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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM COUNTY OF COLLETON
COURT OF COMMON PLEAS

Honorable Marvin H. Dukes III, 14th Judicial Circuit

COURT OF APPEALS CASE # 2026-000840

REGINALD P. JOHNSTON AND SHONDA D. JOHNSTON, Appellant,

vs.

THE CITY OF WALTERBORO, Respondent.

AMENDED RECORD ON APPEAL

Respectfully submitted
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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM COUNTY OF COLLETON
Court of Common Pleas

Honorable Marvin H. Dukes, III

Court of Appeals Case No. 2026-000840

REGINALD P. JOHNSTON AND SHONDA D. JOHNSTON, Appellant,

vs.

THE CITY OF WALTERBORO, Respondent.

DESIGNATION OF MATTER TO BE
INCLUDED IN THE RECORD ON APPEAL

Appellant proposes the following be included in the Record on Appeal:

1. Defendant's 2nd Motion for Summary Judgment
2. Plaintiff Memorandum in Opposition to Defendant 2nd Motion for Summary Judgment
3. Order of March 9, 2026;
4. Transcript of Motions Hearing dated March 4, 2026;
5. Final Brief of Appellant

I certify that this designation contains no matter which is irrelevant to this appeal.

October 19, 2026

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STATE OF SOUTH CAROLINA

COUNTY OF COLLETON

REGINALD P. JOHNTSON and
SHONDA D. JOHNSTON,

Plaintiffs,

v.

CITY OF WALTERBORO,

Defendant.

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
CASE NO. 2022-CP-15-00791

**DEFENDANT'S 2nd MOTION FOR
SUMMARY JUDGMENT BASED ON
UNDISPUTED TESTIMONY**

PLEASE TAKE NOTICE that Defendant, City of Walterboro ("Defendant"), by and through its undersigned attorney and pursuant to Rule 56 of the South Carolina Rules of Civil Procedure, will move before the Presiding Judge of the Fourteenth Judicial Circuit at the Colleton County Courthouse, more than ten (10) days after service, for an Order granting Defendant summary judgment.

This motion is based on undisputed deposition testimony taken after Defendant's initial Motion for Summary Judgment was filed. Discovery has now eliminated any conceivable factual dispute. Plaintiffs' own sworn testimony establishes that:

1. Plaintiffs knowingly undertook a construction "development" under the City's Unified Development Ordinance;
2. Plaintiffs were informed before paying tap fees that a water main extension would be required and paid the tap fees anyway;
3. No contract—written or oral— between Parties;
4. Plaintiffs can identify no similarly situated property owner treated differently; and
5. Plaintiffs' inverse condemnation theory rests solely on refusal to pay lawful extension costs.

Even viewing the record in the light most favorable to Plaintiffs, Defendant is entitled to judgment as a matter of law on all causes of action. Because the material facts are undisputed

and Plaintiffs challenge only the legal effect of Defendant's ordinances, the case is appropriate for resolving through summary judgment.

SUMMARY JUDGMENT STANDARD

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), SCRCP. When determining whether triable issues of fact exist, the evidence and all reasonable inferences must be viewed in the light most favorable to the non-moving party. Sumner v. Carpenter, 328 S.C. 36, 42, 492 S.E.2d 55, 58 (1997). Once the movant meets its burden, the non-moving party must present specific facts showing a genuine issue for trial. Sides v. Greenville Hosp. Sys., 362 S.C. 250, 255, 607 S.E.2d 362, 364 (Ct. App. 2004).

"The purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder." George v. Fabri, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001).

PROCEDURAL BACKGROUND

Plaintiffs filed this action in Colleton County pursuant to the South Carolina Tort Claims Act ("SCTCA") alleging that following Plaintiffs are the owners of 321 State Street, Walterboro, SC. Plaintiffs allege that Defendant improperly required them to bear the cost of extending a water main to their property in order to connect to Defendant's water system.

Plaintiffs have asserted claims for: (1) Declaratory Judgment; (2) Breach of Contract; and (3) Gross Negligence; and (5) Inverse Condemnation.

UNDISPUTED MATERIAL FACTS FROM PLAINTIFF'S DEPOSITION TESTIMONY

1. Plaintiff Shonda Johnston is the sole record owner of the property located at 321 State Street, Walterboro, South Carolina. (Shonda Johnston Dep. 15:12-16:20).

2. Plaintiffs hired a professional designer to prepare plans for new construction on the property. (Shonda Johnston Dep. 29:19-29:24).
3. Plaintiffs executed a design contract describing the project as "project development" and assigning responsibility for utility information to the owner. (Shonda Johnston Dep. 49:8-50:21; 51:19-52:6).
4. The City issued a building permit for new multifamily building construction on January 14, 2022. (Shonda Johnston Dep. 64:7-64:19).
5. On February 10, 2022, the City notified Plaintiffs' contractor that a water main extension was required to serve the property. (Shonda Johnston Dep. 70:15-71:24).
6. Plaintiffs were informed of this requirement before paying any tap fees. (Shonda Johnston Dep. 73:17-73:23).
7. Plaintiffs nevertheless submitted water applications and paid tap fees on April 11, 2022. (Shonda Johnston Dep. 72:5-73:8).
8. Plaintiff reviewed and brought copies of the City's Unified Development Ordinance to her deposition. (Shonda Johnston Dep. 9:11-12:4).
9. Plaintiff read into the record the ordinance definition of 'development,' which defines "development" to include the construction of any building or structure. (Shonda Johnston Dep. 79:6-79:23).
10. Plaintiff admitted that Plaintiffs constructed a building on the property. (Shonda Johnston Dep. 81:17-82:9).
11. Plaintiff testified they have no agreement or contract with the City related to the project. (Shonda Johnston Dep. 81:17-82:9).

12. Plaintiff testified she was unaware of any similarly situated property owner treated differently by the City. (Shonda Johnston Dep. 109:13–109:23).

ARGUMENT

All of Plaintiffs' claims rise or fall on a single legal question: whether the City correctly interpreted and applied its ordinances to Plaintiffs' construction project. The South Carolina Tort Claims Act expressly preserves governmental immunity for claims arising out of the interpretation, enforcement, or compliance with laws and ordinances. S.C. Code Ann. § 15-78-60(4) provides:

The governmental entity is not liable for a loss resulting from legislative, judicial, or quasi-judicial action or inaction, **including but not limited to the adoption, enforcement, or compliance with any law, ordinance, or regulation.**

S.C. Code Ann. § 15-78-60(4)(emphasis added)

Plaintiffs' claims are all premised entirely on Defendant's interpretation and application of its ordinances, specifically determining that Plaintiff's construction project constituted a development requiring Plaintiffs to bear the costs of the extension of a water line to Plaintiffs' property.

In Repko v. County of Georgetown, 423 S.C. 135, 814 S.E.2d 552 (2018), the Supreme Court held that claims arising from a county's application and enforcement of development regulations were barred under § 15-78-60(4), explaining that the Tort Claims Act "specifically immunizes governmental entities from liability for losses resulting from the adoption, enforcement, or compliance with laws and regulations."

As such, all Plaintiffs' claims are barred under the Tort Claims Act, and Defendant is entitled to summary judgment.

I. Declaratory Judgment Claim

Issues involving construction of municipal ordinances are questions of law for the Court. Mitchell v. City of Greenville, 411 S.C. 632, 770 S.E.2d 391 (2015). An ordinance must be given a practical, reasonable, and fair interpretation consistent with legislative intent. Dewberry 334 Meeting St. LLC v. City of Charleston, 2021-UP-360 (S.C. Ct. App. Oct. 20, 2021). “[I]t is well-settled that statutes dealing with the same subject matter are in *pari materia* and must be construed together, if possible, to produce a single, harmonious result.” Beaufort County v. S.C. State Election Comm’n, 395 S.C. 366, 371, 718 S.E.2d 432, 435 (2011).

The City of Walterboro Code of Ordinances states that “[i]t shall be the responsibility of any developer to bear all cost of any main line extensions to serve proposed property.” Code 1961, §37-187. Under the Walterboro Unified Development Ordinance (“Ordinance”), “development” is defined as “[t]he construction of any building or structure, any increase in impervious area, the making of any material change in the use of any structure or land” Supra. Here, it is undisputed that Plaintiffs’ building, the subject of this action, meets the ordinance definition of “development”. It is further undisputed that Plaintiffs hired a designer and contractor for the construction of the building.

South Carolina law supports this interpretation at South Carolina Code Section 5-31-1510 which states:

Upon the written request of **any property owner requesting the city or town to extend to him water and sewer service and agreeing to pay the cost thereof** the city or town may provide such service and levy an assessment against the property of the owner, so requesting such service for the costs thereof.
(Emphasis added).

While Defendant points to the clear applicability of the Ordinance definition of “development” to Plaintiffs’ building, Plaintiffs offer no contrary evidence to dispute the fact

that they are developers under the Ordinance. Accordingly, the Court should declare that the language contained in the Defendant's Ordinance requires that Plaintiffs bear the costs of extending the waterline line to Plaintiff's property, and grant summary judgement as to all claims.

II. Breach of Contract Fails as a Matter of Law.

It is elementary that a contract must exist for there to be a claim for breach of contract.

Tidewater Supply Co., Inc. v. Industrial Electric Co., 253 S.C. 483, 171 S.E.2d 607 (1969).

However, Plaintiff admits in her deposition there is no agreement with the City to do any type of development of their property. Furthermore, payment of tap fees does not create a contractual duty to construct off-site utilities. Absent a binding, valid contract, there can be no valid claim for breach of contract under South Carolina law, and Plaintiffs' claim fails as a matter of law.

III. Gross Negligence Claim is Barred by Statutory Immunity.

Plaintiff's gross negligence claim is premised entirely on the Defendant's interpretation and application of its ordinances, specifically determining that Plaintiff's construction project constituted a development requiring Plaintiffs' to bear the costs of the extension of a water line to Plaintiffs' property. Furthermore, S.C. Code Section 5-31-1510 supports Defendant's position requiring Plaintiffs to bear the costs of extending the water line to Plaintiffs' property.

Defendant does not owe a duty to Plaintiff to provide water connection and are entitled to summary judgment.

Additionally, as noted above, South Carolina courts have held that claims arising from the application and enforcement of ordinances or regulations were barred under § 15-78-60(4) which "specifically immunizes governmental entities from liability for losses resulting from the adoption, enforcement, or compliance with laws and regulations." Repko, supra.

The same immunity applies to Defendant's interpretation and enforcement of its ordinance related to the development of Plaintiffs' property at issue. Furthermore, Plaintiffs admit that they were not aware of anyone being treated any differently than there were under the ordinances. Therefore, Plaintiffs' claim for gross negligence is barred under the Tort Claims Act.

IV. Inverse Condemnation Claim Fails as a Matter of Law.

South Carolina courts have held that enforcement of a government regulation will usually affect a taking under inverse condemnation when the regulation denies **all economically beneficial or productive use of the land**. Hardin v. S.C. Dep't of Transp., 371 S.C. 505, 641 S.E.2d 437 (2007)(emphasis added). However, Defendant's refusal to subsidize private development of Plaintiffs' property is not a taking. Here, Plaintiffs retain ownership and may connect utilities upon paying for the lawful extension costs of the water line to their property. Plaintiff's claim for inverse condemnation fails as a matter of law.

CONCLUSION

Based on the foregoing authorities and arguments, there are no genuine issues of material fact regarding Plaintiff's claims, and summary judgment should be granted in favor of Defendant.

Respectfully submitted,

MCLEOD FRASER & CONE, LLC

Walterboro, South Carolina
February 12, 2026

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF COLLETON	)	CASE NO. 2022-CP-15-00791
REGINALD P. JOHNTSON and	)	
SHONDA D. JOHNSTON,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	PLAINTIFF MEMORANDUM IN
	)	OPPOSITION TO DEFENDANT
	)	SECOND MOTION FOR
	)	FOR SUMMARY JUDGMENT
CITY OF WALTERBORO,	)	
	)	
Defendant.	)	
_____	)	

**TO: HON. MARVIN DUKES, PRESIDING
PEDEN BROWN MCLEOD, JR., ESQ. – ATTORNEY FOR CITY OF WALTERBORO**

Plaintiffs here file their reply and memorandum of law in opposition to defendant City of Walterboro's second motion for summary judgment. Plaintiff's response is predicated on all discovery exchanged to date, defendant's own exhibits from the court's first denial of summary judgment, deposition testimony excerpts, and may be supported by affidavit prior to argument pursuant to Rule 56 SCRPC. Plaintiff respectfully shows the following in requesting the court deny the relief being sought under Defendant's Second Motion for Summary Judgment :

PROCEDURAL HISTORY

Procedurally this motion is Defendant's second bite at the apple. Prior to this motion, Summary Judgment was denied by the Hon. Patrick C. Fant, III on September 26, 2024. Exhibit-#1. Defendant did not seek reconsideration or challenge this order under Rule 59 or Rule 60 SCRPC. The parties have now completed extensive written discovery, depositions, and mediation. The case was mediated

on December 9, 2025 and met with impasse. The case is now #3 on the Jury Trial Roster for the week of March 9, 2026 and stands ready for trial.

FACTUAL BACKGROUND

Plaintiffs are being denied basic water and sewer service at their property by Defendant after they paid water and sewer tap fees. Exhibit-#2. Plaintiff filed suit on September 9, 2022 after disputes develop between the parties over the city's additional demands for \$12,434.40 and city refusal (*sic) (Def. Br. p. 5 at IV, lines 4-5) to provide compellable services (not subsidize development), unless Plaintiffs pays as demanded. Plaintiffs have since April 11, 2022 been denied water and sewer at their residential property 321 State Street, Walterboro, South Carolina 29488 (TMS # 163-03-00-001). Plaintiffs asserted claims for (1) Declaratory Judgment; (2) Breach of Contract; (3) Gross Negligence; and (4) Inverse Condemnation. Defendant timely answered December 15, 2022 asserting seventeen (17) defenses or affirmative defenses.¹

LEGAL STANDARD

Rule 56(C) S.C.R.C.P.

“Summary judgment is appropriate “if the pleadings, depositions, answers to interrogatories and admissions on file, together with affidavits, if any, show there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.” *Russell v. Wachovia Bank, N.A.*, 353 S.C. 208, 217, 578 S.E.2d 329, 334 (2003) (quoting Rule 56(c), SCRCPP). Summary judgment's purpose is to expedite the disposition of cases not requiring a fact finder. *Nakatsu v. Encompass Indemn. Co.*, 390 S.C. 172, 177, 700 S.E.2d 283, 286 (Ct. App. 2010). The burden of proof rests with the party seeking summary judgment; however, the non-

¹ Noteworthy is that Defendant does not file this motion under Rule 41(b) of the SCRCPP. Conversely, it is filed a second time under Rule 56(c), where over a year has passed since the Hon. Patrick Fant denied Defendant summary judgment 9/26/2024 and Defendant did not seek reconsideration.

moving party must make a showing sufficient to establish the existence of an essential element on which it will bear the burden to prove at trial. *Baughman v. Am. Tel. & Tel. Co.*, 306 S.C. 101, 115, 410 S.E.2d 537, 545 (1991). The “mere scintilla” standard does not apply to defeat summary judgment, but instead the party must establish a genuine issue of material fact under the plain text of Rule 56(c), SCRPC. *Kitchen Planners, LLC v. Friedman*, 440 S.C. 456, 463, 892 S.E.2d 297, 301 (2023). “A fact is material if it “might affect the outcome of the suit under governing law.” *Libertarian Party of Va. v. Judd*, 718 F.3d 308, 313 (4th Cir. 2013) (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986)). A dispute is “genuine” if “a reasonable jury could return a verdict for the non-moving party.” *Strothers v. City of Laurel*, 895 F.3d 317, 326 (4th Cir. 2018) (quoting *Anderson*, 477 U.S. at 248). The supreme court has set forth that It is not sufficient for a party to create an inference that is not reasonable or an issue of fact that is not genuine. *Town of Hollywood v. Floyd*, 403 S.C. 466, 477, 744 S.E.2d 161, 166 (2013). When determining whether triable issues of fact exist, all the evidence and all reasonable inferences must be viewed in the light most favorable to the non-moving party. *Summer v. Carpenter*, 328 S.C. 36, 42, 492 S.E.2d 55, 58 (1997).

DISCUSSION

Defendant’s second motion for summary judgment comes before this court with the City seeking to create an inference that is not reasonable, and issue that is not genuine; e.g., that water and sewer enjoyed by all other citizens is not available to Plaintiffs due somehow to Plaintiffs own conduct. This is incorrect, and applied in reverse and inverted form under *Kitchen Planners*. Noteworthy is Plaintiffs come before this court with no less than five (5)² evidentiary documents,

² The documents attached as Exhibits include (1) Sewer and Tap Applications; (2) Confirmed payment of fees by Plaintiffs; (3) Residential Appraisal, (4) the property is within city limits of Waltherboro, and (5) the code of

showing conflicting evidentiary disputes and disputed inferences and facts that are genuine and material, precluding summary judgment under defendants' second try.

Defendant's second bite at the apple nonetheless seeks to persuade the court to *invert* the legal standard for summary judgment under a dated standard of review, and not *Kitchen Planners, LLC*. Defendant erroneously asserts there now exist only pure question of law under "uncontradicted testimony" taken out of context, and applied where the Supreme Court has now firmly established the proper review under the plain text of Rule 56(c) SCRPC under *Kitchen Planners, LLC*. Defendant's arguments seek to factually and erroneously characterize Reginald and Shonda Johnson as "*developers*" who lacked *enforceable contract* with the City, where the evidence demonstrates the precise opposite. Exhibit-2. There exist disputed facts and inferences upon which a reasonable jury could return a verdict in favor of Plaintiffs. Plaintiffs can demonstrate they have paid for but have been refused basic water and sewer, utilizing defendant's own exhibits and testimony. (Exhibit-3, p. 1) Plaintiffs reply with genuine issue of disputed material fact and easily meet the "genuine" and the "material" elements under Rule 56(c) SCRPC as to liability and damage, where both property should be reserved for the trier of fact. The case is now #3 for trial week of March 9, 2026 in Colleton County.

ARGUMENT

- 1. The genuine issue of disputed material fact precluding summary judgment is whether the city refuses services prior to it's application of its ordinance to Plaintiffs, and whether city conduct is arbitrary, capricious and prejudicial to Plaintiffs who are not "*developers*".**

The record shows Defendant previously and unsuccessfully submitted their arguments under first motion for summary judgment, and this motion only serves only to pit one circuit

ordinance cited by Defendant, and (6) Section 44-55-820 permit for residential electrical connection . See, Exhibit-1 to Exhibit-6

judge against another. It is well settled that there is a “general rule prohibiting one circuit court judge from overruling another.” *Wachovia Bank of S.C. v. Player*, 341 S.C. 424, 535 S.E.2d 129 (2000). “This rule forbids a circuit judge to grant an order after the first judge (here a visiting judge at the first motion Hon. Patrick C. Fant) after the first judge refused it, and further provides that if upon such application any order be made, it shall be revoked. *Ex Parte the STATE of South Carolina v. In re Joseph Norman Brittain, Child under the Age of Seventeen Years*, 263 S.C. 363, 367 (S.C. 1974) (emphasis added). Again, defendant failed to seek reconsideration of Judge Fant’s first order September 26, 2024 for well over a year.

While a judge “may sometimes reconsider his own orders...all the authorities agree as to the general doctrine, “that the decision of one judge is not subject to be reviewed by another.” *Steel v. Charlotte v. C.&A.R. Co.*, 14 S.C. 324, 330 (1880). “A motion once heard and fully decided will only be reviewed upon a new state of facts arising after the decision.” *Id.* The new state of facts must be such as to make a new case, as misconduct in the judge granting the order... [or] newly discovered evidence.” *Id.* Here, Defendant assertions of Shonda Johnson’s uncontradicted testimony, taken after its first bite at the apple, fails to meet this standard. Far from trying to raise new arguments that were unavailable before, the Defendant merely seeks another bite at the proverbial apple that Judge Patric C. Fant denied the city.

2. The plaintiffs have paid all tap water and sewer fees and have never been invoiced by the city for \$12,434.40. Exhibit-2.

Defendant arguments under its second motion for summary judgment seek to have this court invert the dated standard for summary judgment cited under assertion of undisputed testimony. Stated differently, defendants seek to convince this court uncontradicted testimony forces plaintiffs to come forward with scintilla showing genuine issue of disputed fact, when the

city's own documents defy the city's assertions. Exhibit-2. Viewed most favorably to the Plaintiffs, there is genuine and conflicting evidence and inferences, under which a jury could return verdict for Plaintiffs. Contrary to defendant assertions, it is not accurate or true assertion that all of Defendant's claims rise or fall on plaintiff's disputed question of law in ordinance interpretation. [Def. Br. p. 2-3 #'s (1)-(12)]. The issue is not whether the City correctly *interpreted* and *enforced* its ordinances to deny basic water and sewer to Plaintiffs. The genuine and material issue of disputed fact is whether summary judgment is precluded where the city has denied Plaintiffs equal protection of law by *refusing* basic water and sewer; services that all other citizens enjoy. Hence, the issue is whether city refusal (not interpretation or enforcement) acts are in arbitrary, capricious, or prejudicial manner in denying plaintiffs compellable basic services of water and sewer.

While true the South Carolina Tort Claims Act expressly preserves governmental immunity for claims arising out of the interpretation, enforcement, or compliance with laws and ordinances. S.C. Code Ann. § 15-78-60(4) (...The governmental entity is not liable for a loss resulting from legislative, judicial, or quasi-judicial action or inaction, *including but not limited to the adoption, enforcement, or compliance with any law, ordinance, or regulation.*) S.C. Code Ann. § 15-78-60(4), this differs materially from city *refusal* (*sic) to provide basic services under assessments not within the zoning code. The city is exceeding its statutory authority by imposing upon plaintiffs additional monies not disclosed to plaintiffs, which Wayne Crosby obtained from a general contractor (not the code), a contractor not chosen by Plaintiffs. [Crosby, depo, 23:16-24] (Exhibit-3, p. 23) It is undisputed that the demand for additional \$12,434.40 comes from Carroll Enterprises, not plaintiffs own contractor. (*Id.* at 24:12-16). "I came up with that number based on the cost estimate given to me by Carroll Enterprises and the cost and our service fees

for two taps.” Id. at 26:5-8). The number is secured by Wayne Crosby, and purportedly provided to plaintiff’s general contractor Billy Caine as a courtesy. (*Id.* at 28:12-13) Provided, however, the assessment with no disclosure is found nowhere in the zoning code, and defendant attempts to create an inference that is not reasonable or an issue of fact that is not genuine against the authority of *Town of Hollywood v. Floyd*, 403 S.C. 466, 477, 744 S.E.2d 161, 166 (2013). Plaintiff’s residence lies within the city of Walterboro city limits. (Exhibit-4, p.1-6). Plaintiffs construction was approved by the city. Exhibit-4, p. 2)

It is untrue and a mischaracterization by Defendant that Plaintiffs’ claims are all premised entirely on Defendant’s *interpretation and application* of its ordinances, specifically determining that Plaintiff’s construction project constituted a *development* mandating that Plaintiffs are “developers” in reliance upon Repko v. County of Georgetown, 423 S.C. 135, 814 S.E.2d 552 (2018). There, the Supreme Court held that claims arising from a county’s application and enforcement of development regulations were barred under § 15-78-60(4), explaining that the Tort Claims Act “specifically immunizes governmental entities from liability for losses resulting from the adoption, enforcement, or compliance with laws and regulations.”

By contrast, here the city has refused and denied basic water and sewer and denied Plaintiffs equal protection under its laws and ordinances by characterizing them as “developers”. Moreover, the city does so upon demand of additional monies not within the zoning code, (Exhibit-2) and thus not adopted by or in compliance with ordinances. In the case sub judice the government is seeking to enforce *additional fees* upon Plaintiffs which are not authorized by the legislative body. The genuine issue of disputed material fact is has the city government denied Plaintiffs equal protection under the laws and zoning ordinances of Walterboro and the state

under city arbitrary refusal, upon financial demand which the zoning code does not support.
(Exhibit-2, p. 1)

3. Declaratory Judgment Claim where Plaintiffs are not “developers” and constructed a residential dwelling after paying city water and tap fees and proper city permitting.

Issues involving construction of municipal ordinances are questions of law for the Court. Mitchell v. City of Greenville, 411 S.C. 632, 770 S.E.2d 391 (2015). An ordinance must be given a practical, reasonable, and fair interpretation consistent with legislative intent. Dewberry 334 Meeting St. LLC v. City of Charleston, 2021-UP-360 (S.C. Ct. App. Oct. 20, 2021). “[I]t is well-settled that statutes dealing with the same subject matter are in *pari materia* and must be construed together, if possible, to produce a single, harmonious result.” Beaufort County v. S.C. State Election Comm'n, 395 S.C. 366, 371, 718 S.E.2d 432, 435 (2011). “The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature.” Elmore v. Ramos, 327 S.C. 507, 510, 489 S.E.2d 663, 665 (Ct. App. 1997).

“In construing a statute, its words must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute’s operation.” Adkins v. Comcar Indus., Inc., 323 S.C. 409, 411, 475 S.E.2d 762, 763 (1996). “If a statute’s language is plain and unambiguous, and conveys a clear and definite meaning, there is no occasion for employing rules of statutory interpretation and the court has no right to look for or impose another meaning.” State v. Smith, 330 S.C. 237, 240, 498 S.E.2d 648, 650 (Ct. App. 1998). “Where a statute is complete, plain, and unambiguous, legislative intent must be determined from the language of the statute itself.” Id.

On the other hand, however, “[c]ourts will reject the plain and ordinary meaning of statutory language when to accept it would lead to a result *so absurd* that it could not possibly have been intended by the legislature, or would defeat plain legislative intention; “[i]f possible we will construe a statute so as to escape an absurd result and carry the legislative intention into effect.” *State v. Gordon*, 356 S.C. 143, 152-53, 588 S.E.2d 105, 110 (2003). The City of Walterboro Code of Ordinances states that “[i]t shall be the responsibility of any *developer* to bear all cost of any main line extensions to serve proposed property.” Code 1961, §37-187. Under the Walterboro Unified Development Ordinance (“Ordinance”), “development” is ill defined as “[t]he construction of **any** building or structure, any increase in impervious area, the making of any material change in the use of any structure or land . . .” The ordinance is overly broad, and silent as to duplex residential construction the city previously permitted. (Exhibit-4, p.2.) The city of Walterboro approved all plans for residential construction, participated in adjustments in the construction, then accepted water and tap fees. Exhibit-2. All documents of record evidence residential construction, and not commercial. Here, it is undisputed that Plaintiffs’ construction is a residential construction upon a lot which is now and historically been designated residential. Exhibit-4, p. 3. Plaintiffs do not become “developers” until the city’s demand for an additional \$12,434.40. (Exhibit-2, p. 1). The city code of ordinance does not define nor make exception for “duplex” residential dwellings, nor did the city advise (or invoice) plaintiffs for the \$12,434.40.

Contrary to city assertions of uncontradicted testimony, which is disputed, it is question of fact whether plaintiff activities meet the ordinance definition of “development”. Under the plain text of Rule 56 and defendant’s own factual assertions that it is further not undisputed that Plaintiffs hired a *designer* and *contractor* [Exhibit-4, p. 4] for the construction of the *building*.

(Def. Br. at 1).The city would assert in error that a Reginald Johnson (accountant) and his wife Shonda Johnston (school teacher), are “developers”, a question properly reserved for the trier of facts, not the administrative government body, and certainly not a subordinate employee using charges undisclosed to plaintiffs, and obtained by the city from a contractor plaintiffs did not choose, not invoiced, where the subordinate did not consult with his supervisor. (Exhibit-4, p. 28:6-9)

South Carolina law supports cited by defendant does not support the interpretation at South Carolina Code Ann. Section 5-31-1510 which states:

Upon the written request of **any property owner requesting the city or town to extend to him water and sewer service and agreeing to pay the cost thereof** the city or town may provide such service and levy an assessment against the property of the owner so requesting such service for the costs thereof.
(Emphasis added).

While Defendant points to the clear applicability of the Ordinance definition of “development” to Plaintiffs’ residence, defendants offer no contrary evidence to dispute the fact that they are not developers under the Ordinance under “any” form of construction. Accordingly, the Court should not declare that the language contained in the Defendant’s Ordinance requires that Plaintiffs bear the costs of extending the waterline line to Plaintiff’s property, and deny summary judgement as to all claims.

4. Estoppel by silence precludes summary judgment under Defendant’s second motion where the city never invoices plaintiffs for \$12,434.40.

Estoppel by silence arises when the estopped party owes a duty to speak to the other party but refrains from doing so, thereby leading the other party to believe in an erroneous state of facts. *Southern Dev.*, 426 S.E.2d at 751. A “manifest intent” to mislead is not required for

estoppel by silence; it arises when the silence is intended or has the effect of misleading the other party, provided the other party acts reasonably. *Id.* The reliance by the party claiming estoppel must be reasonable, and it must proceed in good faith. *Masonic Temple, Inc. v. Ebert*, 199 S.C. 5, 18 S.E.2d 584 (1942). In his deposition, Wayne Crosby admits that Plaintiffs paid tap fees. (Exhibit-2.); (*Crosby* depo. 24:407 Exhibit-3.) There is no citation of any requirement for \$12,434.40 and there is a sheer absence of evidence of the city invoicing plaintiffs for this amount before refusing service. To be clear, at no time does the city invoice Plaintiffs for the additional \$12,434.40 during or after accepting payment of tap fees for a residence. Exhibit-2. Genuine issue of disputed fact exists whether the city exceeds its statutory authority by levying such additional costs that do not exist in the zoning code, evidencing arbitrary and capricious conduct. Wayne Crosby is not in charge of the zoning department, nor is he part of the legislative body for Walterboro. There exist no authority in the code for the additional \$12,434.40 demand. In short, viewed under the lens of *Kitchen Planners, LLC* Plaintiffs can demonstrate genuine issues of disputed material fact that the city as acted in arbitrary, capricious, or prejudicial means against Plaintiffs *refusing* basic services, thus making their refusal (not interpretation or enforcement) under ordinance gross negligence and not barred by tort claims act immunity. Defendant incorrectly assert there is no contract. Yet, they do not deny the invoice to (and payment from) Plaintiffs. Exhibit-#2. Plaintiffs paid not one, but two \$1,297. Tap fees. Exhibit-2. At no time did the city invoice Plaintiffs for anything other than these fees. Exhibit-3, p. 1.

“In construing a contract, the primary objective is to ascertain and give effect to the intention of the parties. *Southern Atl. Fin. Servs., Inc. v. Middleton*, 349 S.C. 77, 80-81, 562 S.E.2d 482, 484-85 (Ct. App. 2002). In ascertaining the parties’ intent, the court will strive to

discover the situation of the parties, along with their purposes at the time the contract was entered. *Klutts Resort Realty, Inc. v. Down'Round Development Corp.*, 268 S.C. 80, 89, 232 S.E.2d 20, 25 (1977); *Bruce v. Blalock*, 241 S.C. 155, 161, 127 S.E.2d 439, 442 (1962). In this case, the city's own evidence, facts, and testimony of the parties provide clear evidence of the purpose and intent for the invoicing, payments, and receipts of money which undermine the city's arguments to this court to grant summary judgment. The situation of the parties were residential owners seeking basic water and sewer services from the city utilities department for their property at 321 State Street, which is situate within the city limits of Walterboro. (Exhibit-4, p. 8)

5. Plaintiff claims of Breach of Contract Do Not Fails as a Matter of Law where the City has refused compellable basic water and sewer service to Plaintiffs.

It is elementary that a contract must exist for there to be a claim for breach of contract. *Tidewater Supply Co., Inc. v. Industrial Electric Co.*, 253 S.C. 483, 171 S.E.2d 607 (1969). However, defendant misconstrues for the court Plaintiff Shonda Johnson admits in her deposition there is *no agreement* with the City. Exhibit-2. Under Rule 56 SCRPC Plaintiffs can come forward with straightforward evidence and inferences to be drawn therefrom that prove Defendant's refusal arbitrary, capricious, contested, wrong, and evidencing disputed facts. *See*, (Exhibit-2, p.1-4) and (Exhibit-4, p. 8). A contract constitutes offer, acceptance, and valuable consideration under South Carolina law. Undisputed evidence shows genuine issue of material fact, where a jury could rule for Plaintiff in view of the undisputed demonstrative evidence of record. Exhibit-2.

Defendant is now before this court on second motion for summary judgment, seeking to evade and circumvent the city's own conduct and failure to perform erroneously skewed as pure

question of law and uncontradicted testimony. The core issue in this case is involve the city's refusal to provide basic sewer and water, not its adopting, interpretation or enforcement by code. This occurs under demand of a city subordinate, Wayne Crosby, implying additional fees are required which are not found inside the code, nor communicated direct to Plaintiffs after the city accepts two (2) payments for sewer and tap fees. Exhibit-2. Plaintiffs do not become "developers" until the city seeks an additional \$6,217.20 per tap, or \$12,434.40. Exhibit-2, p.1. Moreover, this amount is obtained from Carroll Enterprises vs. plaintiffs own choice of contractor. *"They could hire their own contractor . . . he had an option to either use Carroll Enterprises or a contractor of his own."* (Crosby depo. 24:16-19). Exhibit-3 Plaintiffs did not choose the city's preferred contractor Carroll Enterprises. They sought to use a contractor of their own, Billy Caine. Herein lies the arbitrary and capricious conduct constituting gross negligence, as the city is refusing service based on a quote by a contractor "asset" it prefers, and one plaintiffs did not choose. Exhibit-3, (Crosby, depo. at 30:1-3)

6. Gross Negligence Claim is not Barred by Statutory Immunity where the defendant has denied equal protection of the laws in refusing basic water and sewer never communicated direct to plaintiffs from city and never invoiced.

Plaintiff's gross negligence claim is not premised entirely on the Defendant's interpretation and application of its ordinances. Water is available to all other home sites in the neighborhood, but denied to Plaintiffs. (Exhibit-3, Crosby depo. p. 33:13-25) "Duplex" is not defined or differentiated in the zoning code showing Plaintiff's construction project constituted a "development". Once Wayne Crosby and the city determined this, the City required additional monetary demand of Plaintiffs based on Mr. Crosby's consulting with his choice (not Plaintiffs

choice) of contractor Carroll Enterprises for pricing, purportedly for the purpose of bearing the costs of the extension of a water line to Plaintiffs' property.

Contrary to Defendant assertions, S.C. Code Section 5-31-1510 does not supports Defendant's position requiring Plaintiffs to bear the costs of extending the water line to Plaintiffs' property from an adjacent intersection, when their home is within 20 to 30 feet of the city infrastructure. Exhibit-3, (*Crosby*, depo. 25: 2-5). Defendant owed a duty to Plaintiffs to provide water and sewer connection and are not entitled to summary judgment where Plaintiff has paid tap fees, and there was no notice or invoice of additional fees being demanded. Defendant is estopped from claiming otherwise where no city invoice to Plaintiffs for the additional financial demand. Defendant cites out of context that Plaintiffs admit that they were not aware of anyone being treated any differently than there were under the ordinances. Yet, existing owners on State Street [Exhibit-4, p.1] have water and sewer being denied to Plaintiffs. Thus, defendant is fabricating facts that are not genuine in pursuit of its second motion for summary judgment. The subdivision has had water and sewer for decades.

7. Plaintiff Inverse Condemnation Claims do not fail as a Matter of Law where basic sewer and water is being refused by arbitrary and capricious conduct under financial demand not supported in the zoning code.

South Carolina courts have held that enforcement of a government regulation will usually affect a taking under inverse condemnation when the regulation denies *all economically beneficial or productive use of the land*. Hardin v. S.C. Dep't of Transp., 371 S.C. 505, 641 S.E.2d 437 (2007)(emphasis added). Contrary to defendant assertions, the issue is not Defendant's *refusal* (*sic) [Def. br. p. 5 IV at 4] to subsidize private development of Plaintiffs' property. Rather, the issue is City denial of equal protection of the law by refusing basic water and sewer. Only if Plaintiffs pay extra may the city (not Plaintiffs) connect Plaintiff to utilities

after Plaintiffs had first lawfully paid for tap fees for water and sewer at their property. Exhibit-2. As demanded by Wayne Crosby, however, it is genuine issue of material fact and contested and competing testimony that Mr. Crosby, through a contractor not of the Plaintiff's choosing, is levying additional costs not supported by zoning code itself. Because the city is the only entity that can provide water and sewer, it raises a special duty as defined in the case below.

The pivotal case is *Steinke v. South Carolina Department of Labor, Licensing and Regulation*, 336 S.C. 373, 520 S.E.2d 142 (1999). In this case, the South Carolina Supreme Court established that the gross negligence standard in one sovereign immunity exemption applies to others, preventing claims of absolute immunity where gross negligence is alleged and importantly, inability to argue against one's own conduct and inapplicability under the special duty doctrine. Here, only the defendant can provide – or refuse – basic water and sewer. Because the duty was owed to Plaintiffs individually and not the public at large, (who already have service) defendant's reliance on the Tort Claims Act immunity is misplaced and fails.

To prevail under the discretionary immunity provision, the governmental entity must show that when faced with alternatives, it actually weighed competing considerations and made a conscious decision to act or not to act, and that it used accepted professional standards appropriate to resolve the issue before it. Strange v. South Carolina Dep't of Highways Pub. Transp., 314 S.C. 427, 445 S.E.2d 439 (1994); Niver v. South Carolina Dep't of Highways Pub. Transp., 302 S.C. 461, 395 S.E.2d 728 (Ct.App. 1990). The record contains scant evidence Department officials exercised this discretion before imposing additional financial demand upon Plaintiffs without any notice or invoice. It simply refused basic water and sewer in advance without doing so, now seeking to justify their refusal under Tort Claims immunity claim where the city was grossly negligent denying special duty to plaintiffs.

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully aver contested fact and inferences exist under *Kitchen Planners, LLC* and Rule 56, and therefore Plaintiffs request that this court deny the Defendant's second motion for summary judgment and set the case for trial as currently rostered.

Respectfully submitted,

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CERTIFICATE OF SERVICE

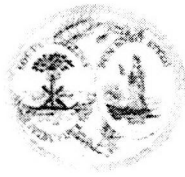
I hereby Certify that I am the attorney for the Plaintiffs in the above entitled civil action and that I did on March 2, 2026 by electronic filing, email, and digital delivery serve upon defense counsel at the address cited below and the Supreme Court's AIS system information the Plaintiffs Return and Memorandum in Opposition to Defendant Second Motion for Summary Judgment.

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Respectfully submitted,

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Colleton Common Pleas

Case Caption: Reginald P Johnston , plaintiff, et al VS Walterboro City Of
Case Number: 2022CP1500791
Type: Order/Summary Judgment

So Ordered

s/Marvin H. Dukes III #2785

STATE OF SOUTH CAROLINA)

COUNTY OF COLLETON)

REGINALD P. JOHNTSON and)
SHONDA D. JOHNSTON,)

Plaintiffs,)

v.)

CITY OF WALTERBORO,)

Defendant.)
_____)IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
CASE NO. 2022-CP-15-00791**ORDER GRANTING DEFENDANT'S
SECOND MOTION FOR SUMMARY
JUDGMENT**

A hearing on Defendant City of Walterboro's Second Motion for Summary Judgment was held on March 4, 2026, via WebEx in this subject case. After due and careful consideration of the pleadings, parties' arguments, memoranda and supporting materials, this Court grants summary judgment in favor of Defendant, thereby ending this case in full.

Procedural History

This is an action involving the extension of a water line to Plaintiffs' property located in Walterboro, South Carolina. Plaintiff is alleging that Plaintiff paid Defendant all connections fees related to the water and sewer. Plaintiff further alleges that Defendant has denied Plaintiffs the ability to connect to the city water and sewer system.

Plaintiffs asserted a claim for declaratory judgment as to Defendant's Ordinances; a claim for breach of contract based upon Plaintiffs paying Defendant tap fees; a claim for gross negligence in miss-interpreting Defendant's Ordinances; and a claim for inverse condemnation. Defendant denied all claims and asserts that Defendant's Ordinances require Plaintiffs to pay the costs of the water line extension.

Defendant filed a prior motion for summary judgment solely related to whether Plaintiffs are considered Developers under Defendant's Ordinance which states that "[i]t shall be the responsibility of any developer to bear all cost of any main line extensions to serve proposed property." City of Walterboro Code §37-187. Defendant further argued that under the Walterboro Unified Development Ordinance ("Ordinance"), "development" is defined as "[t]he construction of any building or structure, any increase in impervious area, the making of any material change in the use of any structure or land" City of Walterboro Unified Development Ordinance § A.4. The summary judgment motion was heard by the Honorable Judge Patrick Fant and denied by Order filed September 26, 2024.

This Court held a hearing on Defendant's subsequent motion for summary judgment raising new and additional arguments and grounds not raised in the initial motion, including arguments based upon deposition testimony developed during discovery. This Court finds that Defendant's present motion is based on additional legal arguments and undisputed deposition testimony developed during discovery and therefore is properly considered under Rule 56, SCRPC.

Summary Judgment Standard

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), SCRPC. "The purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder." George v. Fabri, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001). The burden of proof rests with the party seeking summary judgment; however, the non-moving party must make a showing sufficient to establish the existence of an essential element on which it will bear the burden to prove at trial. Baughman v. Am. Tel. & Tel. Co., 306 S.C.101, 115, 410 S.E.2d 537,

545 (1991). Once the movant meets its burden, the non-moving party must present specific facts showing a genuine issue for trial. Sides v. Greenville Hosp. Sys., 362 S.C. 250, 255, 607 S.E.2d 362, 364 (Ct. App. 2004). The supreme court has set forth that it is not sufficient for a party to create an inference that is not reasonable or an issue of fact that is not genuine. Town of Hollywood v. Floyd, 403 S.C. 466, 477, 744 S.E.2d 161, 166 (2013). When determining whether triable issues of fact exist, the evidence and all reasonable inferences must be viewed in the light most favorable to the non-moving party. Summer v. Carpenter, 328 S.C. 36, 42, 492 S.E.2d 55, 58 (1997).

Discussion

Defendant argues it is entitled to summary judgment as to all claims based on the language of Defendant's Ordinances; the language of the S.C. Code of Laws and Plaintiff's failure to establish all elements of their causes of action.

1. Declaratory Judgment

Issues involving construction of municipal ordinances are questions of law for the Court. Mitchell v. City of Greenville, 411 S.C. 632, 770 S.E.2d 391 (2015). An ordinance must be given a practical, reasonable, and fair interpretation consistent with legislative intent. Dewberry 334 Meeting St. LLC v. City of Charleston, 2021-UP-360 (S.C. Ct. App. Oct. 20, 2021). "[I]t is well-settled that statutes dealing with the same subject matter are in *pari materia* and must be construed together, if possible, to produce a single, harmonious result." Beaufort County v. S.C. State Election Comm'n, 395 S.C. 366, 371, 718 S.E.2d 432, 435 (2011).

The City of Walterboro Code of Ordinances states that "[i]t shall be the responsibility of any developer to bear all cost of any main line extensions to serve proposed property." Ordinance §37-187. Under the Walterboro Unified Development Ordinance ("Ordinance"), "development" is defined as "[t]he construction of any building or structure, any increase in

impervious area, the making of any material change in the use of any structure or land . . . ”

Supra. at §A.4.

The Court finds that it is undisputed Plaintiffs constructed a building on the property at issue. The construction of a building falls within the ordinance definition of “development,” and Plaintiffs therefore qualify as developers under Defendant’s Ordinances. Accordingly, the ordinances require Plaintiffs to bear the cost of extending water infrastructure necessary to serve the property.

Furthermore, Defendant’s counsel argued during oral argument that if Defendant’s Ordinance did not apply to Plaintiffs and the Ordinances were silent as to Plaintiffs, then the South Carolina Code would apply – more specifically Section 531-1510. This section states

Upon the written request of any property owner requesting the city or town to extend to him water and sewer service and agreeing to pay the cost thereof the city or town may provide such service and levy an assessment against the property of the owner so requesting such service for the costs thereof.

S.C. Code § 5-31-1510.

Plaintiffs’ counsel conceded that the State law would apply to Plaintiffs if the Ordinance did not apply. The Court agrees and further finds that this independently authorizes municipalities to require property owners requesting water service to bear the cost of extending the water line. Based on the foregoing, the Court issues a declaratory judgment that Plaintiffs are required to pay for any extension of the water line to their property at issue in this action.

2. Breach of Contract

It is elementary that a contract must exist for there to be a claim for breach of contract.

Tidewater Supply Co., Inc. v. Industrial Electric Co., 253 S.C. 483, 171 S.E.2d 607 (1969).

Plaintiff Shonda Johnston’s deposition testimony was that Plaintiffs had no agreements with

Defendants for any development. Furthermore, the payment of tap fees or administrative fees required by ordinance does not constitute bargained-for consideration sufficient to create a contract with a municipality. Such fees are regulatory in nature and arise from statutory or ordinance requirements rather than mutual assent to a contractual obligation. Absent a binding, valid contract, there can be no valid claim for breach of contract under South Carolina law, and Plaintiffs' breach of contract claim fails as a matter of law.

3. Gross Negligence

Plaintiffs' gross negligence claim arises solely from Defendant's interpretation and application of its ordinances. South Carolina courts have held that claims arising from the application and enforcement of ordinances or regulations were barred under § 15-78-60(4) which "specifically immunizes governmental entities from liability for losses resulting from the adoption, enforcement, or compliance with laws and regulations." Repko v. County of Georgetown, 423 S.C. 135, 814 S.E.2d 552 (2018).

The same immunity applies to Defendant's interpretation and enforcement of its Ordinance related to development of the Plaintiffs' property at issue in this action. Therefore, Plaintiffs' claim for gross negligence is barred under the Tort Claims Act.

4. Inverse Condemnation

The elements of an inverse condemnation are (1) affirmative, positive, aggressive act on the part of the government agency; (2) a taking; (3) the taking is for a public use; and (4) the taking has some degree of permanence. Gray v. South Carolina Dept. of Highway and Public Trans., 311 S.C. 144, 427 S.E.2d 899 (Ct. App.). Defendant argued that Plaintiffs failed to satisfy all the elements of the claim and specifically that there is no evidence to establish a "public use" of the property. The Court further finds that Defendant has not taken possession of

or exercised dominion over Plaintiffs' property and that Plaintiffs remain free to develop the property upon compliance with applicable ordinances and statutes. The Court agrees and finds that Plaintiffs' inverse condemnation claim fails as a matter of law.

Conclusion

Based on the foregoing, the Court finds that Defendant is entitled to declaratory judgment that Plaintiffs are responsible for the costs associated with extending the water line to their property and that Defendant is entitled to summary judgment as to Plaintiffs' claims for breach of contract, gross negligence, and inverse condemnation.

AND IT IS SO ORDER this _____ day of March 2026

The Honorable March H. Dukes, III
Presiding Judge
Fourteenth Judicial Circuit

Beaufort, South Carolina

Reginald P. Johnston v. City of Walterboro
Shonda D. Johnston

Appellate Case No. 2026-000840

STATE OF SOUTH CAROLINA

DOCKET NUMBER
2022-CP-15-00791

COMMON PLEAS

COUNTY OF COLLETON

REGINALD P JOHNSTON, ET AL,

Plaintiff,

vs.

CITY OF WALTERBORO,

Defendant.

MARCH 4, 2026

MOTIONS HEARING

B E F O R E:

The Honorable Marvin H. Dukes, III, Presiding Judge.

C O U R T:

South Carolina Circuit Court 14

T R A N S C R I B E D B Y:

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P R O C E E D I N G S

(Whereupon, the following proceedings started at 0:50:45.)

THE COURT: We then move to Johnston versus Walterboro, Summary Judgment Motion, case 22- -- wow, that's an old one -- CP-15-00791.

Let me get that one teed up here.

Who-all do we have on that one?

MR. MCLEOD: Brown McLeod, on behalf of the City of Walterboro.

Good morning.

THE COURT: Okay. Good morning.

Mr. Halford, are you -- you're muted there, if you're here on the -- that one as well.

(Pause.)

THE COURT: You're still muted. I'm going to try to unmute you from my side.

Say something, Mr. --

MR. HALFORD: -- you, Judge.

THE COURT: There you go. Okay.

MR. HALFORD: Can you see me as well hear from me? Because we drove to Walterboro to see you this morning.

THE COURT: I can see you and hear you. Thank you.

MR. HALFORD: Outstanding.

THE COURT: All right. Thank you.

So this is Walterboro's second Motion for Summary Judgment, bases on undisputed testimony.

1 And -- let's see. Mr. McLeod, I am happy to hear from
2 you. Give me just a touch of background, if you would --

3 MR. MCLEOD: Yeah.

4 THE COURT: -- on this one.

5 MR. MCLEOD: Yeah. I'll give you a little bit more. And
6 I think what's important, as far -- is a little bit of a time
7 line, too.

8 But basically, this case stems out of an issue about
9 who's to cover the cost of a water line extension to
10 plaintiff's property.

11 The City has an ordinance that states -- and it's
12 Ordinance Section 37-187 -- that states, "It shall be the
13 responsibility of any developer to bear all costs of any main
14 line extension to serve proposed property."

15 There's another section in the ordinance under the UDO,
16 the Uniform Development Ordinance, that defines development
17 as -- partially as, "Construction of any building or
18 structure," and it goes on.

19 But -- so the plaintiff is -- applied for a permit to
20 construct a duplex on her property. She bought the property
21 from her father in 2019. And then March 11th, 2020, she
22 executed a design contract with a designer that used the term
23 "project development." And that contract also noted that
24 plaintiffs were to provide utility information.

25 A set of plans --

THE COURT: And this was raw land?

1 MR. HALFORD: Yeah. It's raw land in an older
2 subdivision. And I don't know exactly how old, but I bet it's
3 from the --

4 MR. HALFORD: (Indiscernible) subdivision.

5 MR. MCLEOD: -- 40s, 50s.

6 THE COURT: Okay.

7 MR. MCLEOD: And so this is an older neighborhood within
8 the city of -- city limits. And so --

9 (Background conversations.)

10 MR. MCLEOD: -- (indiscernible) this design --

11 (Background conversations.)

12 MR. MCLEOD: -- design, he prepared --

13 (Background conversations.)

14 THE COURT: Mr. Halford, you're bleeding over a little
15 bit.

16 (Background conversations.)

17 THE COURT: Mr. Halford, we can hear you, so --

18 MR. MCLEOD: Yeah. I can't --

19 THE COURT: Thanks.

20 All right. Mr. McLeod, go ahead, please.

21 MR. MCLEOD: Yeah. Thank you.

22 Okay. So like I mentioned, she signed a contract with a
23 designer. And on June -- well, the designer produced plans
24 dated June 23rd, 2020, which included a statement to say the
25 contractor is to locate and identify all utilities.

Then, in September of 2021, the plaintiff signs a

1 contract with a contractor to build the duplex. In that
2 contract -- I'll just note this for the record is that
3 contract says that the contract includes connecting city --

4 (Background conversations.)

5 MR. MCLEOD: -- city water and sewer.

6 And on January 14th, 2022, a permit was --

7 (Background conversations.)

8 MR. MCLEOD: -- issued --

9 THE COURT: Let's see --

10 MR. MCLEOD: -- for --

11 THE COURT: Mr. Halford, you may have to mute for a
12 second. Because it's bleeding over.

13 (Pause.)

14 THE COURT: Great.

15 Okay. Go ahead, Mr. McLeod, sir.

16 MR. MCLEOD: Yeah.

17 So again, and I'm almost done with the time frame. But
18 it's important because of, sort of, notice issues.

19 So a permit was issued by the City of Walterboro on
20 January 14th, 2022, to build a duplex. And at some point, the
21 contractor and an employee of the city, the utilities
22 director, met on site. And then subsequent to that, the
23 utilities director, on February 17th, 2022, emailed the
24 contractor and provided a total cost of line extension to
25 bring the line to the property, as well as two service
connections.

1 And the total amount -- I don't have the exact amount,
2 but it was \$12,300. So this case is dealing with an extension
3 of less than \$10,000.

4 I took the plaintiff's deposition, and she testified that
5 her contractor told her about the cost of extending the line
6 and this two-service connections, there about the same time
7 that the contractor was informed about it.

8 And you know, there's a change order out there, just to
9 indicate there's no vertical construction going on. There's a
10 change order dated February 22, 2022, where there's an
11 additional cost of leveling the ground. So they're still
12 just, you know, moving dirt around and no vertical
13 construction -- you know, no vertical construction, even after
14 the plaintiff was put on notice of the cost of extending the
15 line and the cost of the service connections.

16 Well, February 2028th, 2022 -- or February 28th, 2022 --
17 excuse me -- the plaintiffs write a letter to an attorney,
18 Casey Campbell, who's now deceased, saying that the city was
19 requiring payment for the extension of the water line and the
20 connection fees.

21 And this is the important part -- after all of that
22 information, on April 11th, 2022, the plaintiff then goes and
23 files a water tap application and pays the cost of that, which
24 it was about \$3,000.

25 So the plaintiff has brought this action -- and so the
city's like, Well, you need to pay -- you need to hire a

1 contractor in that line. And they refused to do it. They
2 actually contacted another contractor from Columbia who came
3 and looked at it, and for whatever reason, he didn't do it.

4 And then subsequent to all of this, the plaintiffs brings
5 this lawsuit in 2022, of certain claims for declaratory
6 judgment. And in that first Cause of Action, it states, "The
7 City has defined plaintiff wrongfully, as developers."

8 Then he's got a -- then they have a Second Cause of
9 Action for Breach of Contract. And that, as well, says as a
10 result of "defining plaintiffs as developers."

11 Then there's a Gross Negligence claim. And it states,
12 "The personnel filed -- failed in bad faith in affirmative
13 acts to even exercise light care in applying the definition of
14 developers to the plaintiffs -- I mean -- yeah, to the
15 plaintiffs.

16 And finally, there's an Inverse Condemnation claim.

17 And so this is a Second Motion for Summary Judgment. The
18 first one -- and the Court can pull it -- I can send the Court
19 a copy of it -- but it was solely related to -- and this is
20 the argument, "The Summary Judgment should be granted because
21 City of Waltherboro Municipal Code states that plaintiff shall
22 bear all costs of any main line extensions to serve their
23 proposed property." So that was the only grounds for that
24 first motion.

25 And again, those grounds were based on the ordinances
that stated, "It shall be the responsibility of any developer

1 to bear all costs of any main line extensions to serve
2 proposed properties."

3 And so that motion was heard by Judge Fant. And he
4 issued a Form 4, just denying it; no findings of fact, no
5 conclusions of law; nothing. There was no motion to
6 reconsider or any kind of motion to seek clarification of the
7 order. So you know, this case is up for trial next week.
8 We're number two. So something we're going to have to deal
9 with, either today or, I guess, next week. But --

10 So I don't know -- it's unclear what Judge Fant's grounds
11 were for denying it, but he did. And as I mentioned before,
12 you know, the plaintiffs' complaint asserts numerous times
13 that they're not developers. And again, the city interpreted
14 their own ordinance to include them as developers.

15 But if it's the plaintiffs' position that they're not
16 developers, then I would submit to the Court that that
17 ordinance, that I just read to the Court, does not apply to
18 them. And the ordinance is silent as to individual property
19 owners. Now, I'm not conceding that. I still believe it does
20 apply to it. But if the Court finds they are, in fact, not
21 developers and that does not apply to them, then again, the
22 ordinance in the city is silent as to who's going to pay the
23 cost of the water extension.

24 There is a South Carolina statute --

25 (Pause.)

MR. MCLEOD: -- 15 -- or excuse me -- 531-15-10. And

1 this section states that, "Upon written request of any
2 property owner requesting the city or town to extend hill
3 water and sewer service and the grading, to pay the cost
4 thereof, the city or town may -- may, not shall, may --
5 provide such services and levy an assessment against the
6 property for the costs thereof."

7 And so it's the defendant's position that if the
8 plaintiffs contend that the language of the ordinance does not
9 include them; it's silent. And under South Carolina law, if
10 it's silent, then you look to state law. And it's clear as
11 day that it says, "property owners shall pay the cost of the
12 extension."

13 (Pause.)

14 MR. MCLEOD: As to the Breach of Contract, I took the
15 plaintiff's deposition, Ms. Johnston's deposition. And by the
16 way, she's the only legally titled owner. They've named both
17 defendants, but that's so minor, I didn't even want to raise
18 it, but the -- Ms. Johnston is on the deed as the only owner.
19 She's not transferred any interest to her husband for that --
20 that doesn't really matter too much. But I took her
21 deposition, and she stated in her deposition -- and I was
22 talking to her about the definition of development and asking
23 her about that.

24 And she goes on -- and I can provide this -- I'm just
25 picking out a line just to keep it brief -- "I don't have an
agreement with the city to do any type of development." And

1 development, again, is under the UDO -- and this is what we
2 talk about, prior to her saying that -- is, development is
3 defined as the construction of any building or structure."
4 And they did. They built a duplex on there; it just doesn't
5 have water, to this day.

6 And so as to the claim for contract, she denies -- she
7 admits they don't have an agreement with the city.

8 And I'd further assert that the -- in their claims for
9 Breach of Contract, they say it existed virtue -- "virtue of
10 payment of taxes, deposits, application fees, and tap fees."
11 Those are regulatory fees. Those are not bargained for
12 considerations. And I mean, if that's the case, everybody in
13 the county's got a contract with the county or the city.
14 That's just not the law. It's got to be a -- consideration
15 has to be bargained for. And if -- and a tap fee -- it's
16 uniform. And so they can't go -- if it's \$1500, you can't go
17 to the city and say, Well, listen, I'll give you \$1250 for it;
18 I'm going to negotiate with you. It -- that's not how it is.
19 You pay it or you don't pay it. It's a regulatory fee, and
20 it's not contractual.

21 So Breach of Contract fails because the plaintiff admits
22 she had no agreement with them, and two, the fees do not give
23 rise to a contractual obligation.

24 Next thing, gross negligence. Obviously, that's a tort.
25 The Court knows that and plaintiffs' counsel knows that. And
under the South Carolina Torts Claim Act, there is a specific

1 exception, and it's 15-78-60(4). So it states, "Government
2 entity is not liable for a loss resulting from legislative,
3 judicial, or quasi-judicial action or inaction, including but
4 not limited the adoption, enforcement, or compliance with any
5 law ordinance or regulation."

6 It -- that applies to the gross negligence claim. And so
7 we believe we're entitled to summary judgment to gross
8 negligence, as well as Breach of Contract.

9 Inverse condemnation is their fourth and final claim.
10 And as the Court knows, the elements of inverse condemnation
11 are: One, an affirmative, positive, aggressive act on the
12 part of the governmental agency; two, a taking; a taking for
13 public use; four, the taking has some degree of permanency.

14 There's no allegation. There's no evidence that this
15 property of plaintiffs' has been taken for public use. Don't
16 have it. Plus, it's got to be a took -- it has to render it
17 valueless. And that's not the case. They allege in their
18 Complaint, "greatly decreased the value of the plaintiffs'
19 property."

20 But again, it's not been taken for public use. It's not
21 been taken at all. But it -- if they paid to have the water
22 extended, the water would be connected. I mean, good lord,
23 the more people allow in the system, it makes it more -- it
24 makes it -- it's easier to run. And so why would they not
25 want to get in the -- hook them up to it?

But the issue here is, who has to bear the cost of

1 extending that line? And if our ordinance doesn't say it, the
2 state Statute does.

3 And again, the other claims, Breach of Contract, as I
4 said earlier, there's no contract. Post-negligence, we've got
5 the statute -- the torts claim act that squarely falls as the
6 defendant's, and inverse condemnation, it has not been taken
7 for any public's use. It is their property. It's got their
8 building on it.

9 So with that, Your Honor, we'd -- we are seeking summary
10 judgment on all claims so we don't have to go to trial on
11 Monday.

12 Thank you, Your Honor.

13 THE COURT: All right. Thank you so much.

14 Mr. Halford, happy to hear from you, sir.

15 MR. HALFORD: And good morning, Judge. May it please the
16 Court.

17 As a housekeeping matter, we did file a memorandum. I
18 didn't want the Court to think that we did not.

19 Our affidavit exhibits filed sideways, so my paralegal is
20 in the process of correcting that as we speak.

21 THE COURT: Okay.

22 MR. HALFORD: But there will be a memorandum. I would
23 ask Your Honor to briefly take it under advisement to look at
24 our memorandum versus the defendant's.

25 So getting into it, Your Honor, since April of 2022, my
clients have been denied water and sewer. Let me rephrase

1 that to articulate for the Court what has really occurred.

2 They have been refused the very basic service of water
3 and sewer to a residential construction that Mr. McLeod's
4 client permitted.

5 So when you do see our memorandum, please read it. As
6 (inaudible) --

7 THE COURT: All right. I think you're breaking --

8 MR. HALFORD: -- one judge versus the (inaudible).

9 THE COURT: You're breaking up just a little bit. I
10 don't know if that's --

11 MR. MCLEOD: I couldn't understand him.

12 MR. HALFORD: I'm sorry. Can you hear me now?

13 THE COURT: Yes. Much better.

14 MR. HALFORD: So I -- first, we've got a memorandum out
15 there. I'd ask you to take it under advisement and read that.
16 I know we're number one for trial. That's important too.
17 It's a very important day for both parties.

18 But, Your Honor, the issue here is my clients -- the City
19 of Waltherboro has refused -- we're in 2026 -- has refused
20 water and sewer to a residential construction that they
21 permitted.

22 So I'm going to first go into their standard of review,
23 which doesn't fight *Kitchen Planners*, Your Honor. And I know
24 I don't really have to cite it for you, but I do if for the
25 record here today.

My clients need only come forward with a genuine issue of

1 disputed fact under the plain text of Rule 56. *Kitchen*
2 *Planners* did away with the scintilla standard. And if you
3 look at their standard of review, that's what they're trying
4 to do here, Judge. If you read their brief versus ours,
5 they're trying to invert the Court's review to show that the
6 defendants must come forward with some form of scintilla.
7 That's not the law in this state anymore.

8 So turning to the Breach of Contract claim, our
9 memorandum has attached as Exhibit 1, Judge Fant's order -- he
10 was also a visiting judge -- denying summary judgment. And
11 they took no appeal of that order or no reconsideration from
12 that order. So this is their second bite of the apple, Judge.

13 Our Exhibit 2 shows City of Walterboro correspondence or
14 invoice for Tap fees. It also shows where my clients wrote
15 checks and paid the City of Walterboro. Now, these additional
16 costs that Mr. McLeod references come along later in the game.
17 The city has permitted this residential construction; has
18 monitored and asked them to change the construction; has
19 permitted them to connect utilities, meaning electric; and has
20 never given sanitary sewer or basic water. They never should
21 have permitted the construction to have electricity to it if
22 that were not the case. But my clients have paid all fees,
23 invoiced by the city, and then this issue comes up about an
24 additional fee.

25 And the problem is, that additional fee was \$12,340.40 --
hold on, I want to be clear of what it was -- \$12,340.40.

1 It's never communicated to the plaintiffs. It first goes from
2 an subordinate in their city manager's office to a contractor
3 that was not my client's contractor. And they seemed to
4 prefer Harrell Enterprises (phonetic). My client's contractor
5 chosen for the job was a Billy Cain, who has worked for the
6 city. And they gave him these numbers, which is how my client
7 became on notice of those numbers.

8 The point is, it's not supported by the zoning code
9 anywhere. Duplex isn't defined by their zoning code anywhere.
10 And they are attempting to get my client, Mr. Johnston being a
11 CPA or an accountant; Mrs. Johnston, being a teacher, to ask
12 the Court to deem them developers because they built any,
13 a-n-y, any form of construction. That's overly broad. And
14 secondly, we've got an administrative governmental official
15 acting as a legislature, where, when we took his deposition,
16 Mr. Wayne Crosby, that's attached under our Exhibit 2, he
17 didn't even run it by his boss, the city manager.

18 So since the time of 2022 -- and again, we're in year
19 2026, Judge. It is an old case. It's number one or number
20 two for trial; I thought we were number one. They've been
21 denied basic water and sewer. So yes, they brought suit.

22 And the issue here isn't the enforcement. There's no
23 enforcement cited by Mr. McLeod. And the issue here isn't
24 interpretation. The issue is that they refused basic
25 services. The statute cited by Mr. McLeod says they can, in
fact, connect the water and sewer and levy a fee. They

1 couldn't have fought over this later, but not first denied my
2 clients the basic services, which, by the way, Judge, the City
3 of Waltherboro is the only entity that can provide these
4 services.

5 Lastly, Judge, when you look at our Exhibit 4 when that
6 memorandum comes over, everything about this state street
7 subdivision, which was annexed by the city back in the 40s,
8 they have water and sewer all over the subdivision. The only
9 people that seem to be denied about it is Mr. and Mrs.
10 Johnston at their property.

11 So here's the issue, and we cite the *Town of Hollywood*
12 case in our Motion for summary judgment standard. You can't
13 bring forth or allege disingenuous fact before this Court in
14 support of your arguments. So they're asking the Court,
15 basically, to assume -- if you read his characterization of
16 Ms. Shonda Johnston's testimony, they aren't aware of anybody
17 else being treated differently. They're asking this Court to
18 presume that there's no water and no sewer in that
19 subdivision, which is highly improper and misplaced here.

20 So going to the causes of action, again, I -- Mr.
21 McLeod's right, we've got a duplex residential construction
22 sitting out there. And damages would be properly reserved for
23 the jury. Liability will be properly reserved for the jury
24 under any theory of uncontested testimony, they cite in their
25 memorandum -- and again, please review our memorandum before
ruling. It would be a question of fact for the jury whether

1 or not they are developers, because they certainly are not.

2 And it's just a matter of whether they have been refused
3 what all other citizens haven't been refused, because they
4 don't -- they never got an invoice. I'll tell you what,
5 Judge, if Mr. Brown can -- if Mr. McLeod had --

6 Good morning, Mr. McLeod. It's good to see you.

7 -- can provide you where they invoiced my client, that's
8 one thing. But if they didn't, and we cite in our brief
9 estoppel by silence. They can't come forward now and blame
10 the plaintiffs in this action, especially on the eye of trial,
11 which is Monday.

12 Your Honor has emailed us and we have pretrial briefs due
13 before you. So one, another court has already ruled on this.
14 And I don't think it's proper to ask one circuit judge to
15 review the order of another. Second, under Rule 56, you've
16 got to consider kitchen cleaners. And all we have to do is
17 raise the genuine issue of material fact, which clearly, the
18 evidence and the inferences from the evidence do so. So
19 third, the inverse condemnation, Judge, it -- there is a
20 building out there, but how much longer must my client's go
21 without basics, the water and sewer. And under the theory
22 being alleged by the City, they could have levied an
23 assessment after looking out for the citizens. That's not
24 what they did here.

25 Just to correct a few misstatements by Mr. Brown, this is
the -- I heard "raw land." There was a house on this site

1 before my clients build a residential duplex upon it. So
2 let's don't pretend the subdivision didn't have water and
3 sewer stemming from the 40s.

4 That we were put on notice from somebody from Columbia --
5 unfortunately, I couldn't get the Court an affidavit because
6 our proposed expert has a neck injury and couldn't even rise
7 to do an affidavit. So I couldn't get that to the Court. But
8 respectfully, I don't think we need it. Our expert's from
9 Rock Hill, and they have cited --

10 And if you'll look at our Exhibit 4, this property is
11 inside the city limits of Walterboro, that they used their own
12 designer and contractor, that does not make my clients
13 developers; that they issued a permit -- why are you going to
14 issue a permit for a structure and then come back later and
15 say, Oh, by the way, you can't have water and sewer? At least
16 give us an invoice or something in writing, communicated to
17 the client. But they didn't do that. They sent it to their
18 choice of general contractors first, and got the numbers, and
19 then sent it to -- sent those numbers to my clients' general
20 contractor, demanding excessive fees and basically refusing --
21 this isn't interpretation, this isn't enforcement -- refused
22 basic services all this time.

23 So we think summary judgment's improper, Judge.
24 Everything they have permitted, invoiced, my clients have done
25 everything except for some gentleman in the city planning
department, a subordinate, has acted as a legislator and has

1 imposed a fee that's not supported by the zoning code. It's
2 no where in the zoning code cited by Mr. Brown.

3 So based on that, we would ask that the court deny
4 summary judgment. It's already been denied once. And under
5 *Kitchen Planners*, my clients can come forward with a genuine
6 issue of material disputed fact, under the plain text of that
7 Rule.

8 So I'd ask the Court not to invert the review and to
9 review it for what it is under *Kitchen Planners*, and to take a
10 look at our brief and our exhibits before ruling, if you'd
11 kindly do so.

12 And I apologize for the kickback of that filing.
13 Apparently, our exhibits filed horizontally and not
14 vertically, Judge, so.

15 THE COURT: All right.

16 MR. HALFORD: But that's --

17 MR. MCLEOD: Your Honor, quickly --

18 THE COURT: Yes, sir.

19 MR. MCLEOD: You know, the way I understood in finishing
20 up there, he said the city ordinance does not apply to them.
21 That's -- and I'm paraphrasing. And if that's the case, as I
22 mentioned earlier, the ordinance are silent. And when it's
23 silent, you look to the state Statute. And the state Statute
24 is clear, again. And it's interesting, because they use the
25 term "may." I'm sorry, I'm going to read it again. But --

(Background conversations.)

1 MR. MCLEOD: Can he mute his phone? If he's going to
2 talk to his client, it's just interrupting me again.

3 THE COURT: Oh. Yeah.

4 Mr. Halford --

5 There you go. Thanks.

6 MR. MCLEOD: It states, "Upon request -- upon written
7 request of any property owner requesting the city or town to
8 extend him water and sewer service and -- and agreeing --"
9 that's the property owner -- "and agreeing to pay the costs
10 thereof, the city then may --" it doesn't say "shall."
11 There's nothing in there that says it's required under law to
12 do it. It gives the option of the city. They may do it.

13 And here, he is not offered to -- there's -- they're not
14 going to pay. And so we believe that controls -- and they
15 testified they never sent any written request. I asked them
16 in their deposition: Did you comply with this? Did you write
17 a written request?" "No, I didn't."

18 And so we believe that the ordinance -- what they're
19 saying is that ordinance does not state what applies to their
20 client, then we look at the state ordinance.

21 The other thing is, mitigate your damages. He -- you
22 know, it's their obligation to mitigate their damages. They
23 could have paid the -- I think it's \$9,000 -- and maybe \$8,000
24 and some change -- and then go fought this in -- almost in
25 magistrate's court. And so they didn't mitigate their damages
and just let -- we told them before they submitted their

1 application and tap fees, we told them in February -- told
2 their contractor, that you had to pay for the extension and
3 the tap fees. That was relayed on to the plaintiff.
4 Plaintiff's husband then writes an attorney in town about it
5 in February, but then in April, they go and pay it.

6 And so we believe we're entitled to summary judgment.

7 And if the Court's got any questions, I'd be glad to
8 provide any other, you know, information.

9 But we think it's clear. There's no contract. We've got
10 a clear defense under gross negligence. And the inverse
11 condemnation, it's not taken as -- for public use.

12 Thank you.

13 THE COURT: Thanks.

14 What is the status of single-family residences? Are they
15 handled different with regard to sewer line? Or under the --

16 MR. MCLEOD: No.

17 MR. HALFORD: (Inaudible) --

18 MR. MCLEOD: No. There's no -- it's just a -- again,
19 development is defined as the construction of any building.
20 It doesn't say, "single-family versus duplex versus, you know,
21 multi-family."

22 THE COURT: So --

23 MR. MCLEOD: So there's nothing in there about that.

24 THE COURT: All right. I was just curious.

25 Mr. Halford, you have a comment on that?

MR. HALFORD: Just briefly.

1 I'll agree with Mr. McLeod that we'd -- to fall over into
2 the state Statutes where the city ordinance are silent. But
3 the Statute that he cited for Your Honor is inapplicable here,
4 too or should be construed most favorably to the plaintiff.

5 And here's why: Under 15-78-60, Sub-Paragraph 4 that he
6 has cited, that's regarding the adoption or the enforcement,
7 okay. If this fee that was quoted by their city planning
8 department was legit, if it was in the code anyway -- and it's
9 not -- and the residential -- it's different, pursuant to your
10 question that you just asked, because it's the city that --
11 it's only the city that can provide it.

12 He's saying that my clients have failed to mitigate
13 damages. They never -- (inaudible) fees. These are basic
14 services that only, in this subdivision, the City can provide.
15 It's almost like, why don't you guys go ahead and connect to
16 the water and sewer and then let's battle this out in
17 magistrate's court?

18 Again, that's asking this Court, under Rule 56(c) to view
19 it most properly to the Movant. And under Rule 56 and the
20 *Kitchen Planners* -- which they failed to cite -- you've got to
21 view all evidence and inferences most favorable to the non-
22 movant, which is my client.

23 So again, you know, this is certainly -- it's a 2022
24 case, Judge, we're ready for trial. We're first or second up.

25 So we'd ask that you deny the summary judgment. This is
two -- a day late and a dollar short, Judge. I mean, this is

1 an arbitrary and capricious decision.

2 It's not about their interpretation of the Statute.
3 Because clearly, their city manager didn't interpret anything;
4 some subordinate did. This is about the refusal to provide
5 the most basic of services on a permitted property that they
6 approved. In fact, they requested changes to, they permitted
7 electric to be connected to, and then all of a sudden, You
8 can't have water and sewer. Everybody in that subdivision has
9 water and sewer. But --

10 THE COURT: Now, sir, was there any evidence in the
11 record that, had the installation fee been paid, the city
12 would've refused?

13 MR. MCLEOD: No, Your Honor.

14 MR. HALFORD: No, Your Honor. There's just the payment
15 of tap and water fees. And again, I quote from a subordinate,
16 not direct -- my clients have never been invoiced direct. But
17 they gave it to my client's choice of general contractor.
18 But ---

19 THE COURT: Okay. So this agent -- their agent, of
20 course, was aware that if you pay -- I don't know what the net
21 number would be, because if the number you quoted, I guess,
22 included the tap-in fees. So what was that --

23 MR. MCLEOD: Right.

24 THE COURT: So the actual amount would have been \$10,000
25 or something like that to install?

MR. MCLEOD: Yeah. It was like -- I -- it was a tap fee.

1 That quote, in the email, was \$13- -- or \$12,300 or something
2 like that. But yeah, if you -- yeah, it would have been 10-
3 or slightly south of \$10,000.

4 And you just heard him concede that the state law would
5 apply here, because it's not addressed in the ordinance.

6 And so we just ask the Court to read Section 531-15-10,
7 because it's clear as day.

8 And so thank you, Your Honor.

9 THE COURT: All right.

10 Well, I'll -- again, my clerk passed me a note. We
11 hadn't actually received the memo and exhibits yet. But I'll
12 try to take a look at those.

13 I'll take it under advisement.

14 I'm guessing, since this is a '22 case, you-all have
15 exhausted all possibilities of trying to make it go away at
16 this point. Is that a fair assessment?

17 MR. MCLEOD: We had a mediation where we were willing to
18 pay some money.

19 MR. HALFORD: Tap fees.

20 MR. MCLEOD: It was -- we were too far apart.

21 THE COURT: All right.

22 Well, that's the way a lot of them are, I suppose.

23 But --

24 MR. MCLEOD: Yeah.

25 THE COURT: And you-all are number one, just in case, for
Monday?

1 MR. MCLEOD: I hadn't checked. It was -- I heard we were
2 number two. But yeah, chances are --

3 THE CLERK: Yes. Number one.

4 THE COURT: Number one? Okay.

5 All right. Well, I'll try to look at it and see what I
6 can figure out.

7 And this is on the jury roster? What do we have next
8 week? It's jury?

9 MR. MCLEOD: It's jury --

10 THE CLERK: Yes.

11 MR. MCLEOD: -- but it should be a legal -- it's an issue
12 for the Court.

13 THE COURT: Okay.

14 All right. Well, I'll take a look at it and see what I
15 can do.

16 And, Eliza, if you'll just mark that one under advisement
17 and sort of expedite (indiscernible) --

18 MR. HALFORD: Judge, briefly, I -- and I'm not in the
19 custom of sending things to chambers, particularly not for
20 oral argument. But I'm happy now to send it to chambers, if
21 that would expedite it. And I know we're first up for trial.

22 THE COURT: Well, I mean, you've -- you filed -- it
23 should appear electronically. If you-all will just want to
24 email it --

25 THE CLERK: We'll have it this afternoon. There's no
need.

1 THE COURT: Yeah. I'm actually in Walterboro right now.
2 But I'll be -- I think we'll be back in Beaufort this
3 afternoon, so.

4 All right. Good. Thank you very much.
5
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7

8 (At 1:28:37, the hearing concluded.)
9

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11 **END OF TRANSCRIPT.**
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CERTIFICATE OF TRANSCRIBER

State of South Carolina

County of Colleton

I, BARBIE TEBOE, a court-approved transcriber, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of the proceedings and evidence introduced in the trial of the captioned case, in the Court of Common Pleas for Colleton County, South Carolina, on the 4th day of March, 2026.

I further certify that I am neither of kin, counsel, nor interest to any party hereto.

May 20, 2026

A handwritten signature in cursive script, reading "Barbie K. Teboe", written in dark ink.

Barbie Teboe,
Transcriber