasn't interested in selling . . .. (R. p. 1952, lines 19-21).

Landowner: . . . I didn't want to sell the property. . . (R. p. 1956, lines 14-15).

Landowner: So, of course, I don't want to get rid of it. I mean, we bought it. We held it for a reason. I litigated with the DOT for a reason. You know, it wasn't because I like to pay attorneys. It's because we wanted the property. (R. p. 1965, lines 13-17).

Landowner refused to engage, made it clear he would not sell the property, and now argues the County did not follow the pre-filing requirements after admitting the futility of the process.

In other words, Landowner did not suffer any damage, prejudice or loss of right. The principal element in any lawsuit is some form of damage and although damage comes in all forms, Landowner did not present any damage or any form of prejudice in this case. *Carolina Chloride, Inc. v. Richland Cty*., 394 S.C. 154, 170, 714 S.E.2d 869, 877 (2011) ("A landowner has the burden of proving damages for the taking of the landowner's property, whether through condemnation proceedings or by inverse condemnation"); (*Kiriakides v. Sch. Dist*., 382 S.C. 8, 14, 675 S.E.2d 439, 442 (2009)) ("Not all damages that are suffered by a private property owner at the hands of the governmental agency are compensable.") *Id*.; ("The property itself must suffer some diminution in substance, or it must be rendered intrinsically less valuable.") *Id*.

Landowner seems to concede it did not suffer and damage, harm, prejudice, and asks the Court to ignore this basic element of any lawsuit. (Landowner's Initial Brief at p. 22).

c. South Carolina Law Provides the Landowner a Statutory Remedy in the Event of Violations.

Although not specifically stated, it is logical that the 'Challenge Action' under S.C. Code § 28-2-470 provides Landowner a legal vehicle to assert statutory violations by a condemning authority. However, when doing so, the Court must determine if those violations constitute harm, damages, prejudice or if the County acted in "bad faith," "fraudulently," or "with clear abuse of discretion." *Oien Family Invs., LLC*, 817 S.E.2d 647, at 651 & S.C. Code § 28-2-470.

1) The County Did Not Conceal Appraisals in Violation of S.C. Code Ann. §28-2-70.

Landowner alleges some malicious intent by the County to conceal the appraisals in this matter, but fails to explain any loss of rights, prejudice, or damage as a result. Regardless, the trial court disagreed. The Court can start with the testimony of County Attorney, Brittany Ward, who testified about her attempts to contact the Landowner and negotiate with him:

Question: And in terms of contact or filing the condemnation, you've been through, you were trying to contact the landowner.

Ward: Repeatedly.

Question: And did you get anywhere in terms of negotiations?

Ward: No.

Question: Did you ever get any type of counter offer back?

Ward: None.

Question: In dealing with [landowner], were you trying to hide anything from him?

Ward: No.

Question: Were you trying to act with any type of fraudulent intent or ill will?

Ward: None.

Question: Had you even known who [landowner] was before?

Ward: No.

Question: Did you have any intent to try to gain some type of tactical advantage when dealing with them?

Ward: None. All the records that are associated with purchases of real property are public documents at the end of the day. (R. p. 1839, line 20 – p. 1840, line 17).

The unsuccessful attempts by the County were foreseeable considering Landowner had no interest in selling the property as explained in his testimony.

Landowner: Well, we weren't really interested in selling, obviously. (R. p. 1948, lines 7-8).

Landowner: I had no interest in selling it voluntarily for $3.4 million or $3.2 million. I wasn't interested in selling . . . (R. p. 1952, lines 19-21).

Landowner: . . . I didn't want to sell the property. . . (R. p. 1956, lines 14-15).

Landowner: So, of course, I don't want to get rid of it. I mean, we bought it. We held it for a reason. I litigated with the DOT for a reason. You know, it wasn't because I like to pay attorneys. It's because we wanted the property. (R. p. 1965, lines 13-17).

Foster: I had my staff respond to [Brittany Ward] that I was not interested in or there was no interest in selling the property. (R. p. 1808, lines 18-20).

Foster: I told her that I was not interested in selling the property, had no interest in selling the property . . . (R. p. 1812, lines 3-5).

The testimony also indicated that County Attorney, Brittany Ward, told Landowner's agent, Canton Foster, that the County did appraise the property. Brittany Ward testified:

> Ward: I did inform Mr. Foster that there was an appraisal completed. That is the only way that I would have known what to ask County Council for. (R. p. 1833, lines 5-7).
>
> Ward: In reviewing all the e-mails and everything I've gone through, I do believe that in that conversation I did state to Mr. Foster that an appraisal had been completed, which was what was resulting in the value that was being approved by County Council that evening. I explained to him the process and the approval that was going to be made on August 8th. (R. p. 1833, line 23 – p. 1834, line 5).
>
> Ward: …I do believe that I told Mr. Foster that we are making an offer based on an appraisal, and that that appraisal amount is being used for justification for approval of this ordinance. That is the only way that I can present to County Council and tell them how much we are asking for and justify it. (R. p. 1834, lines 17-23).

It is undisputed that the Landowner never asked for the appraisal and simply would not engage with Brittany Ward about the acquisition of the Property. (R. p. 1822, line 19 – p. 1823, line 9). The facts indicate that the Landowner received the initial appraisal when its representative requested it on September 26, 2022. (R. p. 3836).

At best, the Landowner and its agent testified, they were not going to sell the Property, that they never engaged with the County regarding the transfer of the Property, and they never asked for an appraisal. Furthermore, the County provided the appraisal when requested. These facts do not support any finding of "bad faith," "fraud," or "clear abuse of discretion" when addressing any issues. *Oien Family Invs., LLC*, 817 S.E.2d 647, at 651.

Simply put, Landowner did not and will not accept the initial $3.4 million offer for the property. When questioned by the court, Landowner stated that he would "probably not" accept the offer and that he "would have certainly wanted to have gotten his own appraisal." (R.

p. 1950, lines 15-23).

In addition, Landowner argues some malicious intent by not offering the higher value appraisal. This argument fails for a number of reasons. First, Landowner testified he would not accept the offer for the higher value of $3.9 million.

> Question: And I'm going to kind of cut to the chase. You've seen the appraisal, which is tab 35 up there in the white binder, from Mr. Owens for $4.37 million.
>
> Landowner: Not prior to the notice of condemnation . . .
>
> Question: And my question is whether or not you're telling this Court today, had you seen that prior to filing, would you have accepted that?
>
> Landowner: . . . I certainly would not have taken it. (R. p. 1963, line 10 – p. 1964, line 2).

In addition, Landowner always possessed the right to contest the value of the Property in the underlying Condemnation. Landowner was fully aware he could get his own appraisal and contest the amount of compensation. (R. p. 1950, lines 21-23). Thus, Landowner did not lose any right or suffer any prejudice under its theory. Finally, Landowner possesses the right to accept the $3.4 million for the Property but refuses to do so.

2) The County Offered the Appraised Value of the Property When it Filed the Notice of Condemnation and Served the Pleadings.

The County offered the appraisal value of $3.4 million for the Property when it filed the Notice of Condemnation and deposited the funds with the Beaufort County Clerk of Court. As stated above, Landowner would not and does not accept the $3.4 million for the property which moots its argument that the County violated S.C. Code Ann. §§28-2-220 and 28-2-230. Again, Landowner fails to explain any damages, lose any rights or suffer any prejudice. Landowner always possessed and still possesses the right to contest the value of his Property in the

underlying Condemnation.

3) Any Issues With the Affidavit Do Not Impact the Posture of the Case.

Landowner alleges the County filed a false affidavit, but fails to explain any loss of rights, prejudice, or damage as a result. The trial court determined "that it resulted from a scrivener's error or miscommunication on the County's part." (R. pp. 22-23). The trial court continued to state, "[n]evertheless, this error does not harm the Landowner, invalidate any rights, or cause any deprivation." (R. p. 23). In addition, Landowner does not claim any "bad faith," "fraud," or "clear abuse of discretion" with the affidavit when its counsel stated, "I'm not saying it was intentional." (R. p. 1781, lines 7-8).

4) South Carolina Law Does not Require the County to Develop Detailed Project Plans Prior to Filing.

This argument is a play on words and hinges on 'terms of art.' The County did comply with the court order in *Ware* and planned to use the Helmsman property for parking purposes. The County also procured a conceptual design demonstrating how the County can maximize parking on the Helmsman property. (R. pp. 3270-3271). However, the County did not obtain detailed construction plans for the Landowner to review. The Landowner knows the plan and saw the conceptual designs and again fails to cite damages, lose any rights or suffer any prejudice. Jared Fralix of the County explained the plans as follows:

> Fralix: So, when you say, well, did we do extensive analyses by engineers on the 10-year projected need of parking? No. We know that we need more than
> 200. That place gave us potentially more than 200. We know we had to be out of there by January of 2024. We, without the contest action, would easily be operating out of there before January of 2024. So, while we didn't have extensive plans, we had a plan that would have complied with all of these and not moved it twice and not wasted a million dollars.
>
> Question: But it was a concept plan.

Fralix: No, no, no. Who's to say we wouldn't have made two levels of parking if we found out that there were wet areas? (R. p. 1875, lines 4-18).

As stated, the County needed to comply with the court order and identified the Helmsman property as the best location.

Landowner argues the County failed to include "a map, diagram, sketch, map or reference a project plan," but fails to point out the "as far as practical" language in S.C. Code § 28-2-280(C)(5). (Landowner's Initial Brief at p. 25). Landowner also references S.C. Code § 28-2-280(C)(6) which does require the County to produce plans if available. *Id*. However, the County did not possess fully developed construction plans and thus could not make them available to the Landowner. The County did produce conceptual drawings of the property which demonstrate the proposed use of the property. (R. pp. 3270-3271). Despite receiving these designs, Landowner still alleges a violation. In its Initial Brief, Landowner argues the trial court misstated its position that the, "[c]ounty should have had fully developed construction plans before filing a Condemnation Action." (Landowner's Initial Brief at p. 25). However, Landowner does not state what the County should have done or what the law requires other than state it needed the entire Property to construct a ferry landing site.

5) The County Did Make an Offer Based on the Date of Statutory Date of Valuation.

In the underlying Condemnation Action, the parties must present evidence on the value of the property on the date the pleadings were filed. S.C. Code Ann. § 28-2-440 states that "the date of valuation is the date of the filing of the condemnation notice." S.C. Code Ann. § 28-2-440. Clearly, the County would not know this date until it filed the Condemnation Action on September 15, 2022. As the trial court noted, "[t]his statute applies to the underlying

Condemnation Action, not the Challenge Action and therefore does not prejudice the Landowner." (R. p. 42).

Regardless, the County did update the appraisals to the date of filing. (R. pp. 3652-3722). Again, the Landowner fails to explain any damages, loss of any rights, or prejudice with this allegation.

6) Entering the Property Does Not Invalidate the Underlying Condemnation.

Landowner argues that the County's inadvertently sending surveyors to the Property invalidates the Condemnation. In this case, Hank Amundson from County testified that he did not know about the filing of the 'Challenge Action' or the 'stay.' (R. p. 1863, lines 11-20). He further testified that the surveyors left when asked and that he never got the results. (R. p. 1864, lines 14-17). Again, Landowner argues a violation without explaining any damages, lose any rights or prejudice. If Landowner suffered any damage, then it can bring a separate tort action against the County and/or the surveyors for trespass.

d. The Out of State Cases Provide Very Little If Any Guidance on the Issue of Statutory Violations.

Landowner lists a number of out of state cases where courts found strict compliance with their eminent domain laws. However, the different states enacted different statutes and apply different standards. For instance, Georgia enacted a Landowner Bill of Rights which contains nine requirements. Georgia Code § 22-9. North Carolina contains a very sparse statute and does not require pre condemnation negotiations. North Carolina Code § 50A-5. Furthermore, none of the cases cited by Landowner deal with the fact pattern in this case - that the County needed to comply with a court order or discontinue public transportation to the island.

Although Landowner produced law in support of its argument, a look at the out of state cases that are based on the facts of this case appear to side with the trial court. Georgia law allows for an exception under Georgia Code § 22-1-10.1 in emergency situations.

The court in Virginia found, "[an] [a]ttempt is sufficient if negotiations proceed far enough to indicate impossibility of agreement." *Tiller v. Norfolk & W. Ry.*, 201 Va. 222, 110 S.E.2d 209, 1959 Va. LEXIS 215 (1959). Another Virginia court found, "[i]f [the] impossibility of [an] agreement becomes apparent immediately, [a] condemnor is not obliged further to pursue futile efforts." *Norfolk Redevelopment & Hous. Auth. v. Baylor*, 214 Va. 1, 197 S.E.2d 335, 1973 Va. LEXIS 240 (1973). Another court ruled, "[m]ere incorrectness in the quantum of the offer, without a showing of bad faith, is insufficient to make out a violation of the mandate of the section. *State Hwy. & Transp. Comm'r v. Herndon*, 225 Va. 380, 302 S.E.2d 55, 1983 Va. LEXIS 233 (1983).

A court in West Virginia held, "[a] petition in writing filed by a county court (now county commission) in the circuit court pursuant to this section is sufficient if it contains substantially all that is required by said section." *Cty. Court v. Thornburg*, 65 W. Va. 185, 186, 63 S.E. 975, 975 (1909); *Board of Educ. v. Campbells Creek R.R.*, 138 W. Va. 473, 76 S.E.2d 271, 1953 W. Va. LEXIS 42 (W. Va. 1953). Another West Virginia court held, "[a] petition to condemn land for State highway purposes is sufficient if it substantially conforms to the requirements of this section." *State by State Rd. Comm'n v. Professional Realty Co.*, 144 W. Va. 652, 110 S.E.2d 616, 1959 W. Va. LEXIS 48 (W. Va. 1959).

A Florida court held, "Fla. Stat. §73.015 requires a condemnor to make a good faith attempt to negotiate with the property owner prior to the commencement of a condemnation action but does not require that a resolution be passed in order for the condemning authority to

begin that negotiation or extend a binding offer." *JEA v. Williams*, 978 So. 2d 842, 2008 Fla. App. LEXIS 4776 (Fla. 1st DCA 2008).

South Carolina requires this Court to exam the facts, apply equitable maxims and determine if the County acted in "bad faith", "fraudulently," or "with clear abuse of discretion" when addressing a statutory violation. *Oien Family Invs., LLC*, 817 S.E.2d 647, at 651; *S. Dev. Land & Golf v. SC Pub. Serv. Auth*., 226 S.E. 2d, at 748.

III. THE DATE OF FILING OF THE UNDERLYING CONDEMNATION DOES NOT LIMIT THE EVIDENCE THAT PARTIES CAN PRESENT TO THE COURT IN A 'CHALLENGE ACTION'

Landowner argues that S.C. Code 28-7-470 limits evidence the court may consider in a 'challenge action' but does not cite any case law to support this theory. Evidence falls within the court's discretion absent an abuse of discretion. *S.C. DOT v. Hood*, 381 S.C. 318, 320, 672 S.E.2d 595, 596 (Ct. App. 2009) ("The admission or exclusion of evidence is within the sound discretion of the trial court and will not be disturbed on appeal absent an abuse of discretion.) (*see also Conner v. City of Forest Acres* ,363 S.C. 460, 467, 611 S.E.2d 905, 908 (2005) ("An abuse of discretion occurs when the ruling is based on an error of law or a factual conclusion without evidentiary support."). No statute exists that limits the evidence the courts may consider in a 'challenge action'.

The County initially sought to acquire the Property to use as a self-contained ferry embarkation site. The site would consist of a parking facility, restrooms, and a dock. The 'Challenge Action' stayed the project and forced the County to come up with alternative plans which included a larger footprint. In the updated plans, the County would use the Landowner's Property solely as a parking lot.

Landowner asks this Court to differentiate the difference between using the Property as a

"self-contained ferry embarkation site" or using the property solely as a "parking lot for the ferry embarkation site." This play on words is a distinction without any difference since parking was the number one issue in this Project.

The law does not prevent a government agency from amending project plans to either increase or decrease the scope of any project nor does the law prevent government agencies from modifying plans to ensure continuation of public benefits.

V. THE COUNTY DEMONSTRATED 'PUBLIC USE' OF THE PROJECT

a. Ferry Service qualifies as a "Public Purpose" or "Public Use."

Throughout the years, courts across the United States held that providing "ferry services" constitutes a "public purpose." First, S.C. Code § 6-21-50 states that:

> Any municipality of this State may purchase or construct . . . piers, docks, terminals, ferries, public markets, . . . parking buildings, parking lots . . . or other public buildings or structures and in furtherance thereof may purchase or construct any necessary part of any such system, either within or without the limits of such county or the corporate limits of such city or incorporated town. S.C. Code § 6-21-50.

Therefore, the legislature already determined that providing a ferry system constitutes a "public purpose" as a matter of law.

This statute is consistent with the South Carolina Supreme Court's ruling in the *Poulnot v. Cantwell* matter. *See Poulnot v. Cantwell*, 129 SC 171, 123 S.E. 651 (1924). In *Poulnot*, plaintiff argued that the legislation creating a ferry system was unconstitutional. The *Poulnot* court found the argument without merit, stating:

> "In a general way it may be said that a ferry is a public highway or thoroughfare across a stream of water or river by boat, instead of by a bridge . . . or, as one Court said, a ferry is a moving public highway upon water. . . And as a county or public purpose, recognized and approved both by the Legislature of this State and by the Courts." *Id* at 180.

The court in *Golden Gate Bridge, Etc. Dist. v. Muzzi* held that the condemnation to acquire

land to hold dredged spoils for the construction of a ferry terminal was valid. *Golden Gate Bridge, Etc. Dist. v. Muzzi*, 83 Cal. App. 3rd 707 (1978). The court in *Assessors of Boston v. Boston RB&LR Co.*, held that property used for ferry purposes qualified as a "public purpose." *Assessors of Boston v. Boston RB&LR Co.*, 319 Mass. 378 (1946).

The ferry system is the equivalent of a bridge or bus system - both of which are objectively public purposes.

b. The County Will Own and Control the Ferry Facility.

The *Ga. DOT* Court ultimately ruled that Jasper County could not condemn property and then turn over complete control of the property via a lease, stating, "It is well settled that the power of eminent domain cannot be used to accomplish a project simply because it will benefit the public." *Ga. DOT*, 586 S.E.2d 853 (2003). The *Ga. DOT* court then emphasized,

> "The public use implies possession, occupation, and enjoyment of the land by the public at large or by public agencies; and the due protection of the rights of private property will preclude the government from seizing it in the hands of the owner, and turning it over to another on vague grounds of public benefit to spring from a more profitable use to which the latter will devote it." *Id*. at 857.

The *Ga. DOT* court continued to state, "[t]he involuntary taking of an individual's property by the government is not justified unless the property is taken for public use -- a fixed, definite, and enforceable right of use, independent of the will of a private lessor of the condemned property." *Karesh v. City Council of Charleston*, 271 S.C. 339, 344, 247 S.E.2d 342, 345 (1978) cited in *Ga. DOT*, at 857.

The testimony clearly indicated that the County will own and control every aspect of the ferry operation with the exception of actually running the boat back and forth. Landowner argues two issues void this Project; 1) the purpose of the project is for economic development; and 2) the public will not possess "unfettered access" to the dock.

Addressing the Landowner's first argument alleging a purpose of economic development, Daufuskie Island contains about 1,000 developed lots and 1,000 vacant lots. (R. p. 1906, lines 14-21). As the lots get developed, so will the need for more public services. Hank Amundson echoed this idea that 'need' correlates with the growth of Daufuskie Island. His testimony reflects the following:

Question: All right. Now, in terms of need, we're busing people back and forth from the bus yard. Is there a correlation between the sites from [Daufuskie Island] versus the needs for parking?

Hank: Yes. We know that as population grows, there will be more spots needed.

Question: Is there any other type of development factor or involvement, other than the development of the Daufuskie Island? Are there agreements that the County has with any private developer with this property?

Hank: No. (R. p. 1855, line 16 – p. 1856, line 2).

Jared Fralix of the county also addressed the need for parking with the projected growth according to a local planner called LCATS which projected 1.19% annual growth. (R. p. 1980, lines 11-23).

Next, Landowner argues the project becomes invalid because the ferry boat captain will have some degree of control over the dock when loading and unloading. The trial court points out and held:

> The ferry boat will use the floating dock for about fifteen (15) minutes on each of its four (4) visits per day for a total of forty-five (45) minutes to one (1) hour per day. While the ferry captain will need to exercise some control while loading and unloading passengers to ensure safety, this ability to "control" the boarding of passengers does not render the Condemnation unconstitutional." (R. pp. 35-36).

Landowner further argues that the only way this project becomes valid is by the County owning and operating the actual ferry. Effectively, Landowner argues that government cannot

contract out any service without violating the 'unfettered access' requirement. If the Court follows Landowner's argument, government agencies could never hire private third-party contractors since those private third parties would exercise some control over public property. This logic would invalidate all public airports unless the government actually owned and operated the planes, bus stations unless the government owns and operates the buses, county hospitals unless the government employs all doctors and nurses. This logic would also invalidate all road projects unless the government actually constructed all roads rather than hire private construction companies and so on.

Finally, even if the Court accepted Landowner's strictest reading of the law which limits full 'unfettered access' to condemned property, the Court should note that the County is not acquiring a dock from the Landowner. The County will construct a dock and use the condemned property for parking and restrooms.

c. The County Needs More than the Two Hundred and Fifty-Four (254) Spaces the Helmsman Property Can Provide.

Under an ideal scenario, the County could construct two hundred and fifty-four (254) parking spaces on the Helmsman Property. (R. pp. 3270-3271). Jared Fralix testified that the County knows it currently needs more than two hundred (200) parking spaces and based on project growth, the County would need at least two hundred and eighty-eight (288) spaces. (R. p. 1980, line 6 – p. 1981, line 3). County Counsel approved this 'need' when it approved the ordinance to procure the Helmsman property. (R. p. 3241). The trial court correctly pointed out, "If anything, the County is likely to need more property, which it can address when the need becomes more critical." (R. p. 39).

d. The County Addressed All of the Project Factors Prior to Filing the Condemnation Action.

Landowner argues the County did not "weigh and consider" the following factors:

- prepare plans or specifications detailing elements of either the proposed ferry system or its components, such as docks, facilities, or other structures;

- determine the reasonable likelihood of the issuance of any of the necessary permits to carry out or construct its proposed ferry system;

- prepare any cost estimates, or budgets, for ferry embarkation land or marine structures to be constructed on landowner's property; or

- consider the costs involved in attempting to obtain permits, designing, or constructing the embarkation facilities or comparing those costs with other embarkation site options. (Landowner's Initial Brief at pp. 29-30).

As stated above, the court in *Ware* placed the County on strict deadlines. The County also analyzed multiple sites prior to and after the filing of the Condemnation.

First, the County analyzed multiple sites. The County asked Public Works Director, David Wilhelm, to analyze alternative sites. In his search Wilhelm addressed all of Landowner's allegations. Wilhelm testified as follows:

Question: All right. So you're looking for different sites.

Wilhelm: Yes.

Question: Tell the Court how you started that search and what you did.

Wilhelm: Essentially, it started with GIS mapping, looking at potential properties, trying to assess each property's ability to house the embarkation.

Question: And what type of criteria were you looking for?

Wilhelm: Parking. That's number one. Access to the site, easy access off of a highway to make it convenient for the public. If the infrastructure was already in place, obviously, if it had a dock in place already that could house the ferry, that would be favorable. What the site conditions look like, the contractibility, presence of wetlands, things Question: And when you started looking, did you look at other marinas?

Wilhelm: Yes.

Answer: And did you look at other docks?

Wilhelm: Yes.

Question: Did these include private and public?

Wilhelm: Both, yes. (R. p. 1968, line 6 - p. 1969, line 6).

Wilhelm also testified about the cost analysis he conducted stating;

Question: And were you looking at cost analysis or doing any type of cost analysis?

Wilhelm: Yes.

Question: And could you just explain to the Court what type of -- was it a formal cost analysis or an informal cost analysis?

Wilhelm: Informal.

Question: And what were you doing? Can you tell the court what you were looking at?

Wilhelm: Cost to construct a ferry embarkation, including all the factors, all the infrastructure improvements, the parking as well as the dock.

Question: And so what was the cost for parking?

Wilhelm: It depends. I would look at the price, you know, based on my past history working in construction. I just would look at each individual site, look at the requirements, excavation, parking lot paving, pavement section, and develop a cost for each one. (R. p. 1969, line 12 – p. 1970, line 10).

For more analysis on the cost issues, the Court can review the emails on the various factors which include (R. pp. 3243, 3245, 3249, 3253, 3258, 3259, 3263, 3265, 3267, 3268, 3273, 3276). Wilhelm explained how he put together a presentation listing eleven (11) possible alternative sites for the ferry landing which he presented to County Council and discussed the pros and cons of each site. (R. p. 1972, line 16 – p. 1973, line 8). Wilhelm explained the issues with each site,

to include parking issues, environmental issues, cost issues, infrastructure, etc. (R. p. 1973, line 2 - p. 1975, line 5).

As explained in the beginning of this Brief, the passage of time confirmed that:

- the Helmsman property is the best location for the Project;
- that the County could and did obtain the necessary permits; and
- the only issue holding up the Project is the 'challenge' action.

Once the County obtains the Helmsman property, it can get the final permit from the Town of Hilton Head.

V. THE LANDOWNER'S OTHER GROUNDS LACK MERIT

a. The Court Did Not Ignore the Stipulations of the Parties.

In section III A of its Brief, Landowner alleges the trial court ignored the stipulations of fact but does not explain what the trial court failed to consider. This section contains legal citations, but no substance. Reading this section, it seems that Landowner thinks the trial court should include the stipulated facts in the amended order.

No evidence exists that supports the notion that trial court did not adopt all the stipulations. The reality is that a lot of the stipulations were not relevant to the 'Challenge Action' because they did not make a consequential fact "more probable or less probable" SCRE 401. Finally, the amended order references the substance of a number of stipulations. (R. p. 29). Without any specific references addressing what the trial judge ignored, the County cannot respond with any specificity.

b. All Findings of Fact are Supported by the Evidence.

Landowner also cites facts it believes are not supported by the record which is simply not the case. Landowner makes specific arguments which the County can address:

> "Furthermore, the record shows that when the Landowner's counsel requested the appraisal, the County provided it immediately on September 27, 2022, just 12 days after the NOC was filed, and within a day [sic], the NOC was served. Amended Order at 13." (Appellant Initial Brief at p. 33).

Here, the County sent Landowner the Tony Martin appraisal which it used to support the Condemnation. (R. p. 3836). This 'splitting of hairs' makes no difference in the case and makes 'no fact more or less probable.' Again, Landowner testified, if provided, it would not make any difference. (R. p. 1963, line 10 – p. 1964, line 2).

Landowner alleges error with the sentence, "[n]othing in the facts indicate that the County withheld the appraisals or failed to provide them upon request." (Landowner's Initial Brief at p. 33). Again, the County based the Condemnation on the Martin appraisal and produced it on Sept 27, 2022. (R. p. 3836). Furthermore, the County produced the Owens appraisal pursuant to discovery requests.

Landowner takes issue with the exert "[a]s a result of Broad Creek's refusal to sell the property outright." (Landowner's Initial Brief at p. 34). As explained above, Landowner and his agents refused to engage with the County and made it clear it had no intent on selling the Property. See testimony of Canton Foster and the Landowner, Dean Pierce. (R. p. 1948, lines 5-8; R. p. 1952, lines 18-21; R. p. 1956, lines 14-15); (R. p. 1808, lines 18-20; R. p. 1965, lines 13-17); and (R. p. 1812, lines 3-6).

Landowner takes issue with the exert, "[t]he testimony clearly established the ferry landing would be in operation but for the 'Challenge Action.' The testimony also demonstrates that the 'Challenge Action' is the only issue holding up this project." (Landowner's Initial Brief at p. 34). County employee, Jared Fralix testified to this exact issue stating, "[the County], without the contest action, would easily be operating out of there before January of

2024." (R. p. 1875, lines 9-10).

Landowner takes issue with the exert, "[t]he County will own and control the parking lot to be placed on the Broad Creek property, and the public will enjoy access to the parking lot." (Landowner's Initial Brief at p. 34). Again, the testimony supports this fact. See testimony from Hank Amundson:

> Question: As it stands right now, we're looking at the Helmsman property to be used as parking, correct?
>
> Hank: Yes.
>
> Question: And does the County have any intention to lease out that property?
>
> Hank: No.
>
> Question: Does the County have any intention to turn over control of this parking lot?
>
> Hank: No, we own and operate parking today. (R. p. 1856, lines 3-11).

Landowner takes issue with the exert addressing that affidavit, "the Court determines that it resulted from a scrivener's error or miscommunication on the County's part." (Landowner's Initial Brief at p. 35). Two options exist with this error – intentional or accidental. Counsel for Landowner stated "I'm not saying it's intentional." (R. p. 1781, lines 7-8). Furthermore, no evidence or inference exists to demonstrate an intentional mistake leaving a miscommunication or scrivener's error as the only inference the trial court could conclude.

Landowner takes issue with the exert, "[t]herefore, it is clear that the County requires more than 200 spaces to adequately address its present parking needs, a fact that is not disputed." (Landowner's Initial Brief at p. 35). County employee, Jared Fralix testified about this very issue:

> Question: And so we had Buckingham at about 180 spots. And we have

Pinckney that has about 200 spots. And we know that those are axed out at peak season, correct?

Fralix: That's correct. (R. p. 1980, lines 6-10).

Finally, Landowner takes issue with the exert, "was aware that County Council on August 8, 2022, had approved a $3.4 million budget for the property." (Landowner's Initial Brief at p. 35). The readings of the ordinance were public. (R. p. 1839, line 20 – p. 1840, line 17; R. p. 3241). The public nature of the hearings put Landowner on constructive notice of the decisions of County Council. *See Spence v. Spence*, 368 S.C. 106, 119, 628 S.E.2d 869, 876 (2006) (holding constructive notice is "notice imputed to a person whose knowledge of facts is sufficient to put him on inquiry; if these facts were pursued with due diligence, they would lead to other undisclosed facts." (quoting *Strother v. Lexington Cnty. Recreation Comm'n*, 332 S.C. 54, 64 n.6, 504 S.E.2d 117, 122 n.6 (1998)).

CONCLUSION

Ultimately, the Landowner does not want to lose this Property. Landowner refused to engage with the County prior to the Condemnation, admitted that he would not sell the Property to the County prior to the Condemnation and then claims the County acted in bad faith. Landowner argues the County should jump through hoops but admits it would not accept the offers. Throughout this litigation, Landowner argues the County's 'bad acts' but can't cite a single claim of damage, loss of right, prejudice or deprivation.

In addition, Landowner cannot show any examples of fraud, bad faith or abuse of discretion by the County. The County needed to comply with a court order. The County complied with the court order and condemned the Helmsman property. At the time of Condemnation, the County believed the Helmsman site to be the best location for the landing and after two (2) years of litigation, it confirmed the Helmsman site as the ideal location.

Respectfully submitted,

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May 18, 2026

THE STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas
Judge Carmen T. Mullen, Circuit Court Judge

Appellate Case No. 2025-000615
Circuit Court Case No. 2022-CP-07-01978

Broad Creek Development, LLC .....Appellant,

v.

Beaufort County .....Respondent.

CERTIFICATE OF COMPLIANCE

The undersigned hereby certifies that the Final Brief of Respondent complies with Rule 211(b) of the SC Appellant Court Rules.

Respectfully submitted,

/s/ Christopher L. Murphy

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