

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ORANGEBURG COUNTY
Master-in-Equity

O. Davie Burgdorf, Master-in-Equity

Case No. 2007-CP-38-1424

John W. Williamson, III and Kathryn J. Williamson, ... Appellants

v.

The County of Orangeburg, ... Respondent

FINAL BRIEF OF APPELLANTS

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STATEMENT OF ISSUES ON APPEAL

- I. Did the trial court err when it found that the County of Orangeburg established that the condemnation of Ness Boat Landing was a necessity?**
- II. Did the trial court err when it excluded relevant and uncontradicted newspaper articles as inadmissible hearsay?**
- III. Did the trial court err by not finding that the condemnation of Ness Boat Landing was characterized by bad faith and an abuse of Orangeburg County's discretion?**

STATEMENT OF THE CASE

On September 27, 2007, the County of Orangeburg ("the County") served a Condemnation Notice and Tender of Payment on Appellants John W. Williamson, III and Kathryn J. Williamson ("Williamsons"), Landowners. The subject property is J. B. Ness Landing ("the Landing" or "Ness Landing") situated on the South Fork Edisto in Orangeburg County. On October 29, 2007, the Williamsons filed this action challenging the condemnation as unlawful under the constitution and laws of South Carolina. The central issues are whether Orangeburg County, as condemning authority, reasonably considered the necessity for the taking of the Williamsons' property before condemning, or whether its condemnation decision was made arbitrarily without due consideration of relevant facts.

The case was tried before the Honorable O. Davie Burgdorf, Master-in-Equity for Orangeburg County, without a jury on October 21-23, 2008. On January 21, 2009, Judge Burgdorf entered his Order finding for the County that the condemnation action was lawful. At trial, the Williamsons introduced into evidence certain articles from *The Times and Democrat* ("T&D"), the Orangeburg newspaper of daily circulation. After hearing County's objections to the articles, the trial court admitted them into evidence while acknowledging the County's objection. In its Order, the trial court reversed the position it appeared to have taken at trial and declared the articles to be inadmissible hearsay.

On February 16, 2009, the Williamsons served a timely notice of appeal challenging the trial court's findings as to the issues of the necessity for the condemnation, the County's abuse discretion and bad faith, and the evidentiary exclusion of the newspaper articles.

STATEMENT OF FACTS

The Landing and the Leasehold. J. B. Ness Landing – sometimes called Binnicker Bridge Landing for the nearby bridge over the South Fork Edisto River – is a secluded, single lane, boat ramp off of secondary highway SC-70 which runs from Orangeburg to Denmark, SC. The South Fork Edisto is a blackwater river that merges with the North Fork Edisto downstream from Ness Landing near Branchville, SC, to form the Edisto River. For approximately 40 miles, the South Fork serves as the county line between Orangeburg County and the counties of Bamberg, Barnwell and, partially, Aiken. Except at very high water, the South Fork Edisto is slow moving, peaceful and narrow.

On March 15, 2005, the Williamsons purchased a tract of land on the northern bank of the South Fork, which encompasses Ness Landing, from the previous owner Leon Newman, subject to Newman's existing lease of the Landing to the County. (Exh. 1 at R. pp. 568-71; Answer to Am. Compl., ¶2 at R. p. 29; R. p. 78, lines 7-8.) When the Williamsons purchased the property, the lease term was for one year with automatic annual extensions. Either party could terminate with 60 days written notice prior to the anniversary date. (R. p. 29 Answer to Am. Compl., ¶2.) The lessor, at his sole discretion, could also terminate if the land were sold or "if there be repeated, excessive, deliberate vandalism and destruction of the adjoining property". Id. By the time of purchase, or shortly thereafter, the Williamsons were aware of liability risks with the Landing arising from its reputation for criminal activity, including drug dealing, partying, vandalism, chronic litter and as a secluded spot for romantic liaisons. (R. p. 89 lines 2-6; p. 264 lines 6-19; p. 265, lines 5-20; pp. 267, line 22-p. 269, line 16.) The Williamsons became resident owners of the Landing by virtue of living directly across the South Fork Edisto River from the tract. (R. p. 181, lines 9-10.)

The Newman lease required the County to properly maintain the leasehold. It did not require the County to patrol specially for crime or litter at the Landing or to indemnify the Landowners for lawsuits brought against them arising out of the public's free use of the Landing. (R. p. 24 ¶¶ 13,14; p. 29, ¶2; pp. 568-71.) None of the known leases for the Landing has ever required payment of rent by the County for public use of the Landing. (R. p. 23, ¶ 9; p. 29, ¶ 2.)

Upon purchasing the property, the Williamsons were anxious about being sued by members of the public arising from use of the Landing. (R. p. 196, lines 1-5.) At the persistent urging of his friend and attorney, Terry Poole, Mr. Williamson contacted the County in an effort to negotiate a new lease, primarily to permit continued use by the public while protecting himself and his wife from liability arising out of the public access, including the crime problems at the Landing. (R. p. 24, ¶ 15; p. 29, ¶2.) Williamson placed a call to the County Administrator, William Clark, and eventually reached him approximately two weeks later. (R. p. 89, lines 8-21.) Mr. Williamson related various acts of damage to property on the river near the Landing, of boats stolen from the Landing and other criminal incidents resulting, in part, from the lack of sufficient law enforcement patrols by the County, (R. p. 24, ¶ 16; p. 29, ¶2) as well as chronic litter and garbage problems. (R. p. 181, line 23-p. 182, line 4; p. 264, lines 15-19.)

The Landowners sought to negotiate a new lease to require, among other things, indemnification by the County for damages claims made by members of the public arising from use of the Landing by the County, for improved law enforcement and for litter pick-up at the site. (R. p. 24, ¶ 17; p. 29, ¶2.) The Administrator and Mr. Williamson talked about the Williamsons' desire for indemnity from the County, and Mr. Clark promised action; but

the County took none. (R. p. 90, lines 11-14.) Over the July 4, 2005 weekend there were more problems with vandalism and boat theft originating from the Landing. (R. pp. 90-93; p. 178, line 24-p. 179, line 14.)

Almost nine months later, on March 1, 2006, after the Williamson's unsuccessful attempts to get a constructive response from the County, Terry Poole sent written notice by certified mail on behalf of his clients to the County Administrator declaring the lease terminated. (Exh. 2 at R. p. 572-73; R. p. 24, ¶ 18; p. 29, ¶ 2.; p. 93, lines 12-20.) The County received the certified letter but never responded to the written notice of termination.¹ (R. p. 24, ¶ 18; p. 29, ¶ 2; R. p. 94, lines 3-6.)

On June 26, 2006, almost four months after sending the termination letter and fifteen months after they had purchased the land, the Williamsons became concerned about the approaching July 4th holiday and installed a gate blocking public access to their road leading to the Landing. (R. p. 94, line 7-p. 95, line 6; p. 25, ¶ 19; p. 29, ¶ 2.) The crime problems at the Landing have been relieved since then. (R. p. 264, line 24-p. 265, line 1; p. 268, line 1-p. 269, line 16.)

There are seven bridge crossings over the South Fork between Orangeburg and Bamberg counties. (R. p. 431, lines 1-16.) There are a number of public (and private) boat landings located on both sides of the South Fork Edisto in Orangeburg and Bamberg counties. (R. p. 615.) Although the Williamsons' gate precluded access to Ness Landing, the public still had excellent access to this part of the river via Claude's Landing, a public

¹ Although receipt of this letter was admitted by the County in its Answer and at trial, the County Attorney publicly denied for months that the County had ever "received written notice from anyone" and argued that "from a legal standpoint we still have a lease." (*See Times and Democrat*, December 12, 2006, (Plfs' Exh. 7 at R. pp 585-86) and March 24, 2007 (Plfs' Exh. 18, R. at pp. 625-26.)) The County Administrator testified at trial that the letter had been misplaced by his office. (R. p. 256, line 15-p. 258, line 12.)

landing owned by the Department of Natural Resources, and which is situated close to Ness Landing, albeit on the Bamberg County side of the South Fork Edisto. (R. p. 81, lines 2-17.) Claude's Landing is a 3-minute, 2.5-mile car drive from Ness Landing and approximately 2.7 water miles distant. (R. p. 84, lines 13-16)

Condemnation Decision. During the second week of July 2006, after the Landowners closed Ness Landing in anticipation of the July 4th holiday, County Councilman Heyward Livingston called Mr. Williamson to arrange a meeting at the Landing to discuss the situation. (R. p. 95, lines 9-20.) At that or a subsequent meeting the councilman informed Mr. Williamson that if something could not be worked out through negotiations to reopen the landing, Council "would do what we've got to do" – meaning take the landing using its power of condemnation. (R. p. 25, ¶ 20; p. 29, ¶2; R. p. 274, line 19-p. 275, line 18.) At the time of the meetings, Councilman Livingston thought the County could meet the Williamsons' request to be indemnified against liability from use of the Landing. (R. p. 272, line 25-p. 273, line 7.) At one of the meetings, Mr. Williamson drove Councilman Livingston and Councilman Wimberly to view Claude's Landing on the Bamberg side of the river. Councilman Livingston had not previously seen Claude's Landing. (R. p. 280, line 24-p. 281, line 8.)

With the issue remaining unresolved, on September 5, 2006, Council voted unanimously in regular session on a motion by Councilman Livingston "for the County Administrator and the attorney to do whatever is necessary to keep the landing [Ness] open." (Exh. 3 at R. pp. 576-77; R. p. 117, lines 10-24.) The minutes of another meeting of Council quote Mr. Livingston as saying "I feel like we ought to go kick the gate open", a

comment subsequently published in the Orangeburg *T&D*. (R. p. 276, line 25-p. 277, line 12.)

On September 14, 2006, the *T&D* published an article quoting the County Administrator regarding a yet-to-be-drafted agreement with Mr. Williamson that addressed the Williamsons' concerns regarding crime, litter and liability. (Plfs' Exh. 4 at R. pp. 623-24.) On October 13, 2006, the County Administrator wrote Mr. Williamson stating that the County was prepared to address his concerns, including the issues of litter, law enforcement and liability indemnity. (Pls.'s Exh. 5 at R. pp. 578-79.) The County Attorney was blind copied with the letter. (R. p. 218, lines 7-15.)

The following month, on November 21, 2006, Council received a report from the County Administrator regarding the status of negotiations with the Landowners over reopening the Landing. Because of the passing of a November 15 negotiating deadline, the Administrator recommended "to Council to proceed with the conditions laid out in the letter to the property owner to initiate condemnation activity to reopen Ness Landing to the public." Council unanimously passed a motion made by Councilman Livingston "to proceed with legal activity to reopen Ness Landing to the public." (Plfs' Exh. 6 at R. pp. 583-84; R. p. 119, line 1-p. 120, line 1), thereby committing the County to the taking of the Landing. Livingston acted on his personal belief that the long history of public access to the Landing, of itself, provided the necessary justification for the County's decision to condemn. (R. p. 277, line 9-p. 278, line 4.) Secondly, he believed that the County needed to own and control its own boat landings on the South Fork Edisto. (R. p. 279, lines 6-13; p. 281 line 19-p. 282, line 17; p. 286, lines 4-14; p. 288, line 20-p. 289, line 11.) When the Councilman made and voted on his two motions to reopen Ness Landing, he believed that

the Landing needed to be reopened “whether by negotiation or legal action.” (R. p. 281, lines 20-24.) He considered it his duty to his constituents to get the Landing back open. (R. p. 282, lines 18-21.)

The minutes of Council record as well that the “County Attorney indicated the condemnation statutes recognize that you may end up working out a voluntary agreement and is part of the process.” The term “legal activity” referred to in the minutes is condemnation. (R. p. 236, lines 2-9.)

Once the September and November votes were taken and Council voted to reopen Ness Landing, the County Administrator’s duty was to implement and effect Council’s will as declared by its votes. (R. p. 215, line 23-p. 216, line 1; p. 297, line 19-p. 298, line 3; p. 557, lines 11-19.) The Administrator is authorized to speak for the County, as is the County Attorney, with whom he worked in concert to accomplish the goal of Council. (R. p. 129, lines 4-13; p. 130, lines 6-9; p. 297, line 19-p. 298, line 3.)

On December 12, 2006, the *T&D* published another article on the Ness Landing dispute in which the County Attorney was quoted extensively, and in which she explained that the County was preparing to proceed with condemnation of the Landing. (See R. pp. 585-86.) The County Attorney’s quoted remarks in the December article contradicted the County Administrator’s previous written offer to the Landowners, of October 13, 2006, regarding the issues of indemnity and increased law enforcement. Thus, the statements constituted a public reversal of the County’s position from that recently being negotiated by the County Administrator with the Williamsons. (R. p. 124, lines 9-17.) The article of December 12, 2006 also reported Councilman Heyward Livingston’s remark about knocking

down the gate to Ness Landing, a remark apparently taken from the minutes of a Council meeting earlier in the fall. (R. p. 271, line 25-p. 277, line 17.)

In December 2006 the County retained outside counsel for the condemnation. On his advice, the County also retained an outside engineer, Berry Still of RPM Engineering, in early January 2007. (R. p. 410, line 23-p. 411, line 13.) The County's retention letter to Mr. Still referenced this project for his client as the "J. B. Ness Boat Landing Project". (R. p. 596; R. p. 466, lines 2-11.) On December 20, 2006, the County's outside condemnation counsel e-mailed to Mr. Still a list of the relevant criteria for consideration in working up the consulting engineer's proposal for the County in response to a request for bids. (R. p. 589.)

In further pursuit of the County's commitment to condemn the Landing, on December 15, 2006, the County engaged Absolute Title, LLC of Columbia, SC to conduct a title search for the County on the Williamsons' property. In doing so, the attorney instructed "ALL PERSONNEL TO BE DISCREET IN THEIR INQUIRIES" concerning the property, thus revealing an intention to keep the County's legal efforts from the Landowners. (R. p. 587.) No one from the County or Absolute Title informed the Landowners. (R. p. 126, line 25-p. 127, line 10.) No evidence was introduced at trial to show that the County requested title searches on any other property.

Also on December 20, 2006 the County Administrator mailed a letter regarding "J.B. Ness Boat Landing Project" to "anyone [the County] anticipated might have had an interest in this activity", including fourteen federal and state agencies. The County Attorney prepared this letter for the signature of the County Administrator. (R. p. 225, line 10-p. 226, line 5.) The letter entered into evidence was directed to the State Conservation Engineer of the USDA Natural Resources Conservation Service. (R. pp. 591-95.) The list on the letter of

people who received copies included “the individuals who were most directly involved in the project.” (R. p. 226, lines 14-20.) The Landowners, however, were not addressees, were not copied, nor did the County otherwise make them aware of this letter affecting their property. (R. pp. 133-35.) In obvious reference to Ness Landing, the letter from the County stated, in part:

“ . . . [T]his project involves the County condemning a fee simple interest in a property which has served under lease to Orangeburg County for the last thirty (30) years as a public boat landing. The acquisition is for improvement of the boat landing and to ensure that the landing is, in the future, as open and available to the general public as it has been for so many years.”

On March 24, 2007, the *T&D* ran another story on the dispute which again reported public remarks by the County Attorney regarding the law and the nature of condemnation. (R. pp. 625-26.) She is also quoted reiterating her previous erroneous denial that the County “received any notice to cancel the lease.”

For the period up to and including the Council votes on condemnation in September and November 2006, there is no evidence that Council considered the actual need for an additional boat ramp owned by the County in order to afford its citizens reasonable access to the river. At the time of the votes in the fall of 2006 to reopen the Landing, Council had no information from any consultant, engineer, expert or other source based on a study of what to do about the landing issue or whether adequate and convenient access already existed. (R. p. 248, lines 14-23; p. 282, line 22-p. 284, line 1.) Council did not discuss reasons for voting to reopen Ness Landing other than the history of a public landing in the vicinity of Binnicker Bridge. (R. p. 289, lines 12-16.) Other than anecdotal demands of local fishermen, at the time of its two votes to reopen Ness Landing through legal action, Council did not have the benefit of any data or statistics about the frequency or type of use of Ness

Landing or of any other landing in the area. (R. p. 284, lines 2-8.) It had no analysis of the cost of purchasing, or improving Ness Landing. (R. p. 198, lines 2-7.) It had no advice or information about the environmental effects of reopening Ness Landing. (R. p. 284, line 2-p. 285, line 10.) It had not considered long-range or comprehensive planning for the South Fork Edisto. (R. p. 247, lines 15-22.) It had not studied the availability of alternative sites for an additional landing. Most importantly, at the time of its votes to pursue condemnation, Council had not investigated or given any consideration to the suitability of nearby Claude's Landing as a close, free and public alternative to the taking of Ness Landing.

Boat Landing Assessment Committee. After the documented actions to obtain Ness Landing for the County by the force of law had been taken since September 2006, Council held planning sessions on January 26 and February 6, 2007, whereupon it decided that acquisition of additional landings on both the North and South Fork Edisto within the boundaries of Orangeburg County would be a "community resource goal" for 2007/2008. (R. p. 547, lines 1-5; p. 554, lines 5-10.)²

Berry Still commenced with a process involving his engineering input and public comment to determine a preferred site for an additional landing on the Orangeburg side of the South Fork Edisto. Mr. Still's process assembled a committee called the Boat Landing Assessment Committee ("BLAC" or "Committee"). Importantly, Mr. Still and BLAC were never charged by the County with studying the actual need for another landing – only in finding the preferred location. (R. p. 468, lines 11-21; p. 471, lines 10-16.) Mr. Still "shepherded them through the process", which the Committee "did not understand". (R. p.

² While the County wasted no time in pushing the condemnation of Ness Landing on the South Fork Edisto, by the time of trial – 22 months later – no action had been taken on the County's stated goal of acquiring a landing on the North Fork. (R. pp. 555-557.)

430, lines 4-13.) Its first meeting was on January 29, 2007. (R. p. 555, lines 3-10.) The BLAC members were cognizant of Council's formal votes in the fall of 2006 to "take all necessary action to reopen the boat landing [Ness], including condemnation" (R. pp. 602-03; R. p. 376, line 20-p. 377, line 14.) The BLAC committee did not question the approach of Mr. Still, the engineer whom the County had hired to lead the process. (R. p. 400, lines 13-24.) The County Attorney sat in on the meetings and was very involved with the process. (R. p. 424, lines 5-15.) Berry Still "kept [outside counsel] informed what we were doing". (R. p. 465, lines 12-17.)

The County attempted but was unable to recruit Committee participants for BLAC from DOT, DNR and environmental groups. (R. p. 413, line 11- p. 414, line 13; R. p. 420, lines 20-25.) Because several people declined to serve, the committee was manned by three county employees (Deputy Administrator for Community Development, Deputy Administrator for Public Services, and County Engineer), all of whom were appointed by and answered to the County Administrator. (R. p. 397, lines 2-4; p. 498, line 22-p. 500, line 2; p. 550, line 25-p. 551, line 7.) BLAC also had a fourth "citizen member," Joe Sutcliffe. Mr. Sutcliffe turned out not to be an actual resident of Orangeburg County, but was known to be an outspoken activist for reopening Ness Landing. (R. p. 367, line 23-p. 368, line 3; p. 369, line 15-p. 370, line 7; p. 397, lines 5-10; p. 499, lines 13-21; p. 558, lines 12-20.) Mr. Sutcliffe had been quoted in *T&D* articles and had appeared at Council meetings as a member of the public favoring reopening of Ness Landing. (R. p. 558, lines 12-20) (Pls.'s Exhs. 4 and 7 found at R. pp. 623-24 and 585-86.)

BLAC utilized a public survey and a public meeting in gathering its site selection information. (R. p. 505, lines 23-24) The expert, Berry Still, did not draft the survey or

preside over where the surveys were mailed. (R. p. 472, lines 12-15; p. 478, lines 9-13; p. 484, lines 1-9.) BLAC purported to be solicitous of the population centers of the County, including the City of Orangeburg, in making its site selection (R. p. 475, lines 11-15; p. 476, lines 9-15). It neglected, however, to send any surveys to the City. (R. p. 477 line 16-p. 478, line 8.) Orangeburg's population is many times larger than those of Cope and Norway, which did receive surveys. Those towns have populations of 105 and 389, respectively, while the City of Orangeburg has 12,765 residents. Norway and Cope have existing public landings closer than Ness Landing (Claude's and Bobcat, respectively), which are accessible by major secondary highways. (R. p. 615.) The survey did not contain any questions intended to evaluate the actual and practical need for another landing on the Orangeburg side of the river or consider the availability and use of public landings on the Bamberg side. (R. p. 484, lines 1-16; p. 485, line 17-p. 486, line 1.) It did, however, ask whether accessibility to a conveniently located public landing was a factor to those who did not boat, which received so few responses, that Berry Still disregarded them. (R. p. 448, line 25-p. 449, line 7.) Berry Still admitted that it would have been sensible and fair to include questions in the survey inquiring about the citizens' use of the Bamberg County landings. (R. p. 485, line 17-p. 486, line 1.) The "study corridor" selected by BLAC, in order to reduce the scope of their study area from a 40 to a 10-mile section of the river, has three Bamberg landings available to the public – Brabham's on Cannon's Bridge Road, Bobcat at Highway 301/601 and Claude's Landing, situated three minutes driving distance from Ness Landing. (R. p. 482, lines 10-22.) The Public Hearing Booklet handed out by BLAC to the citizens in attendance at the public meeting telegraphed BLAC's intended result in referring

to the closing of Ness Landing as the loss of a "vital amenity". (R. p. 514, line 6-p. 516, line

1.) Thus, the bias of the BLAC process was apparent from the start.

The Boat Landing Assessment Committee chose Ness Landing as the preferred site for acquisition more than three months after Council's second unequivocal vote to take Ness Landing. Confirming the predictability of this result, the *T&D* reported in an article on March 24, 2007:

"The condemnation is not a surprise.

Council agreed in November 2006 to proceed with condemnation proceedings. Council voted then to pursue condemnation not of the entire 238-acre tract, but of the portion that had been used under the right-of-way and boat ramp lease agreement signed Sept. 8, 1975, by the Georgia-Pacific Corp. and the Orangeburg County Commission, forerunner to County Council."

(R. pp. 625-626.)

STANDARD OF REVIEW

The standard of review in this equitable action is de novo. This action challenges Orangeburg County's right to condemn as provided for in S.C. Code Ann. § 28-2-470 of the Eminent Domain Statute.

This code section provides that a condemnee's action challenging the condemnor's right to condemn must be brought in a separate proceeding from the condemnation action. Under prior caselaw, such a proceeding was in equity in the court of common pleas. Seabrook v. Carolina Power & Light Co., 159 S.C. 1, 156 S.E. 1 (1930). Since this is an equitable action for an injunction this court may review the findings of fact of the master based upon our own view of the preponderance of the evidence. Taylor v. Hoppin' Johns Inc., 304 S.C. 471, 405 S.E.2d 410 (Ct. App. 1991).

Southern Dev'l Land and Golf Co., Ltd. v. S.C. Pub. Serv. Auth., 305 S.C. 507, 509, 409

S.E.2d 428 (Ct. App. 1993), aff'd in part, rev'd in part 311 S.C. 29 (1993).

ARGUMENT

I. The Evidence is Susceptible of Only One Conclusion – the Condemnation of Ness Boat Landing is Unnecessary.

South Carolina requires by statute that a taking be *necessary* for its proposed public use. S.C. Code §28-2-60 provides, in pertinent part: “A condemnor may commence an action under this chapter for the acquisition of an interest in any real property *necessary* for any public purpose” (Emphasis added.) The rule that property being taken by eminent domain must be ‘necessary’ for the proposed purpose is universally accepted. 71 Am. Jur. POF 3d 97. Thus, distinct from and in addition to the element of public purpose, the element of “necessity” is also a prerequisite to a lawful condemnation. South Carolina courts have long recognized the element of necessity to be a prerequisite for a lawful condemnation. Riley v. Charleston Union Station Co., 71 S.C. 457, 51 S.E. 485 (1905). In Riley, the South Carolina Supreme Court explained that, while “weight should be given” to the condemnor’s determination that a particular taking is necessary, “[t]his right . . . is subordinate to the right of the courts to prevent an abuse of the power by restricting its exercise for the reasonable necessities of the case”

[T]he grantee of the power to condemn lands is not the sole judge whether any particular parcel of land is required . . . and that the final determination of this question rests with the courts.

.

The grantee of the power to condemn must not abuse the discretion confided by the Legislature, and spoliage private property by taking, for pretended public use, more than a reasonable necessity requires [I]f there be no bad faith or abuse of discretion on the part of the [condemnor] . . . , his discretion will not be interfered with.” [Citations omitted.]

71 S.C. 457; 51 S.E.2d at ____.

It is fundamental that the existence of a genuine necessity is the foundation of the right to take property by eminent domain, and ascertainment of such necessity must precede or accompany the taking. *See, e.g. Cameron v. City of Chester*, 253 S.C. 574, 172 S.E.2d 306 (1970) (landowner’s challenge to City’s condemnation of property to build off-street

parking facility rejected where City conducted reliable studies determining need to alleviate congestion and hazards created from traffic in business area). *See also* Am. Jur. 2d, Eminent Domain §27. However, while necessity is a condition precedent to a valid exercise of the power of eminent domain, absolute necessity need not be proven. Reasonable necessity under the circumstances is sufficient. Timmons v. S.C. Tricentennial Comm., 254 S.C. 378, 175 S.E.2d 805 (1970) (citing Riley with approval).

Our courts sit in review of a condemnor's determination of the necessity of the condemnation, which determination will be upheld in the absence of "bad faith or abuse of discretion". Atkinson v. Carolina Power & Light Co., 239 S.C. 150, 159, 121 S.E.2d 743, 747 (1961). "[A] condemning authority must exercise its discretion by a rational decision making process which is supported by facts." Southern Development Land and Golf Co., Ltd. v. S.C. Public Serv. Auth., 305 S.C. 507, 409 S.E.2d at 434 (agreeing with Court of Appeals' analysis of the issue of abuse of discretion).

The trial court here committed clear error when it found that Orangeburg County studied the question of the necessity of a boat landing and, with that study, determined necessity. (Order at R. p. 14) This conclusion is unsupportable from the record. The County's own expert admitted that the opposite was true, and the evidence is not susceptible of differing interpretations. The trial court's Order wholly ignores Berry Still's testimony that he did not undertake to study the need for a landing nor was he asked to do so:

Q. But let me make sure you and I are clear on the record here.
You didn't undertake to study the necessity of condemning or taking another landing on the South Fork of the Edisto in Orangeburg County. You were hired to find the best site for such a landing.

A. Correct. . . .

(R. p. 468, lines 11-17.)

Q. . . . You were told and it was a given before you started that Orangeburg County had previously determined there was a need on the South Fork Edisto and they were going to acquire a new landing on the South Fork Edisto in their county.

A. Yes, sir, I did.

(R. p. 471, lines 10-16.)

This erroneous finding of fact by the trial court was central to the Order's result and the outcome in this case. It completely overlooks Berry Still's admissions. It deliberately ignores the fact that the County's decision to take Ness Landing by legal means occurred months before the BLAC process was commenced.

Orangeburg County Council's votes in September and November 2006 constituted the legislative decision to condemn Ness Landing. (R. p. 247, lines 7-14; R. p. 297, line 19-p. 298, line 3.) There is no suggestion in the minutes of Council meetings or otherwise that these votes were rescinded. Statements by the County to the press after the votes confirmed the County's intent to take the Landing through the condemnation process. (R. pp. 585-86.)

Prior to its decision to condemn, the County gathered precious few, if any, facts. It acted largely in reaction to the Williamsons' erection of their gate. With Councilman Livingston at the forefront, the County assumed the necessity for reopening Ness Landing on the basis of (i) the historical public use of the Landing and (ii) the assumption that Orangeburg County "needs" its own landings on its own side of the river, without regard to how readily accessible the river is on the Bamberg side through other public landings. (R. pp. 276-86; p. 288, line 13-p. 289, line 21.) That is to say, Council never undertook to gather and study facts concerning the actual practical need for Ness Landing considering the close proximity of another public landing and the functional redundancy of Ness Landing. (R. p. 285, lines 11-23.) It is plainly obvious from the evidence that Council simply *wanted*

Ness Landing back and felt no obligation to objectively consider the need for the landing. It is equally apparent from the evidence at trial that Council was irritated with the Williamsons for exercising their private property rights and reacted accordingly. As Councilman Livingston so plainly stated: "I feel like we ought to go kick the gate open." (R. p. 276, line 25-p. 277, line 12.)

The County's condemnation of Ness Landing is not supportable on the basis that a landing had been historically available near Binnicker Bridge. Public use, however long, is not synonymous with, or determinative of, necessity. The law is clear that public use and necessity are distinct prerequisites to a lawful condemnation of private property. Moreover, this historical use of Ness Landing by the public was always by permission of private landowners. (R. p. 286, lines 14-25.) There are compelling policy and equity reasons for not turning such civic minded arrangements by private owners against them by using their generosity as the very reason for depriving them of their property through force of law.

The County's other rationale, expressed by Councilman Livingston, is that it "needs" to possess a landing of its own on its own side of the river. This is nothing more than a parochial desire. Why does Orangeburg County "need" to own another landing within its borders when Orangeburg's citizens have free and convenient use of other nearby, public landing sites easily accessed in an adjoining county on the same portion of river? The County never attempted to respond to this question. Surely, counties are not granted the power of condemnation in order to duplicate services to the general public of the state by competing with one another for accumulation of landings. The evidence demonstrates that for the County to take Ness Landing would duplicate public services -- a wasteful

redundancy. Such a use of the condemnation power is dismissive of private property rights and an abuse of its discretion.

A. Existing facilities

The close proximity of Claude's Landing, a well-maintained, state-owned public landing on the Bamberg side of the river, is the key proof of the lack of necessity for the taking of Ness Landing. There was no evidence at trial of any inadequacy of Claude's Landing to reasonably handle any demands that would otherwise be shared, redundantly, with Ness Landing in the event it were taken from the Landowners. Claude's Landing is larger than Ness Landing with a double ramp and paved access and parking. (R. p. 81, lines 2-7.) It is maintained by SCDNR and is an easy three-minute drive from Ness Landing. (R. p. 84, lines 13-25.) It is also an easy river trip from Ness. Claude's does not suffer from the natural seclusion of Ness Landing that has caused its long history with crime and litter. (R. p. 90, line 17-p. 92, line 15.) Claude's is indisputably within very convenient driving and river distance to anyone who would also potentially use Ness Landing, whether he be a citizen of Orangeburg, Bamberg or any other county. Although the County's BLAC process, after voting to take Ness Landing, mailed surveys to a targeted population in Orangeburg County, it did not include any questions as to use by that population of landings in Bamberg County. (R. p. 485, line 17-p. 486, line 11.)

Dennis Hardwick, an accomplished canoeist, was qualified as an expert in the case for the County. The trial court's Order relies on Hardwick's testimony to bolster the claim of necessity. (Order, R. p. 15.) It is notable that any opinion Hardwick may have had about necessity was solicited at trial only, and not by the County or anyone else contemporaneous with the decision to take Ness Landing by force of condemnation. (R. p. 529, line 16-p. 530,

line 21.) Thus, his testimony is no evidence that the County properly determined a need for the Landing at the time of its condemnation decision as required by law. But even were Hardwick's testimony relevant, it exposes a crucial flaw in the County's logic. Under cross-examination he readily acknowledged the obvious practical fact that, in paddling the South Fork Edisto, he would utilize public landings on both sides of the river for access, without regard to which county they were situated in. (R. p. 534, line 11- p. 535, line 6.) This point seems too obvious to dispute, but this testimony runs directly contrary to the County's position that it "needs" its own landing on its own side of the South Fork Edisto River to serve its citizens. This position assumes that the County's citizens have some entitlement to a boat ramp on their side of a modest river without having to be bothered with crossing a bridge to Bamberg County. Under the particular facts of this case, where several counties share a common waterway and are well-connected by bridges, the County's claim to need its own landing is unsupported by the facts and is more accurately characterized as the County's *wanting* to have its own landing and, in particular, Ness Landing.

B. The Trial Court Erred in Relying on the BLAC Committee Whose Work Post-Dated the Decision to Take Ness Landing and Which Did Not Evaluate the Issue of Necessity.

Only after Council's decision to condemn had been made, acted upon and publicized in late 2006, and only after the Landowners objected to the forced taking of their property did the County make its belated attempt to formalize a deliberative process to legitimize the condemnation through the Boat Landing Assessment Committee ("BLAC"). The County Attorney and the County's retained outside condemnation counsel presided over an effort to justify, retroactively, Council's decision.

The evidence is clear, and it is a vital point in this case, that the Committee was charged specifically with locating a preferred location for another landing in Orangeburg County – not with evaluating the necessity for such a landing. This fact, *ipso facto*, makes the conclusions of the BLAC process irrelevant to the central issue in this case. Composed of three county employees and Joe Sutcliffe,³ an activist for reopening Ness Landing, who was not a citizen of Orangeburg County, BLAC did not represent a cross-section of the community or a “well-rounded kind of expertise” as Berry Still, its expert consultant, had planned. (R. p. 498, line 12-p. 499, line 3.) BLAC was not charged with and did not undertake to study the pivotal issue of this legal action – i.e., the necessity for another boat ramp within the boundaries of Orangeburg County on the South Fork Edisto. Berry Still was not retained by the County to study the *actual need* for another boat landing on the South Fork Edisto within Orangeburg County, or to consider the practical availability of convenient public landings on the other side of the same river in the adjoining counties. (R. p. 372, lines 4-12; p. 378, lines 2-13;⁴ p. 468, lines 11-17.) BLAC did not gather any data or investigate how many people actually used Ness Landing. (R. p. 470, lines 1-5.) The need for another landing on the Orangeburg County side of the South Fork Edisto was assumed by Berry Still going into his work, because the County had *previously decided* that another such landing was to be procured. (R. p. 471, lines 10-16.)

During the BLAC process no one from the County informed Berry Still that Council had previously authorized and directed taking of Ness Landing. (R. p. 501, line 7-p. 503,

³ Joe Sutcliffe’s specific interest in reopening Ness Landing was documented in his attendance at Orangeburg County Council meetings where the closing of the Landing was discussed, and this bias was known to Berry Still. (R. p. 499, lines 4-23.)

⁴ The trial transcript reads “beneath or the landing” (R. p. 378, line 9). This is a transcription error and it should read “the need for the landing.”

line 17.) No one from the County informed Mr. Still that the County Administrator and County Attorney had previously written to fourteen federal and state agencies in December informing them of the County's intention to condemn Ness Landing. (R. p. 500, lines 8-19.) Berry Still was made aware, however, that the County desired the Ness Landing site. (R. p. 503, line 18-p. 504, line 6.) Thus, Mr. Still was provided the fiction that his process was not prejudiced. In reality, Mr. Still was a cooperative expert who was manipulated by the lawyers who retained him.

In any event, because neither BLAC nor anyone else ever engaged in a deliberative process to evaluate the County's need for another landing, the BLAC selection of a preferred location on the Orangeburg side of the river is wholly irrelevant.

C. Conclusion as to Necessity

The decision to condemn Ness Landing was made on the County's presumption that Orangeburg's citizens need landings on their own side of the South Fork Edisto. This presumption was made without regard to the convenient availability of adequate public landings on the Bamberg County side. This complete lack of rational process cannot justify the exercise of the tremendous power of eminent domain. Prior to the decision to condemn the Landing made in the fall of 2006, there was no rational deliberation or reasonable exercise of judgment based on criteria established in this state's law as set forth in Southern Development. No one examined the immediate proximity, convenience, availability and adequacy of Claude's Landing or any other public landing within easy reach of the citizens of Orangeburg County. The County's outside engineer assumed the need for Ness Landing on the same basis as did Councilman Livingston – the historical use of Ness Landing – thereby equating historical public use with necessity. (R. p. 469, lines 19-25.) The County

had decided in the fall of 2006 that it was going to take a landing that it had come to regard as its own, Ness Landing. It made this decision oblivious to the facts that another suitable public landing was situated at a conveniently close location and that there was, in fact, no practical need for condemning another landing at such a location. It speaks volumes about the County's state of mind that Councilman Livingston would have voted as he did to reopen Ness Landing by force "even if Claude's Landing had been directly across from Ness Landing". (R. p. 289, lines 17-21.) This testimony reveals an absolute ignorance of the responsibilities inherent in the use of the power of eminent domain. The entire episode reeks of disdain for the Williamsons' property rights.

Because Council's decision utilized no determining standards or principles, it was arbitrary by definition. "Arbitrary" means based alone upon one's will, and not upon any course of reasoning and exercise of judgment; bound by no law; done capriciously or at pleasure, without adequate determining principle, nonrational; not governed by any fixed rules or standard." Turbeville v. Morris, 203 S.C. 287, 315, 26 S.E.2d 821 (1943). Accord Southern Development, 305 S.C. at 515, 409 S.E.2d at 433.

II. The Trial Court's Order Reversed His Evidence Ruling Made at Trial and Erred in its Finding That the Newspaper Articles Offered by the Williamsons Were Inadmissible Hearsay.

A. The newspaper articles are self-authenticating, are admissions by a party, were not offered for the truth of the matter asserted and are admissible.

The Order, with little explication, rules the newspaper articles to be inadmissible hearsay and intimates that they were offered for the truth of the matter asserted. The Order incorrectly states "this is an issue of first impression in South Carolina" and offers a summary of law from other jurisdictions as to the inadmissibility of certain newspaper

articles in other litigation without identifying the matter being asserted and how it relates to the issue at trial. (Order, R. pp. 8-10.) The Order includes no analysis of the assertions in the newspaper articles and the issues in this litigation to establish that they were being offered for the truth of the matter asserted.

The County, in arguing to exclude the evidence, focused on the fact that the newspapers contained hearsay. It objected that the newspapers were “prejudicial and irrelevant” (R. p. 66, lines 3-7). The County never explained why the quotes were irrelevant or unfairly prejudicial, claiming only that it was trying to narrow the issues, shorten the trial and make a proper record. (R. p. 65, lines 19-24.)

1. The newspaper articles are self-authenticating and the trial court admitted them into evidence at trial.

It is unclear from the Order whether or not the trial court ruled that the proffered articles need to be authenticated. Initially the Order states: “Plaintiffs attempted to introduce unauthenticated newspaper articles to establish the truth of what was published and reported therein.” (Order, R. p. 8.) On the next page, the Order relies on a Colorado Court of Appeals decision in which that court “held that, although newspaper articles are self-authenticating, that rule alone does not render all newspaper articles admissible.” (Order, R. p. 9.) Finally, in its conclusion as to the inadmissibility of the articles, the trial court opines: “The mere fact that a document is authentic does not mean that it is also competent evidence of the facts contained in the document. In this case, the news articles are inadmissible, not because they are not authentic” (Order, R. p. 10.) Although it is unclear what the trial court’s position is as to authenticity, it is clear under Rule 902(6), S.C.R.Ev., that newspaper articles are self-authenticating documents, and “[e]xtrinsic

evidence of authenticity as a condition precedent to admissibility is not required” Rule 902(6), S.C.R.Ev. Authentication is no bar to the admissibility of the proffered articles.

Further, the trial court admitted the articles into evidence at trial. The County filed a motion in limine objecting to the admission of the news articles into evidence. The trial court heard argument and equivocated at first. (R. p. 74, lines 1-18.) However, in response to repeated requests for clarification from counsel for the County, the trial court stated unambiguously that the articles were admitted into evidence.

The Court: Again, like I said before, the evidence is in and you have objected to it. And I noted your objection, but I have allowed it to be placed in evidence over your objection.

Mr. de Holczer: All right, sir.

The Court: Does that make sense?

Mr. de Holczer: Yes, sir. I am glad to have that on the record.

The Court: I don’t want to oversimplify it, but I want to make it clear from the very beginning that I would allow your objection to continue, but I was allowing that evidence to come in. If that makes sense.

(R. p. 346, lines 12-24.)

2. The statements in the newspaper articles are admissions by a party-opponent.

The statements made by county officials and elected representatives in the *T&D* articles are relevant to and probative of the County’s abuse of discretion and bad faith in pursuing this condemnation. They are defined as non-hearsay by Evidence Rule 801(d)(2):

(2) *Admission by Party-Opponent.* The statement is offered against a party is (A) the party’s own statement in either an individual or a representative capacity, or (B) a statement of which the party has manifested an adoption or belief in its truth, or (C) a statement by a person authorized by the party to make a statement concerning the subject, or (D) a statement by the party’s agent or servant concerning a matter within the scope of the agency or the

employment, made during the existence of the relationship, or (E) a statement by a coconspirator of a party during the course and in furtherance of the conspiracy.

Included in these news articles are statements by: William Clark, Orangeburg County Administrator; D'Anne Haydel, Orangeburg County Attorney; and Heyward Livingston, Orangeburg County Councilman. As pointed out previously, the Administrator is authorized to speak for the County, as is the County Attorney, with whom he worked in concert to accomplish the goal of Council. (R. p. 129, lines 4-13; p. 130, lines 6-9; p. 297, line 19-p. 298, line 3.) The statements by Mr. Clark and Ms. Haydel about this dispute were made concerning matters within their scope of employment under Evidence Rule 801(d)(2)(D). Councilman Heyward Livingston is an elected representative of Orangeburg County, who met three times with Mr. Williamson, was the most involved member of County Council regarding Ness Landing, (R. p. 96, line 1 – p. 99, line 19) and is a council member with authority to speak about the County's business relating to Ness Landing. His statements fall within sub-sections A, B, C and D of the rule.

On December 12, 2006, the *T&D* published an article on the Landing dispute in which the County Attorney was quoted extensively. Explicit in her remarks is the fact that the County had made its decision to take Ness Landing, a matter that is indisputable after the two Council votes.

"Orangeburg County is continuing its efforts to restore public access to Ness Boat Landing on the Edisto River, [the County Attorney] says.

"Since lease negotiations with the property owner broke down, the county is preparing to exercise its power of eminent domain, also known as condemnation, to acquire the property, she says."

3. South Carolina has considered and found newspaper articles admissible if not offered for the truth of the matter asserted.

The South Carolina Court of Appeals has considered and ruled newspaper articles admissible when offered as evidence not for the truth of the statements contained therein. State v. Blurton, 342 S.C. 500, 537 S.E.2d 291 (Ct. App. 2000), rev'd on other grounds, 352 S.C. 203, 573 S.E.2d 802 (2002). In Blurton, the trial court found articles, which unwittingly contained fictional details of the life of a man named Mayfield, to be inadmissible hearsay. Blurton was arrested for armed robbery and his defense of lack of criminal intent arose from his belief that he was involved in a CIA sting operation with a man named Mayfield and that the robbery was staged as part of that operation. Two newspaper articles were proffered, one of which purported to be a biographical history of Mayfield and the second consisting of a follow-up story after the robbery which retracted the first article. Finding that the articles were offered to show Mayfield's ability to deceive others and not for the truth of the statements contained therein, the court of appeals reversed the trial court and ruled the articles had been improperly excluded. 342 S.C. at 511. Although the state petitioned for certiorari asking for review of court of appeals' evidentiary ruling, the supreme court declined, while granting certiorari for review of the jury charge. State v. Blurton, 352 S.C. 203, 205, 573 S.E.2d 802, 803 (2002).

In our trial, several statements were offered to show that the County was publishing misleading and untrue statements to the press. (R. p. 144, lines 11-25; p. 150, line 16- p. 151, line 18; p. 167, lines 12-25; p. 186, line 15-p. 189, line 17.) Mr. Williamson testified that the newspaper published articles "trying to vilify my wife and myself, putting statements in there that are not true" (R. p. 144, lines 11-14), including comments by the County Attorney "denying that [the Williamsons] had a lawful closing of the lease," when the Williamsons had notified the County as required under the lease. (R. p. 151, lines 1-18.)

"It's been a concerted effort to make my wife and I look like we were the bad guys in this whole proceeding. We have worked and tried to reach an accord," said Mr. Williamson. (R. p. 167, lines 13-16.) Thus, the articles were offered to show bad faith on the part of the County.

4. The trial court erred in finding the newspaper articles were offered for the truth of the matter asserted.

The burden in this action is on the Plaintiff landowners to demonstrate gross abuse of discretion or bad faith on the part of the County. (R. p. 55, lines 14-17.) The articles were offered for this purpose, as counsel for the Williamsons noted. "[First], several of the public statements in the newspaper contradict other actions by the county taking place simultaneously in writing and otherwise relative (sic) to the condemnation attempt. And secondly . . . we believe the totality of the newspaper articles demonstrates a concerted effort by the County of Orangeburg to pressure the Williamsons publicly into going along with their condemnation which [the Williamsons] were resisting." (R. p.56, lines 4-12.)

The *T&D* article of September 14, 2006 quoted the County Administrator who stated that the County had "proposed an agreement that would indemnify [Williamson] from liability", would place the Landing on a litter cleanup rotation list, and would "ask for increased patrols" for law enforcement. (R. p. 623-24,) These quotes from the County Administrator in the press were consistent with Mr. Williamson's previous conversations with him. (R. p. 112, lines 4-21.) Also consistent on the issue of indemnification, the letter of October 13, 2006 from the County to Mr. Williamson stated that "[t]he County is willing to prepare an Agreement for your review that "would release you from any liabilities relating to the use of the boat landing by the general public." (R. pp. 578-79; R. p. 29 at ¶2; R. p. 113, line 23-p. 114. line 2.) Although the County represented to Mr. Williamson and

to the public that it was proposing an agreement to indemnify the Williamsons, it did no such thing. No such agreement, was ever tendered by the County. Instead, Council voted on November 21, 2006 to proceed with legal activity to reopen the landing, thereby raising serious questions as to the good faith of the County's prior public and private offers of indemnification for use of the Landing. Thus, the Williamsons do not contend the statement quoted in the newspaper is true, but rather that the County's actions and words contradicted one another. The Williamsons do not know the truth of the County's intentions for handling the important issue of indemnity; but they do know that the County refused to indemnify them. When the County Attorney, who was quoted in the December 12, 2006 article, challenged the legality of the Williamsons' closing of the Landing, the Williamsons knew the assertion was untrue:

"The boat landing users have a valid complaint, she said, because, 'from a legal standpoint, we still have a lease We've never received written notice from anyone' that the property owner wanted to cancel the lease."

The trial testimony of the County Administrator admitted that he had received the certified letter from Terry Poole terminating the lease to the County Administrator on March 1, 2006. (R. pp. 572-73.) The County Attorney, present throughout the trial, never claimed to have been misquoted in the article. The misstatement of fact quoted was offered as evidence of the County's amazing public campaign to impugn the Williamsons' assertion of their private property rights, a campaign that included remarks made without factual investigation.

The County Attorney's remarks in the December article were also irreconcilable with the County Administrator's previous written offer to the Landowners of October 13, 2006 regarding the issues of indemnity and increased law enforcement:

“Haydel said new accounting rules won’t allow the county to do that [indemnify] to an unlimited degree.” . . . “We can’t direct the sheriff to give anybody special treatment.”

John Williamson recognized these remarks as a public reversal of the prior position of the County as to issues he and the County Administrator had been addressing. (R. p. 124, lines 9-17.) The County Administrator himself acknowledged that the County attorney’s remark as to indemnity contradicted his letter to Mr. Williamson of October 13, 2006. (R. p. 220, lines 1-15.) That letter had stated: “Sheriff’s Office is willing to add the boat landing as a point on their area patrol. The Sheriff’s Office will provide a direct contact for you within the department to receive any complaints or concerns about the boat landing.” (R. pp. 578-79.) The County Attorney’s remark regarding “special treatment” from the Sheriff was not only a reversal of the County’s representations to the Williamsons, and publicly disparaging of the Williamsons’ request for more law enforcement, but also dismissive of the public safety issues existing at the Landing when it had been open under the County’s lease. This admission is relevant to the issue of bad faith, without regard as to the truth of the matters asserted.

The same article of December 12, 2006 further quoted the County Attorney as saying that “the law gives public bodies, such as council, the right to take private property as long as it is for public use” and that “the boat landing serves the public purpose by providing public access to the river, which is a natural resource available to all.” It is simply not true, as a matter of law, that all that is required for condemnation of private property is that it be put to public use. Similarly, it is inaccurate and misleading for an attorney to suggest that, simply because a boat landing being opened to the public would provide the public with access to a natural resource, this fact alone legally justifies a condemnation.

Nowhere in these public pronouncements by the County Attorney on the law of condemnation was there any mention of the element of necessity as a legal prerequisite for the taking of private property. Neither does the County Attorney make any mention the actual public need for another landing at this location. These public statements by the County were intended to denigrate the Williamsons' legal positions and were dismissive of the private property rights of the Williamsons. It also strongly suggests that Orangeburg County did not even understand certain requirements of the law of condemnation when it voted to take the Landing by force of law. In all events, these statements were certainly not offered into evidence to prove the truth of the matters asserted therein.

Finally, from the County Attorney in the same interview with the press was the still-unexplained public assertion questioning the existence of the Leon Newman 2001 lease agreement with the County:

"[The County Attorney] was surprised to learn that a revised contract existed. She said she would like to see a copy of it."

Williamson said it is recorded in the deed book that is on file at the Orangeburg County Courthouse for all to see."

The "Right-Of-Way And Boat Ramp Lease Agreement", which reflects its public filing in Orangeburg County on March 11, 2002, proves that the contract did exist, a legal fact of which the County had, at least, constructive knowledge. (R. pp. 568-71.) Once again, the statements of the County Attorney were not offered to prove the truth of their assertions.

The article of December 12, 2006 also quotes Councilman Livingston as saying, "he thought the county should 'go down and knock the gate down.'" This remark was most likely taken from the minutes of a Council meeting earlier in the fall. (R. p. 276, line 25-p. 277, line 17.) At trial Livingston confirmed that he made this statement (Id.), which was

consistent with several statements from the County Attorney in their public implication that somehow the Williamsons had no right to place the gate on their own property.

A few months later the County Attorney was, yet again, speaking to the press. She was quoted on March 24, 2007 as stating that "the law gives a public body such as council the right to take private property as long as it is for public use." (R. pp. 625-26.) Here again, there is no mention of need as a prerequisite to condemnation. And, for a second time, the County Attorney was quoted as denying that the County "received any notice to cancel the lease", although the County later admitted in its Answer, as well as at trial, receipt of the letter. (R. p. 256, line 20 - p. 258, line 12.) And once more, continuing the public pressure on the Williamsons, she described the condemnation process as "both expensive and time consuming" to the County, while adding that "a voluntary surrender would obviously be much less expensive than the condemnation process." Finally, commenting directly on the merits of the pending condemnation dispute, the County Attorney shared her personal conviction that all the disputed issues with the Williamsons are "100% in our (the County's) favor." The March 24, 2007 article was peppered with such inaccuracies, half-truths and statements intended to discredit the Williamsons. This statement, and those from the other two articles, were offered not for the truth of the matters asserted, but rather to show the several misstatements made by the County regarding the Williamsons' legal position and the law of condemnation. Collectively, these statements amount to a concerted public effort by the County to regain control of Ness Landing by pressuring the Williamsons in the public forum. They reveal little or no governmental regard for the Williamsons' rights or reputation.

B. The persons quoted in the newspaper articles were present in the courtroom at all times and never challenged the content of or accuracy of the reported events.

The County's witnesses never denied or challenge the accuracy of any statements quoted in the news articles. William Clark testified and discussed the articles. (R. p. 218, line 25-p. 225, line 9.) Councilman Livingston also confirmed the comments attributed to him in newspaper. (R. p. 277, lines 4-12.) Ms. Haydel, the County Attorney, was present in the courtroom throughout the trial, but never took the stand to deny the accuracy of her several quoted statements to the press. In short, no evidence was ever offered by the County of any inaccuracies, although it would have been simple for the County to do so. Thus, even were these statements hearsay, they were absolutely trustworthy and should not have been excluded.

Moreover, because of the trial court's ruling that the newspapers were admissible at trial, the Williamsons released from subpoena the reporters who wrote the disputed articles and who were prepared to testify at trial as to the accuracy of the statements quoted. (R. p. 74, line 20-p. 75, line 6.) When the trial court, without explanation, reversed itself in its post-trial Order and declared the newspapers inadmissible, it unfairly prejudiced the rights of the Williamsons, who were prepared to introduce testimony on the articles, but for the trial court's admission of them into evidence.

III. The County Abused Its Discretion in Voting to Take the Landing By Force of Law and Acted in Bad Faith in Attempting to Obtain the Landing.

"[A] court of equity will not interfere with the exercise of the condemnation power unless the condemning authority has acted in bad faith, fraudulently, or with a clear abuse of discretion." Southern Development, 305 S.C. at 515. "[A] condemning authority must exercise its discretion by a rational decision making process which is supported by facts."

Id., 305 S.C. at 517. "A judge abuses his discretion in a ruling when the ruling is controlled by error of law or is without evidentiary support." Id. (citing Thompson v. Hammond, 299 S.C. 116, 382 S.E.2d 900 (1989)).

Mr. Williamson initiated his discussions with the County regarding the Lease, not for the purpose of closing the Landing, but to get the County to address the crime and litter problems and to protect his family from liability claims arising out of the public's use of the Landing. Beginning with his initial contacts with the County, Mr. Williamson was met with a lack of responsiveness. (See supra pp. 2-4.) After Williamson erected the gate, and Councilman Livingston and the County Administrator finally engaged with him, articles about the Landing began to appear in the *T&D*. More than once the County made extensive remarks to the press which misstated material facts of the dispute, publicly contradicted positions that the County had taken in private negotiations, and commented misleadingly on condemnation law in a manner denigrating the legal position of the Williamsons as well as their public standing. In issuing such public statements for the obvious purpose of pressuring the Williamsons, the County acted in bad faith in the handling of the condemnation process. There was absolutely no need for the County to try its case in the press, but when it undertook to do so, it was bound in good faith to be accurate and truthful.

The testimony and exhibits reveal substantial proof of the County's bad faith in wielding its power of condemnation. As has been seen, Council's decision to condemn in the fall of 2006 was made in haste and anger without any deliberative process considering actual utilization of public landings on both sides of the river, costs of adding another landing, long-term development plans, the environmental impact of adding a landing, or safety and social concerns for the users and neighbors of a new landing.

The County Administrator's letters to state and federal agencies on December 20, 2006 regarding the "J.B. Ness Boat Landing Project" were an obvious effort to frustrate or stymie any intentions by the Williamsons to place a conservation easement on their property before the County could acquire it. (R. p. 591-95.) John Williamson had recently mentioned the possibility of such an easement in an article published on December 12, 2006. (R. pp. 585-86.) These letters not only prove that the County's commitment to take the Landing in 2006, but also prove the County's determination to derail any other plans the owners may have had for their own property. The Williamsons were never copied, although the letter was sent "to anyone [the County] anticipated might have had an interest in this activity." (R. p. 225, line 10- p. 226, line 5.) So that it could buy time to paper over its arbitrary condemnation decision with the help of Berry Still, the County had to trample upon the private property rights of the Williamsons in the interim. This is bad faith and clear proof that the County was not dealing in a straightforward fashion with the Williamsons.

Condemnation of the Landing was implied or explicit in every meeting John Williamson had with County representatives, including two Council members and the County Administrator. (R. p. 115, lines 13-21; p. 152, line 14- p. 154, line 5.) The County's inconsistent public and private positions on issues of indemnity, law enforcement and litter patrol were, at best, confusing to the Williamsons. (R. p. 162, line 10- p. 164, line 21.) The County's persistent public denials that it had received any letter terminating the Lease from the Williamsons, when the Williamsons had proof of delivery of such a letter, were confounding to them. Through the two formal votes of Council, a series of conversations with representatives of the County and several public pronouncements by the County to the press, it was made clear to the Williamsons (and to the public readership of the *T&D*), by the

time of the publication of the December 12, 2006 news article, that unless the Landowners negotiated a voluntary sale of Ness Landing to the County, the County would take the property by force of condemnation. (R. p. 166, line 18- p. 169, line 3; p. 189, lines 5-17.) In fact, the December 12, 2006 news article was the first notification to the Williamsons that the County had decided to condemn. (R. p. 125, line 11-22.)

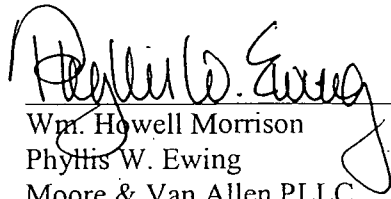
Councilman Livingston's actions, pronouncements and motions demonstrate that reopening the Landing was a personal crusade for him. At one of the meetings between Councilman Livingston and Mr. Williamson after the gate was erected, the Councilman let Mr. Williamson know that Council "would do what we've got to do" – meaning condemnation of the Landing. (R. p. 274, line 19- p. 275, line 18.) As early as September 2006, Councilman Livingston made a motion "to do whatever is necessary to keep the landing open," which passed unanimously. (R. pp. 576-77; p. 117, lines 10-24.) This motion did not arise out of an analysis of need for such a landing, but out of Councilman Livingston's personal belief based on the previous history of access to the Landing for Orangeburg citizens. (R. p. 287, line 8-p. 289, line 16.) Such a poorly-considered approach by a condemning authority to its exercise of the awesome power to take a private citizen's land is not something that a court of equity should allow.

CONCLUSION

This evidence is clear that this condemnation was conceived in anger, without proper legal restraint and with no deliberation of facts essential to the exercise of the power of condemnation. The documented actions and public pronouncements by authorized County personnel in control of the condemnation process were astounding for their incompetence, inaccuracy, and arrogant disdain for fundamental property rights.

This State's judiciary has historically been a vigilant protector of property rights. This is no time to waiver in that vigilance. Indeed, these facts present a clear opportunity to remind those with the power of condemnation that it must be exercised judiciously. These Plaintiffs request reversal of the trial court's Order, judgment that the County abused its discretion and acted in bad faith, and remand to the trial court for consideration of attorneys' fees for the Plaintiffs as sought in their pleadings.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Phyllis W. Ewing", is written over a horizontal line.

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September 16, 2009

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

APPEAL FROM ORANGEBURG COUNTY
MASTER-IN-EQUITY

O. Davie Burgdorf, Master-in-Equity

Case No. 2007-CP-38-1424

John W. Williams, III and Kathryn J. Williamson

Appellants

v.

The County of Orangeburg

Respondent

RESPONDENT'S FINAL BRIEF

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STATEMENT OF ISSUES ON APPEAL

- I. DID THE TRIAL COURT PROPERLY RULE THAT THE APPELLANTS DID NOT PROVE, BY A PREPONDERANCE OF THE EVIDENCE, FRAUD, BAD FAITH OR CLEAR ABUSE OF DISCRETION ON THE PART OF THE RESPONDENT IN DETERMINING NECESSITY?
- II. DID THE TRIAL COURT PROPERLY EXCLUDED THE CONTENTS OF NEWSPAPER ARTICLES EXCEPT AS TO THOSE STATEMENTS WHICH A TRIAL WITNESS CONFIRMED MAKING?
- III. DID THE TRIAL COURT PROPERLY RULE THAT THE APPELLANTS DID NOT PROVE, BY A PREPONDERANCE OF THE EVIDENCE, FRAUD, BAD FAITH OR CLEAR ABUSE OF DISCRETION ON THE PART OF THE RESPONDENT IN CONDEMNING APPELLANTS' PROPERTY?

STANDARD AND SCOPE OF REVIEW

In an action in equity the applicable standard of review is the appellate court's own view of the preponderance of the evidence. Williams v. Wilson, 349 S.C. 336, 563 S.E.2d 320 (2002).

The broad scope of review in equity matters does not require the appellate court to disregard the findings of the trial judge nor does it relieve the appellant of the burden of convincing the appellate court that the trial judge erred. Gibbs v. G.K.H., Inc., 311 S.C. 103, 427 S.E.2d 701 (Ct. App. 1993). The trial judge, who saw and heard the witnesses, is better able to evaluate their credibility. Id.

STATEMENT OF THE CASE

Respondent, County of Orangeburg, served Appellants with its Condemnation Notice and Tender of Payment on September 27, 2007. On October 29, 2007, Appellants filed an action challenging the condemnation. The case proceeded to trial before the Honorable O. Davie Burgdorf, Master-in-Equity for Orangeburg County, on October 21, 2008. Following

the conclusion of the non-jury trial on October 23, 2008, the Master issued a written Order dated and filed January 21, 2009. In his Order, the Master ruled that the condemnation was lawful. Final Order, Williamson v. County of Orangeburg, No. 2007-CP-38-1424 (R. p. 3).

Appellants filed their Notice of Appeal on February 16, 2009, and filed Appellant's Initial Brief on April 17, 2009. Respondent's Brief follows.

STATEMENT OF THE FACTS

Appellants purchased a property in Orangeburg County on the South Fork of the Edisto River in March 2005 (R. p. 78, ll. 2-8). At the time of purchase, there existed on the property a lease to the County for use of an existing public boat ramp and public access to the South Fork of the Edisto River (R. p. 85, l. 23; R. p. 86, l. 13). Pursuant to the terms of the lease agreement, Appellants cancelled the lease by having their attorney send a rescission letter to the County on March 1, 2006 (R. p. 92, ll. 23-25).

County Council member Heyward Livingston met with Appellant John Williamson in July 2006 to discuss reopening the landing but nothing was resolved (R. p. 101, ll. 21-25). He had two further meetings with Mr. Williamson (R. p. 273, l. 16; R. p. 274, l. 12). About six weeks after Mr. Livingston's first meeting, Appellant John Williamson met with County Administrator William Clark and Deputy Administrator Earl Whalen (R. p. 102, l. 16; R. p. 103, l. 11; R. p. 104, ll. 8-14). Again, nothing was resolved. In September of 2006 Respondent, by unanimous resolution, authorized its County Administrator and Attorney, to "do whatever is necessary to keep the landing open" (R. p. 580)(R. p. 116). There ensued further discussions and negotiations between the parties, which negotiations were

unsuccessful in reopening the landing (R. p. 152, l. 19; R. p. 153, l. 7). In November of 2006 Respondent, by unanimous resolution, further authorized its personnel, "to proceed with legal activity to reopen Ness Landing to the public" (R. p. 580)(R. p. 118, l. 15; R. p. 119, l. 22). Negotiations and discussions continued through the summer of 2007. (R. p. 171, l. 15; R. p. 172, l. 22).

By November 2006, Respondent believed that the possibility of a voluntary resolution between the parties was much diminished (R. p. 231, l. 3)(R. p. 233, l. 14). As the negotiations and discussions between the parties continued, Respondent pursued several tracks simultaneously to make a landing on the South Fork of the Edisto available to the public. The various tracks, or alternatives, included 1) obtaining a consensual extension of the lease agreement; 2) purchasing the property; 3) acquiring an alternate site; and, 4) condemnation of a site (R. p. 228, l. 2)(R. p. 229, l. 19). Respondent pursued multiple different approaches to looking to open back up a site of public access (R. p. 229, ll. 13-14).

In January 2007 Respondent County engaged professional engineer Berry Still to provide engineering consulting services to study potential alternative sites for a landing along the South Edisto (R. p. 410, l. 23 - R. p. 411, l. 18). Mr. Still began a study process with a steering committee, the Boat Landing Assessment Committee (or, "BLAC") (R. p. 230, ll. 14-17)(R. p. 412, l. 5 - R. p. 420, l. 10). The study involved a mailed-out survey as well as a public hearing (R. p. 432, l. 17)(R. p. 437, l. 5) (R. p. 437, l. 18)(R. p. 448, l. 1) (R. p. 451, l. 11)(R. p. 453, l. 9). The report identified Appellants' property as the preferred alternative out of, first, eighteen alternative locations, and finally, four alternative locations (R. p. 428, l. 1)(R. p. 464, l. 15).

Orangeburg County Council voted in open session at its February 2007 retreat to make a boat landing on the South Fork of the Edisto River one of its priorities (R. p. 375, l. 15)(R. p. 376, l. 18). According to Mr. Clark, that vote was reached after discussion and deliberation and input from the council members and County staff (R. p. 543, l. 18)(R. p. 546, l. 21). The Boat Landing Assessment Committee completed its work in Spring 2007 and presented its findings to the Orangeburg County Council in a report. Orangeburg County Council voted to accept the report and move forward with the acquisition of the landing on the Appellants' property (R. p. 547, l. 17)(R. p. 549, l. 5) (R. p. 558, l. 24)(R. p. 559, l. 14). On or about September 28, 2007 Respondent served Appellants with its Condemnation Notice and Tender of Payment.

This appeal stems from the condemnation of "4.42 acres of land, more or less, composed of a portion of land located south of S.C. Highway 70" (R. p. 616). Respondent sought to condemn and obtain the property "for public purposes, more particularly for the J.B. Ness Boat Landing Project, a recreational and transportation improvement project near S.C. Route 70 in Orangeburg County and the State of South Carolina" (R. p. 616).

Appellants filed a challenge action challenging the condemnation on several grounds (R. p. 38). Appellants alleged that the condemnation action is "parochial, illogical, arbitrary, wasteful, and an abuse of discretion" (R. p. 27, ¶ 32), "unreasonable, unnecessary, wasteful, arbitrary and capricious" (R. p. 28, ¶ 36) and that Respondent "acted in bad faith and grossly abused its authority and discretion by deciding to take the [Appellants'] land for inappropriate parochial reasons without benefit of having examined the actual public necessity of the taking in advance." The non-jury trial ended on October 23, 2008, the

Master issued a written Order dated and filed January 21, 2009, and Appellants filed their appeal.

ARGUMENT

I. THE TRIAL COURT PROPERLY RULED THAT THE APPELLANTS DID NOT PROVE, BY A PREPONDERANCE OF THE EVIDENCE, FRAUD, BAD FAITH OR CLEAR ABUSE OF DISCRETION ON THE PART OF THE RESPONDENT IN DETERMINING NECESSITY.

The trial court properly ruled that the County of Orangeburg could condemn Appellant's property for the purpose of opening the J.B. Ness Boat Landing Project. A challenge action is the prescribed procedure by which a landowner or other condemnee attempts to prevent a condemnor from exercising its power of eminent domain, to prevent a commenced condemnation action from being completed. It is an equitable action, heard without a jury. "An action challenging a condemnation under § 28-2-470 is considered one in equity because it essentially seeks to enjoin the condemnation." Georgia Dept. of Transp. v. Jasper County, 355 S.C. 631, 586 S.E.2d 853 (2003)(citations omitted). A challenge action is recognized by provisions of the South Carolina Eminent Domain Procedure Act, Section 28-2-10 to -510, South Carolina Code of Laws (1976, as amended), and common law. South Carolina & Western Railway v. Ellen, 95 S.C. 68, 78 S.E. 963 (1913).

Under the Eminent Domain Procedure Act, "An action challenging a condemnor's right to condemn must be commenced in separate proceedings filed in the court of common pleas in the county in which the property or a portion thereof is located." § 28-2-470, Code of Laws of South Carolina (1976, as amended). The challenge action must be commenced within thirty (30) days of the service of the condemnation notice. The trial of the challenge action is separate from the trial on the issue on just compensation. No issue involving the

Condemnor's right to take can be heard in a condemnation action. Section 28-2-470, South Carolina Code of Laws (1976, as amended).

A challenge action must be predicated on one or more alleged fatal deficiencies in the condemnation action or on deficiencies in the condemnation process. When a landowner brings an action to enjoin a condemnation proceeding the burden is upon him to allege and establish fraud, bad faith, or clear abuse of discretion on the part of the condemnor." Sease v. City of Spartanburg, 242 S.C. 520, 131 S.E.2d 683 (1963), quoting Atkinson v. Carolina Power & Light Co., 239 S.C. 150, 121 S.E.2d 743 (1961).

Necessity

Appellants' Statement of Issues on Appeal attempts to shift the burden in this case from Appellants to Respondent. In this nonjury case, the Master is the fact-finder and the Appellants had the burden to prove to the Master, by a preponderance of the evidence, fraud, bad faith or clear abuse of discretion on the part of the Respondent. Smith v. Barr, 375 S.C. 157, 650 S.E.2d 486 (Ct.App. 2007). Appellants are, in effect, claiming that the Master erred when he found that Appellants did not carry their burden on the issue of necessity. The Master found, however,

Plaintiffs did not offer any evidence that there was no need, no necessity for the project. Plaintiffs did not elicit any testimony from any witness that Defendant's boat landing project was unnecessary. Plaintiffs did not offer any evidence or testimony, either expert or lay testimony, that an alternative to Defendant's project was more satisfactory of the need for access to the South Fork of the Edisto River. Plaintiffs did not offer any evidence or testimony that an additional boat landing on the South Fork of the Edisto River was redundant or unnecessary or that existing access was satisfactory or sufficient.

Final Order, Williamson v. County of Orangeburg, No. 2007-CP-38-1424 (R. p. 3).

Appellants argue that there is no necessity for the J.B. Ness Boat Landing Project because

other boat landings are available on the Bamberg County side of the South Fork of the Edisto River. Plaintiffs did not refute the evidence that the County Council voted in open session at its February 2007 retreat to make a boat landing on the South Fork of the Edisto River one of its priorities (R. p 375, l. 15 - R. p. 376, l. 18). Appellants have not shown that vote was improper or illegal.

Mr. Still testified without objection as an “expert in civil engineering, transportation engineering, site selection, site design and environmental considerations concerned with all of the above” (R. p. 420, ll. 1 - 10). Mr. Still testified that the Boat Landing Assessment Committee began with a purpose and need for the proposed boat landing: “The new ramp is proposed for the purpose of providing the citizens of Orangeburg County with an additional public access boat ramp along the South Fork of the Edisto” (R. p. 426, ll. 14 - 25).

County Administrator William Clark testified that other boat landings in other counties are not within the control of Respondent, that funding to maintain other landings is outside the control of the Respondent, and that by owning its own landing Respondent can have some discretion over the availability of that landing (R. p. 241, l. 3)(R. p. 242, l. 2)(R. p. 249, ll. 3-11). County Councilman Heyward Livingston also testified that he believed the County needed to have and control its own landings (R. p. 278, l. 18)(R. p. 279, l. 18). The Appellants’ cancellation of the boat landing lease illustrates this very point: Only by owning and controlling its own boat landing can Respondent ensure that continued adequate access to the South Fork of the Edisto River is available to the citizens of Orangeburg County.

Respondent also offered testimony by Dennis Hardwick, an expert paddler (R. p. 520, ll. 16-24) (R. p. 535, ll. 7- 8). Mr. Hardwick testified that improved access would serve not only expert paddlers such as himself, but also, “Anybody with different skill levels. . . .

Some people are novices, some people are beginning, some people are medium paddlers, but people with different skill levels need different lengths to access. So the more access it is, the better it is for the public, whether they are experts or not. . . . Not just the skill levels, but whether they're fishermen, whether they're paddlers. Whatever their recreational interests are. The rivers need the access for the public to get to it" (R. pp. 532, l. 9)(R. p. 533, l. 4). Mr. Hardwick also testified that better access would be safer for the public who use rivers and encounter hazards such as snakes, wasps, lightning and log jams (R. p. 538, l. 18)(R. p. 541, l. 21).

Without available access, the guarantee of the South Carolina Constitution is hollow: "[A]ll navigable waters within the limits of the State, shall be common highways and forever free, as well to the inhabitants of this State as to the citizens of the United States, ..." S.C. Const. art. XIV [Eminent Domain], § 1 and § 4. Similarly, that an interstate highway provides access to a county at one interchange does not render redundant and unnecessary other interchanges in that county.

Orangeburg County may "acquire real property by purchase or gift", "exercise powers of eminent domain for county purposes" and "make appropriations for functions and operations of the county, including, but not limited to, appropriations for general public works, including roads, . . . transportation . . . [and] recreation." S.C. Code Ann. § 4-9-30 (Supp. 2008). "Under S.C. Code Ann. § 4-9-25 (Supp. 2008), all counties are permitted to exercise those powers '**respecting any subject as appears to them necessary and proper for the . . . general welfare**' and these powers must be liberally construed." See Hospitality Ass'n of South Carolina, Inc. v. County of Charleston, 320 S.C. 219, 464 S.E.2d 113 (1995) (emphasis supplied). ("The powers of a county must be liberally construed in favor of the

county” S.C. Code Ann. § 4-9-25 (Supp. 2008)).

Our courts have found the question of the public necessity of constructing a project as a whole is a legislative or political one. Bookhart v. Central Electrical Power Co-op. Inc., 222 S.C. 289, 72 S.E.2d 576 (1952). In legal terms, an abuse of discretion occurs when a decision is based on an error of law or a factual conclusion that is without evidentiary support. Fields v. Regional Med. Ctr. Orangeburg, 363 S.C. 19, 609 S.E.2d 506 (2005). A determination of necessity is an exercise of discretion.

The rule in this State is that the decision of the question of necessity lies with the one to whom the State has delegated the authority to take property for a public use and is not subject to review by the Court in the absence of fraud, bad faith, or clear abuse of discretion. When a landowner brings an action to enjoin a condemnation proceeding the burden is upon him to allege and establish fraud, bad faith, or clear abuse of discretion on the part of the condemnor.

Cameron v. City of Chester, 253 S.C. 574, 172 S.E.2d 306 (1970); *citing* Sease v. City of Spartanburg, 242 S.C. 520, 131 S.E.2d 683 (1963).

Lack of necessity is constructively viewed as a deficiency based on an error of law and fact. Lack of necessity stands for the proposition that the condemnation is not reasonably necessary to accomplish the purpose of the project or that the acquisition exceeds what is reasonably necessary to accomplish the purpose of the project. A concise discussion of necessity is found in Atkinson v. Carolina Power & Light Co., 239 S.C. 150, 121 S.E.2d 743 (1961):

The legislature may delegate the power of determining the necessity of exercising the power of eminent domain to public officers or boards or to private corporations vested with the power of eminent domain, and in the absence of any statutory provision submitting the matter to a court or jury the decision of the question of necessity lies with the body of individuals to whom the state has delegated the authority to take. Generally, a determination by the grantee or the power is conclusive and is not subject to judicial review, in the absence of fraud, bad faith, or clear abuse of discretion.

Atkinson v. Carolina Power & Light Co., 239 S.C. 150, 121 S.E.2d 743 (1961), *citing* Bookhart v. Central Electric Power Company Cooperative, 222 S.C. 289, 72 S.E.2d 576, 578 (1952) (*quoting* 29 C.J.S., Eminent Domain, § 89, p. 882).

The South Carolina Supreme Court discussed necessity in detail in 1970, holding that, while there must be a necessity for the taking, this does not mean an absolute necessity, but rather a reasonable necessity. Seabrook v. Carolina Power & Light Co., 159 S.C. 1, 156 S.E. 1. Our Supreme Court said in White v. Johnson, 148 S.C. 488, 146 S.E. 411, 412:

It is well established law that necessity, as well as public use, must always exist in order to warrant the taking of lands, through condemnation, by a grantee of the power of eminent domain. The delegation of the right to exercise that power carries with it the implied condition that it shall be exercised only to the extent found necessary.

As to what is meant, in this connection, by the term “necessity”, we find the following in 80 C.J., at page 630: “Necessity . . . does not mean an absolute but only a reasonable necessity, such as would combine the greatest benefit to the public with the least inconvenience and expense to the condemning party and the property owner consistent with each benefit . . .”

This block will be used as a site for a historical exhibit during 1970 and thereafter as a public park or garden and historic site. The block is the site of the Hampton-Preston house, an antebellum mansion in which the Hampton and Preston families lived prior to and during the Civil War. The house is being restored, and the gardens which were laid out over the entire block are to be replanted after the Tricentennial celebration.

The validity of condemnation for parks, public squares, historical sites or monuments has been established in many instances. The landowner complains that her properties are to be used for parking purposes, but that, too, is a recognized use for which lands can be condemned. Condemnations for ornamental or beautification purposes are recognized as necessary uses in several jurisdictions.

This use is clearly appropriate and fitting for the purposes for which the land is being condemned, and that is the test on the issue of necessity. This determination has been made by the Commission, and, unless the landowner can show that acquisition of this land is not reasonably necessary and is an abuse of discretion, the Court will not interfere.

The record before me establishes that the acquisition of this parcel (as well as all other parcels in this block), is reasonably necessary and in the interest of the public.

This taking is therefore necessary within the meaning of the law of eminent domain, and there is no basis for enjoining the condemnation on this ground.

Timmons v. S.C. Tricentennial Comm'n, 254 S.C. 378, 402, 175 S.E.2d 805, 817 (1970),
citing White v. Johnson, 148 S.C. 488, 146 S.E. 411 (1929).

In this case, Respondent has condemned Appellants' property for use as a boat landing. The boat landing serves as both a recreational and transportation improvement, purposes recognized under the enabling statutes as uses for which lands can be condemned. These uses are clearly appropriate and fitting given that the land is being condemned for a public boat ramp, with possession, occupation, and enjoyment of the land by the public at large. Additionally, an engineering study identified the need for a boat landing and established the selected location for the boat landing as the optimum location. Respondent has clearly shown that the condemnation of Ness Landing is reasonably necessary to provide a recreational and transportation improvement to the citizens of Orangeburg County.

Bad Faith and Abuse of Discretion

Respondent clearly demonstrated that the boat landing in question was necessary for the public use. Lack of public use stands for the proposition that the condemnation is not for a public use as defined under South Carolina law. If a condemnation lacks a public use, it is excessive because it intends a use beyond what is permissible under the law of South Carolina. Here, however, the project clearly has a public use and is therefore proper under South Carolina's eminent domain laws.

Similarly, in Southern Dev. and Golf Co. v. South Carolina Pub. Serv. Auth., 305 S.C. 507, 409 S.E.2d 428 (Ct.App. 1991), *aff'd as modified*, 311 S.C. 29, 426 S.E.2d 748 (1993), our appellate courts again addressed the necessity standard in challenge actions. In Southern Development, Santee Cooper (South Carolina Public Service Authority) condemned a parcel of land to create a corridor for an electric transmission line project. Prior to the condemnation, and prior even to Landowner buying the property, the Landowner inquired of Santee Cooper whether or not any electric transmission line was planned. Condemnor reported that no line was planned, whereupon the Landowner purchased the property for a golf course development. Subsequently, Condemnor did condemn an electric transmission corridor and Landowner filed its challenge action. The Landowner argued that Condemnor should be estopped from building the line because of its representations and enjoined from proceeding with the condemnation because the siting of the electric transmission line project on Landowner's property was an abuse of discretion. The Master issued an injunction based upon his findings that (1) Santee Cooper was estopped from using the proposed route based upon certain representations of its officers which were relied upon by Southern to its detriment and (2) Santee Cooper clearly abused its discretion in selecting the transmission line route because it did not consider or improperly considered certain criteria. On appeal from the Master, the Court of Appeals held, "that a condemning authority must exercise its discretion by a rational decision making process which is supported by facts. The Court of Appeals reversed the Master on the issue of estoppel but upheld the Master on the finding of an abuse of discretion and remanded the case with instructions to the Master. The Supreme Court reversed the Court of Appeals on the issue of estoppel and reversed the remand. Southern Dev. and Golf Co. v. South Carolina Pub. Serv. Auth., 305

S.C. 507, 409 S.E.2d 428 (Ct.App. 1991), aff'd as modified, 311 S.C. 29, 426 S.E.2d 748 (1993). The Supreme Court said, "Although we agree with the Court of Appeals' analysis of the issue of abuse of discretion, in light of our holding on the question of estoppel, we find the remand as ordered by the Court of Appeals unnecessary."

In this case, the evidence shows that the boat landing ramp will be open to the public for the use of the public, by any person at pleasure and on equal terms. It is the right of the general public to use the facility which is determinative, not the number who actually exercise the right. The right of public access to navigable waters is guaranteed by our state constitution: "All navigable waters shall forever remain public highways free to the citizens of the State. . . ." S.C. Const. art. XIV, § 4. South Carolina Code § 49-1-10 (2008) similarly provides that "[a]ll streams which have been rendered or can be rendered capable of being navigated by rafts of lumber or timber by the removal of accidental obstructions and all navigable watercourses and cuts are hereby declared navigable streams and such streams shall be common highways and forever free. . . ." White's Mill Colony, Inc. v. Williams, 363 S.C. 117, 609 S.E.2d 811 (Ct.App. 2005).

Powers of the County

South Carolina counties have the authority to exercise the power of eminent domain for certain specific uses pursuant to Section 4-9-30 (5) (a), Code of Laws of South Carolina (Supp. 2008).

Under each of the alternate forms of government listed in § 4-9-20, except the board of commissioners form provided for in Article 11, each county government within the authority granted by the Constitution and

subject to the general law of this State shall have the following enumerated powers which shall be exercised by the respective governing bodies thereof:

(5)(a) to assess property and levy ad valorem property taxes and uniform service charges, including the power to tax different areas at different rates related to the nature and level of governmental services provided and **make appropriations for functions and operations of the county, including, but not limited to, appropriations for general public works, including roads, drainage, street lighting, and other public works;** water treatment and distribution; sewage collection and treatment; courts and criminal justice administration; correctional institutions; public health; social services; **transportation**; planning; economic development; **recreation**; public safety, including police and fire protection, disaster preparedness, regulatory code enforcement; hospital and medical care; sanitation, including solid waste collection and disposal; elections; libraries; and to provide for the regulation and enforcement of the above. . . .

(emphasis supplied). Respondent is vested with the power of eminent domain pursuant to Section 4-9-30 and Section 28-2-60, South Carolina Code of Laws (Supp. 2008). In this case, a boat landing is a recreational and transportation improvement, purposes recognized under the enabling statutes as uses for which lands can be condemned. These uses are clearly appropriate and fitting given that the land is being condemned for a public boat ramp, with possession, occupation, and enjoyment of the land by the public at large. The facts of this case satisfy the test for reasonable necessity. This determination has been made by the Orangeburg County Council and Landowners have failed to show that the acquisition of this land is not reasonably necessary. The rule in South Carolina holds that the decision on the question of necessity lies with the one to whom the State has delegated the authority to take property for a public use and is not subject to review by the Court in the absence of fraud, bad faith, or clear abuse of discretion – none of which have been shown by Appellants to exist in this case. This taking is necessary within the meaning of the law of eminent domain,

there is no basis for enjoining the condemnation, and as such, the Master-in-Equity's ruling should be affirmed.

**II. THE TRIAL COURT PROPERLY EXCLUDED THE CONTENTS OF
NEWSPAPER ARTICLES EXCEPT AS TO THOSE STATEMENTS
WHICH A TRIAL WITNESS CONFIRMED MAKING.**

The trial court properly excluded certain newspaper articles offered by Appellants.

Self-Authentication

Respondent concedes that newspaper articles are self-authenticating, such that "[e]xtrinsic evidence of authenticity as a condition precedent to admissibility is not required", under Rule 902(6) of the South Carolina Rules of Evidence. However, mere authentication of a newspaper article does not render the newspaper article admissible *per se* as Appellants argue.

Hearsay vs. Non-Hearsay

As mentioned above, the mere fact that newspaper articles are self-authenticating, does not require that the articles be automatically introduced into evidence. In South Carolina, hearsay is any "statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." Rule 801(c), SCRE. Subject to an exception, hearsay is inadmissible at trial.

Although this is an issue of first impression in South Carolina, the federal courts and other jurisdictions have long recognized that a news article, if offered for the truth of the matter asserted, is hearsay and is inadmissible in nearly all circumstances. The Indiana

Supreme Court stated, “[n]ewspaper articles are, of course, by their very nature, hearsay and for that reason are seldom proper evidence to prove any fact, except the bare fact of their publication. Feliciano v. State, 467 N.E.2d 748 (Ind.,1984) See also, United States v. Abel, 258 F.2d 485 (2d Cir.1958) (news article attributing statements to Commissioner of Immigration and Naturalization is inadmissible hearsay), *aff’d*, 362 U.S. 217, 80 S.Ct. 683, 4 L.Ed.2d 668 (1960); United States v. Nacrelli, 468 F.Supp. 241 (E.D.Pa.1979) (newspaper account of incident in which co-conspirator allegedly threatened defendant was inadmissible hearsay), *aff’d*, 614 F.2d 771 (3rd Cir.1980); Watford v. Evening Star Newspaper Co., 211 F.2d 31 (D.C.Cir.1954) (trial court properly excluded newspaper account of accident and of offer by official of defendant to pay medical expenses).

In 1993, the Colorado Court of Appeals passed on an issue virtually identical to the issue presented here. In People v. Morise, the State of Colorado entered three articles from the Denver Post containing quotes from a defendant in a criminal case. 859 P.2d 247, 250. The trial court admitted the articles under Rule 902(6) of the Colorado Rules of Evidence which mirrors both Rule 902(6), Federal Rules of Evidence and Rule 902(6), SCRE. Id. The staff writers were not required to testify based on privilege similar to that existing in South Carolina. Id. In reversing the trial court, the Colorado Court of Appeals held that although newspaper articles are self-authenticating, that rule alone does not render all newspaper articles admissible. Id. The Court held that quotes within the “news articles were not the statements of defendant; they were the statements of the two reporters who wrote them.” Id. at 250.

Appellants claim that the several Orangeburg Times and Democrat newspaper

articles, which Appellants attempted to introduce at trial, fall within the exception described in State v. Blurton, 242 S.C. 500, 537 S.E.2d 291 (Ct. App. 2000), rev'd on other grounds, 352 S.C. 203, 573 S.E.2d 802 (2002). The Court of Appeals held in Blurton:

The newspaper articles did not constitute hearsay because they were not offered for the truth of the statements contained in them, but to show Mayfield's ability to persuade and trick others. Because of the purpose for which they were offered, the articles clearly were not hearsay and were improperly excluded. See Jackson, 326 S.C. 289, 486 S.E.2d 750; Rule 801(c), SCRE.

Id. at 511; Citing Jackson v. Speed, 326 S.C. 289, 486 S.E.2d 750 (1997). Appellants claim that the articles in this case were introduced to show bad faith on the part of the County rather than for the truth of the statements contained in them. Unlike the articles in Blurton, however, the truth of the statements contained in the articles are indeed the point of the articles. Appellants claim that the articles show that those who made statements reported in the articles somehow demonstrate bad faith on the part of the County. However, the testimony and evidence presented at trial shows but mere error and misunderstanding, which does not amount to fraud, bad faith or clear abuse of discretion on the part of the County.

In this case, various witnesses were asked questions at trial about the articles. These witnesses, Mr. and Mrs. Williamson and Mr. Clark, answered these questions about the articles and were examined and cross-examined as to the statements reported in the articles. The County attorney, though present at trial, was never called to testify about any of her alleged statements reported in the articles. Apparently, no reporter or other witness was subpoenaed to testify as to the substance of the articles – certainly there is no record of any motion for the trial court to enforce a subpoena. The trial court ruled that it “does not consider the content of the articles introduced at trial except as to those statements which a

witness has confirmed making.” Final Order, Williamson v. County of Orangeburg, No. 2007-CP-38-1424 (R. p. 3).

Here, Orangeburg Times and Democrat newspaper articles containing quotes from various individuals are being offered in an identical manner as in Morise. The existence of newspaper articles does not test the veracity of the content contained within the articles and thus a proper foundation for the admissibility of the content must be laid. At trial, Appellants failed to lay the foundation necessary for the introduction of statements. Accordingly, the trial court’s ruling suppressing those articles introduced at trial, except as to those statements which a witness has confirmed making, should be affirmed and the contents of the articles not considered.

III. THE TRIAL COURT PROPERLY RULED THAT THE APPELLANTS DID NOT PROVE, BY A PREPONDERANCE OF THE EVIDENCE, FRAUD, BAD FAITH OR CLEAR ABUSE OF DISCRETION ON THE PART OF THE RESPONDENT IN CONDEMNING APPELLANTS' PROPERTY.

Appellants presented no evidence of bad faith on the part of the county, and as such, the ruling of the trial court should be affirmed on appeal. In considering questions of eminent domain, great deference is given to the governing body exercising its power in determining whether the use is a public use. Timmons v. Tricentennial Comm’n, 254 S.C. 378, 175 S.E.2d 805 (1970). The decision to condemn will not be overturned absent fraud, bad faith, or a clear abuse of discretion. Sease v. City of Spartanburg, 242 S.C. 520, 131 S.E.2d 683 (1963). The reviewing Court must, therefore, look to the decision to condemn and the reasoning behind that decision. The South Carolina Supreme Court has defined bad faith as:

The opposite of good faith, generally implying or involving actual or constructive fraud, or a design to deceive or mislead another, or a neglect or

refusal to [fulfill] some duty or some contractual obligation, not prompted by an honest mistake as to one's rights or duties, but by some interested or sinister motive.

Estate of Carr ex rel. Bolton v. Circle S Enterprises, Inc., 379 S.C. 31; 664 S.E.2d 83 (Ct. App., 2008) *quoting* State v. Griffin, 100 S.C. 331, 333, 84 S.E. 876, 877 (1915) (*quoting* Black's Law Dictionary).

As the trial court ruled:

Plaintiffs did not offer any evidence that there was bad faith on the part of Defendant in pursuing this project and initiating this condemnation action. Plaintiffs did not offer any evidence or testimony, either expert or lay testimony, that Defendant acted from some improper or sinister motive.

Final Order, Williamson v. County of Orangeburg, No. 2007-CP-38-1424 (R. p. 3).

As to the issue of bad faith, the trial court found that

In the record, only argument of Plaintiffs' counsel addresses this issue, specifically: (1) the suggestion that Defendant initiated the condemnation action to retaliate for Plaintiffs' closure of the leased boat landing (R. p. 302, l. 19 - R. p. 303, l. 5); (2) the argument that Defendant improperly withdrew an unaccepted offer of indemnification (R. p. 342, ll. 12-16); (3) the argument that Defendant improperly withdrew a guarantee of law enforcement protection by the county sheriff (R. p. 342, ll. 17-20); (4) the argument that Defendant's attorney somehow impugned the Plaintiffs - prior to any litigation - by commenting on the cost of condemnation (R. p. 342, l. 21 - R. p. 343, l. 11); and, (5) the argument that Councilman Heyward Livingston based his decision to vote for condemnation of Plaintiffs' property on the long public use of the boat landing area (R. p. 310, ll. 9-15).

Final Order, Williamson v. County of Orangeburg, No. 2007-CP-38-1424 (R. p. 3).

Appellants' argument mirrors the argument of Plaintiffs' counsel at trial that the totality of circumstances indicates bad faith:

- Appellants argue that "Mr. Williamson was met with a lack of responsiveness."

The County Administrator testified that the County simply misplaced correspondence cancelling the lease sent to the County by Terry Poole on behalf of the Appellants

(R. p. 256, l. 12 - R. p. 258, l. 12)(R. p. 262, l. 6-18). Appellants claim that County personnel gave statements to the press which "misstated material facts of the dispute." The evidence shows that the County was initially unaware that the correspondence was misplaced (R. pp. 256, l. 12 - 258, l. 22).

- Mr. Williamson testified on direct examination that he felt vilified by the County (R. p. 144, ll. 11-14). On cross-examination, Mr. Williamson admitted that he felt vilified simply on the basis of a newspaper article which reported the county's position that it still had a lease on the boat landing (R. p. 149, l. 23)(R. p. 152, l. 13).

- Appellants claim that County personnel offered and then improperly withdrew an unaccepted offer of indemnification (R. p. 342, ll. 12-16). The County Administrator testified that he generally deferred to the county attorney about the liability issue (R. p. 216, l. 6)(R. p. 220, l. 19). Mr. Clark admitted proposing an agreement that would indemnify the Appellants from liability but also admitted that he had read the Times & Democrat article in which the county attorney is quoted as saying that "new accounting rules wouldn't allow the county to [indemnify the Appellants] to an unlimited degree. The county can only purchase insurance for the stated minimum dollar amount" (R. p. 218, l. 25)(R. p. 220, l. 19).

- Appellants claim that County Councilman Livingston was on a "personal crusade" to reopen the landing on Appellants' property. Councilman Livingston testified that he had two reasons for reopening the landing: 1) it had been used by the public for so long, and, 2) so Orangeburg County could control its own landing (R. p. 288, l. 20)(R. p. 289, l. 4). Appellants' counsel published a portion of Councilman Livingston's deposition testimony: "You know, if we could work

something out, it was fine; if not, we would probably be in the – you know, we would probably go forward with condemning it or trying to” (R. p. 275, ll. 3-6). In that same deposition, Councilman Livingston also testified in response to the question “Is there anything you recollected when I was out of the room that you wanted to add or any questions that you’re not sure that I asked clearly that you want to clarify before we go off, close the record?” Councilman Livingston responded: “Yes. One thing. The last time we met Mr. Williamson with Mr. Wimberly, thinking back, I doubt if there was anything. I first thought, you know, we might have talked about, you know, either party would have to do what they wanted to do. I don’t really know if that was said or not. I know that’s kind of bad business to repeat yourself, but I don’t want to say nothing wrong” (R. p. 295, l. 16)(R. p. 296, l. 3). Councilman Livingston also testified that, after he heard the landing was closed, he met with Mr. Williamson on three occasions. On the first occasion, “we talked, and it wasn’t a whole lot of talking the first time.” On the second occasion, he thought they had “pretty much reached an agreement to get it reopened” and on the third occasion “[Mr. Williamson] had about five things he wanted us to do, and we thought we could do all of those” (R. p. 272, l. 4)(R. p. 275, l. 25). Even after these conversations in 2006, the County did not condemn Appellants’ property for nearly a year and only after completing a study which included a mailed survey and public hearing.

Testimony elicited and evidence presented at trial by Appellants is insufficient to establish a retaliatory intent on behalf of the Respondent. Appellants claim that, because County Council members and County employees did not present a unified position on these

issues in discussions to renew the lease, County operated in bad faith (R. pp. 162, l. 10)(R. p. 164, l. 4).

Plaintiffs have not shown by a preponderance of the evidence that Defendant failed to reach an agreement with Appellants for renewal of the lease as retaliation or for some sinister motive. The evidence shows that Respondent never provided an indemnification agreement to Appellants because Respondent's counsel objected (R. p. 219, l. 24)(R. p. 220, l. 15). Appellant John Williamson's own testimony was that, on the issue of indemnification, County Administrator Clark "thought that could be worked out" (R. p. 112, ll. 10-12). Mr. Williamson testified, "He told me that he would go back and see what they could do about it, that he would recommend it; but as we heard earlier in here, it takes council approval to do anything" (R. p. 112, ll. 18-21).

Appellants claim that Respondent improperly withdrew a guarantee of law enforcement protection by the county sheriff; however, the testimony elicited by Appellants' counsel from the County Administrator, William Clark, does not establish either that there was a guarantee of law enforcement protection or that it was withdrawn (R. pp. 220, l. 20) (R. pp. 225, l. 9). Mr. Williamson testified on direct examination that he and the County Administrator, William Clark, did not come to terms (R. p. 118, ll. 12-14). Appellants have not shown by a preponderance of the evidence bad faith on behalf of Respondent in dealing with this matter.

County Councilman Heyward Livingston testified that he based his decision to vote for condemnation of Plaintiffs' property on the long public use of the boat landing area (R. p. 278, l. 18)(R. p. 279, l. 3) but he also testified that he told Mr. Clark on several occasions "that we needed -- if we could find other land within the vicinity, that would be fine. But let

me tell you: There is only one boat landing in Orangeburg County left on that river. [. . .] If we close all the public boat landings down the river, that cut the public to have any access to the river at all." Whatever Councilman Livingston's reasons for supporting this project, County Council voted as a body to proceed with this project. Appellants did not carry their burden on the issue of bad faith.

Here, there is no sinister motive behind the condemnation. As has been stated from the outset, the purpose of the condemnation of Appellants' property is for the purpose of opening a boat landing. The boat landing satisfies all requirements for condemnation. Although Appellants oppose the condemnation, there is no evidence that the County acted with bad faith or clear abuse of discretion in condemning Appellants' property

CONCLUSION

This case involves legislative or political action of the Respondent which was reasonably necessary to guarantee access to the South Fork of the Edisto River for public use. The trial court properly ruled that the Appellants did not prove, by a preponderance of the evidence, fraud, bad faith or clear abuse of discretion on the part of the Respondent in determining necessity or in condemning Appellants' property. Under these facts, the reviewing court must defer to the discretion of the Orangeburg County Council. Here, the record is clear that the governing body lawfully condemned the subject property and the trial court's ruling allowing the condemnation to go forward should be affirmed.

RESPECTFULLY SUBMITTED,

A handwritten signature in cursive script, appearing to read "Paul D. de Holczer", written over a horizontal line.

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September 16, 2009

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

APPEAL FROM ORANGEBURG COUNTY
MASTER-IN-EQUITY

O. Davie Burgdorf, Master-in-Equity

Case No.: 2007-CP-38-1424

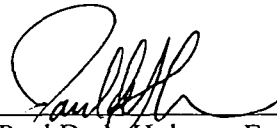
John W. Williams, III and Kathryn J. Williamson Appellants,

v.

The County of Orangeburg Respondent.

CERTIFICATE OF COUNSEL

The undersigned certifies that Respondent's Final Brief complies with Rule 211 (b),
SCACR and is in compliance with the Supreme Court's Order dated August 13, 2007.



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APPEAL FROM ORANGEBURG COUNTY
Master-in-Equity

O. Davie Burgdorf, Master-in-Equity

Case No. 2007-CP-38-1424

John W. Williamson, III and Kathryn J. Williamson, ... Appellants

v.

The County of Orangeburg, ... Respondent

FINAL REPLY BRIEF

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INTRODUCTION

In a brief thin on facts and straining in its efforts to justify a wanton taking of property, the County of Orangeburg: (i) evades the overwhelming proof that the County never considered the element of necessity as a prerequisite for its decision in 2006 to condemn Ness Landing; (ii) conflates the distinct prerequisites of "public use" and "necessity" to disguise the fact that that it shrugged off the issue of necessity for this taking both before and after it voted to condemn; (iii) argues in circular fashion that the taking was "necessary" because there was no abuse of discretion, when the failure to consider necessity is, by definition, abuse of discretion; (iv) attempts to shift the burden of proof as to the condemnor's obligation to consider both prerequisites of public use and necessity; and (v) dismisses the need for judicial review of a taking so long as the public convenience is enhanced by the conversion of private property to public property.

The facts demonstrate that, from the day the Williamsons purchased the property which includes Ness Landing, the County was indifferent to the landowners' concerns about personal liability in continuing the free lease of the landing to the public with no liability protection. When the combination of the incompetence and indifference by the County pushed the Williamsons to protect themselves with the lawful termination of the lease and erection of a gate, County officials reacted angrily. Now acting quickly, they met with the Williamsons and delivered the clear message that an accommodation would be reached to reopen the landing or the County would take it by condemnation. This was nothing short of a polite ultimatum. When the negotiations bore no fruit, in large measure because the County could not get out of its own way on the issue of indemnifying the landowners for liability, Council declared umbrage at the Williamsons' exercise of their own rights and

voted unconditionally to condemn the landing. The votes occurred in the fall of 2006 without any consideration whatsoever of facts pertinent to the actual need for the landing. When the County realized that the Williamsons would not simply surrender their property rights in the face of the condemnation votes, it retained outside counsel to handle the legal condemnation. Outside counsel realized the obvious defects in the County's process utilized in 2006 and endeavored to rewrite the record. But even with that guidance, the County *never conducted* any rational analysis of facts pertinent to the necessity of acquiring another landing on the South Fork Edisto within Orangeburg County. Even now, the County's best argument is that it is more convenient to the public to have more landings as opposed to fewer landings (Respondent's Br. pp. 8 & 11) – a rationale that dodges the issue of necessity and logically leads to a condemnor's ostensible "right" to take any number of sites for landings from private owners on the sole justification of "recreational and transportation improvement" or, stated differently, any marginal increase to the public convenience. Unnecessary and redundant convenience does not provide a legal basis for a taking by eminent domain.

PROOF AT TRIAL

Both the Order and Respondent's brief ignore critical proof from the trial. Both gloss over important events occurring after the Williamsons' purchase of Ness Landing in March 2005 and leading to Council's votes to condemn. The Williamsons contacted the County shortly after purchasing the property requesting a revised lease that would allow the Landing to remain open to the public but address security problems, crime, vandalism and litter originating at the Landing. (Answer to Am. Compl. ¶2 at R. p. 29; p 89, line 8-p. 92, line 22; p. 263, line 5-p. 266, line 3; p. 267, line 1- p. 269, line 16.) The County was slow to

respond and, on July 4, 2005, the Williamsons, as the first resident landowners of the Landing, experienced first-hand the criminal activity originating at the Landing. (R. p. 90, line 17- p. 92, line 15; p. 178, line 24 - p. 179, line 14.) Approximately one year after John Williamson's initial contact with the County, the landowners had yet to receive any response. The County had made no effort to address problems arising from the use of the Landing, nor did it feel it had any responsibility to do so if the victims were on the Bamberg side of the river. (R. p. 265.) Unwilling to endure another July 4th weekend with its litter, crime and potential for personal liability, the Williamsons informed the County in a letter from their lawyer, Mr. Poole, that the Lease was being terminated pursuant to its terms. Still, the County failed to respond, exhibiting indifference to the concerns of the landowner/lessor. Mr. Williamson erected a gate and closed the Landing on June 26, 2006. (R. p. 94, lines 3-24; p. 101, line 3 - p. 102, line 10.)

The closing of the Landing provoked the long-awaited response from the County. Specifically, Councilman Livingston had three separate meetings with Mr. Williamson after the gate was erected (R. p. 272, line 6 - p. 273, line 23), as did Bill Clark, County Administrator. (R. p. 247, lines 4-14.) At each meeting, representatives of the County let Williamson know that if he did not work with them to reopen the Landing, they would condemn. (R. p. 115 lines 17-21; p. 152, line 14 - p. 154, line 5; p. 274, line 13 - p. 275, line 18.) Approximately two months after Councilman Livingston's initial visit to the Landing, County Council unanimously voted on his motion "to do whatever was necessary to keep the landing open." (R. pp.576-77.) Councilman Livingston made a second motion in November "to proceed with legal activity to reopen Ness Landing to the public." (R. pp. 583-84.) These motions were offered and passed without discussion of the actual necessity

of keeping Ness open to the public or acknowledgment of convenient public landings on the Bamberg side of the river, including Claude's Landing within a very short distance of Ness Landing. (R. p. 279, line 19 - p. 281, line 12.) These motions were made by the Councilman who, for the public record, stated that he thought the gate should be kicked open. (R. p. 276, line 25 - p. 277, line 12.) The votes to condemn were taken without benefit of any study or statistical data as to the use of Ness Landing or other proximate landings, without any information as to costs, without any information on alternative or redundant sites, and without any information on environmental issues. (R. p. 284, line 2 - p. 285, line 23.) There was no discussion of any reason to condemn other than the length of the public's use pursuant to free leases and Councilman Livingston's belief that County needed to own and control boat landings. (R. p. 279, lines 6-13; p. 281, line 19 - p. 282, line 17; p. 286, lines 4-14; p. 288 line 20 - p. 289, line 16.) Only Ness Landing was targeted. This chronology of events in 2006 is not seriously disputed and demonstrates an exercise of the condemnation power on the basis of defective considerations inconsistent with South Carolina law.

Although Councilman Livingston and Berry Still, the engineer engaged by the County in 2007 to find the best spot for a landing, relied on the historical presence of a landing as justification for the condemnation (R. p. 277, line 23 - p. 278, line 4; p. 467, line 12 - p. 468, line 17; p. 469, line 19 - p. 470, line 25), only one witness at the trial, John Williamson, actually testified based on his own personal knowledge as to the history of the Landing:

In 1975 [a] landing was built there. There had been nothing there. You've heard reference to a boat landing. Nothing there. Swamp. Under water. I fished on that site in a boat, paddle boats. We would paddle down from the country club and fish there. . . . [T]here was nothing there but floodplain and swamp.

In 1975 the trees were cut. It was backfilled. You can see where the dirt was filled in, which you wouldn't do it today because of wetland laws. . . . But that came about in 1975.

You keep hearing reference to a boat landing. You couldn't put a boat in. All you could do was stand in water knee deep and fish.

(R. p. 139, line 14 - p. 140, line 6.)

Williamson's first-hand experience, as a lifelong outdoorsman on the South Fork Edisto, contradicts County's assertion as to a long historical use associated with the Landing.

In a startling admission, Councilman Livingston testified at trial that he probably would have voted to condemn Ness Landing even if Claude's Landing was located directly across the South Fork from it. (R. p. 289, lines 17-21.) Thus, in the Councilman's view, the County may properly wield the condemnation power to expend public funds to take private property to accumulate an amenity on the basis that his County does not hold title to the conveniently located, redundant, publicly-owned amenity directly across the river. This flawed reasoning cries out for judicial review and confirms that this taking was triggered without any regard for its actual need.

The County argues that "as negotiations and discussions between the parties continued, Respondent pursued several tracks simultaneously to make a landing on the South Fork of the Edisto available to the public." (Respondent's Br. p.3) But the evidence is one-sided that the pursuit of "other tracks" looking for alternate sites on the river did not occur until after the November vote. (R. p. 234 line 2 - p. 236, line 9.) There is no credible evidence the County made any effort to pursue other tracks prior to the votes to condemn.¹

¹ Both William Clark and Heywood Livingston testified about a meeting with SCE&G, but neither had any recollection of the date. Clark testified that the meeting was held on an unspecified date in fall of 2006, (R. p. 254, line 24-p. 255, line 12) and the meeting was the result of his own initiative. (R. p. 261 lines 4-13.) Livingston testified that he did not know

The Boat Landing Assessment Committee (BLAC) was not cobbled together until 2007. In all events, the pursuit of "other tracks" refers only to *other potential landing sites within the County* ignoring the threshold question, central to this case, of whether there was an actual necessity for another landing on the Orangeburg County side of the South Fork Edisto. This is the problem overlooked by the trial court and stubbornly ignored by the County. As shown at trial, accessible, convenient access existed across the South Fork Edisto bridges into Bamberg County, including nearby Claude's Landing. (R. p. 84, line 13-p. 85, line 6; p. 102, line 19-p. 103, line 3; p. 110, lines 2-24; p. 182, line 3-p. 183, line 5; p. 239, line 12-p. 241, line 10; p. 243, lines 1-12; p. 279, line 19-p. 281, line 12; p. 285, lines 11-23; p. 289, lines 17-21; p. 482, line 8-p. 483, line 20; Exh. 24 at p. 615.)

The testimony and evidence at trial demonstrate overwhelmingly that prior to Mr. de Holczer's retention by the County, and for a time period shortly thereafter, all communications and written documents clearly referred to the object of the County's actions as being aimed at "Ness Landing" (Exh's. 3, 4, 5, 6, 8, 10, 11, 13 at R. pp. 574-84, p. 587, pp. 591-96, p. 600). County Administrator Clark testified that he was specifically charged by Council in September and November 2006 to reopen Ness Landing; and the minutes of those meetings reflect those instructions. (R. p. 557 lines 11-24; pp. 576-77 and pp. 583-84.) Berry Still, the engineer hired later to conduct a study as to the location of a landing, referred, in an e-mail dated January 13, 2007, to his project as "Ness Boat Landing" (Exh. 13 at R. p. 600). And in testimony that is vital, Still testified that he was *not hired to study*

when Council "instructed Mr. Clark to go out there and find some more land," (R. p. 284 lines 15-24) and no evidence was offered to show such an instruction. Mr. Whalen did not testify as to the date of the meeting with SCE&G, but stated that the meeting came about because of Mr. Clark's personal relationships with some SCE&G personnel. (R. p. 356, line 8-p. 357, line 1.)

need for a landing, because that had already been determined. (R. p. 468, lines 11-17; p. 471, lines 6-16.) In January 2007, in an exchange of e-mails between Mr. de Holczer and the County Attorney, it is obvious that they are planning on entering "the property – but not until the engineers' work is done." (Exh. 12 at R. p. 597) (emphasis added.) There was always only one property under consideration -- Ness Landing. In his letter dated December 20, 2006, Clark notified fourteen state and federal agencies that the County was going to condemn Ness Landing (Exh. 10 at R. pp. 591-92). Copies of the letter were sent to Joe McLauchlin, Orangeburg County Engineer,² and Earl Whalen, future members of the BLAC Commission, informing them that Ness Landing was the chosen property. (R. p. 396, line 23 - p. 397, line 1.)³ The evidence is one-sided that the Council (and the County Attorney) always had Ness targeted for the taking and that no rational consideration was given to the necessity of the County acquiring ownership of an additional landing.

YEAR 2007 EVENTS

Well after the decision had been made to condemn Ness Landing and after the County's retention of outside counsel, the project acquired in 2007 the euphemistic reference of a "boat landing on the South Fork of the Edisto," or "access to the South Fork." In a thinly-veiled effort to paper over a decision made without the legally required determination of necessity, or the weighing of rational criteria prescribed by law, the County set about to transmute the unsupportable decision into something defensible. But the horse was long out of the barn on the taking of Ness Landing. All the papering and the BLAC

² McLauchlin was also identified in de Holczer's engagement letter to Berry Still dated January 5, 2007, along with the county attorney as the people with whom Still was to coordinate his engineering consulting services "Re: J.B. Ness Boat Landing Project." (Exh. 11, R. at p. 596.)

³ No copy was sent to the landowners.

Commission meetings occurred after the fact and, even then, the County never corrected its original sin of failing to objectively consider the actual need for another landing within Orangeburg County on the South Fork Edisto River – a necessity that still does not exist today.

As late as February 28, 2007, Berry Still was inquiring as to whether Council had voted to make “the boat landing a priority.” (Exh. 15 at R. pp. 602-03.) In response, the County Attorney stated that “Council included a boat landing on the South Fork of the Edisto River as one of its priorities at Council’s 2007 retreat.” She then added -- gratuitously: “In addition, Council voted in an open regular session that the County was to take all action necessary to ‘reopen the boat landing’ ‘including condemnation’ – referring to the Williamson property.” Id. (emphasis added) Although the euphemism, “boat landing on the South Fork of the Edisto” was now official, the County Attorney was careful to remind Mr. Still that the Williamson property was the object. And again, although the County made the landing “a priority” well after its public and formal condemnation votes, Council never considered, let alone made any findings as to necessity. Indeed, by her extensive public statements, the County Attorney made obvious her utter lack of appreciation for that crucial prerequisite to the lawful exercise of the power of condemnation.

NECESSITY

One of the County’s rationalizations after the fact is that “[o]nly by owning and controlling its own boat landing can [it] ensure that continued adequate access to the South Fork of the Edisto River is available to the citizens of Orangeburg County.” (Respondent’s Br., p.8) There is simply no evidence for this bold and erroneous assertion. The County’s

proof identified no risk of closing of Claude's Landing or any of the other publicly owned and maintained landings in the area. (R. p. 240, line 20 - p. 242, line 2; p. 242, lines 16-21.) It is pure conjecture that Claude's could be closed and, even were that to occur, then would be the logical time for Orangeburg County to consider the necessity for another landing.

A survey designed by the County to bolster its case told recipients who did not boat in Orangeburg County and would not if a landing were accessible, to return the survey without answering any more questions. (R. p. 434, lines 14-23.) The survey not only did not want any information from its own resident boaters unless they supported the need for a landing, it purposefully did not ask those who boated elsewhere if they launched at landings in neighboring counties. The survey did not want any information regarding the public's use of other nearby water access, rendering it irrelevant to the issue in this case.

The survey was sent to approximately 1100 residents of Orangeburg County who lived in close proximity to Ness Landing. One hundred thirty-nine (139) of the replies were provided to Berry Still, although the County received many more according to Mr. Still. (R. p. 472, line 9 - p. 480, line 14.) Although such a response was not solicited, some of the respondents stated they used Claude's or Bamberg County's landings for access. (R. p. 485 line 17-p. 486, line 11.) Interestingly, the surveys were available at Rock's, a bait and tackle shop in Bamberg County,⁴ along with a notice of a public meeting to discuss a landing on the South Fork of the Edisto. (R. p. 394, line 20-p. 395, line 9.) Although the County is jealous as to ownership of its own landings, it does not hold to the same standards as to who

⁴ Rock's is located at the cross-roads of Highway 70 and Highway 332 in Bamberg County less than one-mile from Ness Landing. When asked if Rock's was closer to Claude's than Ness Landing, Harold Young, an Orangeburg County deputy administrator who reports to Bill Clark (R. p. 546, lines 13-16), opined; "I couldn't say for sure, but I would think it is closer." (R. p. 395, lines 14-22.)

may respond to its surveys by limiting their distribution to Orangeburg County residents. More likely, this is the County's recognition that the users of public landings come from the public, irrespective of county residence.

The County's own "expert paddler", Dennis Hardwick, testified that he utilizes all landings when on a river trip, without regard to which side of the river or in which county a landing is located. (R. p. 534, line 15-p. 535, line 6.) While the public's logical indifference to the issue of which county holds title to a public landing seems like common sense, it is a concept that did not occur to the County.

"It is the right of the general public to use the facility which is determinative, not the number who actually exercise the right." (Respondent's Br. p. 13) With this startling assertion the County asks the judiciary to condone any condemnation so long as the property taken could be made minimally available to the public. This statement goes to the heart of this case and displays the County's fundamental misapprehension of the law of condemnation. It dismisses altogether the element of necessity as a component of the process. It would allow a condemnor to take private property merely upon a showing of the potential for any public use. And it is *precisely the position* espoused by Orangeburg's County Attorney in her several public statements (Exhs. 7 & 18 at R. pp. 585-86 & pp. 625-26).

THE EXERCISE OF THE POWER OF EMINENT DOMAIN

"Th[e] exercise of the right of eminent domain is, in its nature, in derogation of the great and fundamental principle of all constitutional governments, which secures to every individual the right to acquire, possess, and defend property." Karesh v. City Council of the City of Charleston, 271 S.C. 339, 247 S.E.2d 342 (1978) (quoting Bangor & P.R. Co. v.

McComb, 60 Me. 290). South Carolina's courts have never abdicated their responsibility to review and constrain an abusive or capricious use of the condemnation power.

[T]he Legislature of South Carolina has expressly delegated . . . the power of eminent domain. In the exercise of that power those to whom it has been delegated represent the sovereignty of the state, and are empowered to decide, *subject only to supervision of the courts to avoid fraudulent or capricious abuse*, what and how much land of the citizens they will condemn for their purposes. (emphasis added)

Atkinson v. Carolina Power & Light Co., 239 S.C. 150, 157, 121 S.E.2d 743 (1961).

Under the Eminent Domain Procedure Act, condemnation is appropriate "for the acquisition of an interest in any real property *necessary* for any public purpose." S.C. Code Ann. §28-2-210 (emphasis added). "The legislative grant of the power of eminent domain must be strictly construed for the protection of property rights." Tuomey Hospital v. City of Sumter, 243 S.C. 544, 548, 134 S.E.2d 744 (1964) (citing Paris Mountain Water Co. v. City of Greenville, 105 S.C. 180, 89 S.E.2d 225, 226 (1916)).⁵

In its brief, the County endeavors to persuade this court that what it did through the BLAC process was a lawful substitute for a rational, fact-based inquiry into the necessity for a taking. But the facts prove that the County conducted no such inquiry as to the actual need for an additional public landing on the South Fork Edisto within Orangeburg County. Instead, it made findings, after-the-fact, as to where such a landing could, most conveniently, be located – which findings *presumed* the necessity for another landing. This process in 2007 was all for the purpose of bolstering its unsupported decision to condemn Ness Landing. But the proof is certain that the BLAC process itself *never considered the*

⁵ County's brief (at p. 14) erroneously cites to §4-9-30(5)(a) as granting the power of eminent domain to the County. The cited section gives the County power to tax and spend. The grant of the power of eminent domain to the counties is found in S.C. Code Ann. § 4-9-30(4).

issue of necessity. (R. p. 468, lines p.11-17; p. 471, lines 6-16.) Such action can only be categorized as a capricious abuse of power requiring injunction by the judiciary.

POWERS OF THE COUNTY

County argues because the taking is for a recreational and transportation improvement, “purposes recognized under the enabling statutes for which lands can be condemned,” and “with possession, occupation, and enjoyment of the land by the public at large,” that it has established necessity. First, this assertion ignores the considerable testimony from the landowners and their neighbors that Ness Landing is in truth a public nuisance and nothing close to a “recreational improvement”. (Appellant’s Br. pp. 3-4.)

If one ignores the financial and environmental costs, the public is usually provided some marginal recreational convenience when more private land is taken for parks, boat landings, ball fields, amphitheaters, camp sites, etc. But the power to condemn is not dependent merely on whether the public would like to own or might use a given parcel of private property. A condemnor does not possess the power to condemn what it wants. There must be a need for the taking. “A decision is deemed arbitrary under this section if it is ‘without a rational basis, is based alone on one’s will and not upon any course of reasoning and exercise of judgment, is made at pleasure, without adequate determining principles, or is governed by no fixed rules or standards.’” Southern Dev. Land and Golf Co., Ltd. v. S.C. Pub. Serv. Comm’n, 305 S.C. 507, 515, 409 S.E.2d 428 (Ct. App. 1991) aff’d as modified 311 S.C. 29, 426 S.E.2d 748 (1993) (citing Deese v. S.C. State Bd. of Dentistry, 286 S.C. 182, 184, 332 S.E.2d 539, 541 (Ct. App. 1995)). Although the Southern Development court was referring to the Administrative Procedures Act, its criteria for an arbitrary decision are

an accurate description of the County's conduct in instigating the condemnation of the Landing.

NEWSPAPER ARTICLES

County cites numerous cases in which newspaper articles were inadmissible as hearsay, without any examination of the facts of those cases. In U.S. v. Abel,⁶ which was an espionage case, the court did not allow an article with certain statements by the Commissioner of Immigration and Naturalization Service, as the Commissioner had no first hand knowledge of the issue under discussion. In Watford v. Evening Star Newspaper Co.⁷ the court upheld the trial court's decision to exclude newspaper articles, without any explanation of what the articles were or why they were being offered. In U.S. v. Nacrelli,⁸ there was no ruling on the admission of newspaper articles by the appellate court, but only a notice of the lower court's decision without explanation of what the articles were and why they were being offered. None of these clearly applies to this case. What County fails to acknowledge is that in People v. Morise, its primary case, the Colorado court acknowledged that if the disputed newspaper articles fell within an exception to the hearsay rule, they would be admissible. 859 P.2d 247, 250 (Co. Ct. App. 1993).

Although the County objects to the admission of newspaper articles into evidence, the Court *clearly admitted them* at trial. The Williamsons relied on that ruling to their detriment by releasing pending subpoenas of representatives of the Times & Democrat. (R. p. 73, line 23-p. 75, line 6.) Moreover, the County's own witnesses relied on information contained in some of them. The County Administrator testified at length in an effort to

⁶ 258 F.2d 485 (2d Cir. 1958)

⁷ 211 F.2d 31 (D.C.Cir. 1954)

⁸ 468 F. Supp. 241 (E.D. Pa. 1979)

reconcile the conflicting views attributed to the County Attorney in an article dated December 12, 2009, with those expressed in a letter he had written to the Williamsons. (R. p. 218, line 25 - p. 225, line 9; Exh. 7 at R. p. 585-86.) At no point did Mr. Clark state that the attributed remarks were incorrect.⁹ Rather, he relied on the news reports. Respondent notes in its brief (at pp.20-21) that the County Administrator deferred to the County attorney after reading the article in the Times & Democrat. Similarly, in his letter to numerous agencies, dated December 20, 2006, regarding the condemnation of the Ness Landing (R. p. 591), Mr. Clark alluded to a newspaper article for the proposition that the landowners were opposing the condemnation of Ness Landing.

Finally, the Williamsons refer to their initial argument for admission of the articles (R. p. 55, line 18 - p. 57, line 4; p. 68, line 19 - p. 70, line 3) and to Section II of Appellants' Brief for the admissibility of newspaper articles, including the substantial prejudice suffered by Appellants who relied on the trial court's admission of the articles into evidence at trial and the court's reversal of itself on this issue, as noted on in Section II B of its initial brief (Appellants' Br. p. 32).

BAD FAITH & ABUSE OF DISCRETION

Addressing bullet points in Respondent's brief (at p. 20), the Williamsons note that:

- The lack of responsiveness on the part of the County was evident from the initial contacts made by the Williamsons, more than a year before the County "simply misplaced correspondence." Id.
- Mrs. Williamson also testified she felt threatened and vilified by the newspaper articles. (R. p. 189, lines 6-17.)

⁹ Indeed, no one from the County has ever questioned the accuracy of the news reports.

- When the County initiated formal condemnation proceedings is irrelevant to whether there was a determination of necessity when the decision to condemn was made and voted upon by Council. Moreover, a consideration of necessity was never made even during the County's efforts to justify its condemnation votes after the fact.

As the County notes, bad faith is:

The opposite of good faith, generally implying or involving actual or constructive fraud, or a design to deceive or mislead another, or a neglect or refusal to [fulfill] some duty or some contractual obligation, not prompted by an honest mistake as to one's rights or duties, but by some interested or sinister motive.

(Respondent's Br. p. 19 (citing Estate of Carr ex rel. Bolton v. Circle S Enterprises, Inc., 379 S.C. 31, 664 S.E.2d 83 (Ct. App. 2008))). The County states that the Williamsons' evidence is "insufficient to establish a retaliatory intent on behalf of the [County]." (Respondent's Br. p. 22) In narrowing the definition of "bad faith" to retaliatory intent, the County chooses its own definition of "bad faith", requiring subjective animus, and ignoring that the definition is "the opposite of good faith" and that the remainder of the definition is qualified by the words "generally implying." The lack of any determination at any time as to the necessity of the condemnation by the County was a gross abuse of discretion and (objective) bad faith. "[A] condemning authority must exercise its discretion by a rational decision process which is supported by facts." Southern Development, 305 S.C. at 517.

The evidence shows that factors such as cost, environmental impact, or potential duplication of services were all ignored, together with necessity, when County Council voted to take legal action and reopen Ness Landing in its September and November 2006 council meetings. When the County brought in Berry Still, it ostensibly charged him with

finding the best site for a landing on the South Fork Edisto, although the facts are clear that he was not retained to study the issue of necessity for another landing, and he was steered by the County to Ness Landing. The County refused to address litter, crime and vandalism issues. It was unresponsive to the Williamsons' requests for months until the gate was erected. Its elected officials indulged themselves in a publicly-reported display of temper, humiliating to the Williamsons, in response to their exercise of their legitimate right to cancel the lease and limit their own liability to the public. The County Attorney waged a public campaign, through extended interviews with the newspaper that misstated the law of condemnation, misrepresented facts to impugn the landowners and publicly contradicted information that the Williamsons received privately from the County. This flawed process, whether stemming from pervasive incompetence or from something more intentional, cannot be deemed a proper exercise of discretion or good faith.

CONCLUSION

This taking was born of an overreaction to the landowners' exercise of their legitimate property rights under the lease. It was little about convenient public access to the river, but driven in reality by the County's ill-considered assumption that its years of leasing Ness Landing implied public need and permanent property rights.

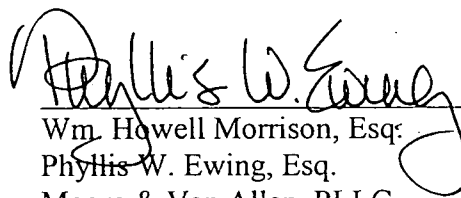
Necessity is one of only two fundamental criteria for the government's taking of property from private landowners. It is not asking too much of those given the awesome power of condemnation to understand and respect the precious few constraints on the power. The proof at trial permits only one conclusion: the County never addressed the element of necessity at all – much less in a fact-based, rational fashion – during its contorted condemnation of Ness Landing. The County's attempts in 2007 to rationalize and excuse

the defective process it employed for this taking in 2006 are unworthy of elected officials whose wages are paid by the taxpaying citizens of this state. Such a decision by a governmental entity to expropriate private property without regard for need, cost, or environmental or public safety concerns reflects an underlying bureaucratic arrogance. This taking is fairly characterized as parochial, arbitrary, wasteful, and grossly abusive of discretion. If it is sanctioned by the judiciary, it will be cited as support by condemnors for their decisions to accumulate superfluous property holdings for one political subdivision over another. It will erode one of the two prerequisites to a lawful condemnation and further undermine private property rights.

Appellants respectfully urge this Court to:

- i) reverse the trial court's ruling dismissing the Williamsons' complaint,
- ii) enjoin Orangeburg County from proceeding with the condemnation of the Landing, and
- iii) remand this matter to the trial court with an order to award Appellants their statutory fees and costs for this challenge action.

Respectfully submitted,


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