

20532

THE STATE OF SOUTH-CAROLINA
In the Court of Appeals

APPEAL FROM FAIRFIELD COUNTY
Court of Common Pleas

Paul M. Burch, Circuit Court Judge

Case Nos. 2011-CP-20-0298 and 2011-CP-20-0299
Appellate Case No. 2013-000076

RAWLEY E. SCHOFIELD Respondent,

v.

FAIRFIELD COUNTY, South Carolina, a political subdivision of
the State of South Carolina, ...Appellant.

MARY R. MEDLIN Respondent,

v.

FAIRFIELD COUNTY, South Carolina, a political subdivision of
the State of South Carolina, ...Appellant.

RECORD ON APPEAL

L. Dwight Floyd (72770)
PARKER POE ADAMS & BERNSTEIN LLP
1201 Main Street, Suite 1450
Columbia, South Carolina 29201
(803) 255-8000
Attorney for Appellant

Creighton B. Coleman (6521)
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(803) 635-6884
Attorney for Respondents

RECEIVED
SC COURT OF APPEALS

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STATE OF SOUTH CAROLINA

COUNTY OF FAIRFIELD

Rawley E. Schofield,
R. Mary Medlin,

Plaintiffs,

v.

Fairfield County, South Carolina, a political
subdivision of the State of South Carolina,

Defendant.

IN THE COURT OF COMMON PLEAS
FOR THE
SIXTH JUDICIAL CIRCUIT

Civil Action No. 11-CP-20-0298

Civil Action No. 11-CP-20-0299

ORDER

2012 APR 11 P 12:15
FAIRFIELD COUNTY
CLERK OF COURT
BETTY JO BECKHAM

THIS MATTER originates from the Defendant's filing and service of the Condemnation Notice and Tender of Payment on or about July 1, 2011. As a result, Plaintiffs filed a Summons and Complaint on July 25, 2011, and served Defendant's attorney on August 3, 2011. Pursuant to an agreement between the parties, the above-referenced actions are consolidated for the purposes of this trial.

Both Plaintiffs assert that condemnation is not necessary, in that if the Defendant would place the wastewater treatment line on its own property, the taking of their property would not be necessary. In addition, the Complainants assert that Defendant has failed to utilize the necessary factors in determining the most advantageous location and construction of the wastewater line.

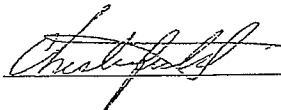
In the case of *Southern Development Land and Golf Company, LTD v. South Carolina Public Service Authority*, 305 S.C. 507, 409 S.E.2d 428 (1991) hereinafter referred to as *Southern Development*, the South Carolina Court of Appeals reversed in part, vacated in part, and remanded to the Master-in-Equity. While remanding the case it did so with specific instructions for the Master to consider in determining whether the Defendant abused its discretion in selecting a specific route to run a high voltage transmission line resulting in a condemnation action. The factors the Court instructed the Master to re-evaluate are 1) availability of an alternate route; 2) cost; 3) environmental factors; 4) long-range planning; and 5) safety considerations. In addition, the Court further stated that "safety, reliability, aesthetics, and costs along with any other appropriate factors, such as environmental conditions and long-range area planning by public authorities" could be considered.

Any condemning authority shall utilize the above factors, and any other factors it deems appropriate, in determining where a specific route should be located. It is this Court's decision that Defendant failed to meet the above factors in determining the best location for the wastewater treatment line. Of the five factors along with aesthetics, as set forth in *Southern Development*, the Defendant did not consider the availability of an alternate route,

environmental factors, safety considerations or aesthetics. Of the six (6) factors, they did not consider four (4) factors. In addition, the Defendant's consideration of one factor they did consider, i.e. cost, is flawed and lacks justification. The only factor the Defendant considered is long-range planning, and the Plaintiffs do not contest this factor. The Defendant did not perform the necessary due diligence as set forth in *Southern Development*. As a result, the Defendant has abused its discretion in selecting the proposed route through the Plaintiffs' property.

Therefore, the Defendant shall re-evaluate the proposed condemnation by utilizing the above factors, as well as factors it deems appropriate.

AND IT IS SO ORDERED.

 SC

March 27, 2012


Paul M Burch
Circuit Court Judge

STATE OF SOUTH CAROLINA

COUNTY OF FAIRFIELD

Rawley E. Schofield,

2012 JUL 11 1:43
IN THE COURT OF COMMON PLEAS
OF THE SIXTH JUDICIAL CIRCUIT

FAIRFIELD COUNTY
CLERK OF COURT
BETTY JO BECKHAM

Case Number: 2011-CP-20-0298

Plaintiff,

vs.

Fairfield County, South Carolina, a political
subdivision of the State of South Carolina,

Defendant.

**ORDER AWARDING
ATTORNEY'S FEES AND COSTS**

STATE OF SOUTH CAROLINA

COUNTY OF FAIRFIELD

Mary R. Medlin,

IN THE COURT OF COMMON PLEAS
OF THE SIXTH JUDICIAL CIRCUIT

Case Number: 2011-CP-20-0298

Plaintiff,

vs.

Fairfield County, South Carolina, a political
subdivision of the State of South Carolina,

Defendant.

**ORDER AWARDING
ATTORNEY'S FEES AND COSTS**

ORDER

This matter is before the Court on Plaintiffs' Motion for an Award of Attorney's Fees and Costs pursuant to S.C. Code Ann. § 28-2-510 (2007). The parties presented oral arguments on June 7, 2012, at the Fairfield County Courthouse. After hearing the arguments of counsel, reviewing the memoranda and other documents submitted to the Court, and the applicable authority, the Court hereby grants Plaintiffs' Motion for an Award of Attorney's Fees and Costs as set forth below.

FACTUAL AND PROCEDURAL BACKGROUND

This matter involves a proposed condemnation initiated on behalf of Defendant on July 1, 2011, by filing and serving a condemnation notice and tender of payment. The Plaintiffs filed a summons and complaint on July 25, 2011, contesting the appropriateness of Defendant's condemnation. The nonjury trial took place on February 3, 2012, at the Fairfield County Courthouse.

On March 27, 2012, this Court, finding an abuse of discretion by the county, ordered the Defendant Fairfield County to re-evaluate the proposed condemnation, utilizing the factors relied upon in *Southern Dev. Land and Golf Co., Ltd. v. S.C. Pub. Serv. Auth.*, 305 S.C. 507, 409 S.E.2d 428 (Ct. App. 1991), *rev'd on other grounds*, 311 S.C. 29, 426 S.E.2d 748 (S.C. 1993).

Plaintiffs next moved for an award of attorney's fees and costs. On April 16, 2012, Plaintiffs' counsel filed an invoice, stating a total of \$29,260.00 in attorney's fees and \$10,620.39 in costs. At the June 7, 2012 hearing, counsel for Defendant presented the Court an affidavit from Tiffany S. Harrison, Director of Fairfield County Economic Development, swearing that after re-evaluating the condemnation plan consistent with the factors established in *Southern Development*, the "preferred, best, and most appropriate route to serve the wastewater needs of the Fairfield Commerce Center" remains the proposed condemnation route through Plaintiff's property.

This Court also takes into consideration that during the February 3, 2012 trial, the expert witness for the Defendant made what this Court considers to be a material misrepresentation of fact concerning South Carolina Department of Health and Environmental Control procedure.

ANALYSIS

The applicable law in this motion for attorney's fees and costs is S.C. Code Ann. § 28-2-510 (A) (2007).¹ Under that section, "If, in the action challenging the condemnor's right to take, the court determines that the condemnor has no right to take all or part of any landowner's property, the landowner's reasonable costs and litigation expenses incurred therein must be awarded to the landowner." This Court has indeed determined that the condemnor has no right to take all or part of the landowners' property. The county's condemnation was not reasonably necessary, and its methodology in selecting the condemnation route was an abuse of discretion. Accordingly, this Court's order of March 27, 2012, prevented the county from taking the Plaintiffs' land under its original condemnation plan, and ordered it to re-evaluate its plan pursuant to the analysis employed in *Southern Development*.

As to Plaintiffs' counsel's invoice, this Court finds that the amounts are reasonable and orders that the Defendant shall pay \$39,880.39, which represents attorney's fees and costs.

CONCLUSION

THEREFORE, Plaintiffs' Motion for an Award of Attorney's Fees and Costs is hereby GRANTED. Plaintiffs are awarded \$39,880.39 from the Defendant.

IT IS SO ORDERED.

¹ Subsection (A) applies when a condemnor has asserted a right to take and the condemnee has challenged the right to take under the procedures of § 28-2-470, subsection (B) applies when a condemnor has in fact taken the property, and subsection (C) applies when a condemnor has initiated a condemnation action but has since abandoned or withdrawn the condemnation action.



The Honorable Paul M. Burch
Presiding Judge

Pageland, South Carolina
July 17, 2012

RECEIVED

JUL 18 2012

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF FAIRFIELD) OF THE SIXTH JUDICIAL CIRCUIT

Rawley E. Schofield,

2012 DEC -6 A 11:05
FAIRFIELD COUNTY
CLERK OF COURT
BETTY JO BECKHAM

Case Number: 2011-CP-20-00298

v.

Fairfield County, South Carolina, a political
subdivision of the State of South Carolina,

Defendant.

ORDER

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF FAIRFIELD) OF THE SIXTH JUDICIAL CIRCUIT

Mary R. Medlin,

Case Number: 2011-CP-20-00299

Plaintiff,

v.

Fairfield County, South Carolina, a political
subdivision of the State of South Carolina,

Defendant.

ORDER

This matter is before the Court on Defendant's Motion to Alter or Amend, or, in the Alternative, for Reconsideration of this Court's Order Awarding Attorney's Fees and Costs. In accordance with Rule 59(f), SCRCP, the Court holds that it is not necessary to hear oral arguments on this matter. After reviewing the memoranda and other documents submitted to the Court, and the applicable authority, the Court hereby denies Defendant's Motion.

In its Motion, Defendant has raised the issue of the sufficiency of its new condemnation plan. Any matters relating to the sufficiency of the re-evaluated condemnation plan were not and are not before this Court. This Court ordered Defendant to re-evaluate its condemnation plan in a

way consistent with South Carolina case law. Following that order, Plaintiffs moved for an award of attorney's fees relating to that order, which this Court granted. The new plan proposed by Defendant has not been challenged. Any dispute as to the new plan must follow the procedures codified in S.C. Code Title 28.

THEREFORE, Defendant's Motion to Alter or Amend, or, in the Alternative, for Reconsideration is DENIED.

IT IS SO ORDERED.

A handwritten signature in dark ink, appearing to read "Paul M. Burch", is written over a horizontal line.

The Honorable Paul M. Burch
Presiding Judge

Pageland, South Carolina
December 5, 2012

STATE OF SOUTH CAROLINA
COUNTY OF FAIRFIELD

IN THE COURT OF COMMON PLEAS
FOR THE
SIXTH JUDICIAL CIRCUIT

Rawley E. Schofield,

2011 JUL 25 3:06 PM

Civil Action No. 11-CP-20- 298

v.

FAIRFIELD COUNTY
CLERK OF COURT
ESTABLISHED 1800

CIVIL ACTION
COVERSHEET

Fairfield County, South Carolina,

Defendant.

Creighton B. Coleman
COLEMAN TOLEN & SWEARINGEN, LLC
120 West Washington Street
PO Box 1006
Winnsboro, SC 29180

SC Bar: 6521
Telephone: 803-635-6884
Facsimile: 803-635-9228
E-mail: creighton@cbcoleman-llc.com

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 Court Annexed Alternative Dispute Resolution Rules.
☐ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- | | | | |
|---|---|---|--|
| Contracts | Torts-Professional Malpractice | Torts - Personal Injury | Real Property |
| ☐ Constructions (100) | ☐ Dental Malpractice (200) | ☐ Assault/Slander/Libel (300) | ☐ Claim & Delivery (400) |
| ☐ Debt Collection (110) | ☐ Legal Malpractice (210) | ☐ Conversion (310) | ☒ Condemnation (410) |
| ☐ Employment (120) | ☐ Medical Malpractice (220) | ☐ Motor Vehicle Accident (320) | ☐ Foreclosure (420) |
| ☐ General (130) | Previous Notice of Intent Case # | ☐ Premises Liability (330) | ☐ Mechanic's Lien (430) |
| ☐ Breach of Contract (140) | 20__-CP-__-__ | ☐ Products Liability (340) | ☐ Partition (440) |
| ☐ Other (199) | ☐ Notice/ File Med Mal (230) | ☐ Personal Injury (350) | ☐ Possession (450) |
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| ☐ Mandamus (520) | ☐ Foreign Judgment (710) | ☐ Judicial Review (810) | ☐ Magistrate-Civil (910) |
| ☐ Habeas Corpus (530) | ☐ Magistrate's Judgment (720) | ☐ Relief (820) | ☐ Magistrate-Criminal (920) |
| ☐ Other (599) | ☐ Minor Settlement (730) | ☐ Permanent Injunction (830) | ☐ Municipal (930) |
| | ☐ Transcript Judgment (740) | ☐ Forfeiture-Petition (840) | ☐ Probate Court (940) |
| | ☐ Lis Pendens (750) | ☐ Forfeiture-Consent Order (850) | ☐ SCDOT (950) |
| | ☐ Trans Structured Settlement | ☐ Other (899) | ☐ Worker's Comp (960) |
| | Payment Rights App (760) | | ☐ Zoning Board (970) |
| | ☐ Other (799) | | ☐ Administrative Law Judge (980) |
| Special/Complex /Other | ☐ Pharmaceuticals (630) | | ☐ Public Service Commission (990) |
| ☐ Environmental (600) | ☐ Unfair Trade Practices (640) | | ☐ Employment Security Comm (991) |
| ☐ Automobile Arb. (610) | ☐ Out-of State Depositions (650) | | ☐ Other (999) |
| ☐ Medical (620) | ☐ Sexual Predator (510) | | |
| ☐ Other (699) | | | |

Submitting Party Signature: _____

Date: July 25, 2011

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 FAIRFIELD

Rawley E. Schofield,

Plaintiff,

v.

Fairfield County, South Carolina, a political
subdivision of the State of South Carolina,

Defendant.

IN THE COURT OF COMMON PLEAS
FOR THE
SIXTH JUDICIAL CIRCUIT

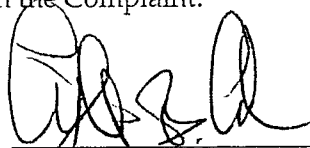
Civil Action No. 11-CP-20-_____

SUMMONS

2011 JUL 25 P 3:06
FAIRFIELD COUNTY
CLERK OF COURT
JUL 25 2011

TO THE ABOVE-NAMED DEFENDANT:

YOU ARE HEREBY SUMMONED and required to answer the Complaint herein, a copy of which is served upon you, and to serve a copy of your answer to this Complaint upon the subscriber at the address shown below within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the Complaint, judgment by default will be rendered against you for the relief demanded in the Complaint.



Creighton B. Coleman – SCB 6521
COLEMAN TOLEN & SWEARINGEN, LLC
120 West Washington Street
PO Box 1006
Winnsboro, SC 29180
803-635-6884
creighton@cbcoleman-llc.com
ATTORNEYS FOR PLAINTIFF

July 21, 2011

STATE OF SOUTH CAROLINA
COUNTY OF FAIRFIELD

Rawley E. Schofield,

Plaintiff,

v.

Fairfield County, South Carolina, a political
subdivision of the State of South Carolina,

Defendant.

IN THE COURT OF COMMON PLEAS
FOR THE
SIXTH JUDICIAL CIRCUIT

Civil Action No. 11-CP-20-_____

COMPLAINT
(Challenge Action to Condemnation)

(Non-Jury)

2011 JUL 25 P 3:01 PM
CLERK OF COURT
FAIRFIELD COUNTY

PURSUANT TO the South Carolina Eminent Domain Procedures Act, South Carolina Code Ann. § 28-2-270, Plaintiff does challenge Defendant's (Condemnor) right to condemn on the following facts and grounds:

1. Plaintiff is a resident of Fairfield County, South Carolina.
2. Defendant is a political subdivision of the State of South Carolina.
3. The subject property is located in Fairfield County, therefore, venue is proper.
4. Plaintiff was served with certain papers in the purported exercise of the power of eminent domain by Defendant on June 30, 2011.
5. That Defendant has alleged a public need for the construction of wastewater infrastructure improvements to service a new industrial park located at Cook and Peach Roads.
6. That Plaintiff is a landowner and Defendant has served condemnation papers pursuant to S.C. Code Ann. §§ 4-9-30 and 28-2-60, alleging the right to take a parcel of land from the Plaintiff through exercise of the eminent domain process.
7. That Plaintiff alleges that the condemnation is not necessary in that if Defendant stays on its property, as shown on the map titled "Class A Business/Industrial Park Alternate

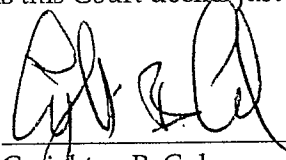
Wastewater Plan," attached as Exhibit A hereto, the taking of their property will not be necessary.

8. That Defendant has not utilized the necessary factors in determining the location and construction of the additional facilities for which it attempts to exercise the power of eminent domain.

9. That Defendant is required at a minimum to analyze the factors of safety, reliability, aesthetics and cost, but that it has not shown such an analysis prior to the attempted discretionary exercise of the power of eminent domain for the construction of the additional facilities.

WHEREFORE, Plaintiff prays that the Court grant an Order:

- a. To stop all present and future condemnation efforts in regard to the present and/or future location of wastewater improvements as this cannot be justified in that Defendant could just stay on its own property to complete the project without taking Plaintiff's property, which would not unreasonably affect Plaintiff;
- b. for attorney fees and costs of this action; and
- c. for such other and further relief as this Court deems just and proper.

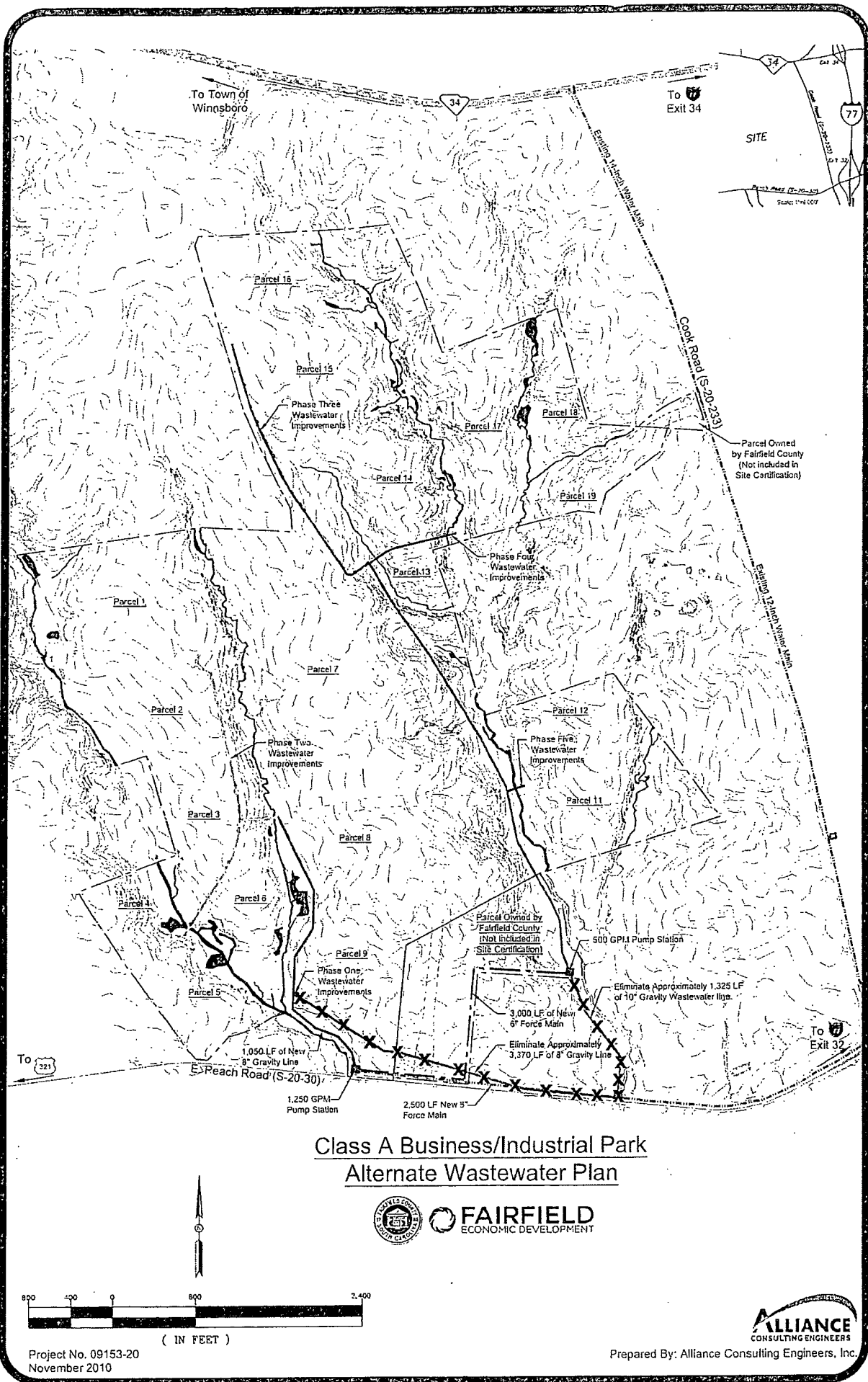


Creighton B. Coleman – SCB 6521
COLEMAN TOLEN & SWEARINGEN, LLC
120 West Washington Street
PO Box 1006
Winnsboro, SC 29180
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creighton@cbcoleman-llc.com
ATTORNEYS FOR PLAINTIFF

July 21, 2011

2011 JUL 25 P 3:06
FAIRFIELD COUNTY
CLERK OF COURT
STEVEN BERMAN

Exhibit A



STATE OF SOUTH CAROLINA

COUNTY OF FAIRFIELD

Rawley E. Schofield,

Plaintiff,

vs.

Fairfield County, South Carolina, a political
subdivision of the State of South Carolina,

Defendant.

2011 AUG 23

FAIRFIELD COUNTY
CLERK OF COURT
BETTY JO DECKHAM

IN THE COURT OF COMMON PLEAS

CA # 2011-CP-20-0298

ANSWER

Defendant Fairfield County, South Carolina, a political division of the State of South Carolina ("Fairfield County") answers and responds to Plaintiff's Complaint (the "Complaint") as follows:

GENERAL RESPONSE

Fairfield County denies each and every allegation of the Complaint that is not hereinafter specifically admitted, modified or explained.

FOR A FIRST DEFENSE

1. Fairfield County admits the allegations contained in Paragraph 1 of the Complaint.
2. Fairfield County admits the allegations contained in Paragraph 2 of the Complaint.
3. Fairfield County admits the allegations contained in Paragraph 3 of the Complaint.
4. In response to Paragraph 4 of the Complaint, Fairfield County admits that Plaintiff was served with a Condemnation Notice and Tender of Payment, for CA No. 2011-CP-

20-84 (the "Condemnation Notice") on June 30, 2011. Any allegations in Paragraph 4 of the Complaint inconsistent with the preceding admission are denied.

5. In response to Paragraph 5 of the Complaint, Fairfield County states that the Condemnation Notice speaks for itself and therefore denies the allegations contained in Paragraph 5 of the Complaint to the extent they are inconsistent in restating the allegations made in the Condemnation Notice.

6. In response to Paragraph 6 of the Complaint, Fairfield County admits that it served the Condemnation Notice. Fairfield County further admits that Plaintiff is a Landowner as defined in S.C. CODE ANN. § 28-2-30. Fairfield County states that the Condemnation Notice speaks for itself and therefore denies any remaining allegations contained in Paragraph 5 of the Complaint to the extent they are inconsistent in restating the allegations made in the Condemnation Notice.

7. Fairfield County denies the allegations contained in Paragraph 7 of the Complaint.

8. Fairfield County denies the allegations contained in Paragraph 8 of the Complaint.

9. Fairfield County denies the allegations contained in Paragraph 9 of the Complaint.

10. Fairfield County denies any allegations set forth in the unnumbered "WHEREFORE" paragraph and prayer for relief.

FOR A SECOND DEFENSE
(Failure to State a Claim)

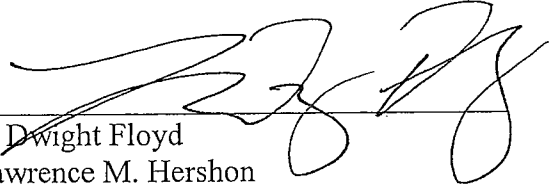
Plaintiff fails to state facts sufficient to constitute a cause of action against Fairfield County and should be dismissed pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

FOR A THIRD DEFENSE
(Statutory Compliance)

Fairfield County has complied with all statutory requirements of S.C. CODE ANN. § 28-2-10 *et seq.*, and, therefore, condemnation of the subject property is appropriate.

WHEREFORE, having fully answered Plaintiff's Complaint, Defendant Fairfield County respectfully prays that the Court:

1. Dismiss the Plaintiff's Complaint with prejudice;
2. Declare that Plaintiff is entitled to no relief;
3. Order to lift the stay in CA No. 2011-CP-20-83 so that the condemnation action may proceed;
4. Award Defendant Fairfield County its attorneys' fees and costs in defending this action; and
5. Grant such other and further relief as the Court may deem just and proper.


L. Dwight Floyd
Lawrence M. Hershon
Parker Poe Adams & Bernstein LLP
1201 Main Street, Suite 1450
Columbia, SC 29202-1509
(803) 255-8000
(803) 255-8017 (facsimile)

Attorneys for Defendant Fairfield County, South
Carolina, a political division of the State of South
Carolina

August 25, 2011
Columbia, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF FAIRFIELD

Rawley E. Schofield,

Plaintiff,

vs.

Fairfield County, South Carolina, a political
subdivision of the State of South Carolina,

Defendant.

IN THE COURT OF COMMON PLEAS

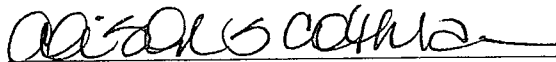
CA # 2011-CP-20-0298

CERTIFICATE OF SERVICE

2011 AUG 25 P 11:40
FAIRFIELD COUNTY
CLERK OF COURT
JERRY D. BECKHAM

I hereby certify that a copy of the **Answer** in the above-captioned matter was served upon counsel of record on August 25, 2011, by hand delivery, addressed as follows:

Creighton B. Coleman, Esquire
Coleman Tolen & Swearingen, LLC
120 West Washington Street
Winnsboro, SC 29180



Alison S. Cothran, Legal Secretary
PARKER POE ADAMS & BERNSTEIN LLP

STATE OF SOUTH CAROLINA
COUNTY OF FAIRFIELD

IN THE COURT OF COMMON PLEAS
FOR THE
SIXTH JUDICIAL CIRCUIT

Mary R. Medlin,

2011 JUL 25 P 3:04
Plaintiff,
FAIRFIELD COUNTY
CLERK OF COURT
DEPT. OF PROBATION

Civil Action No. 11-CP-20-299

v.

CIVIL ACTION
COVERSHEET

Fairfield County, South Carolina,

Defendant.

Creighton B. Coleman
COLEMAN TOLEN & SWEARINGEN, LLC
120 West Washington Street
PO Box 1006
Winnsboro, SC 29180

SC Bar: 6521
Telephone: 803-635-6884
Facsimile: 803-635-9228
E-mail: creighton@cbcoleman-llc.com

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DOCKETING INFORMATION (Check all that apply)

**If Action is Judgment/Settlement do not complete*

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☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- | | | | |
|---|---|---|--|
| Contracts | Torts-Professional Malpractice | Torts - Personal Injury | Real Property |
| ☐ Constructions (100) | ☐ Dental Malpractice (200) | ☐ Assault/Slander/Libel (300) | ☐ Claim & Delivery (400) |
| ☐ Debt Collection (110) | ☐ Legal Malpractice (210) | ☐ Conversion (310) | ☒ Condemnation (410) |
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| | ☐ Transcript Judgment (740) | ☐ Forfeiture-Petition (840) | ☐ Probate Court (940) |
| | ☐ Lis Pendens (750) | ☐ Forfeiture-Consent Order (850) | ☐ SCDOT (950) |
| | ☐ Trans Structured Settlement | ☐ Other (899) | ☐ Worker's Comp (960) |
| | Payment Rights App (760) | | ☐ Zoning Board (970) |
| | ☐ Other (799) | | ☐ Administrative Law Judge (980) |
| Special/Complex /Other | ☐ Pharmaceuticals (630) | | ☐ Public Service Commission (990) |
| ☐ Environmental (600) | ☐ Unfair Trade Practices (640) | | ☐ Employment Security Comm (991) |
| ☐ Automobile Arb. (610) | ☐ Out-of State Depositions (650) | | ☐ Other (999) |
| ☐ Medical (620) | ☐ Sexual Predator (610) | | |
| ☐ Other (699) | | | |

Submitting Party Signature: _____

Date: July 25, 2011

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRPC, 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 FAIRFIELD

Mary R. Medlin,

Plaintiff, -

v.

Fairfield County, South Carolina, a political
subdivision of the State of South Carolina,

Defendant.

IN THE COURT OF COMMON PLEAS
FOR THE
SIXTH JUDICIAL CIRCUIT

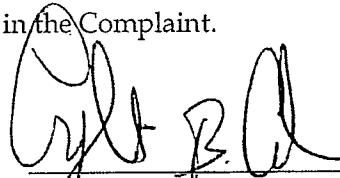
Civil Action No. 11-CP-20-_____

SUMMONS

FAIRFIELD COUNTY
CLERK OF COURT
JUL 25 P 3:04

TO THE ABOVE-NAMED DEFENDANT:

YOU ARE HEREBY SUMMONED and required to answer the Complaint herein, a copy of which is served upon you, and to serve a copy of your answer to this Complaint upon the subscriber at the address shown below within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the Complaint, judgment by default will be rendered against you for the relief demanded in the Complaint.



Creighton B. Coleman - SCB 6521
COLEMAN TOLEN & SWEARINGEN, LLC
120 West Washington Street
PO Box 1006
Winnsboro, SC 29180
803-635-6884
creighton@cbcoleman-llc.com
ATTORNEYS FOR PLAINTIFF

July 25, 2011

STATE OF SOUTH CAROLINA
COUNTY OF FAIRFIELD

Mary R. Medlin,

Plaintiff,

v.

Fairfield County, South Carolina, a political
subdivision of the State of South Carolina,

Defendant.

IN THE COURT OF COMMON PLEAS
FOR THE
SIXTH JUDICIAL CIRCUIT

Civil Action No. 11-CP-20-_____

COMPLAINT
(Challenge Action to Condemnation)

(Non-Jury)

FILED
JUL 25
P 3 04
FAIRFIELD COUNTY

PURSUANT TO the South Carolina Eminent Domain Procedures Act, South Carolina Code Ann. § 28-2-270, Plaintiff does challenge Defendant's (Condemnor) right to condemn on the following facts and grounds:

1. Plaintiff is a resident of Fairfield County, South Carolina.
2. Defendant is a political subdivision of the State of South Carolina.
3. The subject property is located in Fairfield County, therefore, venue is proper.
4. Plaintiff was served with certain papers in the purported exercise of the power of eminent domain by Defendant on June 30, 2011.
5. That Defendant has alleged a public need for the construction of wastewater infrastructure improvements to service a new industrial park located at Cook and Peach Roads.
6. That Plaintiff is a landowner and Defendant has served condemnation papers pursuant to S.C. Code Ann. §§ 4-9-30 and 28-2-60, alleging the right to take a parcel of land from the Plaintiff through exercise of the eminent domain process.
7. That Plaintiff alleges that the condemnation is not necessary in that if Defendant stays on its property, as shown on the map titled "Class A Business/Industrial Park Alternate

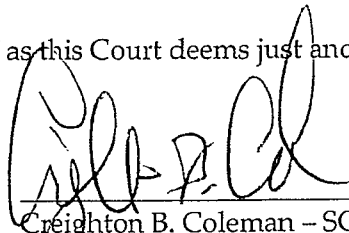
Wastewater Plan," attached as Exhibit A hereto, the taking of their property will not be necessary.

8. That Defendant has not utilized the necessary factors in determining the location and construction of the additional facilities for which it attempts to exercise the power of eminent domain.

9. That Defendant is required at a minimum to analyze the factors of safety, reliability, aesthetics and cost, but that it has not shown such an analysis prior to the attempted discretionary exercise of the power of eminent domain for the construction of the additional facilities.

WHEREFORE, Plaintiff prays that the Court grant an Order:

- a. To stop all present and future condemnation efforts in regard to the present and/or future location of wastewater improvements as this cannot be justified in that Defendant could just stay on its own property to complete the project without taking Plaintiff's property, which would not unreasonably affect Plaintiff;
- b. for attorney fees and costs of this action; and
- c. for such other and further relief as this Court deems just and proper.

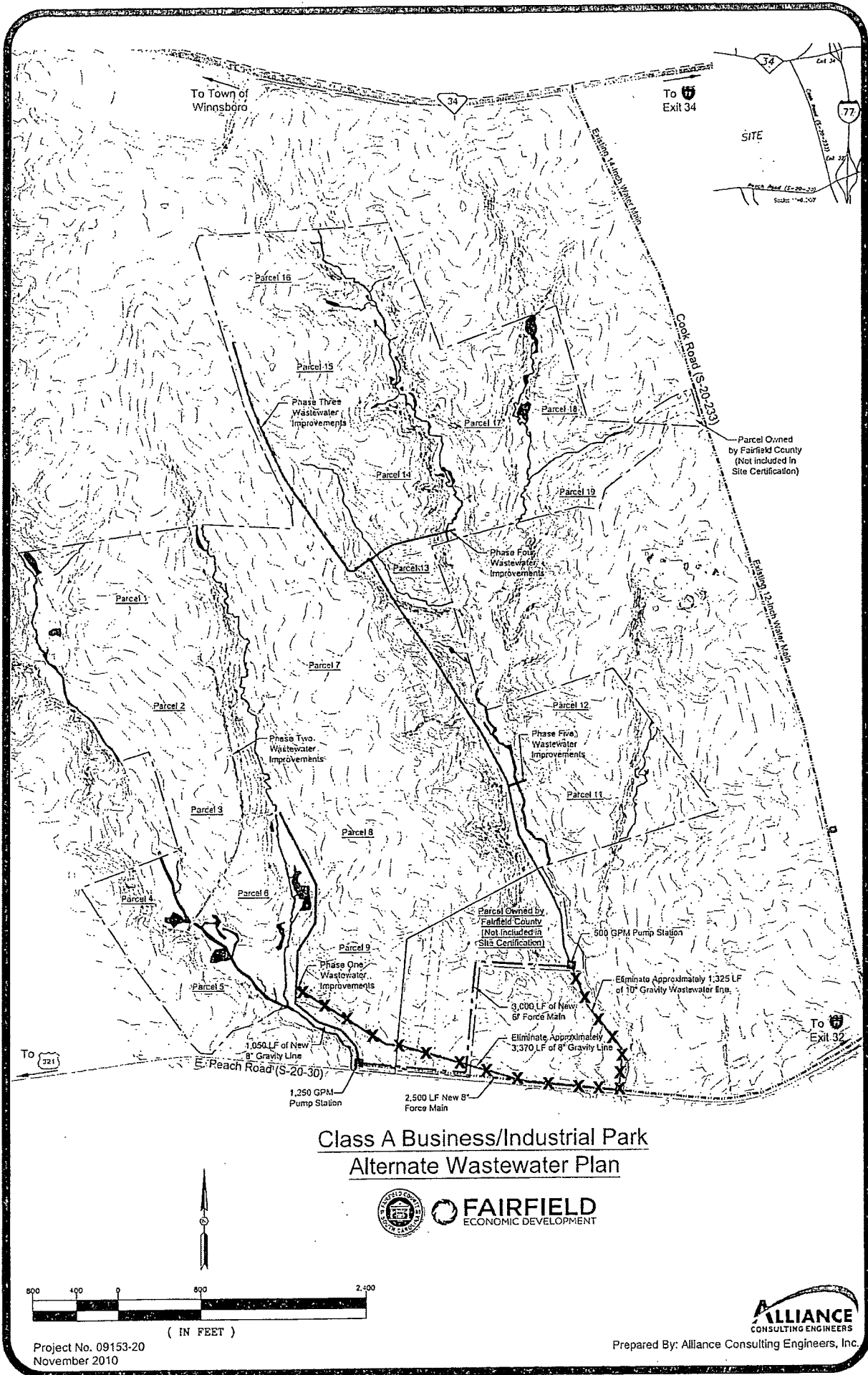


Creighton B. Coleman – SCB 6521
COLEMAN TOLEN & SWEARINGEN, LLC
120 West Washington Street
PO Box 1006
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803-635-6884
creighton@cbcoleman-llc.com
ATTORNEYS FOR PLAINTIFF

July 25, 2011

Exhibit A

2011 JUL 25 P 3:05
FAIRFIELD COUNTY
CLERK OF COURT
JEROME W. PUGH



STATE OF SOUTH CAROLINA

COUNTY OF FAIRFIELD

Mary R. Medlin,

Plaintiff,

vs.

Fairfield County, South Carolina, a political
subdivision of the State of South Carolina,

Defendant.

IN THE COURT OF COMMON PLEAS

CA # 2011-CP-20-0299

ANSWER

2011 AUG 25 P 4:38
FAIRFIELD COUNTY
CLERK OF COURT
DETTY JO BECKHAM

Defendant Fairfield County, South Carolina, a political division of the State of South Carolina ("Fairfield County") answers and responds to Plaintiff's Complaint (the "Complaint") as follows:

GENERAL RESPONSE

Fairfield County denies each and every allegation of the Complaint that is not hereinafter specifically admitted, modified or explained.

FOR A FIRST DEFENSE

1. Fairfield County admits the allegations contained in Paragraph 1 of the Complaint.

2. Fairfield County admits the allegations contained in Paragraph 2 of the Complaint.

3. Fairfield County admits the allegations contained in Paragraph 3 of the Complaint.

4. In response to Paragraph 4 of the Complaint, Fairfield County admits that Plaintiff was served with a Condemnation Notice and Tender of Payment, for CA No. 2011-CP-

20-83 (the “Condemnation Notice”) on June 30, 2011. Any allegations in Paragraph 4 of the Complaint inconsistent with the preceding admission are denied.

5. In response to Paragraph 5 of the Complaint, Fairfield County states that the Condemnation Notice speaks for itself and therefore denies the allegations contained in Paragraph 5 of the Complaint to the extent they are inconsistent in restating the allegations made in the Condemnation Notice.

6. In response to Paragraph 6 of the Complaint, Fairfield County admits that it served the Condemnation Notice. Fairfield County further admits that Plaintiff is a Landowner as defined in S.C. CODE ANN. § 28-2-30. Fairfield County states that the Condemnation Notice speaks for itself and therefore denies any remaining allegations contained in Paragraph 5 of the Complaint to the extent they are inconsistent in restating the allegations made in the Condemnation Notice.

7. Fairfield County denies the allegations contained in Paragraph 7 of the Complaint.

8. Fairfield County denies the allegations contained in Paragraph 8 of the Complaint.

9. Fairfield County denies the allegations contained in Paragraph 9 of the Complaint.

10. Fairfield County denies any allegations set forth in the unnumbered “WHEREFORE” paragraph and prayer for relief.

FOR A SECOND DEFENSE
(Failure to State a Claim)

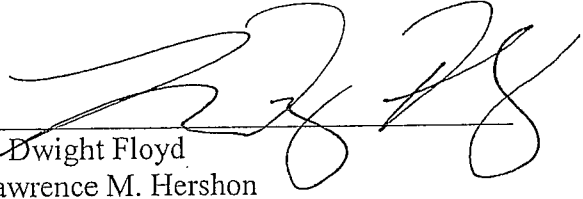
Plaintiff fails to state facts sufficient to constitute a cause of action against Fairfield County and should be dismissed pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

FOR A THIRD DEFENSE
(Statutory Compliance)

Fairfield County has complied with all statutory requirements of S.C. CODE ANN. § 28-2-10 *et seq.*, and, therefore, condemnation of the subject property is appropriate.

WHEREFORE, having fully answered Plaintiff's Complaint, Defendant Fairfield County respectfully prays that the Court:

1. Dismiss the Plaintiff's Complaint with prejudice;
2. Declare that Plaintiff is entitled to no relief;
3. Order to lift the stay in CA No. 2011-CP-20-83 so that the condemnation action may proceed;
4. Award Defendant Fairfield County its attorneys' fees and costs in defending this action; and
5. Grant such other and further relief as the Court may deem just and proper.



L. Dwight Floyd
Lawrence M. Hershon
Parker Poe Adams & Bernstein LLP
1201 Main Street, Suite 1450
Columbia, SC 29202-1509
(803) 255-8000
(803) 255-8017 (facsimile)

Attorneys for Defendant Fairfield County, South
Carolina, a political division of the State of South
Carolina

August 25, 2011
Columbia, South Carolina

) IN THE COURT OF COMMON PLEAS

) CA # 2011-CP-20-0299

)

)

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)

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)

)

Creighton B. Coleman, Esquire
Coleman Tolen & Swearingen, LLC
120 West Washington Street
Winnsboro, SC 29180

Alison S. Cothran, Legal Secretary
PARKER POE ADAMS & BERNSTEIN LLP

STATE OF SOUTH CAROLINA
COUNTY OF FAIRFIELD

Rawley E. Schofield,
R. Mary Medlin,

Plaintiffs,

v.

Fairfield County, South Carolina, a political
subdivision of the State of South Carolina,

Defendant.

IN THE COURT OF COMMON PLEAS
FOR THE
SIXTH JUDICIAL CIRCUIT

2012 APR 16 P 4:13

FAIRFIELD COUNTY
CLERK OF COURT
BETTY JO BECKHAM

Civil Action No. 11-CP-20-0298

Civil Action No. 11-CP-20-0299

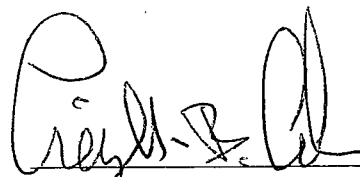
NOTICE OF MOTION
AND
MOTION FOR ATTORNEY FEES
AND COSTS

TO: L. DWIGHT FLOYD, JR., Attorney for Defendant:

YOU WILL PLEASE TAKE NOTICE that Plaintiffs, by and through their undersigned attorney, will move before The Honorable Paul M. Burch, the Presiding Judge in the above-referenced matters, at a time and place to be scheduled by the Court, for an Order awarding attorney fees and costs in the above-referenced consolidated cases.

Plaintiffs are requesting judgment in the amount of \$39,880.39 for attorney fees and costs, which amount has been verified by Affidavit of Creighton B. Coleman, Plaintiffs' attorney, which is attached as Exhibit A hereto.

The grounds for this motion are based on § 28-2-510, The Eminent Domain Procedure Act, of the SC Code of Laws.



Creighton B. Coleman – SCB 6521
COLEMAN TOLAN & SWEARINGEN, LLC
120 West Washington Street
PO Box 1006
Winnsboro, SC 29180
803-635-6884
creighton@cbcoleman-llc.com
ATTORNEYS FOR PLAINTIFFS

April 16, 2012

STATE OF SOUTH CAROLINA

COUNTY OF FAIRFIELD

Rawley E. Schofield,
R. Mary Medlin,

2012 APR 16

FAIRFIELD COUNTY
CLERK OF COURT
BETTY JO BECKHAM

IN THE COURT OF COMMON PLEAS
FOR THE
SIXTH JUDICIAL CIRCUIT

Civil Action No. 11-CP-20-0298

Civil Action No. 11-CP-20-0299

Plaintiffs,

v.

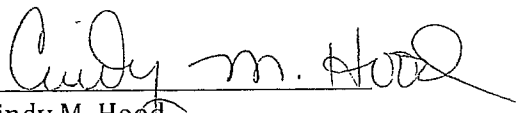
Fairfield County, South Carolina, a political
subdivision of the State of South Carolina,

Defendant.

CERTIFICATE
OF SERVICE

I, Cindy M. Hood, employee of Coleman Tolen & Swearingen, LLC, hereby certify that on the date below written I served the foregoing Notice of Motion and Motion for Attorney Fees and Costs by causing a copy to be mailed to all counsel of record via United States Mail, first class postage prepaid, to:

L. Dwight Floyd, Jr., Esquire
Parker Poe Adams & Bernstein, LLP
PO Box 1509
Columbia, SC 29202


Cindy M. Hood
Paralegal

April 16, 2012

Creighton B. Coleman, LLC

120 W Washington St.
PO Box 1006
Winnsboro, SC 29180

Invoice

Invoice Date: April 16, 2012
Invoice No. 367

Re: *Rawley E. Schofield v. Fairfield County, South Carolina*
Civil Action No. 11-CP-20-0298
Ruth Mary Medlin v. Fairfield County, South Carolina
Civil Action No. 11-CP-20-0299

2012 APR 16 P 4:13
FAIRFIELD COUNTY
CLERK OF COURT
BETTY JO BECKHAM

Date	Description		Time
03/07/2011	Meeting with Mr. Schofield to discuss possible suit; review of condemnation documents.	CBC	1.50
03/09/2011	Receipt and review of letter from Mr. Kozlarek to Fairfield Clerk filing Proof of Service for Complaint and Motion for Temporary Injunction.	CBC	0.10
03/30/2011	Meeting with clients for execution of Authorizations to Enter Property; same emailed to Mr. Kozlarek.	CBC	1.25
04/20/2011	Receipt and review of letter from Kozlarek to Fairfield Clerk withdrawing County's motions for temporary injunction.	CBC	0.10
04/25/2011	Meeting with Ms. Medlin to discuss possible suit; review of condemnation documents.	CBC	2.00
05/05/2011	Email from Mr. Kozlarek with Uniform Rural Appraisal Report for Schofield property with reference to settlement.	CBC	0.30
05/06/2011	Conference with Mr. Schofield regarding settlement offer and deadline of May 13th for response.	CBC	0.80
05/23/2011	Email with information to Mr. Sheheen for review.	CBC	0.50
06/21/2011	Conference with Expert Dunn to discuss case and review plats and phase drawings.	CBC	2.50
06/27/2011	Email from Mr. Kozlarek advising that the County will be dismissing their actions concerning injunctive relief to enter the property and that they will be moving forward with service on the property owners.	CBC	0.15
06/27/2011	Receipt and review of letter from Mr. Kozlarek to Fairfield Clerk with Notices of Dismissal.	CBC	0.15
06/30/2011	Emails to and from Mr. Kozlarek regarding service of the Notices of Condemnation and questions involving the original plan and alternate plan and costs associated with each.	CBC	1.25
07/06/2011	Receipt and review of letter from Mr. Kozlarek to Fairfield County Clerk with Proof of Service of Condemnation Notice.	CBC	0.10
07/14/2011	Draft Complaints.	CBC	2.50
07/19/2011	Revise Complaints.	CBC	1.00
07/22/2011	Legal research regarding the taking of property.	CBC	2.50
07/25/2011	Finalize Complaints and file same.	CBC	1.50
07/25/2011	Letters to clients with Complaints filed.	CBC	0.20
07/25/2011	Preparation of Acceptance of Service for both suits.	CBC	0.30
07/26/2011	Letter to Mr. Kozlarek serving Summons and Complaints.	CBC	0.20
08/02/2011	Letter to Expert Rosen with numerous plats for review.	CBC	0.40
08/11/2011	Email from Mr. Kozlarek regarding settlement offers.	CBC	0.10
08/12/2011	Letter to clients regarding settlement offers.	CBC	0.50
08/16/2011	Telephone conference with Ms. Medlin regarding settlement offer.	CBC	0.40
08/17/2011	Telephone conference with Mr. Schofield regarding extended hospital	CBC	0.30

	stay.		
08/25/2011	Receipt and review of Answers; Motions for Pre-Trial Hearings.	CBC	1.00
09/01/2011	Receipt and review of Defendant's discovery requests.	CBC	0.50
09/02/2011	Letters to clients with Defendant's discovery requests.	CBC	0.40
09/09/2011	Receipt and review of proposed Scheduling Orders from Mr. Floyd.	CBC	0.30
09/12/2011	Emails from Judge Kinard's law clerk regarding signed Scheduling Orders.	CBC	0.10
09/15/2011	Receipt and Review of Notices of Deposition of Plaintiffs; conference with paralegal regarding conflict with date.	CBC	0.30
09/15/2011	Email from Expert Dunn regarding four potential impacts of County's proposed plan.	CBC	0.40
09/16/2011	Conference with Mr. Schofield and Ms. Medlin at site.	CBC	2.00
09/16/2011	Receipt and review of Amended Notices of Deposition.	CBC	0.10
09/19/2011	Telephone conference with Mr. Schofield in the hospital concerning settlement offer.	CBC	0.40
09/19/2011	Draft discovery requests to County; telephone conference with Expert Dunn regarding same.	CBC	1.50
09/26/2011	Several conferences with paralegal regarding re-scheduling depositions.	CBC	0.50
09/27/2011	Letter to Mr. Floyd with discovery requests.	CBC	0.20
09/26/2011	Draft answers to discovery requests – Interrogatories and Request for Production	CBC	2.00
10/03/2011	Receipt and review of Second Amended Notice of Deposition of Ms. Medlin; telephone call to Ms. Medlin regarding same.	CBC	0.40
10/05/2011	Email to Mr. Sheheen regarding possible case pitfalls regarding value of property.	CBC	0.40
10/06/2011	Letter to Mr. Floyd regarding depositions.	CBC	0.20
10/07/2011	Review of cases suggested by Mr. Sheheen and other legal research.	CBC	0.80
10/10/2011	Conference with clients regarding discovery requests, review of documents, etc.	CBC	1.00
10/12/2011	Receipt and review of Third Amended Notice of Deposition for Ms. Medlin; telephone call to Ms. Medlin regarding same.	CBC	0.40
10/13/2011	Finalize responses to discovery responses; letter to Mr. Floyd serving same.	CBC	1.00
10/13/2011	Receipt and review of Expert Dunn's resume.	CBC	0.40
10/28/2011	Telephone call with clients regarding depositions and swapping times.	CBC	0.40
11/01/2011	Email from Mr. Floyd's office regarding depositions being held as scheduled.	CBC	0.10
11/01/2011	Pre-deposition conference with clients.	CBC	1.00
11/01/2011	Preparation for deposition; review of file and exhibits; review of discovery.	CBC	1.75
11/02/2011	Email to Mr. Sheheen with discovery documents for review.	CBC	0.20
11/02/2011	Receipt and review of Defendant's Motions for Summary Judgment.	CBC	0.75
11/02/2011	Receipt and review of Defendant's responses to our discovery requests.	CBC	0.75
11/02/2011	Depositions of Mr. Schofield and Ms. Medlin.	CBC	4.00
11/04/2011	Draft Memoranda in Opposition to Defendant's Motions for Summary Judgment.	CBC	1.50
11/07/2011	Telephone conference with Mr. Schofield.	CBC	0.30
11/08/2011	Email from Mr. Floyd regarding discovery documents he is producing.	CBC	0.10
11/08/2011	Email with discovery responses to Mr. Sheheen for review; subsequent	CBC	1.20

	telephone conversation re same.		
11/08/2011	Receipt and review of deposition transcripts.	CBC	0.50
11/08/2011	Email from Mr. Floyd regarding the production of Defendant's documents.	CBC	0.10
11/10/2011	Conference with Mr. Schofield.	CBC	1.00
11/10/2011	Email to Mr. Floyd regarding discovery documents and use at hearing on Motion for Summary Judgment and review of his response to same.	CBC	0.20
11/14/2011	Email from Expert Dunn regarding environmental study.	CBC	0.10
11/15/2011	Receipt and review of Expert Pruitt's resume.	CBC	0.30
11/15/2011	Preparation of Supplemental Answers to Interrogatories regarding Expert Pruitt.	CBC	0.50
11/15/2011	Letter to Mr. Floyd with discovery responses.	CBC	0.20
11/15/2011	Conference call with Experts Dunn and Pruitt.	CBC	0.50
11/17/2011	Email from Mr. Floyd regarding Plaintiffs' additional expert named in supplemental discovery and his objection to the same.	CBC	0.10
11/21/2011	Letter to Judge Kinard regarding trial date.	CBC	0.40
11/21/2011	Review emails from Experts Dunn and Pruitt regarding acreage and mitigation costs; discussion of possible trial date.	CBC	0.20
11/23/2011	Email from Mr. Floyd regarding agreement for trial in Winnsboro on December 6th.	CBC	0.10
11/23/2011	Emails to Experts Dunn and Pruitt regarding availability for trial December 6th or 8th and review of their responses.	CBC	0.20
11/23/2011	Email from Mr. Floyd to Judge Kinard's law clerk regarding the availability of all parties for the trial to be Tuesday, December 6th and the response to all concerning estimated length of time needed to be heard.	CBC	0.50
11/29/2011	Email from Judge Kinard's clerk regarding length of trial.	CBC	0.10
11/29/2011	Email to Judge Kinard's clerk regarding length of trial.	CBC	0.20
11/29/2011	Email from Judge Kinard's clerk regarding extenuating circumstances of putting off trial until week of January 2nd.	CBC	0.10
11/29/2011	Email from Judge Kinard's law clerk that it will be impossible to hear cases the following week due to heavy caseload.	CBC	0.10
11/29/2011	Email from Mr. Floyd to Judge Kinard's law clerk requesting a day certain setting of the trial for January 2nd.	CBC	0.10
11/30/2011	Letter to Judge Kinard regarding January trial.	CBC	0.40
12/01/2011	Email from Judge Kinard's law clerk putting this matter on docket for week of January 2nd.	CBC	0.10
12/02/2011	Email from Judge Kinard's clerk regarding tentatively scheduling trial on Friday for last week in January, if not with Judge Kinard, with Judge Burch.	CBC	0.10
12/21/2011	Review of documents produced by Defendant on CD.	CBC	2.50
12/22/2011	Email from Mr. Floyd inquiring of January 5th date.	CBC	0.10
01/06/2012	Email to Judge Goldsmith regarding availability of trial on February 3rd with Judge Burch.	CBC	0.20
01/06/2012	Email from Judge Goldsmith regarding setting the trial date the week of January 30th.	CBC	0.10
01/12/2012	Email to Judge Goldsmith regarding agreement regarding rescheduling of trial for week of January 30th and logistics of experts.	CBC	0.20
01/12/2012	Email from Mr. Floyd to Judge Goldsmith's secretary regarding the trial date.	CBC	0.10

01/12/2012	Email to Judge Goldsmith advising that the matter does not need to be heard in Lancaster, but in Winnsboro of the week of January 30th.	CBC	0.10
01/17/2012	Telephone conference with client following knee surgery for status and to ascertain if he will be available for trial.	CBC	0.25
01/18/2012	Email from Judge Goldsmith's assistant advising that Judge Burch has agreed to hear the matters.	CBC	0.10
01/19/2012	Email from Judge Burch's clerk confirming time of trial.	CBC	0.10
01/19/2012	Telephone conference with clients regarding time of trial.	CBC	0.40
01/19/2012	Email from Judge Goldsmith's Assistant regarding trial date of February 3rd and advising Judge Burch will hear matter.	CBC	0.10
01/19/2012	Email to Judge Burch advising that any time on February 3rd for the trial.	CBC	0.20
01/19/2012	Email from Judge Burch's clerk setting the trial time for 10:00 a.m.; telephone conferences with clients and experts coordinating the same.	CBC	0.60
01/30/2012	Email to Experts Dunn and Pruitt regarding Phasing Plan and costs and need for conference call.	CBC	0.40
01/31/2012	Emails from Experts Dunn and Pruitt regarding County's cost analysis concerning alternate plan and land acquisition figures.	CBC	0.70
01/31/2012	Preparation for trial; telephone conferences with experts; telephone conferences with clients; document review; review of depositions.	CBC	2.50
02/01/2012	Draft and finalize Motion to Admit Into Evidence.	CBC	0.80
02/01/2012	Email from Expert Dunn with report of figures for trial and subsequent telephone conference regarding same.	CBC	0.60
02/02/2012	Email to Expert Dunn regarding trial time and confirmation by Expert Dunn of pre-trial meeting.	CBC	0.10
02/02/2012	Preparation and service of Subpoenas for Experts.	CBC	0.50
02/02/2012	Pre-trial conference with clients to review file materials and prepare for trial.	CBC	3.00
02/02/2012	Outline testimony and prepare for trial.	CBC	4.00
02/03/2012	Pre-trial conference with clients and expert.	CBC	1.50
02/03/2012	Attend trial; discuss with clients.	CBC	5.00
02/06/2012	Review of file and trial notes; draft post-trial Memorandum.	CBC	3.00
02/07/2012	Correspondence from Expert Dunn with statement for services.	CBC	0.20
02/10/2012	Additions to Memorandum.	CBC	0.50
02/14/2012	Further editing of Memorandum; draft of proposed Order.	CBC	1.80
02/22/2012	Finalization of Memorandum and proposed Order.	CBC	0.50
02/23/2012	Letter to Judge Burch with Memorandum and proposed Order.	CBC	0.20
3/19/2012	Letter to Mr. Floyd with copy of proposed order for review.	CBC	0.20
		TOTAL HOURS	83.60
CBC/hours	83.60 x \$350/hour = \$29,260.00	TOTAL	\$29,260.00
COSTS			
07/25/2011	Filing Fee – Schofield		150.00
07/25/2011	Filing Fee – Medlin		150.00
12/05/2011	Every Word Deposition – Schofield		288.54
12/05/2011	Every Word Deposition – Medlin		256.88
02/06/2012	Clyde Sanders Service of Process – Subpoena – Clampitt		50.00

02/06/2012	Clyde Sanders Service of Process - Subpoena - Harrison		50.00
10/13/2011	Parker Poe Adams & Bernstein, LLP - Deposition charges		619.97
10/07/2011	Every Word - Deposition cancellation		80.00
04/16/2012	Motion filing fee		25.00
04/16/2012	BKD Engineering/Expert Witness Fees; expert witness testimony		8,950.00
	TOTAL COSTS		\$10,620.39
	TOTAL CBC HOURS + TOTAL COSTS =		\$39,880.39

4/16/2012 2:59 PM

STATE OF SOUTH CAROLINA

COUNTY OF FAIRFIELD

Rawley E. Schofield,
R. Mary Medlin,

2012 APR 16 P 4:13

FAIRFIELD COUNTY
CLERK OF COURT
BETTY JO BECKHAM
Plaintiffs,

IN THE COURT OF COMMON PLEAS
FOR THE
SIXTH JUDICIAL CIRCUIT

Civil Action No. 11-CP-20-0298
Civil Action No. 11-CP-20-0299

v.

Fairfield County, South Carolina, a political
subdivision of the State of South Carolina,

Defendant.

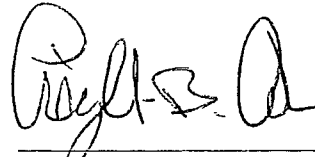
AFFIDAVIT
OF
CREIGHTON B. COLEMAN

the co PERSONALLY APPEARED before me Creighton B. Coleman, who first being duly sworn,
says:

1. That he has been licensed to practice law in the State of South Carolina since 1986.
2. That he has been practicing law in Winnsboro, SC since 1991 and prior to that was a prosecutor for both Richland and Fairfield Counties for approximately 6.5 years.
3. That since 1991, he has devoted approximately 100% of his practice to the area of litigation, and approximately 60% to civil litigation.
4. That his hourly rate of \$350.00 is based on 26 years' experience, and is reasonable for the issues involved in this litigation.
5. That he was retained by both Plaintiffs to represent them in their individual condemnation cases, which were consolidated at the time of trial.
6. That as their attorney, he expended 83.60 hours on behalf of his clients in defending the condemnation action and bringing suit through this date, as shown in detail on his statement attached as Exhibit A hereto.

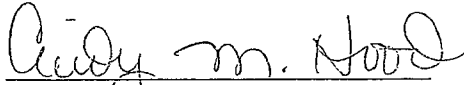
7. That reasonable attorney fees are \$29,260.00

8. That costs paid are \$10,620.39



Creighton B. Coleman

SWORN TO before me this
16th day of April, 2012.



Notary Public for South Carolina

My commission expires: 6/22/21

4. In accordance with the court's Order entered in the above matters on April 11, 2012, the County has re-evaluated the proposed condemnation by utilizing the factors set forth by the Court in its Order.

5. As a part of this re-evaluation, the County engaged Alliance Consulting Engineers to re-evaluate the Wastewater routing to serve the Fairfield Commerce Center in light of the factors identified by the Court in its April 11, 2012, Order including, specifically, (1) the availability of an alternate route; (2) cost; (3) environmental factors; (4) long-range planning; (5) safety considerations; and (6) aesthetics.

6. Alliance issued its report to the County on May 25, 2012.

7. In addition, the County engaged URS Corporation to review the Wastewater Collection Master Plan for the Fairfield Commerce Center and to provide a professional opinion for the most feasible and cost effective plan based upon the factors set forth by the court in its April 11, 2012, order.

8. URS issued its report to the County on May 18, 2012.

9. The County has confirmed that Alliance and URS made their reports and opinions based upon the factors required to be considered by the Court.

10. The County has considered these reports and opinions and has determined the following:

a. While alternate routes exist to the proposed condemnation route, the least expensive alternate route would cost \$220,000 - \$300,000 more in up front construction costs;

b. Over a period of 20 years, the alternate route would cost the County between approximately \$595,579 and \$1,173,000 more to operate and maintain than the proposed condemnation route;

c. When considering environmental factors, the proposed condemnation route does not implicate any Environmental or Ecological concerns. In addition, because the alternate route contains an additional pump station at a more remote location, it will cause greater environmental impact and more construction disturbance requiring .7 acres more cleared space. The extra pump station will also increase annual carbon dioxide emissions by an estimated 43 metric tons;

d. When considering long-range planning, particularly the ability to service additional sites south of the location in question, the proposed condemnation route is preferred and, because future plans would eliminate the pump station on Peach Road, the County could save approximately \$130,000 per year in operation, maintenance and depreciation/replacement costs over the alternate route;

e. Aesthetically, from the perspective of the engineers and the public at large, the proposed condemnation route is preferred because it has only two pump stations as opposed to three. However, it is noted that from the adjacent landowner's perspective, any

alternate that moves a pump station away from its property will generally be preferable, regardless of the aesthetic impact on the public. To minimize this effect, the pump station can be screened to reduce its visibility with vegetation and fencing. The reports also note that gravity sewer is not readily noticeable and raised manholes will not be required for this line; and

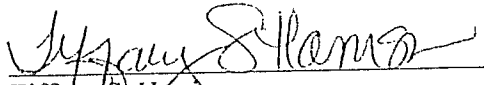
f. Fewer pump stations with primarily gravity lines (which are easier and safer to maintain) are more reliable and safer. Therefore, the proposed condemnation route is preferred over any alternative.

11. The County deems these factors appropriate under these circumstances and that no additional factors need to be considered at this time.

12. Based upon the information from Alliance and URS and an evaluation of all the factors set forth by the Court in its April 11, 2012, Order, the County has determined that the proposed condemnation route through Plaintiffs' property, as previously described in the Notices of Condemnation associated with these cases, is the preferred, best, and most appropriate route to serve the wastewater needs of the Fairfield Commerce Center.

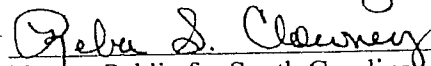
FURTHER AFFIANT SAYETH NAUGHT.

This 31st day of May, 2012.


Tiffany S. Harrison

SWORN to before me,

This 31st day of May, 2012.


Notary Public for South Carolina
My commission expires: 4/5/2016

STATE OF SOUTH CAROLINA

COUNTY OF FAIRFIELD

Mary R. Medlin,

Plaintiff,

vs.

Fairfield County, South Carolina, a political
subdivision of the State of South Carolina,

Defendant.

Rawley E. Schofield,

Plaintiff,

vs.

Fairfield County, South Carolina, a political
subdivision of the State of South Carolina,

Defendant.

IN THE COURT OF COMMON PLEAS
SIXTH JUDICIAL CIRCUIT

CA # 2011-CP-20-0299

2012 AUG -2 P 1:40
FAIRFIELD COUNTY
CLERK OF COURT
BETTY JO BECKHAM

CA # 2011-CP-20-0298

**MOTION TO ALTER OR AMEND, OR IN THE ALTERNATIVE,
FOR RECONSIDERATION**

This Court entered its Order Awarding Attorney's Fees and Costs (the "Order") on July 19, 2012, with written notice of the entry of the order received on July 23, 2012. Defendant Fairfield County (the "County") respectfully moves the Court to alter or amend the Order or, in the alternative, reconsider its decision in light of the arguments below.

This condemnation challenge action was filed on July 25, 2011, and tried on February 3, 2012. The Court entered an order dated March 27, 2012 (entered on April 11), finding that the County had abused its discretion in selecting the proposed route and ordered that "Defendant shall re-evaluate the proposed condemnation by utilizing the above factors, as well as factors it deems appropriate." In accordance with the Court's order, the County hired an additional

PPAB 1987845v1

engineer, had its new engineer and its previous engineer evaluate the proposed route, and re-evaluated the proposed condemnation utilizing the relevant factors. The County then submitted its re-evaluation to the Court by affidavit dated May 31, 2012. Meanwhile, Plaintiffs moved to be awarded fees and costs under S.C. Code Ann. § 28-2-510(A). That motion was heard on June 7, 2012.

At the hearing, the County raised the issue of the propriety of a fee request. After all, the statute provides for costs and fees in a challenge action only if “the court determines that the condemnor has no right to take all or part of any landowner’s property....” S.C. Code Ann. § 28-2-510(A). That did not happen. In its March 27 Order, the Court (1) decided the County had abused its discretion in selecting the route; and (2) ordered the County to re-evaluate the proposed condemnation in light of the outlined factors as well as other factors it deems appropriate. At no point did the March 27 Order indicate that the proposed condemnation would not be allowed or that the County had “no right to take all or part of any landowner’s property.” On the contrary, the Order specifically contemplated a re-evaluation. A re-evaluation is predicated on the possibility that the proposed condemnation would be allowed under different circumstances. Thus, a fee request could not be granted and, in fact, was not ripe.

At the hearing, the County also stated that, should the Court believe the issue to be ripe and was ready to decide the issue of the fees themselves, the County had additional substantive arguments against this fee award. The Court did not hear those additional arguments, took the matter under advisement, and informed the parties that the Court may need to reconvene. The Court announced no decision with respect to the re-evaluation.

On July 9, 2012, the County again informed the Court and Plaintiffs’ counsel that it had complied with the Court’s previous order requiring a re-evaluation and was prepared to file its

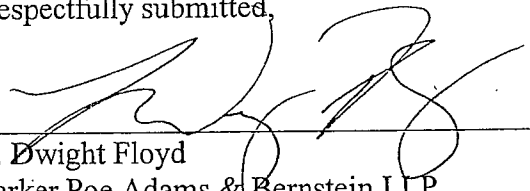
Condemnation Notices and deposit the amount of compensation within ten days in accordance with S.C. Code Ann. § 28-2-230.

The Order Awarding Attorney's Fees and Costs was entered on July 19, 2012. The Order twice notes that the Court's March 27, 2012, Order required the County to re-evaluate the proposed condemnation. (Order at 2 and 3.) The Order also notes that the Court was presented "an affidavit from Tiffany S. Harrison, Director of Fairfield County Economic Development, swearing that after re-evaluating the condemnation plan consistent with the factors established in *Southern Development*, the 'preferred, best, and most appropriate route to serve the wastewater needs of the Fairfield Commerce Center' remains the proposed condemnation route through Plaintiff's [sic] property." (Order at 2.) However, the Order does not make any other reference to the required re-evaluation. Instead, the Court concluded that its order of March 27, 2012, "prevented the county from taking the Plaintiffs' land under its original condemnation plan, and ordered it to re-evaluate its plan pursuant to the analysis employed in *Southern Development*." (Order at 3.) The Court then found that the amounts requested were reasonable and ordered the County to pay fees and costs to Plaintiffs in the full amount requested. The Court did not make any findings of fact regarding the reasonableness of the fees and, specifically, did not address the factors required by the Supreme Court in *Jackson v. Speed*, 326 S.C. 289, 486 S.E.2d 750 (1997).

Based on this history and the facts of the case, the County respectfully requests that the Court (1) alter or amend its order to deny Plaintiffs' request for attorneys' fees and costs because it is improper or not yet ripe; rather, the Court ordered and accepted the County's re-evaluation and has never determined that the proposed condemnation route is impermissible under the re-evaluation; or, in the alternative, (2) reconsider its decision and allow further argument in light of

the arguments reserved by the County but not heard by the Court including, specifically, substantive arguments based upon the *Jackson v. Speed* standards.¹

Respectfully submitted,



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dwightfloyd@parkerpoe.com

Attorneys for Defendant Fairfield County

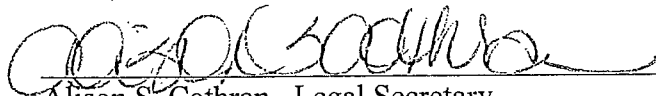
August 2, 2012
Columbia, South Carolina

¹ In addition to the required factors, counsel's affidavit in support of Plaintiffs' motion for fees leaves a number of required questions unanswered including, but not limited to: (a) Was this engagement taken on an hourly or a contingency basis? (b) If the engagement was hourly, what have the Plaintiffs actually paid or been billed by their attorneys? (c) Where are the back-up documents justifying costs? (d) Where is the invoice and itemized costs for \$8,950.00 for an engineering expert and what was the nature of the engagement? (e) Why would the County be responsible for repaying \$699.97 for attorney time and deposition cancellation fees for a duly noticed deposition that Plaintiffs' counsel chose to cancel after the County's attorney and court reporter had appeared?

CERTIFICATE OF SERVICE

I hereby certify that a copy of Defendant's **MOTION TO ALTER OR AMEND, OR IN THE ALTERNATIVE, FOR RECONSIDERATION** was served upon counsel of record on August 8, 2012, by hand delivery, addressed as follows:

Creighton B. Coleman, Esquire
Coleman Tolen & Swearingen, LLC
120 West Washington Street
Winnsboro, SC 29180



Alison S. Cothran, Legal Secretary
PARKER POE ADAMS & BERNSTEIN LLP

2012 AUG -2 P 1:40
FAIRFIELD COUNTY
CLERK OF COURT
BETTY JO BECKHAM

1 STATE OF SOUTH CAROLINA
2 COURT OF COMMON PLEAS
3 COUNTY OF FAIRFIELD
4 2011-CP-20-298, 299

5

6 Schofield and Medlin

7 vs.

8 Fairfield County

9

10

11 Winnsboro, South Carolina

12 June 7, 2012

13 Before the Honorable Paul Burch

14

15 APPEARANCES

16 For the Plaintiffs: Creighton Coleman

17 For the Defendant: Dwight L. Floyd

18

19 Reported by: Michael C. Watkins

20 Official Court Reporter

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1 THE COURT: This is concerning attorney fees from the
2 Schofield, Medlin Fairfield County case.

3 MR. COLEMAN: Yes, sir, on my motion. You have the
4 information. We tried this case in front of you probably
5 three months ago, something like that, I think, with regard
6 to the condemnation. You signed an order back in March
7 saying that the county hadn't done their due diligence with
8 regard to assessing all the different factors necessary to
9 determine a proper route to take. As a result of that you
10 said that they had abused their discretion and they needed
11 to reevaluate the proposed condemnation by utilizing the
12 above factors. As a result of that I filed the appropriate
13 attorneys fees request within the designated time pursuant
14 to the statute and we are hereby requesting that. I've
15 handed to the Court and copied opposing attorney the
16 affidavit, the itemization and all of that. And also, Your
17 Honor, I recently got an e-mail from opposing attorney that
18 evidently the county is going to pursue this matter, so as a
19 result of that either they have to file another action or
20 whatever we do, but I'll ask this Court to retain
21 jurisdiction of this matter, because there's no sense in
22 having to educate another judge on what has happened in the
23 past. I think this Court has heard the matter and I'm
24 asking that this Court retain jurisdiction in case the
25 county does assert the same route that they are proposing to

1 do and I ask this Court to do that.

2 THE COURT: Yes, sir?

3 MR. FLOYD: May it please the Court? First before
4 touching on the merits of the motion for attorneys fees
5 itself is the fact that the motion is misplaced. The
6 statute makes clear in attorneys fees when costs and
7 litigation are allowed in a condemnation action, that's set
8 forth in SC code 28-2-510A. And what that statute provides
9 is that the Court -- if the Court determines that the
10 condemnor has no right to take all or part of any
11 landowner's property that's when costs and fees may be
12 considered. The order in this case -- the order that this
13 Court entered on April 11th of this year as a result of the
14 trial here and the hearing here in Winnsboro, the order
15 issued by the Court directs the county, the defendant, to
16 reevaluate the proposed condemnation by utilizing the above
17 factors, that's what the order said as a result of that
18 hearing. That is not a determination that the county has no
19 right to take all or part of any landowner's property. In
20 fact, it openly contemplates the fact that it may still have
21 that right and it should be reevaluated. The county has, in
22 fact, reevaluated the waste water plan at the site, has
23 retained Alliance Engineering and another engineering
24 company to separately and independently evaluate the waste
25 water plant, and a affidavit of Ms. Tiffany Harrison who

1 you've heard from previously in this case has been filed
2 with the Court. I have another copy for Your Honor if you
3 don't have one in front of you. Do you have one, sir?
4 Ms. Harrison's affidavit goes through the process that the
5 county went to abide by the Court order and to reevaluate
6 the proposed condemnation route, alternate routes. The
7 findings and conclusions of the county are set forth in the
8 affidavit starting specifically on paragraph 10 of page two
9 where it considers the individual factors and notes that the
10 alternate plans that were considered by the engineers as
11 well as alternate plans that were proposed by plaintiffs in
12 this case would cost up to \$300,000 more in upfront
13 construction costs, and cost more than a million dollars in
14 extended costs over the next 20 years. When considering
15 environmental factors the alternate routes would have a
16 greater environmental impact by causing more land to be
17 cleared and actually increase pollution incredibly. When
18 considering long range planning and the service of tracks
19 south of Peach Road, the alternate -- the current proposed
20 route could save the county up to \$130,000 per year when
21 that tract begins to be serviced if it uses the current
22 route as opposed to the alternate routes. The esthetics
23 were considered, esthetically having the proposed route with
24 only two pump stations as opposed to three, it looks better
25 and is more appealing to the public as a whole. Obviously

1 from the landowner's perspective the landowner doesn't want
2 to see anything but there are ways to mitigate that
3 including screening and fencing. And finally, the fact that
4 there are fewer front stations with primarily gravity lines
5 as opposed to pressurized lines, those are easier and safer
6 to maintain. So all of those factors were considered by
7 engineers and presented to the county, the county has
8 considered those in light of the Court's order and the
9 county has determined based upon that that the proposed
10 condemnation route that -- the easement that was proposed in
11 the notice of condemnation for both of these cases is the
12 preferred best and most appropriate route. So from the
13 county's perspective the order has been complied with, the
14 condemnation is ready to proceed. The county is prepared to
15 file that notice with the clerk of court as well as the
16 compensation that was previously determined. So for that
17 reason alone without even getting to the merits for the
18 motion, the motion for attorneys fees is not proper.

19 MR. COLEMAN: Just briefly, Your Honor. I'll hand up
20 to the Court a copy -- I don't know if you have that -- a
21 copy 28-2-510 and I hand it up to the Court. And I
22 underlined the section that I think is appropriate for the
23 Court. And looking at number one it says, "A landowner who
24 prevails in the trial in a condemnation in addition to his
25 compensation for the property may recover his reasonable

1 litigation expenses," et cetera. We prevailed. This Court
2 ruled that the county abused its discretion in selecting
3 this site, it is in your order, they didn't properly
4 consider all of the factors. Now, if they want to try to
5 condemn again that's for another day and another trial, if
6 they want to do that that's fine. I'm asking this Court to
7 retain jurisdiction so you can hear this and to make a
8 decision based on the facts on that case. For all we know
9 they could have abused their discretion a second time. But
10 you ruled that they abused their discretion when they filed
11 this action, we prevailed clearly.

12 MR. FLOYD: Your Honor, with all due respect to
13 Mr. Coleman, 29-2-510B has no bearing on this case. This is
14 not a condemnation action, this is a condemnation challenge
15 action, that's governed by 2-510A, there is no prevailing
16 party language in 2-510A. 2-510A provides for attorney fees
17 if the judge has determined that the condemnor has no right
18 to take all or part of any landowner's property, that has
19 not happened. Prevailing party in 2-510A has only to do the
20 condemnation actions and determining the amount of
21 compensation. In fact, prevailing party, prevails is
22 defined in 2-510B2 in terms of compensation awarded. This
23 is not a trial about compensation, this was a challenge
24 issue.

25 THE COURT: Anything else for the record?

1 MR. FLOYD: Your Honor, only to the extent if we reach
2 the merits for plaintiffs motion for attorneys fees in this
3 case then the county would suggest to you that there's no
4 reason to reach those merits. To the extent that the Court
5 wishes to consider those merits the county is prepared to
6 argue why even if the motion is appropriate or is allowed
7 under 2-510 that attorneys fees should not be awarded. I
8 would be happy to argue that now should the Court even
9 consider it.

10 THE COURT: Let me take a little time to go over all of
11 this and I may have to get y'all back. I didn't say
12 anything in open court and I didn't include anything in an
13 order, but your expert witness sat right there on that stand
14 and told me a bold faced lie about DHEC's procedure and
15 permitting and granting permitting. I was 90 percent from
16 my experience I knew the answer and he told me the very
17 opposite and I went back and researched it. You need to sit
18 down and have a little talk with that gentleman.

19 MR. FLOYD: I will be happy to discuss it with him,
20 Your Honor.

21 THE COURT: If I remember correctly -- I'm probably not
22 using the exact terms I ought to use -- but he told me that
23 they couldn't do it before the fact in affect, that the only
24 way they could do it would be after certain procedures had
25 been done and it was totally wrong. I went back and pulled

1 the regulations and read them and I wasn't too happy a
2 camper about that, but I kept my cool and I didn't include
3 anything in the order about it, but I've been waiting until
4 case this occasion came long to talk with you about it on
5 the record. He'd better not ever do anything like that
6 again in my court.

7 MR. FLOYD: I understand, Your Honor. I was not aware
8 that he had misstated anything, I will definitely pass that
9 along.

10 THE COURT: All right. I will get back with y'all on
11 this.

12 (End of the hearing.)

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1 I, the undersigned, Michael C. Watkins, Official Court
2 Reporter for the Sixth Judicial Circuit of the State of South
3 Carolina, do hereby certify that the foregoing is a true,
4 accurate and complete transcript of record of the proceedings
5 had and evidence introduced in the trial of the captioned
6 case, relative to appeal, in the Court of Common Pleas for
7 Fairfield County, South Carolina, on the 7th day of June,
8 2012.

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

11

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February 1, 2012

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Michael C. Watkins
Court Reporter.

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM FAIRFIELD COUNTY
Court of Common Pleas

Paul M. Burch, Circuit Court Judge

RECEIVED

MAY 29 2013

SC Court of Appeals

Case Nos. 2011-CP-20-0298 and 2011-CP-20-0299

Rawley E. Schofield,.....Respondent,

v.

Fairfield County, South Carolina, a political subdivision of
the State of South Carolina, ...Appellant.

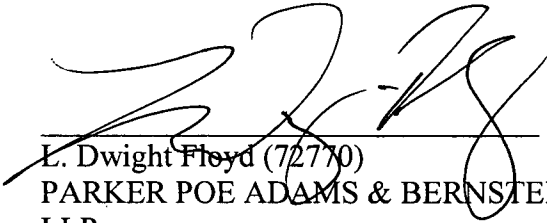
Mary R. Medlin.....Respondent,

v.

Fairfield County, South Carolina, a political subdivision of
the State of South Carolina, ...Appellant.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.


L. Dwight Floyd (72770)
PARKER POE ADAMS & BERNSTEIN
LLP
1201 Main Street, Suite 1450
Columbia, South Carolina 29201
(803) 255-8000

Attorney for Appellant