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STATE OF SOUTH CAROLINA **COUNTY OF RICHLAND**	)	**IN THE COURT OF COMMON PLEAS**
In the House, LLC, Plaintiff, -vs- Richland County, City of Columbia, and the South Carolina Department of Transportation. Defendants.	)	Civil Action No.: 2020-CP-40-04769 **ORDER**

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SC Court of Appeals

THIS MATTER came before the Court for a bench trial on August 11, 2025. The Court heard evidence and arguments from the parties from August 11 through August 15, 2025, and the trial continued from August 20 through August 22, 2025. Having heard the evidence at trial, and for the reasons stated herein, the Court renders judgment for the Plaintiff and makes the following findings of fact and conclusions of law[1]:

FINDINGS OF FACT

1. The Plaintiff, In the House, LLC, is the owner of a commercial building located at 2965 North Main Street commonly known as the Trestle building (the "Property").

2. Chris Barczak ("Mr. Barczak") is the principal of In the House, LLC, which is a real estate brokerage.

3. Mr. Barczak is a licensed real estate broker and licensed residential appraiser.

4. Mr. Barczak purchased the Trestle Building in 2004 for $175,000 as an investment and a form of retirement.

5. Mr. Barczak made approximately $700,000 in improvements on the property since its purchase.

6. On or about May 20, 2016, the Defendants, the City of Columbia ("City"), and Richland County ("County") entered into an Intergovernmental Agreement ("IGA") for the

[1] To the extent any of the following findings of fact constitute conclusions of law, they are adopted as such, and to the extent any of the following conclusions of law constitute findings of fact, they are so adopted.

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"widening and improving of North Main Street." (hereinafter, the "Project"). A recital to the IGA notes, "the Penny Project and the Tiger Grant Project are inextricably linked in terms of planning, design, right of way acquisition, bidding and construction." (Ex. 1)

7. The project was funded by a federal Tiger Grant for $10 million and the County Penny Tax program for $30 million.

8. The project was built in phases and the phase adjacent to the Trestle Building was Phase IA2.

9. On February 7, 2014, The South Carolina Department of Transportation ("SCDOT") and Richland County entered in a Cooperative Intergovernmental Agreement (IGA-25-14) for the Richland County Penny Tax Program. This agreement outlines responsibilities for project planning, design, right-of-way acquisition, construction, and maintenance. SCDOT standards and specifications are to be followed, and SCDOT retains authority for approval at various project stages. ("Umbrella Agreement").

10. The North Main Street Project is one of the projects included in the schedule for this agreement. North Main Street is owned by SCDOT.

11. On April 12, 2016, the SCDOT and Richland County executed a Fourth Supplemental Agreement to the Umbrella Agreement, specifically applying it to the North Main Street Project.

12. Each of the Defendants had roles in the North Main Street project but it was undeniably a joint project.

THE CITY

13. Kim Toney testified that the City was the developer of the project and was responsible for the design and right of way acquisition.

14. The City hired Parsons Brinkerhoff to do the design that was then approved by the SCDOT and subject to SCDOT specifications.

15. The City was responsible for right of way acquisition and hired Pan, Inc. to assist with right of way acquisition.

16. The City had sole responsibility for compliance with the terms and conditions of the Tiger River Grant Agreement. (Ex. 1, ¶4)

THE COUNTY

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17. The County was responsible for managing all aspects of the construction in the North Main Project. The County had oversight of all construction.

18. The County hired Richland County PDT to perform certain duties for the County on the Project. The County also hired LJ Contractors, Inc. ("LJ") as general contractor for the North Main Project.

19. The contract with LJ states "County" means County of Richland, a public body politic and corporate and political subdivision of the State of South Carolina, or the Richland PDT."

20. The contract with LJ provides that at the request of the County, the contractor shall provide other work related to the Project that is not within the scope of work provided for in this Agreement.

21. All work by LJ was subject to inspection and test by the County and SCDOT. Furthermore, LJ had to correct or re-perform without charge any Work found by the County not to conform to the Agreement's requirements.

22. In its agreement with SCDOT, the County was responsible for right of way issues and impact. Also, in its agreement with SCDOT, the County had to coordinate with SCDOT during the construction of the work.

SCDOT

23. SCDOT owns North Main Street and ultimately is responsible for its maintenance.

24. The North Main Street Project was required to be developed and constructed to SCDOT standards.

25. SCDOT had the right to review the design plans and provide comments.

26. The Project will be turned over to, be maintained by and ultimately benefit SCDOT when accepted.

27. SCDOT owned the "staging" lot uphill and south of the southern lot immediately adjacent to Mr. Barczak's property. Mr. Barczak presented evidence that mud and silt originated at this lot and flowed downhill to his lot.

28. SCDOT and the County have the right to inspect all work by the contractor.

29. The Permission Agreement executed in this case by Mr. Barczak was granted to SCDOT on an SCDOT form.

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30. As the project involved federal funds through a Tiger Grant, the SCDOT required the County to apply for and receive Local Public Agency Status and file monthly reports and answer questions about the Project.

31. The County and the SCDOT shall jointly conduct a final inspection of the Project.

32. According to the testimony of Kim Toney, all the Defendants, the City, the County and SCDOT had weekly or bi-weekly meetings through March 2020 on the project.

RIGHT OF WAY/PERMISSION AGREEMENT

33. In November 2015, David Link ("Link") and Keena Edwards reached out to Mr. Barczak by email about securing a Permission Agreement ("Agreement") for the Project. Link was employed by Pan, Inc. who the City of Columbia hired to assist in right of way acquisition. They provided Mr. Barczak schematic plans for his tract.

34. Mr. Barczak responded noting his concern about the drastic two feet rise in the sidewalk adjacent to his property. Prior to the project, the front part of the Trestle Building lot was relatively flat, and its sidewalks connected to the sidewalk adjacent to North Main Street. Multiple witnesses testified that storm water from Mr. Barczak's property would flow into North Main street.

35. Link discussed Mr. Barczak's concerns with Michael Sheu at the City of Columbia. Link suggested they could add language in the Agreement.

36. On January 20, 2016, Link and Sheu met with Mr. Barczak at the property to discuss his concerns. One of his concerns was the elimination of the drainage permission which according to Link's notes, the City agreed it could eliminate.

37. Mr. Barczak testified that he did not want drains on his property because of their appearance and that he did not want to have to maintain them.

38. On January 29, 2016, Link sent Mr. Barczak a revised Agreement for review. On February 23, 2016, Mr. Barczak signed the revised Agreement. (Ex. 12). The Agreement included the following "Special Provisions" which are at issue in this litigation:

- It is understood and agreed that the 24' drive entrance left of approximate survey station 54+50 (current drive location) will be tied back in smoothly with the new construction of North Main Street. The drive will be reconnected in a manner to avoid a slope causing a ramp effect….
- It is understood and agreed that the property will be graded to the existing concrete apron at the entrance of the building. The area disturbed will be sodded with emerald zoysia.

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Further, any landscaping items disturbed will be replaced and the sprinkler system will be repaired and returned to as good or better condition.

- Construction will tie in smoothly with landscape wall located at the south end of the property and the two concrete entry sidewalks will be replaced. (Ex. 12).

39. The sidewalks and certain landscaping items have not been replaced nor has the sprinkler system been repaired and returned to as good or better condition.

40. The construction is not tied in smoothly with the landscape wall and the property is not properly graded to the concrete apron.

41. Mr. Barczak provided photographs showing his previous sidewalks ending in the side of the embankment and people during a public event on North Main Street helping each other climb up the hill of the embankment in leaving the property.

FLOODING/WATER INTRUSION

42. The construction commenced, and by October 29, 2018, the grading was being completed in front of The Property. Mr. Barczak expressed his concerns about the height of the grade, not only for aesthetics, but also for handicapped accessibility, landscape maintenance, drainage, and safety concerns.

43. On November 13, 2018, Mr. Barczak emailed Hugh Wilson of LJ, Inc. (the contractor for the County and various city officials) that residual muddy water was in The Property.

44. On or about November 15, 2018, Jason Patterson, PE (the Resident Construction Engineer with Richland County PDT) had a site visit with Hugh Wilson and others. He commented on the site visit observations that that the build-up on North Main Street blocks approximately 0.10 Acres on Tract 52 (South of The Property); prior to construction, this area would flow into North Main Street to a catch basin. The buildup has blocked this area from reaching North Main Street.

45. Mr. Patterson prepared a graphic exhibit (Exhibit 90) in which he showed this area (colored in blue) immediately South and above The Property with the box callout, "[a]pproximate Area from Richland GIS Contours that is trapped by roadway embankment (Approx. .10 acre)."

46. Dan Creed, P.E., the Plaintiff's expert, corroborated Mr. Patterson's testimony. He testified that–based on the topography–it was foreseeable that water would be trapped by the

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elevated highway and channeled to the Property. He further testified that was the purpose of installing a drain inlet south of the Property.

47. Mr. Barczak testified that prior to construction he had a single water intrusion event, several years prior to the Project, which is why he installed a French drain along the southern border of his building. He testified that, during the 2015 Columbia catastrophic rain event, The Property did not flood; yet after the Project, the first-floor, front area flooded repeatedly.

48. Mr. Barczak offered numerous photographs of the flooding of his property with mud, silt and the water intrusion onto the first floor of his building. The record is replete with emails from Mr. Barczak notifying the Defendants of this problem and requesting relief.

49. In an effort to mitigate the damage to furniture stored in the area, Hugh Wilson, the County Contractor from LJ, placed furniture on blocks to elevate it above the water level.

50. Ms. Sabrina Odom (then President of the North Main Street Business Association) corroborated Mr. Barczak's testimony. Her office was on the first floor of The Property, and her desk is visible in photographs offered into evidence. Like Mr. Barczak, she testified that prior to the Project, she had no problem with flooding, but that after the Project, she came to the office expecting to use a mop. Further, prior to her departure during rain events, she placed chairs on top of the desks.

51. On March 15, 2019, Hugh Wilson with LJ, Inc. (the County contractor) submitted RFI No. 13 (Request for Information) to Jason Patterson, the resident construction engineer. Hugh Wilson observed that several tracts in Phase IA2 that previously drained to the roadway were blocked due to the build-up. He further noted that at tract 53 (The Property) no provisions have been made to address the water that is now flowing to, and being trapped, on portions of his property. Based on his review of the cross sections, water at the toe of the proposed slope from portions of tract 205 and all of tract 52, flow down gradient to the Trestle Building property. To further complicate the issue, there are two short walls on the south end of this property that trap water; the water builds up and flows back towards the building. There are no provisions in the plans to address these walls (although portions of the walls are within the new right of way) nor are there any provisions in the plans to address water that is being trapped between the new toe of slope and The Property. (Ex. 80).

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52. Hugh Wilson asked for specific instructions: 1) Dealing with the runoff from tract 52 and portions of tract 205 that flows to tract 52; 2) How to handle the two walls at the south end of tract 52 that currently trap water causing some flow back towards the building; 3)How to handle the water that is trapped between the toe of the proposed fill slope and the Trestle Building; 4) How to connect the two existing concrete sidewalks in front of the Trestle Building to the new concrete sidewalk.

53. Hugh Wilson testified that he did not receive a response to RFI No. 13, and that this may have been the only RFI to which he did not receive a response.

54. The flooding continued until the County (through contractor LJ) installed a storm water drain on Tract 52 (the property to the South of Mr. Barczak) about December 2019[2]. Uncertainties exist as to whether this is a permanent solution (the drain is not on The Property) and who will maintain it.

BARCZAK MITIGATION

55. Mr. Barczak took action to mitigate the damage caused by the flooding and requested that the Defendants assist him with these costs. These were temporary measures until full replacement could be negotiated with the Defendants.

56. On November 11, 2019, Mr. Barczak paid Christopher Nance with C&B Drainage Systems $2,132.50 to excavate at the left front of the building and to waterproof along the foundation wall.

57. On December 27, 2019, Mr. Barczak paid Riverside Renovations, LLC $6,000 to demolish and excavate on the side of the building, remove the old drainage line, and build a retaining wall for approximately 60 feet.

58. Mr. Barczak also purchased $659.89 in materials for these efforts.

DROP INLET IN PARKING LOT

59. LJ installed a drop inlet in the first parking space of Mr. Barczak's parking lot.

60. Kim Toney testified that the inlet was installed at the direction of Richland County or pursuant to its plans.

61. Conflicting testimony exists as to whether Mr. Barczak agreed to its installation on his property.

[2] The date of the installation of the drain inlet in not clear as will be discussed later in this opinion.

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62. The original design plans called for it to be placed within the right of way in the driveway to the parking lot.

63. Hugh Wilson of LJ testified that it would not be effective at its planned location in the driveway; and that after discussing the issue with Jason Patterson and Mr. Barczak, they decided to move it to the parking space location.

64. Mr. Barczak was adamant that he never wanted or agreed to an inlet in that location and that any discussions with Mr. Wilson or Patterson were misconstrued.

65. Mr. Barczak's version of events is corroborated by other evidence. First, Mr. Link's notes indicate that after a meeting with Mr. Barczak the City could eliminate the drainage permission. Second, when Mr. Barczak saw the heavy equipment digging the hole for the inlet, he immediately objected and asked for the equipment to be removed from his property.

66. There is no written document authorizing the installation of the drainage inlet in that location.

67. This court finds that the drop inlet was installed in the parking lot without Mr. Barczak's permission.

DAMAGES

68. The flooding and water intrusion into The Property caused by the trapped water from the roadway embankment caused continuous and substantial damage to Mr. Barczak.

69. In addition to the costs incurred in mitigation, Mr. Barczak testified that he disposed of furniture and other items damaged by the water. He provided evidence of a family heirloom–a Credenza–with the wood paneling peeling off. He estimated the these damages to be $3,000.

70. Mr. Barczak testified that mud and silt from the project filled the French drain bordering the south of the Trestle Building rendering it inoperable. Testimony shows that prior to the project the French drain was operable. He testified that he maintained this drain; Roger Williamson, the maintenance employee for the Trestle Building, corroborated this testimony.

71. Photographic evidence depicts the mud from the project flowing to The Property to the South and testimony shows that mud from the project filled the French Drain. This is supported by a preponderance of the evidence.

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72. Mr. Barczak testified, and the evidence shows, that water in front of building that used to flow into the street now ponds on his property and is trapped by the roadway embankment. This is consistent with the observations of Hugh Wilson stated in RFI No. 13.

73. Mr. Barczak testified that he observed cracks in his foundation and the southeastern corner of his building which he attributed to water intrusion undermining the foundation.

74. Mr. Barczak also testified that a parking space was damaged in the form of a depression in a parking space left when Dominion Energy or its contractors put a powerline underground. This was under the construction oversight of Richland County. Mr. Barczak further testified the runoff area in the northwest corner of the parking lot has been damaged and remains damaged today.

75. Currently the slope adjacent to North Main Street in front of The Property is covered in grass but has no steps or access from the sidewalk. There is no retaining wall. The existing sidewalks dead in the slope. The landscaping has not been replaced, the sprinkler system has not been fixed; according to Mr. Barczak, water still ponds in that area and drainage is still an issue.

BARCZAK PROPOSALS AND ESTIMATES

76. By letter (dated May 5, 2020), Michael Niermeier directed Mr. Barczak to pursue his claims with the City of Columbia and stated the County placed the contractor, LJ Construction, on notice of his concerns. (Exhibit 76(b)).

77. Mr. Barczak obtained fee quotes from a landscape architect, Mark Cotterill, and civil engineer, Dan Creed, to assess the stormwater and drainage issue and the issue with the Project. He emailed two proposals to the City on August 26, 2020. The City, in a joint letter (dated September 15, 2020) to Mr. Barczak and another owner, declined assistance stating "[u]nfortunately, we are not able to participate in the funding of the design or construction of improvements on your private property." (Ex. 76(a)).

78. Mr. Cotterill prepared a preliminary site plan for Mr. Barczak and was paid $1,500. (Exhibit 99)

79. Using this site plan, David Marion, President of Chason Landscaping, prepared a proposal dated May 1, 2024, including the following:

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- Remove the existing concrete in the front of the building and the masonry wall at the end of the building;
- Grade and remove excess fill between the walk and the building to establish grade below finish floor and positive drainage away from the building;
- Form and pour a cast in place concrete retaining wall across the end and parallel to Main Street;
- Form and pour an 8' wide set of concrete steps with cheek walls and grooved edge treads;
- Provide and install two rail tube handrails with the length of the wall Steel tubing with a black powder coated finish;
- Install a 4" trench drain at the base of the wall the length of the wall;
- Install a 6" drain line to support the trench drain and tie into the existing catch basin on the other side of the entry drive;
- Repair the curb and asphalt after crossing the entry drive with the drain line;
- Form and pour 427sf of Flat concrete work per the attached sketch. Concrete is in light blue;
- Prep and sod the lawn per the attached sketch. Lawn is in green;
- Install automatic irrigation for the lawn;
- Utilize the existing water source;
- Haul off and dispose of off site all waste, removed materials, etc…

80. Expert witness Mr. Marion estimated the costs at $136,336. Since the estimate was a little over a year old by the time of trial, Mr. Marion estimated the costs increased by about 5% for a total of $143,152.80. On this same proposal, based on the landscaping in the Cotterill plan, Mr. Marion quoted $7,314 for installing trees and shrubs.

81. In a separate proposal, Mr. Marion also provided estimates for the replacement of Mr. Barczak's French Drain and waterproofing to the south side of his building. This estimate was $28,081. In the same proposal, he provided an estimate for paving over the existing parking lot and striping the parking spaces for $46,639.

82. The Defendant's expert, Raulston Travis, P.E. provided three separate estimates. First, he provided an estimate for regrading the front lot only to slope away from the building. This would cost $16,151.18. Mr. Travis believes that a drainage system was not necessary once the drop inlet was installed to the south of Mr. Barczak's property.

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83. Second, Mr. Travis provided an estimate for the installation of steps from the public sidewalk along North Main Street to Mr. Barczak's lot and entrance. The estimate for this work totaled $18,707.22.

84. Finally, Mr. Travis provided a combined estimate for grading and a storm drainage system. This system would include a drop inlet, a yard inlet, and a trench drain. The total cost estimate for the grading and storm drainage system was $32,422.14.

85. Michael Wilson of Cantey Foundation Specialist provided an estimate for the repair and stabilization to the southeast corner area of the Trestle Building. The proposal calls for the installation of 4 push piers to support the foundation. The costs for this stabilization are $10,689.50. Mr. Wilson included a separate quote to replace the French Drain for $21,295.10.

86. The court finds that the substantial foundation erosion caused by the continuous flooding for over a year is a direct and proximate cause to the destabilization of the southeast corner of the Trestle Building, and that the Cantey quote is a reasonable estimate to stabilize the foundation.

LOST RENT

87. Mr. Barczak testified, and the evidence shows that Mr. Barczak attempted to rent the front portion of the property to a tenant but could not due to the flooding caused by the Project.

88. Mr. Barczak expressly notified the Defendants of this issue in his emails.

89. Ms. Odom, who occupied the space for the North Main Street Business Association, testified to elevating chairs on the desks and that she expected to mop the floors after a rain event.

90. The Defendants offered requests for admission that show Mr. Barczak reported rental income did not change; however, if Mr. Barczak had been able to secure a tenant, then his reported income would have reflected that but could not due to the constant flooding of the first floor of the Trestle Building by the Project.

91. There are two factual issues which the court must decide to determine the amount of lost rent. First, the court must decide for what length of time Mr. Barczak was prevented from reasonably renting the property. Second, what is the appropriate rental amount.

92. As to the second issue, Mr. Barczak offered the expert appraisal testimony of Deborah Tripp. Deborah Tripp conducted a rental survey of similar properties and compared the

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rental amount per square foot as applied to each of the two parts of the building. (Tripp Appraisal, pp. 88-90).

93. Deborah Tripp concluded that the Front Office could rent for 11.00 SF[3];

94. Thus, for 5,000 feet of rental space the annual loss, net rental income would be $55,000 annually and $4,583 per month.

95. Varying testimony exists as to when it was reasonable for Mr. Barczak to resume renting the front office of the Trestle Building[4]. There is a consensus that the flooding was greatly reduced when a drop inlet was installed just south of Mr. Barczak's property on Tract 52 by Richland County and LJ. The exact time this occurred is uncertain.

96. The evidence presented provides some reliable markers. In his Rule 32(a)(5) testimony, Mr. Barczak states that "we are going into month number 9 in June 2019" (Pg. 177 (13-17)). He stated that "There are also photos showing flooding in the office on June 9, 2019" (Exhibit 68a). The record also reflects that Mr. Wilson, with LJ, submitted a proposed change order for the drop inlet on May 10. 2019. In November and December 2019, Mr. Barczak continued damage mitigation from flooding by the Project; he installed a trench around the corner of his building and waterproofed the area. (Exhibits 71 and 72). He also emailed Kimberly Toney (January 9, 2020) stating, "I had to start because I couldn't secure a tenant until I had dry space." (Exhibit 70) Finally, Mr. Barczak testified that the front space remained mostly dry by this point.

97. Thus, the court finds that from October 2018 until December 27, 2019, Mr. Barczak was unable to rent his building due to flooding caused by the Project.

98. Computing lost rent at $4,583 x 15 months is $68,745 in lost rent.

99. The court's findings differ from Ms. Tripp's findings in a few ways: 1) the court applied the rental analysis to only the front 5,000 square feet (which does not include the rear space nor the 2nd floor which was not for rent; 2) the court does not believe it is appropriate to provide a present value discount since Mr. Barczak would have already received this rent; and 3)

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[3] Mr. Barczak testified in his Rule 32(a)(5) designation to $6,100 month which would be about 14.64SF. (pg. 213)

[4] Mr. Barczak testified he keeps the front entrance locked with a sign on the door because of the ditches, incomplete sidewalks, limited use of front access. He testified he was making around a $1000 a month for the front portion of the building from mid 2020 through his other tenant consigning furniture at their risk until he can have the work completed; instead of the market rent.

Ms. Tripp limited her calculations to eight months based on what she perceived to be the deposition testimony, but as set forth above, the evidence at trial shows Fifteen (15) months is an appropriate time.

DIMINUTION IN VALUE/IMPACT

100. Ms. Tripp determined the property value before the impact of the Project was $1,080,000.

101. Ms. Tripp determined the Project impacts as: the total of the physical damage, rent loss during flooding, site improvements acquired, and stigma. This resulted in a total reduction in value of $154,605.

102. Mr. Barczak testified as the owner of the property that it was worth at least $875,00-$900,000 based on the purchase price and what he invested in improving the property.

103. Ms. Tripp assigned a 5% stigma value ($48,705) to the property related to the continuous flooding for a year. She explained that stigma is an adverse market perception of a property that had detrimental conditions. In this case, continuous flooding of the property. Her appraisal cited a study of properties in a flood zone and also her personal knowledge and experience with appraising Coldstream properties in Columbia that a stigma value of 9-18% applied. She further testified that the range of values listed for Coldstream and the study were too high for this property, but a 5% stigma value was appropriate. She described this as very conservative.

104. The Defendants offered the testimony of their expert, Charles Crider, to refute the claim of stigma. Mr. Crider testified that stigma is rare and should not be applied to cases where the property could be repaired.

105. Mr. Barczak testified that in addition to the repairs, reimbursement, and lost rent, that he believed a 5% figure was appropriate. He pointed out that his property was now in a hole and not as visible, that he could not erect an advertising sign, lack of ADA accessibility and loss of functional utility of front yard space. He also noted that he was now reliant on a third party to monitor and clean a drain to protect his property.

106. The court finds that 5% stigma impact damages are warranted. Ms. Tripp testified that stigma involves risk perception which could remain even after repairs are made. She further testified that the 5% figure was low and conservative in her expert opinion. Further,

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Mr. Barczak, as the owner of the property, has valid points as to the permanent impact of the taking on his property.

CONCLUSIONS OF LAW

INVERSE CONDEMNATION[5]

107. Both Article I, § 13 of the South Carolina Constitution and the Fifth Amendment to the United States Constitution provide that private property shall not be taken for public use without the payment of "just compensation."[6]

108. "An inverse condemnation occurs when a government agency commits a taking of private property without exercising its formal powers of eminent domain." *Ray v. City of Rock Hill*, 428 S.C. 358, 365–66, 834 S.E.2d 464, 468 (Ct. App. 2019) (quoting *Hawkins v. City of Greenville*, 358 S.C. 280, 290, 594 S.E.2d 557, 562 (Ct. App. 2004)).

109. The elements of inverse condemnation are: (1) an affirmative, positive, aggressive act on the part of the governmental agency; (2) a taking; (3) the taking is for a public use; and (4) the taking has some degree of permanence. *Rolandi v. City of Spartanburg*, 294 S.C. 161, 363 S.E.2d 385 (Ct. App. 1987); *See Marietta Garage, Inc. v. S.C. Dep't of Pub. Safety*, 352 S.C. 95, 101, 572 S.E.2d 306, 308 (Ct. App. 2002). The Court removed the last element: 'degree of permanence'. *See Byrd v. City of Hartsville*, 365 S.C. 650, 657 620 S.E.2d 76, 79 (2005) ("[W]e remove the element 'some degree of permanence,' for it conflicts with the principle that government must compensate for even a temporary taking.") (citations omitted).

110. "Determining whether government action affects a taking requires a court to examine the character of the government's action and the extent to which this action interferes with the owner's rights in the property as a whole." *Hardin v. S.C. Dep't of Transp.*, 371 S.C. 598, 605, 641 S.E.2d 437, 441 (2007) (citing *Penn Central*, 438 U.S at 130–31, 98 S.Ct. 2646).

111. "The constitutional prohibition against taking private property for public use without just compensation must have been intended to protect all the essential elements of ownership which make property valuable, including, of course, the right of user, and the right of enjoyment." *See Kline v. City of Columbia*, 249 S.C. 532, 537, 155 S.E.2d 597 (S.C. 1967) (citations omitted).

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[5] In a jury trial the judge will determine whether a claim for inverse condemnation has been established and then the issue of compensation is submitted to the jury. As this is a non-jury case, the court handles both.

[6] The Fifth Amendment's takings clause applies to the actions of state governments through the due process clause of the Fourteenth Amendment to the United States Constitution.

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112. This court has previously adopted and adhered to "the broadest possible view of 'what is a taking' and has construed the least actual 'damage' to be a 'taking' . . . . *Webb v. Greenwood County*, 229 S.C. 267, 92 S.E.2d 688. (citations omitted).

113. In this case, the Plaintiff alleged takings by the government in at least three forms: First, the North Main Street Project and the elevation of the road trapped and concentrated water on to his land flooding his building and trapping water in his front lot. Second, by elevating the road two feet in front of his property, it impaired his easement of access to North Main Street. Third, the government improperly installed a drop inlet in his parking lot without his permission.

114. This Court concludes that the second basis, impairment of access, must be denied because the Permission/Slope Agreement signed by Mr. Barczak authorized the government to erect the slope which impairs access.

115. However, the court concludes that by the preponderance of the evidence, the Plaintiff has established the elements of inverse condemnation for the other two claims.

116. It has long been recognized in South Carolina that "the casting of water on adjoining premises by some act of the governmental authority in the course of making improvements to a public way constitutes a taking of property in violation of Article I, Section 17, of the Constitution." *Kline v. City of Columbia*, 249 S.C. 532 at 536.

117. For instance, in *Milhous v. State Highway Department*, the South Carolina Supreme Court held that the landowner had cause of action against the state for damage to his land resulting from the obstruction of natural flow of surface waters caused by the state's raising of the grade of the highway roadbed. *Milhous v. State Highway Dep't*, 8 S.E.2d 852, 856 (1940). Similarly, in *Spradley v. South Carolina State Highway Department*, the South Carolina Supreme Court found a plaintiff "could recover just compensation for the taking and damaging" of her land "caused by the dumping and spilling of surface water" upon the plaintiff's land as a result of highway improvement. *Spradley v. South Carolina State Highway Dep't*, 256 S.C. 431, 437, 182 S.E.2d 735, 738 (1971). In *Spradley,* the Highway Department failed to provide proper drainage. *Id.*

118. Moreover, the Court of Appeals upheld a verdict for a property owner who brought an inverse condemnation action against a town for flood damage he sustained during heavy rain following reconstruction of adjoining street. *Newsome v. Town of Surfside Beach*, 300 S.C. 14, 16, 386 S.E.2d 274, 275 (Ct. App. 1989). The town's reconstruction raised the level of

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the street approximately seventeen inches. *Id.* During a storm and unusually high tide after the road reconstruction, the road dammed excess water and caused the water to congregate at the lowest piece of land along the road, which was in the plaintiff's house. *Id.* The Court of Appeals held in *Newsome* that "[f]rom this evidence the jury could have easily concluded that the building up of [the street] satisfied the requirement of an overt or positive action by the Town necessary to prove a taking under a cause of action for inverse condemnation." *Id.*

119. In this case, there was ample testimony that the elevation of the road from North Main Street Project trapped water and cast it, mud and silt in concentrated amounts onto Mr. Barczak's property flooding his front yard and intruding into the Trestle Building. This satisfies the element for (1) an affirmative, positive, aggressive act on the part of the governmental agency under South Carolina case law.

120. Jason Patterson observed in his field notes and in a graphic exhibit (Exhibit 90) that the embankment trapped approximately a .10 acre of water that would normally flow into North Main Street.

121. Dan Creed, the Plaintiff's expert engineer, corroborated this and testified that it was foreseeable from the topography map that water would be trapped by the embankment and flow to Mr. Barczak's property. He further opined this was why the drop inlet was installed to the south of Mr. Barczak's property.

122. This was further corroborated by Hugh Wilson who testified in his unanswered RFI No. 13 about these exact issues.

123. Finally, Mr. Barczak provided numerous photographs documenting the flooding water, mud and silt flowing down to his property from the Project including the lot owned by the SCDOT and used as a staging area for construction.

124. As noted above in facts, this flooding damaged the Plaintiff's property and interfered with the Plaintiff's rental of the front part of his building (5,000 Sf). This flooding also traps water in his front lot. The continuous and concentrated flooding satisfies the element for a taking. South Carolina law is clear that regarding inverse condemnation claims, there is no distinction between "taking" and "damaging." *See South Carolina State Highway Dep't v. Wilson*, 254 S.C. 360, 366-67, 175 S.E.2d 391, 395 (1970) (holding, "within the purview of this constitutional provision, there is no distinction between 'taking' and 'damaging' and that the least damage to property constitutes a taking within the purview of the Constitution."); *see also*

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Spradley v. South Carolina State Highway Dep't, 256 S.C. 431, 182 S.E.2d 735 (1971) (ruling, "In the construction of this Article of our Constitution, we do not recognize a distinction between 'taking' and 'damaging'. A deprivation of the ordinary beneficial use and enjoyment of one's property is equivalent to the taking of it and is as much a 'taking' as though the property was actually appropriated.").

125. Finally, there is no debate that the North Main Street Project was for a public use and involved substantial public funding.

126. This court concludes that the Defendants' acts in constructing an embankment and trapping water which was concentrated onto Mr. Barczak's land is a taking under Article I, § 13 of the South Carolina Constitution and the Fifth Amendment to the United States Constitution entitling In the House, LLC to just compensation.

127. The court also concludes that the placement of a drop inlet in the first parking space without Mr. Barczak's permission is a physical taking of the property under Article I, § 13 of the South Carolina Constitution and the Fifth Amendment to the United States Constitution entitling In the House, LLC to just compensation.

128. Having concluded that there was a taking the court must also decide who was responsible for the taking. For the reasons discussed below, the court concludes that both Richland County and SCDOT are responsible for the taking.

129. Richland County was responsible for overall management and construction oversight for the project. They had weekly and biweekly meetings with all the stakeholders in the project including SCDOT, the contractor, and the City of Columbia.

130. Richland County hired LJ to construct the North Main Street project in accordance with the design plans and SCDOT specifications.

131. Richland County's contract with LJ provides that at the request of the County, the contractor shall provide other work related to the Project that is not within the scope of work provided for in this Agreement.

132. All work by LJ was subject to inspection and test by the County and SCDOT. Furthermore, LJ had to correct or re-perform without charge any Work found by the County not to conform to the Agreement's requirements.

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133. When asked about stormwater drainage cast on adjacent property, Kimberly Toney of Richland County testified that while that normally was the contractor's responsibility, "But, of course, we have to oversee that." "We" being Richland County.

134. In its agreement with SCDOT, the County was responsible for right of way issues and impact. Also, in its agreement with SCDOT, the County had to coordinate with SCDOT during the construction of the work.

135. The SCDOT owns North Main Street and ultimately is responsible for its maintenance within its rights of way. The results of this multi-million dollar project will be turned over to and ultimately accepted by SCDOT including the roadway embankments which trapped the water and concentrated on the Trestle Building property.

136. The North Main Street Project had to be developed and constructed to SCDOT standards. SCDOT had the right to review the design plans and provide comments.

137. There was evidence that the mud and silt flowed downhill from a SCDOT property that was used as a staging area for the construction.

138. The Permission Agreement executed in this case by Mr. Barczak was granted to SCDOT on an SCDOT form.

139. As the project involved federal funds through a Tiger Grant, the SCDOT required the County to apply for and receive Local Public Agency Status and file monthly reports and answer questions about the Project.

140. Both the County and the SCDOT jointly conduct a final inspection of the Project.

141. LJ is labelled as an independent contractor in its agreement with Richland County, but the court concludes Richland County has a greater degree of control over LJ, than a typical contractor. "It is well established that the terms of a contractual agreement are not conclusive in determining the association between two parties where there is evidence outside the contract establishing an agency relationship. *Hubbard v. Rowe*, 192 S.C. 12, 5 S.E.2d 187 (1939). *See also Thompson v. Ford Motor Co.*, 200 S.C 393, 21 S.E.2d 34 (1942). "It is not the descriptive name employed, but the nature of the business and the extent of authority given and exercised, which is determinative." *Jones v. General Motors Corporation*, 197 S.C. 129, 14 S.E.2d 628, 631 (1941)"

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142. Furthermore, for the reasons and cases discussed below, the court concludes that Richland County and SCDOT are liable for inverse condemnation even if LJ was an independent contractor.

INDEPENDENT CONTRACTORS ARE NOT A SHIELD FOR INVERSE CONDEMNATION CLAIMS

143. Richland County argues it should not be held liable in inverse condemnation because it acted through independent contractors, LJ and Richland County PDT. While the court has already concluded that LJ is not a truly independent contractor, and doubts Richland County, PDT is one. ("County" means County of Richland, a public body politic and corporate and political subdivision of the State of South Carolina, or the Richland PDT.)(LJ Contract). This status does not shield a government agency from its constitutional duty in an inverse condemnation case.

144. Several cases from other jurisdictions[7] have established that a governmental entity cannot hide behind an independent contractor to avoid liability for inverse condemnation. This makes logical sense because a private entity can never be liable for inverse condemnation. Thus, a public body could evade its constitutional responsibility by using independent contractors.

145. In *Fulton County v. Woodside*, 155 S.E.2d 404, 223 Ga. 316, 321 (Ga. 1967), the court stated, "For these reasons Fulton County and the State Highway Department cannot escape their constitutional responsibility to compensate for the taking or damaging of petitioner's property on the ground that the parties who did the actual taking or damaging were independent contractors."

146. The reasons cited by the court in *Fulton County*, "Several decisions from the highest appellate courts of foreign jurisdictions have followed this rule in cases similar to this one. In *Sherlock v. Mobile Co.*, 241 Ala. 247, 249(3), 2 So.2d 405, 407 (1941) it was held: 'The county cannot avoid liability to property owners for property taken or for injury done, within the meaning of § 23 and § 235 of the Constitution, by authorizing the work to be done by a third

[7] While there does not appear to be a clear case in South Carolina on point, in *South Carolina State Highway Dept. v. Moody*, 226 S.E.2d 423, 267 S.C. 130, 135 (S.C. 1976) the court states, "If an independent contractor, in constructing a road or improving the same, trespasses beyond the right-of-way and causes damages to a landowner, relief to the landowner is available by way of a common law action for damages. Such an action may be instituted against the contractor, or against the highway department, or against the two, depending on the facts. This we refer to as inverse condemnation."

person acting by the county's authority, whether such third person be an agent or an independent contractor.' (*Emphasis supplied*). *See also Republic Iron & Steel Co. v. Barter*, 218 Ala. 369, 118 So. 749 (1928). In *Kelley v. Falangus*, 63 Wash.2d 581, 388 P.2d 223 (1964) the court held that owners of supporting land could not, by delegation of duties to a private independent contractor, escape the constitutional responsibility for damage to adjoining lands caused by removal of lateral support. The Washington Court cited one of its previous decisions as follows: '* * * the state could not delegate to a private independent contractor the liability for such damaging (i.e. the removal of lateral support) any more than the state could so delegate its power of eminent domain.' *State v. Williams*, 12 Wash.2d 1, 14, 120 P.2d 496 (1941).

147. "The municipality cannot shift or evade liability by procuring or permitting another to do the work". C*ity of Colorado Springs v. Stark*, 57 Colo. 384, 386, 140 P. 794 (Colo. 1914).

148. Thus, case precedent, in Georgia, Colorado, Minnesota, Michigan Alabama, Washington, and probably other jurisdictions all hold that the government cannot avoid liability to property owners for property taken or for injury done... by authorizing the work to be done by a third person acting by the government's authority, whether such third person be an agent or an independent contractor.

149. The *Stark* court cited the equitable principle, " it was primarily for the safety, benefit and convenience of the public, and the city is in the first instance, under the well-settled rule in this jurisdiction, clearly and unquestionably liable for damage to private property occasioned by its construction, on the highly equitable and wholesome principle that since the benefit is general the cost incurred to obtain it should be generally distributed." *City of Colorado Springs v. Stark*, 57 Colo. 384, 388, 140 P. 794 (Colo. 1914).

150. This principle applies equally to Richland County and SCDOT. While Richland County, with its construction oversight and management of the Project may have been more directly involved, SCDOT, in effect, used Richland County and its contractors to provide the public benefit and therefore should not be able to avoid its constitutional duty to pay just compensation for the taking of private property.

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JUST COMPENSATION

151. The court must now determine the amount of just compensation for the inverse condemnation.

152. [T]he amount that the governmental agency should pay a landowner in order to adequately compensate the landowner for a taking of his property is called just compensation. It is that amount of money which would ... put the landowner in as good a position monetarily as he was prior to the taking of the property. ... He's entitled to have the full equivalent of the value of such use at the time of the taking ... And this is probably the heart of what just compensation is: The measure of damages from the taking is the difference in the value of the landowner's land before the taking and after the taking. *Burke v. S.C. Dep't of Transp.*, 429 S.C. 319, 838 S.E.2d 534 (Ct. App. 2020)(noting this was a traditional jury charge).

153. As recited in detail in the factual findings of this order, this court, the Plaintiff and Mr. Barczak offered before and after calculations of the values of the property for the taking by the Defendants.

154. Ms. Tripp concluded the diminution in value was $154,605 consisting of lost rent, physical damage to the property, and stigma.

155. Mr. Barczak testified that in addition to the repairs, reimbursement, and lost rent, that he believed a 5% figure was appropriate (which based on his pre-project estimate of $875,000 -900,000 would be $45,000).

156. It is important to note that once a taking is found, the court must look at the impact of the project as a whole, and not just the actual taking. *S.C. Dep't of Transp. v. Powell*, 424 S.C. 206, 818 S.E.2d 433 (2018).

157. The court concludes just compensation for the taking is the lost rent ($68,745[8]); the 5% stigma impact damages ($48,705); the Marion quote[9] for the front lot tie in and drainage ($143,152.80) the Marion quote for replacement of the French drain ($28,081), the Cantey quote for foundation stabilization ($10,689.50), reimbursement for the property damage ($3,000) and

[8] The Plaintiff is also entitled to interest at 8% on the rent. Burke v. S.C. Dep't of Transp., 429 S.C. 319, 838 S.E.2d 534 (S.C. App. 2020)

[9] The Marion quote effectively replaces the Creed and Cotterill estimates. Also included in this quote and not broken our separately are the quotes for stairs and concrete pavers which are not technically inverse condemnation damage but damages awarded against the same entities under the breach of contract/declaratory judgment causes of action for the special provisions.

the costs of mitigation during the taking: C&B Drainage Systems ($2,123,50), Riverside Renovations, LLC ($6,000) and $659.89 in materials.

158. The court concludes that these damages reflect the diminution in value and impact on the Trestle Building property caused by taking and are appropriate just compensation to the Plaintiff for the taking by the Defendants. These damages and estimates are reasonable and supported by the preponderance of the evidence.

159. The Plaintiff is also entitled to reimbursement of attorney's fees, costs and expenses pursuant to S.C. Code Ann. §28-11-30. As the parties stipulated at trial, a separate hearing will be held after Plaintiff's counsel served an affidavit as to attorney's fees and costs on Defendants counsel for review. This shall be done within fifteen (15) days of the date of this order.

NEGLIGENCE

160. Negligence is the failure to use due care. *Sales v. South Carolina Department of Transportation*, 2016 WL 3607225 (Ct. App. 2016). To prove a cause of action for negligence, a plaintiff must show "(1) the defendant owes a duty of care to the plaintiff; (2) the defendant breached that duty by a negligent act or omission; (3) the defendant's breach was the actual and proximate cause of the plaintiff's injury; and (4) the plaintiff suffered an injury or damages." *Roddey v. Wal-Mart Stores E., LP*, 415 S.C. 580, 589, 784 S.E.2d 670, 675 (2016) (citing *Madison ex rel. Bryant v. Babcock Ctr., Inc.,* 371 S.C. 123, 135, 638 S.E.2d 650, 656 (2006)).

161. In South Carolina regarding water law, "(1) a landowner must not handle surface water in such a way as to create a nuisance, and (2) he must not by means of a ditch or other artificial means collect surface water and cast it in concentrated form upon the lands of another." *Johnson v. Williams*, 238 S.C. 623, 633, 121 S.E.2d 223, 228 (1961). "It is well settled that a landowner has no right to obstruct the flow of water in a natural watercourse, so as to back it up on the lands of an adjoining landowner to his damage." *Id.*

162. "To show proximate cause, a plaintiff must show both causation in fact and legal cause." *Roddey*, 415 S.C. at 590, 784 S.E.2d at 675-76 (citing *Madison,* 371 S.C. at 146, 638 S.E.2d at 662). "A plaintiff proves causation in fact by establishing that the injury would not have occurred 'but for' the defendant's negligence, and legal cause by establishing foreseeability." *Id.* "Foreseeability is determined by looking at the natural and probable consequences of the complained of act, although it is not necessary to prove that a particular

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event or injury was foreseeable." *Id.* "The defendant's negligence does not have to be the sole proximate cause of the plaintiff's injury; instead, the plaintiff must prove the defendant's negligence was at least one of the proximate causes of the injury." *Id.*

163. Under the South Carolina Torts Claims Act, "[t]he State, an agency, a political subdivision, and a governmental entity are liable for their torts in the same manner and to the same extent as a private individual under like circumstances, subject to the limitations upon liability and damages, and exemptions from liability and damages, contained [in the Act.]" S.C. Code Ann. § 15-78-40.

164. Richland County owed a duty to adjacent landowners to construct North Main Street in such a way that it would not unreasonably damage the Plaintiff's land and unreasonably interfere with its use and enjoyment of the property during the construction process.

165. Richland County breached this duty and was negligent by trapping the surface stormwater and channeling it in concentrated amounts on the Plaintiff's land. There was ample evidence of this as set forth in this court's discussion of the inverse condemnation claim including the site observations, graphic exhibit and testimony of Jason Patterson, the testimony and photographs of the Plaintiff, the testimony of Plaintiff's expert Dan Creed, and the testimony and RFI No. 13 of Hugh Wilson.

166. As a direct and proximate result of the concentration and flooding of his property, the Plaintiff suffered actual, consequential and special damages.

167. Dan Creed testified that based on the topography map, it was foreseeable that the roadway embankment would trap water that used to flow in the street and be channeled to Mr. Barczak's property. Indeed, Jason Patterson specifically identified this exact problem within a few weeks after construction has reached the Trestle Building.

168. The County is not exempted from liability under S.C. Code Ann. § 15-78-60(15), which states, "governmental entities are not liable for the design of highways and other public ways." The highway design exception under § 15-78-60(15) does not apply to Plaintiff's claims. First, the trapping and concentration of water due to the embankment is outside the roadway itself and is a function of the topography and the failure of the Richland County to account for it during the construction process. (See Hugh Wilson, RFI No. 13).

169. Second, even if the exemption did apply, it does not provide any protection after the governmental entity is on notice of the condition. "Although Department of Transportation

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(DOT) has design immunity under Tort Claims Act (TCA), such immunity does not extend to maintenance issues after the DOT has notice of a hazardous condition." W*right v. South Carolina Department of Transportation* (App. 2022) 2022 WL 2444703; *Hawkins v. City of Greenville,* 358 S.C. 280, 594 S.E.2d 557 (Ct. App. 2004).

170. Here, Mr. Barczak notified the County through emails starting in October 2018, and Jason Patteron had site observation in November 16, 2018 specifically noting the problem. The County, despite actual notice, did not address the problem by providing a drop inlet in the property to the south of Mr. Barczak until over a year later.

171. The damages for the County's negligence in flooding the Plaintiff's property are the same as those under inverse condemnation with one addition.

172. In addition to this damage, there was also testimony that a third party company buried the power utility line going to Mr. Barczak's property resulting in a depression in the parking space. The County had oversight of this construction. Mr. Marion provided a quote to pave and stripe the whole parking lot ($46,639) but not just the damaged space.

173. The court concludes that reaving the whole parking lot is not warranted; however, 1/3 of that amount, or $15,546 is appropriate to repair the parking space, tie that part of the parking lot into the driveway which will be disrupted by the drainage repair and to repair the asphalt around the drop inlet installed in the parking lot.

TRESPASS

174. The elements of an actionable trespass are (1) an affirmative act, (2) invasion of land must be intentional, and (3) harm caused must be the direct result of that invasion. *Id.* Intent in the context of trespass does not require malice or a specific purpose to harm. It is sufficient that the defendant intended the act that caused the invasion, even if they did not intend the resulting damage. *Snow v. City of Columbia*, 305 S.C. 544, 553, 409 S.E.2d 797, 802 (Ct. App. 1991).

175. In other words, "intent is proved by showing that the defendant acted voluntarily or that he knew or should have known the result will follow from his act." *Id.* (citing *Snakenberg v. Hartford Casualty Insurance Co.,* 299 S.C. 164, 383 S.E.2d 2 (Ct.App.1989). "The gist of trespass is the injury to possession, and generally either actual or constructive possession is sufficient to maintain an action for trespass." *Hawkins*, 358 S.C. at 266, 594 S.E.2d at 566.

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176. Defendants committed an intentional affirmative act and acted voluntarily in erecting the embankment which trapped the water causing water to flow onto Mr. Barczak's property as described herein.

177. It is undisputed the Defendants intended for the roadway grading to be raised, as shown through case law, intention of the act that causes the invasion is sufficient.

178. As discussed in the previous causes of action, it was foreseeable that based on the topography, the elevation of the roadway would result in the trapping and trespass of water on to Mr. Barczak's land.

179. As a direct and proximate result of this continuous trespass, the Plaintiff has suffered damages as set forth in the previous causes of action, except the pavement damage.

180. Plaintiff is awarded the same damages as for the inverse condemnation.

S.C. Code Ann. § 5-31-450

181. The court has ruled that this statute is not applicable to the facts of this case.

182. The court notes that SCDOT owns North Main Street and not the City of Columbia, and that the water damage and intrusion to Mr. Barczak's property is not from the street but from being trapped by the roadway embankment.

BREACH OF SPECIAL PROVISIONS

183. As set forth in the findings of fact, Mr. Barczak did not require his property to be condemned but negotiated a Revised Permission Agreement with the SCDOT which included several special provisions which were important to Mr. Barczak.

184. This agreement was with the SCDOT, but there was testimony that the provisions were to be completed by Richland County (See Hugh Wilson RFI No. 13).

185. Aside from the temporary installation of zoysia grass, none of the special provisions have been completed despite demand.

186. There was evidence that Richland County attempted to comply with some of the provisions in the agreement. Exhibit 95 was an email by Jason Patterson to Johnathan Eichelberger by presenting a Tract 53 Plan Sheet which showed various slope ratios of 2:1, 4:1, and 6:1 onto Mr. Barczak's property along with some stairs and replacement shrubs. Mr. Barczak rejected this proposal.

187. The problem with this proposal is that the ratios would have resulted in property sloping toward Mr. Barczak's building and Mr. Barczak did not want the drain inlets in his front

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yard. David Link the right of way agent specifically noted in his field notes that the City could eliminate the drainage permissions.

188. Using a site plan prepared by Mark Cotterill, David Marion, President of Chason Landscaping, prepared a proposal dated May 1, 2024, including the following:

> Remove the existing concrete in the front of the building and the masonry wall at the end of the building; Grade and remove excess fill between the walk and the building to establish grade below finish floor and positive drainage away from the building; Form and pour a cast in place concrete retaining wall across the end and parallel to Main Street; Form and pour an 8' wide set of concrete steps with cheek walls and grooved edge treads; Provide and install two rail tube handrails with the length of the wall Steel tubing with a black powder coated finish;
> Install a 4" trench drain at the base of the wall the length of the wall;
> Install a 6" drain line to support the trench drain and tie into the existing catch basin on the other side of the entry drive; Repair the curb and asphalt after crossing the entry drive with the drain line; Form and pour 427sf of Flat concrete work per the attached sketch.
> Prep and sod the lawn per the attached sketch.
> Install automatic irrigation for the lawn; Utilize the existing water source;
> Haul off and dispose of off site all waste, removed materials, etc…

189. Mr. Marion estimated the total costs at $136,336. Since the estimate was a little over a year old by the time of trial, Mr. Marion estimated the costs increased by about 5% for a total of $143,152.80.

190. On this same proposal, based on the landscaping in the Cotterill plan, Mr. Marion quoted $7,314 for installing trees and shrubs.

191. Mr. Marion's proposal satisfies the special provisions of the contract.

192. The Defendant's expert, Raulston Travis, P.E. provided three separate estimates. First, he provided an estimate for regrading the front lot only to slope away from the building. This would cost $16,151.18. Second, Mr. Travis provided an estimate for the installation of steps from the public sidewalk along North Main Street to Mr. Barczak's lot and entrance. The estimate for this work totaled $18,707.22. Finally, Mr. Travis provided a combined estimate for grading and a storm drainage system. This system would include a drop inlet, a yard inlet, and a trench drain. The total cost estimate for the grading and storm drainage system was $32,422.14.

193. There are several differences between the two experts' estimates. Mr. Marion's quote includes a retaining wall between North Main Street and the front lawn of the Trestle Building which he testified would result in more functional, useable space. He also said it would help in maintenance. Mr. Travis's estimate does not include any pavers only grading and

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Mr. Travis's drainage estimate includes one large yard drainage inlet and one drop inlet; whereas Mr. Marion's quote is for a trench inlet by the retaining wall. Finally, Mr. Travis's quotes do not include any landscaping (except sod) or replacement for the sprinkler system or trees and shrubbery.

194. The court finds that Mr. Marion's quote and credible expert testimony is the most applicable to satisfy the intent and terms of the special provisions of the Revised Permission Agreement and awards judgment to the Plaintiff in breach of contract in the amount of $143,152.80 primary quote and $7,314 for installing trees and shrubs.

DECLARATORY JUDGMENT

195. S.C. Code Ann. § 15-53-20 provides in relevant part, "Courts of record within their respective jurisdictions shall have power to declare rights, status and other legal relations whether or not further relief is or could be claimed. The declaration may be either affirmative or negative in form and effect. Such declarations shall have the force and effect of a final judgment or decree.

196. In this case, the court has determined the rights and liabilities of the parties under the various causes of action pled by the Plaintiff; however one matter remains that was requested by the Plaintiff and is necessary in order to award the parties complete relief.

197. Mr. Barczak testified that the drain to the south of his property is poorly maintained which would substantially reduce its effectiveness in causing water to concentrate and flood the Trestle Buildings. All the experts (Dan Creed, Jason Patterson, Hugh Wilson, and even Raulston Travis) testified this drain was essential in keeping excess stormwater from draining onto Mr. Barczak's property.

198. However, it appears from the testimony that this drain is not within the SCDOT right of way and that there is no written agreement with landowner where his drain is located.

199. Mr. Barczak has indicated he is willing to maintain this drain to protect his property.

200. Therefore, it is hereby ordered and declared that the Defendants SCDOT and Richland County shall negotiate, prepare and execute a written easement agreement with the property owner where the south drain is located whereby Mr. Barczak can maintain the drain.

WHEREFORE, having fully adjudicated this matter and set forth its findings of fact and conclusions of law, the court orders the following:

The Plaintiff shall have judgment against the Defendants Richland County and SCDOT, jointly and severally, in the principal amount of $311,156.69 for the cause of action for inverse condemnation. (See ¶ 157 incorporated by reference). The Plaintiff shall submit an affidavit to Defendants' counsel within fifteen (15) days as to Plaintiff's attorney's fees and costs. Thereafter, a hearing will be scheduled if the parties cannot agree on the reasonable award of attorney's fees and costs;

The Plaintiff shall have judgment against Richland County in the principal amount of $326,702.69 (see ¶ 171-73 incorporated by reference) for negligence;

The Plaintiff shall have judgment against Richland County in the principal amount of $311,156.69 (see ¶ 180 incorporated by reference) for continuous trespass;

The Plaintiff shall have judgment against Richland County and SCDOT for breach of the special provisions and by declaratory judgment in the amount of $150,466.80 (see ¶ 194 incorporated by reference);

The Defendants SCDOT and Richland County shall negotiate, prepare and execute a written easement agreement with the property owner where the south drain is located whereby Mr. Barczak can maintain the drain. (See ¶ 200 incorporated by reference).

IT IS SO ORDERED.

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Richland Common Pleas

Case Caption: In The House Llc vs City Of Columbia , defendant, et al

Case Number: 2020CP4004769

Type: Order/Other

So Ordered

s/ Daniel Coble, 2774