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STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

SC Court of Appeals

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

Exchange Club Fair of Charleston, Inc.,

Civil Action No. 2024-CP-10-04474

Plaintiff/Landowner,

vs.

Charleston Area Regional Transportation
Authority,

Defendant/Condemnor.

**ORDER GRANTING
PLAINTIFF/LANDOWNER'S MOTION
FOR SUMMARY JUDGMENT**

This matter came before the Court on the Motion for Summary Judgment (the "Motion") filed by Plaintiff/Landowner Exchange Club Fair of Charleston, Inc. ("ECFC" or "Plaintiff") on March 9, 2026, as supplemented by Plaintiff's Supplemental Memorandum in Support of its Motion for Summary Judgment filed May 18, 2026. Defendant/Condemnor Charleston Area Regional Transportation Authority ("CARTA") filed memoranda in opposition, including its Supplemental Memorandum dated May 27, 2026 with an Affidavit of Joseph A. Boykin attached thereto. The Court heard oral argument on June 1, 2026.

Having considered the Motion, the parties' briefs, the parties' Stipulation of Facts filed March 15, 2026, the Affidavit of Joseph A. Boykin, arguments of counsel, the applicable law, and the record before it, the Court grants Plaintiff's Motion for Summary Judgment for the reasons set forth below.

BACKGROUND

This action arises from CARTA's attempt to condemn and obtain fee simple title to approximately six (6.0) acres of Plaintiff's real property (the "Subject Area"), which is located in unincorporated Charleston County, for the construction of a park-and-ride bus station as part of the Lowcountry Rapid Transit project ("LCRT Project"). CARTA served its Condemnation

Notice on Plaintiff on August 12, 2024. Plaintiff timely filed this challenge action under S.C. Code Ann. § 28-2-470 on September 6, 2024. Through its Motion, Plaintiff challenges CARTA's authority to initiate the condemnation action, asserting that CARTA failed to satisfy a prerequisite to its eminent domain power contained in the Amended and Restated Agreement to Establish the Charleston Area Regional Transportation Authority Pursuant to the State of South Carolina Regional Transportation Law dated January 1, 1997 (the "Formational Agreement").

UNDISPUTED FACTS

1. CARTA is a regional transportation authority created pursuant to the Regional Transportation Authority Law, S.C. Code Ann. §§ 58-25-10, *et seq.*, and the Formational Agreement executed by its member governments pursuant to S.C. Code Ann. § 58-25-30. *See* Stipulation of Facts by Plaintiff/Landowner and Defendant/Condemnor, filed March 15, 2026 ("Stipulation of Facts"), at Nos. 2-3.

2. Article I, Section 2(d) of the Formational Agreement provides that CARTA may "exercise the power of eminent domain limited to rights-of-way and contiguous facility acquisition, *provided, however, such power is subject to approval by the governing body of the Member in which such land is located*["]. Motion at Exhibit A, Formational Agreement (emphasis added). The real property at issue in this condemnation action, being part of Plaintiff's property bearing TMS No. 393-00-00-028 (the "Property"), is located in Charleston County, South Carolina. Stipulation of Fact No. 1.

3. Charleston County is a Member of CARTA under the Formational Agreement. Stipulation of Fact No. 3.

4. Prior to and as of August 12, 2024, Charleston County Council ("Council") had not adopted or passed any resolution, ordinance, or other formal action approving CARTA's exercise of the power of eminent domain with respect to the Subject Area or any other portion of Plaintiff's

Property. Stipulation of Fact No. 32; June 1, 2026 Hearing Tr. at pp. 38-39, 48; *see also* Exhibits B and C to the Motion, consisting of excerpts from Rule 30(b)(6) deposition testimony of CARTA and Charleston County.

5. On April 14, 2026—more than twenty months after service of the Condemnation Notice, and after Plaintiff’s Motion for Summary Judgment had been filed—Council adopted, by a vote of 5 to 3, a Resolution purporting to authorize CARTA’s exercise of eminent domain to acquire the Subject Area (the “Resolution”).¹

STANDARD OF REVIEW

Summary judgment is appropriate when there is no genuine issue of material fact, and the moving party is entitled to judgment as a matter of law. Rule 56(c), SCRCF; *see also Kitchen Planners, LLC v. Friedman*, 440 S.C. 456, 892 S.E.2d 297 (2023). The Court must view the evidence in the light most favorable to the non-moving party. *See, e.g., Isaac v. Onions*, 445 S.C. 525, 533, 915 S.E.2d 492, 496 (2025). The material facts relevant to this Motion are undisputed and stipulated. The Motion presents a question of law: whether CARTA had the right to condemn Plaintiff’s property on August 12, 2024, when it served its Condemnation Notice.

DISCUSSION

I. Grants and Restrictions on the Power of Eminent Domain Must Be Strictly Construed.

CARTA is a creature of statute and an intergovernmental agreement. It is not a sovereign and has no inherent power of eminent domain. “[A] political subdivision of a state, not being a sovereign itself, has no inherent power of eminent domain and may not exercise the power except pursuant to a grant by the legislature.” *St. Andrews Pub. Serv. Dist. Comm’n v. Comm’rs of Pub.*

¹ A copy of the signed Resolution is attached to CARTA’s May 27, 2026 Supplemental Memorandum, and the minutes of Council’s April 14, 2026 meeting, as well as relevant materials from the Charleston County Finance Committee’s meeting on even date, are attached as exhibits to Plaintiff’s May 18, 2026 Supplemental Memorandum.

Works of City of Charleston, 289 S.C. 68, 71, 344 S.E.2d 857, 858-859 (Ct. App. 1986); *see also* *Tuomey Hosp. v. City of Sumter*, 243 S.C. 544, 548, 134 S.E.2d 744, 746 (1964) (*overruled in part on other grounds by Ga. DOT v. Jasper County*, 355 S.C. 631, 586 S.E.2d 853); *City of Abbeville v. Aiken Elec. Coop.*, 287 S.C. 361, 369, 338 S.E.2d 831, 835 (1985).

Because CARTA's eminent domain authority is wholly derivative, the grant and any conditions on its exercise must be strictly construed in favor of the property owner. *Gray v. S.C. Pub. Serv. Auth.*, 284 S.C. 397, 399, 325 S.E.2d 547, 549 (1985); *Tuomey Hosp.*, 243 S.C. at 548, 134 S.E.2d at 746.

II. Section 2(d) of the Formational Agreement Required Approval by Council Before CARTA Could Exercise the Power of Eminent Domain Against Property in Unincorporated Charleston County.

This Court previously found, and re-affirms in this Order, that a regional transportation authority such as CARTA is authorized to exercise the use of eminent domain for the fee simple taking of property contiguous to a right-of-way and that the plain meaning of the term "facility" in 58-25-50(d) includes the parking area that CARTA seeks to condemn. *See* October 24, 2024 Order.

However, the Court must next evaluate that statutory authority in the context of CARTA's Formational Agreement. Article I, Section 2(d) of the Formational Agreement is clear and unambiguous. The grant of eminent domain power is immediately followed by a limiting clause introduced by "provided, however," which qualifies that the power is "subject to approval by the governing body of the Member in which such land is located."

The Court therefore rejects CARTA's contention that the phrase "subject to approval" imposes no temporal requirement. In plain terms, "subject to" is conditional and prospective—it makes the exercise of the power dependent upon the satisfaction of the stated condition. The Court is not engrafting a new term but giving the limiting clause its natural meaning. To read "subject to

approval" as permitting the exercise of the power before any approval has been given would convert a limitation on the grant of power into a procedural step that the condemnor may complete at its convenience.

The Court further observes that the drafters of the Formational Agreement employed the proviso construction—"provided, however, such power is subject to approval"—which by its terms qualifies the grant of eminent domain power that immediately precedes it. The proviso, in turn, operates as a limitation on the grant itself. *See, e.g., Cain v. South Carolina Public Service Authority*, 222 S.C. 200, 213-14, 72 S.E.2d 177, 183 (1952) (holding that a landowner's repurchase right proviso "was intended to limit or qualify the right of eminent domain granted by the Act **and constitutes a condition annexed thereto**") (emphasis added). Read together with the conditional language "subject to," the proviso confirms that the approval is built into the grant—not an afterthought to be completed at the condemnor's convenience after invoking the power.

Moreover, because CARTA's eminent domain authority is wholly derivative and is not an inherent attribute of sovereignty, the grant of that authority and any conditions imposed upon its exercise must be strictly construed for the protection of property rights. *See Tuomey*, 243 S.C. at 548 (citing *Paris Mountain Water Co. v. City of Greenville*, 105 S.C. 180, 187, 89 S.E. 669, 670 (1916) ("The taking of private property for public use should be done in strict accord with law and **only when all the formalities are complied with.**") (emphasis added)). The Court finds none, but any ambiguity in the scope of CARTA's delegated power resolves against CARTA.

The Subject Area is located in unincorporated Charleston County. Charleston County is the Member of CARTA in which the property is located. The governing body of Charleston County is Council. Approval by Council was therefore a prerequisite to CARTA's exercise of the power of eminent domain for the Subject Area.

III. Approval Under Article I, Section 2(d) Can Only Occur by Affirmative Council Action, Which Did Not Transpire Until Well After the Attempted Condemnation.

The Court finds, on the undisputed and stipulated record, that Council did not approve CARTA's exercise of the power of eminent domain over the Subject Area at any time before August 12, 2024, the date the Condemnation Notice was served. CARTA concedes that the first formal action by Council authorizing CARTA's exercise of eminent domain to acquire the Subject Area occurred on April 14, 2026, when Council adopted the Resolution by a 5-to-3 vote. *See* June 1, 2026 Hearing Tr. at pp. 46-47.

CARTA argued that prior funding commitments by Charleston County under the October 14, 2022 Multi-Party Intergovernmental Agreement ("LCRT Agreement") for the entire LCRT Project, the participation of three Councilmembers on CARTA's Board of Directors, the periodic updates on the entire LCRT Project given to Council by CARTA, and Council's general support of the LCRT Project constituted "approval" within the meaning of Article I, Section 2(d) of the Formational Agreement. The Court rejects that contention.

Approval under Section 2(d) requires affirmative action by "the governing body" — that is, by Council acting as a body through a vote, resolution, ordinance, or other formal action of record. Funding decisions, individual Council members' service on CARTA's Board in a separate capacity, and general LCRT Project support are not the same as Council approval of the specific exercise of eminent domain against a specific portion of a specific property. The very act of adopting the April 14, 2026 Resolution confirms that no such formal approval by Charleston County's governing body had previously been given.

IV. The After-the-Fact Resolution Does Not Change the Result.

CARTA further argued that the April 14, 2026 Resolution either moots Plaintiff's Motion or operates to cure retroactively the absence of pre-condemnation approval. The Court rejects this argument.

Plaintiff's Motion is not moot. The Motion presents a fixed question of historical fact: did CARTA have the authority to condemn Plaintiff's property on August 12, 2024, when it served the Condemnation Notice? That question is unaffected by subsequent events; the date of service, which is the date CARTA attempted to exercise the power of eminent domain, does not and cannot change because Council voted nearly two years later.

Nor can the Resolution operate as a retroactive cure consistent with the statutory framework governing this case. The South Carolina Eminent Domain Procedure Act, S.C. Code Ann. §§ 28-2-10, *et seq.* (the "SCEDPA"), is the exclusive procedure for condemnation in this State. *See* S.C. Code Ann. §§ 28-2-60, -210. The SCEDPA gives a landowner a mere thirty days from service of the condemnation notice within which to challenge "the right of the condemnor to acquire the property," and imposes an automatic stay of the underlying condemnation upon the timely filing of such a challenge. S.C. Code Ann. § 28-2-470. CARTA's counsel conceded at the hearing that the statutory stay applies to "governmental action pertaining to the taking of the land." June 1, 2026 Hearing Transcript at p. 54. This Court finds that the action taken by Council in passing the April 14, 2026 Resolution did pertain to the taking of the Subject Area, and as such, by CARTA's own definition, was subject to the stay in the pending condemnation action.

The grounds for challenge necessarily must be evaluated as of the date of service of the condemnation notice, because that is the date from which the statutory clock runs. Permitting a condemnor to cure a defect in authority after the landowner has filed a timely challenge would deprive the landowner of a statutory remedy that the legislature enacted. The Court therefore

concludes that the April 14, 2026 Resolution—whatever effect it may have on any future condemnation—does not relate back to August 12, 2024, and does not cure the deficiency in CARTA’s authority to invoke the condemnation power at issue in the instant challenge action.

V. CARTA Had No Power to Initiate the Condemnation Action Against ECFC.

In sum, the Court finds and concludes that, at the time CARTA served its Notice of Condemnation on Plaintiff on August 12, 2024, CARTA lacked the authority to exercise the power of eminent domain against the Subject Area because the condition precedent to such exercise—approval by Council under Article I, Section 2(d) of the Formational Agreement—had not been satisfied. CARTA accordingly had no right to condemn the property and no power to serve the Condemnation Notice. S.C. Code Ann. § 28-2-470. The error was substantive and could not be corrected by remedial action.

As Plaintiff is the prevailing party in this challenge action, CARTA’s underlying counterclaim alleging that Plaintiff brought this challenge action in bad faith cannot stand. Plaintiff has prevailed on the merits of the challenge; the recovery of fees and costs under S.C. Code Ann. § 28-2-510(A) by a prevailing condemnor requires the condemnor first to prevail against the landowner, which has not occurred. Accordingly, all remaining claims and counterclaims in this action are also dismissed.

This dismissal is without prejudice to CARTA’s ability to serve a new Notice of Condemnation upon Plaintiff at a future date, should CARTA elect to do so.

CONCLUSION

WHEREFORE, the Court concludes and holds that CARTA lacked the requisite eminent domain authority prior to and at the time it served its Condemnation Notice upon Plaintiff on

August 12, 2024 and thus CARTA lacked the power to condemn the Subject Area on August 12, 2024.

IT IS THEREFORE ORDERED that Plaintiff's Motion for Summary Judgment to prevail in this challenge action is GRANTED.

IT IS FURTHER ORDERED that the underlying condemnation action initiated by CARTA's Condemnation Notice served on Plaintiff on August 12, 2024 is DISMISSED. This dismissal is without prejudice to CARTA's ability to serve a new Condemnation Notice upon Plaintiff at a future date in accordance with governing and applicable law.

IT IS FURTHER ORDERED that because said condemnation action is dismissed, CARTA may not take any actions in further pursuit of this immediate condemnation action and CARTA may not take possession of any portion of Plaintiff's Property in reliance on or connection with the Condemnation Notice or underlying condemnation action.

IT IS FURTHER ORDERED that Plaintiff's claims in this challenge action relating to CARTA's Condemnation Notice, and CARTA's counterclaims, including without limitation CARTA's counterclaim for fees and costs under S.C. Code Ann. § 28-2-510(A) on alleged bad-faith grounds, are DISMISSED.

IT IS FURTHER ORDERED that, as Plaintiff is the prevailing party in this challenge action, the Court reserves jurisdiction to determine Plaintiff's entitlement to and the amount of any litigation expenses, costs, and fees recoverable under S.C. Code Ann. § 28-2-510(A) and other applicable law upon Plaintiff's separate application for the same.

AND IT IS SO ORDERED!

The Honorable Marvin H. Dukes, III (2785)
Presiding Judge, Ninth Judicial District

June ___, 2026
Beaufort, South Carolina



Charleston Common Pleas

Case Caption: Exchange Club Fair Of Charleston Inc VS Charleston Area Regional
Transportation Authority
Case Number: 2024CP1004474
Type: Order/Summary Judgment

So Ordered

s/Marvin H. Dukes III #2785