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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

The Honorable Daniel Coble Circuit Court Judge

Case No. 2025-001903

Bush River C-Store, LLC,Appellant,

v.

South Carolina Department of Transportation,Respondent.

RECORD ON APPEAL

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INDEX

ORDERS

1. Order of the Honorable Daniel Coble dated September 9, 2025 1
2. Order of the South Carolina Court of Appeals dated February 10, 2025 18
3. Order of the Honorable Diane Shafer Goodstein dated October 10, 2024 19

PLEADINGS

4. Service Letter to Counsel with Unfiled Notice of Condemnation
Dated September 1, 202328
5. Challenge Action Number 1 filed September 28, 2023 47
6. Filed Notice of Condemnation dated February 24, 2025.....65
7. Summons and Complaint (Challenge Action Number 2)
Dated March 13, 2025.....81
8. Answer dated April 4, 202584
9. Defendant’s Motion for Summary Judgment dated May 8, 2025100
10. Notice of Appeal (Appellate Case No. 2024-001901) dated September 17, 2025113

TRANSCRIPTS

11. Transcript of Record August 6, 2025.....123

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO.: 2025-CP-40-01667

Bush River C-Store, LLC,

Plaintiff/Landowner

vs

South Carolina Department of Transportation,

Defendant/Condemnor.

**ORDER GRANTING DEFENDANT'S
MOTION FOR SUMMARY JUDGMENT**

Defendant South Carolina Department of Transportation ("SCDOT") filed a Motion for Summary Judgment, pursuant to Rule 56, SCRCP, on May 8, 2025. Defendant's Motion is based on the grounds that (i) no genuine issues of material fact exist as to Plaintiff's challenge action; (ii) Plaintiff has failed to state proper causes of action; and (iii) Plaintiff's statutory challenge action has previously been decided and is barred by the doctrine of res judicata. A hearing on SCDOT's Motion was noticed and held on August 6, 2025 at the Richland County Courthouse. David G. Pagliarini, Esq. appeared on behalf of Defendant SCDOT. S. Jahue Moore, Esq., attorney for the Plaintiff, did not appear following receipt of proper notice.

BACKGROUND AND FACTUAL CONCLUSIONS

The instant case is a statutory challenge, brought pursuant to South Carolina Code Section 28-2-470, to a condemnation action. The challenge statute provides that "[a]n action challenging the condemnor's right to condemn must be commenced in separate proceedings filed in the court of common pleas . . ." The Eminent Domain Procedure Act ("the Act"), S.C. Code Ann. § 28-2-470 (1976). Challenges to condemnations are cases in equity. See Ga. Dep't of Transp. v. Jasper Cty., 355 S.C. 631, 586 S.E.2d 853 (2003).

In accordance with the Act, Defendant SCDOT filed and served a Notice of Condemnation (c/a number 2025-CP-40-01239) on Landowner on or around February 24, 2025 and deposited its estimate of just compensation (\$115,000.00) with the Clerk of Court. SCDOT is acquiring 1,734 square feet (0.040 acre) of right-of-way necessary to complete a road project known as Carolina Crossroads (the "Project") in Richland and Lexington Counties. Specifically, the Project involves the re-design and expansion of interchanges and secondary roads near I-20/I-26/I-126 and is one of the largest in South Carolina history. The Project will be completed in phases over a period of several years.

The underlying condemnation case was originally served, but not filed, in September 2023 in accordance with the provisions of the South Carolina Eminent Domain Procedure Act (the "Act"). S.C. Code Ann. § 28-2-220(C). Landowner filed a statutory challenge action to the case (2023-CP-40-05117) which was ultimately decided by an October 10, 2024 Order granting summary judgment in favor of Condemnor/SCDOT. Landowner appealed the lower court's grant of summary judgment; however, the appeal was dismissed by Order of the South Carolina Court of Appeals dated February 10, 2025. The Court of Appeals remitted the challenge action to the trial court where SCDOT maintains motions for recovery of fees and costs. Upon dismissal of the appeal, SCDOT filed and served the condemnation action now pending (c/a number 2025-CP-40-01239). Despite the grant of summary judgment and the dismissal of the appeal on the first statutory challenge action, Landowner filed this second challenge action on March 13, 2025. In accordance with the Act, the condemnation cases are stayed pending disposition of this challenge action. S.C. Code Ann. § 28-2-470. Therefore, SCDOT is barred from entering the property and moving forward with Project construction.

The underlying condemnation action is referenced as Tract 377 (the tract reference in the Project plans), naming Bush River C-Store, LLC as Landowner. SCDOT seeks to acquire a strip

along the property frontage. SCDOT appraised the value of the acquisition, and has deposited its estimate of just compensation based on the appraisal.

Plaintiff/Landowner based the challenge action on an unsubstantiated claim that SCDOT lacks the right to condemn (despite SCDOT providing the statutory codes for its authority in the February 24, 2025 Condemnation Notice, paragraph 4).

Defendant SCDOT primarily argues that Judge Goodstein has previously addressed these issues and granted summary judgment by Order dated October 10, 2024 in case 2023-CP-40-05117. SCDOT further argues that the acquisition is for public use and is necessary to properly and safely design the Project.

SUMMARY JUDGMENT STANDARD

Motions for summary judgment should be granted where “there is no genuine issue as to any material fact and ... the moving party is entitled to judgment as a matter of law.” Rule 56(c), SCRCPP. Summary judgment is appropriate when “plain, palpable and undisputed facts exist on which reasonable minds cannot differ.” Thompkins v. Festival Ctr. Grp. I, 306 S.C. 193, 410 S.E. 2d 593 (S.C. Ct. App. 1991); Priest v. Brown, 302 S.C. 405, 396 S.E. 2d 638 (S.C. Ct. App. 1990); Main v. Corley, 281 S.C. 525, 316 S.E.2d 406 (1984). Under Rule 56(c), SCRCPP, the party seeking summary judgment has the initial burden of demonstrating the absence of a genuine issue of material fact:

Summary judgment is appropriate when it is clear that there is no genuine issue of material fact and the conclusions and inferences to be drawn from the facts are undisputed. In ruling on a motion for summary judgment, the evidence and the inferences which can be drawn therefrom should be viewed in the light most favorable to the nonmoving party.

See George v. Empire Fire & Marine Ins. Co., 344 S.C. 582, 545 S.E.2d 500 (2001).

Furthermore, “[a]n adverse party may not rely on the mere allegations in his pleadings to withstand a summary judgment motion, but must set forth *specific facts* showing there is a genuine issue for trial.” Cunningham v. Anderson Cty., 402 S.C. 434, 741 S.E.2d 545, 549 (Ct. App. 2013) (reversed in part on other grounds by Cunningham v. Anderson County, 414 S.C. 298, 778 S.E.2d 884 (2015) (citations omitted) (emphasis added)).

“A court considering summary judgment neither makes factual determinations nor considers the merits of competing testimony; however, summary judgment is appropriate when a properly supported motion sets forth facts that remain undisputed or are contested in a deficient manner.” David v. McLeod Reg'l Med. Ctr., 367 S.C. 242, 626 S.E.2d 1, 5 (2006).

LEGAL ANALYSIS AND CONCLUSIONS

The South Carolina Constitution provides: “Except as otherwise provided in this Constitution, private property shall not be taken for private use without the consent of the owner, nor for public use without just compensation being first made for the property.” S.C. CONST. art. I, § 13 (1895). “The public use implies possession, occupation, and enjoyment of the land by the public at large or by public agencies.” Ga. Dep’t of Transp. v. Jasper Cty., 355 S.C. 631, 586 S.E.2d 853, 856 (2003) (citing Edens v. City of Columbia, 228 S.C. at 573, 91 S.E.2d 280 (1956)).

Plaintiff’s March 13, 2025 Complaint contends that SCDOT’s right to condemn does not exist and the Plaintiff is entitled to discovery as to whether or not the right to condemn exists.” Summons and Complaint, p. 2.¹ In South Carolina, a condemning authority must have a public necessity to exercise eminent domain power. Seabrook v. Carolina Power & Light Co., 159 S.C. 1, 156 S.E. 1 (1930); White v. Johnson, 148 S.C. 488, 146 S.E. 411 (1929). The public necessity must be reasonable, but it is not required to be absolute; the “use must be clearly appropriate and

¹ In the instant challenge action, Plaintiff has only filed a Complaint that provides limited basis for its challenge of the condemnation.

fitting for the purposes for which the land is being condemned.” Timmons v. S.C. Tricentennial Comm’n, 254 S.C. 378, 175 S.E.2d 805, 811 (1970); Groce v. Greenville S. & A. Ry. Co., 94 S.C. 199, 78 S.E. 888 (1913). A reasonable necessity combines the “greatest benefit to the public with the least inconvenience and expense to the condemning” authority. White, 146 S.E. at 412. The question of necessity lies with the condemning authority, but a court can overturn that determination if there is clear abuse of discretion. *See* Sease v. Spartanburg, 242 S.C. 520, 131 S.E.2d 683 (1963). Judge Goodstein’s October 10, 2024 Order Granting SCDOT’s Motion for Summary Judgment clearly addresses and rules on SCDOT’s authority to condemn and SCDOT’s responsiveness to discovery.

The principle of res judicata provides that “final judgment on the merits of an action precludes the parties or their privies from relitigating claims that were or could have been raised in that action.” Venture Eng’g, Inc. v. Tishman Constr. Corp. of S.C., 360, S.C. 156, 600 S.E.2d 547, 550 (2004) (citing In re S.N.A. Nut Co., 215 B.R. 1004, 1008 (1997) (internal quotations omitted)). The parties in the instant case are the same as in case number 2023-CP-40-05117; the Plaintiff’s claim is the same in the instant case as in case number 2023-CP-40-05117; and the claim in the instant case has been adjudicated – an October 10, 2024 Order granting SCDOT’s motion for summary judgment is attached hereto as **Exhibit A**.

The principle of issue preclusion provides that “when an issue has been actually litigated and determined by a valid and final judgment, and the determination is essential to the judgment, the determination is conclusive in a subsequent action between the parties, whether on the same or different claim.” S.C. Prop. & Cas. Ins. Guaranty Ass’n v. Walm-Mart Stores, Inc., 304 S.C. 210, 403 S.E.2d 625, 627 (1991) (see Restatement (Second) of Judgments, § 27 (1982)).

Ultimately, Plaintiff’s complaint fails to establish any specific factual basis on which it can stand; accordingly, and pursuant to Rule 56(c), SCRCP summary judgment is mandated.

The Defendant has moved for fees and costs and may pursue the same by separate motion.

NOW, THEREFORE,

IT IS ORDERED that Defendant's Motion for Summary Judgment is hereby GRANTED and that Defendant may pursue recovery of fees and costs, in accordance with The Act, by separate motion.

IT IS SO ORDERED.

September _____, 2025

The Honorable Daniel M. Coble
Richland County, South Carolina



Richland Common Pleas

Case Caption: Bush River C Store Llc vs S C Department Of Transportation
Case Number: 2025CP4001667
Type: Order/Summary Judgment

So Ordered

s/ Daniel Coble, 2774

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EXHIBIT A

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO.: 2023-CP-40-05117

Bush River C-Store, LLC and Pallav Desai,

Plaintiffs,

vs

South Carolina Department of Transportation,

Defendant.

**ORDER GRANTING DEFENDANT'S
MOTION FOR SUMMARY JUDGMENT**

Defendant South Carolina Department of Transportation ("SCDOT") filed a Motion for Summary Judgment, pursuant to Rule 56, SCRPC, on April 30, 2024 and a Motion to Dismiss, pursuant to Rule 12(b)(6), SCRPC, on October 10, 2023 (collectively referred to hereafter as "Motions"). Defendant's Motions are based on the grounds that (i) no genuine issues of material fact exist as to Plaintiffs' challenge action; and (ii) Plaintiffs have failed to state proper causes of action. A hearing on SCDOT's Motions was noticed and held on June 18, 2024 via Zoom. David G. Pagliarini, Esq. and Julia Anne E. McKeachie, Esq. appeared on behalf of Defendant SCDOT. S. Jahue Moore, Esq. appeared on behalf of the Plaintiffs. SCDOT has conceded that the Rule 12(b)(6) motion has been superseded by the Rule 56 motion and, therefore, only the latter is addressed.

BACKGROUND AND FACTUAL CONCLUSIONS

The instant case is a statutory challenge action, brought pursuant to South Carolina Code Section 28-2-470, regarding two (2) separate condemnation actions. The challenge statute provides that "[a]n action challenging the condemnor's right to condemn must be commenced in separate proceedings filed in the court of common pleas . . ." The Eminent Domain Procedure Act, S.C.

Code Ann. § 28-2-470 (1976). Challenges to condemnations are cases in equity. *See Ga. Dep't of Transp. v. Jasper Cty.*, 355 S.C. 631, 586 S.E.2d 853 (2003).

This case stems from two (2) separate condemnation cases commenced by SCDOT to acquire right-of-way necessary to complete a road project known as Carolina Crossroads (the "Project") in Richland and Lexington Counties. Specifically, the Project involves the re-design and expansion of interchanges and secondary roads near I-20/I-26/I-126 and is one of the largest in South Carolina history. The Project will be completed in phases over a period of several years.

The underlying condemnation cases were served, but not filed, in September 2023 in accordance with the provisions of the South Carolina Eminent Domain Procedure Act (the "Act"). S.C. Code Ann. § 28-2-220(C). As such, the underlying condemnation actions have not been assigned case numbers. In accordance with the Act, the condemnation cases are stayed pending disposition of this challenge action. S.C. Code Ann. § 28-2-470. Therefore, SCDOT is barred from entering the property and from moving forward with Project construction.

The underlying condemnation actions are referenced as Tract 376 (the tract reference in the Project plans), naming Pallav Desai as Landowner, and as Tract 377, naming Bush River C-Store as Landowner. The term Landowner is defined as "one or more condemnees having a record fee simple interest in the property condemned or any part thereof." S.C. Code Ann. § 28-2-30(12). Tracts 376 and 377 are adjacent and, although there are common ownership interests, they are separately titled.

For Tract 376 (Pallav Desai), SCDOT seeks to acquire a small strip (826 square feet) along the property frontage on Bush River Road. SCDOT appraised the value of the acquisition and is prepared to deposit its estimate of just compensation (\$8,300.00) once the condemnation action is permitted to proceed.

For Tract 377 (Bush River C-Store, LLC), SCDOT seeks to acquire a small strip (1,734 square feet) along the property frontage on Bush River Road. SCDOT appraised the value of the acquisition and is prepared to deposit its estimate of just compensation (\$115,000.00) once the condemnation action is permitted to proceed.

Plaintiffs/Landowners elected to file one statutory challenge action to address the condemnation actions, basing the challenge action on the following:

1. That the SCDOT is barred by the doctrines of res judicata and collateral estoppel from pursuing the acquisitions;
2. That the SCDOT does not have to take these properties and that there are "other ways the properties can be taken;"
3. All damages to the property remainders have not been considered by SCDOT; and
4. The Plaintiffs are filing this action out of "an abundance of caution" and "are obligated to file this action."

Defendant SCDOT filed its Motions arguing that the SCDOT acquisitions, which are the subjects of the challenge action, are for public use and are necessary to properly and safely design the Project.

Written discovery has been sent and responses have been provided by both parties.

SUMMARY JUDGMENT STANDARD

Motions for summary judgment should be granted where "there is no genuine issue as to any material fact and ... the moving party is entitled to judgment as a matter of law." Rule 56(c), SCRCF. Summary judgment is appropriate when "plain, palpable and undisputed facts exist on which reasonable minds cannot differ." Thompkins v. Festival Ctr. Grp. I, 306 S.C. 193, 410 S.E. 2d 593 (S.C. Ct. App. 1991); Priest v. Brown, 302 S.C. 405, 396 S.E. 2d 638 (S.C. Ct. App. 1990); Main v. Corley, 281 S.C. 525, 316 S.E.2d 406 (1984). Under Rule 56(c), SCRCF, the party seeking summary judgment has the initial burden of demonstrating the absence of a genuine issue of material fact:

Summary judgment is appropriate when it is clear that there is no genuine issue of material fact and the conclusions and inferences to be drawn from the facts are undisputed. In ruling on a motion for summary judgment, the evidence and the inferences which can be drawn therefrom should be viewed in the light most favorable to the nonmoving party.

See George v. Empire Fire & Marine Ins. Co., 344 S.C. 582, 545 S.E.2d 500 (2001).

Furthermore, “[a]n adverse party may not rely on the mere allegations in his pleadings to withstand a summary judgment motion, but must set forth *specific facts* showing there is a genuine issue for trial.” Cunningham v. Anderson Cty., 402 S.C. 434, 741 S.E.2d 545, 549 (Ct. App. 2013) (reversed in part on other grounds by Cunningham v. Anderson County, 414 S.C. 298, 778 S.E.2d 884 (2015) (citations omitted) (emphasis added)).

“A court considering summary judgment neither makes factual determinations nor considers the merits of competing testimony; however, summary judgment is appropriate when a properly supported motion sets forth facts that remain undisputed or are contested in a deficient manner.” David v. McLeod Reg'l Med. Ctr., 367 S.C. 242, 626 S.E.2d 1, 5 (2006).

LEGAL ANALYSIS AND CONCLUSIONS

The South Carolina Constitution provides: “Except as otherwise provided in this Constitution, private property shall not be taken for private use without the consent of the owner, nor for public use without just compensation being first made for the property.” S.C. CONST. art. I, § 13 (1895). “The public use implies possession, occupation, and enjoyment of the land by the public at large or by public agencies.” Ga. Dep’t of Transp. v. Jasper Cty., 355 S.C. 631, 586 S.E.2d 853, 856 (2003) (citing Edens v. City of Columbia, 228 S.C. at 573, 91 S.E.2d 280 (1956)).

Plaintiffs allege that acquisitions of small portions of the subject properties are not necessary. In South Carolina, a condemning authority must have a public necessity to exercise eminent domain power. Seabrook v. Carolina Power & Light Co., 159 S.C. 1, 156 S.E. 1 (1930); White v. Johnson, 148 S.C. 488, 146 S.E. 411 (1929). The public necessity must be reasonable,

but it is not required to be absolute; the “use must be clearly appropriate and fitting for the purposes for which the land is being condemned.” Timmons v. S.C. Tricentennial Comm’n, 254 S.C. 378, 175 S.E.2d 805, 811 (1970); Groce v. Greenville S. & A. Ry. Co., 94 S.C. 199, 78 S.E. 888 (1913). A reasonable necessity combines the “greatest benefit to the public with the least inconvenience and expense to the condemning” authority. White, 146 S.E. at 412. The question of necessity lies with the condemning authority, but a court can overturn that determination if there is clear abuse of discretion. *See* Sease v. Spartanburg, 242 S.C. 520, 131 S.E.2d 683 (1963).

SCDOT argues that Plaintiffs have produced no evidence that SCDOT has abused its discretion or that alterations to Bush River Road are not necessary to the larger project. SCDOT further contends that Plaintiffs/Landowners, after approximately nine (9) months, have failed to produce any facts, opinions, or witnesses that would lead to any discoverable evidence to support the contention that there are “other ways the properties can be taken.”

SCDOT Assistant Director of Rights of Way, Mega Projects, William C. Johnston, prepared an affidavit, filed with the court, which provides details as to the reasoning and necessity of the acquisitions, as well as to public use.

SCDOT argues that Plaintiffs’ claim that SCDOT has not properly addressed damages to the remainder may not be addressed in the instant challenge action pursuant to the Act, and that the issue of just compensation is the sole issue for determination in the underlying condemnation cases. S.C. Code Ann. § 28-2-340.

Finally, during the June 18, 2024 hearing in front of the Honorable Judge Goodstein, Plaintiffs argued that SCDOT failed to respond to its discovery requests and that it had no knowledge of who William C. Johnston was in relation to the underlying condemnation actions. SCDOT countered that these claims are false, as SCDOT responded to Plaintiffs’ discovery requests on March 14, 2024 and in those responses Mr. Johnston was named as a witness.

The court first addresses the Plaintiffs' claim that the SCDOT is barred by the doctrines of res judicata and collateral estoppel from pursuing the acquisitions. Plaintiffs have provided no evidence or made any tenable argument showing that the underlying condemnation actions have been litigated or are barred in any manner.

Plaintiffs further argue that the SCDOT does not have to take these properties and that there are "other ways the properties can be taken." This argument appears to be based on the public necessity doctrine previously cited in this Order. The question of necessity lies with the condemning authority, but a court can overturn that determination if there is clear abuse of discretion. *See Sease v. Spartanburg*, 242 S.C. 520, 131 S.E.2d 683 (1963).

There is no doubt that the Carolina Crossroads project is a public highway project both financed by and designed and constructed for the benefit of the public. SCDOT representative William C. Johnston provided an affidavit supporting these conclusions and Plaintiffs have not seriously challenged the public use aspect. Rather, Plaintiffs argue, without factual basis, that the proposed acquisitions from Tracts 376 and 377 are unnecessary as the project could have been designed in a manner that would allow the acquisitions to be avoided.

SCDOT is charged with maintaining South Carolina highways. S.C. Code Ann. § 57-5-10. SCDOT engineers and consultants designed and approved project plans for this section of the Project. The subject properties are situated along Bush River Road, an existing public right-of-way, and have direct access to and from the road.

In approximately nine (9) months of litigation, Plaintiffs have named no witnesses who hold qualifications to address any deficiency or problem with the SCDOT plans. Plaintiffs have failed to provide affidavits from any witnesses that would create a question of fact. Moreover, even if Plaintiffs provided an alternative to the SCDOT plans, that alone is insufficient: The question of necessity lies with the condemning authority. *See Sease v. Spartanburg*, 242 S.C. 520, 131 S.E.2d

683 (1963). It is insufficient for a Landowner to simply provide an alternate or competing plan for a court sitting in equity to determine which plan is “better.” It is presumed that the condemning authority is correct that the acquisitions, in size and scope, are necessary to design and construct a safe and effective public project:

When a landowner brings an action to enjoin a condemnation proceeding the burden is upon him to allege and establish fraud, bad faith, or clear abuse of discretion on the part of the condemnor. It follows that if the landowner fails to allege facts in the complaint constituting fraud, bad faith or clear abuse of discretion on the part of the condemnor, such complaint does not state a cause of action.

Id. at 525-26 (citing Atkinson v. Carolina Light Co., 239 S.C. 150, 121 S.E.2d 743 (1961)). Plaintiffs have failed to put forth any facts that would indicate that SCDOT has abused its discretion.

Plaintiffs also argue that damages to the property remainders have not been considered by SCDOT. Damages are an element of just compensation. The Act provides that evidence for the purpose of valuation matters is to be heard in the condemnation cases and not this equitable challenge proceeding. S.C. Code Ann. § 28-2-340.

Plaintiffs further argue that they filed this action out of “an abundance of caution” and “are obligated to file this action.” This assertion is incorrect. South Carolina Code section 28-2-280(7) provides that the following language must be included in every condemnation notice:

AN ACTION CHALLENGING THE CONDEMNOR’S RIGHT TO ACQUIRE THE PROPERTY AND RIGHTS DESCRIBED HEREIN MUST BE COMMENCED IN A SEPARATE PROCEEDING IN THE COURT OF COMMON PLEAS WITHIN THIRTY DAYS OF THE SERVICE OF THIS CONDEMNATION NOTICE, OR THE LANDOWNER WILL BE CONSIDERED TO HAVE WAIVED THE CHALLENGE.

The Landowner is in no way obligated to file a separate challenge action; rather, the above language is intended to put the Landowner on notice that failure to file a challenge action results in the waiver of the right to do so.

Finally, Plaintiffs argue that sufficient discovery has not been completed and that the Rule 56 motion, therefore, is premature. Specifically, Plaintiffs assert that SCDOT has not responded to written discovery requests. SCDOT counsel indicated that responses were provided on March 14, 2024. Plaintiffs filed this case on September 28, 2023. Plaintiffs have provided no affidavits to support this challenge action despite ample time to do so. There has been sufficient opportunity for discovery in this case and there are no genuine issues of material fact pertaining to Plaintiffs' claims or Defendant's defenses thereto as discussed herein. Ultimately, Plaintiffs' complaint fails to establish any specific factual basis on which it can stand; accordingly, and pursuant to Rule 56(c), SCRCP summary judgment is mandated.

NOW, THEREFORE,

IT IS ORDERED that Defendant's Motion for Summary Judgment is hereby GRANTED.

IT IS SO ORDERED.

October 10, 2024

The Honorable Diane Goodstein
Orangeburg, South Carolina



Richland Common Pleas

Case Caption: Bush River C Store Llc , plaintiff, et al vs South Carolina Department
Of Transportation
Case Number: 2023CP4005117
Type: Order/Summary Judgment

It is so Ordered!

s/Diane S. Goodstein

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The South Carolina Court of Appeals

Bush River C-Store, LLC and Pallav Desai, Appellants,

v.

South Carolina Department of Transportation,
Respondent.

Appellate Case No. 2024-001901

The Honorable Diane Schafer Goodstein
Richland County
Trial Court Case No. 2023CP4005117

ORDER

Appellant has failed to serve and file their initial brief of appellant and designation of matter, as required by Rule 208 of the South Carolina Appellate Court Rules and this Court's letter dated January 23, 2025. Accordingly, this matter is dismissed. The remittitur will be sent as provided by Rule 221(b), SCACR.

FOR THE COURT
BY Catherine Harrison, deputy
CLERK

Columbia, South Carolina

cc:
S. Jahue Moore, Esquire
James Edward Bradley, Esquire
Julia Anne E. G. McKeachie, Esquire
David Guy Pagliarini, Esquire

FILED
Feb 10 2025

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO.: 2023-CP-40-05117

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Plaintiffs,

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Defendant.

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BACKGROUND AND FACTUAL CONCLUSIONS

The instant case is a statutory challenge action, brought pursuant to South Carolina Code Section 28-2-470, regarding two (2) separate condemnation actions. The challenge statute provides that "[a]n action challenging the condemnor's right to condemn must be commenced in separate proceedings filed in the court of common pleas . . ." The Eminent Domain Procedure Act, S.C.

Code Ann. § 28-2-470 (1976). Challenges to condemnations are cases in equity. *See Ga. Dep't of Transp. v. Jasper Cty.*, 355 S.C. 631, 586 S.E.2d 853 (2003).

This case stems from two (2) separate condemnation cases commenced by SCDOT to acquire right-of-way necessary to complete a road project known as Carolina Crossroads (the "Project") in Richland and Lexington Counties. Specifically, the Project involves the re-design and expansion of interchanges and secondary roads near I-20/I-26/I-126 and is one of the largest in South Carolina history. The Project will be completed in phases over a period of several years.

The underlying condemnation cases were served, but not filed, in September 2023 in accordance with the provisions of the South Carolina Eminent Domain Procedure Act (the "Act"). S.C. Code Ann. § 28-2-220(C). As such, the underlying condemnation actions have not been assigned case numbers. In accordance with the Act, the condemnation cases are stayed pending disposition of this challenge action. S.C. Code Ann. § 28-2-470. Therefore, SCDOT is barred from entering the property and from moving forward with Project construction.

The underlying condemnation actions are referenced as Tract 376 (the tract reference in the Project plans), naming Pallav Desai as Landowner, and as Tract 377, naming Bush River C-Store as Landowner. The term Landowner is defined as "one or more condemnees having a record fee simple interest in the property condemned or any part thereof." S.C. Code Ann. § 28-2-30(12). Tracts 376 and 377 are adjacent and, although there are common ownership interests, they are separately titled.

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2. That the SCDOT does not have to take these properties and that there are "other ways the properties can be taken;"
3. All damages to the property remainders have not been considered by SCDOT; and
4. The Plaintiffs are filing this action out of "an abundance of caution" and "are obligated to file this action."

Defendant SCDOT filed its Motions arguing that the SCDOT acquisitions, which are the subjects of the challenge action, are for public use and are necessary to properly and safely design the Project.

Written discovery has been sent and responses have been provided by both parties.

SUMMARY JUDGMENT STANDARD

Motions for summary judgment should be granted where "there is no genuine issue as to any material fact and ... the moving party is entitled to judgment as a matter of law." Rule 56(c), SCRCP. Summary judgment is appropriate when "plain, palpable and undisputed facts exist on which reasonable minds cannot differ." Thompkins v. Festival Ctr. Grp. I, 306 S.C. 193, 410 S.E. 2d 593 (S.C. Ct. App. 1991); Priest v. Brown, 302 S.C. 405, 396 S.E. 2d 638 (S.C. Ct. App. 1990); Main v. Corley, 281 S.C. 525, 316 S.E.2d 406 (1984). Under Rule 56(c), SCRCP, the party seeking summary judgment has the initial burden of demonstrating the absence of a genuine issue of material fact:

Summary judgment is appropriate when it is clear that there is no genuine issue of material fact and the conclusions and inferences to be drawn from the facts are undisputed. In ruling on a motion for summary judgment, the evidence and the inferences which can be drawn therefrom should be viewed in the light most favorable to the nonmoving party.

See George v. Empire Fire & Marine Ins. Co., 344 S.C. 582, 545 S.E.2d 500 (2001).

Furthermore, “[a]n adverse party may not rely on the mere allegations in his pleadings to withstand a summary judgment motion, but must set forth *specific facts* showing there is a genuine issue for trial.” Cunningham v. Anderson Cty., 402 S.C. 434, 741 S.E.2d 545, 549 (Ct. App. 2013) (reversed in part on other grounds by Cunningham v. Anderson County, 414 S.C. 298, 778 S.E.2d 884 (2015) (citations omitted) (emphasis added)).

“A court considering summary judgment neither makes factual determinations nor considers the merits of competing testimony; however, summary judgment is appropriate when a properly supported motion sets forth facts that remain undisputed or are contested in a deficient manner.” David v. McLeod Reg’l Med. Ctr., 367 S.C. 242, 626 S.E.2d 1, 5 (2006).

LEGAL ANALYSIS AND CONCLUSIONS

The South Carolina Constitution provides: “Except as otherwise provided in this Constitution, private property shall not be taken for private use without the consent of the owner, nor for public use without just compensation being first made for the property.” S.C. CONST. art. I, § 13 (1895). “The public use implies possession, occupation, and enjoyment of the land by the public at large or by public agencies.” Ga. Dep’t of Transp. v. Jasper Cty., 355 S.C. 631, 586 S.E.2d 853, 856 (2003) (citing Edens v. City of Columbia, 228 S.C. at 573, 91 S.E.2d 280 (1956)).

Plaintiffs allege that acquisitions of small portions of the subject properties are not necessary. In South Carolina, a condemning authority must have a public necessity to exercise eminent domain power. Seabrook v. Carolina Power & Light Co., 159 S.C. 1, 156 S.E. 1 (1930); White v. Johnson, 148 S.C. 488, 146 S.E. 411 (1929). The public necessity must be reasonable,

but it is not required to be absolute; the “use must be clearly appropriate and fitting for the purposes for which the land is being condemned.” Timmons v. S.C. Tricentennial Comm’n, 254 S.C. 378, 175 S.E.2d 805, 811 (1970); Groce v. Greenville S. & A. Ry. Co., 94 S.C. 199, 78 S.E. 888 (1913). A reasonable necessity combines the “greatest benefit to the public with the least inconvenience and expense to the condemning” authority. White, 146 S.E. at 412. The question of necessity lies with the condemning authority, but a court can overturn that determination if there is clear abuse of discretion. *See* Sease v. Spartanburg, 242 S.C. 520, 131 S.E.2d 683 (1963).

SCDOT argues that Plaintiffs have produced no evidence that SCDOT has abused its discretion or that alterations to Bush River Road are not necessary to the larger project. SCDOT further contends that Plaintiffs/Landowners, after approximately nine (9) months, have failed to produce any facts, opinions, or witnesses that would lead to any discoverable evidence to support the contention that there are “other ways the properties can be taken.”

SCDOT Assistant Director of Rights of Way, Mega Projects, William C. Johnston, prepared an affidavit, filed with the court, which provides details as to the reasoning and necessity of the acquisitions, as well as to public use.

SCDOT argues that Plaintiffs’ claim that SCDOT has not properly addressed damages to the remainder may not be addressed in the instant challenge action pursuant to the Act, and that the issue of just compensation is the sole issue for determination in the underlying condemnation cases. S.C. Code Ann. § 28-2-340.

Finally, during the June 18, 2024 hearing in front of the Honorable Judge Goodstein, Plaintiffs argued that SCDOT failed to respond to its discovery requests and that it had no knowledge of who William C. Johnston was in relation to the underlying condemnation actions. SCDOT countered that these claims are false. as SCDOT responded to Plaintiffs’ discovery requests on March 14, 2024 and in those responses Mr. Johnston was named as a witness.

The court first addresses the Plaintiffs' claim that the SCDOT is barred by the doctrines of res judicata and collateral estoppel from pursuing the acquisitions. Plaintiffs have provided no evidence or made any tenable argument showing that the underlying condemnation actions have been litigated or are barred in any manner.

Plaintiffs further argue that the SCDOT does not have to take these properties and that there are "other ways the properties can be taken." This argument appears to be based on the public necessity doctrine previously cited in this Order. The question of necessity lies with the condemning authority, but a court can overturn that determination if there is clear abuse of discretion. *See Sease v. Spartanburg*, 242 S.C. 520, 131 S.E.2d 683 (1963).

There is no doubt that the Carolina Crossroads project is a public highway project both financed by and designed and constructed for the benefit of the public. SCDOT representative William C. Johnston provided an affidavit supporting these conclusions and Plaintiffs have not seriously challenged the public use aspect. Rather, Plaintiffs argue, without factual basis, that the proposed acquisitions from Tracts 376 and 377 are unnecessary as the project could have been designed in a manner that would allow the acquisitions to be avoided.

SCDOT is charged with maintaining South Carolina highways. S.C. Code Ann. § 57-5-10. SCDOT engineers and consultants designed and approved project plans for this section of the Project. The subject properties are situated along Bush River Road, an existing public right-of-way, and have direct access to and from the road.

In approximately nine (9) months of litigation, Plaintiffs have named no witnesses who hold qualifications to address any deficiency or problem with the SCDOT plans. Plaintiffs have failed to provide affidavits from any witnesses that would create a question of fact. Moreover, even if Plaintiffs provided an alternative to the SCDOT plans, that alone is insufficient: The question of necessity lies with the condemning authority. *See Sease v. Spartanburg*, 242 S.C. 520, 131 S.E.2d

683 (1963). It is insufficient for a Landowner to simply provide an alternate or competing plan for a court sitting in equity to determine which plan is “better.” It is presumed that the condemning authority is correct that the acquisitions, in size and scope, are necessary to design and construct a safe and effective public project:

When a landowner brings an action to enjoin a condemnation proceeding the burden is upon him to allege and establish fraud, bad faith, or clear abuse of discretion on the part of the condemnor. It follows that if the landowner fails to allege facts in the complaint constituting fraud, bad faith or clear abuse of discretion on the part of the condemnor, such complaint does not state a cause of action.

Id. at 525-26 (citing Atkinson v. Carolina Light Co., 239 S.C. 150, 121 S.E.2d 743 (1961)). Plaintiffs have failed to put forth any facts that would indicate that SCDOT has abused its discretion.

Plaintiffs also argue that damages to the property remainders have not been considered by SCDOT. Damages are an element of just compensation. The Act provides that evidence for the purpose of valuation matters is to be heard in the condemnation cases and not this equitable challenge proceeding. S.C. Code Ann. § 28-2-340.

Plaintiffs further argue that they filed this action out of “an abundance of caution” and “are obligated to file this action.” This assertion is incorrect. South Carolina Code section 28-2-280(7) provides that the following language must be included in every condemnation notice:

AN ACTION CHALLENGING THE CONDEMNOR’S RIGHT TO ACQUIRE THE PROPERTY AND RIGHTS DESCRIBED HEREIN MUST BE COMMENCED IN A SEPARATE PROCEEDING IN THE COURT OF COMMON PLEAS WITHIN THIRTY DAYS OF THE SERVICE OF THIS CONDEMNATION NOTICE, OR THE LANDOWNER WILL BE CONSIDERED TO HAVE WAIVED THE CHALLENGE.

The Landowner is in no way obligated to file a separate challenge action; rather, the above language is intended to put the Landowner on notice that failure to file a challenge action results in the waiver of the right to do so.

Finally, Plaintiffs argue that sufficient discovery has not been completed and that the Rule 56 motion, therefore, is premature. Specifically, Plaintiffs assert that SCDOT has not responded to written discovery requests. SCDOT counsel indicated that responses were provided on March 14, 2024. Plaintiffs filed this case on September 28, 2023. Plaintiffs have provided no affidavits to support this challenge action despite ample time to do so. There has been sufficient opportunity for discovery in this case and there are no genuine issues of material fact pertaining to Plaintiffs' claims or Defendant's defenses thereto as discussed herein. Ultimately, Plaintiffs' complaint fails to establish any specific factual basis on which it can stand; accordingly, and pursuant to Rule 56(c), SCRCF summary judgment is mandated.

NOW, THEREFORE,

IT IS ORDERED that Defendant's Motion for Summary Judgment is hereby GRANTED.

IT IS SO ORDERED.

October 10, 2024

The Honorable Diane Goodstein
Orangeburg, South Carolina



Richland Common Pleas

Case Caption: Bush River C Store Llc , plaintiff, et al vs South Carolina Department
Of Transportation
Case Number: 2023CP4005117
Type: Order/Summary Judgment

It is so Ordered!

s/Diane S. Goodstein

Electronically signed on 2024-10-10 12:45:51 page 9 of 9

ELECTRONICALLY FILED - 2024 Oct 10 4:08 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4005117

PAGLIARINI LAW FIRM, LLC

ATTORNEYS AT LAW

David G. Pagliarini, Esquire
david@lawplf.com

145 River Landing Drive, Suite 101 B
Daniel Island, SC 29492
Phone: 843-971-8646
Fax: 843-971-8745

September 1, 2023

Via Certified Mail – Return Receipt Requested

James Edward Bradley, Esq.
Moore, Bradley & Meyers Law Firm, P.A.
1700 Sunset Blvd.
West Columbia, SC 29169

Re: South Carolina Department of Transportation v. Bush River C-Store, LLC, et al.
Project ID: 027662 Carolina Crossroads
Tract 377

Dear Mr. Bradley:

Please find enclosed for service upon you unfiled copies of the condemnation pleadings in the above-referenced matter. In accordance with the provisions of the South Carolina Eminent Domain Procedure Act, we intend to file these documents and deposit our estimate of just compensation.

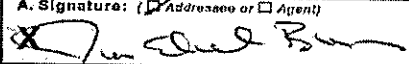
If authorized to accept service on behalf of the Landowner, please sign and return the enclosed Acceptance of Service to our office. Should you have any questions regarding the enclosed, please do not hesitate to contact me.

Kind regards,



David G. Pagliarini

DGP/lis
Enclosure(s)

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
■ Ensure items 1, 2, and 3 are completed. ■ Attach this card to the back of the mailpiece, or on the front if space permits.		A. Signature: (☒ Addressee or ☐ Agent) 	
1. Article Addressed to: JAMES EDWARD BRADLEY, ESQ. Moore, Bradley & Meyers Law Firm, P.A. 1700 SUNSET BLVD WEST COLUMBIA SC 29169-5940		B. Received By: (Printed Name) James Edward Bradley	C. Date of Delivery 9/7/23
2. Article Number (Transfer from service label) 9415 4118 9956 2059 2911 87		D. Is delivery address different from item 1? ☐ Yes ☒ No If YES, enter delivery address below:	
 9490 9118 9956 2059 2911 38		3. Service Type ☒ Certified Mail® Restricted Delivery	

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF LEXINGTON / RICHLAND

Civil Action No.:

Road/Route I-20/I-26/I-126 (Carolina Crossroads)

Project ID No. P027662

Tract 377

South Carolina Department of Transportation,

Condemnor,

v.

SUMMONS

Bush River C-Store, LLC,

Landowner,

and

Congaree State Bank, Mortgagee and Sai Ram-Bush
River ABC, LLC, Lessee,

Other Condemnee(s).

TO: THE LANDOWNER(S) AND OTHER CONDEMNEE(S) ABOVE-NAMED:

YOU ARE HEREBY SUMMONED, advised and notified, that pursuant to the South Carolina Eminent Domain Procedures Act, Section 28-2-10, et seq., the within Condemnation Notice and Tender of Payment, a copy of which is herewith served upon you, has been filed with the Clerk of Court for Richland County. The purpose of this lawsuit is to enable the Condemnor, the South Carolina Department of Transportation, to acquire certain real property for its public purposes, as is more fully stated in the attached Condemnation Notice and Tender of Payment. Responsive pleadings to the Condemnation Notice and Tender of Payment are not necessary.

PAGLIARINI LAW FIRM, LLC

s/ DAVID G. PAGLIARINI

David G. Pagliarini, Esq. (SC Bar No. 8850)

145 River Landing Drive, Ste. 101-B

Charleston, SC 29492

T: (843) 971-8646

david@lawplf.com

Attorney for Condemnor

Charleston, South Carolina
September 1, 2023

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF LEXINGTON / RICHLAND

Civil Action No.:

Road/Route I-20/I-26/I-126 (Carolina Crossroads)
Project ID No. P027662
Tract 377

South Carolina Department of Transportation,

Condemnor,

v.

Bush River C-Store, LLC,

Landowner,

and

Congaree State Bank, Mortgagee and Sai Ram-Bush
River ABC, LLC, Lessee,

Other Condemnee(s).

**CONDEMNATION NOTICE
AND
TENDER OF PAYMENT

(Jury Trial Demanded)**

Copy To: James Edward Bradley, Esq., Moore Bradley Meyers Law Firm, P.A., 1700 Sunset
Blvd., West Columbia, SC 29169

TO: THE LANDOWNER(S) AND OTHER CONDEMNEE(S) ABOVE-NAMED:

Pursuant to the South Carolina Eminent Domain Procedure Act, Section 28-2-10, et seq., Code of Laws of South Carolina, 1976, as amended, you are hereby notified as follows:

1. The South Carolina Department of Transportation (SCDOT) is the Condemnor herein and seeks to acquire the real property described herein for public purposes.

2. **Bush River C-Store, LLC** is named as Landowner(s) in this action by virtue of **their** claim(s) of title (or other interests) as shown by that certain **deed from P&P Investment Company, LLC, dated July 8, 2013, and recorded July 10, 2013, in Deed Book 1876, Page 3825 in the ROD Office for Richland County.**

Project ID No. P027662 — Road/Route I-20/I-26/I-126 (Carolina Crossroads) — Tract 377

3. Congaree State Bank is made a party in this action as “Other Condemnee(s)” by virtue of that Mortgage dated July 8, 2013 and recorded July 10, 2013 in Book 1876, Page 3829 in the ROD Office for Richland County; including all assignments as constituted.

4. Sai Ram-Bush River, LLC is made a party in the action as “Other Condemnee(s)” by virtue of that certain unrecorded Lease of Real Property.

5. The following is a description of the real property subject to this action and a description of the interest sought to be acquired in and to the property by the Condemnor:

All that parcel or strip of land, to establish a right of way, containing 1,734 square feet (0.040 acre), more or less, and all improvements thereon, if any, being a portion of the property, owned by Bush River C-Store, LLC, shown as the “Area of Acquisition” on Exhibit “A”, attached hereto and made a part hereof, between approximate survey stations 93+00 and 95+00 right of S-31 (Bush River Road). Property herein conveyed is along a relocated centerline as shown on plans between approximate survey stations 68+86.23 to 96+54.36 of S-31 (Bush River Road).

Tax Map Number R05916-08-01 (Richland County)

6. The SCDOT is vested with the power of eminent domain pursuant to Section 57-5-320 and Section 28-2-60, Code of Laws of South Carolina, 1976, as amended.

7. The property sought herein is to be acquired for public purposes, more particularly for the construction of a section of I-20/I-26/I-126 (Carolina Crossroads), in Richland/Lexington Counties.

8. This action is brought pursuant to Section 28-2-240, Code of Laws of South Carolina, 1976, as amended.

9. The SCDOT has complied with the requirements set forth in Section 28-2-70(a), Code of Laws of South Carolina, 1976, as amended, by having the subject property appraised and making the appraisal available to the Landowner(s) where required by law, and certifies

Project ID No. P027662 — Road/Route I-20/I-26/I-126 (Carolina Crossroads) — Tract 377

to the Court that a negotiated resolution has been attempted prior to the commencement of this action, or pursuant to Section 12-28-2940, Code of Laws of South Carolina, 1976, as amended, an appraisal of this property was not required.

10. Project plans may be inspected at the office of **South Carolina Department of Transportation, Richland Maintenance Office, 7201 Fairfield Road, Columbia, South Carolina 29203, under Project No. P027662, I-20/I-26/I-126 (Carolina Crossroads), Tract 377.**

11. THE CONDEMNOR HAS DETERMINED JUST COMPENSATION FOR THE PROPERTY AND RIGHTS TO BE ACQUIRED HEREUNDER, INCLUDING ALL DAMAGES (IF ANY), TO BE THE SUM OF **ONE HUNDRED FIFTEEN THOUSAND AND NO/100 DOLLARS (\$115,000.00)** AND HEREBY TENDERS PAYMENT THEREOF TO THE LANDOWNER(S).

12. Payment of this amount will be made to the Landowner(s) if within thirty (30) days of service of this Condemnation Notice, the Landowner(s) in writing requests payment, and agrees to execute any instruments necessary to convey to the Condemnor the property interests and rights described hereinabove. The Agreement and Request for Payment must be sent by first class certified mail with return receipt requested or delivered in person to Director, Rights of Way, South Carolina Department of Transportation, 955 Park Street, Columbia, South Carolina 29202. If no Agreement and Request for Payment is received by the Condemnor within the thirty (30) day period, the tender is considered rejected.

13. If the tender is rejected, the Condemnor has the right to file this Condemnation Notice with the Clerk of Court of the County where the property is situated and deposit the tender amount with the Clerk. The Condemnor shall give the Landowner(s) and Other

Condemnee(s) notice that it has done so and may then proceed to take possession of the property interests and exercise the rights described in this Condemnation Notice.

14. AN ACTION CHALLENGING THE CONDEMNOR'S RIGHT TO ACQUIRE THE PROPERTY AND RIGHTS DESCRIBED HEREIN MUST BE COMMENCED IN A SEPARATE PROCEEDING IN THE COURT OF COMMON PLEAS WITHIN THIRTY DAYS OF THIS CONDEMNATION NOTICE, OR THE LANDOWNER(S) WILL BE CONSIDERED TO HAVE WAIVED THE CHALLENGE.

15. THE CONDEMNOR HAS ELECTED NOT TO UTILIZE THE APPRAISAL PANEL PROCEDURE. Therefore, if the tender herein is rejected, the Condemnor shall notify the Clerk of Court and shall demand a trial to determine the amount of just compensation to be paid. A copy of that notice must be served on the Landowner(s). That notice shall state whether the Condemnor demands a trial by jury or by the Court without a jury. The Landowner(s) has the right to demand a trial by jury. The case may not be called for trial before sixty (60) days after the service of that notice, but it may thereafter be given priority for trial over other civil cases. The Clerk of Court shall give the Landowner(s) written notice by mail of the call of the case for trial.

16. THEREFORE, IF THE TENDER HEREIN IS REJECTED, THE LANDOWNER(S) IS ADVISED TO OBTAIN LEGAL COUNSEL AT ONCE, IF NOT ALREADY OBTAINED.

17. In the event the Landowner(s) accepts the amount tendered in this Notice, the attached Agreement and Request for Payment form should be signed and returned to the Condemnor within thirty (30) days of your receipt of this Notice.

PAGLIARINI LAW FIRM, LLC

s/ DAVID G. PAGLIARINI

David G. Pagliarini, Esq. (SC Bar No. 8850)

145 River Landing Drive, Ste. 101-B

Charleston, SC 29492

T: (843) 971-8646

david@lawplf.com

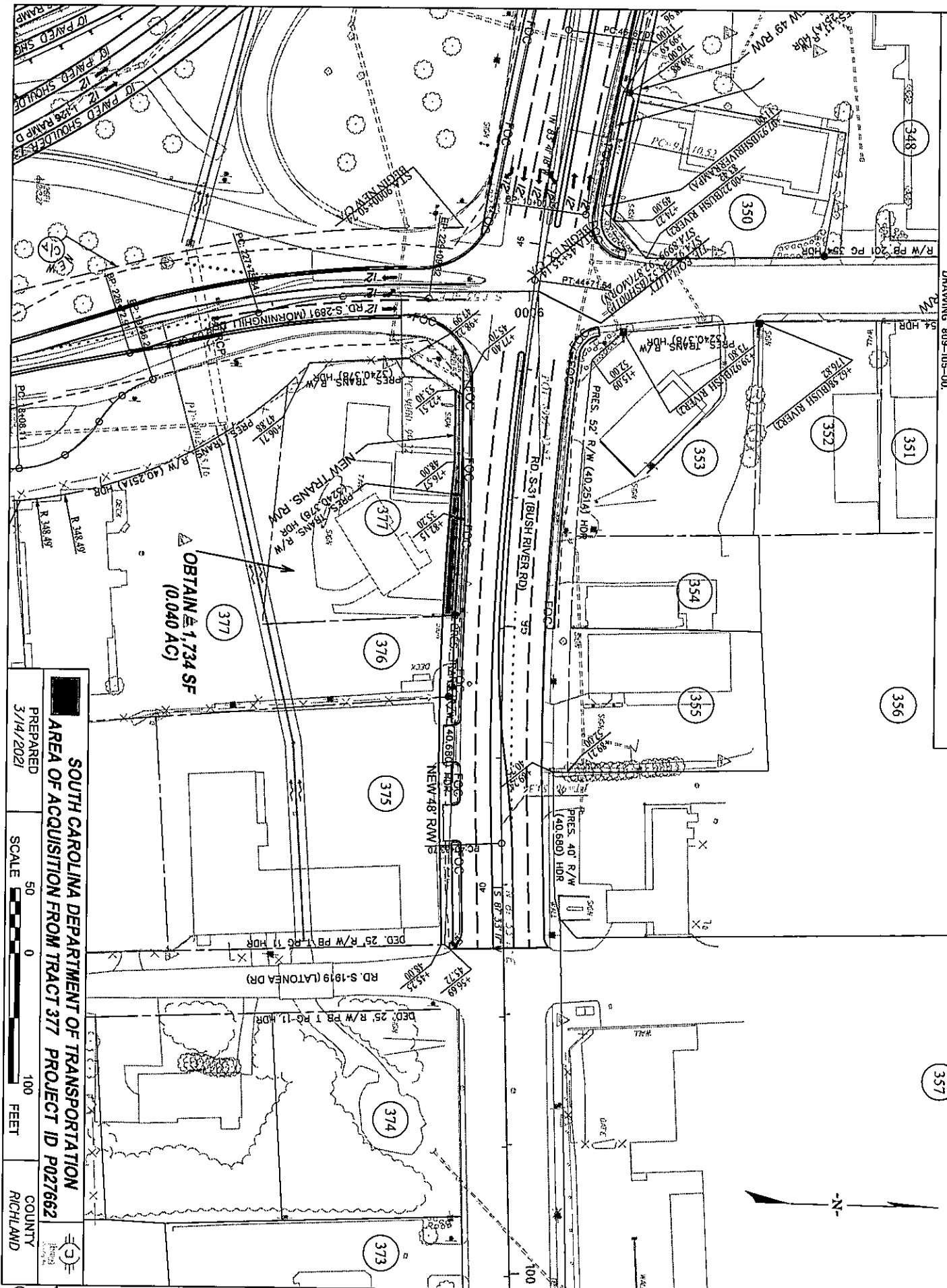
Attorney for Condemnor

Charleston, South Carolina
September 1, 2023

EXHIBIT "A"

THIS EXHIBIT IS A GRAPHIC REPRESENTATION OF THE "AREA OF ACQUISITION" AND IS IN DIRECT REFERENCE TO ENGINEERING PLANS A COPY OF WHICH CAN BE OBTAINED FROM SCOT HEADQUARTERS, 955 PARK STREET, COLUMBIA, SC 29201. ADDITIONALLY UPON COMPLETION OF CONSTRUCTION, A RECORDABLE RIGHT OF WAY PLAY SHALL BE SUBMITTED TO THE REGISTER OF DEEDS IN COMPLIANCE WITH SCOT STANDARD DRAWING 809-105-00.

RELOCATE S-31 (BUSH RIVER RD) CENTERLINE FROM STA 68+86.23 TO STA 96+54.36



SOUTH CAROLINA DEPARTMENT OF TRANSPORTATION
AREA OF ACQUISITION FROM TRACT 377 PROJECT ID P027662
 PREPARED 3/14/2021
 SCALE 0 50 100 FEET
 COUNTY RICHLAND

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON / RICHLAND

**AGREEMENT AND REQUEST
FOR PAYMENT**

Road/Route I-20/I-26/I-126 (Carolina Crossroads)
Project ID No. P027662
Tract 377

I (we), the landowner(s), request payment of the amount determined by the South Carolina Department of Transportation as just compensation for the property and rights to be acquired for the project mentioned above. By making this request I (we) agree to execute the instruments necessary to convey to the South Carolina Department of Transportation the property interests and rights described in the Condemnation Notice and Tender of Payment. Upon signing and payment of the agreed upon amount, the landowner waives any and all rights pursuant to the Code of Laws of South Carolina, 1976, as amended by the Eminent Domain Procedure Act.

BUSH RIVER C-STORE, LLC

(L.S.)

Name: _____ (L.S.)
Title: _____

(L.S.)

(L.S.)

(L.S.)

(L.S.)

Dated the _____ day of _____, 2023

Tract 377

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF LEXINGTON / RICHLAND

Civil Action No.:

Road/Route I-20/I-26/I-126 (Carolina Crossroads)
Project ID No. P027662
Tract 377

South Carolina Department of Transportation,

Condemnor,

v.

Bush River C-Store, LLC,

Landowner(s),

and

Congaree State Bank, Mortgagee and Sai Ram-Bush
River ABC, LLC, Lessee,

Other Condemnee(s).

**AGREEMENT FOR
PAYMENT OF ENTIRE
AMOUNT OF
DEPARTMENT'S OFFER OF
JUST COMPENSATION**

In accordance with the Federal regulations, it has been explained to me that I as Landowner can accept a 100% drawdown against the final determination of just compensation for my property as indicated by the above reference. I hereby apply for the 100% drawdown in the amount of **\$115,000.00**. The Landowner further agrees that, if a verdict on the issue of just compensation is rendered in an amount less than the amount paid to the Landowner and Other Condemnees by the Condemnor pursuant to this agreement, the Landowner will remit to the Condemnor, within thirty (30) days after rendition of said verdict, the excess, plus accrued interest at the rate of eight percent (8%) per annum, of the amount paid to the Landowner and Other Condemnees pursuant to this agreement over and above the jury verdict.

Project ID No. P027662 - Road/RTE I-20/I-26/I-126 (Carolina Crossroads) - Tract 377

The Landowner and the Condemnor further agree that the Condemnor may, in the exercise of its unfettered discretion, do any and all things necessary and desirable on said property to construct the improvements, and that this agreement vests in the Condemnor all the incidents of ownership by the Condemnor of a fee simple interest in the property, and the Landowner does hereby agree to execute those documents necessary to convey fee simple title to the property to the Condemnor after the rendition of a verdict on the issue of additional just compensation.

The acceptance by the Landowner and other Condemnee of such payment shall constitute a waiver of, and absolute bar to the assertion of, any and all rights the Landowner and Other Condemnee may have to any additional interest on such payment received pursuant to this agreement.

This payment does not in any way prohibit or restrict my right to seek additional compensation at trial and shall not be construed as my acceptance of the appraised amount within the meaning of section 28-2-220(c).

1st Witness

LANDOWNER (L.S.)

2nd Witness

LANDOWNER (L.S.)

Michael W. Barbee, P. E.
Director, Rights of Way
P. O. Box 191
Columbia, South Carolina 29202

Columbia, South Carolina

_____, 2023

Project ID No. P027662 - Road/RTE I-20/I-26/I-126 (Carolina Crossroads) - Tract 377

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF LEXINGTON / RICHLAND

Civil Action No.:

Road/Route I-20/I-26/I-126 (Carolina Crossroads)
Project ID No. P027662
Tract 377

South Carolina Department of Transportation,

Condemnor,

v.

LIS PENDENS

Bush River C-Store, LLC,

Landowner,

and

Congaree State Bank, Mortgagee and Sai Ram-Bush
River ABC, LLC, Lessee,

Other Condemnee(s).

NOTICE IS HEREBY GIVEN that the Condemnor above named pursuant to the South Carolina Eminent Domain Procedures Act, Section 28-2-10, et seq., of the South Carolina Code of Laws, 1976, as amended, has brought an action against the Condemnee(s) above named to acquire the real property described herein for public purposes, to-wit:

All that parcel or strip of land, to establish a right of way, containing 1,734 square feet (0.040 acre), more or less, and all improvements thereon, if any, being a portion of the property, owned by Bush River C-Store, LLC, shown as the "Area of Acquisition" on Exhibit "A", attached hereto and made a part hereof, between approximate survey stations 93+00 and 95+00 right of S-31 (Bush River Road). Property herein conveyed is along a relocated centerline as shown on plans between approximate survey stations 68+86.23 to 96+54.36 of S-31 (Bush River Road).

Tax Map Number R05916-08-01 (Richland County)

Project ID No. P027662 — Road/Route I-20/I-26/I-126 (Carolina Crossroads) — Tract 377

The property sought herein is to be acquired for public purposes, more particularly for the construction of a section of **I-20/I-26/I-126 (Carolina Crossroads) in Lexington/Richland Counties.**

PAGLIARINI LAW FIRM, LLC

s/ DAVID G. PAGLIARINI

David G. Pagliarini, Esq. (SC Bar No. 8850)
145 River Landing Drive, Ste. 101-B
Charleston, SC 29492
T: (843) 971-8646
david@lawplf.com

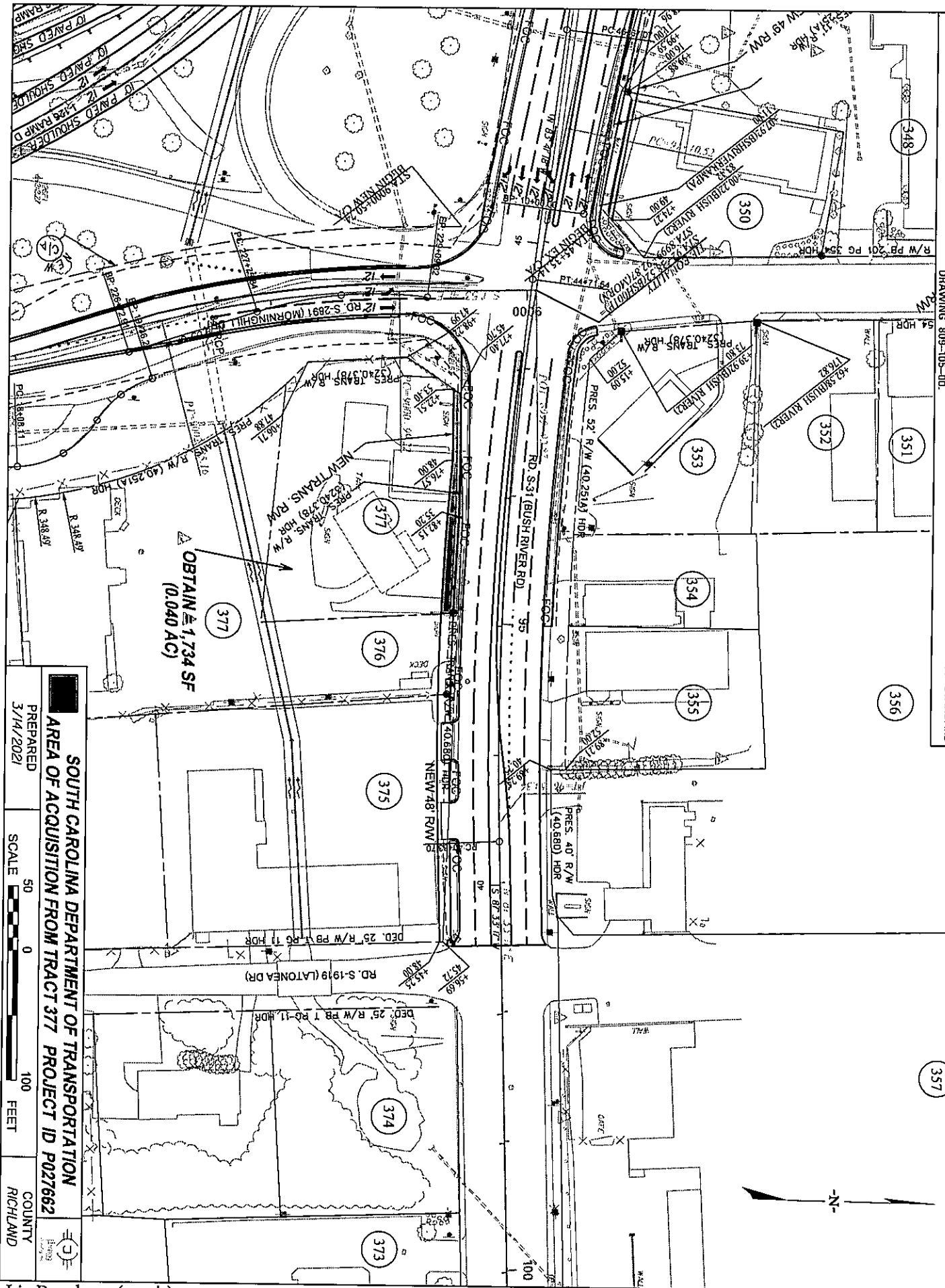
Attorney for Condemnor

Charleston, South Carolina
September 1, 2023

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RELOCATE S-31 (BUSH RIVER RD) CENTERLINE FROM STA 68+86.23 TO STA 96+54.36



SOUTH CAROLINA DEPARTMENT OF TRANSPORTATION

AREA OF ACQUISITION FROM TRACT 377 PROJECT ID P027662

PREPARED 3/14/2021

SCALE 0 50 100 FEET

COUNTY RICHLAND

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF LEXINGTON / RICHLAND

Civil Action No.:

Road/Route I-20/I-26/I-126 (Carolina Crossroads)

Project ID No. P027662

Tract 377

South Carolina Department of Transportation,

Condemnor,

v.

Bush River C-Store, LLC,

Landowner,

and

Congaree State Bank, Mortgagee and Sai Ram-Bush
River ABC, LLC, Lessee,

Other Condemnee(s).

NOTICE OF FILING

TO: THE LANDOWNER(S) AND OTHER CONDEMNEE(S) ABOVE-NAMED:

Pursuant to the South Carolina Eminent Domain Procedure Act, Section 28-2-230(b), et seq., Code of Laws of South Carolina, 1976, as amended, you are hereby notified that as you have rejected the amount tendered as just compensation as stated in the Condemnation Notice, the Condemnor has filed the Condemnation Notice with the Clerk of Court for Richland County pursuant to Section 28-2-90, Code of Laws of South Carolina, 1976, as amended, may now proceed to take possession of the property or interest described in the Condemnation Notice.

[SIGNATURE BLOCK ON FOLLOWING PAGE]

Project ID No. P027662 — Road/Route I-20/I-26/I-126 (Carolina Crossroads) — Tract 377

PAGLIARINI LAW FIRM, LLC

s/ DAVID G. PAGLIARINI

David G. Pagliarini, Esq. (SC Bar No. 8850)

145 River Landing Drive, Ste. 101-B

Charleston, SC 29492

T: (843) 971-8646

david@lawplf.com

Attorney for Condemnor

Charleston, South Carolina
September 1, 2023

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON/RICHLAND

IN THE COURT OF COMMON PLEAS
C/A NO.

Road/Route I-20/I-26/I-126 (Carolina Crossroads)
Project ID No. P027662
Tract 377

South Carolina Department of Transportation

Condemnor,

VS.

Bush River C-Store, LLC,

Landowner,

and

Congaree State Bank, Mortgagee and Sai Ram-
Bush River ABC, LLC, Lessee,

Other Condemnee(s).

AFFIDAVIT

PERSONALLY APPEARED before me **William C. Johnston** who, being first duly sworn, says and deposes:

1. That the amount tendered by the Condemnor to the Landowner(s) in the Condemnation Notice has been rejected;
2. That the Condemnor demands a trial not earlier than sixty (60) days after the date of service of this affidavit upon the Landowner(s);
3. That the Condemnor demands a trial by jury;
4. That, at this time, the Condemnor does not demand that this action be given priority over other cases;

Affidavit (continued)

5. That the Clerk of Court should notify the following of the call of the case.

Bush River C-Store, LLC
41 Cromwell Court
Irmo, SC 29063

Moore Bradley & Myers
S. Jahue Moore, Sr.
1700 Sunset Boulevard
West Columbia, South Carolina 29169

Sai Ram-Bush River ABC, LLC
Address Unknown

Congaree State Bank
PO Box 3018
West Columbia, SC 29171



William C. Johnston
Assistant Director, Rights of Way for
Mega Projects

SWORN to before me this

22nd

day of

February, 2023

Print or Type Notary Name

Deben Thompson

NOTARY PUBLIC FOR

SC

My Commission Expires:

4-13-2031

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	
Bush River C-Store, LLC and Pallav Desai,	)	C/A No. 2023-CP-40-
	)	
Plaintiffs,	)	
	)	
vs.	)	SUMMONS
	)	
South Carolina Department of	)	
Transportation,	)	
	)	
Defendant.	)	
_____	)	

TO THE DEFENDANT ABOVE-NAMED:

YOU ARE HEREBY SUMMONED AND REQUIRED to answer the Complaint in this matter, a copy of which is herewith served upon you, and to serve a copy of your Answer to said Complaint upon the subscriber at his office, 1700 Sunset Boulevard (29169), P.O. Box 5709, West Columbia, South Carolina, 29171, within THIRTY (30) days from the service thereof, exclusive of the day of such service; and if you fail to answer the Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Complaint.

MOORE BRADLEY MYERS LAW FIRM, P.A.

By: s/James Edward Bradley
James Edward Bradley, SC Bar # 66130
S. Jahue Moore, SC Bar #4063
1700 Sunset Blvd. (29169)
P.O. Box 5709
West Columbia, SC 29171
(803) 796-9160
ward@mbmlawsc.com
jake@mbmlawsc.com
Attorneys for Plaintiffs

West Columbia, South Carolina
September 28, 2023

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	
Bush River C-Store, LLC and Pallav Desai,	)	C/A No. 2023-CP-40-
	)	
Plaintiffs,	)	
	)	
vs.	)	COMPLAINT
	)	JURY TRIAL REQUESTED
South Carolina Department of	)	
Transportation,	)	
	)	
Defendant.	)	
	)	

The Plaintiffs complain of the Defendant as follows:

1. Plaintiff Bush River C-Store, LLC is a South Carolina limited liability company.
2. Plaintiff Pallav Desai is the owner of Bush River C-Store, LLC.
3. The South Carolina Department of Transportation ("Department") is a governmental agency.
4. In September 2023, the Plaintiffs' attorney received and accepted condemnation notices on behalf of the Plaintiffs. A copy of these are attached as Exhibit A. The documents in question do not have action numbers but purport to reference both Richland and Lexington counties.
5. This is the second proceeding brought to take properties belonging to the Plaintiffs. The first having been dismissed by the South Carolina Department of Transportation. The Plaintiffs plead res judicata and collateral estoppel in against this taking.
6. The Plaintiffs own two properties adjoining each other and believe what was intended by the Defendant was to make a tender of payment on these tracks.

7. In an abundance of caution, Plaintiffs file this action objecting to the taking of their properties. The Defendant has advised the Plaintiffs they have to either object to the taking or agree within a 30 day period. Not wanting to waive any rights, the Plaintiffs are obligated to file this action and do file this action for declaratory relief.

8. The properties which are sought by the Defendant from the Plaintiffs do not have to be taken and there are other ways the properties can be taken.

9. If the properties are in fact taken related to the convenience store in question, then there are other damages which have not been considered and the properties as a whole would have to be condemned.

10. This action is an action for declaratory relief and is taken by virtue of the fact that the Defendant has indicated the Plaintiffs have to either file this action or lose various rights which the Plaintiffs are not willing to give up.

11. This Court should declare the power of eminent domain not to be without restrictions. The power of eminent domain has to be exercised reasonably and has not been exercised reasonably in this case. Plaintiffs seek a declaratory judgment as to the rights of the parties one to another.

WHEREFORE, by virtue of the Notices provided, Plaintiffs seek a declaratory judgment declaring the rights of the parties one to another; declaring there is no right for the Defendant to condemn these properties; declaring that engineering alternatives are available so that the Plaintiffs' properties are not disrupted; enjoining the condemnation of the properties; for attorneys fees and costs; and for such other and further relief as this Court might deem just and proper.

MOORE BRADLEY MYERS LAW FIRM, P.A.

By: s/James Edward Bradley
James Edward Bradley, SC Bar # 66130
S. Jahue Moore, SC Bar #4063
1700 Sunset Blvd. (29169)
P.O. Box 5709
West Columbia, SC 29171
(803) 796-9160
ward@mbmlawsc.com
jake@mbmlawsc.com
Attorneys for Plaintiffs

West Columbia, South Carolina
September 28, 2023

**EXHIBIT
A**

ELECTRONICALLY FILED - 2023 Sep 28 4:24 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4005117

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF LEXINGTON / RICHLAND

Civil Action No.:

Road/Route I-20/I-26/I-126 (Carolina Crossroads)
Project ID No. P027662
Tract 376

South Carolina Department of Transportation,

Condemnor,

v.

SUMMONS

Pallav Desai,

Landowner.

TO: THE LANDOWNER(S) ABOVE-NAMED:

YOU ARE HEREBY SUMMONED, advised and notified, that pursuant to the South Carolina Eminent Domain Procedures Act, Section 28-2-10, et seq., the within Condemnation Notice and Tender of Payment, a copy of which is herewith served upon you, has been filed with the Clerk of Court for Richland County. The purpose of this lawsuit is to enable the Condemnor, the South Carolina Department of Transportation, to acquire certain real property for its public purposes, as is more fully stated in the attached Condemnation Notice and Tender of Payment. Responsive pleadings to the Condemnation Notice and Tender of Payment are not necessary.

PAGLIARINI LAW FIRM, LLC

s/ DAVID G. PAGLIARINI

David G. Pagliarini, Esq. (SC Bar No. 8850)
145 River Landing Drive, Ste. 101-B
Charleston, SC 29492
T: (843) 971-8646
david@lawplf.com

Attorney for Condemnor

Charleston, South Carolina
September 1, 2023

Project ID No. P027662— Road/Route I-20/I-26/I-126 (Carolina Crossroads) — Tract 376

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF LEXINGTON / RICHLAND

Civil Action No.:

Road/Route I-20/I-26/I-126 (Carolina Crossroads)

Project ID No. P027662

Tract 376

South Carolina Department of Transportation,

Condemnor,

v.

Pallav Desai,

Landowner.

**CONDEMNATION NOTICE
AND
TENDER OF PAYMENT

(Jury Trial Demanded)**

Copy To: James Edward Bradley, Esq., Moore, Bradley & Meyers Law Firm, P.A., 1700
Sunset Blvd., West Columbia, SC 29169

TO: THE LANDOWNER(S) ABOVE-NAMED:

Pursuant to the South Carolina Eminent Domain Procedure Act, Section 28-2-10, et seq., Code of Laws of South Carolina, 1976, as amended, you are hereby notified as follows:

1. The South Carolina Department of Transportation (SCDOT) is the Condemnor herein and seeks to acquire the real property described herein for public purposes.

2. **Pallav Desai** is named as Landowner(s) in this action by virtue of **their** claim(s) of title (or other interests) as shown by that certain **deed from Ella Lim, dated April 21, 2021, and recorded April 27, 2021, in Deed Book 2611, Page 595 in the ROD Office for Richland County.**

3. The following is a description of the real property subject to this action and a description of the interest sought to be acquired in and to the property by the Condemnor:

All that parcel or strip of land, in fee simple, containing 826 square feet (0.019 acre), more or less, and all improvements thereon, if any, being a portion of the property,

Project ID No. P027662 — Road/Route I-20/I-26/I-126 (Carolina Crossroads) — Tract 376

owned by Pallav Desai, shown as the "Area of Acquisition" on Exhibit "A", attached hereto and made a part hereof, between approximate survey stations 94+00 and 96+00 right of S-31 (Bush River Road). Property herein conveyed is along a relocated centerline as shown on plans between approximate survey stations 68+86.23 to 96+54.36 of S-31 (Bush River Road).

Tax Map Number R05916-08-02 (Richland County)

4. The SCDOT is vested with the power of eminent domain pursuant to Section 57-5-320 and Section 28-2-60, Code of Laws of South Carolina, 1976, as amended.

5. The property sought herein is to be acquired for public purposes, more particularly for the construction of a section of I-20/I-26/I-126 (Carolina Crossroads), in Richland/Lexington Counties.

6. This action is brought pursuant to Section 28-2-240, Code of Laws of South Carolina, 1976, as amended.

7. The SCDOT has complied with the requirements set forth in Section 28-2-70(a), Code of Laws of South Carolina, 1976, as amended, by having the subject property appraised and making the appraisal available to the Landowner(s) where required by law, and certifies to the Court that a negotiated resolution has been attempted prior to the commencement of this action, or pursuant to Section 12-28-2940, Code of Laws of South Carolina, 1976, as amended, an appraisal of this property was not required.

8. Project plans may be inspected at the office of South Carolina Department of Transportation, Richland Maintenance Office, 7201 Fairfield Road, Columbia, South Carolina 29203, under Project No. P027662, I-20/I-26/I-126 (Carolina Crossroads), Tract 376.

9. THE CONDEMNOR HAS DETERMINED JUST COMPENSATION FOR THE PROPERTY AND RIGHTS TO BE ACQUIRED HEREUNDER, INCLUDING ALL DAMAGES

Project ID No. P027662 — Road/Route I-20/I-26/I-126 (Carolina Crossroad)— Tract 376

(IF ANY), TO BE THE SUM OF **EIGHT THOUSAND THREE HUNDRED NO/100 DOLLARS (\$8,300.00)** AND HEREBY TENDERS PAYMENT THEREOF TO THE LANDOWNER(S).

10. Payment of this amount will be made to the Landowner(s) if within thirty (30) days of service of this Condemnation Notice, the Landowner(s) in writing requests payment, and agrees to execute any instruments necessary to convey to the Condemnor the property interests and rights described hereinabove. The Agreement and Request for Payment must be sent by first class certified mail with return receipt requested or delivered in person to Director, Rights of Way, South Carolina Department of Transportation, 955 Park Street, Columbia, South Carolina 29202. If no Agreement and Request for Payment is received by the Condemnor within the thirty (30) day period, the tender is considered rejected.

11. If the tender is rejected, the Condemnor has the right to file this Condemnation Notice with the Clerk of Court of the County where the property is situated and deposit the tender amount with the Clerk. The Condemnor shall give the Landowner(s) and Other Condemnee(s) notice that it has done so and may then proceed to take possession of the property interests and exercise the rights described in this Condemnation Notice.

12. AN ACTION CHALLENGING THE CONDEMNOR'S RIGHT TO ACQUIRE THE PROPERTY AND RIGHTS DESCRIBED HEREIN MUST BE COMMENCED IN A SEPARATE PROCEEDING IN THE COURT OF COMMON PLEAS WITHIN THIRTY DAYS OF THIS CONDEMNATION NOTICE, OR THE LANDOWNER(S) WILL BE CONSIDERED TO HAVE WAIVED THE CHALLENGE.

13. THE CONDEMNOR HAS ELECTED NOT TO UTILIZE THE APPRAISAL PANEL PROCEDURE. Therefore, if the tender herein is rejected, the Condemnor shall notify the Clerk

of Court and shall demand a trial to determine the amount of just compensation to be paid. A copy of that notice must be served on the Landowner(s). That notice shall state whether the Condemnor demands a trial by jury or by the Court without a jury. The Landowner(s) has the right to demand a trial by jury. The case may not be called for trial before sixty (60) days after the service of that notice, but it may thereafter be given priority for trial over other civil cases. The Clerk of Court shall give the Landowner(s) written notice by mail of the call of the case for trial.

14. THEREFORE, IF THE TENDER HEREIN IS REJECTED, THE LANDOWNER(S) IS ADVISED TO OBTAIN LEGAL COUNSEL AT ONCE, IF NOT ALREADY OBTAINED.

15. In the event the Landowner(s) accepts the amount tendered in this Notice, the attached Agreement and Request for Payment form should be signed and returned to the Condemnor within thirty (30) days of your receipt of this Notice.

PAGLIARINI LAW FIRM, LLC

s/ DAVID G. PAGLIARINI

David G. Pagliarini, Esq. (SC Bar No. 8850)

145 River Landing Drive, Ste. 101-B

Charleston, SC 29492

T: (843) 971-8646

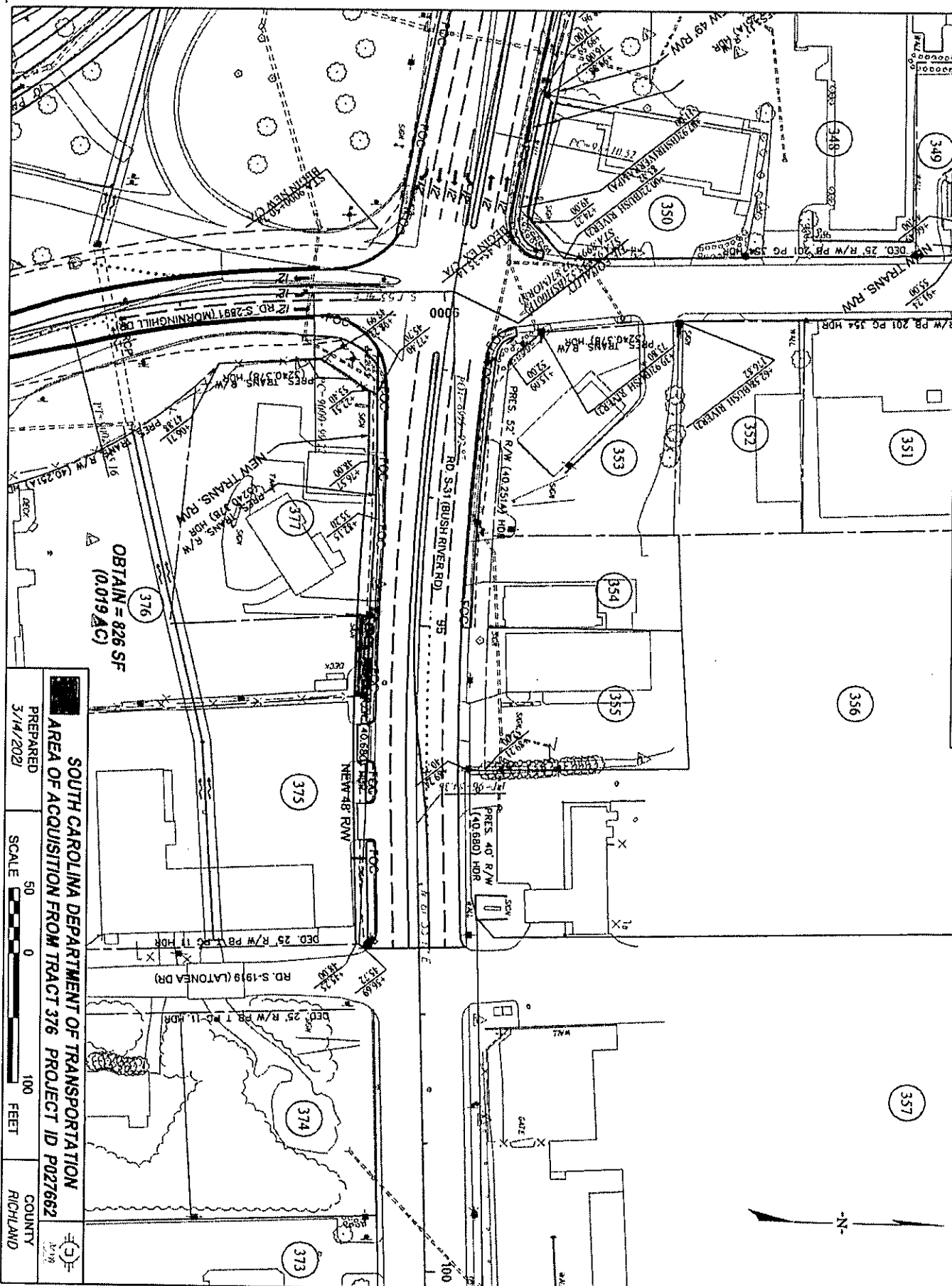
david@lawplf.com

Attorney for Condemnor

Charleston, South Carolina
September 1, 2023

RELOCATE S-31 (BUSH RIVER RD) CENTERLINE FROM STA 68+85.23 TO STA 96+54.35

RELOCATE S-31 (BUSH RIVER RD) CENTERLINE FROM STA 68+85.23 TO STA 96+54.35



STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF LEXINGTON / RICHLAND

Civil Action No.:

Road/Route I-20/I-26/I-126 (Carolina Crossroads)

Project ID No. P027662

Tract 377

South Carolina Department of Transportation,

Condemnor,

v.

SUMMONS

Bush River C-Store, LLC,

Landowner,

and

Congaree State Bank, Mortgagee and Sai Ram-Bush
River ABC, LLC, Lessee,

Other Condemnee(s).

TO: THE LANDOWNER(S) AND OTHER CONDEMNEE(S) ABOVE-NAMED:

YOU ARE HEREBY SUMMONED, advised and notified, that pursuant to the South Carolina Eminent Domain Procedures Act, Section 28-2-10, et seq., the within Condemnation Notice and Tender of Payment, a copy of which is herewith served upon you, has been filed with the Clerk of Court for Richland County. The purpose of this lawsuit is to enable the Condemnor, the South Carolina Department of Transportation, to acquire certain real property for its public purposes, as is more fully stated in the attached Condemnation Notice and Tender of Payment. Responsive pleadings to the Condemnation Notice and Tender of Payment are not necessary.

PAGLIARINI LAW FIRM, LLC

s/ DAVID G. PAGLIARINI

David G. Pagliarini, Esq. (SC Bar No. 8850)
145 River Landing Drive, Ste. 101-B
Charleston, SC 29492
T: (843) 971-8646
david@lawplf.com

Attorney for Condemnor

Charleston, South Carolina
September 1, 2023

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF LEXINGTON / RICHLAND

Civil Action No.:

Road/Route I-20/I-26/I-126 (Carolina Crossroads)

Project ID No. P027662

Tract 377

South Carolina Department of Transportation,

Condemnor,

v.

Bush River C-Store, LLC,

Landowner,

and

Congaree State Bank, Mortgagee and Sai Ram-Bush
River ABC, LLC, Lessee,

Other Condemnee(s).

**CONDEMNATION NOTICE
AND
TENDER OF PAYMENT****(Jury Trial Demanded)**Copy To: James Edward Bradley, Esq., Moore Bradley Meyers Law Firm, P.A., 1700 Sunset
Blvd., West Columbia, SC 29169

TO: THE LANDOWNER(S) AND OTHER CONDEMNEE(S) ABOVE-NAMED:

Pursuant to the South Carolina Eminent Domain Procedure Act, Section 28-2-10, et seq., Code of Laws of South Carolina, 1976, as amended, you are hereby notified as follows:

1. The South Carolina Department of Transportation (SCDOT) is the Condemnor herein and seeks to acquire the real property described herein for public purposes.

2. **Bush River C-Store, LLC** is named as Landowner(s) in this action by virtue of their claim(s) of title (or other interests) as shown by that certain deed from **P&P Investment Company, LLC**, dated **July 8, 2013**, and recorded **July 10, 2013**, in **Deed Book 1876, Page 3825** in the ROD Office for Richland County.

Project ID No. P027662 — Road/Route I-20/I-26/I-126 (Carolina Crossroads) — Tract 377

3. Congaree State Bank is made a party in this action as "Other Condemnee(s)" by virtue of that Mortgage dated July 8, 2013 and recorded July 10, 2013 in Book 1876, Page 3829 in the ROD Office for Richland County; including all assignments as constituted.

4. Sai Ram-Bush River, LLC is made a party in the action as "Other Condemnee(s)" by virtue of that certain unrecorded Lease of Real Property.

5. The following is a description of the real property subject to this action and a description of the interest sought to be acquired in and to the property by the Condemnor:

All that parcel or strip of land, to establish a right of way, containing 1,734 square feet (0.040 acre), more or less, and all improvements thereon, if any, being a portion of the property, owned by Bush River C-Store, LLC, shown as the "Area of Acquisition" on Exhibit "A", attached hereto and made a part hereof, between approximate survey stations 93+00 and 95+00 right of S-31 (Bush River Road). Property herein conveyed is along a relocated centerline as shown on plans between approximate survey stations 68+86.23 to 96+54.36 of S-31 (Bush River Road).

Tax Map Number R05916-08-01 (Richland County)

6. The SCDOT is vested with the power of eminent domain pursuant to Section 57-5-320 and Section 28-2-60, Code of Laws of South Carolina, 1976, as amended.

7. The property sought herein is to be acquired for public purposes, more particularly for the construction of a section of I-20/I-26/I-126 (Carolina Crossroads), in Richland/Lexington Counties.

8. This action is brought pursuant to Section 28-2-240, Code of Laws of South Carolina, 1976, as amended.

9. The SCDOT has complied with the requirements set forth in Section 28-2-70(a), Code of Laws of South Carolina, 1976, as amended, by having the subject property appraised and making the appraisal available to the Landowner(s) where required by law, and certifies

Project ID No. P027662 — Road/Route I-20/I-26/I-126 (Carolina Crossroads) — Tract 377

to the Court that a negotiated resolution has been attempted prior to the commencement of this action, or pursuant to Section 12-28-2940, Code of Laws of South Carolina, 1976, as amended, an appraisal of this property was not required.

10. Project plans may be inspected at the office of **South Carolina Department of Transportation, Richland Maintenance Office, 7201 Fairfield Road, Columbia, South Carolina 29203**, under Project No. **P027662, I-20/I-26/I-126 (Carolina Crossroads), Tract 377**.

11. THE CONDEMNOR HAS DETERMINED JUST COMPENSATION FOR THE PROPERTY AND RIGHTS TO BE ACQUIRED HEREUNDER, INCLUDING ALL DAMAGES (IF ANY), TO BE THE SUM OF **ONE HUNDRED FIFTEEN THOUSAND AND NO/100 DOLLARS (\$115,000.00)** AND HEREBY TENDERS PAYMENT THEREOF TO THE LANDOWNER(S).

12. Payment of this amount will be made to the Landowner(s) if within thirty (30) days of service of this Condemnation Notice, the Landowner(s) in writing requests payment, and agrees to execute any instruments necessary to convey to the Condemnor the property interests and rights described hereinabove. The Agreement and Request for Payment must be sent by first class certified mail with return receipt requested or delivered in person to Director, Rights of Way, South Carolina Department of Transportation, 955 Park Street, Columbia, South Carolina 29202. If no Agreement and Request for Payment is received by the Condemnor within the thirty (30) day period, the tender is considered rejected.

13. If the tender is rejected, the Condemnor has the right to file this Condemnation Notice with the Clerk of Court of the County where the property is situated and deposit the tender amount with the Clerk. The Condemnor shall give the Landowner(s) and Other

Project ID No. P027662 — Road/Route I-20/I-26/I-126 (Carolina Crossroads) — Tract 377

Condemnee(s) notice that it has done so and may then proceed to take possession of the property interests and exercise the rights described in this Condemnation Notice.

14. AN ACTION CHALLENGING THE CONDEMNOR'S RIGHT TO ACQUIRE THE PROPERTY AND RIGHTS DESCRIBED HEREIN MUST BE COMMENCED IN A SEPARATE PROCEEDING IN THE COURT OF COMMON PLEAS WITHIN THIRTY DAYS OF THIS CONDEMNATION NOTICE, OR THE LANDOWNER(S) WILL BE CONSIDERED TO HAVE WAIVED THE CHALLENGE.

15. THE CONDEMNOR HAS ELECTED NOT TO UTILIZE THE APPRAISAL PANEL PROCEDURE. Therefore, if the tender herein is rejected, the Condemnor shall notify the Clerk of Court and shall demand a trial to determine the amount of just compensation to be paid. A copy of that notice must be served on the Landowner(s). That notice shall state whether the Condemnor demands a trial by jury or by the Court without a jury. The Landowner(s) has the right to demand a trial by jury. The case may not be called for trial before sixty (60) days after the service of that notice, but it may thereafter be given priority for trial over other civil cases. The Clerk of Court shall give the Landowner(s) written notice by mail of the call of the case for trial.

16. THEREFORE, IF THE TENDER HEREIN IS REJECTED, THE LANDOWNER(S) IS ADVISED TO OBTAIN LEGAL COUNSEL AT ONCE, IF NOT ALREADY OBTAINED.

17. In the event the Landowner(s) accepts the amount tendered in this Notice, the attached Agreement and Request for Payment form should be signed and returned to the Condemnor within thirty (30) days of your receipt of this Notice.

PAGLIARINI LAW FIRM, LLC

s/ DAVID G. PAGLIARINI

David G. Pagliarini, Esq. (SC Bar No. 8850)
145 River Landing Drive, Ste. 101-B
Charleston, SC 29492
T: (843) 971-8646
david@lawplf.com

Attorney for Condemnor

Charleston, South Carolina
September 1, 2023

Project ID No. P027662 — Road/Route I-20/I-26/I-126 (Carolina Crossroads) — Tract 377

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF LEXINGTON / RICHLAND

Civil Action No.:

Road/Route I-20/I-26/I-126 (Carolina Crossroads)

Project ID No. P027662

Tract 377

South Carolina Department of Transportation,

Condemnor,

SUMMONS

v.

Bush River C-Store, LLC,

Landowner,

and

Congaree State Bank, Mortgagee and Sai Ram-Bush
River ABC, LLC, Lessee,

Other Condemnee(s).

TO: THE LANDOWNER(S) AND OTHER CONDEMNEE(S) ABOVE-NAMED:

YOU ARE HEREBY SUMMONED, advised and notified, that pursuant to the South Carolina Eminent Domain Procedures Act, Section 28-2-10, et seq., the within Condemnation Notice and Tender of Payment, a copy of which is herewith served upon you, has been filed with the Clerk of Court for Richland County. The purpose of this lawsuit is to enable the Condemnor, the South Carolina Department of Transportation, to acquire certain real property for its public purposes, as is more fully stated in the attached Condemnation Notice and Tender of Payment. Responsive pleadings to the Condemnation Notice and Tender of Payment are not necessary.

[SIGNATURE BLOCK ON FOLLOWING PAGE]

PAGLIARINI LAW FIRM, LLC

s/ DAVID G. PAGLIARINI

David G. Pagliarini, Esq.

SC Bar No. 8850

Julia Anne E. G. McKeachie, Esq.

SC Bar No. 106631

145 River Landing Dr., Ste. 101-B

Charleston, South Carolina 29492

T: (843) 971-8646

david@lawplf.com

juliaanne@lawplf.com

Attorneys for Condemnor, SCDOT

Charleston, South Carolina
February 21, 2025

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF LEXINGTON / RICHLAND

Civil Action No.:

Road/Route I-20/I-26/I-126 (Carolina Crossroads)

Project ID No. P027662

Tract 377

South Carolina Department of Transportation,

Condemnor,

**CONDEMNATION NOTICE
AND
TENDER OF PAYMENT
(JURY TRIAL DEMANDED)**

v.

Bush River C-Store, LLC,

Landowner,

and

Congaree State Bank, Mortgagee and Sai Ram-Bush
River ABC, LLC, Lessee,

Other Condemnee(s).

Copy To: Moore Bradley & Myers, Attn: S. Jahue Moore, Jr., 1700 Sunset Boulevard, West
Columbia, South Carolina 29169

TO: THE LANDOWNER(S) AND OTHER CONDEMNEE(S) ABOVE-NAMED:

Pursuant to the South Carolina Eminent Domain Procedure Act, Section 28-2-10, et seq.,
Code of Laws of South Carolina, 1976, as amended, you are hereby notified as follows:

1. The South Carolina Department of Transportation (SCDOT) is the Condemnor
herein and seeks to acquire the real property described herein for public purposes.

2. **Bush River C-Store, LLC is named as Landowner(s) in this action by virtue of their claim(s) of title (or other interests) as shown by that certain deed from P&P Investment Company, LLC, dated July 8, 2013, and recorded July 10, 2013, in Deed Book 1876, Page 3825 in the ROD Office for Richland County.**

3. **Congaree State Bank is made a party in this action as "Other Condemnee(s)" by virtue of that Mortgage dated July 8, 2013 and recorded July 10, 2013 in Book 1876, Page 3829 in the ROD Office for Richland County; including all assignments as constituted.**

4. **Sai Ram-Bush River, LLC is made a party in the action as "Other Condemnee(s)" by virtue of that certain unrecorded Lease of Real Property.**

5. The following is a description of the real property subject to this action and a description of the interest sought to be acquired in and to the property by the Condemnor:

All that parcel or strip of land, to establish a right of way, containing 1,734 square feet (0.040 acre), more or less, and all improvements thereon, if any, being a portion of the property, owned by Bush River C-Store, LLC, shown as the "Area of Acquisition" on Exhibit "A", attached hereto and made a part hereof, between approximate survey stations 93+00 and 95+00 right of S-31 (Bush River Road). Property herein conveyed is along a relocated centerline as shown on plans between approximate survey stations 68+86.23 to 96+54.36 of S-31 (Bush River Road).

Tax Map Number R05916-08-01 (Richland County)

6. The SCDOT is vested with the power of eminent domain pursuant to Section 57-5-320 and Section 28-2-60, Code of Laws of South Carolina, 1976, as amended.

7. The property sought herein is to be acquired for public purposes, more particularly for the construction of a section of I-20/I-26/I-126 (Carolina Crossroads), in Richland/Lexington Counties.

8. This action is brought pursuant to Section 28-2-240, Code of Laws of South Carolina, 1976, as amended.

9. The SCDOT has complied with the requirements set forth in Section 28-2-70(a), Code of Laws of South Carolina, 1976, as amended, by having the subject property appraised and making the appraisal available to the Landowner(s) where required by law, and certifies to the Court that a negotiated resolution has been attempted prior to the commencement of this action, or pursuant to Section 12-28-2940, Code of Laws of South Carolina, 1976, as amended, an appraisal of this property was not required.

10. Project plans may be inspected at the office of **South Carolina Department of Transportation, Richland Maintenance Office, 7201 Fairfield Road, Columbia, South Carolina 29203, under Project No. P027662, I-20/I-26/I-126 (Carolina Crossroads), Tract 377.**

11. THE CONDEMNOR HAS DETERMINED JUST COMPENSATION FOR THE PROPERTY AND RIGHTS TO BE ACQUIRED HEREUNDER, INCLUDING ALL DAMAGES (IF ANY), TO BE THE SUM OF **ONE HUNDRED FIFTEEN THOUSAND AND NO/100 DOLLARS (\$115,000.00)** AND HEREBY TENDERS PAYMENT THEREOF TO THE LANDOWNER(S).

12. Payment of this amount will be made to the Landowner(s) if within thirty (30) days of service of this Condemnation Notice, the Landowner(s) in writing requests payment, and agrees to execute any instruments necessary to convey to the Condemnor the property interests and rights described hereinabove. The Agreement and Request for Payment must be sent by first class certified mail with return receipt requested or delivered in person to Director, Rights of Way, South Carolina Department of Transportation, 955 Park Street, Columbia, South Carolina

29202. If no Agreement and Request for Payment is received by the Condemnor within the thirty (30) day period, the tender is considered rejected.

13. If the tender is rejected, the Condemnor has the right to file this Condemnation Notice with the Clerk of Court of the County where the property is situated and deposit the tender amount with the Clerk. The Condemnor shall give the Landowner(s) and Other Condemnee(s) notice that it has done so and may then proceed to take possession of the property interests and exercise the rights described in this Condemnation Notice.

14. AN ACTION CHALLENGING THE CONDEMNOR'S RIGHT TO ACQUIRE THE PROPERTY AND RIGHTS DESCRIBED HEREIN MUST BE COMMENCED IN A SEPARATE PROCEEDING IN THE COURT OF COMMON PLEAS WITHIN THIRTY DAYS OF THIS CONDEMNATION NOTICE, OR THE LANDOWNER(S) WILL BE CONSIDERED TO HAVE WAIVED THE CHALLENGE.

15. THE CONDEMNOR HAS ELECTED NOT TO UTILIZE THE APPRAISAL PANEL PROCEDURE. Therefore, if the tender herein is rejected, the Condemnor shall notify the Clerk of Court and shall demand a trial to determine the amount of just compensation to be paid. A copy of that notice must be served on the Landowner(s). That notice shall state whether the Condemnor demands a trial by jury or by the Court without a jury. The Landowner(s) has the right to demand a trial by jury. The case may not be called for trial before sixty (60) days after the service of that notice, but it may thereafter be given priority for trial over other civil cases. The Clerk of Court shall give the Landowner(s) written notice by mail of the call of the case for trial.

16. THEREFORE, IF THE TENDER HEREIN IS REJECTED, THE LANDOWNER(S) IS ADVISED TO OBTAIN LEGAL COUNSEL AT ONCE, IF NOT ALREADY OBTAINED.

17. In the event the Landowner(s) accepts the amount tendered in this Notice, the attached Agreement and Request for Payment form should be signed and returned to the Condemnor within thirty (30) days of your receipt of this Notice.

PAGLIARINI LAW FIRM, LLC

s/ DAVID G. PAGLIARINI

David G. Pagliarini, Esq.

SC Bar No. 8850

Julia Anne E. G. McKeachie, Esq.

SC Bar No. 106631

145 River Landing Dr., Ste. 101-B

Charleston, South Carolina 29492

T: (843) 971-8646

david@lawplf.com

juliaanne@lawplf.com

Attorneys for Condemnor, SCDOT

Charleston, South Carolina
February 21, 2025

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON / RICHLAND

**AGREEMENT AND REQUEST
FOR PAYMENT**

Road/Route I-20/I-26/I-126 (Carolina Crossroads)
Project ID No. P027662
Tract 377

I (we), the landowner(s), request payment of the amount determined by the South Carolina Department of Transportation as just compensation for the property and rights to be acquired for the project mentioned above. By making this request I (we) agree to execute the instruments necessary to convey to the South Carolina Department of Transportation the property interests and rights described in the Condemnation Notice and Tender of Payment. Upon signing and payment of the agreed upon amount, the landowner waives any and all rights pursuant to the Code of Laws of South Carolina, 1976, as amended by the Eminent Domain Procedure Act.

BUSH RIVER C-STORE, LLC

(L.S.)

Name: _____ (L.S.)
Title: _____

(L.S.)

(L.S.)

(L.S.)

(L.S.)

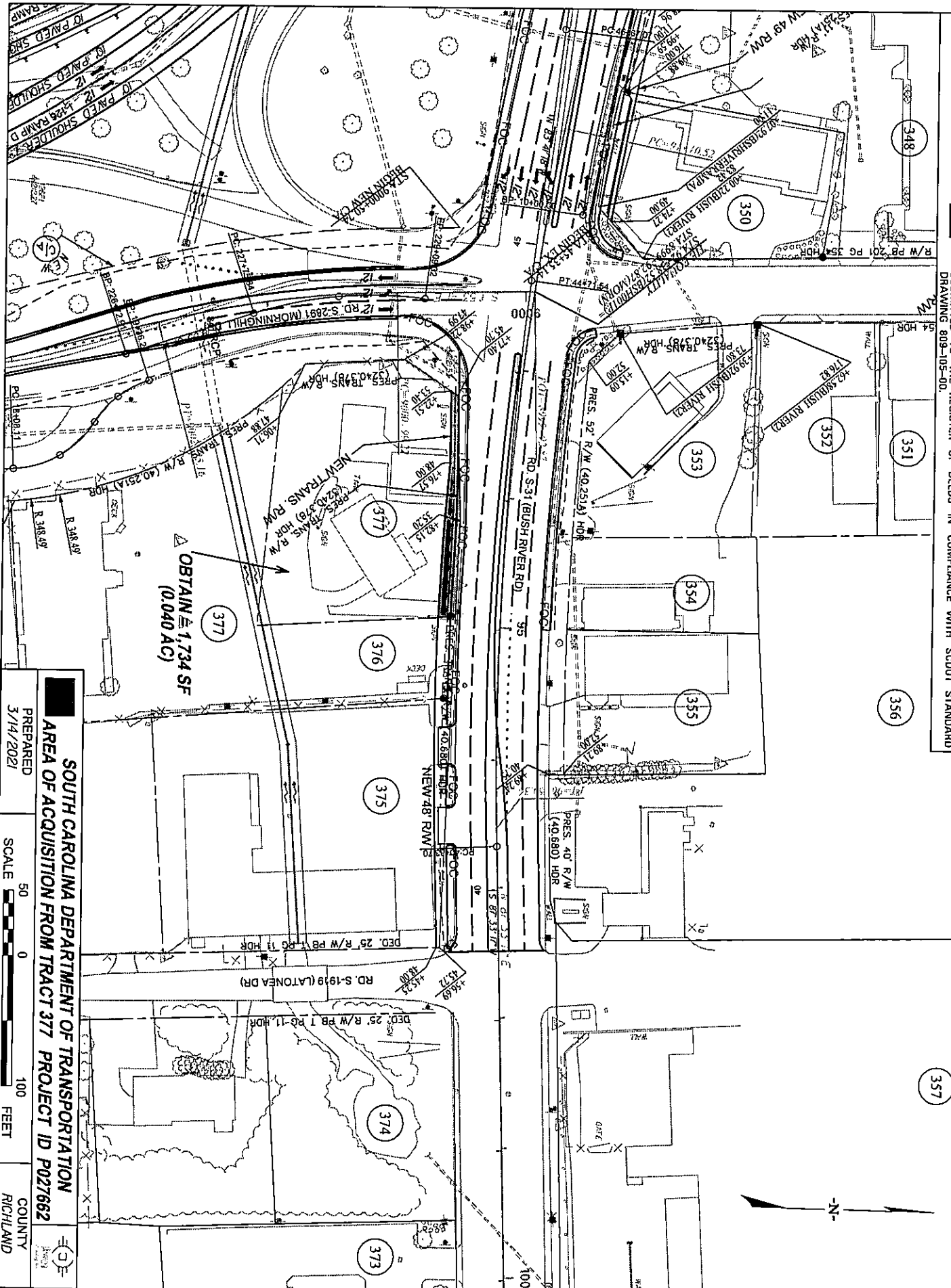
Dated the ____ day of _____, 2025

Tract 377

EXHIBIT A

THIS EXHIBIT IS A GRAPHIC REPRESENTATION OF THE "AREA OF ACQUISITION" AND IS NOT A FINAL ENGINEERING PLAN. IT IS FOR INFORMATION ONLY AND IS NOT TO BE USED FOR ANY PURPOSE OTHER THAN THAT FOR WHICH IT WAS SUBMITTED. IT IS THE RESPONSIBILITY OF THE USER TO OBTAIN ALL NECESSARY PERMITS AND TO COMPLY WITH ALL APPLICABLE LAWS, ORDINANCES, AND REGULATIONS. IT IS NOT TO BE USED FOR ANY PURPOSE OTHER THAN THAT FOR WHICH IT WAS SUBMITTED. IT IS THE RESPONSIBILITY OF THE USER TO OBTAIN ALL NECESSARY PERMITS AND TO COMPLY WITH ALL APPLICABLE LAWS, ORDINANCES, AND REGULATIONS.

SECTION 31 (BUSH RIVER RD) CENTERLINE FROM STA 88+86.23 TO STA 96+54.36



SOUTH CAROLINA DEPARTMENT OF TRANSPORTATION

AREA OF ACQUISITION FROM TRACT 377 PROJECT ID P027662

PREPARED 3/14/2021

SCALE 50 0 100 FEET

COUNTY RICHLAND

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF LEXINGTON / RICHLAND

Civil Action No.:

Road/Route I-20/I-26/I-126 (Carolina Crossroads)

Project ID No. P027662

Tract 377

South Carolina Department of Transportation,

Condemnor,

LIS PENDENS

v.

Bush River C-Store, LLC,

Landowner,

and

Congaree State Bank, Mortgagee and Sai Ram-Bush
River ABC, LLC, Lessee,

Other Condemnee(s).

NOTICE IS HEREBY GIVEN that the Condemnor above named pursuant to the South Carolina Eminent Domain Procedures Act, Section 28-2-10, et seq., of the South Carolina Code of Laws, 1976, as amended, has brought an action against the Condemnee(s) above named to acquire the real property described herein for public purposes, to-wit:

All that parcel or strip of land, to establish a right of way, containing 1,734 square feet (0.040 acre), more or less, and all improvements thereon, if any, being a portion of the property, owned by Bush River C-Store, LLC, shown as the "Area of Acquisition" on Exhibit "A", attached hereto and made a part hereof, between approximate survey stations 93+00 and 95+00 right of S-31 (Bush River Road). Property herein conveyed is along a relocated centerline as shown on plans between approximate survey stations 68+86.23 to 96+54.36 of S-31 (Bush River Road).

Tax Map Number R05916-08-01 (Richland County)

The property sought herein is to be acquired for public purposes, more particularly for the construction of a section of **I-20/I-26/I-126 (Carolina Crossroads) in Lexington/Richland Counties.**

PAGLIARINI LAW FIRM, LLC

s/ DAVID G. PAGLIARINI

David G. Pagliarini, Esq.

SC Bar No. 8850

Julia Anne E. G. McKeachie, Esq.

SC Bar No. 106631

145 River Landing Dr., Ste. 101-B

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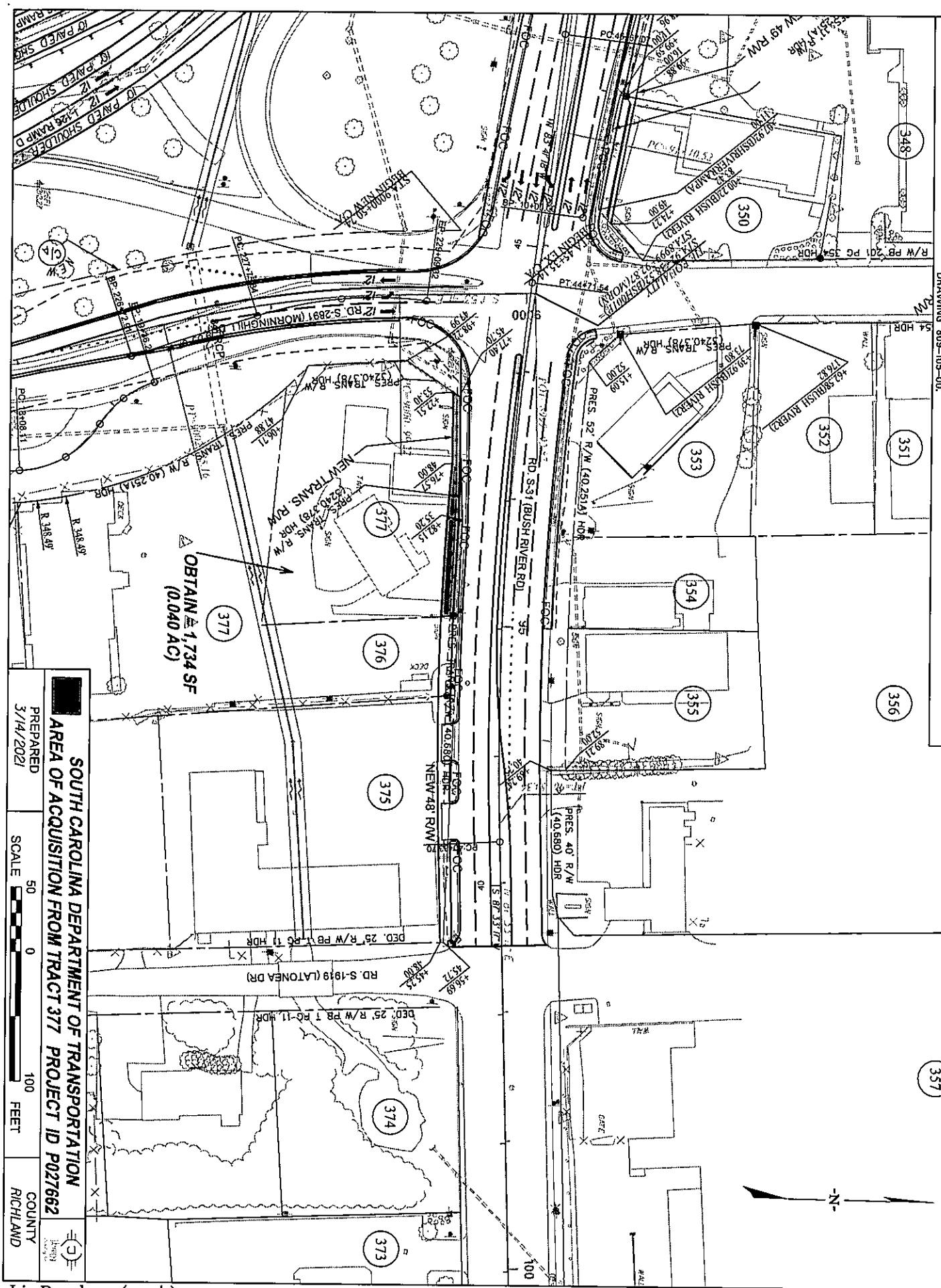
Attorneys for Condemnor, SCDOT

Charleston, South Carolina
February 21, 2025

EXHIBIT A

THIS EXHIBIT IS A GRAPHIC REPRESENTATION OF THE "AREA OF ACQUISITION" AND IS NOT TO BE USED FOR ANY OTHER PURPOSE. IT IS THE PROPERTY OF THE SOUTH CAROLINA DEPARTMENT OF TRANSPORTATION AND IS LOANED TO THE ENGINEER FOR HIS OR HER USE ONLY. IT IS TO BE RETURNED TO THE DEPARTMENT UPON COMPLETION OF CONSTRUCTION, A RECORDABLE RIGHT OF WAY PLAT SHALL BE SUBMITTED TO THE REGISTER OF DEEDS IN COMPLIANCE WITH SCOT STANDARD DRAWING 809-105-00.

SECTION 5.34 (BUSH RIVER RD) CENTERLINE FROM STA 69+86.23 TO STA 96+54.36
 SEE 2025-34 (BUSH RIVER RD)



SOUTH CAROLINA DEPARTMENT OF TRANSPORTATION

AREA OF ACQUISITION FROM TRACT 377 PROJECT ID P027662

PREPARED 3/14/2021

SCALE 50 0 100 FEET

COUNTY RICHLAND

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF LEXINGTON / RICHLAND

Civil Action No.:

Road/Route I-20/I-26/I-126 (Carolina Crossroads)
Project ID No. P027662
Tract 377

South Carolina Department of Transportation,

Condemnor,

NOTICE OF FILING

v.

Bush River C-Store, LLC,

Landowner,

and

Congaree State Bank, Mortgagee and Sai Ram-Bush
River ABC, LLC, Lessee,

Other Condemnee(s).

TO: THE LANDOWNER(S) AND OTHER CONDEMNEE(S) ABOVE-NAMED:

Pursuant to the South Carolina Eminent Domain Procedure Act, Section 28-2-230(b), et seq., Code of Laws of South Carolina, 1976, as amended, you are hereby notified that as you have rejected the amount tendered as just compensation as stated in the Condemnation Notice, the Condemnor has filed the Condemnation Notice with the Clerk of Court for **Richland** County pursuant to Section 28-2-90, Code of Laws of South Carolina, 1976, as amended, may now proceed to take possession of the property or interest described in the Condemnation Notice.

[SIGNATURE BLOCK ON FOLLOWING PAGE]

PAGLIARINI LAW FIRM, LLC

s/ DAVID G. PAGLIARINI

David G. Pagliarini, Esq.

SC Bar No. 8850

Julia Anne E. G. McKeachie, Esq.

SC Bar No. 106631

145 River Landing Dr., Ste. 101-B

Charleston, South Carolina 29492

T: (843) 971-8646

david@lawplf.com

juliaanne@lawplf.com

Attorneys for Condemnor, SCDOT

Charleston, South Carolina

February 21, 2025

STATE OF SOUTH CAROLINA

**IN THE COURT OF COMMON PLEAS
C/A NO.**

COUNTY OF LEXINGTON/RICHLAND

Road/Route **I-20/I-26/I-126 (Carolina Crossroads)**
Project ID No. **P027662**
Tract **377**

South Carolina Department of Transportation

Condemnor,

AFFIDAVIT

VS.

Bush River C-Store, LLC,

Landowner,

and

**Congaree State Bank, Mortgagee and Sai Ram-
Bush River ABC, LLC, Lessee,**

Other Condemnee(s).

PERSONALLY APPEARED before me **William C. Johnston** who, being first duly sworn, says and deposes:

1. That the amount tendered by the Condemnor to the Landowner(s) in the Condemnation Notice has been rejected;
2. That the Condemnor demands a trial not earlier than sixty (60) days after the date of service of this affidavit upon the Landowner(s);
3. That the Condemnor demands a trial by jury;
4. That, at this time, the Condemnor does not demand that this action be given priority over other cases;

Affidavit (continued)

5. That the Clerk of Court should notify the following of the call of the case.

Bush River C-Store, LLC
41 Cromwell Court
Irmo, SC 29063

Moore Bradley & Myers
S. Jahue Moore, Sr.
1700 Sunset Boulevard
West Columbia, South Carolina 29169

Sai Ram-Bush River ABC, LLC
Address Unknown

Congaree State Bank
PO Box 3018
West Columbia, SC 29171



William C. Johnston
Assistant Director, Rights of Way for
Mega Projects

SWORN to before me this 15th

day of November, 20 24

Alexis Williams

Print or Type Notary Name Alexis Williams

NOTARY PUBLIC FOR South Carolina

My Commission Expires: 01/02/2034

Via Process Server,
J. Knox 3/14/2025,
2:35 P.M.

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS

Bush River C-Store, LLC,)
Plaintiff,)
vs.)
S.C. Department of Transportation,)
Defendant.)

C.A. No.:

SUMMONS
(Jury Trial)

TO THE DEFENDANT ABOVE-NAMED:

YOU ARE HEREBY SUMMONED AND REQUIRED to answer the Complaint in this matter, a copy of which is herewith served upon you, and to serve a copy of your ANSWER to said Complaint upon the subscriber at his office, 1700 Sunset Boulevard, P.O. Box 5709, West Columbia, South Carolina, 29171, within THIRTY (30) days from the service thereof, exclusive of the day of such service; and if you fail to answer the COMPLAINT within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Complaint.

MOORE BRADLEY MYERS LAW FIRM, P.A.

BY: s/ S. Jahue Moore

S. Jahue Moore, SC Bar No. 4063
1700 Sunset Boulevard
P.O. Box 5709
West Columbia, SC 29171
(803) 796-9160

ATTORNEY FOR PLAINTIFF

West Columbia, South Carolina
March 13, 2025

ELECTRONICALLY FILED - 2025 Mar 13 2:14 PM - RICHLAND - COMMON PLEAS - CASE#2025CP4001667

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	
Bush River C-Store, LLC,	)	C.A. No.:
	)	
Plaintiff,	)	
	)	
vs.	)	COMPLAINT
	)	
S.C. Department of Transportation,	)	
	)	
Defendant.	)	

Plaintiff above-named Complaining of the Defendant herein alleges that:

1. The Defendant has recently served Plaintiff with a Condemnation Notice and Tender of Payment. A copy of the documentation recently served is attached hereto.
2. Under the Condemnation Notice, the Landowner/Plaintiff is advised that if it does not object to the taking it will be forever barred in its rights to object.
3. Without knowing the nature extent of the condemnation and whether there are engineering alternatives, the Plaintiff is without the ability to determine whether the right to condemn exists.
4. Upon information and belief, the right to condemn does not exist and the Plaintiff is entitled to discovery as to whether or not the right to condemn exists.
5. Plaintiff is informed and believes that this Court should issue its order declaring the Defendant has no right to condemn its property. This action is filed pursuant to the Notice served on the Plaintiff by Attorney David G. Pagliarini as counsel for the South Carolina Department of Transportation.

WHEREFORE, the Plaintiff seeks a declaration of the rights of the parties one to another and to a declaration that there is no right to proceed to condemn the property in question.

(Signature on the following page)

MOORE BRADLEY MYERS LAW FIRM, P.A.

BY: s/ S. Jahue Moore
S. Jahue Moore, SC Bar No. 4063
1700 Sunset Boulevard
P. O. Box 5709
West Columbia, SC 29171
(803) 796-9160

ATTORNEY FOR THE PLAINTIFF

West Columbia, South Carolina
March 13, 2025

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
Civil Action No.: 2025-CP-40-01666

Pallav Desai,

Plaintiffs,

v.

South Carolina Department of Transportation,
Defendant.

SOUTH CAROLINA
DEPARTMENT OF
TRANSPORTATION'S
ANSWER TO COMPLAINT

**DEFENDANT, SOUTH CAROLINA DEPARTMENT OF TRANSPORTATION ("SCDOT"),
BY AND THROUGH ITS UNDERSIGNED COUNSEL, ANSWERING THE PLAINTIFF'S
COMPLAINT, ALLEGES UPON INFORMATION AND BELIEF, AS FOLLOWS:**

FOR A FIRST DEFENSE

1. Each and every allegation of Plaintiffs' Complaint, which is not hereinafter specifically admitted, modified, or qualified, is denied, and strict proof thereof is demanded.

FOR A SECOND DEFENSE

2. Defendant SCDOT admits to the allegations contained in Paragraph 1. For clarity, the Notice of Condemnation and supporting documents was served, but not filed, on or about September 23, 2023. Landowner filed a statutory challenge action to the case (2023-CP-40-05117) which was ultimately decided by an Order granting summary judgment in favor of SCDOT filed on October 10, 2024. Landowner appealed the lower court's grant of summary judgment, however the appeal was dismissed by Order of the South Carolina Court of Appeals dated February 10, 2025. The Court of appeals remitted the challenge action to the trial court where motions SCDOT maintains motions for recovery of fees and costs. Upon dismissal of the appeal, SCDOT filed the Notice of Condemnation on February 24, 2025 (2025-CP-40-01238) and deposited its estimate of just

compensation (\$8,300.00) with the Clerk of Court. Landowner has now filed this statutory challenge action despite dismissal of its prior challenge by the circuit court and dismissal of its appeal. The trial court's Order Granting Defendant's Summary Judgment filed October 10, 2024 is attached as Exhibit A. The South Carolina Court of Appeals Order filed February 10, 2025 is attached as Exhibit B.

3. The allegations in Paragraph 2 are denied. The Notice of Condemnation is prepared in accordance with the provisions of the South Carolina Eminent Domain Procedure Act and, as such, notice of Landowner's right to file a statutory challenge action in accordance with South Carolina Code section 28-2-470 is provided. Landowner has already challenged the condemnation action in case number 2023-CP-40-05117 and the challenge failed.
4. The allegations in Paragraph 3 are denied. Landowner has already challenged the condemnation action in case number 2023-CP-40-05117 and the challenge failed.
5. The allegations in Paragraph 4 are denied. Landowner has already challenged the condemnation action in case number 2023-CP-40-05117 and the challenge failed.
6. The allegations in Paragraph 5 are denied. Landowner has already challenged the condemnation action in case number 2023-CP-40-05117 and the challenge failed.
7. Defendant SCDOT denies all information included in the "WHEREFORE" Paragraph.

FOR A THIRD DEFENSE
(Rule 12(b)(6) SCRCF)

8. Pursuant to SCRCF 12(b)(6), the Complaint, in whole or in part, fails to state a claim upon which relief can be granted.
9. The South Carolina Eminent Domain Procedure Act, section 28-2-470 provides the sole and exclusive procedure to challenge a condemnation action. Any challenge must be filed in a

separate action in accordance with the Act and Landowner's challenge of this condemnation failed in case number 2023-CP-40-05117.

10. Plaintiff's allegations are conclusory and not based on the law.
11. The Complaint, therefore, must be dismissed.

FOR A FOURTH DEFENSE
(Rule 12(b)(5) SCRCP)

12. Plaintiffs have not properly served SCDOT and therefore the action must be dismissed in accordance with SCRCP Rule 12(b)(5).

FOR A FIFTH DEFENSE

13. The doctrine of res judicata bars this claim.

FOR A SIXTH DEFENSE

14. By filing this case, Plaintiffs have abused process. This action has been filed in bad faith with no factual support and the sole purpose is to delay a clearly defined and engineered public project.

WHEREFORE, having answered the Plaintiffs' Complaint, Defendant SCDOT respectfully asks the Court for the following relief:

- a. Dismissal of Plaintiffs' Complaint with prejudice;
- b. An award of attorney's fees and costs to Defendant SCDOT in accordance with common law, the South Carolina Eminent Domain Procedure Act and other relevant statutory law; and
- c. Further relief as this Court deems just and proper.

PAGLIARINI LAW FIRM, LLC

s/ DAVID G. PAGLIARINI

David G. Pagliarini, Esq.

SC Bar No. 8850

145 River Landing Drive, Ste. 101-B

Charleston, SC 29492

T: (843) 971-8646

david@lawplf.com

Charleston, South Carolina
April 4, 2025

EXHIBIT A

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO.: 2023-CP-40-05117

Bush River C-Store, LLC and Pallav Desai,

Plaintiffs,

vs

South Carolina Department of Transportation,

Defendant.

**ORDER GRANTING DEFENDANT'S
MOTION FOR SUMMARY JUDGMENT**

Defendant South Carolina Department of Transportation ("SCDOT") filed a Motion for Summary Judgment, pursuant to Rule 56, SCRPC, on April 30, 2024 and a Motion to Dismiss, pursuant to Rule 12(b)(6), SCRPC, on October 10, 2023 (collectively referred to hereafter as "Motions"). Defendant's Motions are based on the grounds that (i) no genuine issues of material fact exist as to Plaintiffs' challenge action; and (ii) Plaintiffs have failed to state proper causes of action. A hearing on SCDOT's Motions was noticed and held on June 18, 2024 via Zoom. David G. Pagliarini, Esq. and Julia Anne E. McKeachie, Esq. appeared on behalf of Defendant SCDOT. S. Jahue Moore, Esq. appeared on behalf of the Plaintiffs. SCDOT has conceded that the Rule 12(b)(6) motion has been superseded by the Rule 56 motion and, therefore, only the latter is addressed.

BACKGROUND AND FACTUAL CONCLUSIONS

The instant case is a statutory challenge action, brought pursuant to South Carolina Code Section 28-2-470, regarding two (2) separate condemnation actions. The challenge statute provides that "[a]n action challenging the condemnor's right to condemn must be commenced in separate proceedings filed in the court of common pleas . . ." The Eminent Domain Procedure Act, S.C.

Code Ann. § 28-2-470 (1976). Challenges to condemnations are cases in equity. *See Ga. Dep't of Transp. v. Jasper Cty.*, 355 S.C. 631, 586 S.E.2d 853 (2003).

This case stems from two (2) separate condemnation cases commenced by SCDOT to acquire right-of-way necessary to complete a road project known as Carolina Crossroads (the "Project") in Richland and Lexington Counties. Specifically, the Project involves the re-design and expansion of interchanges and secondary roads near I-20/I-26/I-126 and is one of the largest in South Carolina history. The Project will be completed in phases over a period of several years.

The underlying condemnation cases were served, but not filed, in September 2023 in accordance with the provisions of the South Carolina Eminent Domain Procedure Act (the "Act"). S.C. Code Ann. § 28-2-220(C). As such, the underlying condemnation actions have not been assigned case numbers. In accordance with the Act, the condemnation cases are stayed pending disposition of this challenge action. S.C. Code Ann. § 28-2-470. Therefore, SCDOT is barred from entering the property and from moving forward with Project construction.

The underlying condemnation actions are referenced as Tract 376 (the tract reference in the Project plans), naming Pallav Desai as Landowner, and as Tract 377, naming Bush River C-Store as Landowner. The term Landowner is defined as "one or more condemnees having a record fee simple interest in the property condemned or any part thereof." S.C. Code Ann. § 28-2-30(12). Tracts 376 and 377 are adjacent and, although there are common ownership interests, they are separately titled.

For Tract 376 (Pallav Desai), SCDOT seeks to acquire a small strip (826 square feet) along the property frontage on Bush River Road. SCDOT appraised the value of the acquisition and is prepared to deposit its estimate of just compensation (\$8,300.00) once the condemnation action is permitted to proceed.

For Tract 377 (Bush River C-Store, LLC), SCDOT seeks to acquire a small strip (1,734 square feet) along the property frontage on Bush River Road. SCDOT appraised the value of the acquisition and is prepared to deposit its estimate of just compensation (\$115,000.00) once the condemnation action is permitted to proceed.

Plaintiffs/Landowners elected to file one statutory challenge action to address the condemnation actions, basing the challenge action on the following:

1. That the SCDOT is barred by the doctrines of res judicata and collateral estoppel from pursuing the acquisitions;
2. That the SCDOT does not have to take these properties and that there are "other ways the properties can be taken;"
3. All damages to the property remainders have not been considered by SCDOT; and
4. The Plaintiffs are filing this action out of "an abundance of caution" and "are obligated to file this action."

Defendant SCDOT filed its Motions arguing that the SCDOT acquisitions, which are the subjects of the challenge action, are for public use and are necessary to properly and safely design the Project.

Written discovery has been sent and responses have been provided by both parties.

SUMMARY JUDGMENT STANDARD

Motions for summary judgment should be granted where "there is no genuine issue as to any material fact and ... the moving party is entitled to judgment as a matter of law." Rule 56(c), SCRCP. Summary judgment is appropriate when "plain, palpable and undisputed facts exist on which reasonable minds cannot differ." Thompkins v. Festival Ctr. Grp. I, 306 S.C. 193, 410 S.E. 2d 593 (S.C. Ct. App. 1991); Priest v. Brown, 302 S.C. 405, 396 S.E. 2d 638 (S.C. Ct. App. 1990); Main v. Corley, 281 S.C. 525, 316 S.E.2d 406 (1984). Under Rule 56(c), SCRCP, the party seeking summary judgment has the initial burden of demonstrating the absence of a genuine issue of material fact:

Summary judgment is appropriate when it is clear that there is no genuine issue of material fact and the conclusions and inferences to be drawn from the facts are undisputed. In ruling on a motion for summary judgment, the evidence and the inferences which can be drawn therefrom should be viewed in the light most favorable to the nonmoving party.

See George v. Empire Fire & Marine Ins. Co., 344 S.C. 582, 545 S.E.2d 500 (2001).

Furthermore, “[a]n adverse party may not rely on the mere allegations in his pleadings to withstand a summary judgment motion, but must set forth *specific facts* showing there is a genuine issue for trial.” Cunningham v. Anderson Cty., 402 S.C. 434, 741 S.E.2d 545, 549 (Ct. App. 2013) (reversed in part on other grounds by Cunningham v. Anderson County, 414 S.C. 298, 778 S.E.2d 884 (2015) (citations omitted) (emphasis added)).

“A court considering summary judgment neither makes factual determinations nor considers the merits of competing testimony; however, summary judgment is appropriate when a properly supported motion sets forth facts that remain undisputed or are contested in a deficient manner.” David v. McLeod Reg'l Med. Ctr., 367 S.C. 242, 626 S.E.2d 1, 5 (2006).

LEGAL ANALYSIS AND CONCLUSIONS

The South Carolina Constitution provides: “Except as otherwise provided in this Constitution, private property shall not be taken for private use without the consent of the owner, nor for public use without just compensation being first made for the property.” S.C. CONST. art. I, § 13 (1895). “The public use implies possession, occupation, and enjoyment of the land by the public at large or by public agencies.” Ga. Dep’t of Transp. v. Jasper Cty., 355 S.C. 631, 586 S.E.2d 853, 856 (2003) (citing Edens v. City of Columbia, 228 S.C. at 573, 91 S.E.2d 280 (1956)).

Plaintiffs allege that acquisitions of small portions of the subject properties are not necessary. In South Carolina, a condemning authority must have a public necessity to exercise eminent domain power. Seabrook v. Carolina Power & Light Co., 159 S.C. 1, 156 S.E. 1 (1930); White v. Johnson, 148 S.C. 488, 146 S.E. 411 (1929). The public necessity must be reasonable,

but it is not required to be absolute; the “use must be clearly appropriate and fitting for the purposes for which the land is being condemned.” Timmons v. S.C. Tricentennial Comm’n, 254 S.C. 378, 175 S.E.2d 805, 811 (1970); Groce v. Greenville S. & A. Ry. Co., 94 S.C. 199, 78 S.E. 888 (1913). A reasonable necessity combines the “greatest benefit to the public with the least inconvenience and expense to the condemning” authority. White, 146 S.E. at 412. The question of necessity lies with the condemning authority, but a court can overturn that determination if there is clear abuse of discretion. *See Sease v. Spartanburg*, 242 S.C. 520, 131 S.E.2d 683 (1963).

SCDOT argues that Plaintiffs have produced no evidence that SCDOT has abused its discretion or that alterations to Bush River Road are not necessary to the larger project. SCDOT further contends that Plaintiffs/Landowners, after approximately nine (9) months, have failed to produce any facts, opinions, or witnesses that would lead to any discoverable evidence to support the contention that there are “other ways the properties can be taken.”

SCDOT Assistant Director of Rights of Way, Mega Projects, William C. Johnston, prepared an affidavit, filed with the court, which provides details as to the reasoning and necessity of the acquisitions, as well as to public use.

SCDOT argues that Plaintiffs’ claim that SCDOT has not properly addressed damages to the remainder may not be addressed in the instant challenge action pursuant to the Act, and that the issue of just compensation is the sole issue for determination in the underlying condemnation cases. S.C. Code Ann. § 28-2-340.

Finally, during the June 18, 2024 hearing in front of the Honorable Judge Goodstein, Plaintiffs argued that SCDOT failed to respond to its discovery requests and that it had no knowledge of who William C. Johnston was in relation to the underlying condemnation actions. SCDOT countered that these claims are false, as SCDOT responded to Plaintiffs’ discovery requests on March 14, 2024 and in those responses Mr. Johnston was named as a witness.

The court first addresses the Plaintiffs' claim that the SCDOT is barred by the doctrines of res judicata and collateral estoppel from pursuing the acquisitions. Plaintiffs have provided no evidence or made any tenable argument showing that the underlying condemnation actions have been litigated or are barred in any manner.

Plaintiffs further argue that the SCDOT does not have to take these properties and that there are "other ways the properties can be taken." This argument appears to be based on the public necessity doctrine previously cited in this Order. The question of necessity lies with the condemning authority, but a court can overturn that determination if there is clear abuse of discretion. *See Sease v. Spartanburg*, 242 S.C. 520, 131 S.E.2d 683 (1963).

There is no doubt that the Carolina Crossroads project is a public highway project both financed by and designed and constructed for the benefit of the public. SCDOT representative William C. Johnston provided an affidavit supporting these conclusions and Plaintiffs have not seriously challenged the public use aspect. Rather, Plaintiffs argue, without factual basis, that the proposed acquisitions from Tracts 376 and 377 are unnecessary as the project could have been designed in a manner that would allow the acquisitions to be avoided.

SCDOT is charged with maintaining South Carolina highways. S.C. Code Ann. § 57-5-10. SCDOT engineers and consultants designed and approved project plans for this section of the Project. The subject properties are situated along Bush River Road, an existing public right-of-way, and have direct access to and from the road.

In approximately nine (9) months of litigation, Plaintiffs have named no witnesses who hold qualifications to address any deficiency or problem with the SCDOT plans. Plaintiffs have failed to provide affidavits from any witnesses that would create a question of fact. Moreover, even if Plaintiffs provided an alternative to the SCDOT plans, that alone is insufficient: The question of necessity lies with the condemning authority. *See Sease v. Spartanburg*, 242 S.C. 520, 131 S.E.2d

683 (1963). It is insufficient for a Landowner to simply provide an alternate or competing plan for a court sitting in equity to determine which plan is “better.” It is presumed that the condemning authority is correct that the acquisitions, in size and scope, are necessary to design and construct a safe and effective public project:

When a landowner brings an action to enjoin a condemnation proceeding the burden is upon him to allege and establish fraud, bad faith, or clear abuse of discretion on the part of the condemnor. It follows that if the landowner fails to allege facts in the complaint constituting fraud, bad faith or clear abuse of discretion on the part of the condemnor, such complaint does not state a cause of action.

Id. at 525-26 (citing Atkinson v. Carolina Light Co., 239 S.C. 150, 121 S.E.2d 743 (1961)). Plaintiffs have failed to put forth any facts that would indicate that SCDOT has abused its discretion.

Plaintiffs also argue that damages to the property remainders have not been considered by SCDOT. Damages are an element of just compensation. The Act provides that evidence for the purpose of valuation matters is to be heard in the condemnation cases and not this equitable challenge proceeding. S.C. Code Ann. § 28-2-340.

Plaintiffs further argue that they filed this action out of “an abundance of caution” and “are obligated to file this action.” This assertion is incorrect. South Carolina Code section 28-2-280(7) provides that the following language must be included in every condemnation notice:

AN ACTION CHELLENGING THE CONDEMNOR'S RIGHT TO ACQUIRE THE PROPERTY AND RIGHTS DESCRIBED HEREIN MUST BE COMMENCED IN A SEPARATE PROCEEDING IN THE COURT OF COMMON PLEAS WITHIN THIRTY DAYS OF THE SERVICE OF THIS CONDEMNATION NOTICE, OR THE LANDOWNER WILL BE CONSIDERED TO HAVE WAIVED THE CHALLENGE.

The Landowner is in no way obligated to file a separate challenge action; rather, the above language is intended to put the Landowner on notice that failure to file a challenge action results in the waiver of the right to do so.

Finally, Plaintiffs argue that sufficient discovery has not been completed and that the Rule 56 motion, therefore, is premature. Specifically, Plaintiffs assert that SCDOT has not responded to written discovery requests. SCDOT counsel indicated that responses were provided on March 14, 2024. Plaintiffs filed this case on September 28, 2023. Plaintiffs have provided no affidavits to support this challenge action despite ample time to do so. There has been sufficient opportunity for discovery in this case and there are no genuine issues of material fact pertaining to Plaintiffs' claims or Defendant's defenses thereto as discussed herein. Ultimately, Plaintiffs' complaint fails to establish any specific factual basis on which it can stand; accordingly, and pursuant to Rule 56(c), SCRCR summary judgment is mandated.

NOW, THEREFORE,

IT IS ORDERED that Defendant's Motion for Summary Judgment is hereby GRANTED.

IT IS SO ORDERED.

October 10, 2024

The Honorable Diane Goodstein
Orangeburg, South Carolina



Richland Common Pleas

Case Caption: Bush River C Store Llc , plaintiff, et al vs South Carolina Department
Of Transportation
Case Number: 2023CP4005117
Type: Order/Summary Judgment

It is so Ordered!

s/Diane S. Goodstein

Electronically signed on 2024-10-10 12:45:51 page 9 of 9

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EXHIBIT B

The South Carolina Court of Appeals

Bush River C-Store, LLC and Pallav Desai, Appellants,

v.

South Carolina Department of Transportation,
Respondent.

Appellate Case No. 2024-001901

The Honorable Diane Schafer Goodstein
Richland County
Trial Court Case No. 2023CP4005117

ORDER

Appellant has failed to serve and file their initial brief of appellant and designation of matter, as required by Rule 208 of the South Carolina Appellate Court Rules and this Court's letter dated January 23, 2025. Accordingly, this matter is dismissed. The remittitur will be sent as provided by Rule 221(b), SCACR.

FOR THE COURT
BY Catherine Harrisai, Deputy
CLERK

Columbia, South Carolina

cc:
S. Jahue Moore, Esquire
James Edward Bradley, Esquire
Julia Anne E. G. McKeachie, Esquire
David Guy Pagliarini, Esquire

FILED
Feb 10 2025

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
C/A NO. 2025-CP-40-01667

Bush River C-Store, LLC,
Plaintiff/Condemnee,

VS.

South Carolina Department of Transportation,
Defendant/Condemnor

DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT AND
ATTORNEY'S FEES

(Challenge to Condemnation
Action)

YOU WILL PLEASE TAKE NOTICE that, at such time as may be convenient for this Court and counsel following the service of this Motion, Defendant, South Carolina Department of Transportation (SCDOT), by and through its counsel, will move the court for Summary Judgment in its favor, pursuant to Rule 56 of the South Carolina Rules of Civil Procedure. Defendant's motion is based on the grounds that no genuine issues of material fact exist as to Plaintiff's Challenge action and associated claims and Defendant is entitled to judgment as matter of law.

In support of this Motion, Defendant will rely upon the Court the pleadings, affidavits, memoranda and other arguments of counsel during oral argument on this motion pursuant to the South Carolina Rules of Civil Procedure.

Defendant moves for summary judgment on the following grounds:

- (1) In accordance with the South Carolina Eminent Domain Procedure Act, Defendant SCDOT filed and served a Notice of Condemnation (c/a number 2025-CP-40-01239) on Landowner

- on or around February 24, 2025 and deposited its estimate of just compensation (\$115,000.00) with the Clerk of Court.¹
- (2) SCDOT is charged with maintaining South Carolina highways and the Carolina Crossroads project is undoubtedly for public use. S.C. Code Ann. § 57-5-10; S.C. CONST. art. I, § 13 (1895).
 - (3) Plaintiff Bush River C-Store filed this challenge action on March 13, 2025.
 - (4) Defendant SCDOT filed an Answer on April 4, 2025.
 - (5) Bush River C-Store has already challenged the condemnation action in case number 2023-CP-40-05117; the challenge failed.²
 - (6) Plaintiff Bush River C-Store's previous challenge in case number 2023-CP-40-05117 and the instant challenge to SCDOT's right to condemn fail to state facts sufficient to constitute a cause of action for which relief can be granted; further, the allegations are conclusory and not based on law.
 - (7) The principle of res judicata is clear: "final judgment on the merits of an action precludes the parties or their privies from relitigating claims that were or could have been raised in that action." Venture Eng'g, Inc. v. Tishman Constr. Corp. of S.C., 360, S.C. 156, 600 S.E.2d 547, 550 (2004) (citing In re S.N.A. Nut Co., 215 B.R. 1004, 1008 (1997) (internal quotations omitted)). The parties in the instant case are the same as in case number 2023-CP-40-05117³; the Plaintiff's claim is the same in the instant case as in case number 2023-

¹ Condemnor previously served, but did not file a Notice of Condemnation on or around September 7, 2023. Landowner filed a statutory challenge action to the case (2023-CP-40-05117) which was ultimately decided by an October 10, 2024 Order granting summary judgment in favor of Condemnor/SCDOT. Landowner appealed the lower court's grant of summary judgment; however, the appeal was dismissed by Order of the South Carolina Court of Appeals dated February 10, 2025. The Court of Appeals remitted the challenge action to the trial court where SCDOT maintains motions for recovery of fees and costs.

² Plaintiff Bush River C-Store challenged Condemnor's acquisition of 36,391 square feet (0.835 acres).

³ In case number 2023-CP-40-05117, the Plaintiffs challenging Defendant SCDOT's condemnations were Bush River C-Store and Pallav Desai. Per Judge Goodstein's October 10, 2024 Order Granting SCDOT's Motion for Summary

CP-40-05117; and the claim in the instant case has been adjudicated – an October 10, 2024 Order granting SCDOT's motion for summary judgment is attached hereto as **Exhibit A**.

- (8) The principle of issue preclusion is clear: “when an issue has been actually litigated and determined by a valid and final judgment, and the determination is essential to the judgment, the determination is conclusive in a subsequent action between the parties, whether on the same or different claim.” S.C. Prop. & Cas. Ins. Guaranty Ass'n v. Wal-Mart Stores, Inc., 304 S.C. 210, 403 S.E.2d 625, 627 (1991) (see Restatement (Second) of Judgments, § 27 (1982)).

CONCLUSION

For the above reasons and to avoid further unnecessary delay, Defendant respectfully moves that there is no genuine issue of material fact and would further request that it be granted summary judgment as a matter of law. Furthermore, on the grounds and for the reasons stated herein, Defendant SCDOT respectfully requests that this Court award Defendant attorney's fees and costs pursuant to S.C. Code Ann. 15-36-10(G)(1): “Sanctions may include: an order for the party represented by an attorney or pro se litigant to pay the reasonable costs and attorney's fees of the prevailing party under a motion pursuant to this section.”

PAGLIARINI LAW FIRM, LLC

s/David G. Pagliarini

David G. Pagliarini

SC Bar No. 8850

Julia Anne E. McKeachie

SC Bar No. 106631

145 River Landing Drive, Suite 101 B

Charleston, SC 29492

Judgment, the challenge action with case number 2023-CP-40-05117 stemmed from two (2) separate, unfiled condemnation actions; one condemnation (Tract 376) named Pallav Desai as Landowner, the other (Tract 377) named Bush River C-Store as Landowner. Plaintiffs' challenge combined the two condemnations into one statutory challenge action with case number 2023-CP-40-05117.

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Attorneys for Defendant, SCDOT

Charleston, SC
May 8, 2025

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO.: 2023-CP-40-05117

Bush River C-Store, LLC and Pallav Desai,

Plaintiffs,

vs

South Carolina Department of Transportation,

Defendant.

**ORDER GRANTING DEFENDANT'S
MOTION FOR SUMMARY JUDGMENT**

Defendant South Carolina Department of Transportation ("SCDOT") filed a Motion for Summary Judgment, pursuant to Rule 56, SCRPC, on April 30, 2024 and a Motion to Dismiss, pursuant to Rule 12(b)(6), SCRPC, on October 10, 2023 (collectively referred to hereafter as "Motions"). Defendant's Motions are based on the grounds that (i) no genuine issues of material fact exist as to Plaintiffs' challenge action; and (ii) Plaintiffs have failed to state proper causes of action. A hearing on SCDOT's Motions was noticed and held on June 18, 2024 via Zoom. David G. Pagliarini, Esq. and Julia Anne E. McKeachie, Esq. appeared on behalf of Defendant SCDOT. S. Jahue Moore, Esq. appeared on behalf of the Plaintiffs. SCDOT has conceded that the Rule 12(b)(6) motion has been superseded by the Rule 56 motion and, therefore, only the latter is addressed.

BACKGROUND AND FACTUAL CONCLUSIONS

The instant case is a statutory challenge action, brought pursuant to South Carolina Code Section 28-2-470, regarding two (2) separate condemnation actions. The challenge statute provides that "[a]n action challenging the condemnor's right to condemn must be commenced in separate proceedings filed in the court of common pleas . . ." The Eminent Domain Procedure Act, S.C.

Code Ann. § 28-2-470 (1976). Challenges to condemnations are cases in equity. *See Ga. Dep't of Transp. v. Jasper Cty.*, 355 S.C. 631, 586 S.E.2d 853 (2003).

This case stems from two (2) separate condemnation cases commenced by SCDOT to acquire right-of-way necessary to complete a road project known as Carolina Crossroads (the "Project") in Richland and Lexington Counties. Specifically, the Project involves the re-design and expansion of interchanges and secondary roads near I-20/I-26/I-126 and is one of the largest in South Carolina history. The Project will be completed in phases over a period of several years.

The underlying condemnation cases were served, but not filed, in September 2023 in accordance with the provisions of the South Carolina Eminent Domain Procedure Act (the "Act"). S.C. Code Ann. § 28-2-220(C). As such, the underlying condemnation actions have not been assigned case numbers. In accordance with the Act, the condemnation cases are stayed pending disposition of this challenge action. S.C. Code Ann. § 28-2-470. Therefore, SCDOT is barred from entering the property and from moving forward with Project construction.

The underlying condemnation actions are referenced as Tract 376 (the tract reference in the Project plans), naming Pallav Desai as Landowner, and as Tract 377, naming Bush River C-Store as Landowner. The term Landowner is defined as "one or more condemnees having a record fee simple interest in the property condemned or any part thereof." S.C. Code Ann. § 28-2-30(12). Tracts 376 and 377 are adjacent and, although there are common ownership interests, they are separately titled.

For Tract 376 (Pallav Desai), SCDOT seeks to acquire a small strip (826 square feet) along the property frontage on Bush River Road. SCDOT appraised the value of the acquisition and is prepared to deposit its estimate of just compensation (\$8,300.00) once the condemnation action is permitted to proceed.

For Tract 377 (Bush River C-Store, LLC), SCDOT seeks to acquire a small strip (1,734 square feet) along the property frontage on Bush River Road. SCDOT appraised the value of the acquisition and is prepared to deposit its estimate of just compensation (\$115,000.00) once the condemnation action is permitted to proceed.

Plaintiffs/Landowners elected to file one statutory challenge action to address the condemnation actions, basing the challenge action on the following:

1. That the SCDOT is barred by the doctrines of res judicata and collateral estoppel from pursuing the acquisitions;
2. That the SCDOT does not have to take these properties and that there are "other ways the properties can be taken;"
3. All damages to the property remainders have not been considered by SCDOT; and
4. The Plaintiffs are filing this action out of "an abundance of caution" and "are obligated to file this action."

Defendant SCDOT filed its Motions arguing that the SCDOT acquisitions, which are the subjects of the challenge action, are for public use and are necessary to properly and safely design the Project.

Written discovery has been sent and responses have been provided by both parties.

SUMMARY JUDGMENT STANDARD

Motions for summary judgment should be granted where "there is no genuine issue as to any material fact and ... the moving party is entitled to judgment as a matter of law." Rule 56(c), SCRCP. Summary judgment is appropriate when "plain, palpable and undisputed facts exist on which reasonable minds cannot differ." Thompkins v. Festival Ctr. Grp., 306 S.C. 193, 410 S.E. 2d 593 (S.C. Ct. App. 1991); Priest v. Brown, 302 S.C. 405, 396 S.E. 2d 638 (S.C. Ct. App. 1990); Main v. Corley, 281 S.C. 525, 316 S.E.2d 406 (1984). Under Rule 56(c), SCRCP, the party seeking summary judgment has the initial burden of demonstrating the absence of a genuine issue of material fact:

Summary judgment is appropriate when it is clear that there is no genuine issue of material fact and the conclusions and inferences to be drawn from the facts are undisputed. In ruling on a motion for summary judgment, the evidence and the inferences which can be drawn therefrom should be viewed in the light most favorable to the nonmoving party.

See George v. Empire Fire & Marine Ins. Co., 344 S.C. 582, 545 S.E.2d 500 (2001).

Furthermore, “[a]n adverse party may not rely on the mere allegations in his pleadings to withstand a summary judgment motion, but must set forth *specific facts* showing there is a genuine issue for trial.” Cunningham v. Anderson Cty., 402 S.C. 434, 741 S.E.2d 545, 549 (Ct. App. 2013) (reversed in part on other grounds by Cunningham v. Anderson County, 414 S.C. 298, 778 S.E.2d 884 (2015) (citations omitted) (emphasis added)).

“A court considering summary judgment neither makes factual determinations nor considers the merits of competing testimony; however, summary judgment is appropriate when a properly supported motion sets forth facts that remain undisputed or are contested in a deficient manner.” David v. McLeod Reg'l Med. Ctr., 367 S.C. 242, 626 S.E.2d 1, 5 (2006).

LEGAL ANALYSIS AND CONCLUSIONS

The South Carolina Constitution provides: “Except as otherwise provided in this Constitution, private property shall not be taken for private use without the consent of the owner, nor for public use without just compensation being first made for the property.” S.C. CONST. art. I, § 13 (1895). “The public use implies possession, occupation, and enjoyment of the land by the public at large or by public agencies.” Ga. Dep’t of Transp. v. Jasper Cty., 355 S.C. 631, 586 S.E.2d 853, 856 (2003) (citing Edens v. City of Columbia, 228 S.C. at 573, 91 S.E.2d 280 (1956)).

Plaintiffs allege that acquisitions of small portions of the subject properties are not necessary. In South Carolina, a condemning authority must have a public necessity to exercise eminent domain power. Seabrook v. Carolina Power & Light Co., 159 S.C. 1, 156 S.E. 1 (1930); White v. Johnson, 148 S.C. 488, 146 S.E. 411 (1929). The public necessity must be reasonable,

but it is not required to be absolute; the “use must be clearly appropriate and fitting for the purposes for which the land is being condemned.” Timmons v. S.C. Tricentennial Comm’n, 254 S.C. 378, 175 S.E.2d 805, 811 (1970); Groce v. Greenville S. & A. Ry. Co., 94 S.C. 199, 78 S.E. 888 (1913). A reasonable necessity combines the “greatest benefit to the public with the least inconvenience and expense to the condemning” authority. White, 146 S.E. at 412. The question of necessity lies with the condemning authority, but a court can overturn that determination if there is clear abuse of discretion. *See* Sease v. Spartanburg, 242 S.C. 520, 131 S.E.2d 683 (1963).

SCDOT argues that Plaintiffs have produced no evidence that SCDOT has abused its discretion or that alterations to Bush River Road are not necessary to the larger project. SCDOT further contends that Plaintiffs/Landowners, after approximately nine (9) months, have failed to produce any facts, opinions, or witnesses that would lead to any discoverable evidence to support the contention that there are “other ways the properties can be taken.”

SCDOT Assistant Director of Rights of Way, Mega Projects, William C. Johnston, prepared an affidavit, filed with the court, which provides details as to the reasoning and necessity of the acquisitions, as well as to public use.

SCDOT argues that Plaintiffs’ claim that SCDOT has not properly addressed damages to the remainder may not be addressed in the instant challenge action pursuant to the Act, and that the issue of just compensation is the sole issue for determination in the underlying condemnation cases. S.C. Code Ann. § 28-2-340.

Finally, during the June 18, 2024 hearing in front of the Honorable Judge Goodstein, Plaintiffs argued that SCDOT failed to respond to its discovery requests and that it had no knowledge of who William C. Johnston was in relation to the underlying condemnation actions. SCDOT countered that these claims are false, as SCDOT responded to Plaintiffs’ discovery requests on March 14, 2024 and in those responses Mr. Johnston was named as a witness.

The court first addresses the Plaintiffs' claim that the SCDOT is barred by the doctrines of res judicata and collateral estoppel from pursuing the acquisitions. Plaintiffs have provided no evidence or made any tenable argument showing that the underlying condemnation actions have been litigated or are barred in any manner.

Plaintiffs further argue that the SCDOT does not have to take these properties and that there are "other ways the properties can be taken." This argument appears to be based on the public necessity doctrine previously cited in this Order. The question of necessity lies with the condemning authority, but a court can overturn that determination if there is clear abuse of discretion. *See Sease v. Spartanburg*, 242 S.C. 520, 131 S.E.2d 683 (1963).

There is no doubt that the Carolina Crossroads project is a public highway project both financed by and designed and constructed for the benefit of the public. SCDOT representative William C. Johnston provided an affidavit supporting these conclusions and Plaintiffs have not seriously challenged the public use aspect. Rather, Plaintiffs argue, without factual basis, that the proposed acquisitions from Tracts 376 and 377 are unnecessary as the project could have been designed in a manner that would allow the acquisitions to be avoided.

SCDOT is charged with maintaining South Carolina highways. S.C. Code Ann. § 57-5-10. SCDOT engineers and consultants designed and approved project plans for this section of the Project. The subject properties are situated along Bush River Road, an existing public right-of-way, and have direct access to and from the road.

In approximately nine (9) months of litigation, Plaintiffs have named no witnesses who hold qualifications to address any deficiency or problem with the SCDOT plans. Plaintiffs have failed to provide affidavits from any witnesses that would create a question of fact. Moreover, even if Plaintiffs provided an alternative to the SCDOT plans, that alone is insufficient: The question of necessity lies with the condemning authority. *See Sease v. Spartanburg*, 242 S.C. 520, 131 S.E.2d

683 (1963). It is insufficient for a Landowner to simply provide an alternate or competing plan for a court sitting in equity to determine which plan is “better.” It is presumed that the condemning authority is correct that the acquisitions, in size and scope, are necessary to design and construct a safe and effective public project:

When a landowner brings an action to enjoin a condemnation proceeding the burden is upon him to allege and establish fraud, bad faith, or clear abuse of discretion on the part of the condemnor. It follows that if the landowner fails to allege facts in the complaint constituting fraud, bad faith or clear abuse of discretion on the part of the condemnor, such complaint does not state a cause of action.

Id. at 525-26 (citing Atkinson v. Carolina Light Co., 239 S.C. 150, 121 S.E.2d 743 (1961)). Plaintiffs have failed to put forth any facts that would indicate that SCDOT has abused its discretion.

Plaintiffs also argue that damages to the property remainders have not been considered by SCDOT. Damages are an element of just compensation. The Act provides that evidence for the purpose of valuation matters is to be heard in the condemnation cases and not this equitable challenge proceeding. S.C. Code Ann. § 28-2-340.

Plaintiffs further argue that they filed this action out of “an abundance of caution” and “are obligated to file this action.” This assertion is incorrect. South Carolina Code section 28-2-280(7) provides that the following language must be included in every condemnation notice:

AN ACTION CHALLENGING THE CONDEMNOR’S RIGHT TO ACQUIRE THE PROPERTY AND RIGHTS DESCRIBED HEREIN MUST BE COMMENCED IN A SEPARATE PROCEEDING IN THE COURT OF COMMON PLEAS WITHIN THIRTY DAYS OF THE SERVICE OF THIS CONDEMNATION NOTICE, OR THE LANDOWNER WILL BE CONSIDERED TO HAVE WAIVED THE CHALLENGE.

The Landowner is in no way obligated to file a separate challenge action; rather, the above language is intended to put the Landowner on notice that failure to file a challenge action results in the waiver of the right to do so.

Finally, Plaintiffs argue that sufficient discovery has not been completed and that the Rule 56 motion, therefore, is premature. Specifically, Plaintiffs assert that SCDOT has not responded to written discovery requests. SCDOT counsel indicated that responses were provided on March 14, 2024. Plaintiffs filed this case on September 28, 2023. Plaintiffs have provided no affidavits to support this challenge action despite ample time to do so. There has been sufficient opportunity for discovery in this case and there are no genuine issues of material fact pertaining to Plaintiffs' claims or Defendant's defenses thereto as discussed herein. Ultimately, Plaintiffs' complaint fails to establish any specific factual basis on which it can stand; accordingly, and pursuant to Rule 56(c), SCRCF summary judgment is mandated.

NOW, THEREFORE,

IT IS ORDERED that Defendant's Motion for Summary Judgment is hereby GRANTED.

IT IS SO ORDERED.

October 10, 2024

The Honorable Diane Goodstein
Orangeburg, South Carolina



Richland Common Pleas

Case Caption: Bush River C Store Llc , plaintiff, et al vs South Carolina Department
Of Transportation
Case Number: 2023CP4005117
Type: Order/Summary Judgment

It is so Ordered!

s/Diane S. Goodstein

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STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Circuit Court for the Fifth Judicial Circuit

Diane Goodstein, Circuit Court Judge

Case No. 2023-CP-40-05117

Bush River C-Store, LLC and Pallav Desai,

Appellants,

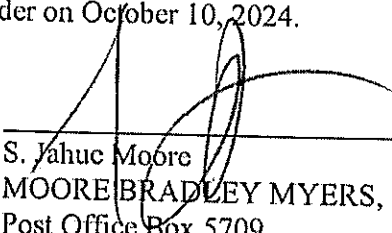
vs.

South Carolina Department of Transportation,

Respondent.

NOTICE OF APPEAL

Bush River C-Store, LLC and Pallav Desai appeal the Order of the Honorable Diane Goodstein, signed on October 10, 2024 and E-filed by the Clerk on that date. Appellants received electronic notice of entry of this Order on October 10, 2024.



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ATTORNEYS FOR THE RESPONDENT

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO.: 2023-CP-40-05117

Bush River C-Store, LLC and Pallav Desai,

Plaintiffs,

vs

South Carolina Department of Transportation,

Defendant.

**ORDER GRANTING DEFENDANT'S
MOTION FOR SUMMARY JUDGMENT**

Defendant South Carolina Department of Transportation ("SCDOT") filed a Motion for Summary Judgment, pursuant to Rule 56, SCRPC, on April 30, 2024 and a Motion to Dismiss, pursuant to Rule 12(b)(6), SCRPC, on October 10, 2023 (collectively referred to hereafter as "Motions"). Defendant's Motions are based on the grounds that (i) no genuine issues of material fact exist as to Plaintiffs' challenge action; and (ii) Plaintiffs have failed to state proper causes of action. A hearing on SCDOT's Motions was noticed and held on June 18, 2024 via Zoom. David G. Pagliarini, Esq. and Julia Anne E. McKeachie, Esq. appeared on behalf of Defendant SCDOT. S. Jahue Moore, Esq. appeared on behalf of the Plaintiffs. SCDOT has conceded that the Rule 12(b)(6) motion has been superseded by the Rule 56 motion and, therefore, only the latter is addressed.

BACKGROUND AND FACTUAL CONCLUSIONS

~~The instant case is a statutory challenge action brought pursuant to South Carolina Code~~
Section 28-2-470, regarding two (2) separate condemnation actions. The challenge statute provides that "[a]n action challenging the condemnor's right to condemn must be commenced in separate proceedings filed in the court of common pleas . . ." The Eminent Domain Procedure Act, S.C.

Code Ann. § 28-2-470 (1976). Challenges to condemnations are cases in equity. *See Ga. Dep't of Transp. v. Jasper Cty.*, 355 S.C. 631, 586 S.E.2d 853 (2003).

This case stems from two (2) separate condemnation cases commenced by SCDOT to acquire right-of-way necessary to complete a road project known as Carolina Crossroads (the "Project") in Richland and Lexington Counties. Specifically, the Project involves the re-design and expansion of interchanges and secondary roads near I-20/I-26/I-126 and is one of the largest in South Carolina history. The Project will be completed in phases over a period of several years.

The underlying condemnation cases were served, but not filed, in September 2023 in accordance with the provisions of the South Carolina Eminent Domain Procedure Act (the "Act"). S.C. Code Ann. § 28-2-220(C). As such, the underlying condemnation actions have not been assigned case numbers. In accordance with the Act, the condemnation cases are stayed pending disposition of this challenge action. S.C. Code Ann. § 28-2-470. Therefore, SCDOT is barred from entering the property and from moving forward with Project construction.

The underlying condemnation actions are referenced as Tract 376 (the tract reference in the Project plans), naming Pallav Desai as Landowner, and as Tract 377, naming Bush River C-Store as Landowner. The term Landowner is defined as "one or more condemnees having a record fee simple interest in the property condemned or any part thereof." S.C. Code Ann. § 28-2-30(12). Tracts 376 and 377 are adjacent and, although there are common ownership interests, they are separately titled.

For Tract 376 (Pallav Desai), SCDOT seeks to acquire a small strip (826 square feet) along ~~the property frontage on Bush River Road. SCDOT appraised the value of the acquisition and is~~ prepared to deposit its estimate of just compensation (\$8,300.00) once the condemnation action is permitted to proceed.

For Tract 377 (Bush River C-Store, LLC), SCDOT seeks to acquire a small strip (1,734 square feet) along the property frontage on Bush River Road. SCDOT appraised the value of the acquisition and is prepared to deposit its estimate of just compensation (\$115,000.00) once the condemnation action is permitted to proceed.

Plaintiffs/Landowners elected to file one statutory challenge action to address the condemnation actions, basing the challenge action on the following:

1. That the SCDOT is barred by the doctrines of res judicata and collateral estoppel from pursuing the acquisitions;
2. That the SCDOT does not have to take these properties and that there are "other ways the properties can be taken;"
3. All damages to the property remainders have not been considered by SCDOT; and
4. The Plaintiffs are filing this action out of "an abundance of caution" and "are obligated to file this action."

Defendant SCDOT filed its Motions arguing that the SCDOT acquisitions, which are the subjects of the challenge action, are for public use and are necessary to properly and safely design the Project.

Written discovery has been sent and responses have been provided by both parties.

SUMMARY JUDGMENT STANDARD

Motions for summary judgment should be granted where "there is no genuine issue as to any material fact and ... the moving party is entitled to judgment as a matter of law." Rule 56(c), SCRCP. Summary judgment is appropriate when "plain, palpable and undisputed facts exist on which reasonable minds cannot differ." Thompkins v. Festival Ctr. Grp. I, 306 S.C. 193, 410 S.E. 2d 593 (S.C. Ct. App. 1991); Priest v. Brown, 302 S.C. 405, 396 S.E. 2d 638 (S.C. Ct. App. 1990);

Main v. Corley, 281 S.C. 525, 316 S.E.2d 406 (1984). Under Rule 56(c), SCRCP, the party seeking summary judgment has the initial burden of demonstrating the absence of a genuine issue of material fact:

Summary judgment is appropriate when it is clear that there is no genuine issue of material fact and the conclusions and inferences to be drawn from the facts are undisputed. In ruling on a motion for summary judgment, the evidence and the inferences which can be drawn therefrom should be viewed in the light most favorable to the nonmoving party.

See George v. Empire Fire & Marine Ins. Co., 344 S.C. 582, 545 S.E.2d 500 (2001).

Furthermore, “[a]n adverse party may not rely on the mere allegations in his pleadings to withstand a summary judgment motion, but must set forth *specific facts* showing there is a genuine issue for trial.” Cunningham v. Anderson Cty., 402 S.C. 434, 741 S.E.2d 545, 549 (Ct. App. 2013) (reversed in part on other grounds by Cunningham v. Anderson County, 414 S.C. 298, 778 S.E.2d 884 (2015) (citations omitted) (emphasis added)).

“A court considering summary judgment neither makes factual determinations nor considers the merits of competing testimony; however, summary judgment is appropriate when a properly supported motion sets forth facts that remain undisputed or are contested in a deficient manner.” David v. McLeod Reg'l Med. Ctr., 367 S.C. 242, 626 S.E.2d 1, 5 (2006).

LEGAL ANALYSIS AND CONCLUSIONS

The South Carolina Constitution provides: “Except as otherwise provided in this Constitution, private property shall not be taken for private use without the consent of the owner, nor for public use without just compensation being first made for the property.” S.C. CONST. art. I, § 13 (1895). “The public use implies possession, occupation, and enjoyment of the land by the public at large or by public agencies.” Ga. Dep’t of Transp. v. Jasper Cty., 355 S.C. 631, 586 S.E.2d 853, 856 (2003) (citing Edens v. City of Columbia, 228 S.C. at 573, 91 S.E.2d 280 (1956)).

~~Plaintiffs allege that acquisitions of small portions of the subject properties are not~~
 necessary. In South Carolina, a condemning authority must have a public necessity to exercise eminent domain power. Seabrook v. Carolina Power & Light Co., 159 S.C. 1, 156 S.E. 1 (1930); White v. Johnson, 148 S.C. 488, 146 S.E. 411 (1929). The public necessity must be reasonable,

but it is not required to be absolute; the “use must be clearly appropriate and fitting for the purposes for which the land is being condemned.” Timmons v. S.C. Tricentennial Comm’n, 254 S.C. 378, 175 S.E.2d 805, 811 (1970); Groce v. Greenville S. & A. Ry. Co., 94 S.C. 199, 78 S.E. 888 (1913). A reasonable necessity combines the “greatest benefit to the public with the least inconvenience and expense to the condemning” authority. White, 146 S.E. at 412. The question of necessity lies with the condemning authority, but a court can overturn that determination if there is clear abuse of discretion. *See* Sease v. Spartanburg, 242 S.C. 520, 131 S.E.2d 683 (1963).

SCDOT argues that Plaintiffs have produced no evidence that SCDOT has abused its discretion or that alterations to Bush River Road are not necessary to the larger project. SCDOT further contends that Plaintiffs/Landowners, after approximately nine (9) months, have failed to produce any facts, opinions, or witnesses that would lead to any discoverable evidence to support the contention that there are “other ways the properties can be taken.”

SCDOT Assistant Director of Rights of Way, Mega Projects, William C. Johnston, prepared an affidavit, filed with the court, which provides details as to the reasoning and necessity of the acquisitions, as well as to public use.

SCDOT argues that Plaintiffs’ claim that SCDOT has not properly addressed damages to the remainder may not be addressed in the instant challenge action pursuant to the Act, and that the issue of just compensation is the sole issue for determination in the underlying condemnation cases. S.C. Code Ann. § 28-2-340.

Finally, during the June 18, 2024 hearing in front of the Honorable Judge Goodstein, Plaintiffs argued that SCDOT failed to respond to its discovery requests and that it had no knowledge of who William C. Johnston was in relation to the underlying condemnation actions. SCDOT countered that these claims are false, as SCDOT responded to Plaintiffs’ discovery requests on March 14, 2024 and in those responses Mr. Johnston was named as a witness.

The court first addresses the Plaintiffs' claim that the SCDOT is barred by the doctrines of res judicata and collateral estoppel from pursuing the acquisitions. Plaintiffs have provided no evidence or made any tenable argument showing that the underlying condemnation actions have been litigated or are barred in any manner.

Plaintiffs further argue that the SCDOT does not have to take these properties and that there are "other ways the properties can be taken." This argument appears to be based on the public necessity doctrine previously cited in this Order. The question of necessity lies with the condemning authority, but a court can overturn that determination if there is clear abuse of discretion. *See Sease v. Spartanburg*, 242 S.C. 520, 131 S.E.2d 683 (1963).

There is no doubt that the Carolina Crossroads project is a public highway project both financed by and designed and constructed for the benefit of the public. SCDOT representative William C. Johnston provided an affidavit supporting these conclusions and Plaintiffs have not seriously challenged the public use aspect. Rather, Plaintiffs argue, without factual basis, that the proposed acquisitions from Tracts 376 and 377 are unnecessary as the project could have been designed in a manner that would allow the acquisitions to be avoided.

SCDOT is charged with maintaining South Carolina highways. S.C. Code Ann. § 57-5-10. SCDOT engineers and consultants designed and approved project plans for this section of the Project. The subject properties are situated along Bush River Road, an existing public right-of-way, and have direct access to and from the road.

In approximately nine (9) months of litigation, Plaintiffs have named no witnesses who ~~hold qualifications to address any deficiency or problem with the SCDOT plans. Plaintiffs have~~ failed to provide affidavits from any witnesses that would create a question of fact. Moreover, even if Plaintiffs provided an alternative to the SCDOT plans, that alone is insufficient. The question of necessity lies with the condemning authority. *See Sease v. Spartanburg*, 242 S.C. 520, 131 S.E.2d

683 (1963). It is insufficient for a Landowner to simply provide an alternate or competing plan for a court sitting in equity to determine which plan is "better." It is presumed that the condemning authority is correct that the acquisitions, in size and scope, are necessary to design and construct a safe and effective public project:

When a landowner brings an action to enjoin a condemnation proceeding the burden is upon him to allege and establish fraud, bad faith, or clear abuse of discretion on the part of the condemnor. It follows that if the landowner fails to allege facts in the complaint constituting fraud, bad faith or clear abuse of discretion on the part of the condemnor, such complaint does not state a cause of action.

Id. at 525-26 (citing Atkinson v. Carolina Light Co., 239 S.C. 150, 121 S.E.2d 743 (1961)). Plaintiffs have failed to put forth any facts that would indicate that SCDOT has abused its discretion.

Plaintiffs also argue that damages to the property remainders have not been considered by SCDOT. Damages are an element of just compensation. The Act provides that evidence for the purpose of valuation matters is to be heard in the condemnation cases and not this equitable challenge proceeding. S.C. Code Ann. § 28-2-340.

Plaintiffs further argue that they filed this action out of "an abundance of caution" and "are obligated to file this action." This assertion is incorrect. South Carolina Code section 28-2-280(7) provides that the following language must be included in every condemnation notice:

AN ACTION CHALLENGING THE CONDEMNOR'S RIGHT TO ACQUIRE THE PROPERTY AND RIGHTS DESCRIBED HEREIN MUST BE COMMENCED IN A SEPARATE PROCEEDING IN THE COURT OF COMMON PLEAS WITHIN THIRTY DAYS OF THE SERVICE OF THIS CONDEMNATION NOTICE, OR THE LANDOWNER WILL BE CONSIDERED TO HAVE WAIVED THE CHALLENGE.

The Landowner is in no way obligated to file a separate challenge action; rather, the above language is intended to put the Landowner on notice that failure to file a challenge action results in the waiver of the right to do so.

Finally, Plaintiffs argue that sufficient discovery has not been completed and that the Rule 56 motion, therefore, is premature. Specifically, Plaintiffs assert that SCDOT has not responded to written discovery requests. SCDOT counsel indicated that responses were provided on March 14, 2024. Plaintiffs filed this case on September 28, 2023. Plaintiffs have provided no affidavits to support this challenge action despite ample time to do so. There has been sufficient opportunity for discovery in this case and there are no genuine issues of material fact pertaining to Plaintiffs' claims or Defendant's defenses thereto as discussed herein. Ultimately, Plaintiffs' complaint fails to establish any specific factual basis on which it can stand; accordingly, and pursuant to Rule 56(c), SCRPC summary judgment is mandated.

NOW, THEREFORE,

IT IS ORDERED that Defendant's Motion for Summary Judgment is hereby GRANTED.

IT IS SO ORDERED.

October 10, 2024

The Honorable Diane Goodstein
Orangeburg, South Carolina



Richland Common Pleas

Case Caption: Bush River C Store Llc , plaintiff, et al vs South Carolina Department
Of Transportation
Case Number: 2023CP4005117
Type: Order/Summary Judgment

It is so Ordered!

s/Diane S. Goodstein

Electronically signed on 2024-10-10 12:45:51 page 9 of 9



S. Jahue Moore
James Edward Bradley†
Shelia McNair Robinson
Christian G. Spradley
William H. Edwards
S. Jahue Moore, Jr.
William B. Fortino
Ralph Nichols Riley, Jr.
John C. Bradley, Jr.
Lester McGill Bell, Jr.
Sierra Carini Hartley
Emily E. Collins

Melissa K. Moore
Catherine Liscusky Jumper
Brian M. Erikstrom
Joshua S. E. Martin
Madison B. Kelly

Retired
J. Mark Taylor*
C. David Sawyer, Jr.*
Billy C. Coleman (1916-2019)
Stanley L. Myers* (1976-2023)
Robert D. Hazel* (1936-2024)

December 23, 2025

VIA E-MAIL: ctappfilings@sccourts.org
VIA U.S. MAIL

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29201

RE: Bush River C-Store, LLC vs. SC Department of Transportation
Appellate Case No.: 2025-001903

and

Pallav Desai vs. SC Department of Transportation
Appellate Case No.: 2025-001907

Dear Ms. Kitchings:

We served and filed the Notice of Appeal on behalf of Bush River C-Store, LLC and Pallav Desai on September 17, 2025. We are advised that the hearings of August 6, 2025 was included in the same hearing as Desai v SCDOT and the Desai transcript will serve as the transcript for both of these hearings. The transcript of the August 6, 2025 hearings were received on December 22, 2025. It is our understanding that the Appellants' Initial Brief and Designation of Matter to be Included in the Record on Appeal will be due on January 22, 2026. If this is incorrect, I would appreciate the Court advising us of same immediately.

Thank you for your assistance and cooperation in this matter.

Yours very truly,


S. Jahue Moore

SJM:dc

cc: SC Office of Court Administration (*E-mail Only: transcripts@sccourts.org*)
David G. Pagliarini, Esquire (*E-mail Only: david@lawplf.com*)

STATE OF SOUTH CAROLINA) IN THE GENERAL SESSIONS COURT
)
 COUNTY OF RICHLAND) FIFTH JUDICIAL CIRCUIT

Pallav Desai,)
)
 Plaintiff,) Case No. 2025-CP-40-01666
)
 vs)
)
 South Carolina Department)
 of Transportation)
)
 Defendant.

H E A R I N G

BEFORE THE HONORABLE DANIEL COBLE

DATE: August 6, 2025
 LOCATION: South Carolina Circuit Court 5
 TRANSCRIBER: Jessica Antonucci

LEGAL EAGLE

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APPEARANCES

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145 River Landing Drive, Suite 101-B
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On behalf of the Defendant

INDEX

Proceedings.....	4
Certificate of Transcriber.....	9

EXHIBITS

(No Exhibits Were Marked)

(THIS TRANSCRIPT MAY CONTAIN QUOTE MATERIAL. SUCH
MATERIAL IS REPRODUCED AS READ OR QUOTED BY THE SPEAKER.)

1 THE COURT: So we have two motions for summary
2 judgment the Desai versus SCDOT, case 1666.

3 MR. PAGLIARINI: Your Honor, I'm David Pagliarini
4 for SCDOT. This motion -- or separate motions involving
5 cases 15 and 16 on our roster. Your Honor, just for your
6 information we have not heard from Mr. Moore on this. He
7 has not filed anything responsive, and I know he's not
8 here. This is not an attempt to pile on. He has not
9 returned our calls for the better part of two years, Your
10 Honor, so it doesn't surprise me that he hasn't called
11 me, but I did want to put that on the record. We made
12 every attempt over the period of time this litigation is
13 going on to try to discuss, you know, I have no feedback.
14 So I'll proceed as Your Honor wishes.

15 THE COURT: Go right ahead.

16 MR. PAGLIARINI: Your Honor, these two motions come
17 out of two separate condemnation actions filed on the
18 Carolina Crossroads project here in Richland and parts of
19 it in Lexington County.

20 In 2023, the DOT filed two separate actions --
21 excuse me, served two separate actions, as you're aware,
22 The Eminent Domain Procedure Act, the procedure is to
23 serve the notice, then there is a 30-day period in which
24 the land owner can challenge the right to condemn, which
25 extend from of course from the just compensation
26 (inaudible) it is the statute -- statutory action related

1 to the right to condemn.

2 The respective landowners did just that in 2023,
3 they filed challenge actions, discovery took place. Last
4 June of 2024 Judge Goodstein heard our summary judgment
5 motion in that challenge action for both of these cases
6 and granted us summary judgment. I've attached that to
7 our respective motions. That order was entered in
8 October of 2024 granting summary judgment as to the
9 statutory challenge action.

10 Following that, Mr. Moore and his respective clients
11 appealed the matter to the Court of Appeals. The Court
12 of Appeals dismissed that appeal for failure to
13 prosecute, failure to file briefs. I'm not sure if you
14 were able to obtain a copy of that order. Your Honor,
15 that was filed in February 10th of 2025, and the case was
16 remanded back to the State courts, at which time DOT then
17 filed the respective notices and deposited our estimate
18 of just compensation, which is mandated by The Eminent
19 Domain Procedure Act. Mr. Moore then filed challenge
20 actions in each case again, even though it had already
21 been decided by Judge Goodstein, and now here we are we
22 immediately filed these motions.

23 Your Honor, it's in our opinion it's fairly simple.
24 This is a res judicata issue; final judgment had already
25 been issued by Judge Goodstein. Its challenge action or
26 these challenge actions are the same that they filed the

1 first time around. This is my editorialization. This
2 has been an attempt to delay this condemnation as I may
3 have alluded to earlier (inaudible) two years. The
4 project is ongoing and underway and we need to access, we
5 being DOT, need to access these properties in order to
6 construct the project or the DOT faces thousands and
7 thousands of penalty dollars if the contractor cannot get
8 it through. We are not yet at these properties, but that
9 is estimated that that will come in October or so, so we
10 are butting up against these deadlines.

11 Your Honor, from the legal standpoint though,
12 (inaudible) of my opinion this is a clear matter of res
13 judicata, Judge Goodstein ruled on these issues. Her
14 motion -- or excuse me, her order is attached, if you'd
15 like I can go through the various legal arguments, but I
16 think it was fairly clear that the initial challenge
17 actions lacked merit as far as things that I've seen.

18 THE COURT: All right. So this will -- it's still
19 going to be -- are they going to challenge the
20 connotation?

21 MR. PAGLIARINI: Yes, sir. It's this only action --
22 these challenge actions, 28-2-470 are challenges to the
23 right to condemn. What will remain -- what we'll proceed
24 with is the just compensation phase of each case, and
25 those amounts, the respective just compensation
26 estimates, are those dollars are sitting in the court

1 right now, we will then proceed with the just
2 compensation portion of each case and (inaudible) as Your
3 Honor is aware, once we filed and deposited (inaudible)
4 the stay that is brought on by these challenge actions,
5 we then have a right to get on the property, take us
6 another year or so to fully litigate the compensation
7 issues, but DOT will then be allowed to get on the
8 property and perform the tasks it needs to complete this
9 project.

10 THE COURT: And the other case that you're here for
11 today is the (inaudible) and it's the same (inaudible) --

12 MR. PAGLIARINI: They're exactly the same, yes, sir.
13 Mr. Moore combined those in his last challenge action, so
14 Judge Goodstein's order covers both cases. He now has
15 filed this time around two separate challenge actions and
16 that's why you see the two separate 2023 -- or excuse me
17 (inaudible) case -- or 2025 case numbers on this.

18 THE COURT: All right, we will grant your motions
19 for summary judgment. You will eFile the proposed order.
20 We would inform (inaudible) saying that motion for
21 summary judgment was granted. If we hear from Mr. Moore,
22 I will invite them to send in a brief, and set them both
23 to having a (inaudible) I mean, (inaudible) Charleston so
24 it's (inaudible) if that is -- if that is necessary and
25 that will probably be their response. So, if you'll just
26 eFile those orders within the next 10 days.

1 MR. PAGLIARINI: Very well. Thank you, Your Honor.
2 I appreciate your time.

3 THE COURT: All right, thank you.
4
5

6 (THERE BEING NOTHING FURTHER, THIS HEARING CONCLUDED)
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CERTIFICATE OF TRANSCRIBER

State of South Carolina

County of Richland

I, JESSICA ANTONUCCI, a court-approved transcriber, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of the proceedings had, and evidence introduced in the hearing of the captioned case, relative to appeal, in South Carolina Circuit Court 5, on the 6th day of August, 2025.

That I am not related to nor the employee of any of the parties hereto, nor related to or employed by any attorney or counsel employed by the parties hereto, nor interested in the outcome of this action.

Jessica N. Antonucci

Transcriber

December 19, 2025

RECEIVED

Aug 20 2026

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

The Honorable Daniel Coble Circuit Court Judge

Case No. 2025-001903

Bush River C-Store, LLC,Appellant,

v.

South Carolina Department of Transportation,Respondent.

CERTIFICATE OF COUNSEL

The undersigned certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

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