

THE STATE OF SOUTH CAROLINA
In the Supreme Court

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APPEAL FROM HORRY COUNTY
Court of Common Pleas

APR 18 2016

Edward B. Cottingham, Circuit Court Judge

S.C. SUPREME COURT

Appellate Case No. 2016-000594

Case No. 2010-CP-26-07961

South Carolina Department of Transportation *Respondent,*

v.

David Franklin Powell *Petitioner.*

**REPLY TO RESPONDENT'S RETURN TO
PETITION FOR A WRIT OF CERTIORARI**

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Petitioner submits the following Reply to the Return filed by the SCDOT in order to address the following items stated by SCDOT regarding the purpose of the acquisition:

1. Respondent readily admits Petitioner's property was taken by condemnation as a part of the "Interchange at US 17 Bypass and SC 707/Farrow Parkway" or "back gate" project. However, there has been no inquiry below, nor any holding as to the "purpose" of the physical appropriation of Petitioner's property. Nor has there been any conclusion or inquiry as to whether SCDOT has, in this matter, exercised its police power. In point of fact, the court below, as is clear in the transcript of the hearing, did not believe this represented an exercise of police power, but, instead one of eminent domain.

2. Respondent further relies on text from the 1991 case of Hales v. City of Kansas City, 248 Kan. 181, 804 P.2d 347 (1991). However, Respondent fails to inform the court that matter involved a crucial evidentiary distinction from the present matter. In Hales, the parties has entered in several stipulations as to the "purpose" of the highway project. They specifically identified, by stipulation, several items of public safety which were addressed by the project. No such stipulations, nor any findings to support similar conclusions exists in the present matter.

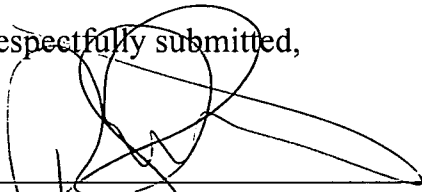
3. Respondent also argues the facts, which are contained within the Condemnation Notice and as the attachments thereto, are "part of the pleadings and not evidence of just compensation." Respondent goes on to then suggest landowners,

should they find any matter in the notice to be inaccurate, are provided by S.C. Code Ann. §28-2-470 a method to challenge such inaccuracies. However, Respondent cites no authority to suggest the entirety of the Condemnation Notice, as well as all documentation attained by a landowner through the discovery process is excluded as evidence of just compensation. Conversely, these very documents are among the most critical in determining just compensation. In most eminent domain matters, and certainly in the present matter, many hours of deposition testimony are solicited specifically to interpret the property description of the acquisition, the project plans and elevations, and any amendments thereto in order to determine the impact to the value of the subject property. Of particular note, SCDOT, in the present matter, was forced to amend its project plans, an act which necessitated the continuance of the trial of this matter as well as substantial revision to the SCDOT appraisal. Clearly, the initial filings, with no expert analysis for the court's consideration, are insufficient evidence upon which to determine the purpose of the project or whether any police power has been exercised in a particular matter.

CONCLUSION

For the reasons stated, Petitioner asks the Court to grant the petition for a writ of certiorari.

Respectfully submitted,



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