

THE STATE OF SOUTH CAROLINA
In the Supreme Court

RECEIVED
MAR 21 2016
CA
S.C. SUPREME COURT

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Edward B. Cottingham, Circuit Court Judge

Case No. 2010-CP-26-07961

OPINION NO. 5368 (FILED DECEMBER 9, 2015)

Appellate Case No. 2013-001759

RECEIVED

MAR 22 2016

SC SUPREME COURT

South Carolina Department of Transportation *Respondent,*

v.

David Franklin Powell *Petitioner.*

APPENDIX

Howell V. Bellamy, Jr., Esq., SCB # 00642
Robert S. Shelton, Esq., SCB # 68543
BELLAMY, RUTENBERG, COPELAND,
EPPS, GRAVELY & BOWERS, P.A.
1000 29th Avenue North
Myrtle Beach, SC 29577
(843) 448-2400
Attorneys for Petitioner

Other Counsel of Record:
John B. McCutcheon, Esq.
Thompson & Henry, P.A.
P.O. Box 1740
Conway, SC 29528
Attorney for Respondent

Beacham O. Brooker, Jr., Esq.
South Carolina Department of Transportation
P.O. Box 91
Columbia, SC 29202-0191
Attorney for Respondent

INDEX

	<u>Page</u>
Record on Appeal	001-317
Court of Appeals Opinion No. 5368, Heard December 10, 2014 – Filed December 9, 2015	318-327
Petition for Rehearing of Opinion No. 5368, dated December 28, 2015 and filed December 29, 2015	328-330
Appellants' Memorandum of Law in Support of Petition for Rehearing, dated December 28, 2015 and filed December 29, 2015	331-356
Return to Petition for Hearing of Respondent South Carolina Department of Transportation, dated January 5, 2016	357-363
Court of Appeals Order denying Petition for Rehearing, filed February 19, 2016	364-365

INDEX

I. ORDERS AND JUDGMENTS

Form 4 Order of Judge Culbertson filed March 13, 2013.....	003
Order of Judge Cottingham filed April 26, 2013.....	007
Order of Judge Cottingham filed May 14, 2013.....	009
Order of Judge Cottingham filed July 29, 2013.....	015

II. PLEADINGS AND MOTIONS

Condemnation Notice filed August 27, 2010.....	016
Condemnor's Motion in Limine filed March 25, 2013.....	032
Landowner's Motion in Limine filed March 28, 2013.....	046
Landowner's Memoranda Opposing Condemnor's Motion in Limine filed March 28, 2013.....	048
Landowner's Rule 59(e), SCRCF, Motion filed June 17, 2013.....	063
Notice of Appeal filed August 16, 2013.....	065

III. TRANSCRIPTS

Transcript of Record of April 1, 2013 Hearing.....	069
Exhibits to April 1, 2013 Hearing:	
Defendant's (Landowner's) Exhibit 1: March 14, 2013 Appraisal of Corbin Haskell.....	117
Court's Exhibit 1: July 6, 2011 Deposition of Corbin Haskell (with exhibits).....	167

Court’s Exhibit 2: March 25, 2013 Deposition of Corbin Haskell (with exhibits).....	234

IV. OTHER MATERIALS

March 25, 2013 Deposition of Michael W. Barbee.....	297

Respondents Highway Plans for File 26.026774A, Interchange at US 17 Bypass and SC 707/Farrow Parkway Horry County, Title Sheet and Sheets 10 and 11.....	314

V. CERTIFICATION

Appellants’ Rule 210(g) Certification.....	317

STATE OF SOUTH CAROLINA
COUNTY OF HORRY
IN THE COURT OF COMMON PLEAS

FORM 4
FILED
HORRY COUNTY

JUDGMENT IN A CIVIL CASE

CASE NO. 2010-CP-26-7961

13 MAR 13 PM 12:03

South Carolina Department of Transportation

PLAINTIFF(S)

David Franklin Powell

DEFENDANT(S)

Submitted by: Benjamin H. Culbertson, Presiding Judge

Attorney for : ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See-attached order (formal order to follow) ☐ Statement of Judgment by the Court:

Plaintiff's request for a continuance past the term of court commencing 3/11/2013 is GRANTED provided plaintiff shall pay certain costs incurred by the defendant. Case is set for date certain on 4/1/2013. Attorney John B. McCutcheon, Jr. is to prepare a formal order.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk :

The clerk of court shall complete the "For Clerk of Court Office Use Only" section below and serve a copy of this Form 4 on all parties.

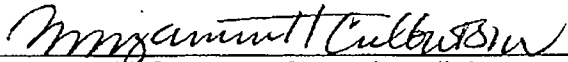
INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
N/A	N/A	\$ N/A

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.


Benjamin H. Culbertson, Circuit Court Judge

2148
Judge Code

March 11, 2013
Date

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

John B. McCutcheon, Jr.

Robert S. Shelton

Howell V. Bellamy

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter: Grace Hurley

STATE OF SOUTH CAROLINA
COUNTY OF Horry

IN THE ☒ COURT OF COMMON PLEAS
☐ FAMILY COURT

South Carolina Department of
Transportation,

CASE NO.: 2010-CP-26-7961

☒ Plaintiff/Condemnor

V.

David Franklin Powell

CIVIL COVER SHEET

☐ Defendants/Landowners

check box above indicating submitting party

<u>name, S.C. Bar no. and address of plaintiff's attorney</u> Robert S. Shelton, Esquire The Bellamy Law Firm P. O. Box 357 Myrtle Beach, SC 29577 telephone: 843/916-7163 fax: e-mail: other:	<u>name, S.C. Bar no. and address of defendants' attorney</u> John B. McCutcheon, Jr., Esquire, S.C. Bar # 3667 Lisa A. Thomas, Esquire, S.C. Bar #66458 THOMPSON & HENRY, PA Post Office Box 1740, 1300 Second Avenue, 3 rd Conway, South Carolina 29528 telephone: (843) 248-5741 fax: (843) 248-5111 e-mail: other:

FILED
HORRY COUNTY
13 APR 26 AM 11:12
CLERK OF COURT
MELANIE SUGGINS-WARD

SECTION I: Hearing Information

Nature of Motion: Order

Estimated Time Needed: _____

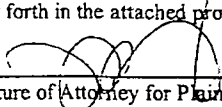
Court Reporter Needed: YES / NO

SECTION II: Motion Type

☐ Written motion attached

☐ Form Motion

I hereby move for relief or action by the court as set forth in the attached proposed order.



Signature of Attorney for Plaintiff/Defendant

4-10-13

Date Submitted

SECTION III: Motion Fee

☐ PAID-AMOUNT: \$ 25.00

☐ EXEMPT:

(check reason)

☐ Rule to Show Cause in Child or Spousal Support

☐ Domestic Abuse or Abuse and Neglect

☐ Indigent Status

☐ State Agency v. Indigent Party

☐ Sexually Violent Predator Act

☐ Post-Conviction Relief

☐ Motion for Stay in Bankruptcy

☐ Motion for Publication

☐ Motion for Execution (Rule 69, SCRCP)

☐ Proposed order submitted at request of the court; or,

reduced to writing from motion made in open court per judge's instructions -

Name of Court Reporter: _____

☐ Other: _____

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.

☐ Other: _____

JUDGE

CODE: _____

Date:

ROA-005
005

CLERK'S VERIFICATION

DATE FILED

Collected by: _____
(print name)

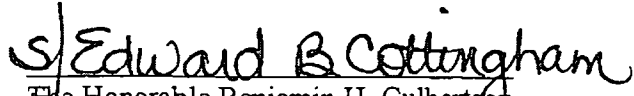
- ☐ MOTION FEE COLLECTED: _____
☐ CONTESTED - AMOUNT DUE: : _____

SCCA/233 (1/2003)

**ROA-006
006**

Landowner's engineer and appraiser. In addition thereto, the SCDOT shall reimburse the Landowner the sum of \$732.50 for the depositions that will have to be taken in this case.

AND IT IS SO ORDERED,


~~The Honorable Benjamin H. Culbertson~~
Presiding Judge of the Fifteenth Judicial Circuit

Conway, South Carolina
April 23, 2013

1

1

(

CASE NO.: 2010-CP-26-7961

Traci 13

1

1

1

1

1

1

2

4

The Condemnor further asked this Court for an Order excluding from evidence any testimony and reference to damages as contained in the appraisal of James R. Jayroe, Sr., dated September 26, 2001, and specifically any reference or testimony to damages resulting from matters of access or visibility or the loss thereof. The Condemnor specifically asked this Court for an Order suppressing evidence that a loss of visibility of the landowner is independently compensable.

In addition, the Condemnor moved for partial summary judgment on the issues of damages and asked the Court to find that any loss of access and loss of visibility were not compensable.

This Court grants the Condemnor's motion for partial summary judgment and finds that the Landowner's loss of access is not compensable at the trial of the case. This Court further excludes from the trial any evidence regarding the Landowner's loss of access. At this time, this Court is not ruling on whether any loss of visibility on behalf of the landowner is compensable.

Discussion

This is a condemnation case where the Department of Transportation served a Notice of Condemnation and Tender of Payment acquiring 0.183 acres of land owned by the Landowner Powell at the northeast corner of Old Socastee Highway and Emory Road in Horry County for the purposes of a highway project involving improvements to Highway 17. Concurrent with the filing of the Condemnation Notice with the Clerk of Court, Condemnor paid in \$72,000.00, which is its estimate of just compensation for the land taken. Condemnor's offer was rejected by the Landowner who demanded a jury trial pursuant to S.C. Code §28-2-310 (Rev. 2007) to determine the just compensation due him.

The Condemnor is closing the intersection of Emory Road and U.S. 17. In addition, it is creating a cul-de-sac on Old Socastee Highway. The result is that the Landowner must take a longer route to get to Highway 17 than he did prior to the construction. The Landowner had access to Old Socastee Highway and Emory Road prior to the construction and will continue to have access to Old Socastee Highway and Emory Road following the completion of construction.

The landowner argues that the case of S.C. Highway Department v. Wilson, 254 S.C. 360, 175 S.E.2d 391 (1970), holds that where land is taken by eminent domain, all damages to the remaining property whether caused by acts of the State on the project that the condemnation was subject to, whether on the part taken or outside the landowner's land, are recoverable. He argues that Hardin (& Tallent) v. S.C. Department of Transportation 371 S.C. 598, 641 S.E.2d 437 (2007), holding that there is no right to travel in both directions from property, being an inverse condemnation case did not overrule Wilson from which it should be distinguished as a direct instead of an inverse condemnation case. I am not convinced that the Wilson case stands for the proposition that Mr. Powell urges. First, both Wilson v. Greenville County, 110 S.C. 321, 96 S.E.2d 301 (1918), and S.C. Highway Dept. v. Carodale Associates, 268 S.C. 556, 235 S.E.2d 127 (1977), decided before and after Wilson, respectively, hold the opposite. Secondly, a close reading of the factual background as related by the Wilson court indicates that that case is distinguishable from the one at bar. In Wilson, the Highway Department took land from Ms. Wilson in order to align a county road running alongside her property at right angles with U.S. 15 which her property abutted. Concurrently, the Department installed a raised concrete median in the center of U.S. 15 eliminating her ability to make left turns from her property. The only break in the median was at the point the county road entered the highway. Thus, Ms. Wilson's only access to the far lanes of U.S. 15 was by use of the county road. The Court noted that it was impossible to separate the damages from the median from other damages suffered by Ms. Wilson. The Court held that there was no need for, or the contemplated construction of, the median except for the overall construction and relocation. In other words, the placement of the median break and the taking of land from Ms. Wilson to line the county road up with it were the

same act and damages from the latter flowed from the taking. The taking was indispensable to the median break location and inseparable from it. Here, the Department could have eliminated the intersection without taking land from Mr. Powell. The land taken was for the purpose of rounding the intersection at Emory Road and Old Socastee Highway.

The Condemnor argues that this Court should grant its Motion for Summary Judgment because a change in access is not compensable under Hardin (&Tallent) v. SCDOT and that any evidence regarding a change in access to the property should be excluded at trial. 371 S.C. 598, 641 S.E.2d 437 (2007) (see, also, Hilton Head Automotive, LLC v. S.C. Dep't. of Transp., 394 S.C. 27, 714 S.E.2d 308 (2011); Carolina Chloride, Inc. v. S.C. Dep't. of Transp., 391 S.C. 429, 706 S.E.2d 501 (2011).) I agree. According to the Court in the Hardin case, the focus of the inquiry in a case of this type must be on a landowner's actual property interests; that is, his easements. The easements a property owner holds with respect to public roads are of two types: The first is the right to enter and leave your property directly on to each of the roads it abuts. The second is the right to access the general system of roads. This latter right is akin to an easement by necessity between private owners and is based on the general principle that no property should be landlocked. *Id.* at 442. The inability to travel in both directions on a road adjoining one's property is irrelevant. *Id.* at 444.

The Hardin court stated:

As long as the owner has access to and from the remainder of the road that continues to abut his property, his easement with respect to that road remains intact. Further, as long as a landowner still has access to the public road system, this easement is unaffected. This reasoning is in line with the notion that a landowner has no right to access abutting roads in more than one direction. 73 A.L.R.2d 689, 691-698.

Hardin, 641 S.E.2d at 442. Here, the Powell property in the after situation still has full access to each of the roads it abuts—Emory Road and Old Socastee Highway. It still has access to the

general system of roads by travelling south on Emory Road. Neither of the easements described in Hardin (& Tallent) have been taken.

The fact that Hardin, Hilton Head Automotive, and Carolina Chloride were inverse condemnation cases and the present case is a direct condemnation case where land was taken does not distinguish the principle stated above. See 4A Sackman, Nichols on Eminent Domain, §14A.01[6][a], p. 14A-25; see, also, Carodale Associates, supra (a landowner has no vested right in the continuance of a public highway even where land is taken for the project.)

With regard to the compensability of impairment of access to the remainder as severance damages, Nichols states that, while access to the remainder may be less convenient or more circuitous than it was in the "before" situation, mere circuitry of access is no more compensable in a severance damage case than it is in any other type of action. At a minimum, the condemning authority is entitled to a jury instruction indicating that no compensation is to be awarded for a change in access, so long as reasonable access is still afforded the remainder property. 2A Sackman, Nichols on Eminent Domain, §6.02[5][h].

While the Landowner likely suffers a diminution in value to his land because of the change in access, under the current law of Hardin that diminution in value is not compensable.

CONCLUSION

It is ORDERED, ADJUDGED, AND DECREED that the Condemnor's Motion for Partial Summary Judgment on Damages is hereby GRANTED. It is further ORDERED, ADJUDGED, AND DECREED that evidence regarding a change in access is excluded from the trial of this case. The issue of visibility is left to the trial judge.

SO ORDERED this the 6th day of MAY, 2013.

Edward B. Cottingham
The Honorable Edward B. Cottingham

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

) IN THE COURT OF COMMON PLEAS
) FOR THE FIFTEENTH JUDICIAL CIRCUIT

South Carolina Department of Transportation,)

Case No.: 2010-GS-26-7961

Condemnor,

vs.

ORDER DENYING LANDOWNER'S
MOTION TO ALTER OR AMEND
UNDER RULE 59(e)

David Franklin Powell,

Landowner.

HORRY COUNTY
13 JUL 29 PM 3:25
MELANIE HUGGINS-WARD
CLERK OF COURT

The Court heard Condemnor's motion for summary judgment in Conway on April 26, 2013. The Court applied the South Carolina Supreme Court's inverse condemnation holding in Hardin (& Tallent) v. S.C. Department of Transportation, 371 S.C. 598, 641 S.E.2d 437 (2007) to the present action and granted Condemnor's motion for summary judgment.

On June 17, 2013, counsel for the Landowner filed a written motion to alter or amend under Rule 59(e), S.C.R.C.P. After reviewing Landowner's written arguments, and having a July 10, 2013 teleconference with both parties, the Court denies Landowner's motion. Since the Court heard this matter via the July 10, 2013 teleconference, further oral arguments will not be necessary.

Therefore, Landowner's motion pursuant to Rule 59(e) is denied.

IT IS SO ORDERED.

July 26, 2013
Lexington, South Carolina


Edward B. Cottingham
Presiding Judge

STATE OF SOUTH CAROLINA

COUNTY OF Horry

IN THE COURT OF COMMON PLEAS

SOUTH CAROLINA DEPT. OF
TRANSPORTATION

Plaintiff(s)

CIVIL ACTION COVERSHEET

vs.

2010 - CP - 26 - 7961

DAVID FRANKLIN POWELL

Defendant(s)

(Please Print)

Submitted By: JOHN B. MCLOTCHERON JR

SC Bar #:

3767

Address:

P.O. BOX 1740

Telephone #:

248-5741

Fax #:

248-5112

Other:

E-mail:

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- ☒ JURY TRIAL demanded in complaint. ☐ NON-JURY TRIAL demanded in complaint.
☐ This case is subject to ARBITRATION pursuant to the Circuit Court Alternative Dispute Resolution Rules.
☒ This case is subject to MEDIATION pursuant to the Circuit Court Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR (certificate attached).

NATURE OF ACTION (Check One Box Below)

Contracts ☐ Construction (100) ☐ Debt Collection (110) ☐ Employment (120) ☐ General (130) ☐ Breach of Contract (140) ☐ Other (199)	Torts - Professional Malpractice ☐ Dental Malpractice (200) ☐ Legal Malpractice (210) ☐ Medical Malpractice (220) ☐ Other (299)	Torts - Personal Injury ☐ Assault/Slander/Libel (300) ☐ Conversion (310) ☐ Motor Vehicle Accident (320) ☐ Premises Liability (330) ☐ Products Liability (340) ☐ Personal Injury (350) ☐ Other (399)	Real Property ☐ Claim & Delivery (400) ☒ Condemnation (410) ☐ Foreclosure (420) ☐ Mechanic's Lien (430) ☐ Partition (440) ☐ Possession (450) ☐ Building Code Violation (460) ☐ Other (499)
Inmate Petitions ☐ PCR (500) ☐ Sexual Predator (510) ☐ Mandamus (520) ☐ Habeas Corpus (530) ☐ Other (599)	Judgments/Settlements ☐ Death Settlement (700) ☐ Foreign Judgment (710) ☐ Magistrate's Judgment (720) ☐ Minor Settlement (730) ☐ Transcript Judgment (740) ☐ Lis Pendens (750) ☐ Other (799)	Administrative Law/Relief ☐ Reinstatement Driver's License (800) ☐ Judicial Review (810) ☐ Relief (820) ☐ Permanent Injunction (830) ☐ Forfeiture (840) ☐ Other (899)	Appeals ☐ Arbitration (900) ☐ Magistrate-Civil (910) ☐ Magistrate-Criminal (920) ☐ Municipal (930) ☐ Probate Court (940) ☐ SCDOT (950) ☐ Worker's Comp (960) ☐ Zoning Board (970) ☐ Administrative Law Judge (980) ☐ Public Service Commission (990) ☐ Employment Security Comm (991) ☐ Other (999)
Special/Complex /Other ☐ Environmental (600) ☐ Pharmaceuticals (630) ☐ Automobile Arb. (610) ☐ Unfair Trade Practices (640) ☐ Medical (620) ☐ Other (699)			

Submitting Party Signature:

John B. McLocheron Jr

Date:

Aug 27, 2010

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

) IN THE COURT OF COMMON PLEAS
) C/A NO.
)

Road/Route Interchange at US 17 Bypass and
SC 707 / Farrow Parkway
File 26.036774A
Item
Project HERR
PIN 36774 RD01

FILED
CLERK OF COURT
HORRY COUNTY
JUL 27 12:19 PM

South Carolina Department of Transportation,

Condemnor,

VS.

David Franklin Powell,

Landowner(s).

CONDEMNATION NOTICE
AND
TENDER OF PAYMENT

(JURY TRIAL DEMANDED)

COPY TO: Rob Shelton, Bellamy Rutenburg, Copeland, Epps, Gravely and Bowers, PA
Attorneys – 1000 29th Avenue North, Myrtle Beach, South Carolina 29577

TO: THE LANDOWNER(S) ABOVE NAMED:

Pursuant to the South Carolina Eminent Domain Procedure Act, Section 28-2-10, et seq., Code of Laws of South Carolina, 1976, as amended, you are hereby notified as follows:

1. The South Carolina Department of Transportation (SCDOT) is the Condemnor herein and seeks to acquire the real property described herein for public purposes.

2. David Franklin Powell is named as Landowner(s) in this action by virtue of his claim(s) of title (or other interests) as heir at law of John P. Powell who died testate on July 8, 2005 as shown by that certain Will filed in the records of Probate Court in Probate Roll 2005ES973; also by Deed of Distribution recorded in Deed Book 3052, Page 114 in the records for Horry County.

Condemnation Notice and Tender of Payment (continued)

3. The following is a description of the real property subject to this action and a description of the interest sought to be acquired in and to the property by the Condemnor:

All that parcel or strip of land, in fee simple, containing 0.183 acre (7,951 square feet) more or less, and all improvements thereon, if any, owned by David Franklin Powell as the "Area of Acquisition" on Exhibit A, attached hereto and made a part hereof, on the right between approximate survey stations 61+00 and 65+00 (Emery Road Survey).

Tax Map Number: 180-09-03-034

ROA-019
019

Condemnation Notice and Tender of Payment (continued)

4. The SCDOT is vested with the power of eminent domain pursuant to Section 57-5-320 and Section 28-2-60, Code of Laws of South Carolina, 1976, as amended.

5. The property sought herein is to be acquired for public purposes, more particularly for the construction of **Interchange at US 17 Bypass and SC 707 / Farrow Parkway**.

6. This action is brought pursuant to Section 28-2-240, Code of Laws of South Carolina, 1976, as amended.

7. The SCDOT has complied with the requirements set forth in Section 28-2-70(a), Code of Laws of South Carolina, 1976, as amended, by having the subject property appraised and making the appraisal available to the Landowner(s) where required by law, and certifies to the Court that a negotiated resolution has been attempted prior to the commencement of this action, or pursuant to Section 12-28-2940, Code of Laws of South Carolina, 1976, as amended, an appraisal of this property was not required.

8. Project plans may be inspected at the office of **South Carolina Department of Transportation, Horry County Maintenance Office, 4145 Highway 701 North, Conway, South Carolina 29526, under File No. 26.036774A, Interchange at US 17 Bypass and SC 707 / Farrow Parkway, Tract 13.**

9. THE CONDEMNOR HAS DETERMINED JUST COMPENSATION FOR THE PROPERTY AND RIGHTS TO BE ACQUIRED HEREUNDER, TO BE THE SUM OF **SIXTY EIGHT THOUSAND AND NO/100 DOLLARS (\$68,000.00)** AND HEREBY TENDERS PAYMENT THEREOF TO THE LANDOWNER(S).

10. Payment of this amount will be made to the Landowner(s) if within thirty (30) days of service of this Condemnation Notice, the Landowner(s) in writing requests payment, and agrees to execute any instruments necessary to convey to the Condemnor the property interests and rights described hereinabove. The Agreement and Request for Payment must be sent by first class certified mail with return receipt requested or delivered in person to Kenneth C. Feaster, Director, Rights of Way, South Carolina Department of Transportation, 955 Park Street, Columbia, South Carolina 29202. If no Agreement and Request for Payment is received by the Condemnor within the thirty (30) day period, the tender is considered rejected.

11. If the tender is rejected, the Condemnor has the right to file this Condemnation Notice with the Clerk of Court of the County where the property is situated and deposit the

Condemnation Notice and Tender of Payment (continued)

tender amount with the Clerk. The Condemnor shall give the Landowner(s) and Other Condemnee(s) notice that it has done so and may then proceed to take possession of the property interests and exercise the rights described in this Condemnation Notice.

12. AN ACTION CHALLENGING THE CONDEMNOR'S RIGHT TO ACQUIRE THE PROPERTY AND RIGHTS DESCRIBED HEREIN MUST BE COMMENCED IN A SEPARATE PROCEEDING IN THE COURT OF COMMON PLEAS WITHIN THIRTY DAYS OF THIS CONDEMNATION NOTICE, OR THE LANDOWNER(S) WILL BE CONSIDERED TO HAVE WAIVED THE CHALLENGE.

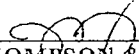
13. THE CONDEMNOR HAS ELECTED NOT TO UTILIZE THE APPRAISAL PANEL PROCEDURE. Therefore, if the tender herein is rejected, the Condemnor shall notify the Clerk of Court and shall demand a trial to determine the amount of just compensation to be paid. A copy of that notice must be served on the Landowner(s). That notice shall state whether the Condemnor demands a trial by jury or by the Court without a jury. The Landowner(s) has the right to demand a trial by jury. The case may not be called for trial before sixty (60) days after the service of that notice, but it may thereafter be given priority for trial over other civil cases. The Clerk of Court shall give the Landowner(s) written notice by mail of the call of the case for trial.

14. THEREFORE, IF THE TENDER HEREIN IS REJECTED, THE LANDOWNER(S) IS ADVISED TO OBTAIN LEGAL COUNSEL AT ONCE, IF NOT ALREADY OBTAINED.

Condemnation Notice and Tender of Payment (continued)

15. In the event the Landowner(s) accepts the amount tendered in this Notice, the attached Agreement and Request for Payment form should be signed and returned to the Condemnor within thirty (30) days of your receipt of this Notice.

BARBARA M. WESSINGER
JOHN B. McCUTCHEON, JR.
Attorneys for the Condemnor,
South Carolina Department of Transportation


THOMPSON & HENRY, PA
1300 Second Avenue, 3rd Flr. P. O. Box 1740
Conway, SC 29526 843/248-5741

Aug 27, 20 10

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

) IN THE COURT OF COMMON PLEAS
) C/A NO.
)

Road/Route Interchange at US 17 Bypass
and SC 707 / Farrow Parkway
File 26.036774A
Item
Project HERR
PIN 36774 RD01

South Carolina Department of Transportation,

Condemnor,

VS.

David Franklin Powell,

Landowner(s).

SUMMONS

FILED
HORRY COUNTY
CLERK OF COURT
AUG 27 PM 12:19
CLAUDE HUGHES-WARD

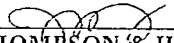
TO: THE LANDOWNER(S) ABOVE NAMED:

YOU ARE HEREBY SUMMONED, advised and notified, that pursuant to the South Carolina Eminent Domain Procedures Act, Section 28-2-10, et seq., the within Condemnation Notice and Tender of Payment, a copy of which is herewith served upon you, has been filed with the Clerk of Court for Horry County. The purpose of this lawsuit is to enable the Condemnor, the South Carolina Department of Transportation, to acquire certain real property for its public purposes, as is more fully

Summons (continued)

stated in the attached Condemnation Notice and Tender of Payment. Responsive pleadings to the Condemnation Notice and Tender of Payment are not necessary.

BARBARA M. WESSINGER
JOHN B. McCUTCHEON, JR.
Attorney for the Condemnor,
South Carolina Department of Transportation


THOMPSON & HENRY, PA
1300 Second Avenue, 3rd Flr. P. O. Box 1740
Conway, SC 29526 843/248-5741

Aug 27, 20 10

STATE OF SOUTH CAROLINA

} IN THE COURT OF COMMON PLEAS

) C/A NO.

COUNTY OF HORRY

Road/Route **Interchange at US 17 Bypass
and SC 707 / Farrow Parkway**

File 26.036774A

Item

Project H0RR

PIN 36774 RD01

South Carolina Department of Transportation,

Condemnor,

VS.

David Franklin Powell,

Landowner(s).

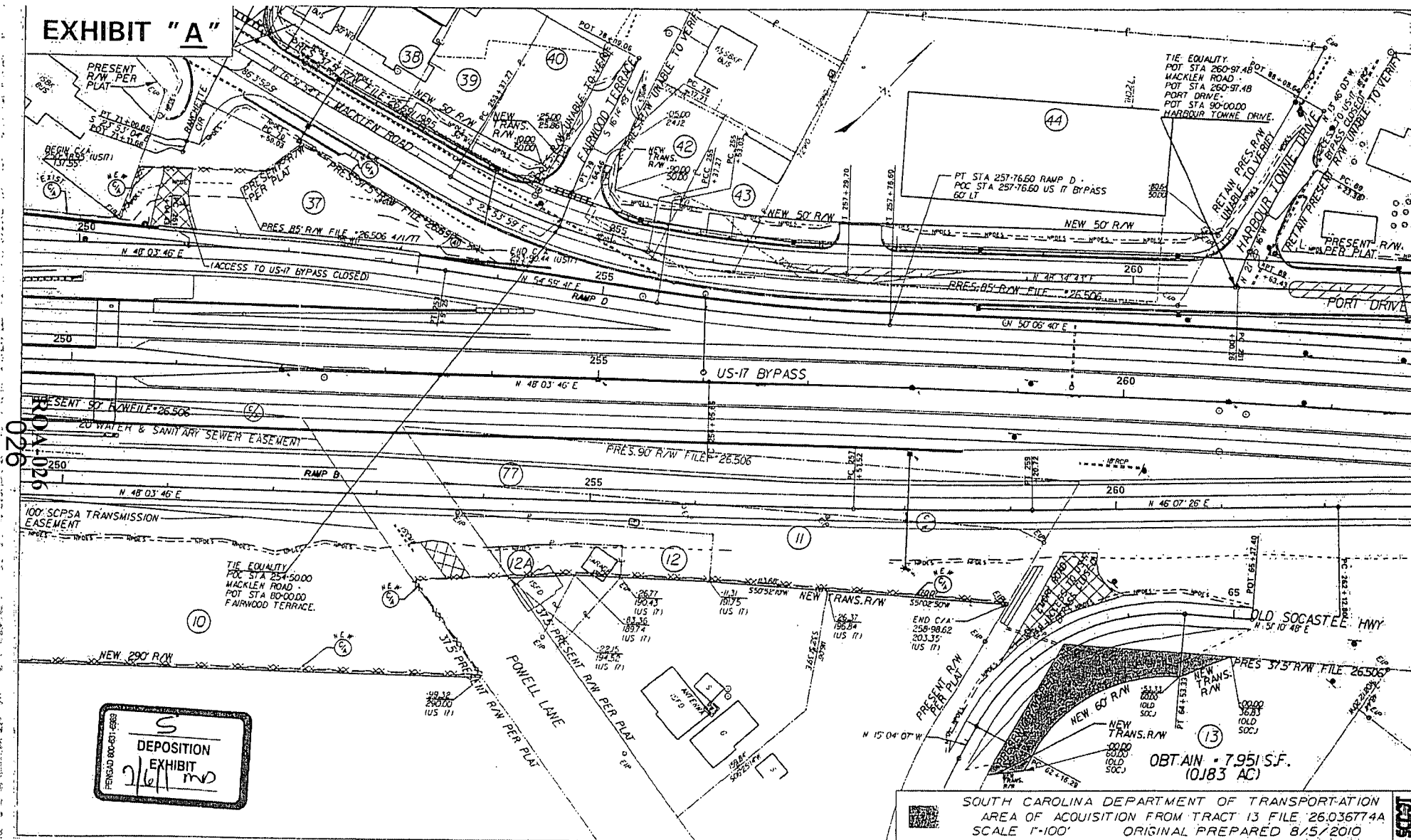
LIS PENDENS

NOTICE IS HEREBY GIVEN that the Condemnor above named pursuant to the South Carolina Eminent Domain Procedures Act, Section 28-2-10, et seq., of the South Carolina Code of Laws, 1976, as amended, has brought an action against the Condemnee(s) above named to acquire the real property described herein for public purposes, to-wit:

All that parcel or strip of land, in fee simple, containing 0.183 acre (7,951 square feet) more or less, and all improvements thereon, if any, owned by David Franklin Powell as the "Area of Acquisition" on Exhibit A, attached hereto and made a part hereof, on the right between approximate survey stations 61+00 and 65+00 (Emery Road Survey).

Tax Map Number: 180-09-03-034

EXHIBIT "A"



Lis Pendens (continued)

The property sought herein is to be acquired for public purposes, more particularly
Interchange at US 17 Bypass and SC 707 / Farrow Parkway.

BARBARA M. WESSINGER
JOHN B. McCUTCHEON, JR.
Attorneys for the Condemnor
South Carolina Department of Transportation



THOMPSON & HENRY, PA
1300 Second Avenue, 3rd Flr. P. O. Box 1740
Conway, SC 29526 843/248-5741

Aug 27, 20 10

STATE OF SOUTH CAROLINA

) IN THE COURT OF COMMON PLEAS

COUNTY OF HORRY

) C/A NO.

)

Road/Route Interchange at US 17 Bypass
and SC 707 / Farrow Parkway
File 26.036774A
Item
Project HERR
PIN 36774 RD01

South Carolina Department of Transportation,

NOTICE OF FILING

Condemnor,

VS.

David Franklin Powell,

Landowner(s).

FILED
HORRY COUNTY
2018 AUG 27 PM 12:19
CLERK OF COURT
CLAUDE HUGHES-WARD

TO THE LANDOWNER(S) ABOVE NAMED:

Pursuant to the South Carolina Eminent Domain Procedure Act, Section 28-2-230(b), et seq., Code of Laws of South Carolina, 1976, as amended, you are hereby notified that as you have rejected the amount tendered as just compensation as stated in the Condemnation Notice, the Condemnor has filed the Condemnation Notice with the Clerk of Court for Horry County pursuant to Section 28-2-90, Code of Laws of South Carolina, 1976, as amended, may now proceed to take possession of the property or interest described in the Condemnation Notice.

Notice of Filing (continued)

BARBARA M. WESSINGER
JOHN B. McCUTCHEON, JR.
Attorneys for the Condemnor
South Carolina Dept. of Transportation


THOMPSON & HENRY, PA
1300 Second Avenue 3rd Fl. P. O. Box 1740
Conway, SC 29526 843/248-5741

Aug 27, 20 10

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

) IN THE COURT OF COMMON PLEAS
) C/A NO.
)

Road/Route Interchange at US 17 Bypass
and SC 707 / Farrow Parkway
File 26.036774A
Item
Project HORR
PIN 36774 RD01

South Carolina Department of Transportation,)
)
Condemnor,)
)
VS.)
)
David Franklin Powell,)
)
)
Landowner(s).)
)
_____)

AFFIDAVIT
FILED
CLERK OF COURT
PH 12:19
AUG 27 2019
HORRY COUNTY

PERSONALLY APPEARED before me **Daryl Hardwick** who, being first duly sworn, says and deposes:

1. That the amount tendered by the Condemnor to the Landowner(s) in the Condemnation Notice has been rejected;
2. That the Condemnor demands a trial not earlier than sixty (60) days after the date of service of this affidavit upon the Landowner(s);
3. That the Condemnor demands a trial by jury;
4. That, at this time, the Condemnor does not demand that this action be given priority over other cases;

Affidavit (continued)

5. That the Clerk of Court should notify the following Landowner(s) of the call of the case.

David Franklin Powell
3190 Emery Road
Myrtle Beach, SC 29577

Rob Shelton, Bellamy, Ruttenburg,
Copeland, Epps, Gravely and Bowers
PA Attorneys
1000 29th Avenue North
Myrtle Beach, South Carolina 29577

Jeff Haskins

SWORN to before me this 13th
day of August, 20 10
Eva A. Cain
NOTARY PUBLIC FOR South Carolina
My Commission Expires: 1-24-2015

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	CASE NO.: 2010-CP-26-7961

Road/Route Interchange at US 17 Bypass and
 SC 707/Farrow Parkway
 File 26.036774A
 Project HERR
 Pin 36774 RD01
 Tract 13

South Carolina Department of Transportation,	)	
	)	
Condemnor,	)	
	)	NOTICE OF NOTICE AND
VS.	)	MOTION IN LIMINE
	)	
David Franklin Powell,	)	
	)	
Landowner(s)	)	
_____	)	

You will please take notice that the Condemnor herein through its undersigned attorneys will move before the Presiding Judge of the Horry County Court of Common Pleas at the Horry County Courthouse, Conway, South Carolina, for an Order excluding from evidence any reference to the appraisal of Corbin Haskell dated March 14, 2013, upon the grounds that said appraisal has been formally withdrawn by counsel and replaced by a subsequent appraisal of Corbin Haskell of the same date that was forwarded to the Landowner's attorney on March 21, 2013, and particularly any references in said appraisal to damages resulting from access issues.

You will further please take notice that the Condemnor herein through its attorneys will move before the Presiding Judge of the Horry County Court of Common Pleas at the Horry County Courthouse, Conway, South Carolina, for an Order excluding from evidence any testimony and reference to damages as contained in the appraisal of James R. Jayroe, Sr., dated September 26, 2001, and specifically any reference or testimony to damages resulting from matters of access or visibility or the loss thereof.

The foregoing Motion is based upon the pleadings in this matter and upon such other and further argument and documents as may be presented at the hearing of said Motion.

JOHN B. McCUTCHEON, JR.
Attorney for Condemnor
South Carolina Department of Transportation

s/John B. McCutcheon, Jr.
THOMPSON & HENRY, PA
1300 Third Avenue PO Box 1740
Conway, SC 29526 843/248-5741

March 25, 2013

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	CASE NO.: 2010-CP-26-7961

Road/Route Interchange at US 17 Bypass and
 SC 707/Farrow Parkway
 File 26.036774A
 Project HORR
 Pin 36774 RD01
 Tract 13

South Carolina Department of Transportation,	)	
	)	
Condemnor,	)	
	)	MEMORANDUM IN SUPPORT
VS.	)	OF MOTION IN LIMINE
	)	
David Franklin Powell,	)	
	)	
Landowner(s)	)	
_____	)	

The Condemnor asks this Court for an Order excluding from evidence any reference to the appraisal of Corbin Haskell dated March 14, 2013, upon the grounds that said appraisal has been formally withdrawn by counsel and replaced by a subsequent appraisal of Corbin Haskell of the same date that was forwarded to the Landowner's attorney on March 21, 2013, and particularly any references in said appraisal to damages resulting from access issues.

The Condemnor further asks this Court for an Order excluding from evidence any testimony and reference to damages as contained in the appraisal of James R. Jayroe, Sr., dated September 26, 2001, and specifically any reference or testimony to damages resulting from matters of access or visibility or the loss thereof. The Condemnor specifically asks this Court for an Order suppressing evidence that a loss of visibility of the landowner is independently compensable.

Discussion

This is a condemnation case where the Department of Transportation served a Notice of Condemnation and Tender of Payment acquiring 0.183 acres of land owned by the Landowner Powell at the northeast corner Old Socastee Highway and Emory Road in Horry County for the purposes of a highway project involving improvements to U.S. Route 17. Concurrent with the filing of the Condemnation Notice with the Clerk of Court, Condemnor paid in \$ 72,000.00, which is its estimate of just compensation for the land taken. Condemnor's offer was rejected by the Landowner who demanded a jury trial pursuant to S.C. Code §28-2-310 (Rev. 2007) to determine the just compensation due him.

I. COMPENSABILITY OF CHANGE IN ACCESS

This Court should disallow the landowner from entering any evidence regarding damages resulting in a change in access to the property.

It is well settled in South Carolina that there is a distinction between the exercise of the police power and the exercise of the power of eminent domain; that just compensation is required in the case of the exercise of eminent domain but not for the loss by the property owner which results from the constitutional exercise of the police power. Richards v. City of Columbia, 227 S.C. 538, 88 S.E.2d 683 (1955); Edens v. City of Columbia, 228 S.C. 563, 91 S.E.2d 280 (1956). Re-routing and diversion of traffic are police power regulations. Carodale, supra, 235 S.E.2d at 129. Here, the right of the landowner to travel from his property to U.S. 17 via Emory road is not embraced with the property right of access that landowners possess with regard to roads adjoining their properties. Rather, it is a right of passage over public roads that Mr. Powell shares with all members of the travelling public which may be modified at any time by the State in redesigning highways and redirecting traffic without liability to any individual landowner.

Thus, any diminution in the value of Mr. Powell's remaining land after the acquisition that is attributable to the closure of the intersection of Emory Road and U.S. 17 is an incidental result of a police power act of the State and not one of eminent domain and is not compensable.

The compensability of the taking of access from private property is governed by the S. C. Supreme Court's decision in Hardin (& Tallent) v. SCDOT, 371 S.C. 598, 641 S.E.2d 437 (2007). (See, also, Hilton Head Automotive, LLC v. S.C. Dep't. of Transp., 394 S.C. 27, 714 S.E.2d 308 (2011); Carolina Chloride, Inc. v. S.C. Dep't. of Transp., 391 S.C. 429, 706 S.E.2d 501 (2011).) There the Court stated that, because road realignments and closures do not involve the enactment of any regulation that directly regulates any use of owners' properties, the Department must have physically appropriated some aspect of them for a taking to be found. Id. 641 S.E.2d at 441. According to the Court, the focus of the inquiry in a case of this type must be on a landowner's actual property interests; that is, his easements. The easements a property owner holds with respect to public roads are of two types: The first is the right to enter and leave your property directly on to each of the roads it abuts. The second is the right to access the general system of roads. This latter right is akin to an easement by necessity between private owners and is based on the general principle that no property should be landlocked. Id. at 442. The inability to travel in both directions on a road adjoining one's property is irrelevant. Id. at 444.

The Hardin court stated:

As long as the owner has access to and from the remainder of the road that continues to abut his property, his easement with respect to that road remains intact. Further, as long as a landowner still has access to the public road system, this easement is unaffected. This reasoning is in line with the notion that a landowner has no right to access abutting roads in more than one direction. 73 A.L.R.2d 689, 691-698.

Hardin, 641 S.E.2d at 442. Here, the Powell property in the after situation still has full access to each of the roads it abuts—Emory Road and Old Socastee Highway. It still has access to the general system of roads by travelling south on Emory Road. Neither of the easements described in Hardin (& Tallent) have been taken.

The fact that Hardin, Hilton Head Automotive, and Carolina Chloride were inverse condemnation cases and the present case a direct condemnation case where land was taken does not distinguish the principle stated above. Damages to land resulting from the State's exercise of its police power are no more recoverable in direct condemnation cases than in inverse cases. See 2A Sackman, Nichols on Eminent Domain, §6.02[5][f] Rev. 6.04;¹ see, also, Carodale Associates, supra (a landowner has no vested right in the continuance of a public highway even where land is taken for the project.)

The measure of just compensation for the taking of private property for public use in South Carolina is defined in S.C. Code Ann. §28-2-370 (Rev. 2007) as the value of the property to be taken, any diminution of value of the landowner's remaining property, and benefits to the property from the project.

The Supreme Court in S.C. State Highway Dept. v. Bolt, 242 S.C. 411, 131 S.E.2d 264, 265-66 (1963), defined the allowable damages as follows:

In addition to the actual value of the land taken, where a portion of a tract of land is taken for such public use, the landowner is entitled to compensation for any special damages resulting to the remainder thereof. The special damages referred

¹ In Hales v. Kansas City, 804 P.2d 347 (Kan. 1991), the court addressed a landowner's claim that the mere acquisition of a part of its land by the exercise of eminent domain rendered all damages resulting from the highway construction project under the before-and-after rule applicable to a taking. The state may, concurrent with a compensable taking in a condemnation proceeding, validly exercise the police power for traffic control and public safety for which there may be no compensation, even if it affects the method of ingress and egress to the affected property. In other words, the mere fact that a public project may also necessitate the physical appropriation of a portion of one's property does not necessarily entitle one to compensation for an otherwise valid exercise of the police power associated with the same project.

to in the above statutes relate to injury or damage to the remainder of the property from which a portion is taken. They would include any damage or any decrease in actual value of the remainder of the landowner's property which are the direct and proximate consequence of the acquisition of the right of way.

(Emphasis added). The Bolt court quoted Am. Jur. that,

[T]he right to recover for the damages to his remaining land is not based upon the theory that damage to such land constitutes a taking of it, nor is there any requirement that the damage be special and peculiar, or as would be actionable at common law; it is enough that it is a consequence of the taking. The entire parcel is considered as a whole, and the inquiry is, how much has the particular public improvement decreased the fair market value of the property, taking into consideration the use for which the land was taken and all the reasonably probable effects of its devotion to that use.

Id. (emphasis added). The types of damages allowable generally go by the shorthand description of "severance damages" and include any act on the portion taken that reduces the value of the remainder whether or not such act affects a discrete property right.

The federal courts have developed a rule to distinguish damages resulting from a taking and damages resulting from concurrent police power acts elsewhere on the project. The rule is contained in three cases: Campbell v. United States, 266 U.S. 368, 45 S.Ct. 115, 69 L.Ed. 328 (1924); West Virginia Pulp & Paper v. United States, 200 F.2d 100 (4th Cir., 1952); and United States v. Pope & Talbot, 293 F.2d 822 (9th Cir., 1961).² In Campbell, the War Department condemned 1.81 acres of Appellant's 69-acre tract along with 1,300 acres owned by other landowners to construct a nitrate plant. Campbell appealed the refusal of the District Court to award him any damages for diminution in value to his remaining land. The government did not propose to use Mr. Campbell's land for industrial purposes. Rather, the plant would be physically located on land taken from the other landowners. The Court held that the proposed use of land by the government taken from others did not constitute a taking of Mr. Campbell's

² Numerous state court decisions follow the rule. See, e.g., Simon v. Dept. of Transp., 265 S.E.2d 777 (Ga. 1980) and those discussed below.

property. It noted that, if his neighboring private owners had put their land to the identical use that the government proposed, Campbell would have no right to prevent it. Thus, the exertion of the power of eminent domain did not deprive him of any right with respect to his land. In summary, the Court stated,

The rule supported by better reason and the weight of authority is that just compensation assured by the Fifth Amendment to an owner, a part of whose land was taken for public use, does not include the diminution in value of the remainder caused by the acquisition and use of adjoining lands of others for the same undertaking.

Id., 45 S.Ct. at 116.

The Fourth Circuit in West Virginia Pulp & Paper, distinguished Campbell, and awarded damages for the diminution in value to two other contiguous tracts owned by the condemnee and put by him to the same use noting that just compensation includes not only the market value of that part of the tract appropriated, but the damage to the remainder resulting from that taking, embracing, of course, injury due to the use to which the part appropriated is to be devoted.

The Ninth Circuit, in Pope & Talbot, established a corollary rule to Campbell. There the United States had taken part of Plaintiff's land and lands of other owners for a dam project. The part taken from Pope & Talbot was flooded along with other lands. In addition, the remaining Pope & Talbot land suffered a loss of accessibility due to having to drive around the lake instead of straight across its bed. The Court held that three elements are necessary to negate the application of Campbell: indispensability, substantiality, and inseparability. In Pope & Talbot, (1) the land taken from the condemnee landowner was indispensable to the dam project; (2) the land taken constituted a substantial (not inconsequential) part of the tract devoted to the project; and (3) the damages resulting to the land not taken from the use of the land taken were

inseparable from those to the same land flowing from the condemnor government's use of its adjoining land in the dam project.

As the Ninth Circuit noted in a later case, both the rules in Campbell and in Pope & Talbot are sensible. United States v. 15.65 Acres of Land in Marin County, Cal., 689 F.2d 1329 (9th Cir. 1982). With regard to Campbell, a private seller receiving a bid for a portion of his land and responding thereto in a rational manner, will fix his asking price at an amount that will compensate him for any diminution in value of his remaining land. On the other hand, a private landowner whose property has its value reduced by the acquisition and use of an adjoining neighbor's land by a third party buyer ordinarily cannot recoup this loss from either the neighbor or the third party buyer. Id. at 1332.

The necessity of the elements in Pope & Talbot is also quite sensible according to the Marin court:

The element of indispensability assures that the government is being required to pay no more than a private buyer confronted with the same compulsion. In either event, indispensability affords the landowner the ability to demand payment for the injury to his remaining property, just as he is able to do so under the first rule stated above. Substantiality tends to assure the existence, in fact of indispensability, and inseparability tends to assure that the injury to the land not taken does not arise from a use independent of the project with respect to which the property taken was indispensable.

Id.

The same question--whether a property owner who has had a parcel of his property taken as part of a public project is entitled to consequential damages to his remaining land flowing from the entire project?—was addressed in Griffith v. Montgomery County, 470 A.2d 840 (Md. App. 1984).

In Griffith, a portion of the Plaintiff's land was taken for a road to provide access to a new County landfill. The Court rejected Plaintiff's claim that he was entitled to consequential

damages to his remaining property attributable to the proximity of his property to the landfill. The Court held that Plaintiff's land was used to construct a road and its use for those purposes is readily separated from the use of other properties utilized as a landfill. The Court stated,

In United States v. Pope & Talbot, supra, and United States v. 15.65 Acres of Land, supra, the cases were determined on the question of whether damages were capable of being separated. In those cases, the portion of the property owner's land appropriated was put to the same use as the neighboring lands. This was not the case in the proceeding presently before us. The appropriation of appellants' land for use as a road is clearly differentiated from the land taken for the purposes of use as a landfill, and the damages resulting from each are clearly separable.

Id. at 845.

With regard to the compensability of impairment of access to the remainder as severance damages, Nichols states that, while access to the remainder may be less convenient or more circuitous than it was in the "before" situation, mere circuitry of access is no more compensable in a severance damage case than it is in any other type of action. At a minimum, the condemning authority is entitled to a jury instruction indicating that no compensation is to be awarded for a change in access, so long a reasonable access is still afforded the remainder property. 2A Sackman, Nichols on Eminent Domain, §6.02[5][h].

Finally, we should distinguish one South Carolina decision, S. C. State Highway Dept. v. Wilson, 254 S.C. 360, 175 S.E.2d 391 (1970), where the Court affirmed and award of damages to a condemnee arising from the construction of a median eliminating left turns from her property onto the abutting highway.

In Wilson, supra, an undivided two-lane highway, U.S. 15, was converted to a four-lane road divided by a median that ran the entire length of the plaintiff's property. As part of the project the State acquired land from Mrs. Wilson for the purpose of

relocating a county road which intersected U.S. 15 at a break in the median. In the after situation, Mrs. Wilson only had access to the north-bound lanes of U.S. 15 by using the relocated county road which aligned with a break in the median. The Court noted the landowner's expert's testimony that it was "virtually impossible to separate from the overall picture what portion, if any, of the damages sustained by the landowners was actually attributable to the median." Id., 175 S.E.2d at 396. The Court held that while construction of the median with nothing else may well be a non-compensable police power action, here there was no suggestion of the need for a median except as an incidental part of the major construction and relocation. "But for such overall construction and relocation and condemnation under the power of eminent domain, there would have been no median and no damage to the landowner." Id.

Thus, the Court found that the taking of land for construction of the relocated County road and the alignment with the median break were all of a piece and all attributable to the act of eminent domain. Here, there is no essential relationship between the closures of the U.S. 17/Emory Road intersection and the dead-ending of Old Socastee Highway and the acquisition of 0.183 acres on the corner of Emory Road and Old Socastee which was for the purpose of improving sight lines at that intersection. The land acquisition is neither indispensable to those closures nor is the use of the land taken inseparable from the road and intersection closures.

II. COMPENSABILITY OF LOSS OF VISIBILITY

This Court should not allow the landowner to provide evidence that shows that any loss of visibility is separately compensable. Evidence of loss of visibility should only be considered when determining the land's highest and best use.

The Alaska case, 8,960 Square Feet, Dimond D Properties, v. State of Alaska, stands for the proposition that, although there is no inherent right of a property owner of visibility for his property from a public road, where an obstruction to visibility is built on the portion of his property condemned by the state, that loss is compensable as damages to the remainder. 806 P.2d 843 (Alaska 1991). The reasoning is that the owner would have had the right to prevent the obstruction of view to his remaining land and that right was taken from him by eminent domain. Id.

“[B]ecause a landowner has no continued right to traffic passing its property, the landowner likewise has no right in the continued motorist visibility of its property from a transit corridor.” Dept. of Transp. of State v. Marilyn Hickey Ministries, 159 P.3d 111, 113 (Colorado 2007). “There is simply no inherent property right to continued traffic or visibility” Id. at 114. Because the landowner does not have a right to traffic passing the property, the landowner cannot recover for the loss of visibility from passing motorists. Id. at 116.

“If...a property owner does not have a property right in traffic flow around his property, it directly follows that he cannot assert a property right in that same traffic’s ability to see his property.” State, Idaho Transp. Bd. v. HI Boise, LLC, 153 Idaho 334, 282 P.3d 595, 603 (2012).

“Loss of visibility to a property’s passers-by is not itself a compensable item of damage in a condemnation action. This is because such a claim is inextricably related to a non-existent property right in traffic.” City of Lee’s Summit v. R and R Equities, LLC, 112 S.W.3d 38, 43-44 (Missouri Ct. App. 2003).

CONCLUSION

This Court should exclude from evidence any reference to the appraisal of Corbin Haskell dated March 14, 2013, upon the grounds that said appraisal has been formally withdrawn by counsel and replaced by a subsequent appraisal of Corbin Haskell of the same date that was forwarded to the Landowner's attorney on March 21, 2013, and particularly any references in said appraisal to damages resulting from access issues.

The Condemnor further asks this Court for an Order excluding from evidence any testimony and reference to damages as contained in the appraisal of James R. Jayroe, Sr., dated September 26, 2001, and specifically any reference or testimony to damages resulting from matters of access or visibility or the loss thereof. The Condemnor specifically asks this Court for an Order suppressing evidence that a loss of visibility of the landowner is independently compensable.

JOHN B. McCUTCHEON, JR.
Attorney for Condemnor
South Carolina Department of Transportation

s/John B. McCutcheon, Jr.
THOMPSON & HENRY, PA
1300 Third Avenue PO Box 1740
Conway, SC 29526 843/248-5741

March 25, 2013

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE ☒ COURT OF COMMON PLEAS
☐ FAMILY COURT

South Carolina Dep't of Transportation,

CASE NO. 2010-CP-26-07961

☐ Condemnor,

v:

David Franklin Powell,

☐ Landowner.

**MOTION AND ORDER INFORMATION
FORM AND COVER SHEET**

check box above indicating submitting party.

Name, SC Bar No. & Address of Plaintiff's attorney	Name, SC Bar No. & Address of Defendant's attorney
John B. McCutcheon, Jr., Esq. SC Bar # Thompson & Henry, P.A. Post Office Box 1740 Conway, SC 29528 Telephone: 843-248-5741 Fax: E-Mail: Other:	Robert S. Shelton, Esq. SC Bar # 68543 The Bellamy Law Firm Post Office Box 357 Myrtle Beach, SC 29578 Telephone: 843-448-2400 Fax: 843-448-3118 E-Mail: Direct: 843-448-7118

- ☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: Motion in Limine

Estimated Time Needed: 10 minutes Court Reporter Needed: ☒ YES / ☐ NO

SECTION II: Motion/Order Type

- ☒ Written motion attached
☐ Form Motion --

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☐ Plaintiff ☒ Defendant

Date submitted 27 Mar 2013

SECTION III: Motion Fee

- ☒ PAID - AMOUNT: \$25.00
☐ EXEMPT: (check reason) ☐ Rule to Show Cause in Child or Spousal Support
☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRPC)
☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter: _____
☐ Other: _____

JUDGE'S SECTION

- ☐ Motion Fee to be paid upon filing of the attached order.
☐ Other: _____

JUDGE

CODE: _____ Date: _____

CLERK'S VERIFICATION

Collected by: _____
(print name)

DATE FILED

☐ MOTION FEE COLLECTED: _____

☐ CONTESTED - AMOUNT DUE: _____

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
C/A NO. 2010-CP-26-07961

Road/Route Interchange at US 17 Bypass
and SC 707/Farrow Parkway
File 26.036774A
Project HERR
Pin 36774 RD01
Tract 13

HORRY COUNTY
13 MAR 28 PM 1:18
HELANE HODGINS-WARD
CLERK OF COURT

South Carolina Department of Transportation,)
)
Condemnor,)
)
vs.)
)
David Franklin Powell,)
)
Landowner.)
)

**LANDOWNER'S NOTICE OF
AND MOTION IN LIMINE**

TO: JOHN B. MCCUTCHEON, JR., ESQ., ATTORNEY FOR CONDEMNOR

YOU WILL PLEASE TAKE NOTICE that the undersigned attorneys for the Landowner will move before the Presiding Judge of the Fifteenth Judicial Circuit at such time as counsel can be heard for an Order excluding from the trial of the above-captioned matter the following:

- a. Testimony or other evidence that asserts the highway project for which Landowner's property was condemned presents any benefits for Tract 13, which is the subject of this action.
- b. Any reference to the SCDOT Appraisal report of Corbin Haskell dated March 14, 2013 and produced March 21, 2013.

Pursuant to Rule 11(a) of the *South Carolina Rules of Civil Procedure*, the undersigned states that any consultation with opposing party to resolve the matter contained in the Motion would serve no useful purpose.

YOU WILL PLEASE TAKE NOTICE that the undersigned will at the same time move the Court for such other and further relief as may be just and proper.

Respectfully submitted,



Howell V. Bellamy, Jr., Esq., SCB #00642
Robert S. Shelton, Esq., SCB #68543
BELLAMY, RUTENBERG, COPELAND,
EPPS, GRAVELY & BOWERS, P.A.
Post Office Box 357
Myrtle Beach, SC 29578
tel: (843) 448-2400
Attorneys for Landowner/Condemnee

Myrtle Beach, South Carolina
March 27, 2013.

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY) C/A NO. 2010-CP-26-07961

Road/Route Interchange at US 17 Bypass
and SC 707/Farrow Parkway
File 26.036774A
Project HERR
Pin 36774 RD01
Tract 13

HORRY COUNTY
13 MAR 28 PM 1:18
HELEN E. JUDGINS-WARD
CLERK OF COURT

South Carolina Department of Transportation,)
)
Condemnor,)
)
vs.)
)
David Franklin Powell,)
)
Landowner.)
_____)

LANDOWNER'S MEMORANDUM
OPPOSING CONDEMNOR'S
MOTION IN LIMINE

BACKGROUND

On August 27, 2010, the South Carolina Department of Transportation filed a lawsuit against Landowner David F. Powell in order to take a portion of his real property as part of the highway project it deemed the "Interchange at US 17 Bypass and SC 707/Farrow Parkway." Mr. Powell's property had for 35 years been visible from and easily accessed from a major roadway. First, the tract was on the Socastee Highway, and, when Highway 17 Bypass was built in 1978, the property enjoyed clear visibility and obvious access from Highway 17 via Emory Road. As a result of SCDOT's condemnation action, Emory Road was closed and Mr. Powell's property was left accessible via a frontage road that one could enter one (1) mile to the north.

After completing mediation and discovery, this case was set for date-certain trial on March 11, 2013 before the Honorable Benjamin Culbertson. Early on the morning of trial, counsel for SCDOT informed counsel for Mr. Powell there had been a change in the road plan. Now, the frontage road would no longer extend to the entrance one (1) mile north, but would become a cul-de-sac just north of Mr. Powell's land. According to the SCDOT's 30(b)(6) witness Mike Barbee, in order to access Mr. Powell's tract now, a motorist must travel 2.24 miles. Moreover, the pathway to Mr. Powell's property is no longer obvious at all. Whereas his tract was historically accessible in a very obvious manner, in the *after* condition a motorist must know in advance how to find Mr. Powell's property in order to reach the tract.

Judge Culbertson permitted counsel for SCDOT five (5) days to revise the SCDOT report to reflect the change to the plans and simultaneously continued the case for trial on April 1, 2013. On Friday, March 15, 2013, SCDOT tendered the revised appraisal report of Corbin Haskell outlining his opinion of just compensation under the revised plans. Whereas Mr. Haskell had not assessed damages to Mr. Powell's remaining property in any of his three (3) earlier reports, in his fourth report Mr. Haskell determined Mr. Powell's tract had been damaged fifty percent (50%) and determined just compensation would be Five Hundred and Seventeen Thousand and no/100 (\$517,000.00) Dollars.

One week later, with the case ten days (10) away, counsel for SCDOT submitted yet *another* Appraisal report of Corbin Haskell. This *fifth* report was tendered to Landowner's

counsel on March 21, 2013 – outside of the time limit permitted by Judge Culbertson. On the cover of this report, Mr. Haskell printed the following disclaimer:

I have been requested to revise my appraisal since legal counsel advises that the reconfiguration of the roadways does not constitute damages to the remainder in this case. Therefore, there are no damages to the subject....

Mr. Haskell goes on to appraise just compensation for the land SCDOT physically took from Mr. Powell and none for the diminution in value to the remainder of his land, per his client's instruction.

ANALYSIS OF LAW

South Carolina Code Ann. § 28-2-370 makes clear what is to be considered in determining just compensation in any action where private property is taken: "In determining just compensation, **only** the value of the property to be taken, **any** diminution in the value of the landowner's remaining property, and any benefits as provided in Section 28-2-360 **may be considered.**" (Emphasis added.)

Had the Legislature intended to prevent consideration of any particular evidence of diminution in value to the remaining property, it could easily have inserted such a limitation in the Eminent Domain Procedure Act, but did not. Instead, in keeping with the intent of the Fifth Amendment of the United States Constitution and Article I § 13 of the South Carolina Constitution, the Legislature created a statute that would place the property owner in the same position financially following the taking of his land as he was before. This is the

approach long-followed in South Carolina. As stated by our Court of Appeals in

Faulkenberry:

In order for the landowner to be compensated fully, the government must "put the owners in as good position pecuniarily as if the use of their property had not been taken. They are entitled to have the full equivalent of the value of such use at the time of the taking paid contemporaneously with the taking." Phelps v. United States, 274 U.S. 341, 344, 47 S. Ct. 611, 71 L.Ed. 1083 (1927). See also Stewart & Grindle, Inc. v. State, 524 P.2d 1242 (Alaska 1974); State Roads Comm'n v. G.L. Cornell Co. Sav. & Profit Sharing Trust, 85 Md. App. 765, 584 A.2d 1331 (1991).

South Carolina Dep't of Transp. v. Faulkenberry, 337 S.C. 140, 148, 522 S.E.2d 822, 826 (Ct. App. 1999).

In order to be certain the government fully, justly compensates private property owners from whom it takes real property, the full analysis of the property's value in the *before* condition and in the *after* condition must be considered. This is the only manner in which "just compensation" can be properly identified. This is further clarified in the Wilson opinion quoting the Bolt case:

'In other words, he is entitled to full compensation for the taking of his land and all its consequences; * * * nor is there any requirement that the damage be special and peculiar, or such as would be actionable at common law; it is enough that it is a consequence of the taking. The entire parcel is considered as a whole, and the inquiry is, how much has the particular public improvement decreased the fair market value of the property, taking into consideration the use for which the land was taken and All the reasonably probable effects of its devotion to that use.' (Emphasis added.)

South Carolina State Highway Dep't v. Wilson, 254 S.C. 360, 367-68, 175 S.E.2d 391, 395 (1970).

SCDOT relies heavily in its memorandum supporting its motion upon the South Carolina Supreme Court holding in Hardin v. South Carolina Dep't of Transp., 371 S.C. 598, 642 S.E.2d 437 (2007). Additionally, SCDOT clearly instructed its appraiser to disregard the effects of the cul de sac and the closure of Emory Road. In Mr. Haskell's March 25, 2013 deposition, the following exchange took place:

Page 29 9 Q: Then drop down. You notice under
10 easements and encroachments: "It should
11 be noted that I am not qualified to
12 detect easements and encroachments, and
13 legal counsel should be retained if
14 there are any indications of title
15 defects."
16 A: Yes, sir.
17 Q: And that's why you have yielded to Mr.
18 McCutcheon on the question of the
19 closing of Emory Road and the cul de sac
20 on Socastee ---
21 A: Yes, sir.

22 Q: --- Boulevard? Okay But he has given
 23 you no written opinion as to why you
 24 should disregard the loss of access to
 25 Highway 17 on Emory Road or the cul de
 Page 30 1 sac?
 2 A: What do you mean written opinion?
 3 Q: Written you a or letter ---
 4 A: No, sir.
 5 Q: --- memorandum or such?
 6 A: No, sir.
 7 Q: Has he told you orally what his position is?
 8 A: Yes, sir.
 9 Q: Tell me what that is.
 10 A: Just quoted some law as, which I can't
 11 recall.

12 MR. MCCUTCHEON: I told him about Tallent and Hardin.

This reliance by SCDOT is misguided. The entire analysis in Hardin was to determine
 whether a taking had occurred. In each of the cases considered in Hardin, no physical
 appropriation of property took place. Both of the plaintiffs in those inverse condemnation
 cases complained of reconfiguration of the road system near their property, but neither had

sustained any actual take. The legal analysis throughout Hardin was to determine whether any of the plaintiffs' property rights had been taken. Likewise, the court in Hilton Head Automotive, LLC v. South Carolina Dep't of Transp. considered similar claims and explained the appropriate analysis in such cases thusly:

Following Hardin, a proper analysis of an **inverse** condemnation claim premised on an alleged physical taking **must begin with a determination of the scope of the property rights** at issue. 371 S.C. at 605, 609, 641 S.E.2d at 441, 443 (explaining that a court evaluating an inverse condemnation claim premised on a physical taking should "focus ... on a landowner's actual property interests; that is, his easements"). As an abutting property owner, HHA had "an easement for access" to Highway 278, "regardless of whether [it had] access to and from an additional public road." Id. at 606, 641 S.E.2d at 442. In addition, HHA had "an easement for access to and from the public road system." Id. **FN3 If governmental action materially injured either of these easements, such that HHA no longer enjoyed the reasonable means of access to which it was entitled, a physical taking has occurred.** **FN4** E.g., S.C. State Highway Dep't v. Allison, 246 S.C. 389, 393, 143 S.E.2d 800, 802 (1965) ("[A]n obstruction that materially injures or deprives the abutting property owner of ingress or egress to and from his property is a 'taking' of the property, for which recovery may be had."); Sease v. City of Spartanburg, 242 S.C. 520, 524-25, 131 S.E.2d 683, 685 (1963) ("The protection of [the South Carolina "takings" clause] extends to all cases in which any of the essential elements of ownership has been destroyed or impaired as the result of the construction or maintenance of a public street."); Brown v. Hendricks, 211 S.C. 395, 403-04, 45 S.E.2d 603, 606-07 (1947) ("The accessibility of one's property may in some instances constitute a great part of its value, and to permit a material impairment of his access would result in the destruction of a great part of the value ... and his property is therefore as effectually taken as if a physical invasion was made thereon and a physical injury done thereto." (quoting with

approval Foster Lumber Co. v. Arkansas Valley & Western Ry. Co., 20 Okla. 583, 95 P. 224, 228 (1908))).

FN3. In City of Rock Hill v. Cothran, this Court also recognized an abutter's right to proceed upon the abutting road to the next intersection. 209 S.C. 357, 369, 40 S.E.2d 239, 244 (1946) (“[T]he right of an abutting landowner to passage at least to the next intersection is a substantial property right”); see also Powell v. Spartanburg County, 136 S.C. 371, 374–76, 134 S.E. 367, 368 (1926) (holding that, where a portion of a road was formally discontinued and a new road was built to route traffic around the discontinued portion such that the two roads formed a semicircle pattern, property owners abutting on the old road “could not rightfully be deprived of the privilege of still using it to reach the newly located portion [of the road] in either direction,” and therefore, nonsuit was improper where access to the new road was cut off at the south end of the old road, even though the new road was accessible from the north end of the old road (emphasis added)). While Hardin overruled Cothran in certain respects, it did not expressly overrule the existence of this property right. We take no position regarding the status of this right, as HHA has not lost the ability to proceed upon Highway 278 to the next intersection. Emphasis added.

FN4. Certain language in Hardin might suggest this “material injury” test is no longer good law. We take this opportunity to clarify. The “material injury” test is firmly rooted in our jurisprudence, and Hardin did not overrule this well-established aspect of our takings analysis. See Hardin, 371 S.C. at 609, 641 S.E.2d at 443 (“We therefore overrule the ‘special injury’ analysis ... and specify that our focus in these cases is on how any road re-configuration affects a property owner's easements.”); id. at 609 n. 4, 641 S.E.2d at 443 n. 4 (“[N]either landowner ... has been deprived of ingress or egress ... nor have these landowners been injured in their ability to enter or exit their property.” (emphasis added)).

Hilton Head Automotive, LLC v. South Carolina Dep’t of Transp. 394 S.C. 27, 30-32, 714 S.E.2d 308, 310-11 (S.C. 2011), *emphasis added*.

Both Hardin and Hilton Head Automotive explain that in an inverse case, the first step is to look at the property right the plaintiff had to begin with and then to see *if* the government action materially injured the property right such that the plaintiff “no longer enjoyed reasonable means of access to which it was entitled” *then* a physical taking has occurred. This analysis is not needed in straight condemnation cases because a physical taking occurred the instant the Condemnation Notice got filed and all elements of damage necessarily apply if the private property owner is to be left in the *after* in the same position pecuniarily as he was in the *before*. As the Hardin court noted, “Generally, the physical occupation of private property by the government results in a taking regardless of the public interest the government's action serves.” See Loretto, 458 U.S. at 426-28, 102 S.Ct. 3164; see also Lucas, 505 U.S. at 1015, 112 S.Ct. 2886. Hardin v. S. Carolina Dept. of Transp., 371 S.C. 598, 605, 641 S.E.2d 437, 441 (2007)

The SCDOT is likewise incorrect in asserting that the frontage road is somehow unrelated to the highway project. In his deposition on March 25, 2013, Mike Barbee testified as the SCDOT representative as follows:

Page 8 20 Q: And who is constructing the cul de sac?

 21 A: The cul de sac will be constructed by

 22 the DOT and the county's contractor,

 23 which is Balfour Beaty Infrastructure.

 24 Q: Okay. And is that being constructed

25 with the Ride on a Penny Fund?

Page 9 1 A: Yes, sir.

2 Q: Okay. So that's part of the

3 construction project that you've called

4 the interchange at Highway 17 and Farrow

5 Parkway?

6 A: Yes, sir.

This interchange project is part of the group of highway projects funded by a "One-Cent Capital Projects Sales Tax" that was approved by referendum on November 7, 2006.¹ Moreover, the plan sheet that appears in Mr. Haskell's report showing the cul-de-sac is clearly labeled as a plan sheet for the interchange project. This cul-de-sac closed a frontage road that had been open for decades. Clearly, were it not for the interchange project, the frontage road would *never* have been closed.

As the Wilson case correctly noted:

While the construction of a median, with nothing more, may very well be an exercise of the police power with no resulting compensable damage to an abutting property owner, in the instant case the proposed median is only an incidental part of the overall Department plans and contemplated construction. There is no suggestion of the need for, or the contemplated construction of, a median except as an incidental part of the major relocation and construction plans of the Department. But for such overall construction and relocation, and condemnation under the power of eminent domain for such purposes, there

¹<http://www.ridingonapenny.com>

would have been no median and, of course, no damage to the abutting landowner. It logically follows, we think that any damage attributable to the planned median is an incidental result of the exercise of the power of eminent domain, and under these circumstances we know of no sound reason for departing from the established rule in this State, which is as follows:

“The entire parcel is considered as a whole, and the inquiry is, how much has the particular public improvement decreased the fair market value of the property, taking into consideration the use for which the land was taken and all the reasonably probable effects of its devotion to that use.” South Carolina State Highway Dep’t v. Bolt, *supra*.

Moreover, the appraiser for the SCDOT himself agrees with this analysis. He even went to the trouble of locating paired sales in order to specifically quantify the value of the property in the *after* condition. In Mr. Haskell’s deposition on March 25, 2013, Mr. Haskell testified:

Page 51	14	Q:	“After the acquisition, the subject will
	15		have similar access to Sale “C”;
	16		however, the subject will maintain its
	17		exposure along Highway 17, thus an
	18		adjustment slightly less than fifty-
	19		three percent is appropriate. Based on
	20		the paired sales data analysis, after
	21		the acquisition, a fifty percent
	22		downward adjustment is reasonable.” So

23 you're giving the benefit to Mr.

24 Powell's tract of land?

25 A: That's correct.

Page 51

1 Q: And this is your work product that you
2 did and assembled on your own volition
3 acting as an appraiser in evaluating the
4 take and damages?

5 A: That's correct.

Mr. Haskell continued:

Page 53

1 Q: So you indicated the difference of
2 \$517,000, which as I read your report,
3 it's 72,000 for the take and 445,000 for
4 damages to the remainder?

5 A: Yes, sir.

6 Q And that was your opinion when you

7 A: signed this report on March 14, 2013?

8 A: Yes, sir.

9 Q: All right, sir. And if you went to
10 trial tomorrow morning, and this
11 appraisal was determined by the court to

12 be relevant, this would still be your

13 opinion?

14 A: Yes, sir.

It is clear that until Mr. Haskell was instructed by his client to disregard the true damage done to Mr. Powell's property as a direct result of the interchange project, he determined the tract had been damaged by fifty percent.

As to visibility, this, too, is an appropriate consideration in determining whether the property Mr. Powell retained following the involuntary acquisition of his land by the government is worth less money than it was before the take. As the Touchberry Courty aptly noted, ““(t)he different elements of damage to remaining land recoverable when part of a tract is taken are as numerous as the possible forms of injury.” 4 Nichols on Eminent Domain, Section 14.24, at 556. South Carolina State Highway Dep’t v. Touchberry, 248 S.C. 1, 7, 148 S.E.2d 747, 749 (1966). This holds true not on some notion that Mr. Powell deserves any more than he held in the *before* condition, but that deserves to be put “in as good position pecuniarily as if the use of their property had not been taken” as explained in Bolt. The court in Touchberry considered loss of favorable breeze and loss of view as well, and that was upheld on appeal. Indeed, it is not possible to assess an accurate *after* value of a Highway Commercial property without taking its visibility into consideration.

In order to value property affected by a highway project, the market value in the *before* and *after* conditions must be ascertained. Market value is defined in the SCDOT appraisal as:

‘The most probable price, as of a specified date, in cash, or in terms equivalent to cash, or in other precisely revealed terms, for which the specified property rights should sell after reasonable exposure in a competitive market under all conditions requisite to a fair sale, with the buyer and seller each acting prudently, knowledgeably, and for self-interest, and assuming that neither is under undue duress.’²

Any knowledgeable purchaser of Highway Commercial property will diligently investigate the ease of access and visibility of a parcel prior to making a purchase, and the price such a purchaser is willing to pay will be dependant upon these and other qualities of the subject tract of land. To suggest the government may take real property from tax payers and residents of its state who are unwilling to sell their land voluntarily and then not pay for all the effects of the taking is not in concert with the Constitutional mandate of just compensation.

Once the government takes the extreme step of seizing private property, it should be held to a heightened standard and forced to leave the private property owner in as good a position pecuniarily as he was before his land was taken. Anything less fails to secure just compensation and to permit the government to avoid the requirement that private property owners be made whole is to return the citizenry to a time in history when private property owners rightly feared the government they fund. While the SCDOT cites much foreign court

²March 14, 2013 appraisal of Corbin Haskell, Page 4. Citing The Dictionary of Real Estate Appraisal, 4th Edition.

opinion, as aptly noted in Wilson, “[t]he decisions of courts from other jurisdictions are, of course, only persuasive authority and we are not convinced that the rule which the Department would have us adopt is a sound one.” South Carolina State Highway Dep’t v. Wilson, 254 S.C. 360, 366, 175 S.E.2d 391, 395 (1970).

Mr. Powell will be provided only one opportunity to seek just compensation for the diminution in value of his land resulting from the actions of the SCDOT. To prevent him from presenting to the jury an honest and true depiction of his remaining land would be unjust. Accordingly, we respectfully request this honorable court require SCDOT to proceed to trial using the March 14, 2013 appraisal of Corbin Haskell and further permit testimony fully considering all the effects of the involuntary acquisition of Mr. Powell’s property.

Respectfully submitted,



Howell V. Bellamy, Jr., Esq., SCB #00642
Robert S. Shelton, Esq., SCB #68543
BELLAMY, RUTENBERG, COPELAND,
EPPS, GRAVELY & BOWERS, P.A.
Post Office Box 357
Myrtle Beach, SC 29578
Attorneys for Landowner/Condemnee

Myrtle Beach, South Carolina
March 27, 2013.

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

) IN THE COURT OF COMMON PLEAS
) FIFTEENTH JUDICIAL CIRCUIT
) C/A NO. 2010-CP-26-07961

Road/Route Interchange at US 17 Bypass
and SC 707/Farrow Parkway
File 26.036774A
Project HERR
Pin 36774 RD01
Tract 13

FILED
HORRY COUNTY
2013 JUN 17 PM 12:51
MELANIE HUGGINS-WARD
CLERK OF COURT

South Carolina Department of Transportation,)
)
Condemnor,)
)
vs.)
)
David Franklin Powell,)
)
Landowner.)
_____)

LANDOWNER'S NOTICE OF
AND MOTION TO ALTER OR
AMEND UNDER RULE 59(e),
SCRCP

TO: CONDEMNOR AND ITS COUNSEL JOHN B. MCCUTCHEON, JR, ESQ.

YOU WILL PLEASE TAKE NOTICE the Landowner, David Franklin Powell, by and through his undersigned attorneys, will move pursuant to Rule 59(e), SCRCP, before the Honorable Edward B. Cottingham in the Horry County Court of Common Pleas, Government and Judicial Center, Conway, South Carolina, upon ten (10) days notice hereof or as soon thereafter as counsel may be heard, for an Order of the Court altering or amending the judgment entered on May 14, 2013, as a result of the April 1, 2013 hearing on Condemnor's Motion for Partial Summary Judgment.¹ The grounds for this Motion are, *inter alia*, that the court erred in extending the South Carolina Supreme Court's inverse condemnation holding

¹ Despite having been entered May 14, 2013, this Order was not served upon Landowner until June 5, 2013.

in Hardin (& Tallent) v. S.C. Department of Transportation, 371 S.C. 598, 641 S.E.2d 437 (2007) to the present action, being one in direct condemnation instituted by the South Carolina Department of Transportation.

**BELLAMY, RUTENBERG, COPELAND
EPPS, GRAVELY & BOWERS, P.A.**

Post Office Box 357

Myrtle Beach, South Carolina 29578-0357

(843) 448-2400

Attorneys for Landowner



Howell V. Bellamy, Jr., SC Bar # 00642

Robert S. Shelton, SC Bar # 68543

Myrtle Beach, South Carolina

June 17, 2013

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Edward B. Cottingham, Circuit Court Judge

Case No. 2010-CP-26-07961

FILED
HORRY COUNTY
2013 AUG 16 PM 2:25
MELANIE HUGGINS-WARD
CLERK OF COURT

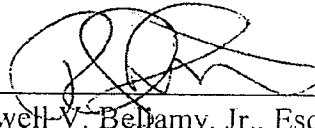
South Carolina Department of Transportation Respondent,

v.

David Franklin Powell Appellant.

NOTICE OF APPEAL

David Franklin Powell, Appellant, appeals the Order of the Honorable Edward B. Cottingham dated July 26, 2013 and filed with the Clerk of Court for Horry County on July 29, 2013 in connection with the above-referenced matter. Appellant received written notice of the Order Denying Landowner's Motion to Alter or Amend Under Rule 59(e) on August 13, 2013.



Howell V. Bellamy, Jr., Esq., SCB # 00642
Robert S. Shelton, Esq., SCB # 68543
BELLAMY, RUTENBERG, COPELAND,
EPPS, GRAVELY & BOWERS, P.A.
P.O. Box 357
Myrtle Beach, SC 29578
(843) 448-2400
Attorneys for Appellant

Myrtle Beach, South Carolina
August 15, 2013

ROA-065
065

Other Counsel of Record:

John B. McCutcheon, Jr., Esq.

Barbara M. Wessinger, Esq.

Thompson & Henry, P.A.

P.O. Box 1740

Conway, SC 29528

(843) 248-5741

Attorneys for Respondent

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

) IN THE COURT OF COMMON PLEAS
) FOR THE FIFTEENTH JUDICIAL CIRCUIT

South Carolina Department of Transportation,)

Case No.: 2010-GS-26-7961

Condemnor.

vs.

ORDER DENYING LANDOWNER'S
MOTION TO ALTER OR AMEND
UNDER RULE 59(e)

David Franklin Powell,

Landowner.

HORRY COUNTY
13 JUL 29 PM 3:25
MELANIE HUGGINS-WARD
CLERK OF COURT

The Court heard Condemnor's motion for summary judgment in Conway on April 2013. The Court applied the South Carolina Supreme Court's inverse condemnation holding in Hardin (& Tallent) v. S.C. Department of Transportation, 371 S.C. 598, 641 S.E.2d 437 (2007) to the present action and granted Condemnor's motion for summary judgment.

On June 17, 2013, counsel for the Landowner filed a written motion to alter or amend under Rule 59(e), S.C.R.C.P. After reviewing Landowner's written arguments, and having a July 10, 2013 teleconference with both parties, the Court denies Landowner's motion. Since the Court heard this matter via the July 10, 2013 teleconference, further oral arguments will not be necessary.

Therefore, Landowner's motion pursuant to Rule 59(e) is denied.

IT IS SO ORDERED.

July 26, 2013
Lexington, South Carolina


Edward B. Cottingham
Presiding Judge

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Edward B. Cottingham, Circuit Court Judge

Case No. 2010-CP-26-07961

FILED
HORRY COUNTY
2013 AUG 16 PM 2:26
MELANIE HUGGINS-WARD
CLERK OF COURT

South Carolina Department of Transportation Respondent,

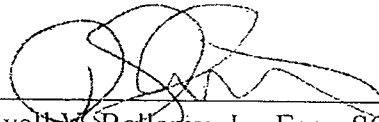
v.

David Franklin Powell Appellant.

PROOF OF SERVICE

I certify that I have served the **Notice of Appeal** in the above-captioned matter on the following individuals by depositing a copy of it in the United States Mail, with sufficient first-class postage affixed, addressed as follows:

John B. McCutcheon, Jr., Esq.
Barbara M. Wessinger, Esq.
Thompson & Henry, P.A.
Post Office Box 1740
Conway, South Carolina 29528



Howell V. Bellamy, Jr., Esq., SCB # 00642
Robert S. Shelton, Esq., SCB # 68543
BELLAMY, RUTENBERG, COPELAND,
EPPS, GRAVELY & BOWERS, P.A.
P.O. Box 357
Myrtle Beach, SC 29578
(843) 448-2400
Attorneys for Appellant

Myrtle Beach, South Carolina
August 15, 2013

ROA-068
068

STATE OF SOUTH CAROLINA	)	
	)	COURT OF COMMON PLEAS
COUNTY OF HORRY	)	2010-CP-26-7961
	)	
	)	
	)	
	)	
South Carolina Department of Transportation)	)	
vs.	)	
	)	TRANSCRIPT OF RECORD
David Franklin Powell	)	
DEFENDANT	)	April 1, 2013
		Conway, South Carolina

B E F O R E:

THE HONORABLE EDWARD B. COTTINGHAM, JUDGE.

A P P E A R A N C E S:

JOHN B. MCCUTCHEON, JR., ESQ.
Attorney for the Plaintiff

HOWELL V. BELLAMY, JR., ESQ.
ROBERT S. SHELTON, ESQ.
Attorneys for the Defendant

KESHIA REED
Official Court Reporter

I N D E X

(WHEREUPON, there were no witnesses called.)

1	<u>I N D E X</u>			
2	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
3	Defendant's 1	Complete Appraisal & Report		47
4				
5	Court's 1	Corbin Haskell's Deposition		22
6	Court's 2	Corbin Haskell's Deposition		22
7				
8				
9				
10				
11				
12				
13				
14				
15				
16				
17				
18				
19				
20				
21				
22				
23				
24				
25				

1 THE COURT: Okay. All right. I'm here in the
2 condemnation case to hear motions. I believe it's your
3 motion, Mr. McCutcheon.

4 MR. MCCUTCHEON: Well, both of us have one, Your
5 Honor, but mine was filed first and I think that mine
6 encompasses more stuff than the other.

7 THE COURT: First, let me say to the both of you
8 I appreciate the exhaustive briefs that both of you
9 forwarded to me have been very helpful.

10 MR. MCCUTCHEON: Thank you, Your Honor.

11 THE COURT: Thank you.

12 MR. MCCUTCHEON: Your Honor, we have moved in
13 this case in two instances and as is stated in our motion
14 in limine and that is to eliminate either from the
15 landowner's appraisal or the DOT's appraisal any comments
16 in regards to damages in this case as they flow or do not
17 flow to the remaining property of Mr. Powell both as to
18 access and visibility. The -- we had sent two appraisals
19 to Mr. Bellamy. The last one is the one that -- the next
20 to the last one is the one that we seek to have any
21 evidence excluded from because it addresses access issues.
22 And, of course, Mr. Jayroe's appraisal addresses both
23 access issues and visibilty issues.

24 As I recall from our short conversation in
25 chambers, Your Honor, one of the things that was

1 concerning, Your Honor, and I'll start with that first. I
2 do not claim in this case that the reason for my motion in
3 limine is solely based on the police power. We think that
4 there are other considerations in the current state of the
5 law as it is now, that in this case would exclude damages
6 particularly in regards to lost of access.

7 The premiere case obviously that has been
8 decided by our Supreme Court most recently was the case of
9 Hardin and Tallent vs. SCDOT, which was cited in 641
10 Southeastern Second 437. Now, granted, Your Honor, that
11 was an inverse condemnation case, but in our opinion and
12 based on the state of the current law as it now it stands
13 in the State of South Carolina, it is our opinion that the
14 Hardin and Tallent vs. SCDOT case not only applies to
15 inverse condemnation, but it also applies to regular
16 condemnation cases.

17 THE COURT: What case is that?

18 MR. MCCUTCHEON: Tallent and Hardin, Your Honor

19 ---

20 THE COURT: I know about Tallent. You quoted
21 another one.

22 MR. MCCUTCHEON: There is another case and that
23 is the -- well, first of all, Your Honor, we would refer,
24 Your Honor, to 2A Sackman Nichols on eminent domain, which
25 damages the land resulting from the State's exercise --

1 never mine -- I forget that one. Your Honor, Carodale,
2 Your Honor, I got to find my complete cite. It's the
3 Carodale case, Your Honor, that cited in my brief which is
4 235 Southeastern Second 929 holds to the proposition that
5 the things that were decided in Hardin and Tallent are
6 also applicable to cases that involve the actual
7 condemnation.

8 In the Carodale case, the landowner's property
9 was acquired from an exit ramp or Interstate 77 being
10 constructed in Richland County apporportion to US Highway
11 501, fronting on the landowner's property prior to the
12 condemnation will be relocated creating a cul-de-sac
13 contiguous to the respondent's land. And that's one of
14 the things that we argue is going on in our case, that
15 there has been cul-de-sac. And I will address the other
16 issue in just a moment, Your Honor, of whether or not the
17 closing of the access for Emory Road would be something
18 that would be of a benefit or something that would be
19 available to the landowner. Access to the relocated U.S.
20 Highway Number 1 will be afforded by the construction of a
21 the connecting street.

22 The Carodale case holds -- now, this case, Your
23 Honor, was subsequent to Touchberry and was also
24 subsequent to Wilson. A landowner has no vested right in
25 the continuance of a public highway. The abandonment of

1 the highway, without its being closed, is damnum adsque
2 injuria. Likewise, the State is under no duty to maintain
3 a minimal level of traffic flow. Closing a street
4 inherently produces a diversion of traffic and loss of
5 frontage on a viable traffic artery. However, these
6 repercussions are not compensable elements of damage. The
7 landowner have no property right in the continuation or
8 maintenance of the flow of traffic past its property. So
9 that case hold -- and in that particular case, Your Honor,
10 they also took point. 47 acres from the landowner in
11 addition to closing the road and creating a cul-de-sac.

12 THE COURT: Let me ask a question, how much
13 acreage was remainder in the tract? Your memo's didn't
14 say that. You took .18, but how much was left?

15 MR. MCCUTCHEON: In our case?

16 THE COURT: In the case before me today?

17 MR. MCCUTCHEON: 2.7.

18 THE COURT: What was the total tract? What was
19 the total tract?

20 MR. BELLAMY: 2.5, Your Honor.

21 MR. MCCUTCHEON: We didn't take a half an acre.
22 We took 1.3 acres.

23 THE COURT: I understand. And what was left?

24 MR. SHELTON: 2.327.

25 THE COURT: Sir?

1 MR. SHELTON: 2.327.

2 MR. MCCUTCHEON: 2.327 acres, Your Honor.

3 THE COURT: That was the remainder. That's what
4 I need to know.

5 MR. MCCUTCHEON: So, your Honor, I don't think
6 there's no question number one but what Tallent and Hardin
7 apply whether it's an inverse case or whether it is a
8 regular case. So then the issue becomes, Your Honor, and,
9 I think, the language in Tallent and Hardin becomes very
10 important in that particular case because of the fact that
11 apparently the landowner is taking the position that he
12 has access to U.S. Highway 17 and the before. He does not
13 have direct access to Highway 17. He has indirect access.
14 His piece of property does not abut U.S. Highway 17.
15 There is property between that Old Socastee Road and the
16 highway.

17 THE COURT: Did it abut prior to the ---

18 MR. MCCUTCHEON: No, sir.

19 THE COURT: It never abutted?

20 MR. MCCUTCHEON: It never abutted U.S. Highway
21 17. It initially abutted the original Socastee Highway,
22 which is now called the Old Socastee Highway. And then
23 they, of course, went and built the four-lane bypass. But
24 his piece of property never has abutted U.S. 17. It has
25 always abutted Old Socastee Road and Emory Road.

1 Now, they argue that since it abuts Emory Road
2 that also gives him the direct access on the 501 and I
3 don't think that's what the cases hold, Your Honor.

4 In the Tallent vs. Hardin, they keep referring
5 to the roads upon which the landowner's property abuts and
6 they use that several times. In our particular case, the
7 right of landowner to travel from his property to U.S.
8 Highway 17 via Emory Road is not embraced with the
9 property right of access that landowner's possess with
10 regard to roads adjoining their property. Rather, it is a
11 right of passage over public roads that Mr. Powell shares
12 with all members of the traveling public, which may be
13 modified at any time by the State in re-design highways
14 and redirecting traffic without liability to an individual
15 landowner. According to the Court ---

16 THE COURT: Tell me this, I didn't see a sketch.
17 There was no sketch presented to me. In the before, what
18 access did he have to either Old Socastee or 17?

19 MR. MCCUTCHEON: I don't see an easel, Your
20 Honor.

21 THE COURT: I just need to see the sketch.

22 MR. BELLAMY: Here's the tract 13.

23 THE COURT: Okay.

24 MR. MCCUTCHEON: Your Honor, this is tract 13.
25 This is Old Socastee Highway. This is Emory Road. These

1 are the travel lanes of the existing bypass. This
2 gentleman's land abuts Old Socastee Road and Emory Road.
3 There is property between here and the existing right of
4 way that he does not own.

5 MR. BELLAMY: It's a power line easement.

6 MR. MCCUTCHEON: Well, one piece is a power line
7 easement.

8 THE COURT: Does he have access now on Emory
9 Road?

10 MR. MCCUTCHEON: Yes, sir.

11 THE COURT: And Emory Road is to the side of his
12 property?

13 MR. MCCUTCHEON: Yes, sir.

14 MR. BELLAMY: He has to go back this way.

15 MR. MCCUTCHEON: He can't go this way, that
16 road's been closed.

17 THE COURT: I got you.

18 MR. BELLAMY: That's been closed and that's been
19 closed there.

20 MR. MCCUTCHEON: But ---

21 THE COURT: What is the distance for his access
22 under the new proposal?

23 MR. MCCUTCHEON: It depends on which way you go
24 into it. There are two ways to go into it.

25 THE COURT: Tell me which are they?

1 MR. MCCUTCHEON: Well, if you're traveling this
2 way, he has to go down to Shatlane (sic) and it comes back
3 around here and come this way.

4 MR. BELLAMY: 1.2 miles.

5 MR. MCCUTCHEON: 1.2 miles.

6 THE COURT: And the other way is what?

7 MR. SHELTON: It's 1.2 each way.

8 MR. MCCUTCHEON: Isn't that what I said?

9 MR. SHELTON: No, it's 2.4 total.

10 MR. MCCUTCHEON: If you're coming from here, it
11 -- that's why I say it depends on which way you're going,
12 Your Honor.

13 THE COURT: I understand.

14 MR. MCCUTCHEON: One way is 1.2. If you're
15 going another way, it's 2.4. If you have travel pass it
16 and then turn around and come back, that's 2.4. But if
17 you come here and turn ---

18 THE COURT: The Old Socastee Road, is that
19 eliminated under the new plan?

20 MR. MCCUTCHEON: It's got a cul-de-sac on it,
21 but it's still there, Your Honor. I'll show you the
22 cul-de-sac in just a moment.

23 THE COURT: Socastee Road is not going to be
24 there any longer?

25 MR. MCCUTCHEON: No, sir, it's still there.

1 MR. BELLAMY: Not in front of our property.

2 MR. MCCUTCHEON: Yes, it is. A portion of Old
3 Socastee Road is still in front of his property right
4 here, Your Honor. That's the Old Socastee Road. You just
5 can't go that way.

6 MR. BELLAMY: There's the cul-de-sac right
7 there.

8 THE COURT: I got you.

9 MR. MCCUTCHEON: But he still has -- and the
10 Tallent and Hardin case says as long as he has access to
11 the roads that abuts his property. This one abuts his
12 property.

13 THE COURT: On the piece that abuts Old Socastee
14 which way would he -- if he went out, straight out which
15 way would he have to go?

16 MR. MCCUTCHEON: He'd have to go this way.

17 THE COURT: Because of the...

18 MR. BELLAMY: Cul-de-sac.

19 THE COURT: I got you. But do you agree, Skeeche
20 (sic), that a part of his of his property actually abuts
21 Old Socastee?

22 MR. BELLAMY: It did in the before.

23 THE COURT: Well, does it now?

24 MR. BELLAMY: Yes, sir, apart of it abuts it in
25 the after, but with a cul-de-sac. So now -- he use Old

1 Socastee Road or Highway any more.

2 THE COURT: I got you. Let me hear -- I do want
3 the record to reflect that apart of his property abuts Old
4 Socastee.

5 MR. MCCUTCHEON: His property abutted Old
6 Socastee Road and Emory Road in the before. It does in
7 the after to both of them.

8 THE COURT: But Socastee is now cut off by the
9 cul-de-sac.

10 MR. MCCUTCHEON: There's a cul-de-sac, yes, sir,
11 which eliminates him from going ---

12 THE COURT: To the right.

13 MR. MCCUTCHEON: --- to the right out of his
14 property, but there two ways in now, Your Honor. One is
15 for traffic to come off of Farrow Parkway and come in and
16 that intersects with Emory Road and then the other one is
17 to come down Socastee.

18 THE COURT: I understand. The sketch helps me
19 understand. Go ahead.

20 MR. MCCUTCHEON: In the Hardin and Tallent case,
21 Your Honor, in addition to that Hilton Head Automotive,
22 LLC, 214 Southeastern Second 211 and Carolina Chloride,
23 Inc. vs. South Carolina Department of Transportation, The
24 Supreme Court said the focus of the inquiry in a case of
25 this type must be on a landowner's actual property

1 interests; that is, his easements. The easements a
2 property owner holds with respect to public roads are of
3 two types: The first is the right to enter and leave your
4 property directly on to each of the roads it abuts. And
5 in this case, that would be Old Socastee Road and Emory
6 Road both before and after. The second is the right to
7 access the general system of roads, which he obviously
8 has. He can access going down Old Socastee Highway --
9 around Old Socastee back down to Highway 17. In the
10 Hardin court stated, as long as the owner has access to
11 and from the remainder of the road that continues to abut
12 his property, his easement with respect to that road
13 remains intact. Further, as long as the landowner still
14 has access to the public road system, this easement is
15 unaffected.

16 THE COURT: Let me ask you this, can we say that
17 in the before, he had access to Old Cherokee both ways and
18 in the after, he still has access but one way; is that a
19 fair statement?

20 MR. MCCUTCHEON: Yes, sir, that is a fair
21 statement.

22 MR. BELLAMY: You would have to go down
23 Socastee and get on what remains of the remainder.

24 THE COURT: I understand that, but there is
25 access in the after. He had access in the before both

1 ways. He now has access one way and there's some
2 difficulty as...

3 MR. MCCUTCHEON: Your Honor, our argument is
4 primarily based on the fact that under the Hardin case and
5 the other cases that have been decided since that time
6 that the only easement and the only rights that he had
7 were to the abutting roads, not to Highway 17 by way of
8 any road, Emory Road or otherwise because that's not
9 encompassed in what excuse me -- the Hardin and Tallent
10 case say.

11 But in this particular case, one of the big
12 basis as I understand for the award of damages is the fact
13 that we have eliminated his access to Highway 17. Under
14 the line of cases, Your Honor, the Powell property in the
15 after situation still has full access to each of the roads
16 it abuts, Emory Road and Old Socastee Highway. It still
17 has access, but the general system of roads by traveling
18 south on Emory Road. And I like to point out to Your
19 Honor at this time that Emory Road ties into Fred Nash
20 Boulevard. Fred Nash Boulevard is a two-lane-paved road
21 that goes out and intersects with Farrow Parkway, which
22 goes into the back of the old Air Force base. From there,
23 you can access Highway 17 or you can come to Emory Road up
24 to where it intersects with Fred Nash Boulevard, turn left
25 and that puts you back on Old Socastee Highway, carries

1 you down to those places. So, Your Honor, I don't think
2 there's any question in this case. The issue in this case
3 ---

4 THE COURT: Let me ask, is there a building on
5 this property?

6 MR. BELLAMY: No, sir.

7 MR. MCCUTCHEON: No, sir.

8 THE COURT: None of your memorandums indicated
9 one.

10 MR. BELLAMY: It's on vacant land, Your Honor.

11 THE COURT: Okay, thank you.

12 MR. MCCUTCHEON: So, I guess, Your Honor, that
13 what I'm saying is is that -- the first issue is does
14 Tallent and Hardin apply. I think unequivocally it does
15 under the Carodale case, which is a South Carolina case
16 that was decided hence or after Touchberry, Faulkenberry
17 and the Wilson case.

18 THE COURT: Wasn't it decided after Harden and
19 Tallent too?

20 MR. MCCUTCHEON: Yes, sir. The Tallent and
21 Hardin case was 1970, I think. Carodale was in 1977.

22 MR. BELLAMY: Before.

23 THE COURT: Before?

24 MR. BELLAMY: Before Tallent and Hardin.

25 THE COURT: Tallent was, I think ---

1 MR. SHELTON: 2007.

2 MR. MCCUTCHEON: I'm sorry 2007. It was after
3 though, Judge, Faulkenberry and Touchberry and Wilson.
4 But it's our position, Your Honor, that Tallent and Harden
5 applies in this situation, that he did not have an
6 easement to Highway 17. He had an easement to the roads
7 that abutted his property which are Old Socastee Road and
8 Emory Road in the before. And he has those in the after,
9 so therefore, there can be no basis for a finding of
10 damages in this case based on logs of access. As far as
11 visibility is concern under case Hill vs. Beach Company,
12 301 Southeastern Second 604, a property right of
13 visibility has never been established in South Carolina
14 either by the legislature or by the Courts. In fact, the
15 law is opposite. There's ---

16 THE COURT: You're saying the visibility is
17 never an issue in condemnation?

18 MR. MCCUTCHEON: Yes, sir.

19 THE COURT: I don't think you go that far.

20 MR. MCCUTCHEON: Well, I'll go that far in this
21 one Your Honor by saying that, of course, I guess, that
22 may be an issue as to how high the road is in front of him
23 whether that's ---

24 THE COURT: Your brief indicates that while
25 visibility is generally not an issue, it can be an issue

1 in a case for highest and best use.

2 MR. MCCUTCHEON: Yes, sir, I want disagree with
3 that.

4 THE COURT: All right. I'll hear your position.
5 Let me hear from the landowner's attorney.

6 MR. BELLAMY: Thank you, Your Honor. Howell
7 Bellamy and Rob Shelton representing the landowner.

8 THE COURT: Yes, sir.

9 MR. BELLAMY: Your Honor, I think it would be
10 helpful to talk about some of the facts. I know the law
11 is important, but factually how did we get here.

12 THE COURT: Oh, let the record reflect what the
13 facts are surely.

14 MR. BELLAMY: This is a condemnation action that
15 was filed on August 27th 2010. The D.O.T. with the
16 appraisals and they used an appraiser from Greenville name
17 Corbin Haskell, never took the position that the lose of
18 access or the impairment of access was non-compensable.
19 Haskell took the position Emory Road was closed first.
20 And bear in mind, we took his depositions and Haskell
21 deposition. All that's in front of this piece of property
22 between us and 17 are power line easements. And I ask him
23 in his deposition if he had anything. So there power line
24 easements in front of us. They say there's no direct
25 access, but, in fact, we were the end piece down there and

1 Emory Road came straight by us and several hundred feet
2 went into Highway 17. It's what made this piece of
3 property valuable. It was zoned highway commercial.

4 Now, there been five appraisals prepared by the
5 Department of Transportation. And I want the Court to
6 understand how we got here. Every time they gave an
7 appraisal we dealt with it. We've taken Mr. Haskell's
8 deposition under the old appraisal where he said the
9 damages were \$71,000 and dealt with all the questions.
10 And then we have an appraisal from Mr. Jayroe based upon
11 not only the take, which the DOT says was some \$84,000 for
12 the take, the physical take. And the distinction I'm
13 making is in this case they took some of our land. And by
14 way of analogy, I would point out to you on the left-hand
15 side of the road, they avoided taking any land where the
16 McDonald's is or whatever because they didn't want to have
17 to compensate on that side of the road. So they tried to
18 stay, but in this case, they had to take ---

19 THE COURT: You mean outside the road, you mean
20 that side of Emory.

21 MR. BELLAMY: On the left-hand side of the road,
22 so all those businesses are closing down. In this case,
23 we have five appraisals. We are ready to go to trial on
24 March 11th in front of Judge Culbertson. And at that
25 time, we were notified by counsel on Friday afternoon

1 prior to the Monday trial, that they had not taken into
2 consideration a cul-de-sac on the Old Socastee Road. And
3 that the DOT wanted to amend it's appraisal to deal with
4 the -- in position of the cul-de-sac. At that time in
5 front of Judge Culbertson, it was alluded that the -- that
6 Mr. Haskell was looking into the question of the
7 cul-de-sac and the affect that it would have, but it look
8 like the damages were going to be about from 71 to 341.

9 Judge Culbertson did a couple of things. He
10 said I'm not incline to continue the case because it comes
11 late. But if in fact you want to continue the case,
12 you're gone have to get a new appraisal, get the appraisal
13 that you want that you want to try the case by from your
14 appraiser and provide it to Mr. Bellamy and Mr. Shelton on
15 Friday because I'm gone put this case down for trial on
16 April 1 before you. You were coming down.

17 At that point in time, Mr. McCutcheon then said
18 we will do that. And there were certain things that he
19 was required to do because we incurred a good bit of
20 expense getting ready to try with the 71. And at that
21 point, Judge Culbertson said I'm going to let you amend
22 your appraisal, that you'll furnish a copy of it to Mr.
23 Bellamy and Mr. Shelton, that happened. On that day on
24 Friday, we got Mr. Corbin Haskell's appraisal, which said
25 that the take of the 84 was there, but that the damage to

1 the remainder based on his unfettered opinion was that the
2 loss of direct access which now becomes indirect access,
3 that's his term, was compensable. And it was going to be
4 \$517,000 was gone be the new take is what we had before
5 Judge Culbertson and this is what the appraisal said. So
6 we then prepare again, this is fifth -- fourth appraisal.
7 We then prepare to get ready to go to trial on this new
8 appraisal. And again, within ten days of trial, we get
9 the last appraisal where it goes back and says Mr. Haskell
10 per the instructions from Mr. McCutcheon to throw out the
11 517 appraisal and to go back to 72. He came up a thousand
12 dollars. That we're going through now, we're going
13 through an appraisal. So then we got a chance to take the
14 depositions of Mike Barbie, the engineer who verified that
15 the take was a part of the project, and I'll get to that
16 in a minute, the overall project, the Farrow Parkway
17 project. This just wasn't isolated incidental take or
18 closing of a road in the course.

19 THE COURT: I would agree with you it's a part
20 of the project.

21 MR. BELLAMY: Yes, sir. It's a part of the all
22 and I'll get to that in a minute under Wilson. And at
23 that time, at that time, we took Mr. Corbin Haskell
24 deposition. And interestingly, Your Honor, he said I came
25 back to 72 because Mr. McCutcheon told me to do it. And

1 here we are getting ready to go to trial changing the
2 whole flavor of the thing. And I'm asking and I want make
3 his -- I want to enter -- introduce his deposition and
4 make it a part of the record in this case.

5 THE COURT: I don't believe Mr. McCutcheon based
6 on a memorandum told him what used appraisal. I believe
7 he said to the appraiser that access was not a damageable
8 issue and got it accordingly. I don't think Mr.
9 McCutcheon told him what the appraisal ---

10 MR. BELLAMY: Yes, sir, he did in his
11 deposition. He told him based on Tallent and Hardin. We
12 would like to make this a part of the record.

13 THE COURT: Yes, sir. Any objection to that
14 being made part of the record.

15 MR. MCCUTCHEON: No, sir.

16 (WHEREUPON, Court's Exhibit No. 1 and 2 were
17 marked for the record.)

18 THE COURT: So ordered.

19 MR. MCCUTCHEON: I would like the Court to
20 recognize, I did not tell him how to do his appraisal. I
21 told him that if I was correct in my interpretation of the
22 law, then damages didn't apply.

23 THE COURT: I understand that and that's what I
24 said on the record.

25 MR. BELLAMY: So anyway interestingly I was

1 inquiring of Mr. Haskell under the general pallets of the
2 duties and the responsibilities of an appraiser under the
3 standards of appraisal practice. When he did the \$517,000
4 appraisal and I'm paraphrasing, I ask him a very important
5 question, Was anybody else in with you? Did anybody tell
6 you how to do your appraisal? Did anybody do it? No,
7 sir. No, sir. I didn't. Nobody told me how to do it.
8 In my opinion, it was my opinion that the property had
9 been damaged because of the lack of access or the
10 impairment of access. And it was my opinion that the
11 impairment of that access was substantial and that's why I
12 came up with \$446,000 worth damages to the remainder of
13 the property because it was my opinion. Well, I thought
14 it was interesting that Mr. Haskell without any
15 interruption from anybody or being told what to do of his
16 own opinion said this piece of property has been damaged.
17 This is not some speculative sort of thing. The DOT's
18 primary appraiser says in my opinion the property has been
19 damaged by access because it was direct. Now, it's
20 indirect in value and use impaired sells. I think the
21 property has been damaged by 50 percent. Well, you know,
22 that's why we ready to go to trial. Now, having said
23 that, I want to now go into the question of what we think
24 the law is and what the law is not as Jack maintains.

25 THE COURT: Obviously, I told you pretrial that

1 I am concerned with regards to the Tallent and Hardin
2 case.

3 MR. BELLAMY: Yes, sir.

4 THE COURT: And I now learn that landowner never
5 in the before had access to 17, the access to Old
6 Cherokee, but you seeking damages for no access to 17 when
7 you never had in the before.

8 MR. BELLAMY: Yes, sir, he did. Emory Road went
9 into Highway 17.

10 THE COURT: I know it, but didn't have direct --
11 I know it from Emory Road.

12 MR. BELLAMY: Well, that's a play on words,
13 Judge.

14 THE COURT: I understand.

15 MR. BELLAMY: This was a corner lot. This was a
16 corner lot in the before. It ain't in the after. They
17 took the -- directly from our property and nobody ever
18 disputed it. Mr. Haskell didn't dispute it, but to cross
19 and go down Emory Road to Highway 17. If you ride out and
20 look at it, the power line easements are there in front of
21 the property where the power line is, clearly visible.
22 Nobody even there disputed in the before that you didn't
23 have good clear visibility of the property. They closed
24 Emory Road and made it controlled access there, that cease
25 to exist, never again is Emory Road go into 17. That was

1 a substantial loss of a right which was material to this
2 property cause it's zoned highway commercial, that's one
3 of the highest and best uses. This was a prime piece of
4 property for development in the before with the zoning
5 and with the access that existed. It had access going out
6 to Highway 17, passing an easement on your right to get 17
7 in which you could go right or left or you could go down
8 Socastee Boulevard all the way to Shatlane (sic) which is
9 about a mile -- was a mile and two tenths at that point to
10 get there. All those went away. All those points went
11 away in addition to the take. Now, in Wilson, which is a
12 seminal case which kind of is -- which was decided in
13 1970, by our Supreme Court and it was written by Justice
14 Bussie (sic), who I respect very much.

15 THE COURT: As I do.

16 MR. BELLAMY: Bussie (sic) and Brailsford were
17 always important to me because I always thought what they
18 said made sense. Now, from that case which has not been
19 overruled. Let me say, Wilson has not been overruled by
20 Tallent and Hardin, Carodale or anything else. It is
21 still the law. And the point is why is it still the law.
22 The Supreme Court of South Carolina never attempted to
23 distinguish or overrule Wilson. Now, what does Wilson
24 say, it's important. On page a five of the opinion, this
25 is Justice Bussie while the construction of a median with

1 nothing more may very well be an exercise of police power
2 with no resulting compensable damages to an abutting
3 property owner. In the incidental case, the proposed
4 median is only part of the incidental part of the overall
5 department plans and contemplated destruction, overall
6 plans and contemplated destruction. There is no
7 suggestion of the need for or contemplated construction of
8 a meeting accept as an incidental part of the major
9 relocation and construction plans of the department. But
10 for such overall construction relocation and condemnation
11 under the power of eminent domain for such purposes, there
12 would have been no median, no median. And, of course, no
13 damages to the abutting property owner, drawing the
14 distinction. If this was an isolated case, not a part of
15 the overall project, then that's one thing. It logically
16 follows, we think, that any damages attributable to the
17 plan median is an incidental result of the exercise of the
18 power eminent domain.

19 And under these circumstances, we know of no
20 sound reason for departing from the establish rule in this
21 state, which is as follows: The entire parcel is consider
22 as a whole and the injury is how much has a particular
23 public improvement decrease the fair market value of the
24 property taking into consideration the use for which the
25 plan was taken and the reasonable probable affects of the

1 demotion to its use. That was pretty clear, that's still
2 the law in South Carolina. It has not been overruled.
3 And that case was take into consideration where you can
4 condemned it. Let me just say to you, where you condemn
5 it and take part of it, we don't think Tallent and Hardin
6 goes so as far as to say where you condemn it, you don't
7 get compensation. It is only that you exercise your
8 police power to close a road within your right of way. We
9 in the condemnation field have been dealing with this and
10 the DOT has been very obviously dealing with this avoiding
11 taking land, so as to invoke the claim of damages.

12 Now, we go on to say in the case of Hilton Head
13 Automotive, that says according from the case an inverse
14 condemnation claim premised on the physical taking should
15 focus on the landowner actual property interest, that is
16 his easement. And our Supreme Court has said that
17 easement exist. While in many states doesn't exist, our
18 court has said that is a very valuable property right.
19 They go on to say if the government action materially
20 injured either the easement such as HAA, no longer enjoys
21 reasonable means of access to which it was entitled a
22 physical taking has occurred. And it goes on to say any
23 obstruction that materially injures or deprived abutting
24 property owner's of ingress and egress to and from this
25 property is a taking of the property for which recovery

1 may be held.

2 South Carolina -- in South Carolina taking
3 clauses extend to all cases in which any of the essential
4 element of ownership has been destroyed, essential element
5 of ownership has been destroyed. They admit in their 517
6 appraisal, it's a heck of a lot worse than it was when we
7 sat there in the before before you can come in there and
8 took it. And I think that was one reason that it was
9 important. Their own appraiser admits it, there been
10 damages. This is not speculative.

11 THE COURT: I think we can agree based on what
12 I've heard here that the access in the after is not as
13 convenient as it was in the before. I think that's a fact
14 and a correct statement ---

15 MR. BELLAMY: --- great part of his value. The
16 great part of his value. And to permit a material
17 impairment of his access would result in the destruction
18 of a great part of the value, that's what we've said.

19 Now, according to Touchberry which has been --
20 it's a 1966 case from our South Carolina Supreme Court and
21 Justice Brailsford writes this opinion. And he says -- in
22 that case they were talking about security of travel
23 easements -- and, Your Honor, many of those cases. All
24 those things that the DOT objected to was the court
25 overrule. All those are elements of damages. It says

1 that a distinction must be drawn between consequential
2 damages to the remainder, but part of the tract is
3 physically appropriated and consequential damage to a
4 tract no part of which is physically appropriated, what we
5 got right here. And the latter case the damages must be
6 peculiar to such language. And not such as is suffered in
7 common with the general public. And the former case it
8 matter not that injury was suffered in common with the
9 general public. They said special damages refer to above
10 statutes relate to the injury of damage to the remainder
11 property for which a portion is taken. They would include
12 any damage or any decrease in the actual value of the
13 remainder of the landowner's property, which are the
14 direct and the consequence of the acquisition of the
15 right.

16 The boat case, Special damages refer to above
17 states relate to injury or damages to the remainder of the
18 property in which a portion is taken. And the courts
19 making a distinction, you taking some and you're not
20 taking some. They would include any damages -- I
21 underline that or any decrease in the actual value of the
22 remainder of the landowner's property which are direct and
23 proximate consequences of the acquisition of the right of
24 way. In other words, as a general rule, special damages
25 include all injuries or damages which call a diminution in

1 the value of the remaining property. And there's no
2 question that our appraiser has said it ain't what it was.
3 It ain't what it was.

4 Now, under Tallent and Hardin most of us
5 thought -- and I think generally at the bar as a whole
6 thought that Tallent and Hardin basically overruling the
7 Gray case came out in Mount Pleasant. You remember that
8 was the case where -- they put him on the cul-de-sac and
9 they -- he was compensated. So what Tallent and Hardin
10 was doing was dealing with was the rule of law in the Gray
11 case. And because up until that time, the case law in
12 South Carolina under Cothran was clear that you could be
13 compensated for loss of access even though there was no
14 physical taking.

15 THE COURT: Tallent and Hardin shot that down
16 though.

17 MR. BELLAMY: Oh, yes, they overruled.

18 THE COURT: It's a great hue and cry when it
19 occurred, but Tallent and Hardin ---

20 MR. BELLAMY: Did that, no question. They
21 overruled it.

22 THE COURT: Ain't no question about that. They
23 said circuitous access is just as good as a direct access
24 and it is not compensable.

25 MR. BELLAMY: Well, they overrule Gray. They

1 overrule the Gray opinion, but they didn't go so far as to
2 overrule Wilson. They did not overrule Wilson. And
3 Wilson dealt with what we are talking about, never in any
4 of the decisions has the court bothered to overrule Wilson
5 that's still the law of the case.

6 Now, in Tallent and Hardin they go on to say
7 succinctly, the restriction of ingress and egress to and
8 from one's property is the right which must be compensated
9 if infringed when the highway is closed by condemnation,
10 okay. Socastee was closed in front of our property. And
11 they went on to say, do not -- say that a road closing and
12 realignment which do not take land, Judge, do not take
13 land or an easement from a property owner and do not get
14 -- and do not give rise to compensable taking because
15 these actions do not directly interfere with owner's
16 rights to properties as a whole. We therefore -- that a
17 special injury now goes on to say an easement is either
18 taken or it is not in that the injury difference in time
19 not really in degree which are concerned. They said this
20 is important on page nine, Similarly no aspect of the
21 Tallent property has been physically taken and I add
22 interest by the SCDOT accordingly we reserve the Court of
23 Appeals decision to hold that there has been no taking in
24 this case.

25 Now, what the Supreme Court is trying to say and

1 I think the clear language in this case is we not gone let
2 the landowner be compensated because an exercise of police
3 power within our right of way, but otherwise we do not
4 rule in -- and they would have overrule Wilson if that's
5 what they intended. We are not saying that where there
6 has been a taking that there should not be compensation
7 because you go the general rule of law in South Carolina.

8 THE COURT: I didn't read that language in
9 Tallent and Hardin that you just express.

10 MR. BELLAMY: I just read it to you, just read
11 it to you. They're trying to make a distinction in that
12 case. If you go into Faulkenberry, our Supreme Court has
13 said in order for the landowner to be compensated fully,
14 the government must put the owner in a good enough
15 position pecuniary as if the use of the property had not
16 been taken. They're entitled to have full value of such
17 use as such time the taking paid contemporaneously with
18 the taking. In other words, he is entitled to the full
19 compensation for the taking of his land and all of his
20 consequences, nor is there a requirement that the damage
21 be special and peculiar or that such would be actual
22 enough that consequences of the taking, entire parcel is
23 considered as a whole and inquiry is how much has this
24 decrease the fair market value. This public improvement
25 decrease the fair market value of the property taking into

1 consideration the use for which the land was taken in all
2 reasonable and possible affects thereto. What do we have,
3 we have a piece of property 2.51 acres that was
4 essentially behind off Highway 17 behind a power line
5 easement. A direct access down Emory Road 150 feet to
6 where you go to Highway 17. Direct access you go right or
7 left, that piece of property was valuable because of the
8 access that it enjoyed. It was valuable because of
9 enjoying access along Socastee Boulevard.

10 Now, what I thought Mr. Corbin Haskell did in
11 his appraisal was he honestly and truthfully told the
12 truth. The loss to this property not only of the take, we
13 were a corner lot in the before. We ended up being on the
14 curve in the after. The loss of the property -- and what
15 he basically said is, it's to look at what a willing buyer
16 would have paid for this piece of property on August 27th
17 2010. What would a willing buyer have paid. He was at
18 \$948,000. Mr. Jayroe he was at \$9 a square foot.
19 Mr. Jayroe was at \$12 a square foot a million two. In our
20 trial of these cases, you never get them to agree on the
21 before value, but everybody recognized that this was a
22 valuable piece of property. It really had good access,
23 good location and it was unfettered. Both appraisers
24 using appraisal terminology looked at it and said in the
25 after, it ain't worth anything. You can't -- to get to it

1 you got to now go down Socastee Boulevard, get on Fred
2 Nash go way around behind it and come up on Emory Road.
3 So it's sitting there, not only did they take away access
4 from Emory Road to 17. They made the access so circuitous
5 that I would bet if the jury were to go out there and try
6 to figure out how to get to this property on their own,
7 they get loss. They also say, well, you can get on Emory
8 Road and eventually get on Farrow Parkway and Farrow
9 Parkway takes you out to 17. We've loss the ability of
10 the public riding by point of impact -- not a destination
11 point impulse. We had the ability in the before that we
12 knew were coming north toward Myrtle Beach. You could
13 have made a right-hand turn on Emory Road and gone to the
14 property a couple hundred feet. It ain't nothing between
15 us and 17, but the power line easement.

16 In the after anyone that understands real estate
17 would understand, you have landlocked in effect this piece
18 of land. You have left it with a more terrible access in
19 the after that one could imagine. So in closing unless
20 Mr. Shelton has something he wants to add. They did not
21 plead any benefit, that's not a part of the appraisal,
22 never has been. The DOT said what that we did, this
23 project did not benefit the property. It also tells you
24 something, that there is no benefit.

25 Now, obviously, they're saying what they did,

1 didn't help the land or make it any better. So what you
2 done is left us with a tract of land that you got to go
3 around your thumb to get to in the after and it wasn't
4 that way in the before. The real issue in this case
5 besides the issue before you is the jury can look at the
6 value in the before and the value in the after. And if
7 they think it's been decreased, you will instruct them
8 they can subtract tract the low value from the top and
9 that can be their damages or they could go through a
10 complicated process as some juries have in years past and
11 try to figure out all the elements of damage to the
12 remainder.

13 THE COURT: I've had jurors like that.

14 MR. BELLAMY: Yes, sir. So what we're simply
15 saying to The Court is one, that this position taken by
16 the DOT comes to late, Your Honor. In the interest of
17 justice, in the interest of what's fair to tell us less
18 than two weeks before trial that they were gone change
19 their position it works a hardship on the landowner. You
20 know, if he doesn't like the verdict in the case, he can
21 appeal it. He can appeal it. He can go to the Court of
22 Appeals or up to the Supreme. But in this case, the
23 landowner is left with a position if he is stripped of all
24 of his Constitutional Rights under the Fifth Amendment in
25 Article 1, Section 13 of our Constitution, he has no

1 adequate way in which to fairly be compensated. It leaves
2 him in the ditch. And I would submit to you that the
3 proper thing to do is to go to trial with what we've got.
4 And if the DOT wants to appeal it and preserve their
5 rights, that's fine, but to leave the landowner who now
6 has the appraisal based on -- we have been consistent
7 from day one, that the loss of access was compensable.
8 DOT has waited two and a half years to even talk about it.

9 I told Rob we had a case in Beaufort
10 representing a landowner down there and we went -- not the
11 same issue, but it was an access of what the quality of
12 the access was in the after. But the DOT has just jerked
13 -- there's no other way to put it jerked the landowner
14 around. And has left the landowner to go to trial, what
15 does he say is he can't talk about the value in the
16 before. And nobody and the thing I think is important is
17 that Mr. Haskell says to the Court in that appraisal,
18 there ain't any question, it's been damage in appraisal
19 terminology. There ain't any question, it's been damaged.
20 So the point is it's apart of the take and I think a fair
21 reading of what -- if the Court -- and I'm going shut up.
22 If the Court in Tallent and Hardin wanted to change the
23 law in Wilson, they had a duty to do it and they didn't do
24 it. And Wilson is still the law.

25 So one must use Wilson to understand that those

1 rights are still there. Because I don't know what in the
2 world we could present by way of evidence. Yes, you took
3 \$84,000. You say \$84,000 for the take, the fraction of
4 the acres. And all we say is a between difference \$9 a
5 square foot and \$12 a square foot. Is that gone put the
6 landowner in the same position in the before? Is that
7 gone put him in the same position that he was in in the
8 before? Because all he can get is money and there ain't
9 any question in anybody's mind that access has been
10 changed that made his property valuable. The location of
11 that property with access on Emory Road and Socastee made
12 it valuable. They even admit that, but they come in and
13 say we gone take it away and all we gone owe you is
14 \$72,000. Thank you.

15 THE COURT: Tell me in reply your view of what
16 Wilson says as it relates to Hardin and Tallent.

17 MR. MCCUTCHEON: First of all, Your Honor, it's
18 my understanding of the way the Court system works in this
19 state and any other state, A court does not have to
20 specifically say, we overruled the finding in the Wilson
21 case. They can overrule that by way of inference based
22 upon what they ruled in subsequent cases. And in this
23 particular case, the subsequent case is the case of
24 Tallent vs. Hardin. Tallent vs. Hardin says specifically,
25 Your Honor -- and I like to -- Mr. Bellamy keeps using the

1 term, he had an easement. He had an easement. He had an
2 easement. He had an easement as being the gravamen of the
3 case in this as to why and how he has access to Highway
4 17. He had in the before no easement to Highway 17. He
5 had under ---

6 THE COURT: Well, he had an easement, direct
7 easement through Emory Road.

8 MR. MCCUTCHEON: Based on -- let's look at it
9 from this standpoint, Your Honor, suppose that they had
10 not taken any land from this landowner and somewhere down
11 the lane they closed Emory Road, would the landowner under
12 those circumstances be entitled to damages for the close
13 of that road under Tallent and Hardin? No. It would not
14 because he does not have an easement. These easements
15 according to Tallent and Hardin are to Old Socastee
16 Boulevard and Emory Road. And so holds in those cases
17 that there is no easement in the before.

18 For example, there is another parcel of property
19 behind this gentleman's property that has a commercial
20 establishment on it. Under their theory, have they taken
21 property from that landowner also, that he would have been
22 entitled to the closure of the entrance to Emory Road
23 also. And I don't think that's what our courts have
24 envisioned, Your Honor, in these particular cases. You
25 know, the Carodale case was decided after Wilson. The

1 Tallent and Hardin case was decided after Wilson. And
2 they both say in there in those cases and I like to quote
3 the language, Your Honor. A landowner has no vested right
4 in the continuance of a public highway, the abandonment of
5 the highway. Closing a street inherently produces a
6 diversion of traffic and loss of frontage on viable
7 traffic artery. However, these repercussions are not
8 compensable elements of damage. The landowner has no
9 property right in the continuation or maintenance of the
10 flow of traffic past it's property. So in those
11 instances, Your Honor, and all of these cases use the
12 word -- the roads to which the landowner's properties
13 abuts. In the case in Hilton Head, the property abutted
14 Highway 37 -- I think, it's 278. In this instant, this
15 property owner's property under the definitions of our
16 state, Your Honor, does not abut on to Highway 17.

17 In addition to power line easements, there are
18 some strips of land out there that apparently nobody knows
19 who it belong to between him and the highway. So I think,
20 Your Honor, that under the Tallent and Hardin case -- it
21 obviously applies to this case. And whether I file my
22 motion in limine two years ago or whether I filed it a
23 week and a half before now. I had motions in limine filed
24 against me the day before trial to exclude this and to
25 exclude that. So therefore, Your Honor, I think that

1 we're entitled to it.

2 MR. BELLAMY: Your Honor, if I might just be
3 given...

4 THE COURT: Be glad to hear from you.

5 MR. BELLAMY: Tallent and Hardin, nonetheless
6 the vacation of a street or the creation of a cul-de-sac
7 with the concomitantly diversion of traffic and the loss
8 of frontage has been held a taking of property. They make
9 a distinction. They go on to say an easement is either
10 taken or not, that is the injury difference in time not
11 merely the degree of which we are concern. What Tallent
12 and Hardin was saying was obviously the property in
13 question got it's value from this great access. It loss
14 it's value from the loss of that access, which their
15 appraiser admitted. And I just don't think that Mr.
16 McCutcheon argues that Wilson they can do it by inference.
17 I don't think the Court was trying to say a simple thing
18 other than -- and this is the case let me give you an
19 example had we tried the case in the before, the only
20 thing that when they condemned was our fractional acre a
21 part of an acre across the front was part of the overrule
22 all project. They had to have it. They had close access
23 down on Highway 17 because the road was going to be
24 elevated there, okay. You couldn't get out there, so they
25 had to make a controlled access. When they put the

1 cul-de-sac in, it's obvious that they had a problem
2 because they were directing traffic to go down Fred Nash
3 before you got to our piece of property. And now they put
4 a cul-de-sac in so you don't do that, so you can't go out
5 that way. The police power is something that the State
6 has. And let me just say to you ---

7 THE COURT: I want to say one more time
8 gentlemen, this is not a police action in my view. This
9 is a taking by condemnation.

10 MR. BELLAMY: Yes, sir, I don't know what else
11 we can say unless you got something you want to say.

12 THE COURT: I know Mr. Shelton very pleasantly
13 be glad to hear from you.

14 MR. SHELTON: I have nothing to add, Your Honor.
15 The bottom line for me is that there's two rules in South
16 Carolina both of which Mr. Bellamy has already read to you
17 and I just establish what just compensation is. But both
18 of those rules go back to the very same analysis you
19 trying to -- because you taking real property from
20 somebody, the jury cannot give them back the real
21 property. So you're trying to put them exactly where they
22 were and the juries job is to give them in money in
23 addition to the remaining property whatever it takes to
24 get them to be exactly where they were before. And if
25 Mr. McCutcheon is correct, then that is not the rule any

1 more. Now, we're going to put them exactly where they
2 were before except we've gone and carved out some of the value
3 they had because Mr. McCutcheon's new rule, that's not
4 just compensation, Your Honor.

5 THE COURT: All right, sir. I've heard it and
6 fine arguments on both sides. I want the record to
7 reflect one more time that this is not a police action.
8 This is a taking of a parcel of a million dollar project.
9 I'm concerned, Mr. Bellamy, on two basis: One, the
10 landowner here seeks damages for loss of access to 17
11 Highway which he never had in the before. Granted, he had
12 more direct access through Emory Road, but never, ever did
13 he have direct access to 17 for which he now claims
14 damages in the after. Two, I remember vividly when Hardin
15 and Tallent came down and there was much consternation in
16 the community concerned with taking in that it obviously
17 was going to decrease the value of the property. And yet
18 Tallent and Hardin said loss of access was not
19 compensable.

20 Now, in this case, it is clear to me that a
21 reasonable jury would find that there is a considerable loss
22 in the after. However, I'm bound by the ruling in Hardin
23 and Tallent to let testimony go in on the issue of loss of
24 access without affect me overriding their two decisions.
25 And I have absolutely no authority to do that.

1 It is my opinion that for the reasons stated
2 recognizing that there is probably a diminution in value
3 that Hardin and Tallent apply and that there are no
4 damages in the after for loss of access. And I so rule.

5 I do not rule on the question of visibility,
6 that would depend on the testimony and evidence presented
7 in the trial of the case. And I'll let the trial judge
8 deal with that. I am aware the law which states that
9 where testimony is presented as to the best use that
10 visibility may be appropriate, but I don't rule on that.
11 I am ruling that Tallent and Hardin apply in this case and
12 that damages in the after with regard to access would not
13 be permissible in the trial.

14 I will forward to you a formal order as to my
15 ruling, but I want it clear that this is not a police
16 action. And it's fair to the landowner based on what I've
17 heard. It is clear to me that there would be some
18 diminution in value. Now, whether or not that's payable
19 under Hardin and Tallent is a different issue. I don't
20 think it is, but I'll let the Supreme Court deal with it
21 and they can overrule it or modify it. But in fairness to
22 the landowner, there is some in diminution in value. That
23 gentleman would be my ruling on this case subject to a
24 final order that I will prepare. Thank you.

25 MR. BELLAMY: Your Honor, can I ask you one

1 question.

2 THE COURT: Sure.

3 MR. BELLAMY: Obviously, we are not prepared to
4 go forward.

5 THE COURT: I would understand that.

6 MR. BELLAMY: I would respectfully ask if the
7 Court would make its ruling as such that we could directly
8 appeal this issue now. It needs to be settled.

9 THE COURT: Yes. The landowner's entitled to
10 have it resolved. What can I do to accommodate you?

11 MR. BELLAMY: Well, I just want a ruling on the
12 merits of the case as to damages by the landowner, so that
13 we can go up directly to the Court of Appeals.

14 THE COURT: Damages as to access. I'm not
15 ruling on visibility.

16 You have any objection to that, Mr. McCutcheon?

17 MR. MCCUTCHEON: If I understand what
18 Mr. Bellamy is saying is that he wants Your Honor to rule
19 that because of your ruling, this is an issue that needs
20 to go straight to the Supreme Court.

21 MR. SHELTON: As though it's a partial summary
22 judgment for instance, so that it's immediately appealed
23 because we can't ---

24 THE COURT: I think my ruling will be on the
25 issue of admissibility of evidence, which is a partial

1 summary judgment which is in and of itself immediately
2 appealable.

3 MR. MCCUTCHEON: Well, if it needs to be done,
4 Your Honor. I'll amend my motion to make it a partial
5 summary judgment.

6 THE COURT: If what?

7 MR. MCCUTCHEON: I'll move to make it a partial
8 -- a motion for partial summary judgment.

9 MR. BELLAMY: So we can get finality and we go
10 on up and let the Court decide.

11 THE COURT: That's fine. We agree to -- let him
12 amend make it a partial summary judgment on the issue of
13 damages.

14 MR. MCCUTCHEON: And in addition to the motion
15 in limine.

16 THE COURT: As to access only, not dealing with
17 visibility.

18 MR. MCCUTCHEON: I understand, Your Honor.

19 THE COURT: I recall gentleman -- off the record
20 here.

21 (WHEREUPON, off the record.)

22 (WHEREUPON, on the record.)

23 MR. BELLAMY: If that is the law ---

24 THE COURT: Sir.

25 MR. BELLAMY: If Tallent and Hardin is the law

1 as you have ruled, then it would take away the whole
2 affect of just compensation.

3 THE COURT: Well, that's why I want my -- in
4 fairness to the landowner and you, sir, I want my order to
5 provide that I would conclude that there is diminution in
6 value, clearly.

7 MR. BELLAMY: I understand.

8 THE COURT: You can agree with that I'm sure,
9 Mr. McCutcheon?

10 MR. MCCUTCHEON: Yes, sir.

11 THE COURT: Thank you gentlemen. The thing was
12 well presented by both sides and very helpful to me with
13 the briefs that get me ready for it. Thank you. The case
14 is continued. I would have like to have tried it. I tell
15 you what prepare me a proposed order and send the proposed
16 order before I sign it.

17 MR. BELLAMY: I like to file a copy of Mr.
18 Corbin Haskell's exhibit number 4 to his deposition, which
19 is the 517,000 appraisal.

20 THE COURT: I will permit it.

21 MR. BELLAMY: Thank you.

22 MR. MCCUTCHEON: The appraisal?

23 MR. BELLAMY: Yes, sir.

24 (WHEREUPON, Defendant's Exhibit No. 1 was
25 admitted into evidence.)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

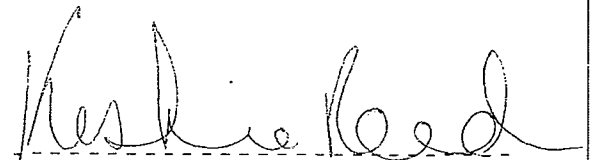
END OF REQUESTED TRANSCRIPT

CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
)
COUNTY OF FLORENCE)

I, Keshia Reed, Court Reporter and Notary Public
in and for the State of South Carolina At Large, do hereby
certify that the above-entitled cause was heard as
hereinafter set out; that I was authorized to and did
transcribe the said proceedings; and that the foregoing
and annexed paged, numbered 1 through 48, inclusive,
constitute a true and accurate transcription of my
stenographic report of the said cause taken during the
said hearing. In the Common Pleas for Horry County, South
Carolina, on the 1st day of April, 2013.

I do further certify that I am neither of kin,
counsel nor interest to any party hereto. In witness
whereof, I have hereunto affixed my signature this 4th day
of April 2013.

A handwritten signature in cursive script, appearing to read "Keshia Reed", written over a horizontal dashed line.

Keshia Reed, Court Reporter

File #: 26.036774A PIN #: 36774 Project #: HORR Tract #: 13

COMPLETE APPRAISAL – SUMMARY REPORT

- (1) Tract Location: NE corner of Old Socastee Highway & Emory Road
 Property Owner: David Franklin Powell
 Address: 3190 Emory Road, Myrtle Beach, SC 29577



Front View of Subject Property

PREPARED FOR:

South Carolina Department of Transportation

- (2) During the inspection the owner was contacted by telephone and invited to be present during inspection of this property. The tract was inspected on 12/8/2009 and I was accompanied by property owner. The property was reinspected several times, most recently 3/11/2013.

Required by Sec. 301(2) of Uniform Act.

Explain: An onsite inspection was made. This appraisal is retrospective as of the date of condemnation or 8/27/10.

PREPARED BY:

- 3) Inspecting Appraiser: H. Corbin Haskell, MAI
 S.C. State Certified General R/E CG 296
 Firm Name: Robinson Company of Greenville, Inc.

File #: 26.036774A PIN #: 36774 Project #: HORR Tract #: 13**APPRAISAL SUMMARY**

- (4) Property Owner: David Franklin Powell
 Tract Location: NE corner of Old Socastee Highway & Emory Road
 Date of Appraisal: 3/14/2013 Date of Value: 8/27/2010

(5) DESCRIPTION	BEFORE	AFTER
Present Use:	Vacant Land	Vacant Land
Number of Buildings:	N/A	N/A
Primary Improvement Size:	N/A	N/A
Building Setback (Feet)	N/A	N/A
# of Feet Building is Above (+), at (0), or Below (-) Road Grade:	N/A	N/A
# Parking Spaces:	N/A	N/A
Corner Influence:	Yes	Yes
Primary Frontage (Linear Feet):	+/-310' Old Socastee Highway +/-530' Emory Road	+/-155' Old Socastee Highway +/-260' New Transitional Right of Way +/-385' Emory Road
Total Frontage(s) (Linear Feet):	840'	800'
Ingress/Egress: Primary Road Secondary Road(s)	Old Socastee Highway- Full Access Emory Road - Full Access	Old Socastee Highway- Full Access Emory Road - Full Access
Zoning Conformity:	Conforming	Conforming

(6) Site Size (SF):	106,940	98,989
Site Size (Ac.):	2.455	2.272
Present or Intended Use of Site:	Vacant Land	Vacant Land
Shape:	Irregular	Irregular
Size of Acquisition:	0.183 Acres or 7,951 SF	

(7) HIGHEST AND BEST USE		
As Vacant:	Light Industrial/Secondary Commercial/Service	Light Industrial/Secondary Commercial/Service
As Improved:	N/A	N/A

(8) Annual Market Rent per SF:	N/A	N/A

File #: 26.036774A PIN #: 36774 Project #: HORR Tract #: 13

(9)

VALUE INDICATIONS		
Land Value:	\$ 963,000	\$ 446,000
Sales Comparison Approach:	N/A	N/A
Cost Approach:	N/A	N/A
Income Approach:	N/A	N/A
Final Value Indications:	\$ 963,000	\$ 446,000

(10)

Value of Acquisition:	\$ 517,000

File #: 26.036774A PIN #: 36774 Project #: HORR Tract #: 13**APPRAISAL DETAILS AND REQUIREMENTS**

- (11) PROPERTY RIGHTS APPRAISED: Fee Simple
- (12) PURPOSE OF THE APPRAISAL: To determine the difference in the retrospective market value of this property caused by the acquisition of the right of way for the proposed construction of this project as of the date of condemnation 8/27/2010.
- (13) INTENDED USE: To assist the South Carolina Department of Transportation in negotiations with the property owner concerning an eminent domain acquisition.

Market value is defined as "The most probable price, as of a specified date, in cash, or in terms equivalent to cash, or in other precisely revealed terms, for which the specified property rights should sell after reasonable exposure in a competitive market under all conditions requisite to a fair sale, with the buyer and seller each acting prudently, knowledgeably, and for self-interest, and assuming that neither is under undue duress.

SOURCE: The Appraisal Institute, The Dictionary of Real Estate Appraisal, 4th Edition

- (14) EXPOSURE TIME: 12-18 Months

- (15) FIVE-YEAR SALE HISTORY:

Date	Sale Price	Deed Reference
2/21/2006	N/A	3052/114
Comments: Deed of distribution. No other known transactions involving the subject have occurred within the last five years.		

- (16) CURRENT LISTING: N/A PENDING CONTRACT: N/A

- (17) ASSESSMENT AND TAXES:

Tax Parcel ID #: 180-09-03-034

Tax Year: 2010

Fair Market Value: \$ 219,200

Total Assessed Value: \$ 13,152

Real Estate Taxes: \$ 2,614.04

- (18) CURRENT ZONING ANALYSIS:

District: HC, Highway Commercial Current Conformity: Conforming

MINIMUM REQUIREMENTS:

Front Setback: 50'

Rear Setback: 15'

Side Setback: 10'

Width: 60'

Building Height: 120'

Parking Spaces: Varies by use

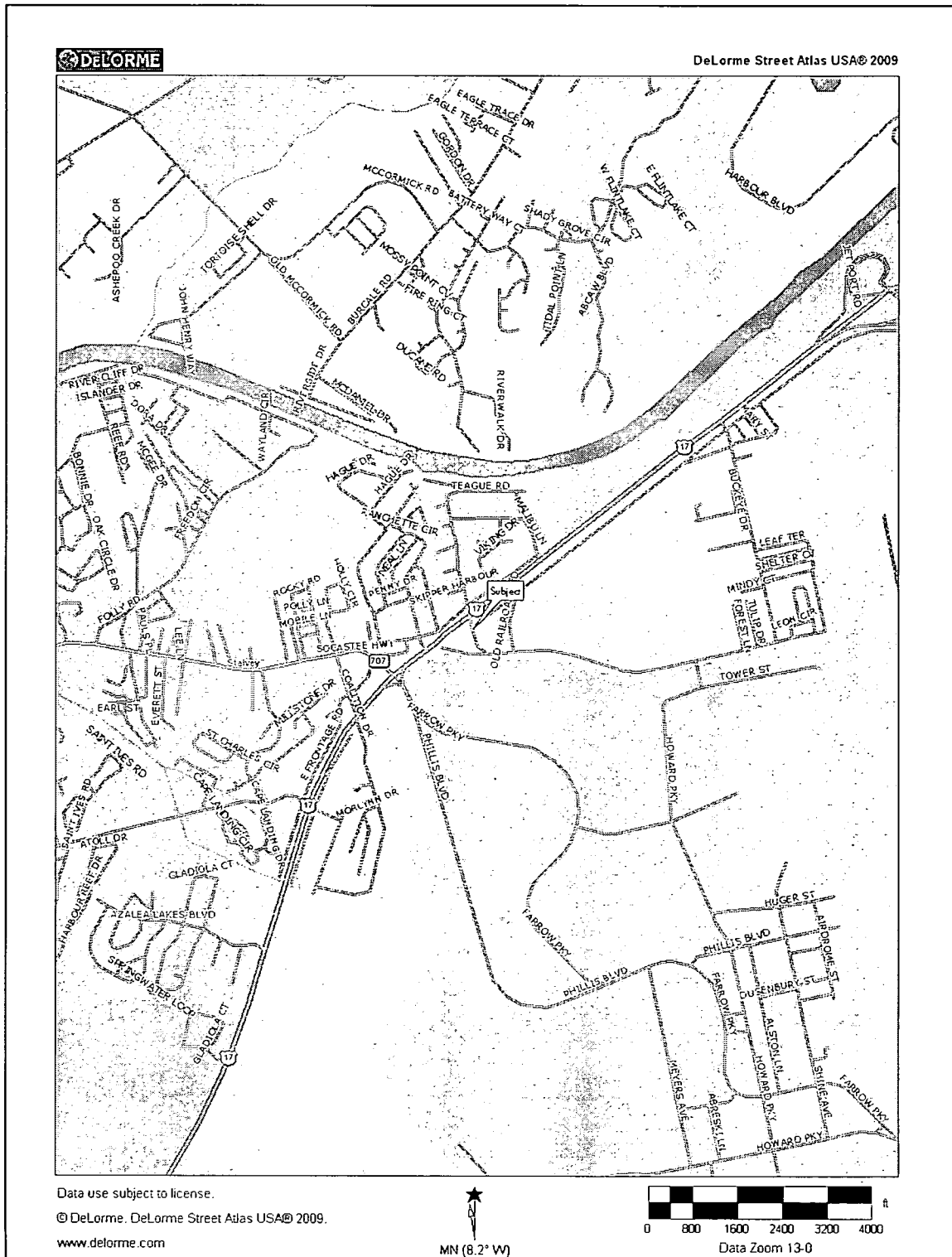
Road Frontage: N/A

Maximum Building Size: N/A

Minimum Lot Size: 10,000 SF- Commercial Use & 6,000 SF Residential Use

Tract #: 13

SUBJECT LOCATION MAP



File #: 26.036774A PIN #: 36774 Project #: HORR Tract #: 13

SUBJECT LOCATION MAP



File #: 26.036774A PIN #: 36774 Project #: HORR Tract #: 13

SUBJECT PHOTOGRAPHS (1-3)

Address/Location: NE corner of Old Socastee Hwy & Emory Road, Myrtle Beach, SC
 Photos Taken By: Corbin Haskell Date of Photos: 4/08/2010 & 4/18/2011

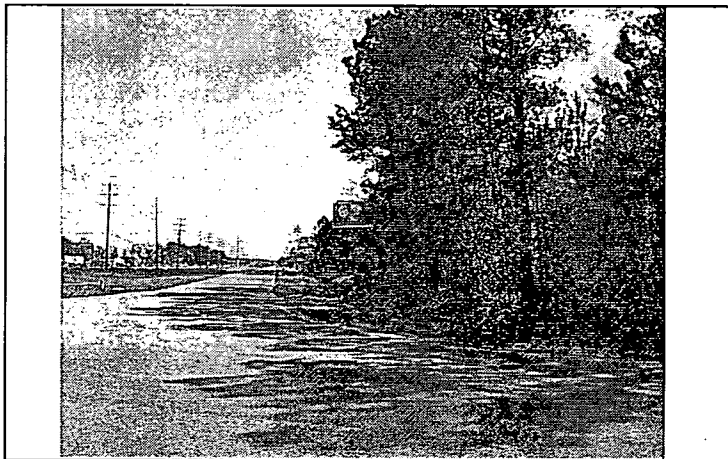
Aerial view of subject



NE corner of Old Socastee Highway and Emory Road, subject on the left



Old Socastee Highway facing northeast, subject on the right



File #: 26.036774A PIN #: 36774 Project #: HORR Tract #: 13

SUBJECT PHOTOGRAPHS (4-6)

Address/Location: NE corner of Old Socastee Hwy & Emory Road, Myrtle Beach, SC
 Photos Taken By: Corbin Haskell Date of Photos: 4/08/2010 & 4/18/2011

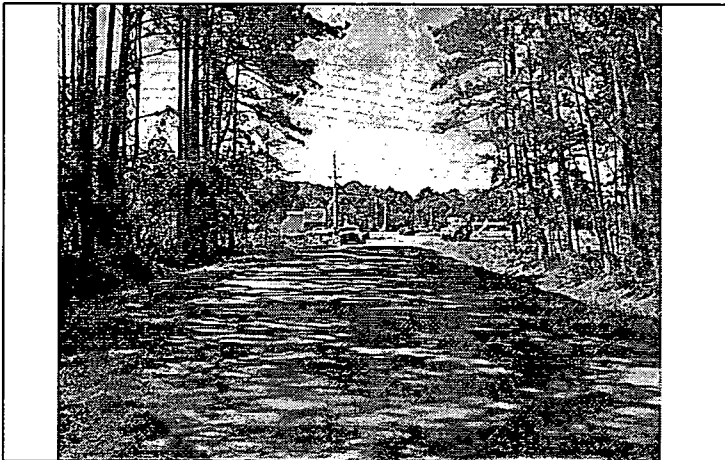
Old Socastee Highway facing south, subject on the left



Emory Road facing southeast, subject on the left



Emory Road facing northwest, subject on the right



File #: 26.036774A PIN #: 36774 Project #: HORR Tract #: 13

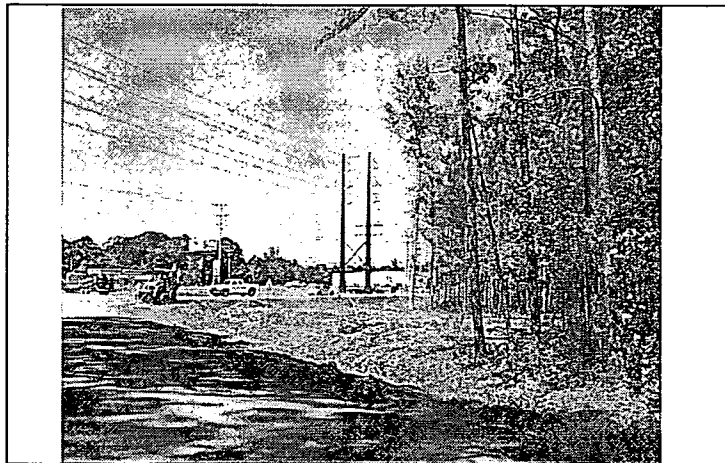
SUBJECT PHOTOGRAPHS (7-9)

Address/Location: NE corner of Old Socastee Hwy & Emory Road, Myrtle Beach, SC
 Photos Taken By: Corbin Haskell Date of Photos: 4/08/2010 & 4/18/2011

Emory Road facing southeast
near rear property line, subject
on the left



Approximate location of the
acquisition



Billboard on site, not impacted
by acquisition



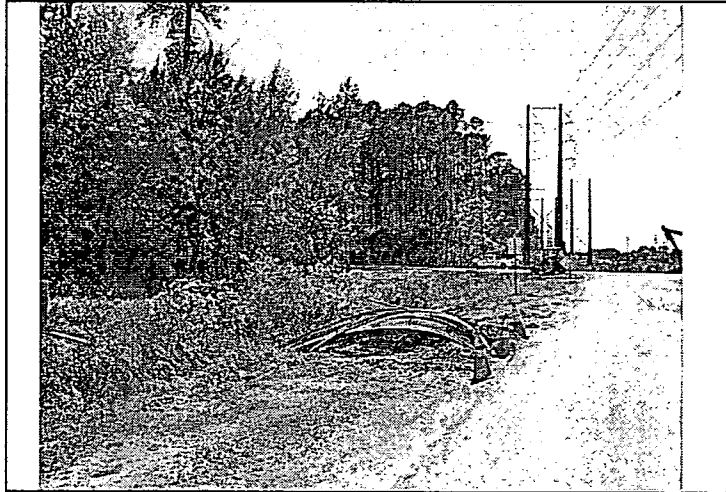
File #: 26.036774A PIN #: 36774 Project #: HORR Tract #: 13

SUBJECT PHOTOGRAPHS (10)

Address/Location: NE corner of Old Socastee Hwy & Emory Road, Myrtle Beach, SC

Photos Taken By: Corbin Haskell Date of Photos: 4/18/2011

Approximate location of
acquisition on Old Socastee
Highway, facing south.



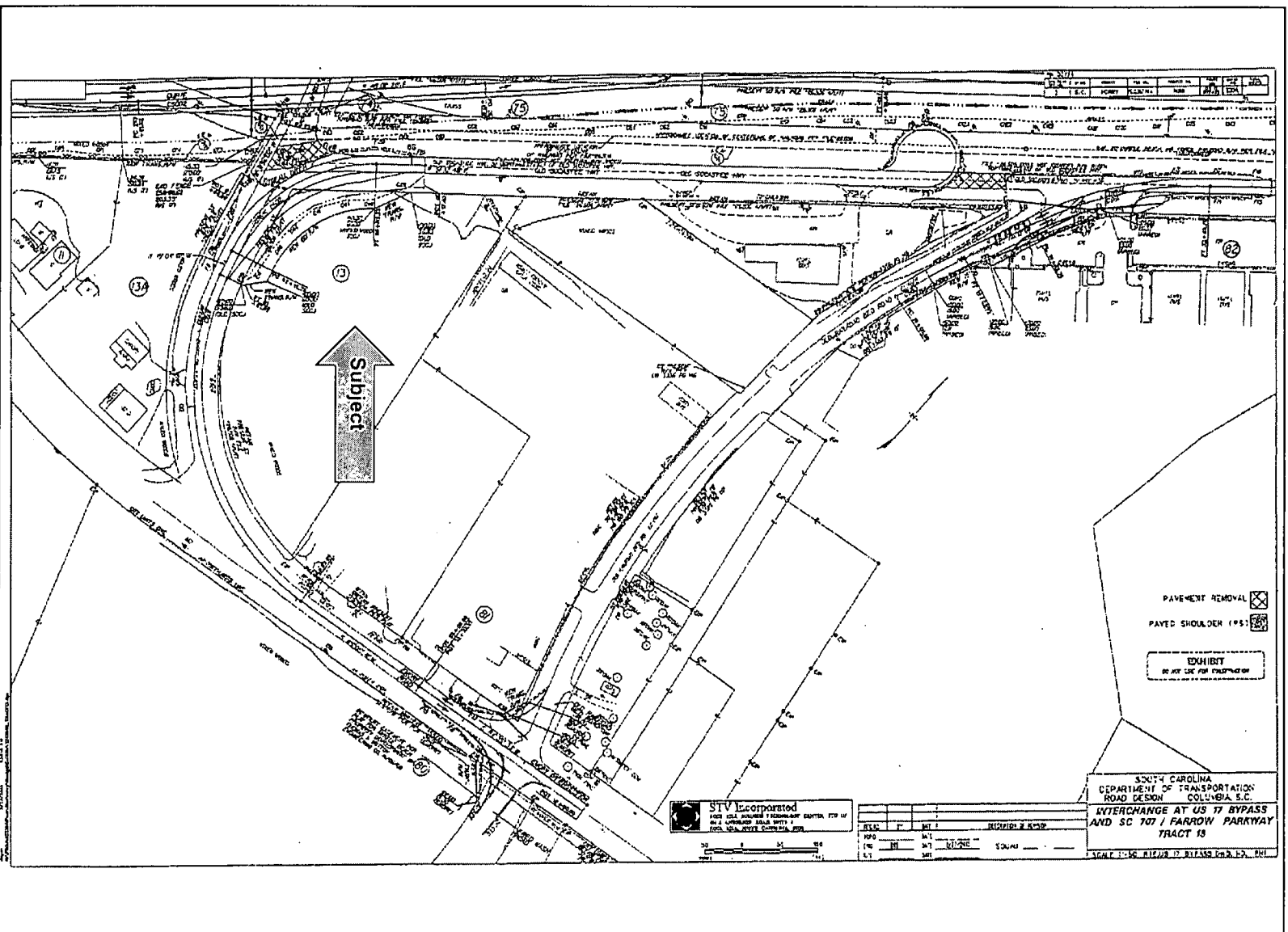
File #: 26.036774A

PIN #: 36774

Project #: H0RR

Tract #: 13

SUBJECT PLAT



Right of Way Section

ROA-127
127

SCDOT

File #: 26.036774A PIN #: 36774 Project #: HORR Tract #: 13**PARAGRAPH 19. SCOPE OF WORK:**

In preparing this appraisal, the *scope of the appraisal* included, but was not limited to the following:

- 1) A physical inspection of the subject property.
- 2) A search of public records to gather sales data and other comparable information.
- 3) Verifying all data by public affidavit or by grantor/grantee, or a representative to the sale.
- 4) Determining the highest and best use of the subject property.
- 5) Applying all relevant approaches to value. As the appraisal is of vacant land, the only relevant approach is the Sales Comparison Approach.

The general scope started with a review of the area economic data and demographics in order to determine the health of the local economy and identify trends in the local trade area while analyzing the corresponding effects on the real estate market. A study of the subject neighborhood also known as the sub-market was also completed in order to determine local trends and the competitive standing of the subject within the sub-market. The sub-market is defined as the Grand Strand area of Horry County.

An on site inspection of the property was made most recently on March 11, 2013. The retrospective market value of the subject is as of the date of condemnation or August 27, 2010. The property description relies on the DOT survey provided to the appraisers, an on site inspection, and Horry County public records. Other data available through the local county tax assessor and mapping department were also researched.

Data considered most relevant are outlined in this report. Acquisition and confirmation of these data included a search of public records, MLS data, CoStar, and local information obtained from local appraisers and brokers, and discussions with people active in the local and regional real estate markets. The investigative process further includes ongoing discussions with developers, appraisers, and brokers of property with regard to development costs, return objectives, market activity, and marketing time. Publications relevant to the real estate market were consulted for information on market activity, expense ratios, capitalization rates, discount rates, and other information. Improved sales and rentals of comparable facilities were researched and analyzed.

The conclusions have been reported in a SCDOT Standard format in accordance with the Uniform Standards of Professional Appraisal Practice (USPAP).

The subject property will be impacted by the reconfiguration of the interchange of Highway 707 and Highway 17 Bypass. No other specific abnormal appraisal problems arose during the appraisal. Adequate data was available to complete the analysis.

File #: 26.036774A PIN #: 36774 Project #: HORR Tract #: 13**PARAGRAPH 20-A. DESCRIPTION OF REALTY (BEFORE):****SITE DESCRIPTION**

Present Use	Vacant land
Site Size	2.455 acres or 106,940square feet. It is recommended that a qualified surveyor inspect the subject for existing property lines and easements that are unable to be detected by the appraiser(s).
Curb and Gutters	None
Sidewalk	No
# of Lanes	2 lanes- Old Socastee Highway 2 lanes- Emory Road
Traffic Level	Low- Old Socastee Highway Low- Emory Road
Traffic Control	None
Shape	Irregular
Ingress/Egress	The subject has frontage and access along Old Socastee Highway and Emory Road. The subject has exposure from Highway 17 Bypass, but has no direct ingress/egress. Emory Road intersects with Highway 17 Bypass. However, due to the current configuration and heavy traffic on Highway 17 Bypass, accessing the southbound lanes from the neighborhood is difficult.
Access to the Improvements	N/A
Frontage	+/-310' Old Socastee Highway +/-530' Emory Road
Grade at Road Level	At or near road grade
Visibility/Exposure	Average
Topography	Level
Drainage	Adequate
Flood Plain:	
Map Number	45051C0692H (See Flood Map in <i>Addendum</i>)
Date	9/17/2003
Zone	X
Landscaping	Average
Utilities	
Water	Yes
Sewer	Yes
Electricity	Yes

File #: 26.036774A PIN #: 36774 Project #: HORR Tract #: 13

Natural Gas	Yes
Telephone	Yes
Zoning	
Designation	HC, Highway Commercial (Horry County)
Uses Allowed	"It is the intent of this section that the Highway Commercial District be established and appropriate land reserved for general business purposes and with particular consideration for the automobile-oriented commercial development existing or proposed along the county's roadways. The regulations which apply within this district are designed to encourage the formation and continuance of a compatible and economically healthy environment for business, financial, service, amusement, entertainment and professional uses which benefit from being located in close proximity to each other; and to discourage any encroachment by industrial or other uses capable of adversely affecting the basic commercial character of the district." A wide variety of retail and commercial uses are allowed. Single-family homes are also allowed.
Easements/ Encroachments	Based upon my inspection and examination of the subject site, as well as my review of plats and deeds of the property, I did not detect adverse easements other than normal utility easements and rights of way. These are not believed to have a detrimental impact on property value. It should be noted that I am not qualified to detect easements and encroachments and legal counsel should be retained if there are any indications of title defects.
Environmental	I am unaware of potential environmental hazards on the property. Environmental aspects of the subject property are beyond my expertise. If necessary, I recommend a professional in environmental expertise be retained.
Comments	Subject appears to be a conforming use as vacant.
Personal Property, FF&E, etc. (Included in the opinion of value)	None noted
Relocation Items (Not included in the opinion of value)	None noted

File #: 26.036774A PIN #: 36774 Project #: HORR Tract #: 13**PARAGRAPH 20-B. DESCRIPTION OF REALTY (BEFORE):****IMPROVEMENT DESCRIPTION**

There is a billboard located on the subject property near the northern property line along Old Socastee Highway. The billboard does not appear to be impacted by the road project.

PARAGRAPH 21. HIGHEST AND BEST USE (BEFORE):

Highest and Best Use is defined in The Appraisal of Real Estate – 13th Edition as, "The reasonably probable and legal use of vacant land or an improved property, that is physically possible, legally permissible, appropriately supported, financially feasible, and that results in the highest value."

AS VACANT:***Physically Possible:***

The subject site contains approximately 2.455 acres. The site is at or near road grade and generally level. The property is located along two secondary thoroughfares with adequate access. The subject has exposure from but does not have direct access to Highway 17 Bypass. This is fairly common to the neighborhood and does not limit the use of the subject for secondary commercial, service, or light industrial uses common to the neighborhood. All utilities are directly available to the site. As vacant, a variety of uses, including nearly all uses common to the neighborhood are physically possible for the subject.

Legally Permissible:

As to the legally permissible uses, the subject property is zoned "HC", Highway Commercial District. According to the Horry County Zoning Ordinance, a wide variety of commercial uses as well as residential uses are legally permissible as vacant.

Financially Feasible:

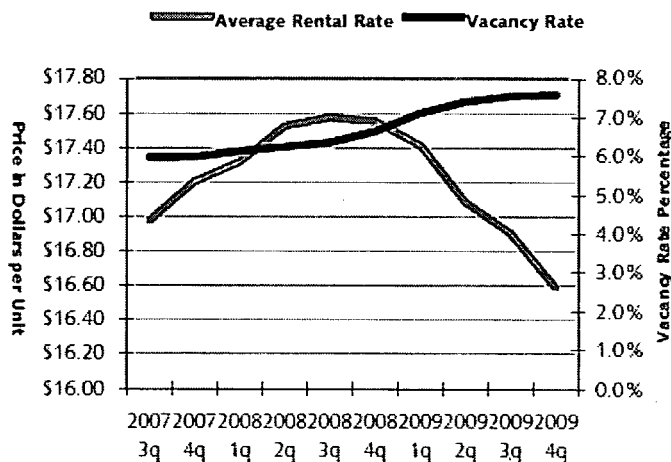
The subject property is located along an established commercial corridor north of the intersection of Highway 17 Bypass and Highway 707. Land uses around this intersection include but are not limited to fast food, convenience stores, banks, restaurants, retail strip centers, self-storage, pharmacy, and other retail operations. However, moving north of the intersection land uses become more secondary commercial, service, and light industrial in nature. Properties along Old Socastee Highway are developed with a variety of established, small light industrial or service buildings. Development to the rear consists of established residential uses. The subject also benefits from its proximity to the newly developed Withers Preserve and to Market Common. However, new development in the immediate subject area has been slow to occur in recent years.

File #: 26.036774A PIN #: 36774 Project #: HORR Tract #: 13

As discussed in more detail in the Comparable Data Brochure, the national and local economy is slowly recovering from the recent recession. For the remainder of 2010, there are a number of factors which will slow the real estate market including a tightening of lending practices and the slowdown in the economy in general. New construction will be limited due to the lack of financing and lack of quality tenants. Vacancy will rise and rental rates will decrease.

U.S. VACANCY COMPARISON

Past 10 Quarters



Source: CoStar Property

In the short term, the immediate subject area will not see the growth and appreciation it has over the last several years. However, based on its positive market fundamentals, overall economic conditions are good for the long term.

The site is physically suited for secondary commercial, service, or light industrial development. Constructing a speculative building at this time is not ideal due to the current economic conditions. Based on the current conditions and projections, it would be most financially feasible to either hold the subject property for future development or develop the property with a build-to-suit and/or owner occupied building. As vacant, based on current market conditions, the subject tract should be held speculatively until it can be put to its highest and best use, which includes a variety of scenarios assuming the proper tenant and/or owner occupant.

Maximally Productive:

To provide the highest return to the land, the proper building improvements providing the optimum land-to-building ratio should be developed. This should allow for adequate ingress and egress to and from the property along with no excess land. Development for commercial use assuming the proper improvements and a proper land-to-building

File #: 26.036774A PIN #: 36774 Project #: HORR Tract #: 13

ratio would be the maximally productive use, as vacant. Constructing a speculative building at this time is not ideal due to the current economic conditions.

Therefore, based on the preceding discussion my opinion of the highest and best use of the property, as vacant and available for development, is to hold for secondary commercial, service, or light industrial utilization.

PARAGRAPH 22. VALUATION BEFORE THE ACQUISITION:

LAND VALUATION (BEFORE):

Land value is derived separately using the sales comparison approach and a minimum of three comparable sales. The South Carolina Department of Transportation requires that the Sales Comparison Approach be demonstrated for all improved properties unless unusual circumstances preclude its development or the improvements are determined to be unaffected by the acquisition. The Cost Approach shall be considered when the impacted improvements are less than ten years old, a special-use property, or when sufficient comparable sale or lease information is not available. The SCDOT requires application of the Income Approach on all investment and income-producing properties where existing improvements might be impacted by the project.

To value the subject land, the Sales Comparison Approach is used. A thorough search for sales activity in the immediate subject neighborhood and in nearby similar neighborhoods was completed to locate comparable land sales. Land sales have been selected for further analysis and direct comparison on the basis of similarities and location, physical characteristics, and other categories.

Five comparable sales have been identified and analyzed. A complete description of each comparable is provided in the Comparable Data Brochure. A Land Sales Map is attached in the *Addendum*. The land sales are summarized in the following chart.

File #: 26.036774A PIN #: 36774 Project #: HORR Tract #: 13**LAND SALES SUMMARY CHART-BEFORE****Tract 13**

Sale #	Name/Location	Sales Date	Use	Sales Price	Land Size (Ac./SF)	Sales Price/SF
14	1600 Farrow Parkway Myrtle Beach	12/12/2007	Retail Center	\$1,958,000	3.543 154,333	\$12.69
21	Socastee Blvd. Myrtle Beach	9/11/2008	Service Center	\$825,000	3.000 130,680	\$6.31
22	Highway 501 Myrtle Beach	1/15/2008	Service	\$825,000	2.230 97,139	\$8.49
23	Highway 501 Myrtle Beach	7/16/2010	Vacant	\$495,000	1.260 54,886	\$9.02
25	Mr. Joe White Blvd Myrtle Beach	8/17/2010	Vacant	\$500,000	1.200 52,272	\$9.57

ANALYSIS

Low	\$6.31
High	\$12.69
Mean	\$9.22
Median	\$9.02

EXPLANATION OF ADJUSTMENTS:

The following analysis outlines adjustments made for differences existing between the sales and the subject in an effort to determine what each property may have sold had it been identical to the subject in all respects. The analysis grid following the discussion summarizes the pertinent facts of each sale in the adjustment process. Due to lack of market data, in most cases adjustments in this appraisal are based on my judgment. The typical unit of comparison for the local market is the price per square foot.

Property Rights: Each of the sales included the Fee Simple Interest with no adjustments necessary.

Financing: Each sale is a cash or cash equivalent transaction indicating no adjustments for financing or cash equivalency.

Conditions of Sale: Each of the sales is an arm's length transaction with no adjustment necessary under this category.

Market Conditions: A market conditions adjustment is necessary in the appraisal to account for the changes that have occurred in the market between the time the sale occurred and the date of this appraisal. A market conditions adjustment is necessary in the appraisal to account for the changes that have occurred in the market between the time the sale occurred and the date of this appraisal. Based on the recent economic downturn and recession, there has been no measurable

File #: 26.036774A PIN #: 36774 Project #: HORR Tract #: 13

appreciation in tracts of land within the last 36 months. Thus, no adjustments are necessary.

Location:

Efforts to show a market-extracted location adjustment based on paired data analysis were inconclusive. Therefore, adjustments for location are based on logical conclusions made by the appraiser when comparing the locations of the comparable sales to that of the subject. Based on this comparison, Sale 14 received a downward adjustment as it is in a superior location, in a more primary commercial area within the Withers Preserve development. Sale 21 received an upward adjustment, as its location on a secondary thoroughfare is inferior to the subject. Sale 22 has a similar location and no adjustment is necessary. Sales 23 and 25 have slightly inferior locations on less traveled thoroughfares and small upward adjustments are reasonable.

Size:

Generally, larger tracts of land are transferred on a lower cost per unit basis than smaller tracts, all other factors being equal. Conversely, smaller tracts are generally transferred on a higher cost per unit basis than are larger tracts. The subject tract contains approximately 2.455 acres of land while the comparable sales used contain between 1.2 acres and 3.543 acres. Therefore, Sale 14 received an upward adjustment, as it is larger than the subject. Sales 21 and 22 are adequately comparable under this category and no adjustments are necessary. Sales 23 and 25 are smaller and downward adjustments are reasonable.

Shape:

The shape of a tract of land can often dictate its development potential and hence its value. The shape of the subject although irregular does not limit the use of the subject and is comparable to the comparable sales and no adjustments are necessary.

Topography:

The topographic features of a tract of land can often dictate its development potential and affect the overall cost of development. The subject property is at or near road grade and generally level. Each of the sales used has comparable topographic features and therefore no adjustments were necessary.

Zoning:

The zoning and/or other land use restrictions to a tract of land affect land value and therefore are considered in the appraisal. The subject property is zoned HC, Highway Commercial by Horry County. Each of the sales used has similar zoning restrictions and no adjustments are required.

File #: 26.036774A PIN #: 36774 Project #: HORR Tract #: 13***Access/Frontage
and Exposure:***

Adjustments are made for access/frontage and exposure based on a direct comparison between the comparable sales and the subject for these characteristics. The subject tract has adequate frontage and exposure. However, the subject does not have direct access on to a major thoroughfare. Sales 14 and 21 have superior access, thus downward adjustments are necessary. The remaining sales have fairly comparable access, frontage, and exposure features and therefore no adjustments are necessary.

The following chart shows the adjustments necessary for each of the comparable sales compared with the subject property.

File #: 26.036774A PIN #: 36774 Project #: HORR Tract #: 13

LAND SALES ADJUSTMENT CHART-BEFORE						
Tract 13						
Comparable No.	Subject	14	21	22	23	25
Property Rights	Fee Simple	Fee Simple	Fee Simple	Fee Simple	Fee Simple	Fee Simple
Financing	Market	Market	Market	Market	Market	Market
Condition of Sale	Arms Length	Arms Length	Arms Length	Arms Length	Arms Length	Arms Length
Date Of Sale	-	12/12/2007	9/11/2008	1/15/2008	7/16/2010	8/17/2010
Sales Price	-	\$1,958,000	\$825,000	\$825,000	\$495,000	\$500,000
Location	Old Socastee Highway & Emory Road Myrtle Beach	1600 Farrow Parkway Myrtle Beach	Socastee Blvd. Myrtle Beach	Highway 501 Myrtle Beach	Highway 501 Myrtle Beach	Mr. Joe White Blvd Myrtle Beach
City						
Physical Characteristics:						
Size; Acres	2.455	3.543	3.000	2.230	1.260	1.200
S.F.	106,940	154,333	130,680	97,139	54,886	52,272
Shape	Irregular	Irregular	Irregular	Irregular	Regular	Regular
Topography	Level	Level	Level	Level	Level	Level
Access/Frontage/Exposure	Average	Average	Average	Average	Average	Average
Other	-	-	-	-	-	-
Sales Price/SF		\$12.69	\$6.31	\$8.49	\$9.02	\$9.57
ADJUSTMENTS						
Property Rights		-	-	-	-	-
Financing		-	-	-	-	-
Conditions of Sale		-	-	-	-	-
Market Conditions		0.00%	0.00%	0.00%	0.00%	0.00%
Adjusted Price/SF		\$12.69	\$6.31	\$8.49	\$9.02	\$9.57
Location		-25%	25%	-	5%	5%
Physical Characteristics:						
Size		5%	-	-	-5%	-5%
Shape		-	-	-	-	-
Topography		-	-	-	-	-
Zoning		-	-	-	-	-
Access/Frontage/Exposure		-10%	-10%	-	-	-
Other		-	-	-	-	-
Total Adjustments		-30%	15%	0%	0%	0%
Final Adjusted Price / SF		\$8.88	\$7.26	\$8.49	\$9.02	\$9.57
ANALYSIS						
Low		\$7.26				
High		\$9.57				
Mean		\$8.64				
Median		\$8.88				

LAND VALUATION (BEFORE) CONCLUSION:

Prior to adjustments, the sales range from \$6.31 per square foot to \$12.69 per square foot. Adjustments deemed necessary were for location, size, and access.

After all necessary adjustments, the sales indicate a range from \$7.26 per square foot to \$9.57 per square foot with a mean of \$8.64 per square foot and a median of \$8.88 per square foot.

Sale 14 is in the immediate subject neighborhood. However, it is best suited for retail use, as opposed to the subject which is better suited for service use. Thus, Sale 14 is given least weight. Sale 22 is located on a similar roadway, with similar access, and was purchased for use as a printing business. Sale 22 is considered to be a strong

File #: 26.036774A PIN #: 36774 Project #: HORR Tract #: 13

indicator of market value. Sales 23 and 25 are the most recent and are given more emphasis. Therefore, based on the preceding sales and analysis, it is my opinion that the subject land has a market value of \$9.00 per square foot prior to the acquisition.

The indicated retrospective market value of the subject is shown as follows:

106,940 SF	X	\$9.00 per SF	=	\$962,458
Rounded to:	\$963,000			

PARAGRAPH 22-B. COST APPROACH TO VALUE (BEFORE):

Not Applicable

PARAGRAPH 22-C INCOME CAPITALIZATION APPROACH TO VALUE (BEFORE)

Not Applicable

PARAGRAPH 23. RESOLUTION OF BEFORE VALUE:

Sales Comparison Approach - As the appraisal is of a vacant tract of land, the only applicable approach is the Sales Comparison Approach to value. The Sales Comparison Approach is a direct reflection of actions of buyers and sellers and is particularly relevant when recent sales of comparable properties are available. The opinion of value developed in this approach can be subjective when adjusting for variations and locational physical characteristics, but serves as a primary guide for buyers and sellers in setting the parameters for a potential transaction.

In this analysis, a number of land sales in the subject neighborhood and in nearby similar neighborhoods were available for comparison. Though there is subjectivity in the adjustment process, the Sales Comparison Approach and analysis is well supported in the appraisal based on qualitative adjustments and analysis.

Cost Approach – N/A

Income Approach – N/A

Therefore, based on the information contained in this report, the retrospective opinion of market value of the subject property as of the date of this report is \$963,000.

File #: 26.036774A PIN #: 36774 Project #: HORR Tract #: 13

PARAGRAPH 24. DESCRIPTION OF THE ACQUISITION:

The new right of way acquires 0.183 acres or 7,951 square feet of the subject property along the corner of Old Socastee Highway and Emory Road. There are no improvements within the acquisition.

PARAGRAPH 25. DESCRIPTION OF THE REMAINDER:

Prior to the acquisition, the subject contained 2.455 acres of land. The acquisition reduces the total land size to 2.272 acres. After the acquisition, there will be new controlled access along Highway 17 Bypass, thus closing the intersection with Emory Road and Highway 17 Bypass to the west of the subject. Additionally, just north of the subject Old Socastee Road will be closed with a cul-de-sac. Access from the subject will now be from Emory Road traveling east/northeast. Emory Road will provide eventual access to Farrow Parkway to the southwest. Emory Road will also eventually intersect with Old Railroad Bed Road, which will provide eventual access to Old Socastee Road/Highway 17 Bypass to the northeast. After the acquisition, vehicular access from Highway 17 Bypass is changed from "typical" of the neighborhood before the acquisition to "indirect" after the acquisition.

The acquisition does not appear to significantly affect the property's shape, topography, frontage, or exposure. Based on the DOT elevation plans provided, it does not appear there is a significant change in road grade with Old Socastee Road and Emory Road after the acquisition. There is sufficient frontage to the north of the acquisition along Old Socastee Highway to support a driveway for future development. Additionally, there is sufficient frontage to the east of the acquisition along Emory Road to support a driveway for future development.

The fee simple ownership interest is reduced and the remaining land area is sufficient to support the development "after" the acquisition. While the land can be developed after the acquisition, with reduced access, the utility is damaged.

PARAGRAPH 26. HIGHEST AND BEST USE (AFTER):

AS VACANT:

The proposed road project requires a fee acquisition along the subject frontage with portions of Old Socastee Highway and Emory Road. The property continues to possess sufficient size, shape and topography to support development. Exposure and frontage will remain similar to the before condition. However, the property will have reduced access.

After the acquisition, the highest and best use of the subject property remains for light industrial, secondary commercial or service utilization. However, based on the changed access, the land value is damaged. In my opinion, the highest and best use of the land "after", as vacant, remains to hold for secondary commercial, service, or light industrial utilization.

File #: 26.036774A PIN #: 36774 Project #: HORR Tract #: 13

AS IMPROVED:

Not Applicable

PARAGRAPH 27. VALUE AFTER THE ACQUISITION:

"After" values and conclusions are based upon plans provided by the SCDOT and the completion of the proposed road construction.

Consideration has been given to relevant aspects of the property affected by the acquisition for analysis and comparison to the subject's "before" condition and the comparable data.

LAND VALUATION (AFTER):

After the acquisition, the subject access has changed from "typical" to "indirect".

Access Adjustment:

The paired data analysis relies on Land Sale A and Land Sale B and Land Sale C and Land Sale D, which are summarized in the *Addendum*. Land Sale A and Land Sale B are primary commercial sites located in the Queens Harbour development on Loyola Drive. Each has similar frontage and exposure on Highway 17 Bypass. Sale A must be accessed via Loyola Drive which extends along the rear of this tract. Sale A's access is more similar to the subject in the "after" condition. Sale B has more typical access via South Strand Drive and Loyola Drive. Sale B is more similar to the subject in the "before" condition. Therefore, after adjusting for market conditions and size these two properties are well suited to extract an access adjustment.

Land Sale C and Land Sale D are secondary commercial/light industrial sites located in the Highway 707 corridor. Land Sale C is located off Highway 707 and just off Moss Creek Road on a small industrial court. Land Sale D fronts on Highway 707. Sale D is most similar to the subject in the "before", while Land Sale C is most similar in the "after" condition. Therefore, after adjusting for size these two properties are well suited to extract an access adjustment. See the following charts for the paired data analysis.

File #: 26.036774A PIN #: 36774 Project #: HORR Tract #: 13

ACCESS ADJUSTMENT		
Tract 13		

Comparable No.	A	B
Property Rights	Fee Simple	Fee Simple
Financing	Market	Market
Condition of Sale	Arms Length	Arms Length
Date Of Sale	6/4/2008	11/16/2007
Sales Price	\$600,000	\$1,475,000
Location	108 Loyola Drive	128 Loyola Drive
City	Myrtle Beach	Myrtle Beach
Physical Characteristics:		
Size; Acres	0.980	1.550
S.F.	42,689	67,518
Shape	Regular	Regular
Topography	Level	Level
Access/Frontage/Exposure	Average	Good
Other	-	-
Sales Price/SF	\$14.06	\$21.85

ADJUSTMENTS		
Property Rights	-	-
Financing	-	-
Conditions of Sale	-	-
Market Conditions	0.00%	1.65%
Adjusted Price/SF	\$14.06	\$22.21
Physical Characteristics:		
Size	-	-10%
Adjusted Price/SF	\$14.06	\$19.99
Percentage Differential		30%

File #: 26.036774A PIN #: 36774 Project #: HORR Tract #: 13

ACCESS ADJUSTMENT		
Tract 13		

Comparable No.	C	D
Property Rights	Fee Simple	Fee Simple
Financing	Market	Market
Condition of Sale	Arms Length	Arms Length
Date Of Sale	9/22/2009	3/7/2008
Sales Price	\$65,000	\$284,298
Location	Hwy 707 & Moss Creek	
	Lichen Court	Rd
City	Myrtle Beach	Myrtle Beach
Physical Characteristics:		
Size; Acres	0.670	1.230
S.F.	29,028	53,579
Shape	Regular	Regular
Topography	Level	Level
Access/Frontage/Exposure	Fair	Average
Other	-	-
Sales Price/SF	\$2.24	\$5.31

ADJUSTMENTS		
Property Rights	-	-
Financing	-	-
Conditions of Sale	-	-
Market Conditions	0.00%	0.00%
Adjusted Price/SF	\$2.24	\$5.31
Physical Characteristics:		
Size	-	-10%
Adjusted Price/SF	\$2.24	\$4.78
Percentage Differential	53%	

As shown the paired data analysis, it indicates that an adjustment ranging from 30% to 53% is appropriate for the change from typical access to indirect access. The subject will have inferior access compared with Sale A, and an adjustment greater than 30% is reasonable. After the acquisition, the subject will have similar access to Sale C; however, the subject will maintain its exposure along Highway 17 Bypass. Thus, an adjustment slightly less than 53% is appropriate. Based on the paired data analysis, after the acquisition, a 50% downward adjustment is reasonable.

File #: 26.036774A PIN #: 36774 Project #: HORR Tract #: 13

As stated, prior to the acquisition, the land value is \$9.00 per square foot. Applying a 50% downward adjustment indicates the following:

98,989 SF	X	\$ 9.00 per SF	X	50 %	=	\$445,451
Rounded to:	\$446,000					

PARAGRAPH 28. RESOLUTION OF AFTER VALUE:

Sales Comparison Approach - As the appraisal is of a vacant tract of land, the only applicable approach is the Sales Comparison Approach to value. As discussed, there was no change in the value per acre due the acquisition.

Cost Approach – N/A

Income Approach – N/A

Therefore, based on the information contained in this report, the retrospective opinion of market value of the subject property after the acquisition is \$446,000.

PARAGRAPH 29. UNECONOMIC REMAINDER:

Not applicable.

File #: 26.036774A PIN #: 36774 Project #: HORR Tract #: 13

File No: 26.036774A

PIN No: 36774

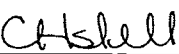
Tract #: 13

DISTRIBUTION OF VALUES

(30)	Value Components:	Before (Paragraph 22)	After (Paragraph 27)	Difference
	Land Value:	\$963,000	\$446,000	\$517,000
	Building Value:	\$0	\$0	\$0
	Site Improvements:	\$0	\$0	\$0
	TOTAL:	\$963,000	\$446,000	\$517,000

(31)	Value Components of the Acquisition:			
	Right of Way Acquired:			
	Land:	7,951.00	sf @:	\$9.00
				\$72,000
	Value of Buildings within the Acquisition Area:			\$0
	Value of Site Improvements within the Acquisition Area:			\$0
	Total for the Acquisition:			\$72,000
	plus Damages (if any to the remainder)			\$445,000
	less Benefits (if any to the remainder)			
	Total for the Acquisition (Right of way, plus damages, less benefits):			\$517,000

(32)	Final Statement of Value:		
	a)	Having considered all applicable approaches, it is my opinion that the indicated value of the whole property before the acquisition is:	\$963,000
	b)	Having considered all applicable approaches, it is my opinion that the indicated value of the whole property after the acquisition is:	\$446,000
	c)	The difference between the indicated value of the property before the acquisition, and the indicated value of the remainder, after the acquisition is:	\$517,000

(33)	The appraisal is made as of:		August 27, 2010
	Date of Report:		March 14, 2013
			
	S.C. Certified General Real Estate Appraiser CG 296		

File #: 26.036774A PIN #: 36774 Project #: HORR Tract #: 13

GENERAL ASSUMPTIONS AND LIMITING CONDITIONS

General Assumptions - This appraisal has been completed and the appraisal report prepared with the following **general assumptions**:

1. No responsibility is assumed for the legal description or for matters including legal or title considerations. The titles to the property are assumed to be good and marketable unless otherwise stated. Any plats, maps, or photographs in this appraisal are used merely to help the reader visualize the property and its surroundings and are not certified to be accurate.
2. Any liens or encumbrances (except for any lease encumbrance that might be referred to in the appraisal) which may exist have been disregarded, and the property has been appraised as though no delinquency in the payment of general taxes or special assessment exists and as though free of indebtedness.
3. It is assumed that the utilization of the land and improvements are within the boundaries of the lines of the property described and that there is no encroachment or trespass unless noted in the report. No survey of the subject property was made or caused to be made by us, and no responsibility is assumed for the occurrence of such matters.
4. A visual inspection of the subject site was made and all engineering is assumed to be correct. The plot plan and illustrative materials in this report are included only to assist the reader in visualizing the property and to show the reader the relationship of its boundaries. The appraiser is not a construction engineer and is not responsible for structural or cosmetic inadequacies associated with any of the improvements unless otherwise noted in the report.
5. It is assumed that there are no hidden or unapparent conditions of the property, subsoil, or structures that render it more or less valuable. No responsibility is assumed for such conditions or for arranging for engineering studies that may be required to discover them. The soil for the area under appraisal appears to be firm and solid, unless otherwise stated. Subsidence in the area is unknown or uncommon, and the appraiser(s) does not warrant against this condition or occurrence.
6. Subsurface rights (minerals and oil) were not considered in this appraisal unless otherwise stated. In addition, no potential timber value was considered.

File #: 26.036774A PIN #: 36774 Project #: HORR Tract #: 13**General Assumptions Continued**

7. It is assumed that there is full compliance with all applicable federal, state, and local environmental regulations and laws unless noncompliance is stated, defined, and considered in the appraisal report. Unless otherwise stated in this report, the appraiser did not observe the existence of hazardous materials or gases, which may or may not be present on the property. The appraiser has no knowledge of the existence of such materials on or in the property. The appraiser, however, is not qualified to detect such substances. The presence of substances such as asbestos, urea-formaldehyde foam insulation, or other potentially hazardous materials may affect the value of the property. The value is predicated on the assumption that there are no such materials on or in the property, which would cause a loss in value. No responsibility is assumed for any such conditions or for any expertise or engineering knowledge required to discover them. The client is urged to retain an expert in this field, if desired.
8. It is assumed that all applicable zoning and use regulations and restrictions have been complied with, unless a nonconforming use has been stated, defined, and considered in the appraisal report.
9. It is assumed that all required licenses, certifications of occupancy, consents, or other legislative or administrative authority from any local, state, or national government or private entity or organization have been or can be obtained or renewed for any use on which the value contained in this report is based.
10. This appraisal assumes water and sewer services will always be provided for the subject.
11. Responsible ownership and competent property management are assumed.
12. The Americans with Disabilities Act ("ADA") became effective January 26, 1992. I (we) have not made a specific compliance survey and an analysis of this property to determine whether or not it is in conformity with the various detailed requirements of the ADA. It is possible that a compliance survey of the property, together with a detailed analysis of the requirements of the ADA, could reveal that the property is not in compliance with one or more of the requirements of the Act. If so, this fact could have a negative impact on the value of the property. Since I (we) have no direct evidence relating to this issue, I (we) did not consider

File #: 26.036774A PIN #: 36774 Project #: HORR Tract #: 13

General Assumptions Continued

non-compliance with the requirements of ADA in determining the value of the property.

13. There is currently a good deal of discussion regarding the potential hazards of Electro-Magnetic Fields and the possible health risk of being located near high voltage transmission lines. I (we) have not made a specific compliance survey and analysis of this property to determine whether or not there are potentially hazardous effects from EMF's. It is possible that a compliance survey of the property together with a detailed analysis could reveal that there is EMF levels, which are above a safe level. If so, this fact could have a negative impact on the value of the subject property. Since I (we) have no direct evidence relating to this issue, I (we) did not consider EMF levels in determining the value for the property.
14. At the store managers request no pictures were allowed. Additionally access to storage areas, office, or coolers was not allowed. This appraisal assumes average condition for these areas.

General Limiting Conditions – This appraisal has been completed and the appraisal report has been prepared with the following **general limiting conditions**.

1. The distribution, if any, of the total valuation in this report between land and improvements applies only under the stated program of utilization. The separate allocations for land and buildings must not be used in conjunction with any other appraisal and are invalid if so used. The opinions of value provided in the report apply to the entire property, and any proration or division of the total into fractional interests will invalidate the value, unless such proration or division or interests has been set forth in this report.
2. Neither possession of this appraisal or copy thereof carries with it the right to publication, nor may it be used for any purpose by anyone but the applicant without previous consent of the appraiser(s).
3. The appraiser, by reason of this appraisal, is not required to give further consultation, testimony, or be in attendance in court with reference to the property in question unless arrangements have been previously made.
4. Neither all nor part of the contents of this report (especially as to value, the identity of the appraiser, or the firm with which the appraiser is associated) shall be disseminated to the public through advertising, public relations, news, sales, or other media without the prior written consent and approval of the appraiser.

File #: 26.036774A PIN #: 36774 Project #: HORR Tract #: 13

General Limiting Conditions Continued

5. Information, estimates, and opinions contained in this report are obtained from sources considered reliable, however the appraiser assumes no liability for such sources.
6. The information supplied to the appraiser is considered to be accurate. The information supplied by the client has been accepted without further verification as correctly reflecting the property's current condition unless otherwise noted.
7. The various opinions of value presented in this report apply to this appraisal only and may not be used out of the context presented herein. This appraisal is valid only for the appraisal date or dates specified herein and only for the appraisal purpose specified herein.

File #: 26.036774A PIN #: 36774 Project #: HORR Tract #: 13

CERTIFICATE OF APPRAISER

I Hereby certify:

That I have personally inspected the property herein and that I have also made a personal field inspection of the comparable sales relied upon in making this appraisal. The subject and the comparable sales relied upon in making the appraisal were as represented in the comparable data brochure which supplements this appraisal. That Wadley R. Glenn, III, MAI provided significant professional assistance to the appraiser in completion of this report.

That to the best of my knowledge and belief the statements contained in the appraisal herein set forth are true, and information upon which the opinions expressed therein are based is correct: subject to the limiting conditions therein set forth.

That I understand that such appraisal may be used in connection with acquisition of right of way for a highway to be constructed by the State of South Carolina with the assistance of Federal-aid highway funds, or other Federal Funds.

That such appraisal has been made in conformity with the appropriate State and Federal laws regulations, policies and procedures applicable to that appraisal of right of way for such purposes; and that to the best of my knowledge, no portion of the value assigned to such property consists of items, which are non-compensable under the established law of South Carolina.

That neither my employment nor my compensation for preparing this appraisal report is in any way contingent upon the values reported herein.

That I have no direct or indirect present or contemplated future personal interest in such property or in any benefit from the acquisition of such property appraised.

That I have not revealed the findings and results of such appraisal to anyone other than the proper officials of the South Carolina Department of Transportation or officials of the Federal Highway Administration and I will not do so until so authorized by the State officials or until I am required to do so by due process of law, or until I am released from this obligation by having publicly testified as to such findings.

That the owner or his designated representative was given the opportunity to accompany me during my inspection of the property.

That any decrease or increase in the fair market value of the real property prior to the date of valuation caused by the public improvement for which such property is being acquired, or by the likelihood that the property would be acquired for such improvement, other than that due to the physical deterioration with in the reasonable control of the owner, has been disregarded in determining the compensation for the property.

The reported analyses, opinions, and conclusions were developed, and this report has been prepared in conformity with the Code of Professional Ethics and the Standards of Professional Practice of the Appraisal Institute.

The use of this report is subject to the requirements of the Appraisal Institute relating to review by its duly authorized representatives.

I have appraised the subject previously within the last three years.

File #: 26.036774A PIN #: 36774 Project #: HORR Tract #: 13

That my opinion of the retrospective fair market value of the acquisition as of August 27, 2010 is **\$517,000** based upon my independent appraisal and the exercise of my professional judgment.

As of the date of this report, I have completed the requirements for continuing education as set forth by the Uniform Standards of Professional Appraisal Practice.

As of the date of this report, H. Corbin Haskell, MAI has completed the continuing education program of the Appraisal Institute.

Date: March 14, 2012

CHaskell

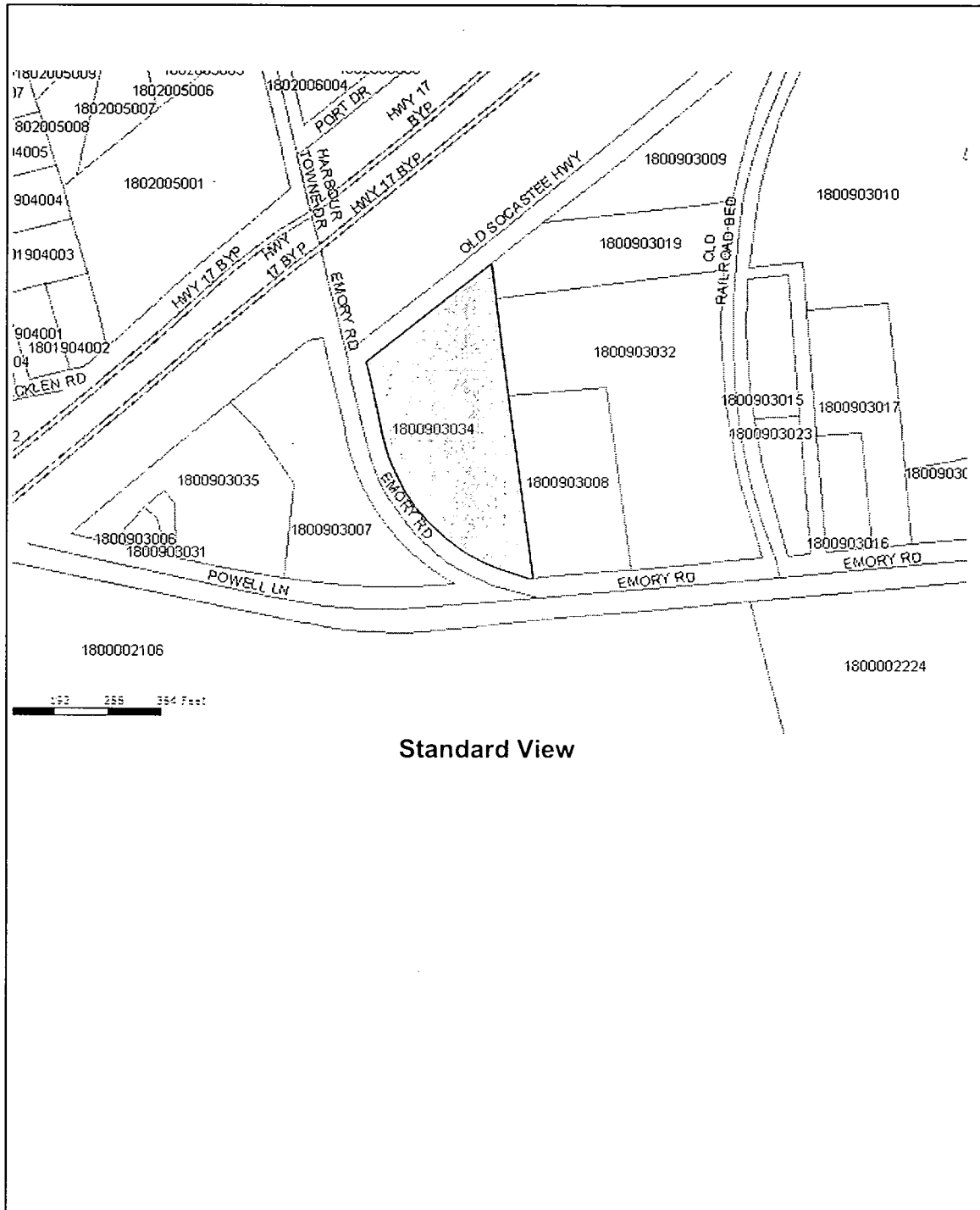
H. Corbin Haskell, MAI
State Certified General Real Estate Appraiser
#296

File #: 26.036774A PIN #: 36774 Project #: HORR Tract #: 13

ADDENDUM

File #: 26.036774A PIN #: 36774 Project #: HORR Tract #: 13

TAX MAP



File #: 26.036774A PIN #: 36774 Project #: HORR Tract #: 13



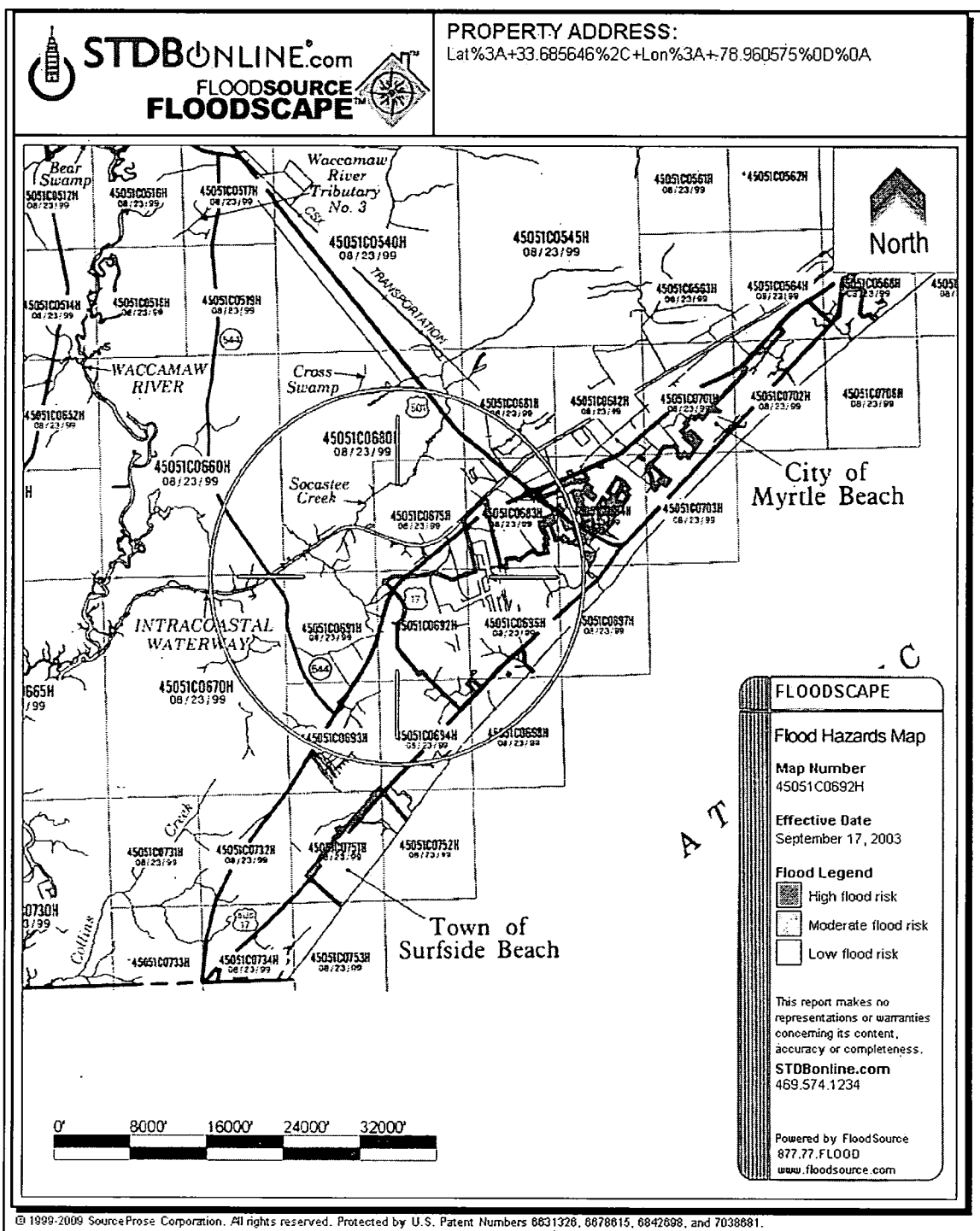
Aerial View

File #: 26.036774A **PIN #:** 36774 **Project #:** HARR **Tract #:** 13

FEMA FLOOD MAP

Flood Panel: 45051C0692H

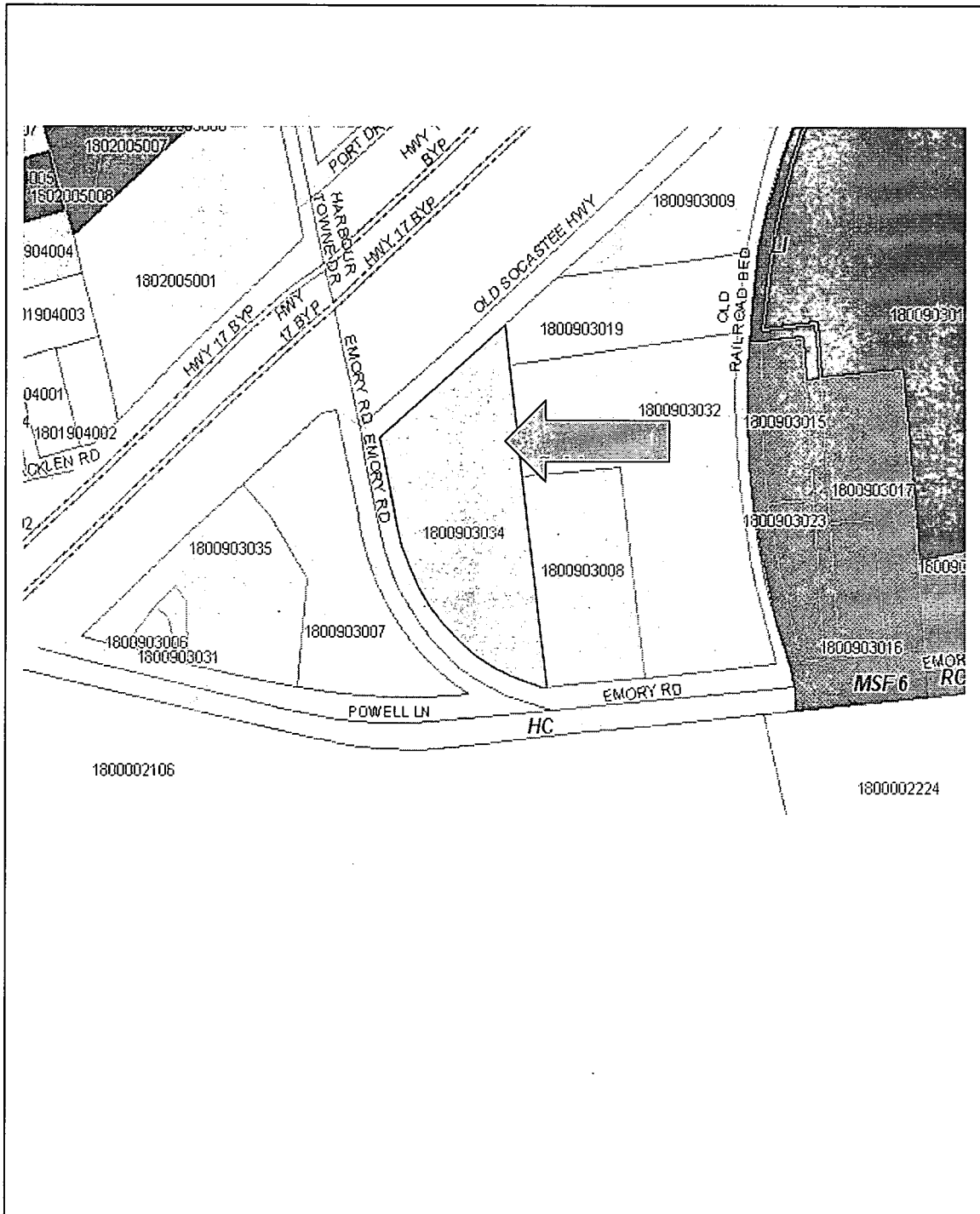
Date: September 17, 2003



File #: 26.036774A PIN #: 36774 Project #: HORR Tract #: 13

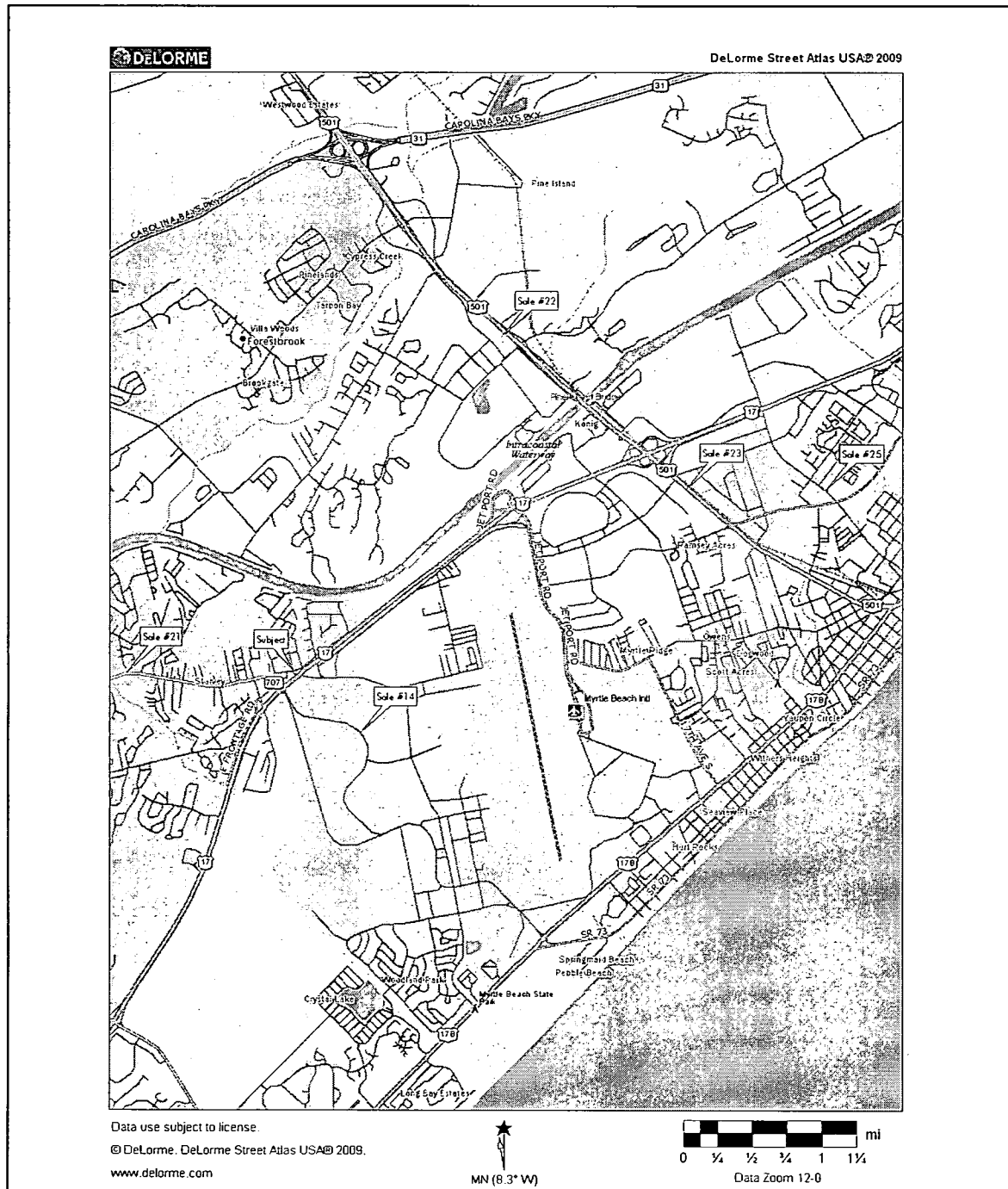
ZONING MAP

Zoning Classification: H-C, Highway Commercial



File #: 26.036774A PIN #: 36774 Project #: HERR Tract #: 13

COMPARABLE LAND SALES LOCATION MAP



File #: 26.036774A PIN #: 36774 Project #: HORR Tract #: 13

SALES FOR ACCESS/CORNER ADJUSTMENTS

File #: 26.036774A PIN #: 36774 Project #: HORR Tract #: 13**COMPARABLE SALE NO. A****IDENTIFICATION**

Type Sale: Vacant Land			
Address: 108 Loyola Drive		City: Myrtle Beach	County: Horry
Tax Map No.: 191-00-01-358	Plat Ref.: 238/13	Deed Book: 3340/1079	
Grantor: VFP, LLC		Grantee: Plains Coastal Properties, LLC	
Zoning: PUD - Horry County		Conformity: Legal Conforming	
Sale Price: \$ 700,000	Date: 6/4/2008	Financing: Typical	
Functional Obsolescence: None		Verification: Broker/Deed/Inspection	

SITE DESCRIPTION

Present or Intended Use: Fast Food		Site Size: 0.98 Ac or 42,689 sf
At road grade	Shape: Regular	Topography: Generally level
Corner: No	Ingress/Egress	
	Primary Road: No Access Secondary Road(s): Full Access	
	<i>Site has frontage and exposure from Highway 17, but no direct access. Access is via Loyola Dr. which provides access to Highway 17</i>	
Primary Frontage (Front Feet): 125' – Loyola Drive		Total Frontage (Front Feet): 250'
Site Improvements: Grading and detention		No. Parking Spaces:
Utilities: All available		

ADDITIONAL COMMENTS

Site was purchased and developed as a Taco Bell restaurant. The property is part of the Queens Harbour Subdivision which has been master planned to allow for off site retention. There is a collector ditch located along the frontage with US Highway 17 Bypass which carries surface water in a southeasterly direction under the Bypass to an off site retention area. Cost of the site work is estimated at \$100,000. Thus, the sales price is adjusted to \$600,000. Allowed uses under the PUD include professional facilities, administrative facilities, laundry facilities, retail food services, restaurant, lounge facilities, commercial retail, recreational facilities, health clubs, guest lodging facilities, service related retail, and facilities storage.

This Comparable is located on the Project: ☐ Tract Number:**INDICATORS**

Price per SF (Building):	N/A	Price per SF (Land):	\$16.40
Adjusted Price per SF:	\$600,000	Adjusted Price per SF (Land):	\$14.06

File #: 26.036774A PIN #: 36774 Project #: HORR Tract #: 13

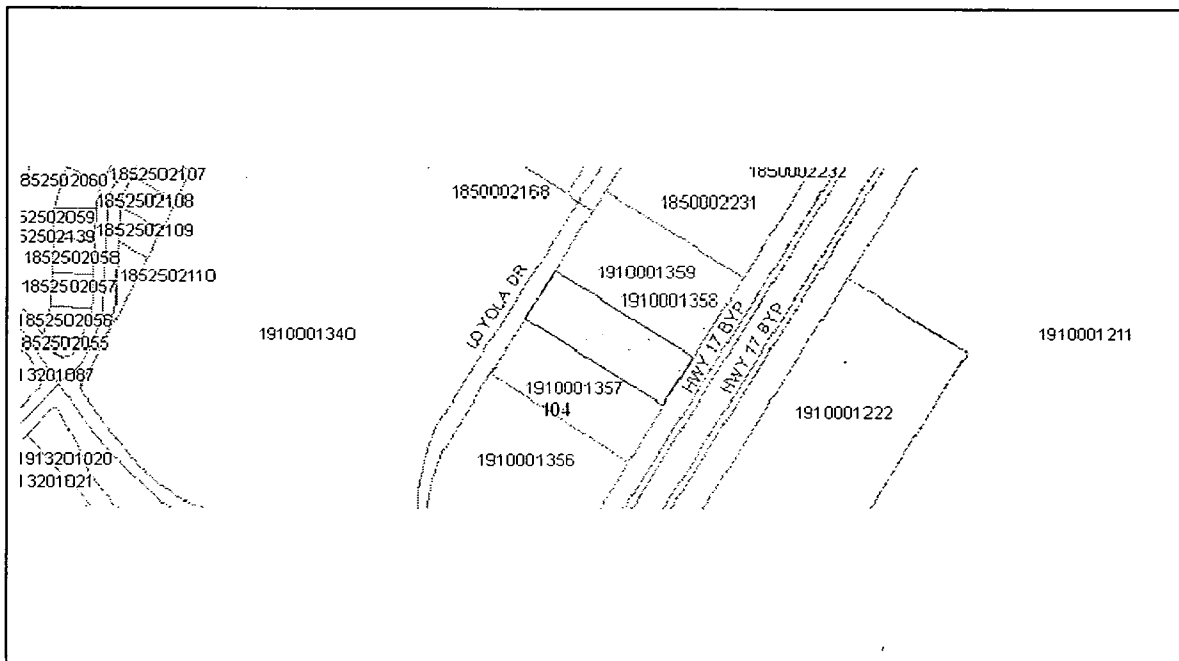
COMPARABLE SALE A PHOTOGRAPH

Photo Taken by: W.R. Glenn

Address: 108 Loyola Drive



COMPARABLE SALE SKETCH/PLAT



File #: 26.036774A PIN #: 36774 Project #: HORR Tract #: 13**COMPARABLE SALE NO. B****IDENTIFICATION**

Type Sale: Vacant Land			
Address: 128 Loyola Drive		City: Myrtle Beach	County: Horry
Tax Map No.: 185-00-02-234	Plat Ref.: 232/184	Deed Book: 3293/2640	
Grantor: G. Ben Thompson		Grantee: First Citizens Bank & Trust Company, Inc.	
Zoning: PUD - Horry County		Conformity: Legal Conforming	
Sale Price: \$1,575,000	Date: 11/16/2007	Financing: Typical	
Functional Obsolescence: None		Verification: Deed/Broker/Inspection	

SITE DESCRIPTION

Present or Intended Use: Bank		Site Size: 1.55 Ac or 67,518 sf (Useable)
At road grade	Shape: Regular	Topography: Generally level
Corner: Corner- Signaled	Ingress/Egress	
	Primary Road: No Access Secondary Road(s): Full Access <i>Property fronts on Highway 17 Bypass; Access is via South Strand Drive and Loyola Drive which provide access to Highway 17</i>	
Primary Frontage (Front Feet): 261' Hwy 17 Bypass		Total Frontage (Front Feet): 622'
Site Improvements: Grading and detention in place		No. Parking Spaces:
Utilities: All available		

ADDITIONAL COMMENTS

Tract contains a total area of 1.73 acres of which approximately .18 acre contains an open drainage easement which is considered to have limited development potential resulting in a net usable area of 1.55 acres. Contract price is \$1,575,000 from which \$100,000 for site work cost by the developer has been deducted resulting in an adjusted sales price of \$1,475,000. Site has been developed with First Citizens for a branch bank. There is a collector ditch located along the frontage with US Highway 17 Bypass which carries surface water in a southeasterly direction under the Bypass to an off site retention area. Allowed uses under the PUD include professional facilities, administrative facilities, laundry facilities, retail food services, restaurant, lounge facilities, commercial retail, recreational facilities, health clubs, guest lodging facilities, service related retail, and facilities storage.

This Comparable is located on the Project: ☐

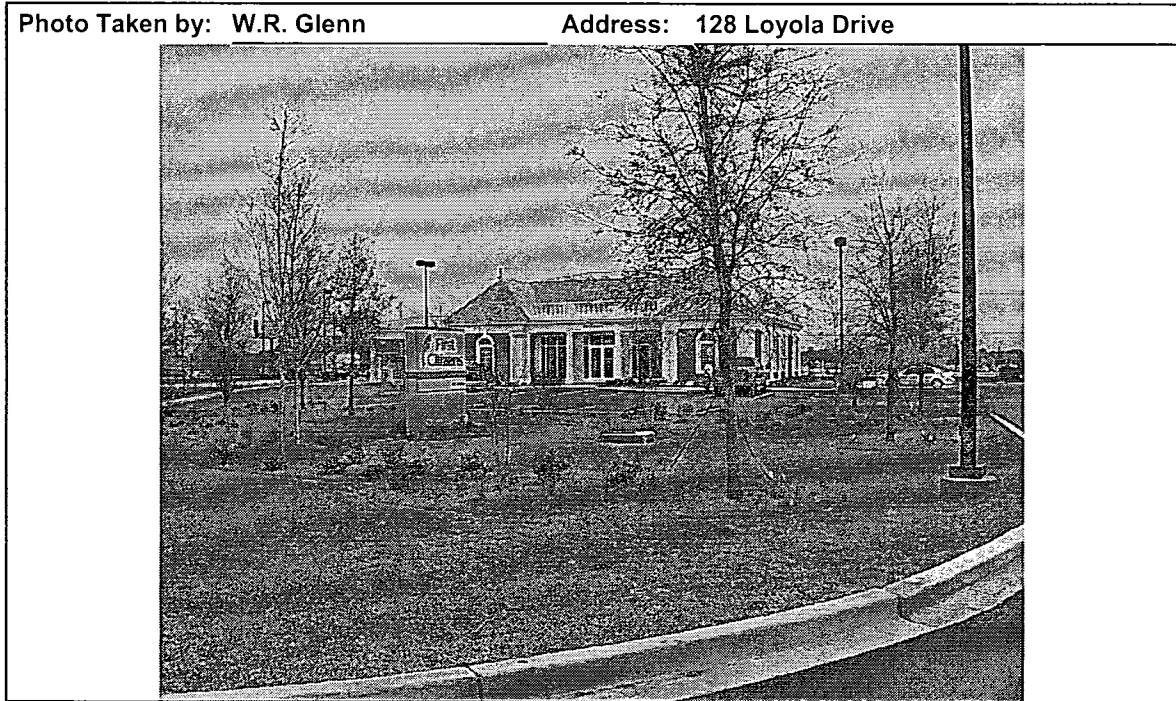
Tract Number:

INDICATORS

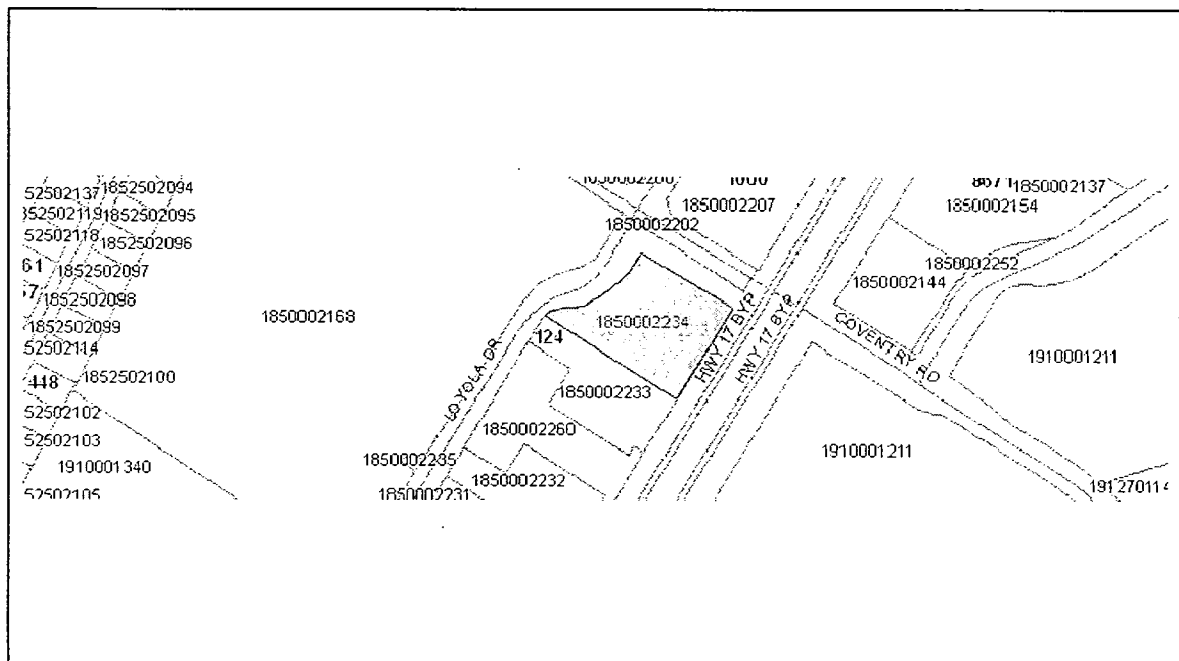
Price per SF (Building):	N/A	Price per SF (Land):	\$23.33
Adjusted Price per SF:	\$1,475,000	Adjusted Price per SF (Land):	\$21.85

File #: 26.036774A PIN #: 36774 Project #: HORR Tract #: 13

COMPARABLE SALE B PHOTOGRAPH



COMPARABLE SALE SKETCH/PLAT



File #: 26.036774A PIN #: 36774 Project #: HORR Tract #: 13**LAND SALE NO. C****IDENTIFICATION**

Type Sale: Vacant Land			
Address: Lichen Court		City: Myrtle Beach	County: Horry
Tax Map No.: 185-27-01-005	Plat Ref.:	Deed Book: 3421/2337	
Grantor: Laurie J. Crespo		Grantee: Monster, Inc.	
Zoning: CFA- Horry County		Conformity: Legal Conforming	
Sale Price: \$ 65,000	Date: 9/22/2009	Financing: Typical	
Functional Obsolescence: N/A		Verification: Deed/Inspection/Reliable Third Party	

SITE DESCRIPTION

Present or Intended Use:		Site Size: 1.29 acres or 56,104 SF
At road grade	Shape: Irregular	Topography: Level with wetlands to the rear
Corner: No	Ingress/Egress	
	Primary Road: Full Access Secondary Road(s): N/A <i>Typical access</i>	
Primary Frontage (Front Feet): 45'- Lichen Court		Total Frontage (Front Feet): 42'
Site Improvements: N/A		No. Parking Spaces: N/A
Utilities: All available		

ADDITIONAL COMMENTS

Property was listed for sale at \$75,000 for 200 days per MLS. Site was purchased by the adjoining property owner for expansion of his business. Per plat of this property, 27,076 square feet or 0.62 acres of the site is swamp land with standing water and did not contribute. There is approximately 29,028 square feet or 0.67 acres of useable area. The site is located on a small industrial court, just off of Moss Creek Road.

This Comparable is located on the Project: Tract Number:

INDICATORS

Price per SF (Land):	\$1.16	Price per Acre (Land):	\$50,388
Adjusted Price per SF:	\$2.24	Adjusted Price per Acre (Land):	\$97,015
L:B	N/A	SF: Primary Frontage:	\$1,444
SF: Parking:	N/A	SF: Total Frontage:	\$1,444

File #: 26.036774A PIN #: 36774 Project #: HORR Tract #: 13

LAND SALE C PHOTOGRAPH

Photo Taken by: W.R. Glenn Address: Lichen Court

Not available

COMPARABLE SALE SKETCH/PLAT



File #: 26.036774A PIN #: 36774 Project #: HORR Tract #: 13**LAND SALE NO. D****IDENTIFICATION**

Type Sale: Vacant Land			
Address: SE corner of Highway 707 & Moss Creek Rd.		City: Myrtle Beach	County: Horry
Tax Map No.: 184-00-03-022	Plat Ref.: 161/1	Deed Book: 3320/32	
Grantor: G. Ben Thompson, et al.		Grantee: Coastal Services of MB, LLC	
Zoning: CFA- Horry County (at time of sale)			Conformity: Legal Conforming
Sale Price: \$ 254,297.71	Date: 3/7/08	Financing: Typical	
Functional Obsolescence: N/A		Verification: Deed/Inspection/Grantor	

SITE DESCRIPTION

Present or Intended Use:		Site Size: 1.23 acres or 53,579 SF
At road grade	Shape: Rectangular	Topography: Level
Corner: Yes	Ingress/Egress	
	Primary Road: Full Access Secondary Road(s): Full Access <i>Typical access on Highway 707 and Moss Creek Road</i>	
Primary Frontage (Front Feet): 136'- Hwy 707		Total Frontage (Front Feet): 497'
Site Improvements: N/A		No. Parking Spaces: N/A
Utilities: All available		

ADDITIONAL COMMENTS

Property was rezoned PDD after purchase. Site surrounded by service uses. Additionally, the seller provided a \$30,000 mortgage to the purchaser. Thus, the sales price is adjusted to \$284,297.71

This Comparable is located on the Project: Tract Number:

INDICATORS

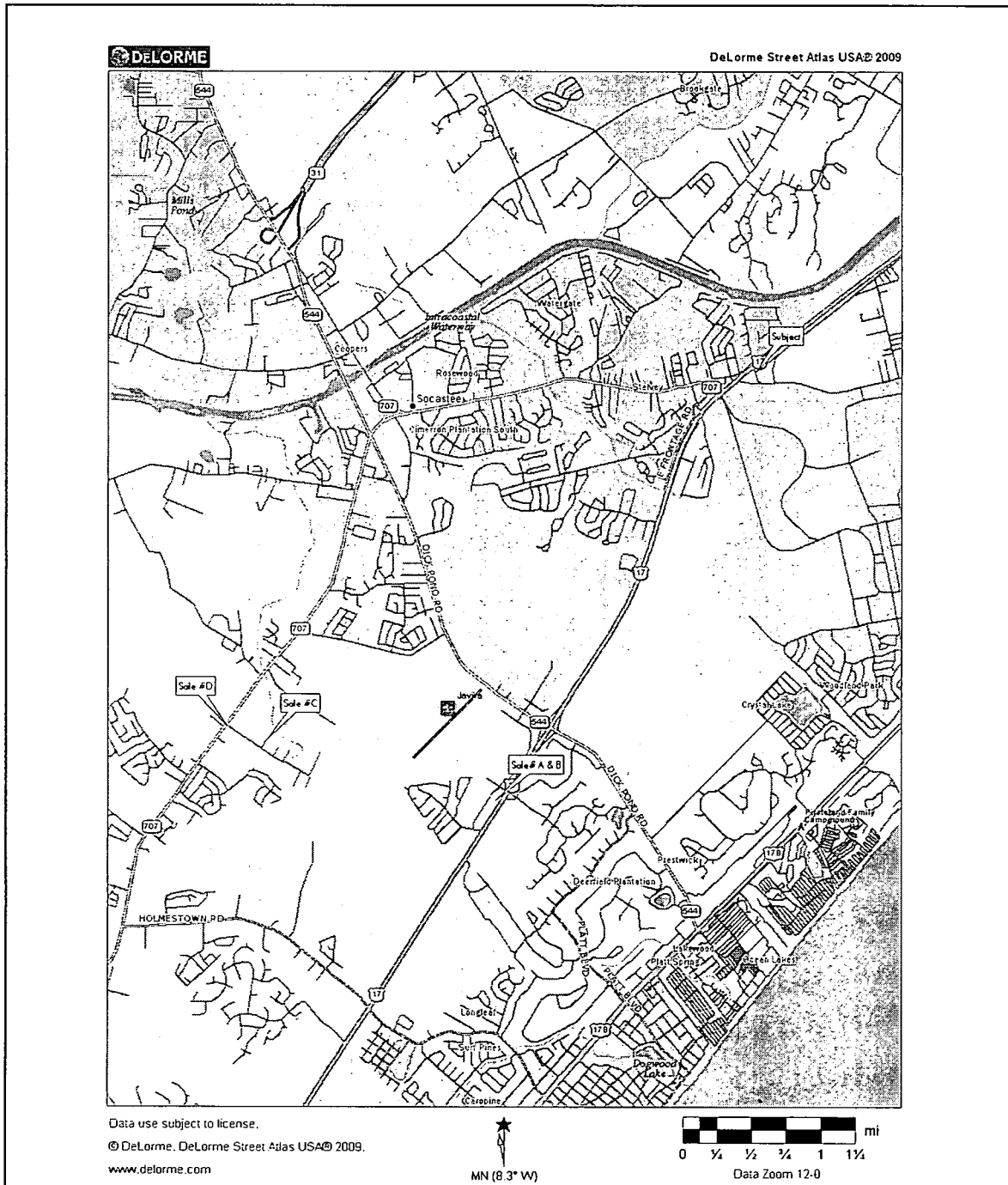
Price per SF (Land):	\$4.75	Price per Acre (Land):	\$206,746
Adjusted Price per SF:	\$5.31	Adjusted Price per Acre (Land):	\$231,136
L:B	N/A	SF: Primary Frontage:	\$2,090
SF: Parking:	N/A	SF: Total Frontage:	\$572

Photo Taken by: W.R. Glenn Address: SE corner of Hwy 707 and Moss Creek Rd.

A black and white photograph showing a wide, flat landscape, likely a field or marsh, with a line of trees and a small building in the distance. A utility pole is visible on the left side of the frame. The image has a grainy, high-contrast appearance.

File #: 26.036774A PIN #: 36774 Project #: HERR Tract #: 13

SUPPLEMENTAL LAND SALES LOCATION MAP



STATE OF SOUTH CAROLINA)
) COURT OF COMMON PLEAS
COUNTY OF HORRY) CASE NO: 2010-CP-26-07999

Road/Route Interchange at US 17 Bypass
And SC 707/Farrow Parkway
File 26.036774A
Project HERR
PIN 36774 RD01
Tracts 13A

SOUTH CAROLINA DEPARTMENT)
OF TRANSPORTATION,)

Condemnor,)

-versus-)

DAVID FRANKLIN POWELL (AKA))

DAVID FRANKLYN POWELL (AKA))

DAVID F. POWELL,)

Landowners,)

AND)

JOHN DOE AND MARY ROE,)

REPRESENTING ALL UNKNOWN)

PERSONS HAVING OR CLAIMING)

TO HAVE ANY RIGHT, TITLE OR)

INTEREST IN OR TO, OR LIEN ON)

THE LANDS DESCRIBED HEREIN,)

INCLUDING ALL UNKNOWN HEIRS)

OF JAMES H. POWELL, DECEASED,)

Unknown Claimant(s).)

**THE DEPOSITION
OF
HARRISON CORBIN HASKELL**

July 6th, 2011
12:50 p.m. – 1:43 p.m.

CP-26 REPORTING

Melissa M. Decker, Court Reporter
PHONE: (843) 446-1691; E-MAIL: melissadecker@sc.rr.com

STATE OF SOUTH CAROLINA)
) COURT OF COMMON PLEAS
COUNTY OF HORRY) CASE NO: 2010-CP-26-07961

Road/Route Interchange at US 17 Bypass
And SC 707/Farrow Parkway
File 26.036774A
Project HORR
PIN 36774 RD01
Tract 13

SOUTH CAROLINA DEPARTMENT)
OF TRANSPORTATION,)
)
Condemnor,)
)
-versus-)
)
DAVID FRANKLIN POWELL,)
)
Landowner.)

**THE DEPOSITION
OF
HARRISON CORBIN HASKELL**

July 6th, 2011
12:50 p.m. – 1:43 p.m.

The deposition of HARRISON CORBIN HASKELL
taken on the 6th day of July, 2011 at THOMPSON &
HENRY, P.A., located at 1300 Second Avenue, Conway,
South Carolina 29526.

CP-26 REPORTING

Melissa M. Decker, Court Reporter
PHONE: (843) 446-1691
E-MAIL: melissadecker@sc.rr.com

**ROA-168
168**

APPEARANCES:

FOR THE CONDEMNOR:

John B. McCutcheon, Jr., Esquire
E. B. Davis Inabinet, Jr., Esquire
THOMPSON & HENRY, P.A.
1300 Second Avenue
Conway, South Carolina 29526

FOR THE LANDOWNER:

Robert S. Shelton, Esquire
BELLAMY LAW FIRM
1000 29th Avenue North
Myrtle Beach, South Carolina 29577

INDEX

EXAMINATION OF WITNESS:	PAGE
HARRISON CORBIN HASKELL	
Examination by Mr. Shelton	06
Continuation of Examination by Mr. Shelton	12, 47
Certificate of Court Reporter	50

****THIS TRANSCRIPT MAY CONTAIN QUOTED MATERIAL. SUCH
MATERIAL IS REPRODUCED AS READ OR QUOTED BY THE
SPEAKER.***

CP-26 REPORTING

Melissa M. Decker, Court Reporter
PHONE: (843) 446-1691
E-MAIL: melissadecker@sc.rr.com

INDEX OF EXHIBITS

Landowners' Deposition Exhibit Number 1	08
(Amended Notice of Deposition and Subpoena duces tecum Tract 13A)	
Landowners' Deposition Exhibit Number 2	08
(Amended Notice of Deposition and Subpoena duces tecum Tract 13)	
Landowners' Deposition Exhibit Number 3	14
(Right-of-Way Agent's Worksheet)	
Landowners' Deposition Exhibit Number 4	20
(Plan Sheet)	
Landowners' Deposition Exhibit Number 5	28
(Comparable Data Brochure; maintained by Mr. Haskell)	

CP-26 REPORTING

Melissa M. Decker, Court Reporter
PHONE: (843) 446-1691
E-MAIL: melissadecker@sc.rr.com

STIPULATIONS

The deposition will be taken before Melissa M. Decker, a Notary Public and Court Reporter in and for the State of South Carolina.

It is stipulated and agreed that this deposition is being taken pursuant to the governing rules.

It is stipulated and agreed that all objections, except as to the form of the question, will be reserved until the time of the trial.

It is stipulated and agreed between counsel and the above witness that the reading and signing of the above deposition be, and the same, are hereby waived.

CP-26 REPORTING

Melissa M. Decker, Court Reporter
PHONE: (843) 446-1691
E-MAIL: melissadecker@sc.rr.com

ROA-171

171

1 HARRISON CORBIN HASKELL, HAVING BEEN DULY
2 SWORN, WAS DEPOSED AS FOLLOWS:

3 **EXAMINATION**

4 BY MR. SHELTON:

5 Q: Mr. Haskell, I'm Rob Shelton. I
6 represent the landowners in this matter,
7 and I know you have been deposed on many
8 occasions, but I'm required to explain a
9 couple basic ground rules for you. It's
10 imperative that we not speak on top of
11 each other so the court reporter can get
12 an accurate record of what we're saying.
13 And if you would, please, use verbal
14 responses so that the court reporter can
15 understand what you're intending to say.
16 Along that same line, if I should say
17 anything that is unclear to you or ask a
18 question that you don't understand, I
19 would ask that you please tell me that
20 and ask me to restate it, okay?

21 A: Yes, sir.

22 Q: And if I ask you a question and you
23 answer it, I'm going to make the
24 assumption that you understood the
25 question; is that fair?

CP-26 REPORTING

Melissa M. Decker, Court Reporter
PHONE: (843) 446-1691
E-MAIL: melissadecker@sc.rr.com

1 A: Yes, sir.

2 Q: And if you'd like a break for the
3 restroom or some water or anything at
4 all, just let me know and we'll go ahead
5 and accommodate you in any way we can.
6 I took your deposition recently on
7 another tract, the McGuire tract, did I
8 not?

9 A: Yes, sir.

10 Q: And in that deposition I asked you about
11 your educational background and
12 employment history did I not?

13 A: Yes, sir.

14 Q: Has it changed any since I took your
15 deposition?

16 A: No, sir.

17 Q: If Mr. McCutcheon would consent, I would
18 like to incorporate the portion of that
19 deposition that included your
20 professional and educational background
21 in this deposition so we dispense with
22 the need to reiterate that here; is that
23 okay?

24 MR. MCCUTCHEON: I HAVE NO PROBLEM WITH
25 THAT.

CP-26 REPORTING

Melissa M. Decker, Court Reporter
PHONE: (843) 446-1691
E-MAIL: melissadecker@sc.rr.com

1 MR. SHELTON: OKAY. THANK YOU.
2 MR. McCUTCHEON: IF IT WILL SHORTEN IT,
3 I WILL EVEN AGREE TO
4 IT.
5 Q: Mr. Haskell, let me show you first of
6 all the two deposition notices I will
7 mark as Exhibits 1 and 2 to your
8 deposition.
9 **LANDOWNERS' DEPOSITION EXHIBIT NUMBERS**
10 **ONE AND TWO MARKED FOR IDENTIFICATION.**
11 This deposition covers two separate
12 tracts of land, 13 and 13A, as do these
13 deposition exhibits and subpoenas.
14 A: Yes, sir.
15 Q: These subpoenas have an exhibit attached
16 to them requiring you to bring with you
17 today those documents upon which you
18 relied in reaching your conclusions of
19 value of just compensation.
20 A: Yes, sir.
21 Q: Have you brought all of that
22 documentation with you today?
23 A: Yes, sir.
24 MR. McCUTCHEON: NOW TO MY
25 UNDERSTANDING, 13A IS

CP-26 REPORTING

Melissa M. Decker, Court Reporter
PHONE: (843) 446-1691
E-MAIL: melissadecker@sc.rr.com

1 NUMBER 1 AND 13 IS
2 NUMBER 2?
3 MR. SHELTON: THAT'S RIGHT.
4 MR. McCUTCHEON: THANK YOU.
5 Q: Now, Mr. Haskell, let's start with Tract
6 Number 13. What is the date of your
7 most recent report of Tract Number 13?
8 A: The effective date of the value is
9 December the 8th, 2009. And it was
10 produced June the 7th, 2011.
11 Q: Is that for Tract 13?
12 A: Yes, sir.
13 Q: Let me hand you the one that was
14 provided to me, and if you could tell
15 me: What is the date of valuation?
16 A: August the 27th, 2010.
17 Q: And the date of the appraisal was?
18 A: Yes, sir.
19 Q: Do I have the correct latest version or
20 is there a different one?
21 A: No, sir. This is correct. That was an
22 error. That's the only page that had an
23 error on it. This date right here.
24 Q: You're pointing to the date of the
25 appraisal?

CP-26 REPORTING

Melissa M. Decker, Court Reporter
PHONE: (843) 446-1691
E-MAIL: melissadecker@sc.rr.com

1 A: The date of value. The date of value
2 was incorrect.

3 Q: What was the date that the condemnation
4 notice was filed in this case?

5 A: December the 8th, 2009.

6 Q: Let me hand you a document that was
7 served on my client as a condemnation
8 notice.

9 A: Excuse me. I'm sorry. August the 27th,
10 2010.

11 Q: Okay.

12 A: This is correct. I apologize. I've got
13 so many dates on here from the ---

14 Q: My children do this to me all the time,
15 too, but can you please not use pronouns
16 on the record because when you say this
17 is correct that doesn't make any sense
18 when we read it later. The one that I
19 brought to this deposition is correct?
20 The appraisal I brought is correct and
21 the one you brought is incorrect; is
22 that what you're saying?

23 A: They are both correct. I was picking up
24 the wrong number off of this cover
25 sheet. They are both correct. I was

CP-26 REPORTING

Melissa M. Decker, Court Reporter
PHONE: (843) 446-1691
E-MAIL: melissadecker@sc.rr.com

1 picking up the original date of
2 inspection rather than the most recent
3 date.
4 Q: Okay. So the date of the valuation of
5 your most recent June 13, 2011 report of
6 Tract 13 is August 27, 2010?
7 A: That is correct.
8 Q: Okay. How many reports have you
9 prepared for Tract 13?
10 A: Just make sure; Tract 13, one report.
11 Q: You haven't done earlier iterations of
12 that report?
13 A: Yes, I have. Excuse me. I have done a
14 previous report but in this one the land
15 size did not change. Excuse me.
16 Q: Okay. So you have a report with the
17 date of value as of September 27, 2010.
18 A: August 27, 2010.
19 MR. McCUTCHEON: THERE ARE TWO.
20 Q: I have ---
21 A: Okay. All right. Yes, sir.
22 Q: Do you have a copy of that report that
23 we can mark for your deposition?
24 A: That is what I am looking for.
25 Q: Okay.

CP-26 REPORTING

Melissa M. Decker, Court Reporter
PHONE: (843) 446-1691
E-MAIL: melissadecker@sc.rr.com

1 MR. McCUTCHEON: LET ME SEE THAT JUST A
2 MINUTE. RIGHT THERE.

3 A: Okay.

4 MR. McCUTCHEON: LET'S GO OFF
5 THE RECORD JUST A
6 MINUTE.

7 ***OFF THE RECORD***

8 (Continuation of Examination)

9 BY MR. McCUTCHEON:

10 Q: I have been provided by the counsel for
11 the condemning authority ---

12 A: Uh-huh (affirmative response).

13 Q: --- three appraisal reports as to Tract
14 13. The first one had a date of
15 valuation of April 8th, 2010. The
16 second one had a date of value of
17 September 27, 2010, and the third one,
18 which was received by the landowner on
19 June 13th, 2011, had a date of value of
20 August 27, 2010.

21 A: Yes, sir.

22 Q: Are those all of the reports you've done
23 on Tract 13 or were there others?

24 A: No, sir. There were not others.

25 Q: Okay. I'm going to go through the most

CP-26 REPORTING

Melissa M. Decker, Court Reporter
PHONE: (843) 446-1691
E-MAIL: melissadecker@sc.rr.com

1 recent report ---
2 A: Yes, sir.
3 Q: --- with you in your deposition. But in
4 doing so, I'm going to ask you how it
5 differs in many regards with any other
6 iterations so that we can determine what
7 changes were made and what precipitated
8 those changes. So taking a look at the
9 version of your appraisal which was
10 dated August, as of the valuation date
11 of August 27, 2010, and it's as to Tract
12 13, not 13A.
13 A: That's correct.
14 Q: Let me just ask you as to the size of
15 the tract you have in Paragraph 6, it's
16 2.455 acres in the before. Where did
17 you get that number; do you recall?
18 A: From the right-of-way agent's worksheet.
19 Q: Do you have a copy of the right-of-way
20 agent's worksheet?
21 A: Yes.
22 Q: I'm going to make that an Exhibit to
23 your deposition, which we'll produce a
24 copy of today and let you keep the
25 original for your file.

CP-26 REPORTING

Melissa M. Decker, Court Reporter
PHONE: (843) 446-1691
E-MAIL: melissadecker@sc.rr.com

LANDOWNERS' DEPOSITION EXHIBIT NUMBER
THREE MARKED FOR IDENTIFICATION.

MR. McCUTCHEON: AND THAT'S THE RIGHT OF
WAY AGENT'S WORKSHEET?

MR. SHELTON: YES.

Q: Do you know who prepared the right-of-
way agent's worksheet?

A: I assume the SCDOT did.

Q: Do you know which individual prepared
it?

A: That's ---

Q: Is there a name on it as the right-of-
way agent?

A: Holly Moody.

Q: And the remarks that are included on the
back of the worksheet, would you
conclude or operate under the assumption
in producing your appraisal that those
were Holly Moody's remarks?

A: I would.

Q: Where would Holly Moody have been
provided the before size of this tract
of land?

A: I assume from the highway department of
engineers in the plans, by the highway

CP-26 REPORTING

Melissa M. Decker, Court Reporter
PHONE: (843) 446-1691
E-MAIL: melissadecker@sc.rr.com

1 plans.

2 Q: Is that already on the right-of-way

3 agent's worksheet when she's assigned

4 the file; do you not know or ---

5 A: No, I don't know.

6 Q: So you've never questioned the original

7 size you were given; that remained

8 consistent in all of your appraisal

9 reports?

10 A: That's correct.

11 Q: Nor have you questioned the amount of

12 the acquisition; it's remained

13 consistent in all of your reports?

14 A: Yes, sir.

15 Q: And using your own calculations, you

16 would arrive at the after size of the

17 property as well and that's remained

18 consistent in all of your reports?

19 A: That's correct.

20 Q: Now, looking at your August 27, 2010

21 date of valuation report, when were you

22 first contacted to produce this report

23 or appraise this property at all; do you

24 recall?

25 A: That would have been the first report

CP-26 REPORTING

Melissa M. Decker, Court Reporter
PHONE: (843) 446-1691
E-MAIL: melissadecker@sc.rr.com

1 which would have been -- I inspected
2 December 2009, so somewhere around that
3 timeframe.
4 Q: Do you have a letter of engagement?
5 A: No, sir.
6 Q: Do you have a bid that you made to get
7 this job? Was there an advertisement
8 and a bid process?
9 A: There was.
10 Q: Did you submit a bid?
11 A: I did.
12 Q: Did you retain a copy of that bid?
13 A: I did.
14 Q: Is it included in your file?
15 A: It is not in the file I have with me.
16 Q: Will you supplement to the counsel for
17 the DOT a copy of that bid, please?
18 A: Yes, sir.
19 Q: Did you receive a response in writing
20 from SCDOT awarding you that contract?
21 A: Yes.
22 Q: Did you maintain a copy of that
23 response?
24 A: I believe I did.
25 Q: Do you have that with you today?

CP-26 REPORTING

Melissa M. Decker, Court Reporter
PHONE: (843) 446-1691
E-MAIL: melissadecker@sc.rr.com

1 A: No, sir.
2 Q: Will you produce a copy of that for
3 counsel for SCDOT to be produced as
4 discovery in this matter, please?
5 A: I will.
6 Q: When did you first visit the subject
7 property?
8 A: December the 8th, 2009.
9 Q: Were you accompanied by the property
10 owner?
11 A: Yes, I was.
12 Q: Do you recognize the person who
13 accompanied you being present at your
14 deposition here today?
15 A: I believe so.
16 Q: Would that be Mr. Powell?
17 A: (Moving head left to right.)
18 MR. McCUTCHEON: YOU HAVE TO SAY YES OR
19 NO.
20 A: Yes, sir.
21 Q: Have you spoken with Mr. Powell since
22 that date other than today?
23 A: Not that I'm aware of. There was a lot
24 of family members so it does get
25 confusing.

CP-26 REPORTING

Melissa M. Decker, Court Reporter
PHONE: (843) 446-1691
E-MAIL: melissadecker@sc.rr.com

1 Q: Who do you have listed as the owner of
2 this particular piece of property, in
3 your paragraph ---
4 A: David Franklin Powell.
5 Q: Okay. Did you visit the property since
6 December 8th, 2009?
7 A: Yes, sir.
8 Q: Did you coordinate any future visits
9 with David Franklin Powell?
10 A: No, sir.
11 Q: And I'm skipping ahead in your appraisal
12 to Paragraph 18. The zoning is listed
13 as highway commercial; is that correct?
14 MR. McCUTCHEON: CAN YOU REFER TO A
15 PAGE?
16 MR. SHELTON: WELL IT'S PAGE 4 ---
17 MR. McCUTCHEON: THANK YOU.
18 MR. SHELTON: --- OF THIS REPORT.
19 A: Yes, sir.
20 Q: Highway commercial zoning was in
21 existence. Do you know when this
22 property was zoned highway commercial?
23 A: No, sir.
24 Q: To your knowledge has it ever been zoned
25 anything other than highway commercial?

CP-26 REPORTING

Melissa M. Decker, Court Reporter
PHONE: (843) 446-1691
E-MAIL: melissadecker@sc.rr.com

1 A: I don't have any knowledge of that.
2 Q: Is there any commercial use that's not
3 permitted in highway commercial?
4 A: I'm sure there are some limitations.
5 Q: Is it the broadest commercial zoning one
6 can acquire for a piece of property?
7 A: It is broad; yes, sir. I guess actually
8 no zoning would be broader.
9 Q: If you have zoning, and you have highway
10 frontage, would you generally expect the
11 property owner to desire highway
12 commercial zoning?
13 A: Yes, sir.
14 Q: Looking at Page 10 of your appraisal
15 there's a sketch or a plat; did you draw
16 that sketch or plat yourself?
17 A: Yes, sir. It was drawn in my office.
18 Tripp Glenn drew that.
19 Q: And Tripp Glenn in your office shows the
20 words, existing right-of-way between the
21 tract of land that we're talking about,
22 13, and Old Socastee Highway?
23 A: Yes, sir.
24 Q: Where did you derive that setback of
25 where the property line was?

CP-26 REPORTING

Melissa M. Decker, Court Reporter
PHONE: (843) 446-1691
E-MAIL: melissadecker@sc.rr.com

1 A: We drew that off of the highway plans.

2 Q: Do you have a copy of the plan sheet you
3 relied upon in doing that with you here
4 today?

5 A: Yes, sir.

6 Q: Let's go ahead and make that an exhibit
7 to your deposition. It will be Exhibit
8 Number 4.

9 **LANDOWNERS' DEPOSITION EXHIBIT NUMBER**

10 **FOUR MARKED FOR IDENTIFICATION.**

11 And if you will, look at Exhibit 4.
12 There's a yellow highlighted area. Do
13 you know who highlighted that?

14 A: I did.

15 Q: What does that yellow signify?

16 A: Acquisition area.

17 Q: Okay. And on your sketch, is that
18 acquisition area the small drawn-in area
19 at the intersection of Old Socastee
20 Highway and Emery Road?

21 A: That's correct.

22 Q: Okay. Are you aware of any existing
23 easements within that acquisition area?

24 A: I was not supplied with any information
25 concerning additional easements in that

CP-26 REPORTING

Melissa M. Decker, Court Reporter
PHONE: (843) 446-1691
E-MAIL: melissadecker@sc.rr.com

1 acquisition area.

2 Q: Did you note any evidence of easements
3 physically by utilities or others when
4 you examined the property on the various
5 occasions?

6 A: No, sir.

7 Q: Do you typically investigate the pre-
8 existence of easements on a parcel of
9 property when you're performing an
10 appraisal?

11 A: We do a cursory look.

12 Q: How is that ---

13 A: We're not qualified to do title
14 research.

15 Q: Do you know what page you disclosed
16 that; what you found in your cursory
17 look in your appraisal report?

18 A: Page 13.

19 Q: And what do you say about the existence
20 of easements?

21 A: Based upon my inspection and examination
22 of the subject site, as well as my
23 review of plats and deeds and other
24 property, I did not detect adverse
25 easements other than normal utility

CP-26 REPORTING

Melissa M. Decker, Court Reporter
PHONE: (843) 446-1691
E-MAIL: melissadecker@sc.rr.com

1 easements and rights-of-way.
2 Q: And those would be the right-of-way line
3 shown on your sketch?
4 A: That's correct.
5 Q: Did you detect any utilities within the
6 acquisition area or within the property
7 beyond the acquisition area?
8 A: We did not note any above grounds; no,
9 sir.
10 Q: Take a look at Page 12 of your appraisal
11 report. In explaining ingress and
12 egress, you explain that the property
13 has exposure but no direct ingress or
14 egress to Highway 17 Bypass; is that
15 correct?
16 A: Yes, sir; that's correct.
17 Q: Of the roads that are in the vicinity of
18 the subject properties, Tracts 13 and
19 13A, would you consider as an appraiser,
20 the most valuable road to these subjects
21 of property to be Highway 17 Bypass?
22 A: I would.
23 Q: Would you consider any of the other
24 roads in the general vicinity to be
25 reasonable comparables as to the amount

CP-26 REPORTING

Melissa M. Decker, Court Reporter
PHONE: (843) 446-1691
E-MAIL: melissadecker@sc.rr.com

1 of value they might lend to neighboring
2 parcels?
3 A: I'm not sure I understand your question.
4 Q: Would you expect the presence of a road
5 such as Highway 17 Bypass to increase
6 property values in an area?
7 A: Oh, yeah.
8 Q: Would you expect it to increase property
9 values moreso than any of the other
10 types of roads in the general vicinity
11 of Tracts 13 and 13A?
12 A: No, sir.
13 Q: Which other roads in the vicinity of
14 Tracts 13 and 13A would you expect would
15 have the effect of increasing property
16 values as much as or comparable to
17 Highway 17 Bypass?
18 A: Farrow Parkway.
19 Q: What is the ADT on Farrow Parkway?
20 A: I'm not aware of it. I've just, from
21 looking at property values they seem to
22 be higher in the Farrow Parkway area
23 than on Highway 17.
24 Q: Do you have examples of properties on
25 Farrow Parkway that are more valuable

CP-26 REPORTING

Melissa M. Decker, Court Reporter
PHONE: (843) 446-1691
E-MAIL: melissadecker@sc.rr.com

1 than properties on Highway 17?

2 A: I believe we had a sale in Farrow

3 Parkway that we did utilize.

4 Q: Do you have your comparable sales

5 brochure with you today?

6 A: I do.

7 Q: We'd like to make that an exhibit to

8 your deposition as well. We'll go

9 through your files in just a moment and

10 do that.

11 A: Uh-huh (affirmative response).

12 Q: Of the roads to which Tracts 13 and 13A

13 had reasonable access in the subject

14 area, is there any other road that you

15 would have expected lent the value to

16 the subject properties that Highway 17

17 did?

18 A: No, sir.

19 Q: Of the roads that Tracts 13 and 13A

20 could lose double access to, is there a

21 road in the general vicinity that would

22 negatively affect the values of 13 and

23 13A moreso than loss of reasonable

24 access to Highway 17 Bypass?

25 A: Restate that.

CP-26 REPORTING

Melissa M. Decker, Court Reporter
PHONE: (843) 446-1691
E-MAIL: melissadecker@sc.rr.com

1 Q: If 13 and 13A had to lose access to any
2 of the roads that they have reasonable
3 access to in the before condition, is
4 there any road that they would lose,
5 that would harm them more financially,
6 as far as the value of the remaining
7 tracts, than Highway 17 Bypass?

8 A: Well I think on 13 probably Socastee
9 Highway. That is the road that it has
10 frontage on. So Socastee Highway would
11 probably impact it more than -- it
12 doesn't have access, frontage on 17.

13 Q: It has good exposure to 17, though,
14 doesn't it?

15 A: It still has ---

16 MR. McCUTCHEON: OBJECT TO THE -- EXCUSE
17 ME; OBJECT TO THE FORM
18 OF THE QUESTION. YOU
19 MAY ANSWER.

20 Q: Did you not say it has good exposure to
21 Highway 17 in your report?

22 A: Yes, sir.

23 Q: And it has access to, but not direct
24 access to Highway 17 in the before; is
25 that true?

CP-26 REPORTING

Melissa M. Decker, Court Reporter
PHONE: (843) 446-1691
E-MAIL: melissadecker@sc.rr.com

1 A: That's correct.

2 Q: Would you consider that the increase in
3 remoteness of access to Highway 17 could
4 cause a damage to a tract that had
5 access, though not direct, to Highway
6 17?

7 A: I think that it could.

8 Q: Okay. In Page 12 and 13 when you're
9 analyzing the tract in the before
10 condition, did you find any negative
11 issues with the property as far as its
12 topography or its access or visibility,
13 or any of those factors that you
14 consider environmental or otherwise?

15 A: If you're talking physically or
16 environmentally, no.

17 Q: Did you note any detriments to the
18 property in that analysis?

19 A: No. We, well, we, as you're speaking we
20 noted that access to Highway 17 was very
21 difficult.

22 Q: Access to 17 -- actually, well how about
23 access from 17; was it difficult?

24 A: No, sir.

25 Q: Access to 17 North, was it difficult?

CP-26 REPORTING

Melissa M. Decker, Court Reporter
PHONE: (843) 446-1691
E-MAIL: melissadecker@sc.rr.com

1 A: No, sir.
2 Q: So when you say access to 17 was very
3 difficult, the only thing you mentioned
4 in your report was access to 17 South --
5 -
6 A: That's correct.
7 Q: --- you consider difficult?
8 A: That's right.
9 Q: Did you study any traffic data as to
10 whether they had any difficulty at
11 making a left-hand turn from Emery Road
12 to 17 South?
13 A: Personal experience.
14 Q: Are you a traffic data scientist of some
15 sort?
16 A: No, sir. I'm just a driver.
17 Q: Okay. You did produce a comparable data
18 brochure. Do you have that with you?
19 A: Yes, sir.
20 Q: Let's make that an exhibit to your
21 deposition. It will be Exhibit Number
22 5. Does this Exhibit Number 5 contain
23 all of the comps that you used for this
24 project?
25 **LANDOWNERS' DEPOSITION EXHIBIT NUMBER**

CP-26 REPORTING

Melissa M. Decker, Court Reporter
PHONE: (843) 446-1691
E-MAIL: melissadecker@sc.rr.com

FIVE MARKED FOR IDENTIFICATION.

1
2 A: Yes, sir. .

3 Q: Even on appraisals for tracts other than
4 13 and 13A?

5 A: Yes, sir.

6 Q: Now on Page 15, we were talking about
7 your comparable data brochure, you're
8 prognosis as I recall from our last
9 deposition was that you think the long-
10 term outlook for the area economic
11 conditions are good?

12 A: Yes, sir.

13 Q: If you will, take a look at, and at this
14 time I'd like to also reference your
15 Tract 13A appraisal, because I want to
16 go through all your comps at one time if
17 we can. Your Tract 13A appraisal that I
18 have, in that case, you produced two
19 that I have. Just for ease of
20 reference, the first one had a date of
21 value of April 8th, 2010, and the second
22 one had a date of value of August 30th,
23 2010?

24 A: Yes.

25 Q: And just for the purpose of the

CP-26 REPORTING

Melissa M. Decker, Court Reporter
PHONE: (843) 446-1691
E-MAIL: melissadecker@sc.rr.com

1 continued litigation over Tract 13A, I
2 believe there's consensus that the
3 acreage amounts in the second appraisal
4 are the only relevant amounts to be
5 considered as we move forward in Tract
6 13A's case; is that your understanding?

7 A: That is my understanding.

8 Q: So I'm not going to belabor the April
9 8th, 2010 appraisal because I don't
10 consider it relevant anymore; do you
11 consider it relevant anymore?

12 A: No, sir.

13 Q: Okay. Looking then at the August 30th,
14 2010 appraisal of Tract 13A, and the
15 August 27, 2010 appraisal of Tract 13,
16 and specifically looking at your
17 comparable sales charts, you selected --

18 -

19 MR. McCUTCHEON: WILL YOU GIVE US THE
20 PAGE, PLEASE?

21 Q: On Page 17 of the Tract 13 report, five
22 comparable sales; and then for Tract
23 13A, on Page 18, you selected five
24 comparable sales; is that correct?

25 A: That's correct.

CP-26 REPORTING

Melissa M. Decker, Court Reporter
PHONE: (843) 446-1691
E-MAIL: melissadecker@sc.rr.com

1 Q: Starting with the ones on Page 17 of the
2 Tract 13 report, Sale Number 14 is at
3 1600 Farrow Parkway; can you describe
4 where that is in relation to the subject
5 property?
6 A: That is located south of the subject on
7 Farrow Parkway.
8 Q: And that's between Highway 17 Bypass and
9 Market Common?
10 A: Yes, sir.
11 Q: And did you confirm that sale yourself,
12 comparable sales brochure?
13 A: I looked at the deed; I inspected the
14 property. And we also confirmed that
15 with the gentleman we were involved with
16 on another tract; I believe.
17 Q: And is the page I've turned to in your
18 comparable sales brochure, Exhibit 5, is
19 that the comparable sale ---
20 A: Yes, sir.
21 Q: --- we're talking about; Number 14?
22 A: That's correct.
23 Q: Okay. Can you describe what the access
24 to and from, and elevations, and
25 exposure to and from that sale are in

CP-26 REPORTING

Melissa M. Decker, Court Reporter
PHONE: (843) 446-1691
E-MAIL: melissadecker@sc.rr.com

1 the before or in the present condition?

2 A: It has full access to Farrow Parkway and

3 it's a level known grade.

4 Q: Okay. Then the next one you identified

5 in that report is Comparable Number 21;

6 can you tell me where that comparable is

7 located in relation to the subject

8 property?

9 A: That's located north of the subject

10 corner of Socastee Boulevard and Luttie

11 Road, north of 17.

12 Q: And what is the access and exposure of

13 that tract in comparison to the subject

14 property in the before condition?

15 A: It had both a full access, or typical

16 access on Socastee Boulevard and Luttie.

17 Q: And it was not controlled access and

18 there was no change of elevation between

19 it and Socastee?

20 A: No, sir.

21 Q: At that grade?

22 A: No, sir.

23 Q: Turn to Comp Number 22; where is that

24 one located?

25 A: That is located on Highway 501 north of

CP-26 REPORTING

Melissa M. Decker, Court Reporter
PHONE: (843) 446-1691
E-MAIL: melissadecker@sc.rr.com

1 17, north of the Intercoastal Waterway.
2 Q: And was that an at grade tract of land?
3 A: That's at grade with George Bishop and
4 Fantasy. I believe it's below grade to
5 501.
6 Q: Okay. And that property have good
7 access when you examined it?
8 A: Yes, sir.
9 Q: Take a look at Tract Number 23. Where
10 is that one? Did you confirm Tracts 21
11 and 22 yourself?
12 A: Yes, sir.
13 Q: Take a look at Tract Number 23; where is
14 that one located in relation to the
15 subject?
16 A: That's located on 501 south of Highway
17 17.
18 Q: Between Highway 17 and Seaboard Street;
19 is that correct?
20 A: Well, actually, I believe it's actually
21 below Seaboard.
22 Q: What do you mean by below?
23 A: Let me get my bearings right, south of
24 Seaboard.
25 Q: And what was its grade with comparison

CP-26 REPORTING

Melissa M. Decker, Court Reporter
PHONE: (843) 446-1691
E-MAIL: melissadecker@sc.rr.com

1 with its road?

2 A: It was level and on grade with 501 and

3 also the adjoining tract behind it.

4 Q: Did it have good access?

5 A: Some right-in access. It didn't have

6 access from both directions on 501.

7 Q: Okay. What about Tract Number 25? And

8 you confirmed 23 yourself?

9 A: Yes, sir.

10 Q: What about Tract Number 25?

11 A: That is located east of the subject and

12 east of 501 off of Grissom Parkway.

13 Q: On 10th Avenue North ---

14 A: Yes, sir.

15 Q: --- or Joe White Avenue?

16 A: That's correct.

17 Q: And was it at grade with the property,

18 with the road in front of it?

19 A: Yes, sir.

20 Q: And what was its access?

21 A: It had right-in, right-out off of Joe

22 White, and full access off of Osceola.

23 Q: What prevented you from making a left

24 off of Joe White?

25 A: I believe there was a median. Wait a

CP-26 REPORTING

Melissa M. Decker, Court Reporter
PHONE: (843) 446-1691
E-MAIL: melissadecker@sc.rr.com

1 minute. No, you're correct. It is full
2 off of Joe White also.

3 Q: And then in looking at the comparable
4 sales chart of Tract 13A's report, you
5 also considered your commercial land
6 sale Number 1; are you familiar with
7 that one?

8 A: Yes, sir.

9 Q: Where is that in relation to these
10 tracts of land?

11 A: That is south of the subject at the
12 intersection of 707 and 17.

13 Q: Is it at grade?

14 A: It is.

15 Q: And what's the access to that property?

16 A: It had full access from Burgess Road and
17 707.

18 Q: And then the last one that you
19 considered was Tract Number 24 of your
20 comparable sales brochure; are you
21 familiar with that tract of land?

22 A: Yes, sir.

23 Q: And where is it in relation to the ---

24 A: It is ---

25 Q: --- property?

CP-26 REPORTING

Melissa M. Decker, Court Reporter
PHONE: (843) 446-1691
E-MAIL: melissadecker@sc.rr.com

ROA-200
200

1 A: --- on 501 north of the Bypass as you
2 head up to Conway.
3 Q: And is it at grade?
4 A: Yes, it is.
5 Q: And what's its access situation?
6 A: It's an outparcel. It had direct road
7 access from Seaboard. It had visibility
8 from Highway 501.
9 Q: Now looking at your Tract 13 report, if
10 you will, please explain the adjustments
11 that you considered necessary to the
12 comps you had chosen.
13 A: Well we did not have a market conditions
14 adjustment. We determined that, that
15 adjustment was through October of 2008.
16 Q: Is that a typographical error, the first
17 two sentences of that market conditions
18 paragraph?
19 A: No, sir.
20 Q: Can you read to me what it says in your
21 version of this report?
22 A: "The market conditions adjustment is
23 necessary in the appraisal to account
24 for the changes that have occurred in
25 the market between the times the sale

CP-26 REPORTING

Melissa M. Decker, Court Reporter
PHONE: (843) 446-1691
E-MAIL: melissadecker@sc.rr.com

ROA-201
201

1 occurred and this appraisal. Market
2 conditions suggest when it is necessary
3 in the appraisal to account for the
4 changes that have occurred in the market
5 between the time the sale occurred and
6 the date of this appraisal."
7 Q: So you repeated that sentence twice.
8 And then what's the next sentence say?
9 A: "Based on the recent economic downturn
10 and recession, there has been no
11 measurable appreciation in the tracts of
12 land within the last 36 months. Thus,
13 no adjustments are necessary."
14 Q: So the first two sentences are saying
15 that a market condition adjustment is
16 necessary?
17 A: Probably should say would be necessary.
18 Q: Okay. What other adjustments did you
19 consider for Tract 13 as to the comps
20 you chose?
21 A: In the location adjustment, Tract 14;
22 I'm sorry. Comparable Sale 14, we've
23 adjusted down for location since it's on
24 the Parkway. We also adjusted Tract 14
25 up for size since it was considered to

CP-26 REPORTING

Melissa M. Decker, Court Reporter
PHONE: (843) 446-1691
E-MAIL: melissadecker@sc.rr.com

1 be larger than the subject. We adjusted
2 that sale down for access frontage and
3 exposure ten percent. We felt like it
4 was superior when compared to the
5 subject. Comparable Sale Number 21, we
6 adjusted up for location. We felt like
7 its location on Socastee north of 17 was
8 inferior. We felt like it had full
9 access on both Socastee and Luttie; it
10 was superior. Tract 22, we did not make
11 any adjustments to that sale. Tract 23,
12 we adjusted down for location. I'm
13 sorry; we adjusted it up for location.
14 We felt it's on 501. It was inferior.
15 We adjusted it down for size since it
16 was slightly smaller. Tract 25, we also
17 adjusted up for location overall from
18 Grissom Parkway. We didn't feel like it
19 was as good as the subject. We adjusted
20 it down for size since it was smaller.
21 And after the adjustments, the
22 comparables range from a low of \$7.26
23 per square foot, the high of \$9.57 per
24 square foot, a mean of \$8.64 per square
25 foot, and a median of \$8.88 per square

CP-26 REPORTING

Melissa M. Decker, Court Reporter
PHONE: (843) 446-1691
E-MAIL: melissadecker@sc.rr.com

ROA-203
203

1 foot.

2 Q: Now what did you determine the per
3 square foot value of Tract 13 to be
4 based on that analysis?

5 A: We determined \$9 per square foot.

6 Q: And taking a look at your report for
7 Tract 13A, what did you determine --
8 well first of all, there's a couple of
9 comps that I want to ask you about that
10 you didn't use the same comps between
11 the two. So let's make sure we
12 understand whether you made any
13 adjustments to those other comps as
14 well. Did you make any adjustments to
15 Comp Number 1 for Tract 13A?

16 A: Yes, sir. We adjusted it up for
17 location.

18 Q: Okay. Was that your only ---

19 A: We felt like its location was inferior.

20 Q: And looking at Comp Number 22 on Tract
21 13, you didn't adjust it. But did you
22 adjust it for Tract 13A?

23 A: We did. We adjusted it up for size. It
24 was slightly larger than 13A.

25 Q: The comp was slightly larger than 13A?

CP-26 REPORTING

Melissa M. Decker, Court Reporter
PHONE: (843) 446-1691
E-MAIL: melissadecker@sc.rr.com

ROA-204
204

1 A: Yes, sir.
2 Q: Okay.
3 A: Yeah.
4 Q: And then looking at Comp Number 24, did
5 you adjust it for Tract 13A?
6 A: Yes, sir. We adjusted it down for
7 location. It was located on 501, north
8 of Carolina Bays Parkway. We felt like
9 its outparcel location was superior.
10 Q: Okay. Now looking at your report for
11 Tract 13A, did you adjust Comp 23 or 25?
12 A: Tract 23 we adjusted up for location.
13 Q: What about Tract 25?
14 A: We also adjusted up for location.
15 Q: And then for size on Tract 13's report,
16 you took those adjustments back?
17 A: Yes, sir.
18 Q: Okay.
19 A: We adjusted both of those down, and did
20 not make that adjustment in 13A.
21 Q: So based on the analysis, the
22 distinction between Tracts 13 and 13A,
23 what was your per square foot
24 determination of value for Tract 13A?
25 A: Ten dollars per square foot.

CP-26 REPORTING

Melissa M. Decker, Court Reporter
PHONE: (843) 446-1691
E-MAIL: melissadecker@sc.rr.com

1 Q: Okay. Now as to everything that you've
2 testified to at arriving at those before
3 per square foot values, is there
4 anything that you would change in the
5 report as its written now?

6 A: No, sir.

7 Q: So you stand by those conclusions?

8 A: Yes, sir.

9 Q: Now let's take a look at the valuation
10 of the acquisition.

11 MR. McCUTCHEON: PAGE, PLEASE.

12 Q: You describe on Page 22 of your Tract 13
13 report, you describe the acquisition.
14 And how would you describe to me now in
15 your deposition what the acquisition
16 itself was as to Tract 13?

17 A: The acquisition represents controlled
18 access along the 17 Bypass, in that it
19 closes the access from Emery Road. And
20 it is acquiring a strip of land along
21 the Emery Road and Socastee Highway
22 frontage.

23 Q: And what is the control of access from
24 the Bypass that you just referred to?
25 Do you have a depiction of that, that

CP-26 REPORTING

Melissa M. Decker, Court Reporter
PHONE: (843) 446-1691
E-MAIL: melissadecker@sc.rr.com

ROA-206
206

1 you can point me to in your report?

2 A: No, sir, other than it should be on the

3 sketch.

4 Q: What page was that?

5 A: Ten.

6 Q: Where is that shown?

7 A: It is shown at the intersection of Emery

8 Road and Highway 17 Bypass.

9 Q: Is that part of the acquisition of Tract

10 13?

11 A: No, sir. It's occurring off of the

12 road. It's occurring off of the

13 subject.

14 Q: Was there controlled access on Highway

15 17 in the before?

16 A: No, sir.

17 Q: If the property owner adjacent to

18 Highway 17 had applied for a curb cut

19 under the standard roadside access

20 management standards, is it your

21 understanding that they would have been

22 considered in the same manner as any

23 other property in a non-controlled

24 access road?

25 MR. McCUTCHEON: OBJECT TO THE FORM OF

CP-26 REPORTING

Melissa M. Decker, Court Reporter
PHONE: (843) 446-1691
E-MAIL: melissadecker@sc.rr.com

ROA-207
207

1 THE QUESTION.
2 Q: And held to the same standard?
3 MR. McCUTCHEON: OBJECT TO THE FORM OF
4 THE QUESTION.
5 A: I don't understand what you're asking
6 me.
7 Q: What does controlled access mean?
8 A: Well it limits the access to the
9 highway.
10 Q: Is there access to the highway where
11 there is controlled access?
12 A: There is. There is access. I'm sorry.
13 There is not controlled -- there is not
14 access to the highway when there's
15 controlled access.
16 Q: Okay. If you had property contiguous to
17 the highway and there was not controlled
18 access, could you apply for an
19 encroachment permit and gain access?
20 A: You could ---
21 MR. McCUTCHEON: OBJECT TO THE FORM OF
22 THE QUESTION. ARE YOU
23 TALKING ABOUT IN
24 GENERAL, OR IN THIS
25 CASE?

CP-26 REPORTING

Melissa M. Decker, Court Reporter
PHONE: (843) 446-1691
E-MAIL: melissadecker@sc.rr.com

ROA-208
208

1 MR. SHELTON: IN GENERAL.
2 MR. McCUTCHEON: THANK YOU.
3 MR. SHELTON: I'M TRYING TO DETERMINE
4 THE DISTINCTION BETWEEN
5 THE TWO.
6 A: In general you could apply and I guess
7 you could or could not be denied ---
8 Q: Okay.
9 A: --- or accepted.
10 Q: If there's controlled access, is there a
11 means by which a property owner can
12 apply for access?
13 A: No, sir.
14 Q: So controlled access is no access?
15 A: That's correct.
16 Q: So you were at Page 22 of your report
17 for Tract 13 explaining what your
18 understanding of the acquisition was.
19 A: Yes, sir.
20 Q: And that was a strip of land that was
21 7,951 square feet; is that your
22 understanding?
23 MR. McCUTCHEON: WHAT DID YOU SAY?
24 A: Yes, sir.
25 MR. McCUTCHEON: YES, SIR.

CP-26 REPORTING

Melissa M. Decker, Court Reporter
PHONE: (843) 446-1691
E-MAIL: melissadecker@sc.rr.com

1 Q: And as to Tract 13A, which is at Page 23
2 of that report, and you describe what
3 you understood the acquisition to be.
4 A: 12,256 square feet of land.
5 Q: Okay. And is there distinction in your
6 descriptions of the remainders of the
7 two properties after the acquisition?
8 A: After the acquisition on 13?
9 Q: Yes.
10 A: The property will contain 2.272 acres.
11 Q: Okay.
12 A: It will still retain its access and
13 frontage along Emery Road and the Old
14 Socastee Road.
15 Q: And it's your professional or expert
16 opinion as an appraiser that, that will
17 not diminish the value of the remainder
18 to Tract 13?
19 A: That's correct.
20 Q: And is that your opinion to Tract 13A as
21 well?
22 A: That is correct.
23 Q: And then you went on to determine the
24 highest and best use after; has the
25 highest and best use changed to either

CP-26 REPORTING

Melissa M. Decker, Court Reporter
PHONE: (843) 446-1691
E-MAIL: melissadecker@sc.rr.com

1 of these tracts ---
2 A: No, sir.
3 Q: --- in the after?
4 A: No, sir. I'm sorry. No, sir.
5 Q: And then Page 23 for your Tract 13
6 report, Page 24 for your Tract 13A
7 report you value the acquisition; how
8 did you accomplish the valuation of the
9 acquisition?
10 A: That is the difference between the
11 before value and the after value. It's
12 a result of the \$9 per square foot times
13 the area acquired.
14 Q: As to Tract 13, and that came to
15 \$891,000; is that correct?
16 A: Well that's the after value. The
17 difference is \$71,000.
18 Q: Oh, excuse me. The 71,000 was the
19 acquisition. As to Tract 13A you were
20 at \$10 a square foot were you not?
21 A: That's correct.
22 Q: And how much was the acquisition?
23 A: The acquisition was 12,256 square feet.
24 Q: If you'll look in that report at Page
25 25, your Paragraph 31 ---

CP-26 REPORTING

Melissa M. Decker, Court Reporter
PHONE: (843) 446-1691
E-MAIL: melissadecker@sc.rr.com

ROA-211
211

1 A: Yes, sir.

2 Q: --- how do you describe the right-of-way
3 acquired value there?

4 A: 12,256 square feet times \$10 a square
5 foot; that's a typo, the ---

6 Q: So \$10.25 is a typographical error?

7 A: That's correct.

8 Q: And on both of these, in Paragraph 31,
9 you explain that there are no damages to
10 the remainder by putting a zero, and
11 then there are no benefits to these
12 properties either; is that true?

13 A: That's correct.

14 Q: Did you consider potential benefits of
15 this project?

16 A: Yes, sir.

17 Q: And you determined the project presented
18 no benefit to either of these tracts?

19 A: That's correct.

20 Q: After having gone through this
21 examination and making that one
22 typographical error as to the square
23 footage of the Tract 13A acquisition on
24 Page 25 of your report, are there any
25 other changes that you would make in

CP-26 REPORTING

Melissa M. Decker, Court Reporter
PHONE: (843) 446-1691
E-MAIL: melissadecker@sc.rr.com

ROA-212
212

1 these reports as you review them today?

2 A: No, sir.

3 Q: And do you anticipate that your
4 testimony, should these cases go to
5 trial, will be consistent with the
6 reports that we've reviewed during your
7 deposition?

8 A: Yes, sir.

9 Q: If you'll excuse me for one moment while
10 I confer with my client.

11 ***OFF THE RECORD***

12 (Continuation of Examination)

13 BY MR. SHELTON:

14 Q: I have a couple more quick things. What
15 is the highest and best use of this
16 property in the after condition?

17 A: Service, light industrial, secondary
18 commercial.

19 Q: Are you familiar with the zoning
20 ordinances of Horry County?

21 A: Yes, sir.

22 Q: Is there any zoning ordinance other than
23 highway commercial that would permit
24 that use as you just described?

25 A: That encompasses all three?

CP-26 REPORTING

Melissa M. Decker, Court Reporter
PHONE: (843) 446-1691
E-MAIL: melissadecker@sc.rr.com

ROA-213
213

1 Q: Yes.

2 A: Not that I'm aware of off the top of my

3 head.

4 Q: Is there any light industrial zoning in

5 Horry County?

6 A: To my knowledge, I believe there's, well

7 there's a zoning that permits light

8 industrial.

9 Q: Other than highway commercial zoning?

10 And if you're not sure, just tell me.

11 A: I, yeah, I couldn't, I couldn't tell

12 you. There is on this sheet. It says

13 light industrial here, so ---

14 Q: Okay.

15 A: --- it's an L-I zone.

16 Q: Well you're looking at what now?

17 A: I'm sorry. It doesn't show up very well

18 on that; does it? This is in Tract 13

19 in the addendum, in the back of the

20 report on the zoning map.

21 Q: And on that zoning map we're looking at

22 the subject, and then to the right of

23 the subject you're seeing the brown

24 tract, which has L-I on it, and that's a

25 light industrial zone?

CP-26 REPORTING

Melissa M. Decker, Court Reporter
PHONE: (843) 446-1691
E-MAIL: melissadecker@sc.rr.com

ROA-214
214

1 A: Yes, sir.
2 Q: Okay. And ---
3 COURT REPORTER'S
4 NOTE: (MR. POWELL BEGINS TO
5 SPEAK BUT IS ADVISED
6 NOT TO.)
7 Q: In valuing the property in the after in
8 your reports, both for Tract 13 and 13A,
9 did you consider as your basis for
10 comparison the same comparable sales as
11 you did in the before condition?
12 A: Yes, sir.
13 Q: Did you make any additional adjustments
14 to any of those comps when looking at
15 the property in the after condition?
16 A: No, sir.
17 Q: Did you consider that and deem it not
18 necessary?
19 A: Yes, sir; that's correct.
20 Q: Okay. I have no further questions.
21 MR. McCUTCHEON: I HAVE NONE.
22 (The deposition concluded at 1:43 p.m.)

CP-26 REPORTING

Melissa M. Decker, Court Reporter
PHONE: (843) 446-1691
E-MAIL: melissadecker@sc.rr.com

ROA-215
215

CERTIFICATE

I, Melissa M. Decker, Notary Public in and for the State of South Carolina, do hereby certify that there appeared before me the foregoing witness;

That said witness was sworn by me to state the truth, the whole truth and nothing but the truth;

That the testimony was recorded by me, by open tape and Stenomask, reduced to typewriting and proofed under my direct supervision and the foregoing consecutively numbered pages are a complete and accurate record of the testimony given at said time by said witness;

That the undersigned is neither of kin nor in anywise associated with any of the parties to said cause of action, nor any counsel thereto, and that I am not interested in the event(s) thereof.

IN WITNESS WHEREOF I have hereunto set my hand and seal this the 11th day of August, 2011.



Melissa M. Decker
Court Reporter
Notary Public in and for
The State of South Carolina
My Commission Expires: 1-23-14

CP-26 REPORTING

Melissa M. Decker, Court Reporter
PHONE: (843) 446-1691
E-MAIL: melissadecker@sc.rr.com

ROA-216
216

STATE OF SOUTH CAROLINA)
)
 COUNTY OF HORRY) IN THE COURT OF COMMON PLEAS
) FIFTEENTH JUDICIAL CIRCUIT
) C/A NO. 2010-CP-26-07999

Road/Route Interchange at US 17 Bypass
 and SC 707/Farrow Parkway
 File 26.036774A
 Project HORR
 Pin 36774 RD01
 Tract 13A

South Carolina Department of Transportation,)
)
 Condemnor,)

vs.)
)

David Franklin Powell (AKA) David)
 Franklyn Powell (AKA) David F. Powell,)
)
 Landowner(s))

AND)
)

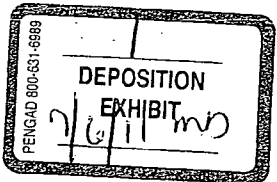
John Doe and Mary Roe, representing all)
 unknown person having or claiming to have)
 any right, title or interest in or to, or lien on)
 the lands described herein, including all)
 unknown heirs of James H. Powell, deceased,)
)
 Unknown Claimant(s).)
 _____)

AMENDED NOTICE
 OF DEPOSITION OF
 CORBIN HASKELL

TO: JOHN B. MCCUTCHEON, JR., ESQ., ATTORNEY FOR THE
 CONDEMNOR

YOU WILL PLEASE TAKE NOTICE THAT the Landowner, David Powell, by the
 undersigned attorneys, will take the oral deposition of:

CORBIN HASKELL (SCDOT's APPRAISER)



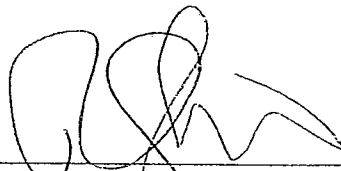
Mr. Haskell will testify on behalf of the said South Carolina Department of Transportation, with respect to the following matters:

1. Any and all matters in connection with condemning the subject property.

The said deposition is taken pursuant to Rule 30 of the *South Carolina Rules of Civil Procedure* and will be taken on **Wednesday, July 6, 2011 beginning at 11:00am** at the law offices of Thompson & Henry, P.A., 1300 Second Avenue, 3rd Floor, Conway, South Carolina 29526, before a notary public or some other officer authorized to administer oaths. The oral deposition will continue from day to day until completed.

YOU WILL PLEASE TAKE FURTHER NOTICE that the above named witness, Corbin Haskell, shall be subpoenaed to appear at the said time and place pursuant to said Rules of Court.

YOU WILL PLEASE TAKE FURTHER NOTICE that you are invited to attend and take such part as is fit and proper.



Howell V. Bellamy, Jr., Esq., SCB #00642
Robert S. Shelton, Esq., SCB #68543
BELLAMY, RUTENBERG, COPELAND,
EPPS, GRAVELY & BOWERS, P.A.
1000 29th Avenue North
Myrtle Beach, SC 29577
tel: (843) 448-2400
Attorneys for Landowner

Myrtle Beach, South Carolina
June 15, 2011

STATE OF SOUTH CAROLINA

ISSUED BY THE COMMON PLEAS COURT IN THE COUNTY OF HORRY

Name South Carolina Dep't of Transportation,
Condemnor

v.

**AMENDED SUBPOENA *duces tecum*
IN A CIVIL CASE**

Name David Franklin Powell, et al.,
Landowner

Case Number: 2010-CP-26-07999
Pending in Horry County

TO: Corbin Haskell
c/o John B. McCutcheon, Jr., Esq.
Thompson & Henry, P.A.
P.O. Box 1740
Conway, SC 29528

☐ YOU ARE COMMANDED to appear in the above named court at the place, date and time specified below to testify in the above case.

PLACE OF TESTIMONY	COURTROOM:
	DATE AND TIME

☒ YOU ARE COMMANDED to appear at the place, date and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION	Thompson & Henry, P.A. 1300 Second Avenue, 3rd Floor Conway, SC 29526	DATE AND TIME: July 6, 2011 at 11:00am

☒ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects in your possession, custody or control at the place, date and time specified below (list documents or objects):

See attached Exhibit "A"

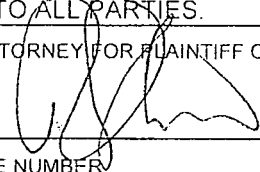
PLACE	Thompson & Henry, P.A. 1300 Second Avenue, 3rd Floor Conway, SC 29526	DATE AND TIME: July 6, 2011 at 11:00am

☐ YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PLACE	DATE AND TIME:

ANY SUBPOENAED ORGANIZATION NOT A PARTY TO THIS SUIT IS HEREBY DIRECTED PURSUANT TO RULE 30(b)(6), SOUTH CAROLINA RULES OF CIVIL PROCEDURE, TO FILE A DESIGNATION WITH THE COURT SPECIFYING ONE OR MORE OFFICERS, DIRECTORS, OR MANAGING AGENTS, OR OTHER PERSONS WHO CONSENT TO TESTIFY ON ITS BEHALF, AND SHALL SET FORTH, FOR EACH PERSON DESIGNATED, THE MATTERS ON WHICH HE WILL TESTIFY OR PRODUCE DOCUMENTS OR THINGS. THE PERSON SO DESIGNATED SHALL TESTIFY AS TO MATTERS KNOWN OR REASONABLY AVAILABLE TO THE ORGANIZATION.

I CERTIFY THAT THE SUBPOENA IS ISSUED IN COMPLIANCE WITH RULE 45(c)(1), AND THAT NOTICE AS REQUIRED BY RULE 45(b)(1) HAS BEEN GIVEN TO ALL PARTIES.

ATTORNEY/ISSUING OFFICER'S SIGNATURE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT)	DATE
 Attorneys for Landowner	June 15, 2011

ATTORNEY/ISSUING OFFICER'S NAME ADDRESS AND PHONE NUMBER

Howell V. Bellamy, Jr. and Robert S. Shelton, Post Office Box 357, Myrtle Beach, SC 29578 (843) 448-2400

PROOF OF SERVICE

Date		Fees and Mileage Tendered to Witness	
ERVED	Place	Yes	No Amount \$
Served On	Corbin Haskell c/o John B. McCutcheon, Jr., Esq. Thompson & Henry, P.A. P.O. Box 1740 Conway, SC 29528	Manner of Service: Via U.S. Mail	
Served By	Cynthia L. Dassoulas	Title	Legal Assistant

DECLARATION OF SERVER

I certify that the foregoing information contained in the Proof of Service is true and correct.

Executed on 6/15/11
Date

Cynthia L. Dassoulas
SIGNATURE OF SERVER

1000 29th Avenue North, Myrtle Beach, SC 29577

ADDRESS OF SERVER

Rule 45, South Carolina Rules of Civil Procedure, Parts (c) and (d):

(c) PROTECTION OF PERSONS SUBJECT TO SUBPOENAS.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2)(A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial. A party or attorney responsible for the issuance and service of a subpoena for production of books, papers and documents without a deposition shall provide to another party copies of documents so produced upon written request. The party requesting copies shall pay the reasonable costs of reproduction.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time in the court that issued the subpoena for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3)(A) On timely motion, the court by which a subpoena was issued, or regarding a subpoena commanding appearance at a deposition, or production or inspection directed to a non-party, the court in the county where the non-party resides, is employed or regularly transacts business in person, shall quash or modify the subpoena if it:

- fails to allow reasonable time for compliance; or
- requires a person who is not a party or an officer, director or managing agent, nor a general partner of a partnership of a party, to travel more than 50 miles from the county where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state where the trial is held; or
- requires disclosure of privileged or otherwise protected matter and no exception or waiver applies; or
- subjects a person to undue burden.

(B) If a subpoena:

- requires disclosure of a trade secret or other confidential research, development, or commercial information, or
- requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or
- requires a person who is not a party or an officer, director or managing agent of a party to incur substantial expense to travel from the county where that person resides, is employed or regularly transacts business in person,

the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(c) DUTIES IN RESPONDING TO SUBPOENA.

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

SUBPOENA EXHIBIT "A"

You are hereby requested under the provisions of Rule 45 of the *South Carolina Rules of Civil Procedure* to produce and permit Landowner's attorneys to inspect the documents and tangible things designated hereafter which are in your possession, custody, control, or are otherwise available to you and are responsive to the requests contained in the paragraphs below.

YOU MUST COMPLY WITH THIS REQUEST BY BRINGING ANY AND ALL RELEVANT DOCUMENTATION THAT MAY PERTAIN TO THE SUBJECT OF THIS ACTION.

The subject of this action includes, but is not limited to the following matters:

1. Any and all statements and documents, including but not limited to, reports, analysis, studies, letters, correspondence, ledgers, checks, receipts, invoices, memoranda, records or notations of conversations or conferences or other documentation that may pertain to the subject of this action and which may be utilized at the time of trial in any manner whatsoever.
2. Any and all plats, plans, photographs, construction plans, sketches, cross-sections, profile plans, environmental studies, noise studies, light studies prepared and utilized in connection with condemning the subject property.
3. Any and all appraisal reports prepared and utilized in connection with condemning the subject property.
4. Any and all records concerning any feasibility studies, impact studies, topographical studies, traffic studies, and/or any other studies conducted in connection with condemning the subject property.
5. Any and all engineering reports prepared and utilized in connection with condemning the subject property.
6. Any and all books of comparable sales utilized in connection with condemning the subject property.
7. All other documentary material relating to the property which is the subject of this litigation, or which in any way relate to the claim or defense of this matter that is in your possession, known or believed to be in the possession of others with the identity of the person or entity in possession of the materials, and all such materials which you intend to introduce as evidence at the trial of this matter.

8. Any and all photographs, video tapes, tape recordings, and other documents that relate, directly or indirectly, to any claim, defense, or issue in this case.

9. All correspondence, reports, notes, documents, and other information that:

- a. you provided to any party herein; and
- b. any party herein provided to you.

10. Any and all documents which you intend to introduce at the trial of this action, whether for purposes of evidence or impeachment.

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
)
COUNTY OF HORRY) FIFTEENTH JUDICIAL CIRCUIT
) C/A NO. 2010-CP-26-07961

Road/Route Interchange at US 17 Bypass
and SC 707/Farrow Parkway
File 26.036774A
Project HERR
Pin 36774 RD01
Tract 13

South Carolina Department of Transportation,)
)
Condemnor,)
)
vs.)
)
David Franklin Powell,)
)
Landowner.)
_____)

**AMENDED NOTICE
OF DEPOSITION
OF CORBIN HASKELL**

**TO: JOHN B. MCCUTCHEON, JR., ESQ., ATTORNEY FOR THE
CONDEMNOR**

YOU WILL PLEASE TAKE NOTICE THAT the Landowner, David Powell, by the undersigned attorneys, will take the oral deposition of:

CORBIN HASKELL (SCDOT's APPRAISER)

Mr. Haskell will testify on behalf of the said South Carolina Department of Transportation, with respect to the following matters:

1. Any and all matters in connection with condemning the subject property.

The said deposition is taken pursuant to Rule 30 of the *South Carolina Rules of Civil Procedure* and will be taken on **Wednesday, July 6, 2011 beginning at 11:00am** at the law offices of Thompson & Henry, P.A., 1300 Second Avenue, 3rd Floor, Conway, South

**ROA-223
223**

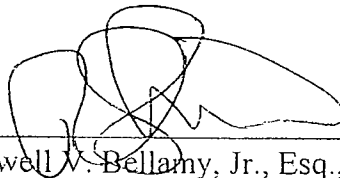


Carolina 29526, before a notary public or some other officer authorized to administer oaths.

The oral deposition will continue from day to day until completed.

YOU WILL PLEASE TAKE FURTHER NOTICE that the above named witness, Corbin Haskell, shall be subpoenaed to appear at the said time and place pursuant to said Rules of Court.

YOU WILL PLEASE TAKE FURTHER NOTICE that you are invited to attend and take such part as is fit and proper.



Howell V. Bellamy, Jr., Esq., SCB #00642
Robert S. Shelton, Esq., SCB #68543
BELLAMY, RUTENBERG, COPELAND,
EPPS, GRAVELY & BOWERS, P.A.
1000 29th Avenue North
Myrtle Beach, SC 29577
tel: (843) 448-2400
Attorneys for Landowner

Myrtle Beach, South Carolina

June 15, 2011

STATE OF SOUTH CAROLINA

ISSUED BY THE COMMON PLEAS COURT IN THE COUNTY OF HORRY

Name South Carolina Dep't of Transportation,
Condemnor

v.

AMENDED SUBPOENA *duces tecum* IN A CIVIL CASE

Name David Franklin Powell,
Landowner

Case Number: 2010-CP-26-07961
Pending in Horry County

TO: Corbin Haskell
c/o John B. McCutcheon, Jr., Esq.
Thompson & Henry, P.A.
P.O. Box 1740
Conway, SC 29528

☐ YOU ARE COMMANDED to appear in the above named court at the place, date and time specified below to testify in the above case.

PLACE OF TESTIMONY	COURTROOM:
	DATE AND TIME

☒ YOU ARE COMMANDED to appear at the place, date and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION	DATE AND TIME:
Thompson & Henry, P.A. 1300 Second Avenue, 3rd Floor Conway, SC 29526	July 6, 2011 at 11:00am

☒ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects in your possession, custody or control at the place, date and time specified below (list documents or objects):

See attached Exhibit "A"

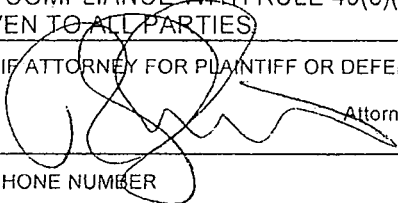
PLACE	DATE AND TIME:
Thompson & Henry, P.A. 1300 Second Avenue, 3rd Floor Conway, SC 29526	July 6, 2011 at 11:00am

☐ YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PLACE	DATE AND TIME:

ANY SUBPOENAED ORGANIZATION NOT A PARTY TO THIS SUIT IS HEREBY DIRECTED PURSUANT TO RULE 30(b)(6), SOUTH CAROLINA RULES OF CIVIL PROCEDURE, TO FILE A DESIGNATION WITH THE COURT SPECIFYING ONE OR MORE OFFICERS, DIRECTORS, OR MANAGING AGENTS, OR OTHER PERSONS WHO CONSENT TO TESTIFY ON ITS BEHALF, AND SHALL SET FORTH, FOR EACH PERSON DESIGNATED, THE MATTERS ON WHICH HE WILL TESTIFY OR PRODUCE DOCUMENTS OR THINGS. THE PERSON SO DESIGNATED SHALL TESTIFY AS TO MATTERS KNOWN OR REASONABLY AVAILABLE TO THE ORGANIZATION.

I CERTIFY THAT THE SUBPOENA IS ISSUED IN COMPLIANCE WITH RULE 45(c)(1), AND THAT NOTICE AS REQUIRED BY RULE 45(b)(1) HAS BEEN GIVEN TO ALL PARTIES

ATTORNEY/ISSUING OFFICER'S SIGNATURE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT)	DATE
 Attorneys for Landowner	June 15, 2011

ATTORNEY/ISSUING OFFICER'S NAME ADDRESS AND PHONE NUMBER

Howell V. Bellamy, Jr. and Robert S. Shelton, Post Office Box 357, Myrtle Beach, SC 29578 (843) 448-2400

PROOF OF SERVICE

Date	Fees and Mileage Tendered to Witness		
____	____ Yes	____ No	Amount \$ _____
Served On	Corbin Haskell c/o John B. McCutcheon, Jr., Esq. Thompson & Henry, P.A. P.O. Box 1740 Conway, SC 29528	Manner of Service:	Via U.S. Mail
Served By	Cynthia L. Dassoulas	Title	Legal Assistant

DECLARATION OF SERVER

I certify that the foregoing information contained in the Proof of Service is true and correct.

Executed on 6/15/11 Cynthia L. Dassoulas
Date SIGNATURE OF SERVER
1000 29th Avenue North, Myrtle Beach, SC 29577
ADDRESS OF SERVER

Rule 45, South Carolina Rules of Civil Procedure, Parts (c) and (d):

(c) PROTECTION OF PERSONS SUBJECT TO SUBPOENAS.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2)(A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial. A party or attorney responsible for the issuance and service of a subpoena for production of books, papers and documents without a deposition shall provide to another party copies of documents so produced upon written request. The party requesting copies shall pay the reasonable costs of reproduction.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time in the court that issued the subpoena for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3)(A) On timely motion, the court by which a subpoena was issued, or regarding a subpoena commanding appearance at a deposition, or production or inspection directed to a non-party, the court in the county where the non-party resides, is employed or regularly transacts business in person, shall quash or modify the subpoena if it:

- fails to allow reasonable time for compliance; or
- requires a person who is not a party or an officer, director or managing agent, nor a general partner of a partnership of a party, to travel more than 50 miles from the county where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state where the trial is held; or
- requires disclosure of privileged or otherwise protected matter and no exception or waiver applies; or
- subjects a person to undue burden.

(B) If a subpoena:

- requires disclosure of a trade secret or other confidential research, development, or commercial information, or
- requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or
- requires a person who is not a party or an officer, director or managing agent of a party to incur substantial expense to travel from the county where that person resides, is employed or regularly transacts business in person,

the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(c) DUTIES IN RESPONDING TO SUBPOENA.

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

SUBPOENA EXHIBIT "A"

You are hereby requested under the provisions of Rule 45 of the *South Carolina Rules of Civil Procedure* to produce and permit Landowner's attorneys to inspect the documents and tangible things designated hereafter which are in your possession, custody, control, or are otherwise available to you and are responsive to the requests contained in the paragraphs below.

YOU MUST COMPLY WITH THIS REQUEST BY BRINGING ANY AND ALL RELEVANT DOCUMENTATION THAT MAY PERTAIN TO THE SUBJECT OF THIS ACTION.

The subject of this action includes, but is not limited to the following matters:

1. Any and all statements and documents, including but not limited to, reports, analysis, studies, letters, correspondence, ledgers, checks, receipts, invoices, memoranda, records or notations of conversations or conferences or other documentation that may pertain to the subject of this action and which may be utilized at the time of trial in any manner whatsoever.
2. Any and all plats, plans, photographs, construction plans, sketches, cross-sections, profile plans, environmental studies, noise studies, light studies prepared and utilized in connection with condemning the subject property.
3. Any and all appraisal reports prepared and utilized in connection with condemning the subject property.
4. Any and all records concerning any feasibility studies, impact studies, topographical studies, traffic studies, and/or any other studies conducted in connection with condemning the subject property.
5. Any and all engineering reports prepared and utilized in connection with condemning the subject property.
6. Any and all books of comparable sales utilized in connection with condemning the subject property.
7. All other documentary material relating to the property which is the subject of this litigation, or which in any way relate to the claim or defense of this matter that is in your possession, known or believed to be in the possession of others with the identity of the person or entity in possession of the materials, and all such materials which you intend to introduce as evidence at the trial of this matter.

8. Any and all photographs, video tapes, tape recordings, and other documents that relate, directly or indirectly, to any claim, defense, or issue in this case.

9. All correspondence, reports, notes, documents, and other information that:

- a. you provided to any party herein; and
- b. any party herein provided to you.

10. Any and all documents which you intend to introduce at the trial of this action, whether for purposes of evidence or impeachment.

RIGHT OF WAY AGENT'S WORKSHEET

Road/Route: Interchange at US 17 Bypass and SC 707 / Farrow Parkway Pin: 36774 File: 26.036774A

County: Horry Project: HORR Item: _____
 Plan Sheet: 4, 4C, 4F, 10 R/W Agent: Holly Moody Tract: 13

OWNER'S AND ADDRESSES

Name & Address: David Franklin Powell - 3190 Emory Road, Myrtle Beach, SC 29577

Phone: Day _____ Evening 843-293-8573

SSN: _____

MORTGAGES AND ADDRESSES

Name & Address: none

Recorded: Book _____ Page _____ Date _____ Amount _____

☐ Lessees ☐ Liens ☐ Judgements

Name(s)/Addresses: none

OWNERSHIP

Before: 2.455 ac Dimensions: _____

Acquisition: 0.183 ac

After: 2.272 ac

Tax Map No.: 180-09-03-034 Plat Information: Book 174 Page 50

TITLE ABSTRACT

From	To	Date	Amount	Book	Page
John P. Powell	David Franklin Powell	2-21-06 2-21-06	DOD	3052	114
John P. Powell	David Franklin Powell	D 7-8-05 F 7-29-05 C 2-1-07	Died Testate	2005ES	973
James H. Powell	John P. Powell	12-19-00 12-19-00	\$5.00 L&S	2327	1370

Type Of Instrument: ☐ Easement ☒ Title ☐ Permission ☐ Other

Condemn ☐ Yes ☐ No Advertise: ☐ Yes ☐ No

Survey (1) From _____ To _____ (2) From _____ To _____

Stations (3) From _____ To _____ (4) From _____ To _____

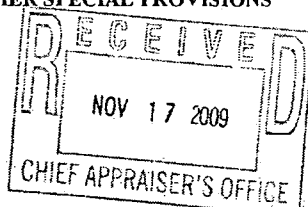
Width Of R/W _____ Feet, That Is _____ Feet On _____ Side Of The Centerline

OTHER SPECIAL PROVISIONS

RECEIVED

SEP 04 2009

DIST. APPR. SECTION



RIGHT OF WAY AGENT'S WORKSHEET

Road/Route: Interchange at US 17 Bypass and SC 707 / Pin 36774 File: 26.036774A
Farrow Parkway

County: Horry Project: HORR Item _____

Plan Sheet: 4, 4C, 4F, 10 R/W Agent Holly Moody Tract 13

OWNER'S AND ADDRESSES

Name & Address: David Franklin Powell - 3190 Emory Road, Myrtle Beach, SC 29577Phone: Day _____ Evening 843-293-8573

SSN: _____

MORTGAGES AND ADDRESSES

Name & Address: none

Recorded: Book _____ Page _____ Date _____ Amount _____

☐ Lessees ☐ Liens ☐ Judgements
Name(s)/Addresses: none

OWNERSHIP

Before: 2.455 ac Dimensions: _____Acquisition: 0.183 acAfter: 2.272 acTax Map No.: 180-09-03-034 Plat Information: Book 174 Page 50

TITLE ABSTRACT

From	To	Date	Amount	Book	Page
John P. Powell	David Franklin Powell	2-21-06 2-21-06	DOD	3052	114
John P. Powell	David Franklin Powell	D 7-8-05 F 7-29-05 C 2-1-07	Died Testate	2005ES	973
James H. Powell	John P. Powell	12-19-00 12-19-00	\$5.00 L&S	2327	1370

Type Of Instrument: ☐ Easement ☒ Title ☐ Permission ☐ Other

Condemn ☐ Yes ☐ No Advertise: ☐ Yes ☐ No

Survey (1) From _____ To _____ (2) From _____ To _____

Stations (3) From _____ To _____ (4) From _____ To _____

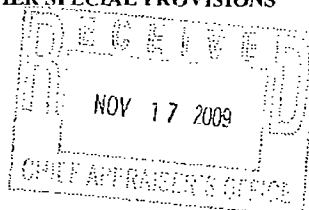
Width Of R/W _____ Feet, That Is _____ Feet On _____ Side Of The Centerline

OTHER SPECIAL PROVISIONS

RECEIVED

SEP 04 2009

DIST. APPR. SECTION



TRIANGULAR AREAS

ze n/a ☐ Lt ☐ Rt Sta _____ At The Intersection Of _____ & _____
ze n/a ☐ Lt ☐ Rt Sta _____ At The Intersection Of _____ & _____
utfall Ditch; ☐ Construct ☐ Clean ☐ Right Of Way
] Rt ☐ Lt Sta n/a For _____ Feet
] Rt ☐ Lt Sta n/a For _____ Feet
] Construction Slopes: Between Survey Stations n/a & _____
] Relocated Centerline: Between Survey Stations n/a & _____

PRELIMINARY CONTACT

erson Contacted _____ Date _____

erson Present _____ Place Contacted _____

Remarks:

Agent Elliott met with Mr. Powell on 9-3-09. She showed him the plans, went over the R/W stating the acquisition of 0.183 acres. She explained that Emory Road would be closed to US Hwy. 17 Bypass. 1, Agent Moody, will meet with Mr. Powell, hopefully next to verify title and PL's and deliver brochure.

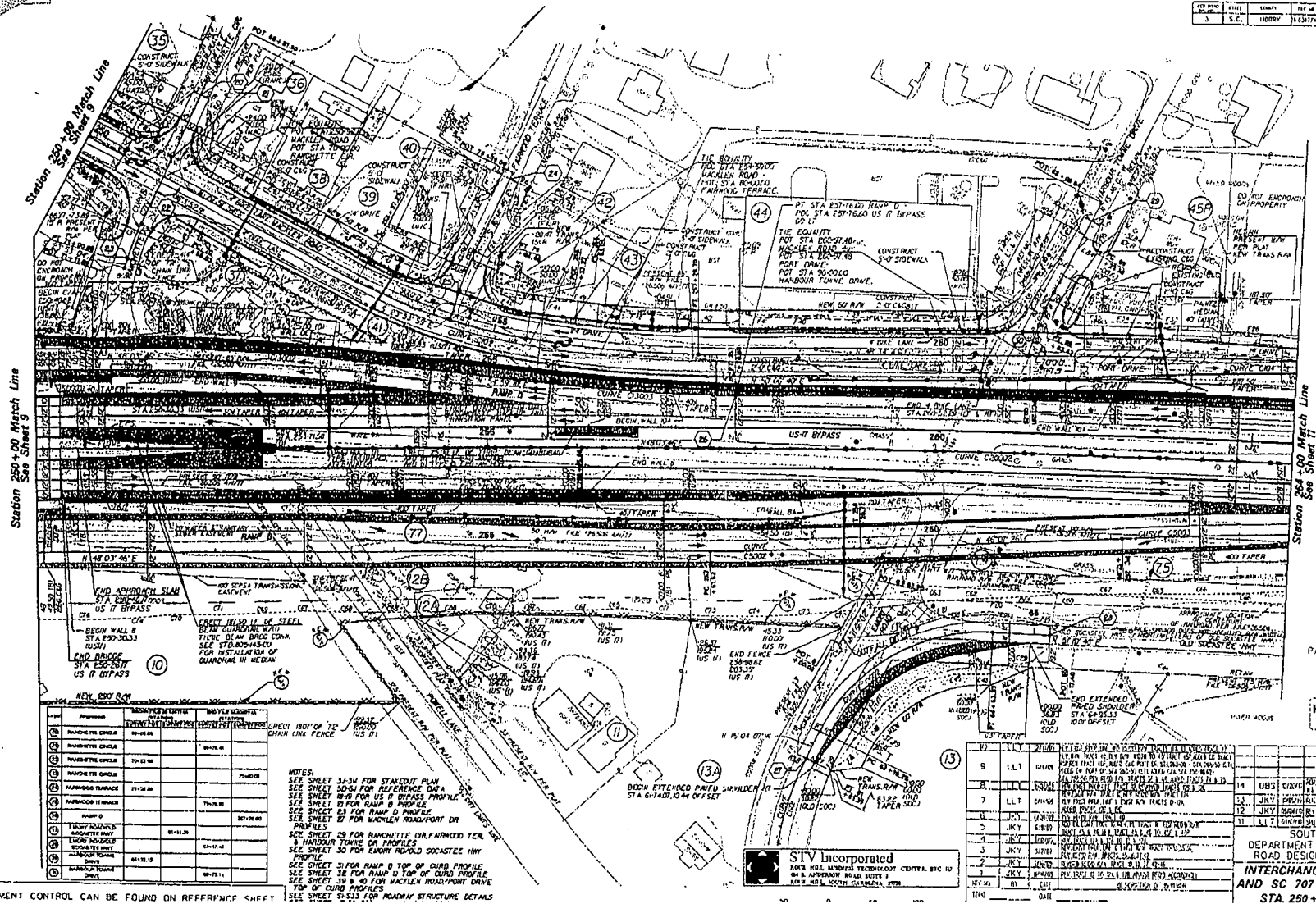
ate Brochure Delivered _____ Date Appraisal Approved _____

ate 100% Drawdown Offered (Federal Projects Only) _____

ppraisal Requested: ☐ Yes ☐ No

Additional Remarks:

ISSUING OFFICE	DATE	COUNTRY	ISS NO	REGISTER NO.	NAME AND ADDRESS	EXPIR DATE	REMARKS
J	S.C.	HONDURAS	660377A	HONDURAS	Y. J. 9/1/77	10	



4
DEPOSITION
EXHIBIT
7/6/11 mjd

PAYMENT REMOVAL ☒

RIGHT OF WAY PLANS:

3	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36	37	38	39	40	41	42	43	44	45	46	47	48	49	50	51	52	53	54	55	56	57	58	59	60	61	62	63	64	65	66	67	68	69	70	71	72	73	74	75	76	77	78	79	80	81	82	83	84	85	86	87	88	89	90	91	92	93	94	95	96	97	98	99	100
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36	37	38	39	40	41	42	43	44	45	46	47	48	49	50	51	52	53	54	55	56	57	58	59	60	61	62	63	64	65	66	67	68	69	70	71	72	73	74	75	76	77	78	79	80	81	82	83	84	85	86	87	88	89	90	91	92	93	94	95	96	97	98	99	100	
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36	37	38	39	40	41	42	43	44	45	46	47	48	49	50	51	52	53	54	55	56	57	58	59	60	61	62	63	64	65	66	67	68	69	70	71	72	73	74	75	76	77	78	79	80	81	82	83	84	85	86	87	88	89	90	91	92	93	94	95	96	97	98	99	100	
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36	37	38	39	40	41	42	43	44	45	46	47	48	49	50	51	52	53	54	55	56	57	58	59	60	61	62	63	64	65	66	67	68	69	70	71	72	73	74	75	76	77	78	79	80	81	82	83	84	85	86	87	88	89	90	91	92	93	94	95	96	97	98	99	100	
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36	37	38	39	40	41	42	43	44	45	46	47	48	49	50	51	52	53	54	55	56	57	58	59	60	61	62	63	64	65	66	67	68	69	70	71	72	73	74	75	76	77	78	79	80	81	82	83	84	85	86	87	88	89	90	91	92	93	94	95	96	97	98	99	100	
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36	37	38	39	40	41	42	43	44	45	46	47	48	49	50	51	52	53	54	55	56	57	58	59	60	61	62	63	64	65	66	67	68	69	70	71	72	73	74	75	76	77	78	79	80	81	82	83	84	85	86	87	88	89	90	91	92	93	94	95	96	97	98	99	100	
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36	37	38	39	40	41	42	43	44	45	46	47	48	49	50	51	52	53	54	55	56	57	58	59	60	61	62	63	64	65	66	67	68	69	70	71	72	73	74	75	76	77	78	79	80	81	82	83	84	85	86	87	88	89	90	91	92	93	94	95	96	97	98	99	100	
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36	37	38	39	40	41	42	43	44	45	46	47	48	49	50	51	52	53	54	55	56	57	58	59	60	61	62	63	64	65	66	67	68	69	70	71	72	73	74	75	76	77	78	79	80	81	82	83	84	85	86	87	88	89	90	91	92	93	94	95	96	97	98	99	100	
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36	37	38	39	40	41	42	43	44	45	46	47	48	49	50	51	52	53	54	55	56	57	58	59	60	61	62	63	64	65	66	67	68	69	70	71	72	73	74	75	76	77	78	79	80	81	82	83	84	85	86	87	88	89	90	91	92	93	94	95	96	97	98	99	100	
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36	37	38	39	40	41	42	43	44	45	46	47	48	49	50	51	52	53	54	55	56	57	58	59	60	61	62	63	64	65	66	67	68	69	70	71	72	73	74	75	76	77	78	79	80	81	82	83	84	85	86	87	88	89	90	91	92	93	94	95	96	97	98	99	100	
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36	37	38	39	40	41	42	43	44	45	46	47	48	49	50	51	52	53	54	55	56	57	58	59	60	61	62	63	64	65	66	67	68	69	70	71	72	73	74	75	76	77	78	79	80	81	82	83	84	85	86	87	88	89	90	91	92	93	94	95	96	97	98	99	100	
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36	37	38	39	40	41	42	43	44	45	46	47	48	49	50	51	52	53	54	55	56	57	58	59	60	61	62	63	64	65	66	67	68	69	70	71	72	73	74	75	76	77	78	79	80	81	82	83	84	85	86	87	88	89	90	91	92	93	94	95	96	97	98	99	100	
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36	37	38	39	40	41	42	43	44	45	46	47	48	49	50	51	52	53	54	55	56	57	58	59	60	61	62	63	64	65	66	67	68	69	70	71	72	73	74	75	76	77	78	79	80	81	82	83	84	85	86	87	88	89	90	91	92	93	94	95	96	97	98	99	100	
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36	37	38	39	40	41	42	43	44	45	46	47	48	49	50	51	52	53	54	55	56	57	58	59	60	61	62	63	64	65	66	67	68	69	70	71	72	73	74	75	76	77	78	79	80	81	82	83	84	85	86	87	88	89	90	91	92	93	94	95	96	97	98	99	100	
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36	37	38	39	40	41	42	43	44	45	46	47	48	49	50	51	52	53	54	55	56	57	58	59	60	61	62	63	64	65	66	67	68	69	70	71	72	73	74	75	76	77	78	79	80	81	82	83	84	85	86	87	88	89	90	91	92	93	94	95	96	97	98	99	100	
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36	37	38	39	40	41	42	43	44	45	46	47	48	49	50	51	52	53	54	55	56	57	58	59	60	61	62	63	64	65	66	67	68	69	70	71	72	73	74	75	76	77	78	79	80	81	82	83	84	85	86	87	88	89	90	91	92	93	94	95	96	97	98	99	100	
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36	37	38	39	40	41	42	43	44	45	46	47	48	49	50	51	52	53	54	55	56	57	58	59	60	61	62	63	64	65	66	67	68	69	70	71	72	73	74	75	76	77	78	79	80	81	82	83	84	85	86	87	88	89	90	91	92	93	94	95	96	97	98	99	100	
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36	37	38	39	40	41	42	43	44	45	46	47	48	49	50	51	52	53	54	55	56	57	58	59	60	61	62	63	64	65	66	67	68	69	70	71	72	73	74	75	76	77	78	79</																						

ROA-233
233

STATE OF SOUTH CAROLINA)
) COURT OF COMMON PLEAS
COUNTY OF HORRY) CASE NO: 2010-CP-26-07961

Road/Route Interchange at US 17 Bypass
and SC 707/Farrow Parkway
File 26.036774A
Project HORRY
PIN 36774 RD01
Tract 13

SOUTH CAROLINA DEPARTMENT)
OF TRANSPORTATION,)
)
Condemnor,)
)
-versus-)
)
DAVID FRANKLIN POWELL,)
Landowner,)
)

COPY

**RESUMPTION OF THE DEPOSITION
OF
H. CORBIN HASKELL**

Monday, March 25th, 2013
1:37 p.m. – 2:53 p.m.

(Originally began on July 6th, 2011)

The deposition of H. CORBIN HASKELL, taken on
the 25th day of March, 2013 at THE BELLAMY LAW
FIRM, located at 1000 29th Avenue North, Myrtle Beach,
South Carolina 29577.

CP-26 REPORTING

Melissa M. Decker, Court Reporter
PHONE: (843) 446-1691; E-MAIL: melissadecker@sc.rr.com

APPEARANCES:

FOR THE CONDEMNOR:

John B. McCutcheon, Jr., Esquire
THOMPSON & HENRY, P.A.
1300 Second Avenue, Third Floor
Conway, South Carolina 29526

FOR THE LANDOWNER:

Howell V. Bellamy, Jr., Esquire
Robert S. Shelton, Esquire
THE BELLAMY LAW FIRM
1000 29th Avenue North
Myrtle Beach, South Carolina 29577

ALSO PRESENT:

David Franklin Powell

INDEX

EXAMINATION OF WITNESS:	PAGE
H. CORBIN HASKELL	
Examination by Mr. Bellamy	05
Continuation of Examination by Mr. Bellamy ..	28
Examination by Mr. McCutcheon	53
Certificate of Court Reporter	56

****THIS TRANSCRIPT MAY CONTAIN QUOTED MATERIAL. SUCH
MATERIAL IS REPRODUCED AS READ OR QUOTED BY THE
SPEAKER.***

CP-26 REPORTING

Melissa M. Decker, Court Reporter
PHONE: (843) 446-1691
E-MAIL: melissadecker@sc.rr.com

INDEX OF EXHIBITS

*Landowner's Deposition Exhibit Number 1 ...07
(Appraisal prepared by H. Corbin Haskell,
MAI, dated 4/28/10, with a land take value of
\$68,000)

*Landowner's Deposition Exhibit Number 2 ...09
(Appraisal prepared by H. Corbin Haskell,
MAI, dated 5/11/11, with a land take value of
\$70,000)

*Landowner's Deposition Exhibit Number 3 ...10
(Appraisal prepared by H. Corbin Haskell,
dated 6/13/2011, with a land take value of
\$71,000)

*Landowner's Deposition Exhibit Number 4 ...10
(Appraisal prepared by H. Corbin Haskell,
dated 3/14/13, with a land take value of
\$517,000)

*Landowner's Deposition Exhibit Number 5 ...18
(Appraisal prepared by H. Corbin Haskell,
dated 3/14/13, with a land value of \$72,000)

Landowner's Deposition Exhibit Number 6 ...08
(Notice of Deposition of H. Corbin Haskell)

Landowner's Deposition Exhibit Number 7 08
(Subpoena duces tecum)

*Maintained by Attorney Bellamy

CP-26 REPORTING

Melissa M. Decker, Court Reporter
PHONE: (843) 446-1691
E-MAIL: melissadecker@sc.rr.com

STIPULATIONS

The deposition will be taken before
Melissa M. Decker, a Notary Public and Court
Reporter in and for the State of South
Carolina.

It is stipulated and agreed that this
deposition is being taken pursuant to the
governing rules.

It is stipulated and agreed that all
objections, except as to the form of the
question, will be reserved until the time of
the trial.

It is stipulated and agreed between
counsel and the above witness that the
reading and signing of the above deposition
be, and the same, are hereby not waived.

CP-26 REPORTING

Melissa M. Decker, Court Reporter
PHONE: (843) 446-1691
E-MAIL: melissadecker@sc.rr.com

1 H. CORBIN HASKELL, HAVING BEEN DULY
2 SWORN, WAS DEPOSED AS FOLLOWS:

3 **EXAMINATION**

4 BY MR. BELLAMY:

5 Q: Did you drive down from Greenville
6 today?

7 A: I did. I just walked it.

8 Q: Okay. That's good. Corbin, your
9 deposition was previously taken back on
10 July 6th, 2011.

11 A: Yes, sir.

12 Q: Is there anything in that deposition
13 that you would change, wish to add to,
14 modify, or in any way deal with?

15 A: No, sir.

16 Q: So whatever that is in that deposition,
17 you're satisfied with your response?

18 A: Yes, sir.

19 Q: Okay. Good. We'll save going into
20 that. Now, when I counted up this
21 morning, I counted five different
22 appraisals that you had made on this
23 tract. And we're going to mark them,
24 and then we'll talk about them very
25 briefly.

CP-26 REPORTING

Melissa M. Decker, Court Reporter
PHONE: (843) 446-1691
E-MAIL: melissadecker@sc.rr.com

1 A: Yes, sir.

2 Q: The first one I have in front of me is
3 an appraisal that you did dated April
4 28th, 2010, made as of April 8th, that
5 shows \$68,000 as compensation, which is
6 the value of the land take, if I'm
7 correct. Take whatever time you need to
8 look at it.

9 A: Yes, sir.

10 Q: Okay.

11 MR. McCUTCHEON: ARE YOU GOING TO MARK
12 THAT NUMBER ONE?

13 MR. BELLAMY: NUMBER ONE. YES, SIR.
14 FOR THE RECORD,
15 MELISSA, THIS IS AN
16 APPRAISAL BY H. CORBIN
17 HASKELL, MAI. THE DATE
18 OF THE REPORT IS DATED
19 APRIL 28TH, 2010, AND
20 THE APPRAISAL MADE
21 AS OF APRIL
22 8TH, 2010.
23 AND IT SHOWS JUST
24 COMPENSATION FOR THE
25 LAND TO BE \$68,000.

CP-26 REPORTING

Melissa M. Decker, Court Reporter
PHONE: (843) 446-1691
E-MAIL: melissadecker@sc.rr.com

LANDOWNER'S DEPOSITION EXHIBIT NUMBER
ONE MARKED FOR IDENTIFICATION.

Q: We're going to go back through these
briefly in just a second.

A: Okay.

Q: The second report I'm going to show you
is an appraisal made as of September
27th, 2010, with the date of the report
dated May 11, 2011, for the \$70,000.

MR. McCUTCHEON: MAY 11TH WHEN?

MR. BELLAMY: MAY 11TH, 2011,
\$70,000 FOR THE ACTUAL
TAKE.

MR. McCUTCHEON: AND WHAT WAS THE DATE
ON THE -- YOU SAID
9/11?

MR. BELLAMY: MAY 11, 2011.

MR. McCUTCHEON: THAT WAS THE DATE?

MR. BELLAMY: YES. AND THE
APPRAISAL AS OF
SEPTEMBER 27, 2010.

MR. McCUTCHEON: OKAY.

A: Uh-huh (affirmative response).

MR. McCUTCHEON: IS THAT A YES,
OR ARE YOU STILL

CP-26 REPORTING

Melissa M. Decker, Court Reporter
PHONE: (843) 446-1691
E-MAIL: melissadecker@sc.rr.com

ROA-240
240

(SPEAKING TO MR.
HASKELL.)

(MR. SHELTON IS
ENTERING ROOM.)

UH-HUH (AFFIRMATIVE
RESPONSE) .

LET ME BACK UP. ROB
JUST HANDED ME THE
AMENDED NOTICE OF
DEPOSITION OF CORBIN
HASKELL AND THE
SUBPOENA DUCES TECUM,
OKAY?

ARE YOU MARKING THEM
SIX AND SEVEN?

MARK THEM SIX AND SEVEN. YOU KNOW WHAT THESE ARE?

LANDOWNER'S DEPOSITION EXHIBIT NUMBERS
SIX AND SEVEN MARKED FOR IDENTIFICATION.

Melissa M. Decker, Court Reporter
PHONE: (843) 446-1691
E-MAIL: melissadecker@sc.rr.com

ROA-241
241

1 Q: Have you brought with you your file?

2 A: Yes, sir.

3 Q: I'm particularly interested in the last
4 two appraisals you did: the one for five
5 seventeen, and then the one that goes
6 back to seventy-two.

7 A: Yes, sir.

8 Q: Have you brought your documentation for
9 that?

10 A: Yes, sir.

11 Q: Good deal.

12 **LANDOWNER'S DEPOSITION EXHIBIT NUMBER**
13 **TWO MARKED FOR IDENTIFICATION.**

14 COURT REPORTER'S

15 NOTE: (APPRAISAL DATED
16 5/11/11.)

17 Q: And then I'm going to show you an
18 appraisal made as of August 27, 2010,
19 the date of the report June 13, 2011.
20 And I notice it's not signed, but I
21 understand this was a copy of an
22 appraisal that was given to us in
23 discovery.

24 A: Yes, sir.

25 **LANDOWNER'S DEPOSITION EXHIBIT NUMBER**

CP-26 REPORTING

Melissa M. Decker, Court Reporter
PHONE: (843) 446-1691
E-MAIL: melissadecker@sc.rr.com

ROA-242
242

THREE MARKED FOR IDENTIFICATION.

MR. McCUTCHEON: YOU DIDN'T STATE, BUT I
THINK THAT ONE WAS
SEVENTY-TWO?

MR. HASKELL: SEVENTY-ONE.

MR. BELLAMY: SEVENTY-ONE.

MR. McCUTCHEON: SEVENTY-ONE.

MR. BELLAMY: 71,000.

Q: Then I'm going to show you an appraisal
as of August 27, 2010. The date of the
report is March 14, 2013; showing
\$517,000 as compensation for the take
and damages.

A: Yes, sir.

LANDOWNER'S DEPOSITION EXHIBIT NUMBER

FOUR MARKED FOR IDENTIFICATION.

Q: Okay. Then I'll show you, lastly, an
appraisal prepared by you. The date of
the report is March 14, 2013, about a
week ago, and made as of August 27,
2010, showing compensation to be \$72,000
for the take.

A: Yes, sir.

Q: Now let me ask you something: Have you
been furnished with copies of Jim

CP-26 REPORTING

Melissa M. Decker, Court Reporter
PHONE: (843) 446-1691
E-MAIL: melissadecker@sc.rr.com

1 Jayroe's report?
2 A: No, sir, not that I'm aware of.
3 Q: Okay. You have not read his report?
4 A: No, sir.
5 Q: And as I understand it, you're not
6 prepared to talk about anything in his
7 report at trial, assuming we go to
8 trial?
9 A: No, sir. Let me make sure. I don't
10 recall seeing anything that he had done.
11 Q: But to your recollection, you haven't
12 read his report and are not prepared to
13 testify about it?
14 A: No, sir. I have not.
15 Q: Okay.
16 A: Not to my knowledge. I don't ---
17 Q: Okay. We can ---
18 A: --- recall seeing it.
19 Q: We can move past that then. What I want
20 to do, Corbin, is go back to Exhibit
21 Number 5, which is your last appraisal.
22 A: Yes, sir.
23 Q: And you can look at the one that's been
24 marked for the record, Exhibit 5 ---
25 A: Yes, sir.

CP-26 REPORTING

Melissa M. Decker, Court Reporter
PHONE: (843) 446-1691
E-MAIL: melissadecker@sc.rr.com

ROA-244
244

1 Q: --- and we'll go through it. I want to
2 go through it a minute. As I
3 understand, on the cover sheet, and you
4 may not have gotten this, but on the
5 cover sheet where this appraisal was
6 sent to us on Friday, March 22, which
7 was this past Friday ---

8 A: Yes, sir.

9 Q: --- copies of this went to Mike Barbee,
10 Tammy Quick, Linda McDonald, and Steve
11 Gosnell. Did you talk with any of these
12 people before you did this report?

13 A: No, sir.

14 Q: Didn't talk with Linda McDonald?

15 A: No.

16 Q: Haven't talked to her, period, have you?

17 A: I'm not sure who she is.

18 Q: Okay. Well, she's chief legal counsel
19 in Columbia.

20 A: Okay. Jack's the only one I've been
21 dealing with.

22 Q: That's all I need to know. How about
23 Steve Gosnell?

24 A: Not on this one particular one.

25 Q: Okay.

CP-26 REPORTING

Melissa M. Decker, Court Reporter
PHONE: (843) 446-1691
E-MAIL: melissadecker@sc.rr.com

ROA-245
245

1 A: I have met with him.
2 Q: But not on this particular tract?
3 A: No, sir.
4 Q: And Tammy Quick is kind of the right-of-
5 way agent for the DOT?
6 A: Yes, sir.
7 Q: Have you talked to her?
8 A: I have. Yeah, I've been in touch with
9 her.
10 Q: Has she ---
11 MR. McCUTCHEON: SKEETS, LET'S CLEAN
12 SOMETHING UP FOR THE
13 RECORD. THEY WERE ALL
14 IN MY OFFICE THE LAST
15 DAY. DO YOU REMEMBER
16 WHEN THE CASE WAS SET
17 FOR TRIAL? STEVE
18 GOSNELL, TAMMY QUICK,
19 MIKE BARBEE AND ---
20 MR. HASKELL: UH-HUH (AFFIRMATIVE
21 RESPONSE).
22 MR. McCUTCHEON: --- CORBIN WERE ALL IN
23 THE ROOM TOGETHER.
24 MR. BELLAMY: OKAY. ALL RIGHT.
25 MR. McCUTCHEON: SO WHEN YOU ASKED HIM

CP-26 REPORTING

Melissa M. Decker, Court Reporter
PHONE: (843) 446-1691
E-MAIL: melissadecker@sc.rr.com

ROA-246
246

1 HAVE THEY TALKED ABOUT
2 THIS CASE, WHATEVER IN
3 GENERAL THEY TALKED
4 ABOUT IT WHEN I WASN'T
5 THERE, I DON'T KNOW..
6 MR. BELLAMY: OKAY. THAT'S FINE.
7 MR. McCUTCHEON: I JUST WANTED TO MAKE
8 SURE WE'RE CLEAR.
9 MR. BELLAMY: ALL RIGHT.
10 Q: But your instructions in preparing this
11 last appraisal came from Jack
12 McCutcheon?
13 A: That's correct.
14 Q: And nobody else?
15 A: That's correct.
16 Q: Okay. No input from Mike Barbee?
17 A: No, sir.
18 Q: None from Tammy Quick?
19 A: No, sir.
20 Q: And none from Steve Gosnell?
21 A: No, sir.
22 Q: Okay. Now, on the first page of Exhibit
23 Number 5, in the last paragraph you say,
24 "I have been requested to revise my
25 appraisal." And I'm talking about that

CP-26 REPORTING

Melissa M. Decker, Court Reporter
PHONE: (843) 446-1691
E-MAIL: melissadecker@sc.rr.com

ROA-247
247

1 would be Appraisal Number 4?
2 A: Yes, sir, Exhibit 5.
3 Q: "I've been requested to review my
4 appraisal since legal counsel advises
5 that the reconfiguration of the roadways
6 does not constitute damages to the
7 remainder of this case. Therefore,
8 there are no damages to the subject as
9 the property will have full
10 ingress/egress by the adjoining road
11 after the acquisition. See description
12 of the remainder for further
13 discussion."
14 MR. McCUTCHEON: THERE WAS ONE WORD IN
15 THERE THAT YOU DIDN'T
16 READ CORRECTLY. YOU
17 SAID REVIEW INSTEAD OF
18 REVISE.
19 MR. BELLAMY: ALL RIGHT.
20 Q: Who requested that you revise your
21 Appraisal Number 5?
22 A: Mr. McCutcheon.
23 Q: Mr. McCutcheon. Okay. And did he cite
24 any case law to you or give you any
25 documentation to support this request?

CP-26 REPORTING

Melissa M. Decker, Court Reporter
PHONE: (843) 446-1691
E-MAIL: melissadecker@sc.rr.com

1 A: I was -- I have some case law, but I'm
2 not an attorney so ---

3 Q: Okay.

4 A: It's case law that I have seen before
5 over the years.

6 Q: Well I really want to kind of
7 understand, because you go ---

8 A: Okay.

9 Q: --- from five seventeen back to seventy-
10 two.

11 A: Yes, sir.

12 Q: And, obviously, the thing of
13 consideration was the loss of the
14 obvious access from Emory Road to
15 Highway 17, which was going to be
16 controlled.

17 A: Yes, sir.

18 Q: You lost that. And you had a cul de sac
19 put on the Socastee Boulevard?

20 A: Yes, sir.

21 Q: Those two pieces, or two elements, were
22 not physically on the property, on Mr.
23 Powell's property?

24 A: That's correct.

25 Q: How did you make the distinction to

CP-26 REPORTING

Melissa M. Decker, Court Reporter
PHONE: (843) 446-1691
E-MAIL: melissadecker@sc.rr.com

1 eliminate the loss of access off Emory
2 Road to 17 in the cul de sac on
3 Socastee; how did you come to that
4 process of not considering that as an
5 element of damages as you had done in
6 Exhibit Number 4?

7 A: It was a legal request. It's based on
8 this limiting condition here.

9 Q: Well what I'm trying to understand is:
10 Were you instructed that you could not
11 consider it, or did you make that
12 decision independently?

13 A: I was instructed ---

14 Q: Okay.

15 A: --- not to consider it per the law as
16 Mr. McCutcheon ---

17 Q: Okay.

18 A: --- interpreted it.

19 Q: Okay. Did he give you any brief or
20 citation, or anything to support what he
21 was telling you, or because he was the
22 guy ordering the deal you just said is
23 that what you're telling me to do and
24 I'm going to do it?

25 A: That's what he was telling me to do and

CP-26 REPORTING

Melissa M. Decker, Court Reporter
PHONE: (843) 446-1691
E-MAIL: melissadecker@sc.rr.com

1 that's what I'm going to do. I
2 considered it like a limiting condition
3 to the appraisal.

4 Q: Okay. Were you required to go beyond
5 that and get an opinion, or did you just
6 accept that he was right and that you
7 could eliminate those two elements of
8 damage?

9 A: I accepted that he was right being the -
10 --

11 Q: Okay. That's fair enough. That's fair
12 enough.

13 A: --- being the legal expert.

14 Q: Okay.

15 MR. McCUTCHEON: SOMETIMES I WONDER.

16 Q: Now, on Page 3 of Exhibit Number -- I'm
17 going to mark this so I don't forget it.

18 A: Number 5.

19 Q: This is Number 5.

20 **LANDOWNER'S DEPOSITION EXHIBIT NUMBER**
21 **FIVE MARKED FOR IDENTIFICATION.**

22 A: Yes, sir.

23 Q: On Page 3 of Exhibit Number 5, at the
24 top you indicate tract location:
25 northeast corner of the Socastee Highway

CP-26 REPORTING

Melissa M. Decker, Court Reporter
PHONE: (843) 446-1691
E-MAIL: melissadecker@sc.rr.com

ROA-251
251

1 and Emory Road.

2 A: Yes, sir.

3 Q: That was a corner lot in the before was
4 it not?

5 A: Yes, sir.

6 Q: Now, as you come down in the before, if
7 you're looking under primary frontage,
8 you indicate plus or minus three hundred
9 and ten, Old Socastee Highway; plus or
10 minus five thirty, Emory, and that was
11 frontage on those respective roads?

12 A: Yes, sir.

13 Q: And then you come back and say plus or
14 minus a hundred and fifty-five feet on
15 Old Socastee Highway; plus or minus two
16 sixty on the new, and the transitional
17 right-of-way of three hundred and
18 eighty-five. Now, in the after, the
19 frontage on those respective roads had
20 changed?

21 A: Yes, sir.

22 Q: Now, you go down the paragraph, and then
23 you indicate under ingress and egress,
24 and you say Old Socastee Highway: full
25 access; Emory Road: full access. And

CP-26 REPORTING

Melissa M. Decker, Court Reporter
PHONE: (843) 446-1691
E-MAIL: melissadecker@sc.rr.com

1 then over on the right you say Old
2 Socastee Highway: full access; Emory
3 Road: full access?
4 A: Yes, sir.
5 Q: Is that correct?
6 A: Yes, sir.
7 Q: That's correct. Well, how is that
8 correct?
9 A: Well they still have frontage and access
10 on those roadways.
11 Q: But it has been diminished in the amount
12 of footage?
13 A: Yes, sir. We -- the transitional right-
14 of-way is kind of hard to define whether
15 that actually is Emory or Socastee.
16 Q: Okay.
17 A: But it has been diminished. We show it
18 about forty feet total.
19 Q: Okay. And you come up with \$72,000.
20 And that's based on Page 4, \$9 a square
21 foot?
22 A: Yes, sir.
23 Q: And that's just for the physical take
24 that the DOT condemned?
25 A: Yes, sir.

CP-26 REPORTING

Melissa M. Decker, Court Reporter
PHONE: (843) 446-1691
E-MAIL: melissadecker@sc.rr.com

1 Q: Now, on Page 5 of Exhibit 5, the purpose
2 of the appraisal, you said, "To
3 determine the difference in the
4 respective market value of this property
5 caused by the acquisition of the right-
6 of-way for the proposed construction of
7 this project as of the date of
8 8/27/2010." The project was the
9 Backgate project, Farrow Parkway, that's
10 the project we're talking about?

11 A: Yes, sir.

12 Q: And, obviously, the property was zoned
13 highway commercial. And as of today
14 it's still zoned highway commercial?

15 A: Yes, sir.

16 Q: Does this appraisal comport with the
17 uniform standards of appraisal practice
18 ---

19 A: Yes, sir.

20 Q: --- to the best of your knowledge?

21 A: Yes, sir.

22 Q: Do the standards of appraisal practice
23 apply where you're given a legal opinion
24 from the employee? I assume you
25 consider Mr. McCutcheon to be your

CP-26 REPORTING

Melissa M. Decker, Court Reporter
PHONE: (843) 446-1691
E-MAIL: melissadecker@sc.rr.com

1 employer?

2 A: Yes, sir.

3 Q: Do they require that you have that in
4 writing as to ---

5 A: They -- I'm not sure about the in
6 writing, but you do need to disclose it
7 within the appraisal in an obvious
8 place.

9 Q: Okay. Well I just am looking in there
10 where exactly he told you, you can't
11 consider those. We'll get to it in just
12 a second, because we'll work over. But
13 it's in there?

14 A: Well, yes, sir. I considered that on
15 Page 1 ---

16 Q: Okay.

17 A: --- of the instruction.

18 Q: Okay. Then on Page 14 of Exhibit 5, we
19 now are in agreement that in the before
20 there were 2.51 acres, or 109,336 square
21 feet?

22 A: Yes, sir. This has the revised size in
23 that.

24 Q: Okay. That's in there. When you say,
25 under ingress and egress, "The subject

CP-26 REPORTING

Melissa M. Decker, Court Reporter
PHONE: (843) 446-1691
E-MAIL: melissadecker@sc.rr.com

1 has exposure from Highway 17 Bypass but
2 does not have direct ingress and egress
3 to Emory Road."

4 MR. McCUTCHEON: WHOA, WHOA, WHOA,
5 WHOA.

6 Q: "Ingress." "Emory Road intersects with
7 Highway 17 Bypass." There isn't any
8 question in the before that Emory Road
9 boarded this tract of land and
10 eventually went out and intersected
11 Highway 17?

12 A: That is correct.

13 Q: All right. And that was one of the
14 access points that this property had in
15 the before?

16 A: Yes, sir.

17 Q: Highway 17 is now a controlled access
18 highway, so that access has been taken?

19 A: That's correct.

20 Q: No question about it?

21 A: No, sir.

22 Q: And it's never going to be open again,
23 as far as we know?

24 A: (Moving head up and down.)

25 Q: Now, between this piece of property,

CP-26 REPORTING

Melissa M. Decker, Court Reporter
PHONE: (843) 446-1691
E-MAIL: melissadecker@sc.rr.com

1 Tract 13, and the right-of-way of
2 Highway 17, what is between those,
3 besides Socastee Boulevard?

4 A: Well there is a tract of land between --
5 at the time of the inspection, there was
6 a tract of land between 17 and Old
7 Socastee Highway.

8 Q: Which is the easement land?

9 A: I am not sure exactly how you would
10 legally describe it. I know there were
11 some right-of-ways that were through it
12 ---

13 Q: Okay. But ---

14 A: --- such as power lines.

15 Q: --- you haven't considered this as being
16 a second row lot have you?

17 A: We considered that there was a tract of
18 land between it and Socastee Highway.
19 Whether you call that a second row or
20 not, we considered it secondary
21 commercial initially.

22 Q: But who owns that tract of land?

23 A: The -- I'm not sure who ---

24 Q: Okay.

25 A: --- the legal owner is of that tract of

CP-26 REPORTING

Melissa M. Decker, Court Reporter
PHONE: (843) 446-1691
E-MAIL: melissadecker@sc.rr.com

1 land.

2 Q: Well, the point is: that didn't go into
3 consideration in your evaluation of the
4 situation of this property and having
5 clear frontage and view?

6 A: It had, it had clear view.

7 Q: Okay.

8 A: We did consider that.

9 Q: And there was no obstruction?

10 A: No, sir.

11 Q: So there's nothing in the land in front
12 of them that obstructs one's view of
13 this tract?

14 A: That's right. There's nothing in the
15 visibility.

16 Q: Okay.

17 A: I think just the power lines were there.

18 Q: All right. And then you say on Page 14
19 that drainage was adequate. Did the
20 crown of the road on Emory Road change
21 in the after as opposed to the before?

22 A: There, I don't think -- just speaking
23 from memory, I don't think that the
24 elevation changed to any significant
25 degree.

CP-26 REPORTING

Melissa M. Decker, Court Reporter
PHONE: (843) 446-1691
E-MAIL: melissadecker@sc.rr.com

1 Q: All right. Did you talk with any
2 engineer about the drainage on this
3 tract?
4 A: No, sir.
5 Q: In the before or the after?
6 A: No, sir.
7 Q: Did you basically leave that up to the
8 DOT?
9 A: That's correct.
10 Q: But in your opinion, you thought it was
11 adequate?
12 A: Yes, sir.
13 Q: When you visited the property, I think
14 on March 14, did you determine that some
15 of the property was being flooded?
16 A: No, sir.
17 Q: Did you go out there and look for that?
18 A: No, sir. I, and not to be, you know,
19 everything down here seems to hold water
20 after it rains, so ---
21 Q: Okay.
22 A: --- it's hard to determine a degree of
23 difference.
24 Q: Now, on Page 19, you had Sale 14, 21,
25 22, 23 and 25.

CP-26 REPORTING

Melissa M. Decker, Court Reporter
PHONE: (843) 446-1691
E-MAIL: melissadecker@sc.rr.com

ROA-259
259

1 A: Yes, sir.

2 Q: And you made your adjustments, and we're
3 not going to go through all those
4 because they've pretty much remained
5 constant with what you used. You
6 probably gave the least weight to Sale
7 14 and the most weight to 23 and 25, as
8 I read your report?

9 A: Probably 22, 23 and 25.

10 Q: Okay. Which one in your mind did you
11 give the most weight to?

12 A: Probably 22 and 23 ---

13 Q: Okay.

14 A: --- as far as their proximity.

15 Q: Okay. Now, down under explanation of
16 adjustments, in the last three lines you
17 say, "Due to the lack of market data, in
18 most cases the adjustments in this
19 appraisal are based on my judgment."

20 COURT REPORTER'S

21 NOTE: (CALL COMING IN OVER
22 INTERCOM IN CONFERENCE
23 ROOM. JUDGE COTTINGHAM
24 IS ON THE PHONE.)

25 Q: Why don't you just take a break for a

CP-26 REPORTING

Melissa M. Decker, Court Reporter
PHONE: (843) 446-1691
E-MAIL: melissadecker@sc.rr.com

ROA-260
260

1 minute? We've got Judge Cottingham on
2 the phone. We've got to deal with a
3 legal question.

4 A: Okay. You want me to step out?

5 Q: Yeah. Just step out.

6 A: Sure. Okay.

7 ***OFF THE RECORD***

8 (Continuation of Examination)

9 BY MR. BELLAMY:

10 Q: Mr. Corbin, on Page 15 of Exhibit 5 ---

11 A: Yes, sir.

12 Q: --- when you look at zoning, there's no
13 question this tract is zoned highway
14 commercial?

15 A: Yes, sir.

16 Q: And under uses allowed, I'm dropping
17 down to about the fifth sentence down.
18 It says, semicolon, "And to discourage
19 any encroachment by industrial or other
20 uses capable of adversely affecting the
21 basic commercial character of this
22 district." What does that language say
23 to you?

24 A: We would translate to be heavy
25 industrial uses that would diminish the

CP-26 REPORTING

Melissa M. Decker, Court Reporter
PHONE: (843) 446-1691
E-MAIL: melissadecker@sc.rr.com

ROA-261
261

1 character, not to include uses that kind
2 of like an office warehouse use. Some
3 people would call that industrial.

4 Q: That's your interpretation ---

5 A: Yes, sir.

6 Q: --- with this thing? Okay. Anything
7 else?

8 A: No, sir.

9 Q: Then drop down. You notice under
10 easements and encroachments: "It should
11 be noted that I am not qualified to
12 detect easements and encroachments, and
13 legal counsel should be retained if
14 there are any indications of title
15 defects."

16 A: Yes, sir.

17 Q: And that's why you have yielded to Mr.
18 McCutcheon on the question of the
19 closing of Emory Road and the cul de sac
20 on Socastee ---

21 A: Yes, sir.

22 Q: --- Boulevard? Okay. But he has given
23 you no written opinion as to why you
24 should disregard the loss of access to
25 Highway 17 on Emory Road or the cul de

CP-26 REPORTING

Melissa M. Decker, Court Reporter
PHONE: (843) 446-1691
E-MAIL: melissadecker@sc.rr.com

1 sac?

2 A: What do you mean written opinion?

3 Q: Written you a letter or ---

4 A: No, sir.

5 Q: --- memorandum or such?

6 A: No, sir.

7 Q: Has he told you orally what his position

8 is?

9 A: Yes, sir.

10 Q: Tell me what that is.

11 A: Just quoted some law as, which I can't

12 recall.

13 MR. McCUTCHEON: I TOLD HIM ABOUT TALENT

14 AND HARDIN ---

15 MR. BELLAMY: RIGHT.

16 MR. McCUTCHEON: --- AND I'LL STIPULATE

17 THAT I HADN'T GIVEN HIM

18 ANYTHING IN WRITING.

19 AND HE HADN'T TALKED

20 ABOUT IT OTHER THAN

21 THAT.

22 MR. BELLAMY: OKAY.

23 MR. McCUTCHEON: BUT YOU CAN STILL ASK

24 HIM IF YOU'D LIKE.

25 Q: So he just told you that he thought

CP-26 REPORTING

Melissa M. Decker, Court Reporter
PHONE: (843) 446-1691
E-MAIL: melissadecker@sc.rr.com

ROA-263
263

1 Talent and Hardin applied?
2 A: Yes, sir.
3 Q: And that was the basis of his
4 instruction to you?
5 A: That's correct.
6 Q: All right.
7 MR. McCUTCHEON: I OBJECT TO THE FORM OF
8 THE QUESTION.
9 MR. BELLAMY: ALL RIGHT. SURE, JACK.
10 Q: Now, we're on Page 19 where you talked
11 about "in most cases the adjustments in
12 this appraisal are based on my
13 judgment."
14 A: Yes, sir.
15 Q: That's just your opinion?
16 A: That's correct.
17 Q: And what weight you gave to the
18 adjustments made?
19 A: That's correct.
20 Q: And that could be subjective could it
21 not?
22 A: Yes, sir.
23 Q: Okay. Then let's turn on over to Page
24 23. At 109,336 square feet you used \$9
25 a square foot?

CP-26 REPORTING

Melissa M. Decker, Court Reporter
PHONE: (843) 446-1691
E-MAIL: melissadecker@sc.rr.com

ROA-264
264

1 A: Yes, sir.

2 Q: Which you rounded off to 984,000 in the
3 before. Do you feel comfortable that,
4 that's a fair market value of the
5 property in the before on August 27th --
6 -

7 A: Yes. I'm sorry; finish. Yes, sir. I
8 do.

9 Q: Okay. Then nothing you would change
10 about that number?

11 A: No, sir.

12 Q: Okay. Then let's get over to Page 24.
13 And I'm going to read this Paragraph 25,
14 most of it. And then you follow me and
15 see if I don't eliminate something,
16 okay? Paragraph, description of
17 remainder: "Prior to the acquisition,
18 the subject contained 2.51 acres of
19 land. The acquisition reduces the total
20 size to 2.327 acres. After the
21 acquisition, there will be new
22 controlled access along Highway 17
23 Bypass, thus closing the intersection
24 with Emory Road and Highway 17 Bypass to
25 the west of the subject. Additionally,

CP-26 REPORTING

Melissa M. Decker, Court Reporter
PHONE: (843) 446-1691
E-MAIL: melissadecker@sc.rr.com

ROA-265
265

1 just north of the subject, Old Socastee
2 Road will be closed with a cul de sac.
3 Access to the subject will" ---
4 MR. McCUTCHEON: THAT'S ACCESS FROM.
5 MR. BELLAMY: EXCUSE ME, JACK.
6 Q: "Access from the subject will now be
7 from Emory Road traveling east
8 northeast. Emory Road provides access
9 to Farrow Parkway to the southwest by
10 Fred Nash Boulevard. Emory Road also
11 intersects with Old Railroad Bed Road."
12 Does it have another name?
13 MR. McCUTCHEON: NOT THAT WE KNOW ABOUT.
14 A: Not that I know about.
15 Q: Okay.
16 A: But I think the new plans are going to
17 show Old Railroad ---
18 Q: Okay.
19 A: --- Bed Road as Nash.
20 Q: All right. "Which will provide eventual
21 access to Old Socastee Road/Highway 17
22 Bypass to the northeast." Again, you
23 put this in caps, "Legal counsel advises
24 that the configuration of the roadways -
25 --

CP-26 REPORTING

Melissa M. Decker, Court Reporter
PHONE: (843) 446-1691
E-MAIL: melissadecker@sc.rr.com

ROA-266
266

1 MR. McCUTCHEON: RECONFIGURATION.

2 Q: --- does not constitute damages to the
3 remainder in this case. Therefore,
4 there is no damages to the subject as
5 the property will have full
6 ingress/egress by the adjoining road
7 after the acquisition." Did I read that
8 correctly?

9 MR. McCUTCHEON: YOU SAID CONFIGURATION
10 INSTEAD OF
11 RECONFIGURATION.

12 MR. BELLAMY: ALL RIGHT.

13 MR. McCUTCHEON: BUT OTHER THAN THAT,
14 EVERYTHING ELSE WAS
15 COOL.

16 MR. BELLAMY: ALL RIGHT.

17 Q: "Therefore, the acquisition does not
18 appear to significantly affect the
19 property shape, topography, frontage or
20 exposure. Based on the DOT elevation
21 plans provided, it does not appear there
22 is a significant change in the road
23 grade with Old Socastee Road and Emory
24 Road after the acquisition. There is
25 sufficient frontage to the north of the

CP-26 REPORTING

Melissa M. Decker, Court Reporter
PHONE: (843) 446-1691
E-MAIL: melissadecker@sc.rr.com

ROA-267
267

1 acquisition along Old Socastee Highway
2 to support a driveway for future
3 development. Additionally, there is
4 sufficient frontage to the east of the
5 acquisition along Emory Road to support
6 a driveway for future development. The
7 fee simple ownership interest is reduced
8 and the remaining land area is
9 sufficient to support future
10 development." Other than the
11 correction, did we read that right?

12 A: Yes, sir.

13 Q: Okay. Now, and you say as vacant. It
14 was your opinion that the land was to be
15 held for sale or for future development?

16 A: Yes, sir; that's correct.

17 Q: And then you come over on Page 25 and
18 basically say in the after there's a
19 101,385 square feet at \$9 a square foot,
20 so it's \$912,000. And then on your
21 distribution of values page, on Page 26
22 you have \$984,000 in the before, and 912
23 in the after, the difference being 72.
24 So based on the instructions from Mr.
25 McCutcheon to not consider any damages

CP-26 REPORTING

Melissa M. Decker, Court Reporter
PHONE: (843) 446-1691
E-MAIL: melissadecker@sc.rr.com

1 to the loss of access, your opinion was
2 that the take for what they actually
3 condemned was \$72,000?

4 A: Yes, sir, that's correct.

5 Q: Okay. Now, you did not attribute any
6 benefit to this tract?

7 A: No, sir, I did not.

8 Q: So this appraisal goes back basically to
9 what your third appraisal was. I think
10 it was 71. This is 72. They were about
11 a thousand dollars apart.

12 A: Yes, sir. And I believe that's
13 attributed to the change in size.

14 Q: All right. Now, if we go back and look
15 at Exhibit Number 4, this is going to be
16 your fourth appraisal. I'm going to go
17 through this with you a little quicker.
18 You went to the site on Page 12 in
19 Exhibit Number 4; is that right?

20 A: Yes, sir.

21 Q: You went to the site on March 11, 2013,
22 which was the same day we were scheduled
23 to try the case?

24 A: Yes, sir.

25 Q: Who accompanied you on that visit?

CP-26 REPORTING

Melissa M. Decker, Court Reporter
PHONE: (843) 446-1691
E-MAIL: melissadecker@sc.rr.com

ROA-269
269

1 A: No one.

2 Q: You went yourself?

3 A: Yes, sir. I just drove down there since
4 I was in town.

5 Q: Did you make any notes or make any
6 observations of what you saw that day?

7 A: No, sir. I just rode through to see
8 kind of what the situation was down
9 there as far as the state of
10 construction.

11 Q: And then on Page 12, you said at the
12 bottom, "The subject property will be
13 impacted by the reconfiguration of the
14 interchange of Highway 707 and Highway
15 17 Bypass"; is that a correct statement?

16 A: Yes, sir.

17 Q: And then you said on Page 13 where you
18 look at site descriptions -- we're still
19 at the old acreage in this appraisal?

20 A: That's correct.

21 Q: And we won't go into that. And then you
22 say that the DOT ought to get them a
23 qualified surveyor if they really want
24 to get into surveying and whatever,
25 distances and so on?

CP-26 REPORTING

Melissa M. Decker, Court Reporter
PHONE: (843) 446-1691
E-MAIL: melissadecker@sc.rr.com

ROA-270
270

1 A: Yes, sir.

2 Q: Now in ingress and egress, you say, "The
3 subject has exposure from Highway 17
4 Bypass but has no direct ingress or
5 egress"; what do you mean by that? Let
6 me be honest: it confused me a little
7 bit because Emory Road does go into
8 Highway 17, and you could enter it in
9 the before going south or north.

10 A: Yes, sir, but that access was off the
11 property site.

12 Q: It's up on the right-of-way of 17 is
13 what you're telling me?

14 A: That's correct.

15 Q: All right.

16 A: It goes through that remainder piece.

17 Q: Okay. But there isn't any question that
18 this property had access in the before
19 down Emory Road to ---

20 A: It ---

21 Q: --- 17?

22 A: Yes, sir.

23 Q: Okay. And then on Page 14 under
24 easements and encroachments said, "It
25 should be noted that I am not qualified

CP-26 REPORTING

Melissa M. Decker, Court Reporter
PHONE: (843) 446-1691
E-MAIL: melissadecker@sc.rr.com

ROA-271
271

1 to detect easements and encroachments
2 and legal counsel should be retained if
3 there is any indication of title
4 defects." Did I read that correctly?

5 A: Yes, sir.

6 Q: You're not a lawyer. You're a licensed
7 appraiser; you're an MAI appraiser?

8 A: That's correct.

9 Q: But you're not an engineer or have any
10 background or expertise in that field?

11 A: No, sir.

12 Q: You're basically to look at the thing as
13 what is something worth, or what it's
14 not worth?

15 A: That would be correct.

16 Q: On Page 22, you came up with \$963,000
17 based on \$9 a square foot. Now, that
18 number changed with Exhibit Number 5 to
19 984,000?

20 A: Yes, sir, that's correct.

21 Q: But that's just taking the acreage of
22 2.51?

23 A: Yes, sir.

24 Q: Okay. And then you come down after
25 income approach at the bottom:

CP-26 REPORTING

Melissa M. Decker, Court Reporter
PHONE: (843) 446-1691
E-MAIL: melissadecker@sc.rr.com

1 "Therefore, based on the information
2 contained in this report, the
3 retrospective opinion of market value of
4 the subject property as of the date of
5 this report is 963. It really has
6 changed to 984 because of the acreage
7 increase?

8 A: Yes, sir. If you refer back, if you
9 correct the size.

10 Q: That's right.

11 A: That's correct.

12 Q: We're just correcting that?

13 A: Yes, sir.

14 Q: Now, on Page 23, under Paragraph 25,
15 which is the description of the
16 remainder, I'm going to read that
17 because it may be of some importance
18 down the road. "Prior to the
19 acquisition, the subject contained
20 2.455," which is now, we know, 2.51?

21 A: Yes, sir.

22 Q: --- "acres of land. The acquisition
23 reduces the total land size to 2.272,"
24 which has changed based on the take.
25 We're not arguing -- I think we're on

CP-26 REPORTING

Melissa M. Decker, Court Reporter
PHONE: (843) 446-1691
E-MAIL: melissadecker@sc.rr.com

1 the same page with the take and what the
2 square footage of the take is, so that's
3 not an issue.

4 A: Yes, sir.

5 Q: "After the acquisition, there will be a
6 new controlled access along Highway 17
7 Bypass, thus closing the intersection
8 with Emory Road and Highway 17 Bypass to
9 the west of the subject. Additionally,
10 just north of the subject, Old Socastee
11 Road will be closed with a cul de sac.
12 Access from the subject will now be from
13 Emory Road traveling east northeast.
14 Emory Road will provide eventual access
15 to Farrow Parkway to the southwest.
16 Emory Road will also eventually
17 intersect with Old Railroad Bed Road,
18 which will provide eventual access to
19 Old Socastee Road, Highway 17 Bypass to
20 the northeast. After the acquisition,
21 visual access from Highway 17 Bypass is
22 changed from typical of the neighborhood
23 before the acquisition to indirect after
24 the acquisition," and that's the first
25 I'd heard that. What did you mean by

CP-26 REPORTING

Melissa M. Decker, Court Reporter
PHONE: (843) 446-1691
E-MAIL: melissadecker@sc.rr.com

1 that term typical to indirect?

2 A: Typical would have been access to those
3 properties on Old Socastee Highway that
4 was common prior to the acquisition.
5 And indirect access was the cul de sac
6 on Socastee Highway precluding driving
7 straight down and having to come back
8 around Emory Road to Old Railroad Bed
9 Road and back up.

10 Q: And when you prepared this appraisal,
11 you did not have any instructions from
12 anyone as to what to consider or not to
13 consider?

14 A: Yes.

15 Q: You did this of your own volition?

16 A: That's correct.

17 Q: These were your opinions in this
18 appraisal, Number 4, as to what the fair
19 market value of the take and the damages
20 were?

21 A: Yes, sir.

22 Q: And because you make a distinction, you
23 go from typical to indirect, in your
24 mind there's a process that's changing
25 as far as access ---

CP-26 REPORTING

Melissa M. Decker, Court Reporter
PHONE: (843) 446-1691
E-MAIL: melissadecker@sc.rr.com

ROA-275
275

1 A: Yes, sir.
2 Q: --- as you're evolving?
3 A: Yes, sir.
4 Q: And then you say, "The acquisition does
5 not appear to significantly affect the
6 property shape, topography, frontage or
7 exposure. Based on the DOT elevation
8 plans provided, it does not appear there
9 is a significant change in the road
10 grade with the Old Socastee Road and
11 Emory Road after the acquisition. There
12 is sufficient frontage to the north of
13 the acquisition along Old Socastee
14 Highway to support a driveway for future
15 development. Additionally, there is
16 sufficient frontage to the east of the
17 acquisition along Emory Road to support
18 a driveway for future development." And
19 then you say, "The fee simple ownership
20 interest is reduced and the remaining
21 land area is sufficient to support
22 development after the acquisition.
23 While the land can be developed after
24 the acquisition with reduced access, the
25 utility has been damaged." Did I read

CP-26 REPORTING

Melissa M. Decker, Court Reporter
PHONE: (843) 446-1691
E-MAIL: melissadecker@sc.rr.com

ROA-276
276

1 that correctly?

2 A: Yes, sir.

3 Q: So it was your opinion when you wrote
4 that sentence that the utility of this
5 tract had been damaged?

6 A: Yes, sir.

7 Q: And then as vacant, you said, "The
8 proposed road project requires a fee
9 acquisition along the subject frontage
10 with portions of Old Socastee Highway
11 and Emory Road. The property continues
12 to possess sufficient size, shape and
13 topography to support development.
14 Exposure and frontage will remain
15 similar to the before condition;
16 however, the property will have reduced
17 access." Did I read that correctly?

18 A: Yes, sir.

19 Q: And that's because of loss of access on
20 Highway 17 and the cul de sac?

21 A: Yes, sir.

22 Q: Okay, sir. And then "After the
23 acquisition, the highest and best use of
24 the subject property remains for light
25 industrial, secondary commercial or

CP-26 REPORTING

Melissa M. Decker, Court Reporter
PHONE: (843) 446-1691
E-MAIL: melissadecker@sc.rr.com

ROA-277
277

1 service utilization; however, based on
2 the changed access, the land value is
3 damaged." Did I read that correctly?
4 A: Yes, sir.
5 Q: And that was your opinion at that time?
6 A: That's correct.
7 Q: That you did independent of any
8 influences from anybody else?
9 A: That's correct.
10 Q: "In my opinion, the highest and best use
11 of the land after as vacant remains to
12 hold for secondary commercial services
13 or light industrial utilization." And
14 then on Page 24, you say under land
15 valuation after: "After the acquisition,
16 the land access has changed from typical
17 to indirect." And you've told me about
18 that?
19 A: Yes, sir. Is that Page 25?
20 Q: Twenty-four.
21 A: Twenty-four.
22 Q: You with me? It's Exhibit 4?
23 A: Yeah. It must have just printed
24 differently.
25 Q: Okay.

CP-26 REPORTING

Melissa M. Decker, Court Reporter
PHONE: (843) 446-1691
E-MAIL: melissadecker@sc.rr.com

1 A: All right.
2 Q: Okay. Have you got it?
3 A: I've got it.
4 Q: Land valuation after. Let's get you a
5 copy that you can look at.
6 A: I've got it right here.
7 Q: Okay. You say, "After the acquisition,
8 the subject has changed from typical to
9 indirect," okay?
10 A: Yes, sir.
11 Q: Access adjustments. And so now you're
12 making in this appraisal an adjustment
13 for what you consider to be damaged
14 access?
15 A: Yes, sir.
16 Q: Okay. "The paired sales data analysis
17 relies on Land Sale "A" and Land Sale
18 "B," and Land Sale "C" and Land Sale
19 "D," which are summarized in the
20 addendum. Land Sale "A" and Land Sale
21 "B" are primary commercial sites located
22 in the Queens Harbor development on
23 Loyola Drive." And that would be going
24 south on the right-hand side from this
25 tract?

CP-26 REPORTING

Melissa M. Decker, Court Reporter
PHONE: (843) 446-1691
E-MAIL: melissadecker@sc.rr.com

1 A: That's correct.

2 Q: "Each has similar frontage and exposure
3 on Highway 17 Bypass. Sale "A" must be
4 accessed by Loyola Drive, which extends
5 along the rear of this tract. Sale "A"
6 accesses more similar to the subject in
7 the after condition. Sale "B" has more
8 typical access by South Strand Drive and
9 Loyola Drive. Sale "B" is more similar
10 to the subject in the before condition;
11 therefore, after adjusting the market
12 conditions and size, these two
13 properties are well suited to extract an
14 access adjustment." You were going and
15 looking at paired sales, which in your
16 mind told you what, maybe a corner lot
17 or an inside lot; that's what you all do
18 when you're looking at paired sales is
19 to try to tell why is one piece more
20 valuable than another piece?

21 A: That's correct.

22 Q: So you used those paired sales to deal
23 with your access adjustments; you're
24 adjusting for the loss of access for
25 Emory on 17 and the cul de sac?

CP-26 REPORTING

Melissa M. Decker, Court Reporter
PHONE: (843) 446-1691
E-MAIL: melissadecker@sc.rr.com

1 A: Yes, sir.

2 Q: And then you go through your
3 phraseology. I'm not going to read all
4 of the next paragraph, but it says,
5 "Therefore, after adjusting for size,
6 these two parcels, properties are well
7 suited to extract an access adjustment.
8 See the following," and then you talk
9 about see the chart. And then you go
10 through a chart here. Now, when you
11 took "A," tell me what "A" and "B"
12 represent in your mind when you were
13 doing this.

14 A: "A" and "B" were primary commercial
15 sites at Queens Harbor. Both of them,
16 they were in a -- "B" was at the light
17 at interchange. "A" was one off, and
18 this represents basically price
19 differences between a first off and a
20 second off property in a primary
21 commercial site.

22 Q: And that helps you try to deal with the
23 access on paired sales?

24 A: That's correct.

25 Q: All right.

CP-26 REPORTING

Melissa M. Decker, Court Reporter
PHONE: (843) 446-1691
E-MAIL: melissadecker@sc.rr.com

1 A: Or the distance.
2 Q: Okay. And your percentage difference
3 was thirty percent?
4 A: That's correct.
5 Q: Okay.
6 A: On a primary commercial.
7 Q: As to these two properties under a
8 paired sales adjustment?
9 A: Yes, sir.
10 Q: Then we go on to the access adjustment
11 and that's where you take this
12 adjustment and carry it forward to
13 Parcels "C" and "D"?
14 A: Yes, sir.
15 Q: And what did you do there?
16 A: Basically the same criteria, but these
17 sales were more of a secondary
18 commercial type use. One of them was,
19 "D" was located much closer up on 707,
20 and Sale "C" was located, removed toward
21 the rear of the park. And this was a
22 measurement of a, more of a secondary
23 commercial service type use.
24 Q: Okay. And what did that help you
25 determine? What ---

CP-26 REPORTING

Melissa M. Decker, Court Reporter
PHONE: (843) 446-1691
E-MAIL: melissadecker@sc.rr.com

1 A: This gave us, this showed on -- and on
2 the lower price range you were probably
3 looking at about a fifty-three percent
4 difference.

5 Q: So you come down and you've got
6 percentage difference. And then we're
7 not going to go through all the
8 adjustments, but you made an adjustment
9 and it showed a percentage differential
10 of fifty-three percent?

11 A: That's correct.

12 Q: And that percentage represents what,
13 Corbin?

14 A: That represents the reduction in value
15 for an access, indirect access.

16 Q: Okay. Attributable to the loss of
17 access on Emory Road to 17 and the cul
18 de sac?

19 A: That's correct.

20 Q: Both of those considered together?

21 A: Yes, sir.

22 Q: So you're considering that percentage,
23 those two are now comingled together?

24 A: That's correct.

25 Q: And then you go down and say, "As shown

CP-26 REPORTING

Melissa M. Decker, Court Reporter
PHONE: (843) 446-1691
E-MAIL: melissadecker@sc.rr.com

1 in the paired analysis, it indicates
2 that an adjustment range from thirty
3 percent to fifty-three percent is
4 appropriate for the change from typical
5 access to indirect access; is that
6 correct?

7 A: That's correct.

8 Q: "The subject will have inferior access
9 compared with Sale "A" and an adjustment
10 greater than thirty percent is
11 reasonable." So you're saying it's
12 entitled to an adjustment?

13 A: Yes, sir.

14 Q: After the acquisition, the subject will
15 have similar access to Sale "C";
16 however, the subject will maintain its
17 exposure along Highway 17, thus an
18 adjustment slightly less than fifty-
19 three percent is appropriate. Based on
20 the paired sales data analysis, after
21 the acquisition, a fifty percent
22 downward adjustment is reasonable." So
23 you're giving the benefit to Mr.
24 Powell's tract of land?

25 A: That's correct.

CP-26 REPORTING

Melissa M. Decker, Court Reporter
PHONE: (843) 446-1691
E-MAIL: melissadecker@sc.rr.com

1 Q: And this is your work product that you
2 did and assembled on your own volition
3 acting as an appraiser in evaluating the
4 take and damages?

5 A: That's correct.

6 Q: Okay, sir. And then when you got
7 through, you came up on Page 27 of
8 Exhibit Number 4 with 98,989 square feet
9 at \$9 a square foot. So you still
10 maintain the value square footage, the
11 land. You didn't reduce the square
12 footage value; you just did the
13 percentages?

14 A: That's correct.

15 Q: And then you rounded up to \$446,000. So
16 if we go over to your distribution of
17 value on Page 28, subject to the 2.51
18 acre adjustment in the take which we all
19 agree on, you came up with the before
20 value of 963 in this appraisal. In the
21 after, you said it was worth \$446,000,
22 and that was your opinion after the take
23 and the damages; that's what the tract
24 was worth?

25 A: Yes, sir.

CP-26 REPORTING

Melissa M. Decker, Court Reporter
PHONE: (843) 446-1691
E-MAIL: melissadecker@sc.rr.com

1 Q: So you indicated the difference of
2 \$517,000, which as I read your report,
3 it's 72,000 for the take and 445,000 for
4 damages to the remainder?

5 A: Yes, sir.

6 Q: And that was your opinion when you
7 signed this report on March 14, 2013?

8 A: Yes, sir.

9 Q: All right, sir. And if you went to
10 trial tomorrow morning, and this
11 appraisal was determined by the court to
12 be relevant, this would still be your
13 opinion?

14 A: Yes, sir.

15 Q: Give me just a minute. I think that's
16 got it.

17 MR. McCUTCHEON: I JUST HAVE ONE
18 QUESTION.

19 **EXAMINATION**

20 BY MR. McCUTCHEON:

21 Q: Mr. Haskell, the numbers that you and
22 Mr. Bellamy just talked about to arrive
23 at the additional compensation all dealt
24 with the issue of access, correct?

25 A: That's correct.

CP-26 REPORTING

Melissa M. Decker, Court Reporter
PHONE: (843) 446-1691
E-MAIL: melissadecker@sc.rr.com

ROA-286
286

1 Q: Thank you. That's all I had.
2 (The deposition concluded at 2:53 p.m.)

CP-26 REPORTING

Melissa M. Decker, Court Reporter
PHONE: (843) 446-1691
E-MAIL: melissadecker@sc.rr.com

ROA-287
287

Melissa M. Decker
Verbatim Reporter
359 Vesta Drive
Myrtle Beach, South Carolina 29579
e-mail: melissadecker@sc.rr.com
843/446-1691

March 26, 2013

VIA EMAIL

H. Corbin Haskell, MAI
Robinson Company of Greenville, Inc.
610 North Main Street
Greenville, SC 29601

In Re: SCDOT v. David Franklin Powell
Case No: 2010-CP-26-07961

Dear Mr. Haskell:

Please find attached a copy of your deposition taken in the above-referenced case, on Monday, March 25th, 2013.

At the time of the deposition, you requested the opportunity to read and sign your transcript and complete the errata sheet, if necessary, together with the signature page, and it was agreed by counsel of record this could be done via PDF.

Please read, review, and complete the signature page, and errata sheet, if necessary. Please note you will need to print Pages 55 and 56 and return to me via PDF at your very earliest convenience due to the trial in this matter is scheduled for next Monday, April 1st, 2013. Upon receipt of the original signature page and errata sheet, they will be sealed and made a part of your original transcript, and I will forward a copy of same to counsel of record.

Should the pages not be returned, the deposition shall be considered complete with this letter in lieu of the signature page and errata sheet.

Thank you in advance for your assistance in this matter.

Sincerely,



Melissa M. Decker
Verbatim Voice Writer

cc: Howell V. Bellamy, Jr., Esquire
Robert S. Shelton, Esquire
John B. McCutcheon, Jr., Esquire

SIGNATURE PAGE

I do hereby certify that I have read the foregoing deposition given by me before Melissa M. Decker, a Notary Public for South Carolina, in Horry County, South Carolina.

(Circle A or B below)

(A) Said deposition is correct as is and requires no changes.

(B) I desire that the changes attached hereto, described on the "Errata Sheet" be incorporated into said deposition.

H. CORBIN HASKELL

Date

CP-26 REPORTING

Melissa M. Decker, Court Reporter
PHONE: (843) 446-1691
E-MAIL: melissadecker@sc.rr.com

[illegible]

Melissa M. Decker, Court Reporter
PHONE: (843) 446-1691
E-MAIL: melissadecker@sc.rr.com

ROA-290
290

CERTIFICATE

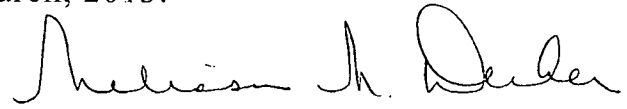
I, Melissa M. Decker, Notary Public in and for the State of South Carolina, do hereby certify that there appeared before me the foregoing witness;

That said witness was sworn by me to state the truth, the whole truth and nothing but the truth;

That the testimony was recorded by me, by open tape and Stenomask, reduced to typewriting and proofed under my direct supervision and the foregoing consecutively numbered pages are a complete and accurate record of the testimony given at said time by said witness;

That the undersigned is neither of kin nor in anywise associated with any of the parties to said cause of action, nor any counsel thereto, and that I am not interested in the event(s) thereof.

IN WITNESS WHEREOF I have hereunto set my hand and seal this the 26th day of March, 2013.



Melissa M. Decker
Court Reporter
Notary Public in and for
The State of South Carolina
My Commission Expires: 1-23-14

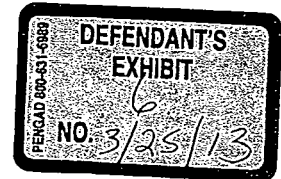
CP-26 REPORTING

Melissa M. Decker, Court Reporter
PHONE: (843) 446-1691
E-MAIL: melissadecker@sc.rr.com

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
C/A NO. 2010-CP-26-07961

Road/Route Interchange at US 17 Bypass
and SC 707/Farrow Parkway
File 26.036774A
Project HERR
Pin 36774 RD01
Tract 13



South Carolina Department of Transportation,)
)
Condemnor,)
)
vs.)
)
David Franklin Powell,)
)
Landowner.)
_____)

**AMENDED NOTICE
OF DEPOSITION
OF CORBIN HASKELL**

**TO: JOHN B. MCCUTCHEON, JR., ESQ., ATTORNEY FOR THE
CONDEMNOR**

YOU WILL PLEASE TAKE NOTICE THAT the Landowner, David Powell, by the undersigned attorneys, will take the oral deposition of:

CORBIN HASKELL (SCDOT's APPRAISER)

Mr. Haskell will testify on behalf of the said South Carolina Department of Transportation, with respect to the following matters:

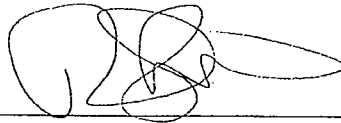
1. Any and all matters in connection with condemning the subject property.

The said deposition is taken pursuant to Rule 30 of the *South Carolina Rules of Civil Procedure* and will be taken on **Monday, March 25, 2013 beginning at 2:00pm** at the law offices of Bellamy Rutenberg, Copeland, Epps, Gravely & Bowers, 1000 29th Avenue, North, Myrtle Beach, South Carolina 29577, before a notary public or some other officer

authorized to administer oaths. The oral deposition will continue from day to day until completed.

YOU WILL PLEASE TAKE FURTHER NOTICE that the above named witness, Corbin Haskell, shall be subpoenaed to appear at the said time and place pursuant to said Rules of Court.

YOU WILL PLEASE TAKE FURTHER NOTICE that you are invited to attend and take such part as is fit and proper.



Howell V. Bellamy, Jr., Esq., SCB #00642
Robert S. Shelton, Esq., SCB #68543
BELLAMY, RUTENBERG, COPELAND,
EPPS, GRAVELY & BOWERS, P.A.
1000 29th Avenue North
Myrtle Beach, SC 29577
tel: (843) 448-2400
Attorneys for Landowner

Myrtle Beach, South Carolina
March 13, 2013

STATE OF SOUTH CAROLINA

ISSUED BY THE COMMON PLEAS COURT IN THE COUNTY OF HORRY

Name South Carolina Dep't of Transportation,
Condemnor

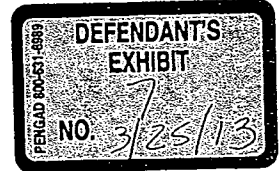
v.

AMENDED SUBPOENA duces tecum **IN A CIVIL CASE**

Name David Franklin Powell,
Landowner

Case Number: 2010-CP-26-07961
Pending in Horry County

TO: Corbin Haskell
c/o John B. McCutcheon, Jr., Esq.
Thompson & Henry, P.A.
P.O. Box 1740
Conway, SC 29528



☐ YOU ARE COMMANDED to appear in the above named court at the place, date and time specified below to testify in the above case.

PLACE OF TESTIMONY

COURTROOM:

DATE AND TIME

☒ YOU ARE COMMANDED to appear at the place, date and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION Bellamy Law Firm, P.A.
1000 29th Avenue North
Myrtle Beach, SC 29577

DATE AND TIME:

March 25, 2013 at 2:00pm

☒ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects in your possession, custody or control at the place, date and time specified below (list documents or objects):

See attached Exhibit "A"

PLACE Bellamy Law Firm, P.A.
1000 29th Avenue North
Myrtle Beach, SC 29577

DATE AND TIME:

March 25, 2013 at 2:00pm

☐ YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PLACE

DATE AND TIME:

ANY SUBPOENAED ORGANIZATION NOT A PARTY TO THIS SUIT IS HEREBY DIRECTED PURSUANT TO RULE 30(b)(6), SOUTH CAROLINA RULES OF CIVIL PROCEDURE, TO FILE A DESIGNATION WITH THE COURT SPECIFYING ONE OR MORE OFFICERS, DIRECTORS, OR MANAGING AGENTS, OR OTHER PERSONS WHO CONSENT TO TESTIFY ON ITS BEHALF, AND SHALL SET FORTH, FOR EACH PERSON DESIGNATED, THE MATTERS ON WHICH HE WILL TESTIFY OR PRODUCE DOCUMENTS OR THINGS. THE PERSON SO DESIGNATED SHALL TESTIFY AS TO MATTERS KNOWN OR REASONABLY AVAILABLE TO THE ORGANIZATION.

I CERTIFY THAT THE SUBPOENA IS ISSUED IN COMPLIANCE WITH RULE 45(c)(1), AND THAT NOTICE AS REQUIRED BY RULE 45(b)(1) HAS BEEN GIVEN TO ALL PARTIES.

ATTORNEY/ISSUING OFFICER'S SIGNATURE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT)

DATE

Attorneys for Landowner

March 13, 2013

ATTORNEY/ISSUING OFFICER'S NAME ADDRESS AND PHONE NUMBER

Howell V. Bellamy, Jr. and Robert S. Shelton, Post Office Box 357, Myrtle Beach, SC 29578 (843) 448-2400

SUBPOENA EXHIBIT "A"

You are hereby requested under the provisions of Rule 45 of the *South Carolina Rules of Civil Procedure* to produce and permit Landowner's attorneys to inspect the documents and tangible things designated hereafter which are in your possession, custody, control, or are otherwise available to you and are responsive to the requests contained in the paragraphs below.

**YOU MUST COMPLY WITH THIS REQUEST BY BRINGING
ANY AND ALL RELEVANT DOCUMENTATION THAT MAY
PERTAIN TO THE SUBJECT OF THIS ACTION.**

The subject of this action includes, but is not limited to the following matters:

1. Any and all statements and documents, including but not limited to, reports, analysis, studies, letters, correspondence, ledgers, checks, receipts, invoices, memoranda, records or notations of conversations or conferences or other documentation that may pertain to the subject of this action and which may be utilized at the time of trial in any manner whatsoever.
2. Any and all plats, plans, photographs, construction plans, sketches, cross-sections, profile plans, environmental studies, noise studies, light studies prepared and utilized in connection with condemning the subject property.
3. Any and all appraisal reports prepared and utilized in connection with condemning the subject property.
4. Any and all records concerning any feasibility studies, impact studies, topographical studies, traffic studies, and/or any other studies conducted in connection with condemning the subject property.
5. Any and all engineering reports prepared and utilized in connection with condemning the subject property.
6. Any and all books of comparable sales utilized in connection with condemning the subject property.
7. All other documentary material relating to the property which is the subject of this litigation, or which in any way relate to the claim or defense of this matter that is in your possession, known or believed to be in the possession of others with the identity of the person or entity in possession of the materials, and all such materials which you intend to introduce as evidence at the trial of this matter.

8. Any and all photographs, video tapes, tape recordings, and other documents that relate, directly or indirectly, to any claim, defense, or issue in this case.

9. All correspondence, reports, notes, documents, and other information that:

- a. you provided to any party herein; and
- b. any party herein provided to you.

10. Any and all documents which you intend to introduce at the trial of this action, whether for purposes of evidence or impeachment.

STATE OF SOUTH CAROLINA)
) COURT OF COMMON PLEAS
COUNTY OF HORRY) CASE NO: 2010-CP-26-07961

Road/Route Interchange at US 17 Bypass
 and SC 707/Farrow Parkway
File 26.036774A
Project HORRY
PIN 36774 RD01
Tract 13

SOUTH CAROLINA DEPARTMENT)
OF TRANSPORTATION,)
)
 Condemnor,)
)
-versus-)
)
DAVID FRANKLIN POWELL,)
 Landowner,)

)

**THE DEPOSITION
OF
MICHAEL W. BARBEE**

Monday, March 25th, 2013
10:06 a.m. – 10:16 a.m.

The deposition of MICHAEL W. BARBEE, taken on
the 25th day of March, 2013 at THE BELLAMY LAW
FIRM, located at 1000 29th Avenue North, Myrtle Beach,
South Carolina 29577.

CP-26 REPORTING

Melissa M. Decker, Court Reporter
PHONE: (843) 446-1691; E-MAIL: melissadecker@sc.rr.com

APPEARANCES:

FOR THE CONDEMNOR:

John B. McCutcheon, Jr., Esquire
THOMPSON & HENRY, P.A.
1300 Second Avenue, Third Floor
Conway, South Carolina 29526

FOR THE LANDOWNER:

Howell V. Bellamy, Jr., Esquire
Robert S. Shelton, Esquire
THE BELLAMY LAW FIRM
1000 29th Avenue North
Myrtle Beach, South Carolina 29577

ALSO PRESENT:

David Franklin Powell

INDEX

EXAMINATION OF WITNESS:	PAGE
MICHAEL W. BARBEE	
Examination by Mr. Shelton	05
Certificate of Court Reporter	17

****THIS TRANSCRIPT MAY CONTAIN QUOTED MATERIAL. SUCH
MATERIAL IS REPRODUCED AS READ OR QUOTED BY THE
SPEAKER.***

CP-26 REPORTING

Melissa M. Decker, Court Reporter
PHONE: (843) 446-1691
E-MAIL: melissadecker@sc.rr.com

INDEX OF EXHIBITS

Landowner's Deposition Exhibit Number 1 05
(Amended Notice of Deposition of SCDOT's
30(b)(6) witness, with attached Subpoena
duces tecum - pre-marked)

Landowner's Deposition Exhibit Number 2 05
(Amended Notice of Deposition of Michael W.
Barbee, with attached Subpoena duces tecum -
pre-marked)

Landowner's Deposition Exhibit Number 3 14
(Plat, Page 12, updated plan sheet taken from
appraisal report)

Landowner's Deposition Exhibit Number 4 14
(SCDOT Proposed Plans for Interchange at U.S.
17 Bypass and SC 707 Farrow Parkway, Pages 3
and 4)

CP-26 REPORTING

Melissa M. Decker, Court Reporter
PHONE: (843) 446-1691
E-MAIL: melissadecker@sc.rr.com

STIPULATIONS

The deposition will be taken before
Melissa M. Decker, a Notary Public and Court
Reporter in and for the State of South
Carolina.

It is stipulated and agreed that this
deposition is being taken pursuant to the
governing rules.

It is stipulated and agreed that all
objections, except as to the form of the
question, will be reserved until the time of
the trial.

It is stipulated and agreed between
counsel and the above witness that the
reading and signing of the above deposition
be, and the same, are hereby not waived.

CP-26 REPORTING

Melissa M. Decker, Court Reporter
PHONE: (843) 446-1691
E-MAIL: melissadecker@sc.rr.com

ROA-300
300

1 MICHAEL W. BARBEE, HAVING BEEN DULY
2 SWORN, WAS DEPOSED AS FOLLOWS:

3 **EXAMINATION**

4 BY MR. SHELTON:

5 Q: Good morning, Mr. Barbee. Has anything
6 in your professional or your career
7 background that you've given me in
8 earlier depositions changed since our
9 last deposition?

10 A: No, sir.

11 Q: Okay. I'm going to hand you what has
12 been marked as Landowner's Exhibits 1
13 and 2. Those are the notices of
14 depositions for the DOT's 30(b)(6)
15 witness. Are you here in that capacity
16 today?

17 **LANDOWNER'S DEPOSITION EXHIBIT NUMBER**
18 **ONE PREVIOUSLY MARKED AND**
19 **IDENTIFIED FOR THE RECORD.**

20 A: Yes, sir.

21 Q: And the notice of deposition for the
22 DOT's engineer. Are you here in that
23 capacity today?

24 **LANDOWNER'S DEPOSITION EXHIBIT NUMBER**
25 **TWO PREVIOUSLY MARKED AND**

CP-26 REPORTING

Melissa M. Decker, Court Reporter
PHONE: (843) 446-1691
E-MAIL: melissadecker@sc.rr.com

IDENTIFIED FOR THE RECORD.

A: Yes, sir.

Q: Okay. Did those notices instruct you to
bring your file with you?

MR. McCUTCHEON: THEY PROBABLY DID, AND
BECAUSE OF THE SHORT
NOTICE OF IT I DIDN'T
GET IT TO HIM TO GET
HIM THE FILE.

MR. SHELTON: OKAY.

Q: What I'm trying to build in the
transcript is the plats that we're
dealing with today are not your personal
working copies; is that correct?

A: Can you repeat that, Mr. Shelton?

Q: You did not bring your highway
constructions plans here with you today?

A: No, sir. I did not.

Q: And I've given you a set of plans. I
don't know if they're the most current,
but do you recognize those plans?

A: Yes, sir.

Q: And then your attorney has provided us
an appraisal report that has at Page 12
an updated plan sheet; do you recognize

CP-26 REPORTING

Melissa M. Decker, Court Reporter
PHONE: (843) 446-1691
E-MAIL: melissadecker@sc.rr.com

1 that plan sheet?

2 A: Yes, sir.

3 Q: When I earlier deposed you, I asked you
4 to let us know if you made any changes
5 to the plans. And I asked you distances
6 to Tract 13 for a traveler going
7 northbound and a traveler going
8 southbound and different routes they
9 might go as well. Have those distances
10 changed now?

11 A: One, the distance has changed due to the
12 introduction of the cul de sac.

13 Q: Okay. When I deposed you the last time,
14 I asked you a northbound traveler coming
15 from the south side of Farrow Parkway,
16 what would be the point where he would
17 have the last opportunity to exit before
18 he would miss his exit, that has not
19 changed has it?

20 A: No, sir.

21 Q: Well let me ask you this then: A
22 northbound traveler who exits south of
23 Farrow Parkway, the distance to this
24 tract has not changed for that traveler
25 has it?

CP-26 REPORTING

Melissa M. Decker, Court Reporter
PHONE: (843) 446-1691
E-MAIL: melissadecker@sc.rr.com

1 A: No, sir.

2 Q: Okay. But a northbound traveler who
3 does not exit south of Farrow Parkway,
4 what is the distance to this tract from
5 the point where Emory Road used to
6 intersect with Highway 17?

7 A: That distance is approximately 2.24
8 miles.

9 Q: Have you measured that distance since
10 the introduction of the cul de sac?

11 A: Yes.

12 Q: And a southbound traveler, when they
13 turn left onto Shetland Lane, what is
14 the distance to this tract after the
15 introduction of the cul de sac?

16 A: Approximately 1.25 miles.

17 Q: Has the distance to Tract 13 changed for
18 any other travelers?

19 A: No, sir.

20 Q: And who is constructing the cul de sac?

21 A: The cul de sac will be constructed by
22 the DOT and the county's contractor,
23 which is Balfour Beatty Infrastructure.

24 Q: Okay. And is that being constructed
25 with the Ride on a Penny Fund?

CP-26 REPORTING

Melissa M. Decker, Court Reporter
PHONE: (843) 446-1691
E-MAIL: melissadecker@sc.rr.com

1 A: Yes, sir.

2 Q: Okay. So that's part of the
3 construction project that you've called
4 the interchange at Highway 17 and Farrow
5 Parkway?

6 A: Yes, sir.

7 Q: If you'll give us just a moment.

8 COURT REPORTER'S

9 NOTE: (MR. BELLAMY AND MR.
10 SHELTON CONFERRING.)

11 Q: First of all, what is that Frontage Road
12 in front of Tract 13 now called?

13 A: Old Socastee Highway.

14 Q: And is that a county maintained road or
15 a state maintained road?

16 A: That is a state maintained roadway.

17 Q: And what about Emory Road?

18 A: Emory Road is a county maintained
19 roadway.

20 Q: And what I believe you're now calling
21 Fred Nash Boulevard, is that county or
22 state?

23 A: Well Fred Nash Boulevard is the road
24 between Farrow Parkway and Emory Road.
25 Old Railroad Bed is the roadway from

CP-26 REPORTING

Melissa M. Decker, Court Reporter
PHONE: (843) 446-1691
E-MAIL: melissadecker@sc.rr.com

1 Emory Road to Old Socastee Boulevard.
2 Q: And can you mark that on this? Here's a
3 blue pen.
4 A: Yes, sir.
5 Q: If you will identify the names of those
6 roads and tell me who maintains them.
7 A: (Complying with request.)
8 Q: And what's Old Railroad Road going to be
9 called now?
10 A: That Old Railroad Bed Road is a county
11 maintained road and it's my
12 understanding that it will still remain
13 Old Railroad Bed Road.
14 Q: And that becomes the Frontage Road does
15 it not?
16 A: Correct.
17 Q: And the Frontage Road was Old Socastee
18 Highway, but it will now be called
19 Railroad Road?
20 A: No. The Old Railroad Bed Road at some
21 point will change to Old Socastee
22 Highway because Old Socastee Highway
23 continues to run from Shetland to this
24 point where Old Railroad Bed comes in.
25 So at some point, the naming will

CP-26 REPORTING

Melissa M. Decker, Court Reporter
PHONE: (843) 446-1691
E-MAIL: melissadecker@sc.rr.com

1 transition to Old Railroad Bed Road.

2 Q: And going north on Socastee, is that
3 state maintained?

4 A: Yes.

5 Q: So there's a transition point somewhere
6 ---

7 A: Correct.

8 Q: --- where the curve is?

9 A: That is correct.

10 Q: Where the maintenance goes from state to
11 county?

12 A: Correct.

13 Q: Okay.

14 A: And let me continue here. This is Fred
15 Nash down here, which is off the map you
16 handed me, Mr. Shelton, and it extends
17 to Farrow Parkway. This is Emory Road.

18 Q: Okay. And is Fred Nash county or state?

19 A: City.

20 Q: City. Okay. And then it crosses Farrow
21 Parkway, is that county or state?

22 A: Fred Nash ends at Farrow Parkway.

23 Q: What begins on the other side of Farrow
24 Parkway?

25 A: That is Crow Lane, which I'm unsure of

CP-26 REPORTING

Melissa M. Decker, Court Reporter
PHONE: (843) 446-1691
E-MAIL: melissadecker@sc.rr.com

ROA-307
307

1 the ownership of that. I believe that
2 may be privately maintained.

3 Q: Okay. And tell me about the curve
4 around Tract 13. That used to be a
5 corner there did it not?

6 A: Yes, sir.

7 Q: And as a result of this project, it is
8 now a curve?

9 A: That is correct.

10 Q: Has the grade or slant of that road
11 surface altered from the before to the
12 after?

13 A: The grade of the roadway is
14 approximately the same grade as it is
15 now. Slant, I'm not sure what you're
16 referring to there.

17 Q: Has there been a bank put there now?

18 A: Yes, there is some banking in the
19 roadway.

20 Q: Okay. That if a drop of water landed on
21 it now, as-built, where would it go?

22 A: It would go to the inside of the curve
23 due to the banking.

24 Q: Toward Tract 13?

25 A: That is correct.

CP-26 REPORTING

Melissa M. Decker, Court Reporter
PHONE: (843) 446-1691
E-MAIL: melissadecker@sc.rr.com

1 Q: Is that the way it was in the before,
2 when it was a corner?

3 A: I'm unsure of the drainage pattern in
4 the before condition. I'm sure there
5 was some water being collected via some
6 roadside ditches, which will be the same
7 case in the after.

8 Q: Did you personally inspect the drainage
9 system at Tract 13 prior to the
10 improvements being made?

11 A: I was in the area many times before
12 construction, but I did not conduct a
13 formal inspection of the existing
14 drainage. Our consultants are hired for
15 that purpose and they did that job.

16 Q: And is this, what we've discussed just
17 now, what you understand to be the basis
18 of what you're going to testify to at
19 trial?

20 A: Yes, sir.

21 Q: Is there anything which we haven't
22 discussed in any of your depositions
23 that you intend to testify to at trial?

24 A: No, sir.

25 Q: I believe that's all we have.

CP-26 REPORTING

Melissa M. Decker, Court Reporter
PHONE: (843) 446-1691
E-MAIL: melissadecker@sc.rr.com

1 MR. McCUTCHEON: I DON'T HAVE ANY
2 QUESTIONS.
3 COURT REPORTER: I HAVE ONE. WERE YOU
4 GOING TO MARK THAT MAP?
5 MR. SHELTON: OH, I'M SORRY. YEAH, I
6 DO NEED TO MARK THAT,
7 PAGE 12.

8 LANDOWNER'S DEPOSITION EXHIBIT NUMBER
9 THREE MARKED FOR IDENTIFICATION.

10 MR. SHELTON: AND THIS PLAN SHEET, 3
11 AND 4.

12 LANDOWNER'S DEPOSITION EXHIBIT NUMBER
13 FOUR MARKED FOR IDENTIFICATION.

14 (The deposition concluded at 10:16 a.m.)
15
16
17
18
19
20
21
22
23
24

CP-26 REPORTING

Melissa M. Decker, Court Reporter
PHONE: (843) 446-1691
E-MAIL: melissadecker@sc.rr.com

ROA-310
310

SIGNATURE PAGE

I do hereby certify that I have read the foregoing deposition given by me before Melissa M. Decker, a Notary Public for South Carolina, in Horry County, South Carolina.

(Circle A or B below)

(A) Said deposition is correct as is and requires no changes.

(B) I desire that the changes attached hereto, described on the "Errata Sheet" be incorporated into said deposition.

MICHAEL W. BARBEE

Date

CP-26 REPORTING

Melissa M. Decker, Court Reporter
PHONE: (843) 446-1691
E-MAIL: melissadecker@sc.rr.com

[illegible]

Melissa M. Decker, Court Reporter
PHONE: (843) 446-1691
E-MAIL: melissadecker@sc.rr.com

ROA-312
312

CERTIFICATE

I, Melissa M. Decker, Notary Public in and for the State of South Carolina, do hereby certify that there appeared before me the foregoing witness;

That said witness was sworn by me to state the truth, the whole truth and nothing but the truth;

That the testimony was recorded by me, by open tape and Stenomask, reduced to typewriting and proofed under my direct supervision and the foregoing consecutively numbered pages are a complete and accurate record of the testimony given at said time by said witness;

That the undersigned is neither of kin nor in anywise associated with any of the parties to said cause of action, nor any counsel thereto, and that I am not interested in the event(s) thereof.

IN WITNESS WHEREOF I have hereunto set my hand and seal this the 25th day of March, 2013.

Melissa M. Decker
Court Reporter
Notary Public in and for
The State of South Carolina
My Commission Expires: 1-23-14

CP-26 REPORTING

Melissa M. Decker, Court Reporter
PHONE: (843) 446-1691
E-MAIL: melissadecker@sc.rr.com

ROAD IMPROVEMENT DEVELOPMENT EFFORT PROGRAM

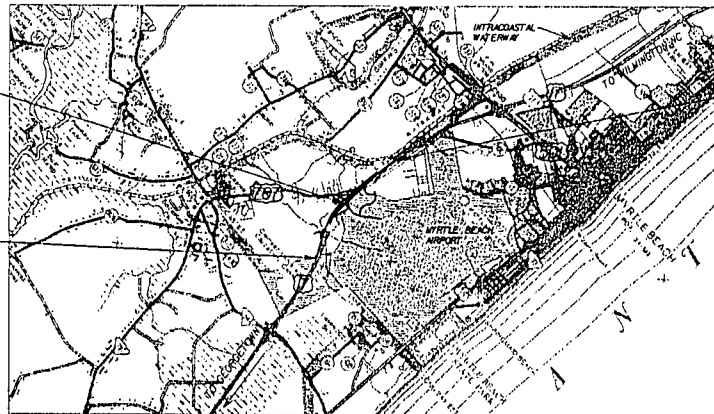
INDEX OF SHEETS

SEE SHEET IL1 FOR INDEX



Working Plans
as of
09/16/2013

PROPOSED PLANS FOR INTERCHANGE AT US 17 BYPASS AND SC 707 / FARROW PARKWAY HORRY COUNTY FILE 26.036774A PROJECT NO. HRR



CONSTRUCT DUAL 1,246.34 LF CONCRETE BRIDGES
OVER SC707/FARROW PKWY FROM
STA.237+79.83 TO STA.250+26.17.
SEE BRIDGE PLANS.

FILE NO.26.036774A
PROJECT NO.HRR
US 17 BYPASS
BEGIN STA.198+65.00
SEE SHEET 6

3 DAYS BEFORE DIGGING IN
SOUTH CAROLINA
CALL 811

PALMETTO UTILITY PROTECTION SERVICES, INC. (PUPS)
ALL UTILITIES MAY NOT BE A MEMBER OF PUPS.

RAILROAD INVOLVEMENT?
YES/NO

TRAFFIC DATA: US 17 BYPASS

2013 ADT 99,000

2033 ADT 129,000

TRUCKS 3 %

LAYOUT

SCALE 1 INCH = 4000 FEET

MAPA RE:	SKINROADS	TOTAL
NET LENGTH OF ROADWAY	1.468	4.047 5.513 MILES
NET LENGTH OF BRIDGES	0.236	0.000 0.236 MILES
NET LENGTH OF PROJECT	1.702	4.047 5.749 MILES
LENGTH OF EXCEPTIONS	0.000	0.000 0.000 MILES
GROSS LENGTH OF PROJECT	1.702	4.047 5.749 MILES

EQUALITIES IN STATIONING

NONE

NOTE: BRIDGE PLANS BOUND UNDER SEPARATE COVER.
NOTE: EXCEPT AS MAY OTHERWISE BE SPECIFIED ON THE PLANS OR IN THE SPECIAL PROVISIONS, ALL MATERIALS AND WORKMANSHIP ON THIS PROJECT SHALL CONFORM TO THE SOUTH CAROLINA DEPARTMENT OF TRANSPORTATION STANDARD SPECIFICATIONS FOR HIGHWAY CONSTRUCTION (2007 EDITION) AND THE STANDARD DRAWINGS FOR ROAD CONSTRUCTION IN EFFECT AT THE TIME OF LETTING.

CONSULTING ENGINEERING FIRM



STV Incorporated
201 S. HILL AVENUE, SUITE 100, MYRTLE BEACH, SC 29577
TEL: 843.681.1111 FAX: 843.681.1112

ENGINEER OF RECORD



FOR CONSTRUCTION: _____ DATE _____

NO.	DATE	REVISION	DESCRIPTION
1	09/16/13	REVISED TOTAL SHEET NUMBER	
2	09/16/13	REVISED TOTAL SHEET NUMBER	
3	09/16/13	REVISED TOTAL SHEET NUMBER	
4	09/16/13	REVISED TOTAL SHEET NUMBER	
5	09/16/13	REVISED TOTAL SHEET NUMBER	

FILE 26.036774
36774 R001
SHEET PROVIDED AFTER LETTING

2000
2001
AASHTO "A" Policy on Geometric Design of Highways and Streets

NPDES PERMIT INFORMATION

NPDES District
Area = 71.2 Acres(s)

Approximate Location of Roadway is
Begin
Latitude 33° 40' 27" N
Longitude 78° 58' 00" W
End
Latitude 33° 41' 34" N
Longitude 78° 56' 52" W

Hydraulic and NPDES Design
provided by:
STV Incorporated
Designs may be obtained from the
SCDOT Regional Production Group

SCDOT REVIEW	RIGHT-OF-WAY INITIAL	DATE	CONSTRUCTION INITIAL	DATE
PRECONSTRUCTION SUPPORT - ROAD				
PRECONSTRUCTION SUPPORT - STRUCTURES				
RPO - DESIGN MANAGER				
RPO - PROGRAM MANAGER				

THE INITIALS ABOVE DO NOT RELIEVE THE ENGINEER OF RECORD OF
THE RESPONSIBILITY TO DESIGN THIS PROJECT IN ACCORDANCE
WITH ALL APPLICABLE CRITERIA.

APPROVED FOR RIGHT OF WAY ACQUISITION:
REGIONAL PRODUCTION
MANAGER _____ Date _____

NOTES:
SEE SHEET 30-31 FOR STAKEOUT PLAN
SEE SHEET 50-51 FOR REFERENCE DATA
SEE SHEET 10-9 FOR US 101 DYPASS PROFILE
SEE SHEET 21 FOR RAMP B PROFILE
SEE SHEET 23 FOR RAMP D PROFILE
SEE SHEET 21 FOR WACKLEN ROAD/PORT DR
PROFILES
SEE SHEET 25 FOR RANGETHEE CIRCLE/HARDWOOD TER
& HARBOUR TOWNE DR PROFILES
SEE SHEET 30 FOR EMORY ROAD/OLD SIOGASTE HWY
PROFILE
SEE SHEET 31 FOR RAMP B TOP OF CURB PROFILE
SEE SHEET 32 FOR RAMP D TOP OF CURB PROFILE
SEE SHEET 33 FOR WACKLEN ROAD/PORT DRIVE
TOP OF CURB PROFILES
SEE SHEET 50-53 FOR ROADWAY STRUCTURE DETAILS
4500 FOR WALL LOCATION DETAILS
SEE SHEET 05 FOR DRAINAGE

[illegible]

SOUTH CAROLINA
 DEPARTMENT OF TRANSPORTATION
 ROAD DESIGN COLUMBIA, S.C.
**INTERCHANGE AT US 17 BYPASS
 AND SC 707 / FARROW PARKWA
 STA. 250+00 TO STA. 264+00**
 SCALE: H=50, R/L=12, BYPASS OWC NO. 200

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Edward B. Cottingham, Circuit Court Judge

Case No. 2010-CP-26-07961

Appellate Case No. 2013-001759

South Carolina Department of Transportation *Respondent,*

v.

David Franklin Powell *Appellant.*

APPELLANT'S RULE 210(G) CERTIFICATION

The undersigned, attorneys for Appellant David Franklin Powell, certifies, pursuant to Rule 210(g), SCACR, that the Record on Appeal, served herewith, contains all of the materials proposed by Appellant and Respondent and not any other material.



Robert S. Shelton
Attorney for Appellant

ROA-317

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

South Carolina Department of Transportation,
Respondent,

v.

David Franklin Powell, Appellant.

Appellate Case No. 2013-001759

Appeal From Horry County
Edward B. Cottingham, Circuit Court Judge

Opinion No. 5368
Heard December 10, 2014 – Filed December 9, 2015

AFFIRMED

Howell V. Bellamy, Jr. and Robert S. Shelton, both of
Bellamy, Rutenberg, Copeland, Epps, Gravely &
Bowers, P.A., of Myrtle Beach, for Appellant.

John B. McCutcheon, Jr., of Thompson & Henry, P.A.,
of Conway; and Beacham O. Brooker, Jr., of the South
Carolina Department of Transportation, of Columbia, for
Respondent.

LOCKEMY, J.: In this appeal from a condemnation action, David Powell argues the circuit court erred in granting the South Carolina Department of Transportation's (SCDOT) motion for partial summary judgment. We affirm.

FACTS/PROCEDURAL BACKGROUND

On August 27, 2010, SCDOT filed a notice of condemnation acquiring 0.183 acres of a 2.51 acre tract of unimproved land owned by Powell at the northeast corner of Old Socastee Highway and Emory Road in Horry County. The acquisition occurred in conjunction with a highway improvement project involving nearby Highway 17. SCDOT offered Powell \$72,000 for the condemned property. Powell rejected SCDOT's offer and requested a jury trial to determine just compensation.

Prior to the condemnation, Powell's property was accessible from Highway 17 via Emory Road. As a result of SCDOT's highway improvement project, the intersection of Emory Road and Highway 17 was closed and Powell's property was accessible only from Highway 17 via an entrance one mile north of his property on to Old Socastee Highway. Powell's property was taken for the purpose of converting the corner of Emory Road and Old Socastee to a curve. Prior to the start of trial, SCDOT changed its road plan. As a result of the change, Old Socastee Highway would no longer extend to the entrance to Highway 17, but would dead-end into a cul-de-sac just north of Powell's property. In order to access Powell's property from Highway 17 after the road change motorists would have to travel a longer distance (roughly 2 miles).

On March 14, 2013, SCDOT submitted the revised appraisal report of its real estate valuation expert, Corbin Haskell, outlining his opinion of just compensation under SCDOT's changed road plan. Whereas Haskell had assessed no damages to Powell's remaining property in any of his three prior reports, in his fourth report Haskell determined Powell's remaining property had been damaged fifty percent as a result of the taking, and he was entitled to compensation in the amount of \$517,000.

One week later, SCDOT submitted a fifth appraisal report from Haskell. As he did in his first three reports, Haskell determined there were no damages to the remainder of Powell's property. On the cover of his report, Haskell included the following disclaimer: "I have been requested to revise my appraisal since legal counsel advises that the reconfiguration of the roadways does not constitute damages to the remainder in this case. Therefore, there are no damages to the subject as the property will have full ingress/egress via an adjoining road 'after' the acquisition."

On March 25, 2013, SCDOT filed a motion in limine to exclude any evidence of diminution in the value of Powell's remaining property caused by the loss of access to Highway 17. SCDOT asserted Powell's property did not abut Highway 17 and he had no private property right with respect to that road. SCDOT maintained Powell's easements with respect to the public roads his property abutted had not been disturbed by the project. Additionally, SCDOT requested the court exclude damages to the remainder of Powell's property caused by loss of visibility from Highway 17. At the hearing on SCDOT's motion, Powell's counsel requested SCDOT convert its motion to one of partial summary judgment to accommodate an appeal. SCDOT agreed to do so. In a May 14, 2013 order, the circuit court granted SCDOT's motion for partial summary judgment. Citing *Hardin v. South Carolina Department of Transportation*, 371 S.C. 598, 641 S.E.2d 437 (2007), the court found Powell's loss of access was not compensable and excluded any evidence regarding change in access from the trial. The court declined to rule on the issue of loss of visibility. Powell's subsequent Rule 59(e), SCRCP, motion to alter or amend was denied. This appeal followed.

STANDARD OF REVIEW

When reviewing the grant of a summary judgment motion, this court applies the same standard that governs the trial court under Rule 56(c), SCRCP; summary judgment is proper when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. *Fleming v. Rose*, 350 S.C. 488, 493, 567 S.E.2d 857, 860 (2002). In determining whether a genuine issue of fact exists, the evidence and all reasonable inferences drawn from it must be viewed in the light most favorable to the nonmoving party. *Sauner v. Pub. Serv. Auth. of S.C.*, 354 S.C. 397, 404, 581 S.E.2d 161, 165 (2003).

LAW/ANALYSIS

I. *Hardin*

Powell argues the circuit court erred in finding our supreme court's holding in *Hardin v. South Carolina Department of Transportation*, 371 S.C. 598, 641 S.E.2d 437 (2007), an inverse condemnation case, prevents the consideration of access damages to remaining property in direct condemnation actions.

Under South Carolina's Constitution, "private property shall not be taken for public use . . . without 'just compensation' being first made for the property." S.C. Const. art. I, § 13(A). "In determining just compensation, only the value of the property

to be taken, any diminution in the value of the landowner's remaining property, and any benefits as provided in § 28-2-360 may be considered." S.C. Code Ann. § 28-2-370 (2007).

In order for the landowner to be compensated fully, the government must "put the owners in as good position pecuniarily as if the use of their property had not been taken. They are entitled to have the full equivalent of the value of such use at the time of the taking paid contemporaneously with the taking."

S.C. Dep't of Transp. v. Faulkenberry, 337 S.C. 140, 148, 522 S.E.2d 822, 826 (Ct. App. 1999) (quoting *Phelps v. United States*, 274 U.S. 341, 344, 47 S.Ct. 611 (1927)).

In *Hardin*, the plaintiffs filed an inverse condemnation action against SCDOT alleging the closure of a break in the median of an abutting highway deprived the traffic leaving their properties of the ability to cross the highway and constituted a taking. 371 S.C. at 603, 641 S.E.2d at 440. The trial court ruled the plaintiffs suffered a compensable taking, and the court of appeals affirmed. *Id.* at 603, 641 S.E.2d at 440. The supreme court reversed the court of appeals and found there was no taking. *Id.* at 610, 641 S.E.2d at 444.

Prior to *Hardin*, "a landowner's ability to recover damages as a result of a re-configuration of road access depended on the location of his land with reference to the road vacated and the effect of the vacation on his rights as an abutting landowner." *Carolina Chloride, Inc. v. S.C. Dep't of Transp.*, 391 S.C. 429, 433, 706 S.E.2d 501, 503 (2011) (citing *City of Rock Hill v. Cothran*, 209 S.C. 357, 40 S.E.2d 239 (1946)). "The *Cothran* [c]ourt held a landowner is not entitled to recover damages unless he has sustained a 'special injury,' which is an injury different in kind and not merely in degree from that suffered by the public at large." *Id.* (citing *Cothran*, 209 S.C. at 368-69, 40 S.E.2d at 243-44). "In *Hardin*, the [c]ourt abandoned the 'special injury' analysis which previously existed in this state's jurisprudence, and specified that the focus in these cases should be how any road re-configuration affects a property owner's easements." *Id.* (citing *Hardin*, 371 S.C. at 609, 641 S.E.2d at 443).

Pursuant to *Hardin*, "a property owner in South Carolina has an easement for access to and from any public road that abuts his property, regardless of whether he has access to and from an additional public road." 371 S.C. at 606, 641 S.E.2d at

442. A property owner "also has an easement for access to and from the public road system." *Id.* The *Hardin* court held

[a]s long as the owner has access to and from the remainder of the road that continues to abut his property, his easement with respect to that road remains intact. Further, as long as a landowner still has access to the public road system, this easement is unaffected. This reasoning is in line with the notion that a landowner has no right to access abutting roads in more than one direction.

Id. at 607, 641 S.E.2d at 442 (footnote omitted). The *Hardin* court found the plaintiffs continued to have a means of ingress and egress from the highway and the public road system, and therefore, their property rights had not been disturbed. 371 S.C. at 610, 641 S.E.2d at 444.

Here, Powell argues the issue of admissibility of evidence relating to the increased remoteness and complexity of access to his property resulting from the SCDOT road project is essential to the determination of just compensation. He asserts that because his property is zoned "highway commercial," the ease of access to his property affects its value. Powell contends the route to his property is no longer visible to northbound travelers on Highway 17 and is only accessible indirectly.

Powell further maintains that had the legislature intended to prevent consideration of any particular evidence of diminution in value to remaining property, it could have inserted limitation language into the Eminent Domain Procedure Act. Instead, Powell notes, section 28-2-370 provides *any* diminution in value of a landowner's remaining property is to be considered in determining just compensation. *See* S.C. Code Ann. § 28-2-370 (2007) ("In determining just compensation, only the value of the property to be taken, any diminution in the value of the landowner's remaining property, and any benefits as provided in § 28-2-360 may be considered.").

Powell argues the circuit court's reliance on *Hardin* is improper. In *Hardin*, our supreme court held the first step in determining if a taking occurred is to look at the property right the plaintiff held prior to the government action for which the plaintiff complained. 371 S.C. at 609, 641 S.E.2d at 443. Next, the court must determine whether the government action materially injured the property right such that the plaintiff "no longer enjoyed the reasonable means of access to which it was

entitled." *Hilton Head Auto., LLC v. S.C. Dep't of Transp.*, 394 S.C. 27, 31, 714 S.E.2d 308, 310 (2011). Powell contends the *Hardin* analysis is unnecessary in direct condemnation cases, like the present case, where a taking has already been established. He asserts that pursuant to section 28-2-370, the court must consider *all* evidence of damage to the landowner.

Conversely, SCDOT argues redesigning highways and redirecting traffic are police power regulations. SCDOT asserts any diminution in the value of Powell's remaining property after the closure of the intersection of Emory Road and Highway 17 is an incidental result of a police power of the State, not one of eminent domain, and is not compensable. SCDOT contends the closure of the intersection was not a taking that deprived Powell of any pre-existing property right. Additionally, SCDOT contends Powell's property still has full access to each of the roads it abuts (Emory Road and Old Socastee Highway) and to the general system of roads by traveling south on Emory Road. SCDOT argues the added distance is not unreasonable and neither of the easements described in *Hardin* have been taken.

We find *Hardin* is not applicable to the present case. *Hardin* is an inverse condemnation case which does not involve the physical appropriation of private property. Here, the relevant question to consider is whether Powell is entitled to compensation for access damages to his remaining property where there was physical appropriation of land by SCDOT.

The factual scenario presented here is similar to that in *South Carolina State Highway Department v. Carodale Associates*, 268 S.C. 556, 235 S.E.2d 127 (1977). In *Carodale*, the highway department acquired 0.47 acres of land from the landowner for the construction of an exit ramp off Interstate 77 in Richland County. 268 S.C. at 560, 235 S.E.2d at 128. Part of the project also involved the relocation of part of Highway 1 upon which the landowner's property abutted. *Id.* The property was afforded access to the relocated Highway 1 by the construction of a connecting street. *Id.* The supreme court reversed the award of damages to the landowner's remaining land attributable to the diversion of traffic previously passing its property. *Id.* at 564, 235 S.E.2d at 130. The court declared the State is under no duty to maintain a minimum level of traffic flow. *Id.* at 561, 235 S.E.2d at 128. Further, the *Carodale* court held

[c]losing a street inherently produces a diversion of traffic and loss of frontage on a viable traffic artery. However, these repercussions are not compensable

elements of damage. Succinctly, the restriction of ingress or egress to and from one's property is the right which must be compensated if infringed when a highway is closed by condemnation.

Id. at 561, 235 S.E.2d at 129.

Viewing the evidence in the light most favorable to Powell, we hold the circuit court did not err in finding any diminution in value of Powell's property as a result of the change in road access is not compensable. While the circuit court's reliance on *Hardin* was error, pursuant to *Carodale*, a landowner has no vested rights in the continuance of a public highway and in the continuation of maintenance of traffic flow past his property. Therefore, any damage to the remainder of Powell's property as a result of the closure of the intersection of Emory Road and Highway 17 is not compensable. Moreover, we note Powell has not lost his right of ingress or egress to and from his property. Powell had access to Old Socastee Highway and Emory Road prior to the road project and will continue to have access to Old Socastee Highway and Emory Road following the completion of road project.

II. *Wilson*

The circuit court found Powell's property was taken for the purpose of rounding the intersection of Emory Road and Old Socastee Highway, and SCDOT could have eliminated the intersection of Emory Road and Highway 17 without taking Powell's property. On appeal, Powell asserts this finding is not supported by any evidence in the record. Powell argues this finding by the court created an inference that could erroneously distinguish the closure of the intersection and the creation of the Old Socastee Highway cul-de-sac from the highway project for which the present action was filed. Relying on *South Carolina State Highway Department v. Wilson*, 254 S.C. 360, 175 S.E.2d 391 (1970), Powell asserts SCDOT's condemnation of a portion of his property was part of its overall road project and he is entitled to recover access damages to his remaining property.

In *Wilson*, the highway department took a portion of Wilson's property in order to align a county road running alongside her property with U.S. 15 which her property abutted. 254 S.C. at 363, 175 S.E.2d at 393. Concurrently, the department constructed a raised concrete median in the center of U.S. 15 eliminating her ability to make left turns onto U.S. 15 from her property. *Id.* at 363-64. The supreme court found that "[w]hile the construction of a median, with nothing more, may very well be an exercise of the police power with no resulting

compensable damage to an abutting property owner, in the instant case the proposed median is only an incidental part of the overall Department plans and contemplated construction." *Id.* at 368, 175 S.E.2d at 396. The court held

[b]ut for such overall construction and relocation, and condemnation under the power of eminent domain for such purposes, there would have been no median and, of course, no damage to the abutting landowner. It logically follows, we think that any damage attributable to the planned median is an incidental result of the exercise of the power of eminent domain

Id. at 369, 175 S.E.2d at 396.

SCDOT argues *Wilson* represents a close factual case between acts of eminent domain and police power actions for which no compensation is due. It contends the federal courts have formalized a three part rule to distinguish damages resulting from a taking and damages resulting from concurrent police power acts in the same project. The "*Campbell* rule," SCDOT asserts, is contained in three cases: *Campbell v. United States*, 266 U.S. 368 (1924); *West Virginia Pulp & Paper Co. v. United States*, 200 F.2d 100 (4th Cir. 1952); and *United States v. Pope & Talbot, Inc.*, 293 F.2d 822 (9th Cir. 1961).

In *Campbell*, the United States condemned 1.81 acres of Campbell's land along with 1,300 acres owned by other landowners to construct a nitrate plant. 266 U.S. at 369. Campbell appealed the refusal of the district court to award him any damages for diminution in value to his remaining land. *Id.* at 369-70. The government did not propose to use Campbell's land for industrial purposes. Rather, the plant would be physically located on land taken from the other landowners. The Supreme Court held that the proposed use of land by the government taken from others did not constitute a taking of Campbell's property. 266 U.S. at 371. It noted that, if the neighboring landowners had put their land to the identical use that the government proposed, Campbell would have no right to prevent it. *Id.* at 371-72. In summary, the court stated,

[t]he rule supported by better reason and the weight of authority is that the just compensation assured by the Fifth Amendment to an owner, a part of whose land is taken for public use, does not include the diminution in

value of the remainder caused by the acquisition and use of adjoining lands of others for the same undertaking.

Id. at 372.

The Fourth Circuit in *West Virginia Pulp & Paper* distinguished *Campbell* and awarded compensation for damages to the remainder of the condemnee's property for the diminution in value to two other contiguous tracts owned by the condemnee. 200 F.2d at 103. The court noted that just compensation "includes not only the market value of that part of the tract appropriated, but the damage to the remainder resulting from that taking, embracing, of course, injury due to the use to which the part appropriated is to be devoted." *Id.* at 102 (quoting *United States v. Grizzard*, 219 U.S. 180, 183 (1911)).

The Ninth Circuit in *Pope & Talbot*, established a corollary rule to *Campbell*. There, the United States had taken part of Pope & Talbot's land and the land of other owners for a dam project. 293 F.2d at 823. The land taken from Pope & Talbot was flooded along with the other lands. *Id.* In addition, the remaining Pope & Talbot land suffered a loss of accessibility due to having to drive around the lake instead of straight across its bed. *Id.* at 823-24. The Court held three elements are necessary to negate the application of *Campbell*: indispensability, substantiality, and inseparability. *Id.* at 825. The Court found (1) the land taken from the condemnee landowner was indispensable to the dam project; (2) the land taken constituted a substantial part of the tract devoted to the project; and (3) the damages resulting to the land not taken from the use of the land taken were inseparable from the damages to the land not taken flowing from the condemnor government's use of its adjoining land in the dam project. *Id.*

We agree with SCDOT that it could have eliminated the intersection without taking part of Powell's property. Powell's property was taken for the purpose of rounding the intersection of Emory Road and Old Socastee Highway, not for the Highway 17 intersection closure. While the intersection closure and the taking of Powell's property were part of the same SCDOT highway improvement project, the relevant question to consider is whether the taking of Powell's property was necessary for the intersection closure. In light of the cases discussed above, we find the taking of Powell's property was only an incidental result of the closure and was not indispensable to and inseparable from the overall project. We further hold the taking of Powell's property was not a substantial part of the overall road project.

CONCLUSION

We affirm the trial court's grant of SCDOT's motion for partial summary judgment.

FEW, C.J., and THOMAS, J., concur.

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Edward B. Cottingham, Circuit Court Judge

Case No. 2010-CP-26-07961

Appellate Case No. 2013-001759

South Carolina Department of Transportation *Respondent,*

v.

David Franklin Powell *Appellant.*

**PETITION FOR REHEARING OF
OPINION No. 5368
Heard December 10, 2014– Filed December 9, 2015**

Pursuant to Rule 221, SCACR, Appellant, David Franklin Powell (hereinafter “Appellant” or “Mr. Powell”), hereby petitions this Court for rehearing of its decision in South Carolina Department of Transportation v. David Franklin Powell, Opinion No. 5368 (December 9, 2015). This Petition for Rehearing should be granted as this Court has “overlooked or misapprehended” material points of law and/or fact. As is more fully set forth in the accompanying Memorandum of Law in Support of Petition for Rehearing, incorporated herein, this standard is readily satisfied here.

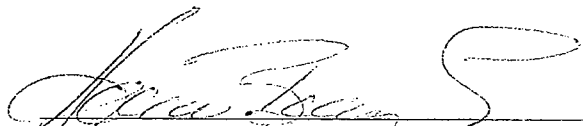
Appellant respectfully requests that this Court rehear and reconsider its Order filed herein December 9, 2015. In so requesting, Appellant appreciates and acknowledges this Court's attention to this important matter. The important issues concerning Appellant's right to just compensation for the diminution in the *value* of his property resulting from the public acquisition of a portion thereof in this matter clearly extend to similarly situated property owners throughout the State of South Carolina.

Submitted herewith and incorporated herein is Appellant's Memorandum in Support of this Petition for Rehearing. Appellant seeks rehearing and reconsideration as to the Court's conclusions that the Mr. Powell is not entitled to be compensated for "any diminution in value to the remaining property" pursuant to SC Code § 28-2-370 and, instead, determining Mr. Powell is not entitled to just compensation for property value diminution resulting from increased circuitry, remoteness, or loss, of access. Moreover, Mr. Powell is entitled to reconsideration of the Court of Appeals determination as to purpose of the condemnation and construction project at issue in the present matter and further determination that this construction project could have been completed without the necessity of condemning any of his property, as no evidence exists in the record to support these determinations of the Court or that of the underlying trial court. Appellant is also entitled to reconsideration of the Court's reference to appraiser Corbin Haskell as an expert for Respondent, as no determination has been made by the court below of the appraiser's qualifications as

an expert and Mr. Powell has not yet been provided an opportunity to *voir dire* the proposed witness on the record as to his qualifications for such a designation. Mr. Powell is also entitled to reconsideration of the Court's decision in its entirety, as the holding below is reliant upon the extension of holding in *Hardin v. South Carolina Department of Transportation*, 371 S.C. 59, 641 S.E.2d 437 (2007), being an inverse condemnation case, to cases involving direct, forced acquisition of property by the government.

For the above reasons and those set forth more fully in the attached and incorporated Memorandum of Law in Support of Petition for Rehearing, this Court should grant this Petition for Rehearing, vacate its prior Opinion, and conduct rehearing proceedings.

Respectfully submitted,



Howell V. Bellamy, Jr., Esq. SCB # 00642

Robert S. Shelton, Esq. SCB # 68543

BELLAMY, RUTENBERG, COPELAND,

EPPS, GRAVELY & BOWERS, P.A.

1000 29th Avenue North

Myrtle Beach, SC 29577

(843) 448-2400

Attorneys for Appellant David Franklin Powell

Myrtle Beach, South Carolina

Dated: December 28, 2015

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Edward B. Cottingham, Circuit Court Judge

Case No. 2010-CP-26-07961

Appellate Case No. 2013-001759

South Carolina Department of Transportation *Respondent,*

v.

David Franklin Powell *Appellant.*

APPELLANT'S MEMORANDUM OF LAW
IN SUPPORT OF PETITION FOR REHEARING

I. CASE SUMMARY

Appellant David Franklin Powell ("Appellant" or "Mr. Powell") seeks rehearing of this Appellate Case No. 2013-001759 filed December 9, 2015. This case stems from the August 27, 2010 acquisition of real property from Appellant as part of the highway project Respondent South Carolina Department of Transportation ("Respondent," "SCDOT," or "Condemnor") deemed the "Interchange at US 17 Bypass and SC 707/Farrow Parkway." (R.pp. 16, 117)

Prior to the condemnation, Mr. Powell's property had a "clear view" from Hwy. 17 Bypass separated only by a power line easement and was accessible from Hwy. 17 via Emory Road. (R.p. 258, line 6; R.p. 271, line 17) As a result of the SCDOT's highway project and subsequent condemnation action, the intersection at Hwy. 17 and Emory Road was closed and Mr. Powell's property was left accessible via a frontage road one could enter from Hwy. 17 one (1) mile to the north. (R.p. 265, line 23)

Central to his argument below and in the present appeal, Appellant seeks to be provided just compensation for the diminution in value resulting from the acquisition and reconfiguration of his property by the South Carolina Department of Transportation as an integral part of the construction of the Interchange at U.S. Highway 17 Bypass SC 707/Farrow Parkway.

After completing mediation and discovery, this case was set for date-certain trial on March 11, 2013 before the Honorable Benjamin Culbertson. (R.p. 3) Prior to the start of the trial, counsel for SCDOT informed counsel for Mr. Powell there had been a change in the road plan. (R.p. 7) As a result of the change, the frontage road would no longer extend to the entrance one (1) mile north, but would dead-end as a cul-de-sac just north of Mr. Powell's land. (R.p. 266, line 2) According to SCDOT's Rule 30(b)(6), SCRCF witness, Mike Barbee, in order to access Mr. Powell's tract after the plan change, a motorist must travel 2.24 miles. (R.p. 304, line 7) Moreover, the pathway to Mr. Powell's property is no longer obvious at all; whereas his tract was historically accessible in a visible, *typical* manner, in the *after* condition the property

is only accessible *indirectly*, and the route of access is not visible to northbound travelers on Hwy. 17 By-pass. (R.p. 370, lines 18-25; R.p. 371, lines 1-7)

On Condemnor's Motion, rather than starting the trial as scheduled, Judge Culbertson permitted SCDOT five (5) days to revise its appraisal report to reflect the change to the plans and the court simultaneously continued the case for trial beginning on April 1, 2013. (R.p. 7) On Friday, March 14, 2013, SCDOT tendered the revised appraisal report of Corbin Haskell outlining his opinion of just compensation under the changed plans pursuant to which SCDOT took a portion of Mr. Powell's real property. (R.p. 117) Notably, in each of Mr. Haskell's appraisals he acknowledged SCDOT was condemning a portion of Mr. Powell's property. Whereas Mr. Haskell had assessed no damages at all to Mr. Powell's remaining property in any of his three (3) earlier reports, in his fourth (4th) report Mr. Haskell, as Condemnor's proposed real estate valuation expert, determined Mr. Powell's remaining property had been damaged Fifty percent (50%) as a result of the take, and determined the just compensation to which Mr. Powell was entitled totaled Five Hundred and Seventeen Thousand and no/100 (\$517,000.00) Dollars. (R.p. 286, lines 1-14)

One week later, ten (10) days prior to the scheduled start of trial, counsel for SCDOT submitted yet *another* appraisal report of Corbin Haskell. (R.p. 505) This *fifth* (5th) report was tendered to the Appellant's counsel on March 21, 2013, which was beyond the time limit permitted by Judge Culbertson. On the cover of this report, Mr. Haskell printed the following disclaimer:

I have been requested to revise my appraisal since legal counsel advises that the reconfiguration of the roadways does not constitute damages to the remainder in this case. Therefore, there are no damages to the subject. . . .

(R.p.505) Mr. Haskell goes on to set forth his appraisal of just compensation for the land SCDOT physically took from Mr. Powell and, as in his first three (3) reports, determined there were no damages to the remainder of Mr. Powell's land, per Condemnor's instruction, and only found \$72,000.00 for the property actually acquired. (R.p. 530)

Thereafter, on March 25, 2013, Condemnor filed a Motion in limine to exclude any reference at trial, by either the Condemnor or the Mr. Powell, to diminution in value to Mr. Powell's remaining property as a result of changes in access. (R.p. 32)

Judge Cottingham heard argument and entered Exhibits into the record on April 1, 2013, which was to have been the first day of the trial of the action below. From the bench, Judge Cottingham held, *inter alia*:

Now, in this case, it is clear to me that reasonable jury would find that there is a consider[able] loss in the after [sic].

(R.p. 110, lines 21-22)

Judge Cottingham further stated:

It is clear to me that there would be some diminution in value. Now, whether that's payable under Hardin and Tallent is a different issue. I don't think it is, but I'll let the Supreme Court deal with it and they can overrule or modify it. But in fairness to the landowner, there is some diminution in value.

(R.p. 111, lines 17-24)

Judge Cottingham continued:

I think my ruling will be on the issue of admissibility of evidence, which is a partial summary judgment which is in and of itself immediately appealable.

(R.p. 112, lines 24-25; R.p. 113, lines 1-2)

Finally, Judge Cottingham made clear:

THE COURT: Well, that's why I want my – in fairness to the landowner and, you, sir, I want my order to provide that I would conclude that there is diminution in value, clearly.

MR. BELLAMY: I understand.

THE COURT: **You can agree with that I'm sure, Mr. McCutcheon?**

MR. MCCUTCHEON: Yes, sir.

(R.p. 114, lines 3-10) (Emphasis Added.)

Immediately following the above exchange, counsel for Condemnor converted its Motion in Limine to a Motion for Partial Summary Judgment as to the admission of evidence at trial regarding the diminution in value of Mr. Powell's remaining property resulting from the reduction of access to Mr. Powell's property caused by the taking of his property for the underlying road project. (R.p. 113, lines 3-15) Judge Cottingham then instructed counsel for SCDOT, Jack McCutcheon, to prepare an Order and continued the case for trial. (R.p. 114, lines 14-16) This appeal followed. (R.p. 65)

Appellant's briefs filed with this Court, as well as the Record on Appeal in this matter and the transcript of oral argument before this Court are hereby incorporated herein by reference and made part of this Memorandum in Support of Appellant's Petition for Rehearing and Petition for Rehearing.

II. THIS COURT INCORRECTLY DETERMINED APPELLANT WAS NOT ENTITLED TO BE COMPENSATED FOR "ANY DIMINUTION IN VALUE TO THE REMAINING PROPERTY PURSUANT TO SC CODE § 28-2-370" AND, INSTEAD, DETERMINING APPELLANT IS NOT ENTITLED JUST COMPENSATION FOR PROPERTY DIMINUTION RESULTING FROM INCREASED CIRCUITY, REMOTENESS, OR LOSS, OF ACCESS TO HIS PROPERTY.

A. The trial court erroneously determined the South Carolina Supreme Court holding in Hardin/Tallent¹ prevents the consideration of access damages to remaining property in eminent domain actions.

This action was initiated by the South Carolina Department of Transportation in order to acquire from Mr. Powell 0.183 acres of his property referred to by SCDOT for the purpose of the "Interchange at US 17 Bypass and SC 707/Farrow Parkway" project as "Tract 13." (R.p. 17) Notably, SCDOT, on the face of the Condemnation Notice, demanded a trial by jury, not Mr. Powell, as indicated in the Order below. (R.p. 17 and R.p. 10) As a result of the condemnation of his property, Mr. Powell will lose northbound access along Socastee Highway. That road will now terminate north of Mr. Powell's property in a cul-de- sac. Also, the historic access to Hwy. 17, via

¹Hardin v. S. Carolina Dep't of Transp., 371 S.C. 598, 641 S.E.2d 437 (2007).

Emory Road (along side Mr. Powell's property), will be closed to allow for the elevation of Hwy. 17 necessitated by the same overpass project. The issue of admissibility of evidence relating to the substantially increased remoteness and complexity of access to Mr. Powell's property resulting from the road project necessitating this action is essential to the determination of just compensation in this condemnation action and is the subject of the present appeal.

i. Evidence of Just Compensation

In order to value property affected by a highway project, the market value in the *before* and *after* conditions must be ascertained. Market value is defined in the SCDOT appraisal as:

The most probable price, as of a specified date, in cash, or in terms equivalent to cash, or in other precisely revealed terms, for which the specified property rights should sell after reasonable exposure in a competitive market under all conditions requisite to a fair sale, with the buyer and seller each acting prudently, knowledgeably, and for self-interest, and assuming that neither is under undue duress.²

Mr. Powell's property was zoned Highway Commercial as of the date of the take in this matter. (R.p. 120) It is axiomatic that any knowledgeable purchaser of highway commercial property will diligently investigate the ease of access to and from a parcel prior to making a purchase and the price such a purchaser would be willing to pay for the tract will necessarily depend, in part, upon the tract's ease of access. To suggest

² March 14, 2013 appraisal of Corbin Haskell, Page 4. Citing The Dictionary of Real Estate Appraisal, 4th Edition.

the government may take real property from tax payers and residents of its state who are unwilling to sell their land voluntarily and then avoid payment for *any* diminution caused to remaining property as a result of the taking is not consistent with the Constitutional mandate of just compensation.

South Carolina's Eminent Domain Procedure Act, S.C. Code Ann. §28-2-30 instructs that the "provisions of this chapter shall constitute the exclusive procedure whereby condemnation may be undertaken in this State." The Act thereafter defines, at § 28-2-370, the proper evidentiary considerations when determining just compensation in *all* actions where private property is taken by the government for a public purpose:

In determining just compensation, **only the value** of the property to be taken, any **diminution in the value of the landowner's remaining property**, and any benefits as provided in Section 28-2-360 may be considered. (Emphasis added).

Had the South Carolina General Assembly intended to prevent consideration of *any* particular evidence of diminution in value to the remaining property, it could have plainly inserted such a limitation in the Eminent Domain Procedure Act, S.C. Code Ann. §§ 28-2-10 *et seq.* (1976). Our legislature inserted no such language; instead, it created a statute designed to place the property owner in the same position financially following the taking of his land as he enjoyed prior to the government taking. As our Supreme Court has repeatedly explained:

The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature. Charleston County Sch. Dist. v. State Budget and Control Bd., 313 S.C. 1, 437 S.E.2d 6 (1993). Under the plain meaning rule, it is not the court's place to change the meaning of a clear and unambiguous statute. In re Vincent J., 333 S.C. 233, 509 S.E.2d 261 (1998) (citations omitted). Where the statute's language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning. Id. at 233, 509 S.E.2d at 262 (citing Paschal v. State Election Comm'n, 317 S.C. 434, 454 S.E.2d 890 (1995)). "What a legislature says in the text of a statute is considered the best evidence of the legislative intent or will. Therefore, the courts are bound to give effect to the expressed intent of the legislature." Norman J. Singer, Sutherland Statutory Construction § 46.03 at 94 (5th ed. 1992) (Emphasis added).

Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000).

Simply stated, S.C. Code § 28-2-370 **does not invoke consideration of property *rights* once the government has taken by condemnation real property for a public purpose, but *requires* a determination of property *values* prior to the acquisition and following the acquisition. Any diminution thereof is owed to the Mr. Powell pursuant to a plain reading of the statute.**

The General Assembly's approach in this regard has been long-followed in South Carolina, and upholds the "just" compensation requirements of the Fifth Amendment of the U. S. Constitution and Article I, § 13 of South Carolina's

Constitution.³ As explained by the South Carolina Court of Appeals in S.C. Dep't of Transp. v. Faulkenberry, 337 S.C. 140, 522 S.E.2d 822 (Ct. App. 1999):

In order for the landowner to be compensated fully, the government must "put the owners in as good position pecuniarily as if the use of their property had not been taken. They are entitled to have the full equivalent of the value of such use at the time of the taking paid contemporaneously with the taking." Phelps v. United States, 274 U.S. 341, 344, 47 S. Ct. 611, 71 L.Ed. 1083 (1927). See also Stewart & Grindle, Inc. v. State, 524 P.2d 1242 (Alaska 1974); State Roads Comm'n v. G.L. Cornell Co. Sav. & Profit Sharing Trust, 85 Md. App. 765, 584 A.2d 1331 (1991).

Faulkenberry, 387 S.C. at 148, 522 S.E.2d at 826.

The record below is clear that neither the Condemnor nor the Court sought to fully restore Mr. Powell to the pecuniary position he maintained prior to the acquisition of his property. **Judge Cottingham found and Counsel for SCDOT concurred that SCDOT's taking necessarily caused a diminution in value to Mr. Powell's remaining property. (R.p. 114, lines 3-10)**

In order to be certain the government fully and justly compensates private property owners from whom it takes real property, the full analysis of the property's value in the *before* condition and in the *after* condition must be presented at trial. This is the only manner in which "just compensation" can be properly identified. This is further clarified in S.C. State Highway Dep't v. Wilson, 254 S.C. 360, 175 S.E.2d 391 (1970):

³USCA CONST Amend. V-Just Compensation; S.C. Const. Art. I, § 13.

‘In other words, he is entitled to full compensation for the taking of his land **and all its consequences**; * * * nor is there any requirement that the damage be special and peculiar, or such as would be actionable at common law; it is enough that it is a consequence of the taking. The entire parcel is considered as a whole, and **the inquiry is, how much has the particular public improvement decreased the fair market value of the property, taking into consideration the use for which the land was taken and All the reasonably probable effects of its devotion to that use.**’ (Emphasis added.)

Id. at 367–68, 175 S.E.2d at 395.⁴ (Quoting from S.C. State Highway Dep’t v. Bolt, 242 S.C. 411, 131 S.E.2d 264 (1963).

SCDOT relied heavily at the hearing below upon the holding in Hardin v. S. Carolina Dep’t of Transp., 371 S.C. 598, 641 S.E.2d 437 (2007). Based upon its reliance on Tallent/Hardin, Condemnor admittedly instructed its appraiser to disregard the effects of the cul-de-sac and the closure of Emory Road. In SCDOT appraiser Corbin Haskell’s March 25, 2013 deposition, the following exchange took place regarding his determination of the value of just compensation to be paid to Mr. Powell:

Q: Then drop down. You notice under easements and encroachments: “It should be noted that I am not qualified to detect easements and encroachments, and legal counsel should be retained if there are any indications of title defects.”

A: Yes, sir.

⁴ 18 Am. Jur. *Eminent Domain* § 265, p. 905.

Q: And that's why you have yielded to Mr. McCutcheon on the question of the closing of Emory Road and the cul de sac on Socastee —

A: Yes, sir.

Q: --- Boulevard? Okay. But he has given you no written opinion as to why you should disregard the loss of access to Highway 17 on Emory Road or the cul de sac?

A: What do you mean written opinion?

Q: Written you a letter or ---

A: No, sir.

Q: --- memorandum or such?

A: No, sir.

Q: Has he told you orally what his position is?

A: Yes, sir.

Q: Tell me what that is.

A: Just quoted some law as, which I can't recall.

MR. McCUTCHEON: I told him about Talent [sic] and Hardin —

(R.p. 262, lines 9-25; R.p. 263, lines 1-14)

SCDOT's reliance on Tallent/Hardin is misguided. The **entire** analysis in Tallent/Hardin was to determine *whether* a taking had occurred. In each of the cases decided in the Tallent/Hardin opinion, no physical appropriation of property took place. Both of the plaintiffs in those inverse condemnation cases complained of reconfiguration of the road system near their respective property, but neither had sustained any actual government taking of their physical property. The legal analysis throughout Tallent/Hardin was to determine *whether* any of the plaintiffs' property rights had been taken, such that those plaintiffs would be permitted access to a court of law to seek redress for their pecuniary loss. As has been explained by one commentator:

The tests adopted by the U.S. Supreme Court to determine a taking focus upon the severity of the burden that the government imposes upon private property rights. Physical takings require compensation because of the unique burden they impose: **a permanent physical invasion, however minimal, eviscerates the owner's right to exclude others from entering and using his or her property--perhaps the most fundamental of all property interests.** Lingle v. Chevron U.S.A. Inc., 544 U.S. 528 (2005).

Richard Davis Bybee, Recent Inverse Condemnation Cases, S.C. Law., May 2007, at 24, 27 (emphasis added).

Likewise, the Court in Hilton Head Automotive, LLC v. S.C. Dep't of Transp., 394 S.C. 27, 714 S.E.2d 308 (2011), considered similar claims and explained the appropriate analysis in such cases thusly:

Following Hardin, a proper analysis of an **inverse** condemnation claim premised on an *alleged physical taking* **must begin with a determination of the scope of the property rights** at issue. 371 S.C. at 605, 609, 641 S.E.2d at 441, 443 (explaining that a court evaluating an inverse condemnation claim premised on a physical taking should “focus ... on a landowner’s actual property interests; that is, his easements”). As an abutting property owner, HHA had “an easement for access” to Highway 278, “regardless of whether [it had] access to and from an additional public road.” Id. at 606, 641 S.E.2d at 442. In addition, HHA had “an easement for access to and from the public road system.” Id. FN3 **If governmental action materially injured either of these easements, such that HHA no longer enjoyed the reasonable means of access to which it was entitled, a physical taking has occurred.**FN4 E.g., S.C. State Highway Dep't v. Allison, 246 S.C. 389, 393, 143 S.E.2d 800, 802 (1965) (“[A]n obstruction that materially injures or deprives the abutting property owner of ingress or

egress to and from his property is a 'taking' of the property, for which recovery may be had."); Sease v. City of Spartanburg, 242 S.C. 520, 524–25, 131 S.E.2d 683, 685 (1963) ("The protection of [the South Carolina "takings" clause] extends to all cases in which any of the essential elements of ownership has been destroyed or impaired as the result of the construction or maintenance of a public street."); Brown v. Hendricks, 211 S.C. 395, 403–04, 45 S.E.2d 603, 606–07 (1947) ("The accessibility of one's property may in some instances constitute a great part of its value, and to permit a material impairment of his access would result in the destruction of a great part of the value ... and his property is therefore as effectually taken as if a physical invasion was made thereon and a physical injury done thereto." (quoting with approval Foster Lumber Co. v. Arkansas Valley & Western Ry. Co., 20 Okla. 583, 95 P. 224, 228 (1908))).

FN3. In *City of Rock Hill v. Cothran*, this Court also recognized an abutter's right to proceed upon the abutting road to the next intersection. 209 S.C. 357, 369, 40 S.E.2d 239, 244 (1946) ("[T]he right of an abutting landowner to passage at least to the next intersection is a substantial property right"); see also *Powell v. Spartanburg County*, 136 S.C. 371, 374–76, 134 S.E. 367, 368 (1926) (holding that, where a portion of a road was formally discontinued and a new road was built to route traffic around the discontinued portion such that the two roads formed a semicircle pattern, property owners abutting on the old road "could not rightfully be deprived of the privilege of still using it to reach the newly located portion [of the road] *in either direction*," and therefore, nonsuit was improper where access to the new road was cut off at the south end of the old road, even though the new road was accessible from the north end of the old road (emphasis added)). While *Hardin* overruled *Cothran* in certain respects, it did not expressly overrule the existence of this property right. We take no position regarding the status of this right, as HHA has not lost the

ability to proceed upon Highway 278 to the next intersection. (Emphasis added.)

FN4. Certain language in *Hardin* might suggest this “material injury” test is no longer good law. We take this opportunity to clarify. The “material injury” test is firmly rooted in our jurisprudence, and *Hardin* did not overrule this well-established aspect of our takings analysis. See *Hardin*, 371 S.C. at 609, 641 S.E.2d at 443 (“We therefore overrule the ‘special injury’ analysis ... and specify that our focus in these cases is on how any road re-configuration affects a property owner’s easements.”); *id.* at 609 n. 4, 641 S.E.2d at 443 n. 4 (“[N]either landowner ... has been *deprived* of ingress or egress ... *nor* have these landowners *been injured* in their ability to enter or exit their property.” (emphasis added))).

Hilton Head Automotive, 394 S.C. at 30–32, 714 S.E.2d at 310–11 (emphasis added).

Both Hardin and Hilton Head Automotive explain in an inverse case, the *first step* is to look at the property right the plaintiff held prior to the government action for which the plaintiff complained. Then, to determine *whether* the government action materially injured the property right such that the plaintiff “no longer enjoyed reasonable means of access to which it was entitled.” Hilton Head Auto., 394 S.C. 27, 31, 714 S.E.2d 308, 310 (2011). ***If these conclusions are affirmatively determined, then a physical taking has occurred.***

This analysis is entirely unnecessary in cases brought by the government to condemn private property. In those instances, a physical taking occurred upon the filing of the Condemnation Notice and all elements of damage must be considered by the trial court if any private property owner is to be left in the after in the same

position pecuniarily as he was in the before. As noted by the aforementioned commentator:

It is important to remember that the Hardin decision is an inverse condemnation action, not a direct condemnation action. In a direct condemnation action, a taking has already been established and the only issue is valuation. The distinction between direct and inverse condemnation cases is that in direct cases there is no need to show special injury, only that the damage is a consequence of the taking. South Carolina State Highway Dep't. v. Bolt, 242 S.C. 411, 131 S.E.2d 264, 267 (1963). **The reason for the distinction is that a taking has occurred and the General Assembly addressed how just compensation is to be determined in direct eminent domain actions. S.C. Eminent Domain Procedure Act, S.C. Code Ann. § 28-2-370 (2007). Section 370 of the Act provides compensation for “any” diminution in value of the remaining property. The condemnation cases interpreting this statute have adopted the “all consequences of the taking” standard. Bolt, 131 S.E.2d at 267.**

Richard Davis Bybee, Recent Inverse Condemnation Cases, S.C. Law., May 2007, at 29 (emphasis added).

Any analysis that does not take into account *each* element of value of the land taken both before and after the condemnation *cannot* render just compensation and fails to meet the requirements of the Eminent Domain Procedure Act, the South Carolina Constitution, and the United States Constitution.

While Appellant recognizes this Court properly distinguished the Hardin decision from the present matter, Appellant asserts this Court's Opinion also improperly avoids proper application of S.C. Code § 28-2-370 and denies Mr. Powell

just compensation for the reduction in *value* caused to his remaining property as a result of the SCDOT acquisition. Accordingly, Appellant David Powell respectfully requests rehearing of this Court's Opinion.

ii. The March 14, 2013 SCDOT Appraisal

On March 14, 2013, the SCDOT produced to Mr. Powell a revised appraisal (hereinafter referred to as "the March 14, 2013 Report") report from the witness SCDOT listed, but not properly qualified by the trial court, as its proposed appraisal expert. This report was the first appraisal SCDOT produced following the revelation that the frontage road would no longer connect Mr. Powell's property to the North, but, instead, would terminate at a cul-de-sac shortly beyond Mr. Powell's property line. This report, along with Mr. Powell's appraisal report, assessed damages to Mr. Powell's property resulting from the reconfiguration of access to his property. Although Mr. Powell's and SCDOT's respective appraisers disagree as to the total amount due Appellant as just compensation for the condemnation of his property, each of these two reports, and only these two reports, contains a full and fair analysis of "any diminution in the value of the landowner's remaining property" caused by the present condemnation action. S.C. Code Ann. § 28-2-370.

Respondent's motion for partial summary judgment below, which is the subject of the present appeal, sought to exclude from the jury both SCDOT's and Appellant's conclusions as to the diminution in value caused to Mr. Powell's remaining property.

SCDOT, in this report, at Paragraph 9, indicated the highway-commercially-

zoned subject property was valued at Nine Hundred and Sixty-Three Thousand and No/100 (\$963,000.00) Dollars as of the date of the filing of the Condemnation Notice *prior* to the construction of the interchange at the back gate for which the Condemnation Notice was filed. However, the report also concluded the property was only worth Four Hundred and Forty-Six Thousand and No/100 (\$446,000.00) Dollars, as of the very same date, *following* the construction of the interchange.

According to SCDOT, the diminution in value, constituting just compensation, totaled Five Hundred and Seventeen Thousand and No/100 (\$517,000.00) Dollars. According to the March 13, 2013 Report, at Paragraph 31, Seventy-Two Thousand and No/100 (\$72,000.00) Dollars of just compensation was attributed to the land which SCDOT physically appropriated in the take. The remaining Four Hundred and Forty-Six Thousand and No/100 (\$446,000.00) Dollar diminution in value to Mr. Powell's property was entirely due to damages to Mr. Powell's remaining property resulting from the reconfiguration of access. This, according to the SCDOT appraiser, represented a Fifty percent (50%) diminution in value of the property Mr. Powell retained after SCDOT condemned a portion of his property for the construction of the interchange.

The appraiser for SCDOT himself fully explained his analysis in his report and in his deposition. Notably, he even went to the trouble of locating paired sales in order to specifically quantify the diminution in value of the property in the *after* condition. In Mr. Haskell's deposition on March 25, 2013, Mr. Haskell testified:

Q: "After the acquisition, the subject will have similar access to Sale "C"; however, the subject will maintain its exposure along Highway 17, thus an adjustment slightly less than fifty-three percent is appropriate. Based on the paired sales data analysis, after the acquisition, a fifty percent downward adjustment is reasonable." So you're giving the benefit to Mr. Powell's tract of land?

A: That's correct.

Q: And this is your work product that you did and assembled on your own volition acting as an appraiser in evaluating the take and damages?

A: That's correct.

Mr. Haskell continued:

Q: So you indicated the difference of \$517,000, which as I read your report, it's 72,000 for the take and 445,000 for damages to the remainder?

A: Yes, sir.

Q: And that was your opinion when you signed this report on March 14, 2013?

A: Yes, sir.

Q: All right, sir. And if you went to trial tomorrow morning, and this appraisal was determined by the court to be relevant, this would still be your opinion?

A: Yes, sir.

(R.p. 284, lines 14-25; R.p. 285; R.p. 286, lines 1-14)

Clearly, until Mr. Haskell was instructed by his client's attorney to disregard the reconfiguration of access to Mr. Powell's property directly resulting from the interchange project, he was prepared to testify under oath, as Condemnor's proposed expert, should he be so qualified, as to property value, that Mr. Powell's remaining property had been damaged by Fifty percent. Notably, not only did Mr. Haskell

determine in his report the remainder had been damaged by Fifty percent (50%), but he considered "Access/Frontage/Exposure" in determining the property value and the appropriate adjustments to be made to other properties in order to make them more comparable to the subject. (R.p. 137)

B. The reference in the Order below that the "Department could have eliminated the intersection without taking land from Mr. Powell" is not supported by *any* evidence before the court and should be remanded to the trial court for proper evidentiary consideration.

In stating the "Department could have eliminated the intersection without taking land from Mr. Powell," the trial court established an inference that could erroneously distinguish the closure of the Emory Rd. intersection with Hwy. 17 and the creation of the cul-de-sac on Socastee Hwy. from the highway project for which this action was filed. (R.p. 12) This inference was: (1) not sought by the Condemnor's Motion nor argued by Condemnor at the hearing below; (2) not stated by the court in the hearing below; and, (3) not specifically enumerated as a holding in the Order below. Neither is it supported by *any* evidence in the record below. In his deposition on March 25, 2013, Mike Barbee testified as the SCDOT engineer as follows:

Q: And who is constructing the cul de sac?
A: The cul de sac will be constructed by the DOT and the county's contractor, which is Balfour Beatty Infrastructure.
Q: Okay. And is that being constructed with the Ride on a Penny Fund?
A: Yes, sir.

Q: Okay. So that's part of the construction project that you've called the interchange at Highway 17 and Farrow Parkway?

A: Yes, sir.

(R.p. 304, lines 20-25; R.p. 305, lines 1-6)

This interchange project is part of the group of highway projects funded by a "One-Cent Capital Projects Sales Tax" that was approved by Horry County voters in the referendum of November 7, 2006.⁵ Moreover, the plan sheet depicting the cul-de-sac and Emory Rd. closure (which appears in both SCDOT's appraisal report Condemnor seeks to suppress from evidence and the appraisal report which Condemnor seeks to present to the jury at trial in place of the one it seeks to suppress from evidence) is clearly labeled as a plan sheet for this same interchange project. (R.p. 127) This interchange project has closed an intersection that had been open for decades. **There is not one scintilla of evidence in this record to support any inference other than: were it not for the interchange project, the intersection would never have been eliminated.**

As the Wilson case correctly noted:

While the construction of a median, with nothing more, may very well be an exercise of the police power with no resulting compensable damage to an abutting property owner, in the instant case the proposed median is only an incidental part of the overall Department plans and contemplated construction. There is no suggestion of the need for, or the contemplated construction of, a median except as an incidental part of the major relocation and

⁵ <http://www.ridingonapenny.com>

construction plans of the Department. But for such overall construction and relocation, and condemnation under the power of eminent domain for such purposes, there would have been no median and, of course, no damage to the abutting landowner. It logically follows, we think that any damage attributable to the planned median is an incidental result of the exercise of the power of eminent domain, and under these circumstances we know of no sound reason for departing from the established rule in this State, which is as follows:

“The entire parcel is considered as a whole, and the inquiry is, how much has the particular public improvement decreased the fair market value of the property, taking into consideration the use for which the land was taken and all the reasonably probable effects of its devotion to that use.” South Carolina State Highway Dep’t v. Bolt, . 242 S.C. 411, 131 S.E.2d 264 (1963).

The implication of this court’s (and that of the court’s below) unsupported statement is that the present condemnation is somehow unrelated to the project listed in the caption of the Condemnation Notice itself. The only evidence in the record on this issue is directly contrary to this inference; and, nothing in the record before this court supports the statement in the order or its inference. Accordingly, Mr. Powell respectfully requests this Court reverse its findings as to this issue and remand the case for trial by jury to determine, once evidence has been proposed and considered, whether the involuntary acquisition of Mr. Powell’s property was “an incidental part of the major relocation and construction plans of the Department” as was the case in Wilson. The “trial judge simply did not have any

evidence to support” the inference of the statement his order. Brown v. Johnson, 276

S.C. 68, 72, 275 S.E.2d 876, 878 (1981).

**III. ADDITIONAL GROUNDS FOR REHEARING OF APPELLATE
CASE NO. 2013-001759**

- A. The determination that Respondent “could have eliminated the intersection without taking part of Powell’s property” was in error and not supported in the record.**

This Court determined “Respondent “could have eliminated the intersection without taking part of Powell’s property”. South Carolina Department of Transportation v. Powell, Op. No. 5368 (S.C. Ct. App. Filed December 9, 2015) (Davis Adv.Sh. No. 48 at 50) However, the trial judge entertained no testimony at the hearing below. The caption designated by Respondent in the filing of the Condemnation Notice and Lis Pendens, each make clear this matter was filed as part of SCDOT project identified as the “Interchange at US 17 Bypass and SC 707/Farrow Parkway.” (R.p. 17) Moreover, the testimony of SCDOT engineer further clarifies this condemnation and the acquisition of real property from Appellant was part of the project identified by SCDOT as the construction of the said interchange. There exists no testimony supporting this Court’s conclusion the acquisition of Appellant’s property was unnecessary to the overall construction of the interchange.

Accordingly, Appellant respectfully requests reconsideration of this conclusion by the Court.

- B. This court erred in referring to Respondent’s appraiser was a “real estate valuation expert” without any qualification in the record.**

This Court erred in referring to Respondent's real estate appraiser as a "real estate valuation expert" without any qualification in the record. South Carolina Department of Transportation v. Powell, Op. No. 5368 (S.C. Ct. App. Filed December 9, 2015) (Davis Adv.Sh. No. 48 at 50) In this matter, the trial judge entertained no testimony at the hearing below. Appellant was provided no opportunity to *voir dire* Mr. Haskell. Moreover, Respondent did not offer Mr. Haskell, on the record, as an expert, and the trial court made no determination Mr. Haskell was qualified as an expert in this matter.

Accordingly, Appellant respectfully requests reconsideration of this conclusion by the Court.

C. To the extent this Court relied upon any of the actions of SCDOT as being an exercise of the State's police power, it is in error and warrants rehearing.

This action was initiated by the South Carolina Department of Transportation, "[p]ursuant to the South Carolina Eminent Domain Procedure Act, Section 28-2-10, et seq." upon the filing of the Condemnation Notice and Lis Pendens on August 27, 2010. (R.p. 16) Pursuant to those documents, SCDOT acquired a portion of Appellant's property for the construction of the "Interchange at US 17 Bypass and SC 707/Farrow Parkway." (The "Interchange Project") (R.p. 17) Yet, it was not until Condemnor sought to exclude an appraisal generated on its behalf that Condemnor sought the police power protection.

At the hearing below, Judge Cottingham repeatedly declared that SCDOT's actions in the present matter are exercises of the eminent domain, rather than the police power. For example; Judge Cottingham stated:

THE COURT: I want to say one more time gentlemen, this is not a police action in my view. This is a taking by condemnation.

(R.p. 109, lines 7-9)

The court continued:

THE COURT: All right, sir. I've heard it and fine arguments on both sides. I want the record to reflect one more time that this is not a police action.

(R.p. 110, lines 5-7)

And, finally, Judge Cottingham concluded:

THE COURT: I will forward you my formal order as to my ruling, but I want it clear that this is not a police action.

(R.p. 111, lines 14-16)

Shortly thereafter, Judge Cottingham requested Condemnor submit a proposed order, and Condemnor complied. Notably, the order Condemnor submitted failed to include the finding Judge Cottingham repeated during the hearing.

Still, Condemnor seeks in its brief to invoke the protection of a governmental power Judge Cottingham clearly held Condemnor had not invoked here. Condemnor made no contemporaneous objection to Judge Cottingham's repeated ruling, failed to

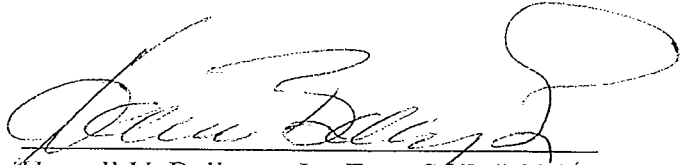
draft the order in a manner consistent with Judge Cottingham's clear instruction, and failed to seek reconsideration of or appeal from, Judge Cottingham's repeated finding. As such, this Court should not now extend to Condemnor protection from the very power Judge Cottingham held SCDOT had not exercised in the present matter.

Accordingly, Appellant requests rehearing of this matter as to this Court's reliance, in any manner, of SCDOT's actions herein being exercised of police power, as this issue was never properly before this Court.

III. CONCLUSION

For the reasons set forth above, Appellant respectfully requests rehearing of this matter.

Respectfully submitted,



Howell V. Bellamy, Jr., Esq., SCB # 00642

Robert S. Shelton, Esq., SCB # 68543

BELLAMY, RUTENBERG, COPELAND,

EPPS, GRAVELY & BOWERS, P.A.

1000 29th Avenue North

Myrtle Beach, SC 29577

(843) 448-2400

Attorneys for Appellant David Franklin Powell

Myrtle Beach, South Carolina

December 28, 2015

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM HORRY COUNTY

Edward B. Cottingham, Circuit Court Judge

Appellate Case No. 2013-001759

Case No. 2010-CP-26-7961

Opinion No. 5368

South Carolina Department of Transportation.....Respondent,

vs.

David Franklin Powell Appellant,

RESPONDENT'S RETURN TO APPELLANT'S PETITION FOR REHEARING

Respondent respectfully submits this Return to Appellant's Petition for Rehearing filed December 29, 2015. Initially, we would note that the Court's holding that a taking of land and acts done elsewhere on the same project can be separated--the latter giving rise to no recovery--is supported by a vast amount of authority that the Court did not and need not have cited. This precedent is so pervasive that it can be said that the principle that the Court confirmed is universally accepted in federal and state courts in the United States. 4A Sackman, Nichols on Eminent Domain, §14A.01[6][a], p. 14A-25.

I. Respondent did not argue nor did this Court or the trial court hold that Appellant's property was not diminished in value by the highway project, only that the loss was not attributable to the taking of a portion of his land.

In his section I., Case Summary, Appellant argues that the diminution in value of his land is recoverable because the taking of a portion of his land was "an integral part of the construction of the Interchange at U.S. Highway 17 Bypass SC 707/Farrow Parkway." However, this Court correctly concluded, based upon well settled precedent, that damages arising from the project as a whole are not necessarily recoverable in a condemnation case where those damages can be separated from the use of the land actually acquired from a landowner. The taking of Appellant's property was only an incidental result of the closure of the Emory Road/U.S. 17 intersection and was not indispensable to and inseparable from the overall project. Further, the taking of the property was not a substantial part of the overall road project. Slip opinion, Dec. 9, 2015.

On page two, Appellant states that his property was separated from the U.S. 17 Bypass only by "a power line easement." However, Appellant does not contend and has never argued that that he was the owner of the fee estate underlying the easement. If so, he would certainly be entitled to compensation for the taking of that important appurtenant property right of access. See, Hardin (& Tallent) v. SCDOT, 371 S.C. 598, 641 S.E.2d 437, 442 (2007).

II. The Eminent Domain Procedure Act does not mandate that landowners be paid for any and all losses in value in a condemnation case.

In section II, Appellant argues, as he has throughout, that it was error for the courts herein to decline to utilize the “before and after” method of determining just compensation and that all loss of value attributable to the project should be recoverable. However, as we pointed out in our brief to the Court herein, our Supreme Court long ago held that the “before and after” appraisal method is sound but not exclusive. SCDHPT v. Cheston, 278 S.C. 464, 465, 298 S.E.2d 447, 448 (1982). That method is particularly unsuited for evaluation of just compensation in a case such as this one where part of the loss of value is attributable to an exercise of the police power in diverting traffic on a highway and not to an act of eminent domain.

On this point, Appellant may be correct in his statement on page 7, that a willing purchaser may not discount his offer due to the possibility that a nearby valuable traffic artery may be converted to a side street by public authorities. However, that is because such a possibility in most cases is an exceedingly remote one. It does not change the nature of the vested rights the owner has in his land. All purchasers of property buy that property subject to the sovereign’s police power to regulate its use.

Beginning at page 8, Appellant asserts his statutory construction argument that the definition of just compensation in S.C. Code §28-2-370 does not place an express limitation on the damages to remaining land element. However, the seminal case in this area, S.C. State Highway Dep’t v. Bolt, 242 S.C. 411, 131 S.E.2d 264 (1963), clearly

limits the damages to remaining land to those damages resulting from the taking and not from the project as a whole. Moreover, a number of cases addressing the non-compensability of police power-related damages preceded the enactment of the Eminent Domain Procedure Act including Wilson v. Greenville County, 110 S.C. 110 S.C. 321, 96 S.E.2d 301 (1918); and South Carolina State Highway Dep't v. Carodale Assocs., 268 S.C. 556, 235 S.E.2d 127 (1977). Those cases include the one upon which Appellant places his greatest reliance, S.C. State Highway Dep't v. Wilson, 254 S.C. 360, 175 S.E.2d 391 (1970). However, the Court in that case could have dispensed with its in-depth analysis of the facts if the law was as Appellant proposes: that any losses are recoverable once a condemnation notice is served. In ascertaining the meaning of a statute the General Assembly is presumed to know the pronouncements of the appellate courts. Grier v. Amisub of S.C., Inc., 397 S.C. 532, 536, 725 S.E.2d 693, 696 (2012).

On page 17, Appellant appears to argue that a mere diminution in value of land constitutes a taking by eminent domain. This argument ignores the basic tenets of takings law. See, Penn Central Transportation Co. v. New York City, 438 U.S. 104, 98 S.Ct. 2646, 57 L.Ed.2d 631 (1978). As this Court has stated, "The property itself must suffer some diminution in substance, or be rendered intrinsically less valuable by reason of the public use." Gray v. S.C. Dep't of Highways and Pub. Transp., 427 S.C. 144, 151, 427 S.E.2d 899, 903 (Ct. App. 1993), overruled on other grounds, Hardin (& Tallent), supra, (quoting 26 Am.Jur.2d *Eminent Domain*, Section 160 (1966)).

We believe the Court's opinion adequately addresses the argument Appellant makes in Section II. B (page 21) that there is no evidence that Respondent could have closed the intersection without taking his property. Just compensation does not include

the diminution in value of the remainder caused by the acquisition and use of adjoining lands of others for the same undertaking. Campbell v. United States, 266 U.S. 368, 45 S.Ct.115, 69 L.Ed. 328 (1924).

III. Appellant's evidentiary arguments are unconvincing in that the Court's decision is based on undisputed facts.

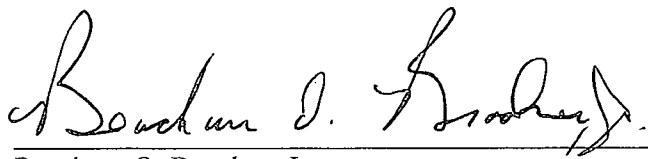
In section III. A., Appellant objects that there has been no testimony to support the conclusion that the taking of his property and the closure of the intersection were separate acts. However, as mentioned above, Appellant never claimed to own land at the intersection. Thus, he has no claim to its use as a matter of law.

In subsection B., Appellant complains that he was not able to cross-examine Respondent's appraisal witness. However, the issue on appeal is one of law and not of valuation. Valuation is yet to be tried.

Appellant complains in subsection C. that we did not object to statements made by the trial judge that the case was not a "police action." However, there was nothing to object to. The case was an affirmative condemnation brought under the Eminent Domain Procedure Act. The court merely ruled on an evidentiary matter in that valuation case that the landowner was not entitled to recover diminution in value flowing from an act of the State that did not affect any pre-existing property right held by him.

IV. Conclusion.

The Court correctly applied the prevailing law herein and should not rehear the appeal or alter its opinion in any way.



Beacham O. Brooker, Jr.
S. C. Department of Transportation
Post Office Box 191
Columbia, South Carolina 29201-0191
(803) 737-1347
brookerbo@scdot.org

John B. McCutcheon, Jr.
Thompson & Henry, P.A.
Post Office Box 1740
Conway, South Carolina 29528
(843) 248-5741
JMcCutcheon@thompsonlaw.com

Attorneys for Respondent

Columbia, S.C.
January 5, 2016

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Edward B. Cottingham, Circuit Court Judge

Appellate Case No. 2013-001759
Case No. 2010-CP-26-7961

South Carolina Department of Transportation Respondent,

v.

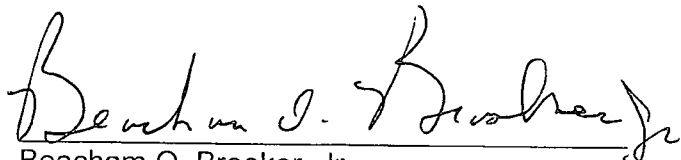
David Franklin Powell.....Appellant.

PROOF OF SERVICE

I certify that I have served the RESPONDENT'S RETURN TO APPELLANT'S PETITION FOR REHEARING on the Appellant by depositing a copy of it in the United States Mail, postage prepaid on January 12, 2016, addressed to his attorneys of record, Howell V. Bellamy, Jr. and Robert S. Shelton, and upon John B. McCutcheon, Jr., as follows:

Howell V. Bellamy, Jr., Esquire
Robert S. Shelton, Esquire
Bellamy, Rutenberg, Copeland,
Epps, Gravely & Bowers, PA
P O Box 357
Myrtle Beach, SC 29578

John B. McCutcheon, Jr., Esquire
Thompson & Henry, PA
P O Box 1740
Conway, SC 29528



Beacham O. Brooker, Jr.,
South Carolina Department of Transportation
Post Office Box 191
Columbia, South Carolina 29202-0191
(803) 737-1347
brookerbo@scdot.org

Attorney for Respondent

January 12, 2016

The South Carolina Court of Appeals

South Carolina Department of Transportation,
Respondent,

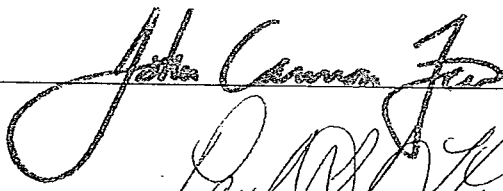
v.

David Franklin Powell, Appellant.

Appellate Case No. 2013-001759

ORDER

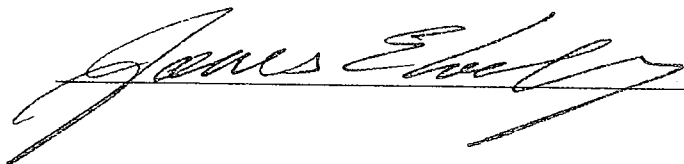
After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.



J.



J.



J.

Columbia, South Carolina

FILED

cc:

Howell V. Bellamy, Jr., Esquire

Robert S. Shelton, Esquire

John B. McCutcheon, Jr., Esquire

February 19, 2016

Beacham O. Brooker, Jr., Esquire
The Honorable Edward B. Cottingham