ORIGINAL

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable Deadra L. Jefferson

Case No. 2013-CP-10-4511

County of Charleston, Respondent,
v.
Walter G. McAdory, Landowner, and Branch Banking and Trust Company and South Carolina Electric & Gas Company, Other Condemnees,
Of Whom Walter G. McAdory is the Appellant.

AMENDED RECORD ON APPEAL

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Christopher L. Murphy, Esquire
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Charleston, SC 29412
(843) 722-0157
Attorneys for Appellant

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(843) 958-4019
Attorneys for Respondent

RECEIVED
OCT 29 2014
SC Court of Appeals

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Plaintiff's Counsel: Joseph E. Dawson, III, County Attorney
Bernard E. Ferrara, Jr., Deputy County Attorney
Bradley A. Mitchell, Assistant County Attorney
Johanna S. Gardner, Assistant County Attorney

Defendant's Counsel: Abigail B. Walsh, Esquire
Christopher L. Murphy, Esquire

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FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2012-CP-10-4511

County of Charleston
PLAINTIFF

Walter G. McAdory, Landowner, and Branch Banking and Trust Company, Other Condemnee
DEFENDANTS

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

FILED
2013 OCT 18 AM 11:54
JULIE J. ARMSTRONG
CLERK OF COURT
BY

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), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other _____

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ 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:

This condemnation cause of action came before the Court for a trial by jury on October 16th and 17th, 2013. All issues were tried and a verdict rendered in favor of the Defendant/Landowner in the amount of Sixty-Three Thousand One Hundred Fifty-Eight Dollars and Zero Cents ($63,158.00). The Court required post-trial motions. Post-trial motions were heard and respectfully denied.

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NOV 2 3 2013
SC Court of Appeals

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.
Additional Information for the Clerk : _____

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		$

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

RECEIVED
NOV 2013
SC Court of Appeals

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.**

Circuit Court Judge

2128
Judge Code

10/17/13
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 as follows:

Bradley A. Mitchell, Esquire
Bernard Ferrara, Esquire

ATTORNEYS FOR THE PLAINTIFF

Abigail B. Walsh, Esquire
Christopher Murphy, Esquire

ATTORNEYS FOR THE DEFENDANTS

CLERK OF COURT

Court Reporter: Phyllis Norton and Sharon Vizer

VERDICT FORM

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON County of Charleston, Condemnor, v. Walter G. McAdory, Landowner.	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT CASE NO.: 2012-CP-10-4511

FILED
2013 OCT 18 AM 11:55
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

VERDICT

We, the Jury, unanimously find for the Landowner in the amount of

$63,158.00 Sixty three thousand one hundred fifty eight & 00/100 dollars as just compensation.

Please sign and date.

M. Sharon Bartshi
Foreperson

October 17, 2013

Please notify Bailiff(s) when you have completed your deliberations.

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	)	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT CASE NO. 2012-CP-10-_____
County of Charleston, Condemnor, vs. Walter G. McAdory, Landowner, and Branch Banking and Trust Company, and South Carolina Electric & Gas Company, Other Condemnees.	)	**CONDEMNATION NOTICE AND TENDER OF PAYMENT**

FILED
2012 JUL 11 AM 9:35
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

TO: THE LANDOWNER WALTER G. McADORY, ABIGAIL B. WALSH, ESQUIRE, ATTORNEY FOR THE LANDOWNER, AND OTHER CONDEMNEES NAMED ABOVE

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 County of Charleston, the Condemnor, is a public body corporate and political subdivision of the State of South Carolina, and seeks to acquire the real property described herein for public purposes.

2. Walter G. McAdory is named as the Landowner in this action by virtue of that certain Limited Warranty Deed from MMC Investments, LLC, to Walter G. McAdory dated January 21, 2011, and recorded January 25, 2011, in Book 0168, Page 129,

in the Office of the Register of Mesne Conveyance for Charleston County, South Carolina.

3. Branch Banking and Trust Company is named as an Other Condemnee by virtue of that certain Mortgage of Real Estate by Lex Tech Automotive, LLC, mortgagor, and granted to Branch Banking and Trust Company, mortgagee, dated January 21, 2011, and recorded January 25, 2011, in Book O168, Page 130, in the Office of the Register of Mesne Conveyance for Charleston County, South Carolina.

4. South Carolina Electric & Gas Company is named as an Other Condemnee in this action by virtue of that certain Indenture between James E. Smoot, Herbert Grazzle by A.L. Smoot and South Carolina Electric & Gas Company, a South Carolina corporation, dated July 29, 1964, and recorded December 18, 1964, in Book V81, Page 332, in the Office of the Register of Mesne Conveyance for Charleston County, South Carolina.

5. The description of the real property which is the subject of this action is as follows:

> All that parcel or strip of land, in fee simple, containing 0.03 of an acre (1,287 square feet) of land, more or less, and any and all improvement thereon, owned by Walter G. McAdory, shown as the "Area of Acquisition" on Exhibit "A", attached hereto and made a part hereof, between approximate survey stations 35+00 and 36+00, left of Folly Road (SC-171), Charleston, South Carolina.
>
> Tax Map Parcel Number 425-02-00-191

6. The County of Charleston is vested with the power of eminent domain pursuant to Section 24-9-30(4), Code of Laws of South Carolina, 1976, as amended.

7. The real property sought herein is to be acquired for public purposes, more particularly for the construction of a section of Intersection Improvements at SC Route 171 (Folly Road) and Road S-10-28 (Camp Road) in Charleston County, South Carolina.

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

9. The County of Charleston 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 where required by law, and certifies to the Court that a negotiated resolution has been attempted prior to the commencement of this action.

10. Project plans may be inspected at the office of the County of Charleston, RoadWise, 4401 Belle Oaks Drive, Suite 105, North Charleston, South Carolina 29405.

11. THE CONDEMNOR HAS DETERMINED JUST COMPENSATION FOR THE PROPERTY AND RIGHTS TO BE ACQUIRED HEREUNDER, INCLUDING DAMAGES TO BE THE SUM OF FIFTY ONE THOUSAND SIX HUNDRED SEVENTY AND 00/100 ($51,670.00) DOLLARS AND HEREBY TENDERS PAYMENT THEREOF TO THE LANDOWNER.

12. Payment of this amount will be made to the Landowner if within thirty (30) days of service of this Condemnation Notice, the Landowner in writing requests payment, and agrees to execute any instrument necessary to convey to the Condemnor the property interests and rights described herein above. The request

and agreement must be sent first class certified mail with return receipt requested or delivered in person to the Condemnor at the Charleston County Attorney's Office, Attention: Bernard E. Ferrara, Jr., Deputy County Attorney, Bradley A. Mitchell, Assistant County Attorney, Lonnie Hamilton, III Public Services Building, 4045 Bridge View Drive, North Charleston, South Carolina 29405. If no request and agreement is received by the Condemnor within the thirty (30) day period, the tender is considered rejected.

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

14. 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 (30) DAYS OF THE SERVICE OF THIS CONDEMNATION NOTICE, OR THE LANDOWNER WILL BE CONSIDERED TO HAVE WAIVED THE CHALLENGE.

15. THE CONDEMNOR HAS ELECTED NOT TO UTILIZE THE APPRAISAL PANEL PROCEDURE. Therefore, if the tender 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.

That notice shall state whether the Condemnor demands a trial by jury or by the Court without a jury. The Landowner has a 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 written notice by mail of the call of the case for trial.

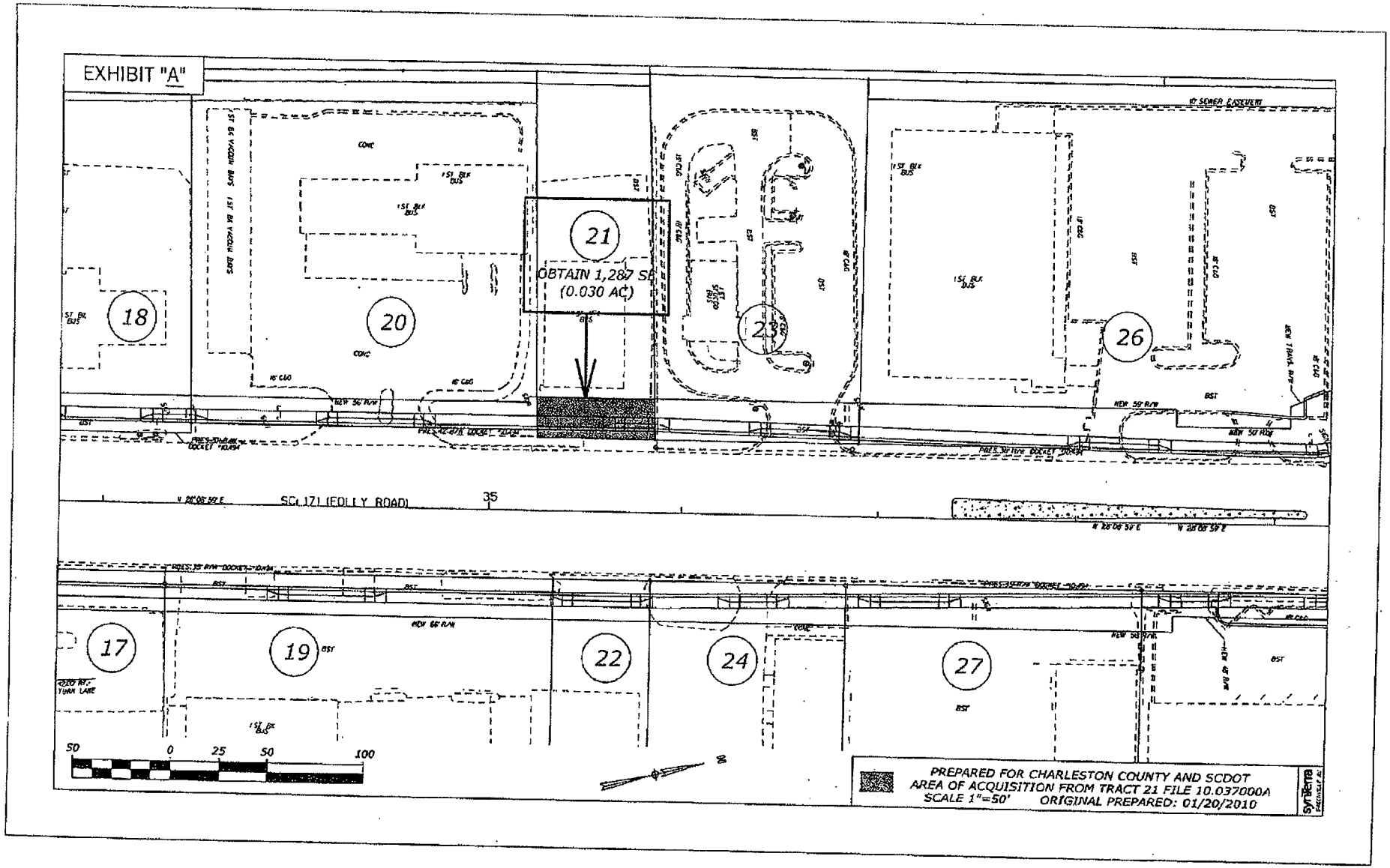
16. THEREFORE, IF THE TENDER IS REJECTED, THE LANDOWNER IS ADVISED TO OBTAIN LEGAL COUNSEL AT ONCE, IF NOT ALREADY OBTAINED.

COUNTY OF CHARLESTON

JOSEPH DAWSON, III, County Attorney
BERNARD E. FERRARA, JR., Deputy County Attorney
AUSTIN A. BRUNER, Assistant County Attorney
BRADLEY A. MITCHELL, Assistant County Attorney
JOHANNA S. GARDNER, Assistant County Attorney
CHARLESTON COUNTY ATTORNEY'S OFFICE
Lonnie Hamilton, III Public Services Building
4045 Bridge View Drive
North Charleston, South Carolina 29405
(843) 958-4010

ATTORNEYS FOR THE CONDEMNOR

Charleston, South Carolina
July 9, 2012


EXHIBIT "A"
21
OBTAIN 1,287 SF
(0.030 AC)
18
20
23
26
17
19
22
24
27
SCHOOL HOUSE ROAD
35
50 0 25 50 100
PREPARED FOR CHARLESTON COUNTY AND SCDOT
AREA OF ACQUISITION FROM TRACT 21 FILE 10.037000A
SCALE 1"=50' ORIGINAL PREPARED: 01/20/2010

RECORD 0013

STATE OF SOUTH CAROLINA)	
)	COURT OF COMMON PLEAS
COUNTY OF CHARLESTON)	No. 2012 CP 10 4511
COUNTY OF CHARLESTON)	
)	
Plaintiff)	
)	
versus)	TRANSCRIPT OF RECORD
)	(Partial)
)	
WALTER G. McADORY and)	
BRANCH BANKING AND TRUST)	
COMPANY)	
)	
Defendants)	
	Charleston, South Carolina
	October 16, 2013

B E F O R E :

HONORABLE DEADRA L. JEFFERSON, Judge

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

For the Plaintiff: BRADLEY MITCHELL, Esq.
BERNARD E. FERRARA, JR., Esq.

For the Defendants: ABIGAIL B. WALSH, Esq.
CHRIS MURPHY, Esq.

Reporter Present: PHYLLIS NORTON

HARRIET P. BENNETT
Reporter, S.C. Court Administration
46 Regency Oaks Drive
Summerville, S.C. 29485

I N D E X

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(The within matter came before the Court on October 16, 2013)

THE COURT: Good morning, ladies and gentlemen. We are going to select a jury in the case of the County of Charleston versus Walter G. McAdory and Branch Banking and Trust Company and S C E and G. Case Number 2012 CP 10 4511, and, actually, I apologize. It is just the County of Charleston versus Walter G. McAdory, and I don't know if I'm pronouncing that right.

MR. MURPHY: Your Honor, it's McAdory.

THE COURT: McAdory -- I apologize.

Ladies and gentlemen, this is what we call a condemnation case, and this is the type of case where the County is doing what is called condemnation of land and a jury is impaneled to determine the value of that property for public purposes.

Before we begin jury selection, we're going through a little process that is called voir dire which is a legal term meaning that I will ask you some questions so the attorneys can more effectively exercise their preemptory challenges in jury selection.

If a question applies to you, please stand and in a loud and clear voice give us your name, your juror number and an answer to the question as applicable.

Remain standing until the Court has completed questioning you.

Before we begin that process, I would ask counsel for the County to stand and introduce themseles, as well as anyone assisting them in the trial of this case, as well as anyone else who practices law in their office.

Then counsel for the Defendant will stand and introduce themselves and anyone assisting them in the trial, as well as the members of their law firm.

You may proceed.

MR. FERRARA: My name is Bernard Ferrara, and I am the Chief Deputy County Attorney for Charleston County. I practice law with other attorneys for Charleston County.

MR. CRITER: I'm Chuck Criter. I am a real estate appraiser.

THE COURT: Is there anyone else in your office?

MR. CRITER: No one else in my office.

THE COURT: I mean the County Attorney's Office.

MR. FERRARA: Oh, I'm sorry. The County Attorney is a gentleman named Joseph Dawson. Other attorneys in the office include Austin Bruner, Assistant County Attorney, Joanna Gardner, Assistant County Attorney, and Ed Nisely, Assistant County Attorney. Thank you, Your Honor.

THE COURT: Counsel, you may proceed.

MR. MURPHY: Thank you, Your Honor. My name is Chris Murphy, and I practice in the Law Firm of Williams and Walsh. One of my law partners is Abigail Walsh, and I have another

law partner, Lauren Williams.

This is Mr. Glenn McAdory.

THE COURT: Ladies and gentlemen, I apologize. I am Deadra Jefferson. I am one of your resident Circuit Judges for the Ninth Circuit.

The Ninth Circuit is made up of Charleston and Berkeley Counties.

If any of the questions applies to you, please stand and in a loud and clear voice give your name, your juror number, the answer to the question that is applicable, and remain standing until the Court has completed questioning you.

Is there any member of the panel related by blood or marriage to anyone who is employed with the County of Charleston or Walter McAdory? If so, please stand at this time.

(No response from jurors)

Does any member of the panel have a close personal or a social relationship with anyone who is employed with the County of Charleston or Mr. Walter McAdory? If so, please stand at this time.

(No response)

The following is a list of potential witnesses in this case. I would ask you to listen very carefully.

Charles F. Criter; Peter Valiquette; Walter G. McAdory.

Is there any member of the panel related by blood or marriage to any of the people that I just listed, or does anyone

have a close personal relationship with any of those individuals? If so, please stand at this time.

Has any member of the panel ever been represented by any of the attorneys involved in this case or anyone in their law firms? If so, please stand at this time.

(No response to previous questions from jurors)

Does any member of the panel have a close personal or a business relationship, or is related by blood or marriage, to any of the attorneys involved in this case or anyone in their law firms? If so, please stand at this time.

(Juror standing)

Remain standing after you provide me with the information. Thank you, maam.

JUROR: Laura McKay, Juror 242. My husband had a business proposal with Ms. Walsh.

THE COURT: Are you in any way involved in this business?

JUROR: No.

THE COURT: All right. In the back.

(Another juror standing)

THE COURT: Yes, maam.

JUROR: Caroline Bonner, 231. Kevin Mitchell and my child are very good friends in school.

THE COURT: Okay, as a result of these experiences, do you all feel that you can remain fair and impartial and render a fair and impartial decision in this case, based solely

on the evidence as it will be presented and the law as the Court will instruct it?

If you answer is yes, please take your seats.

Let the record reflect that all answered yes.

Has any member of the panel formed or expressed an opinion about any of the issues or matters involved in this case? If so, please stand.

(No response)

Is there any member of the panel aware of any bias or prejudice for or against either the Plaintiff or the Defendant in this case? If so, please stand at this time.

(No response)

Is there any member of the panel who has family members who are employed by the County of Charleston? If so, please stand at this time.

(No response)

Is there any member of the panel who was formerly employed by the County of Charleston? If so, please stand at this time.

(Juror standing)

THE COURT: Yes, maam.

JUROR: Stephanie Brown, Juror Number 23. I was formerly employed by the County of Charleston.

THE COURT: How long ago has that been?

JUROR: In 2009.

THE COURT: Please remain standing.

(Another juror standing)

THE COURT: Yes, maam.

JUROR: Erica Smith, 203. My husband retired from the Charleston County School District.

THE COURT: As a result of these experiences, do you feel you could remain fair and impartial and render a fair and impartial verdict in this case that is based on the evidence as it will be presented to you and the law as the Court will instruct it?

If your answer yes, please take your seat.

Let the record reflect the answers were yes. Both answers were yes.

Is there any member of the panel who has any immediate family member or who was formerly employed by Walter McAdory? If so, please stand at this time.

(No response)

Is there any member of the panel or who has any family members who were employed at Lextec LLC or Gene Reed Toyota? If so, please stand at this time.

(No response)

Is there any member of the panel who was formerly employed at Lextec Automobile, LLC, or Gene Reed Toyota? If so, please stand at this time.

(No response)

Is there any member of the panel who formerly worked as a real estate appraiser or real estate agent or broker? If so, please stand at this time.

(Juror standing)

THE COURT: Yes, maam.

JUROR: I had a real estate license from 1978 to 1982.

THE COURT: Your name?

JUROR: (Name inaudible) Juror Number 74.

THE COURT: As a result of that experience, do you feel you can remain fair and impartial and render a fair and impartial decision in this case based on the evidence that will be presented and on the law as the Court instructs it?

JUROR: Yes.

THE COURT: You may take your seat.

Is there any member of the panel who lives in the area of 873 Folly Road in Charleston? If so, please stand.

(No response)

Is there any member of this panel who has any personal knowledge of the facts and circumstances of this case? If so, please stand at this time.

(No response)

Is there any member of this panel who has ever been the subject of a condemnation action? If so, please stand at this time.

(No response)

Is there any member of the panel who has ever been a customer of Lextec Automotive LLC or Gene Reed Toyota? If so, please stand at this time.

(Juror standing)

THE COURT: Yes, maam.

JUROR: I take my car to Lextec. I'm number 115.

THE COURT: You said you take your car to Lextec and your number. What is your name?

JUROR: Christina McDonald.

THE COURT: Please remain standing.

(Another juror standing)

THE COURT: Yes, sir.

JUROR: Andrew Clark, Juror Number 35. I've bought cars at Gene Reed.

(Another juror standing)

THE COURT: Yes, sir. In the back in the light blue?

JUROR: Juror Number 42, and we've had service there.

(Another juror standing)

THE COURT: Yes, maam.

JUROR: I'm Crystal Johnson, and myself and my family have bought cars from Gene Reed Toyota.

THE COURT: As a result of these experiences, do you all feel that you could remain fair and impartial and render a fair and impartial verdict in this case based on the evidence that will be presented and the law the Court will instruct?

If your response is yes, please take your seat.

Let the record reflect all answered yes.

Is there any member of this panel who has any special training in real estate or real estate appraisal? If so please stand at this time.

(Juror standing)

THE COURT: Yes, sir.

JUROR: Mack Compton, Juror 42. As an architect, I do development plans for public facilities, and one of my current projects is a road project. I'm responsible for managing the design, permitting and some of the acquisition concerning the project.

THE COURT: Is that on Magnolia Road?

JUROR: No, maam.

THE COURT: Okay, I was just curious.

As a result of your experience do you feel you can remain fair and impartial and render a fair and impartial decision in this case based on the evidence that will be presented and on the law that the Court will instruct?

JUROR: Yes.

THE COURT: Thank you, sir. You may be seated.

Is there any member of the panel who is or has immediate family members who are involved in developing property? If so, please stand at this time.

(Juror standing)

THE COURT: Yes, sir.

JUROR: Dean Fowler, Juror 66. My brother in law is a civil engineer and is involved in construction.

THE COURT: As a result of this experience do you feel that you could remain fair and impartial and render a fair and impartial decision in this case based on the evidence that will be presented and on the law that the Court will instruct you?

JUROR: Yes, maam.

THE COURT: Thank you, sir. Please take your seat.

Is there any member of the panel or who has a family member, immediate family member, who is employed in autobody repair? If so, please stand at this time.

(No response)

Is there any member of the panel -- Oh, I'm sorry, maam. I apologize.

(Juror standing)

THE COURT: Yes, maam.

JUROR: (Name inaudible) I'm Juror Number 34. My fiance has a body shop in Ravenel.

THE COURT: If you could just remain standing for us.

Is there any member of the panel who owns commercial real estate? If so, please stand at this time.

(Juror standing)

THE COURT: Tell us your name and juror number.

JUROR: I own some property that is commercial property.

THE COURT: Maam, your name and number.

(Answer not audible)

(Another juror standing)

THE COURT: Your name and number.

JUROR: Number 128, Allen Basline. I own property in Summerville, a liquor store.

(Another juror standing)

THE COURT: Yes, sir.

JUROR: Edward Slidell, 186. I have some commercial land on King Street that is vacant.

THE COURT: Did I get everybody? As a result of these experiences, do you all feel that you could remain fair and impartial and render a fair and impartial decision in this case, based solely on the evidence that will be presented and on the law as the Court will instruct? If your answer is yes, please take your seat.

Let the record reflect that all answered yes.

Does any member of the panel know of any reason whatsoever that you could not serve as a juror in this case, with particular emphasis being placed on your ability to be fair and impartial both to the Plaintiff and to the Defendant in the case? If so, please stand at this time.

(No response)

THE COURT: Are there any additional questions from the

County?

MR. FERRARA: No, Your Honor.

THE COURT: From the Defendant?

MR. MURPHY: None, Your Honor.

THE COURT: All right. Do we need an alternate or can we waive the alternate?

MR. FERRARA: Your Honor, it's been my experience that we . .

THE COURT: You don't have to testify.

MR. FERRARA: We waive the alternate.

MR. MURPHY: We would like to have an alternate.

THE COURT: We'll select one alternate.

Ladies and gentlemen, please bear with us for a moment. We have to prepare what is called a strike sheet where you are listed randomly as numbers one through 23. The numbers that are used on the list do not relate to your actual juror numbers.

You will hear numbers called during the actual striking process but they are not related to your juror numbers at all.

We will take a ten minutes recess so we can get that strike sheet and the attorneys can view them. You all can go and stretch your legs for ten minutes and then we will resume the jury strike process.

(Whereupon, the Court took a brief recess and then the case was resumed)

THE COURT: Are you ready to proceed, Mr. Ferrara?

MR. FERRARA: Yes, Your Honor, I am.

THE COURT: Mr. Murphy, are you ready to proceed?

MR. MURPHY: Yes, Your Honor.

THE COURT: If you will give the Clerk your attention, please.

Strikes will be four and four, and please strike by the numbers on the far left. One strike each on the alternate juror.

Whereupon, a jury was struck as follows:

Mr. Murphy for Landowner struck Juror 13.

Mr. Ferrara for the County struck Juror 1.

Mr. Murphy for Landowner struck Juror 18.

Mr. Ferrara for the County struck Juror 17.

Mr. Murphy for Landowner struck Juror 4.

Mr. Ferrara for the County struck Juror 9.

Mr. Ferrara for Landowner struck Juror 7.

Mr. Ferrara for the County struck Juror 15.

Alternate Jurors were struck as follows:

Mr. Murphy for Landowner struck Juror 22.

Mr. Ferrara for the County struck Juror 23.

Alternate Juror listed as Number 21 was selected to serve.

THE COURT: Ladies and gentlemen, as your name is called, come forward, bring your personal belongings, and be seated in

the jury box.

(Jurors selected were seated as their names were called by the Clerk)

(Transcription Note: A juror list was not included with the Reporter's log notes)

(Jurors not selected for the trial of the within case excused from the Courtroom)

THE COURT: Ladies and gentlemen, please stand for me and raise your right hands as the Clerk administers the oath to you.

(Selected jurors were sworn by the Clerk for the trial of the case)

THE COURT: I'm going to give you all a brief recess. I'm sure this schedule is foreign to you all, and you may need to go to the restroom or to refresh yourselves for a moment.

Then we will begin the case with opening arguments, the Court's opening instructions, and then we will begin testimony.

We anticipate that we will be able to finish this case today, and, worst case scenario, we will finish tomorrow morning if we don't finish today.

During the break you cannot discuss the case in any manner whatsoever. Please do not speculate as to what it may or could be about.

(Jurors excused from the Courtroom. The Court took a brief recess, after which the matter resumed.)

* * *

THE COURT: Ladies and gentlemen, I would ask you to give the attorneys your undivided attention.

MR. MURPHY: Thank you, Your Honor. May it please the Court?

THE COURT: Yes, sir.

MR. MURPHY: Madam Forelady and ladies and gentlemen of the jury, my name is Chris Murphy, and I, along with Abigail Walsh, are privileged to represent Walter McAdory in this condemnation action.

Now, I am sure a lot of you folks are sitting there thinking that you are pretty unlucky to have been selected for jury duty today, but if it's any consolation Winston Churchill said that in times of peace the greatest service a citizen could give our country is that of jury duty.

I would also point out that we have some law school students and recent law school grads who are sitting here with you today getting what is called their 403s.

Now, a condemnation case is not an exciting case. It's not sexy. I can guarantee there has never been a movie about a condemnation action and there is never going to be a movie about a condemnation action.

But that doesn't mean it is not important. It is very important to Mr. McAdory because it's dealing with his livelihood.

Absolutely the most awesome power our government possesses is the power to draft or the power to take your property, and when the government exercises one of these policies it must do so in the most responsible manner. It is obligated to do so in the most responsible manner, and the law requires the County to make Mr. McAdory whole as a result of this action.

That is, to put him in as good a position after as he was in before. It is not permitted to put him in a lesser condition.

That is exactly why I'm here, folks. Glenn is an auto mechanic. He didn't graduate from high school and he's worked hard all his life. Nobody gave him anything. He had to earn it, and he did.

He owns the property and he leases it to a company called Lextech. Lextech is a single member LLC where he is the sole member.

Now, back in 2006 Glenn started his own business, and he had to rent the place because he couldn't afford to purchase one. Then on January 21st of 2011 he was able to purchase 873 Folly Road which was a title loan shop.

I'm sure you've seen these green and yellow buildings before, and this was an eleven thousand sixty-four foot square foot property that he paid Three Hundred Seventy-five Thousand Dollars for.

That is roughly Thirty-three Dollars and eighty-nine Cents per square foot.

Now, what he liked about the property is he liked the parking in the front. The building is designed so you have a main entrance in the front with parking. It had great visability and it had very good signage.

And he leased the property to Lextech which had to upfit it for a garage. Now, Lextech was doing great at this location until last year when the County brought this condemnation action.

Understand that the landowner had definitely no say as to whether or not this condemnation action was filed against him, and he had absolutely no imput in the plans. He cannot stop the condemnation.

This condemnation action as you can see is taking the front portion of the property here, this shaded area -- the shaded area there is what the County is acquiring.

What that is doing is eliminating the signage in the front and eliminating all of this part, and the County is wanting to compensate him Fifty-one Thousand Dollars for this taking.

This is forcing, as a result of this condemnation, Lextech to move its location as a result of this, and you are going to hear that Mr. McAdory bought this property on a fifteen year plan.

He intended to use it as a garage for fifteen years, at which time he would sell it and that would be his retirement nest egg.

What we're going to say is that prior to this condemnation action the highest and best use, which is what he's entitled to, as the Judge will tell you -- he is entitled to the highest and best use of his property.

We are saying that it was outfitted as a garage and it was used as a garage. It was purchased for that purpose but when you take away his parking and take away his signage, it changes the configuration of the property and it affects the use and purpose of the property.

We are saying that once this project is complete that the highest and best use is not going to be a garage. It is going to be something else. What we don't know.

And we're saying that because the only choice is to put the parking in the back of the property, and that doesn't work because you can't have customers walking through the garage which is absolutely prohibited, and you don't want customers going down the alleyway because it is not wide enough for two cars to pass so you can't have people walking up and doing with cars going by. It is simply a dangerous situation.

Now, as for signage, he had a great sign out in front of the property. As a result of this acquisition, he is

not going to have any signage out in front of the property.

Now, the County will say they have a solution, but it is definitely going to put Mr. McAdory in a lesser position.

Now, it's said, folks, that actions speak louder than words, and Lextech is moving as a result of this, and this shows the highest and best use is changing after.

Now, once the project is complete, he is only going to have one of two choices. He's either going to have to sell the property at a loss, less than what he invested in it, or he's going to try to lease it out, but since it is out-fitted as a garage the only possible tenant is going to be a garage operator. If it doesn't work for Lextech, there isn't any reason to believe it would work for anybody else. You would even have to rent it out at something well below the market rate.

Now, the County cannot force Mr. McAdory to accept an inferior position in the after, and that is what we believe they are trying to do here.

Witnesses for the government are going to testify that it did not utiilize the building. They did not consider whether those improvements added value for the after.

They did not consider the effect it would have on the business or the effect on the building.

Now, you are the conscience of the community, and at the end of the day it will be your job to make Mr. McAdory

whole. You have to decide whether he will be in as good a position in the after as he was in the before, and, in so doing, you have to decide only one issue. That is, the value of the whole property prior to the acquisition, because we agree the property after this taking is worth Two Hundred Twenty-five Thousand Dollars.

So you will have to look at it and determine what was the before value, deduct the after value, and then find the just compensation which would be the difference.

He wants his money back. He paid Three Hundred and Seventy-five Thousand Dollars for it. He believes it is worth Two Hundred Twenty-five Thousand Dollars after this taking which is what the County appraiser is going to testify to.

He wants to be made whole. At the end of the day, this is his only shot at being compensated. His only shot is in your hands.

At the end of this case, we're going to ask you for the amount of One Hundred Fifty Thousand Dollars, what he paid for the property, less what it is worth after the taking.

Thank you.

THE COURT: Mr. Ferrara.

MR. FERRARA: Thank you, Your Honor.

Good morning, ladies and gentlemen of the jury.

My name is Bernie Ferrara, and I'm the Chief Deputy County Attorney for Charleston County.

Assisting me in trying this case is Brad Mitchell and back in the back is Joseph Dawson, County Attorney for Charleston County.

This is our witness, Charles Criter, and behind him is the project engineer.

We are privileged today to represent Charleston County and, as Mr. Murphy stated, this is an important matter. It is a matter that is addressed in our Constitution, a matter that is in the South Carolina Constitution.

That matter is a guarantee of the Fourteenth Amendment -- the Fifth Amendment guaranteed by the Fourteenth Amendment, and that is when the government takes private property from a private person such as Mr. McAdory, and that person surrenders the property, the government must pay just compensation to that person, and that is why we are here today.

Charleston County has a program called the Road Wise Program. You can see its size in Charleston County. It is a sign that has half of a penny and it has an insignia. This is a road improvement project paid for by the half cent sales tax that was passed in 2005. Those funds provided a means for Charleston County to improve roads.

Today Charleston County has improved Johnny Dodds

Boulevard, Westly Drive, in downtown near the V.A. Hospital, (inaudible) Road, McConnell Parkway. Now on the schedule is the improvement of Folly Road and Camp Road.

The project hasn't begun yet. It's in the design phase, being designed, and we're out looking at properties we need to get right-of-way for the improvements to Folly Road.

Folly Road is going to be widened from thirty-eight feet to fifty-nine feet, and as a result Charleston County must acquire a section of Mr. McAdory's property right in here.

Like Mr. Murphy stated, the property before the County acquires it consists of eleven thousand sixty-four square feet running this way, and that is zero point two five four acres, approximately a quarter of an acre.

After the County acquires the land, it will consist of -- and I want to get this right -- point two two four acres or nine thousand seven hundred seventy square feet.

So between those figures is what the County is acquiring. The County is acquiring one thousand two hundred and seven square feet, or zero point zero three zero acres, three hundredths of an acre.

As I said, earlier, when the Government takes private property, it must compensate the individual. That is a fundamental right.

Charleston County and Mr. McAdory have negotiated but they could not agree on an amount of just compensation for the property the County is taking from Mr. McAdory.

When the parties cannot agree, we ask a jury to decide, and what you all today must do here is decide what is that amount of just compensation it must give to Mr. McAdory.

When you consider the amount of land the County took, what is the amount -- for the land the County took, what is the value of the amount of land the County took.

That is the first step in determining what is just compensation. Again, what the County took is one thousand two hundred seven square feet of property along Folly Road.

The Judge is going to tell you that you are to consider any decrease in the value to the landowner or any dimunition to what is left.

If there is any decrease in the value to the main parcel, what should the landowner be compensated.

So there is no question that Mr. McAdory is due just compensation. The question is that you must determine what is that just compensation.

Let me tell you a little bit about how we get to how the County determines an amount of just compensation.

As you heard from Mr. Murphy, the County arrived at a determination of just compensation in the amount of

Fifty-one Thousand Dollars. How did the County get to that point?

The County goes out and hires an appraiser, and the evidence will show the County hired this gentlemen over here, Mr. Charles Criter.

Mr. Criter grew up on James Island, grew up in Charleston. He now lives in Greenville and is a member of am appraisal firm. Mr. Criter has been an appraiser for many years.

He holds the highest licensure of any kind of appraiser you can have. I'm not sure whether you are aware of this, but there are many levels of appraisers of property. Mr. Criter, again, can appraise any residential property, any commercial property, with the highest licensure in the State.

You may say, well, that sounds interesting. What does that mean?

In other words, he can appraise million dollar properties. There is no property in South Carolina Mr. Criter cannot appraise.

Mr. Criter has a designation as a MAI, a designation that means he is a member of the Appraisal Institute, the highest designation an appraiser can achieve.

That means Mr. Criter took the extra step to become qualified to become MAI, so when the County started the

Folly Road and Camp Road project, they asked Mr. Criter to tell them what is the amount of just compensation that is due to Mr. McAdory.

The County didn't just go out and hire somebody. It hired the best in the field. That's important. That is important because when a private person surrenders their property it's important. Important to the County and important to Mr. McAdory.

The County is ready, willing and able to pay Mr. McAdory just compensation. Unfortunately, we disagree on what that amount is.

Again, you must determine that amount of just compensation. We also have here the project engineer who is going to talk to you about the Folly Road-Camp Road improvement project. He's going to talk about the widening of Folly Road, the intersection improvements, sidewalks, bike paths, medians, turn lanes added -- all that sort of design and construction to help you understand about that.

I have this to mark as Plaintiff's Exhibit 1, and this is a smaller version. Here is the subject parcel.

May I show it to the jury, Your Honor?

THE COURT: You may continue.

MR. FERRARA: In conclusion, I would tell you that Charleston County thanks you for your service as jurors, and the Judge has told you what great service you perform

when you serve as jurors. It is an important civic service, important to the State and the County, important to Mr. McAdory. We thank you.

When you serve as jurors you should treat everyone with respect throughout the whole process, treat people the right way.

So I would ask you to go forward under your oath and do your duty, listen to the facts, listen to the evidence that is placed in the record, and arrive at what you determine to be a fair amount of just compensation.

You are here today which means you have no friends to reward, no enemies to punish. You are here to arrive at what is just compensation.

In closing, at the end of the trial you will all be given a jury verdict. It's kind of like a check, and the form of that jury verdict might say, we, the jury, award the landowner -- and you will fill that jury verdict form out -- fill in an amount on that line.

You have heard what we've offered Mr. McAdory, and you heard what Mr. McAdory has asked for. It is up to each and every one of you to agree on a verdict -- it must be a unanimous decision. Each and every one of you has to agree on what the amount is.

We hope that when you write out that check that you do it carefully, do it thoughtfully, as to what is the

correct amount of compensation.

Thank you for your time and patience.

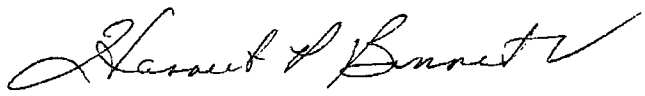
---- END OF REQUESTED PORTION OF TRANSCRIPT OF RECORD ----

CERTIFICATE

I, HARRIET P. BENNETT, Court Reporter for South Carolina Court Administration, hereby certify that the foregoing Transcript was prepared from the records of Phyllis Norton to the best of my ability, having been heard in the Court of Common Pleas for Charleston County on October 16, 2013. This is a portion of the record as was was requested.

FURTHER, I certify that I am neither of kin nor counsel to any party to this matter, nor do I have any interest in the same.

July 23, 2014



STATE OF SOUTH CAROLINA	)	COURT OF GENERAL SESSIONS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	
	)	
County of Charleston,	)	CASE NO. 2012-CP-10-4511
	)	
PLAINTIFF,	)	
	)	
	)	
VS.	)	PARTIAL
	)	TRANSCRIPT OF RECORD
Walter G. McAdory, Landowner,	)	
and Branch Banking and Trust	)	
Company, Other Condemnee,	)	
	)	
DEFENDANTS.	)	
	)	

Charleston, South Carolina

October 16 and 17, 2013

B E F O R E:

The Honorable Deadra L. Jefferson, Judge; and a Jury.

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

Bernard E. Ferrara, Jr., Esquire
Bradley Allen Mitchell, Esquire
For the Condemnor

Christopher L. Murphy, Esquire
Abigail Budd Walsh, Esquire
For the Landowner

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I N D E X

(CW) - DENOTES COUNTY'S WITNESS

(LW) - DENOTES LANDOWNER WITNESS

(IC) - DENOTES IN CAMERA

PARTIAL TRANSCRIPT OF RECORD:

(Jury Voir Dire & Jury Selection - Not Included)

(Opening Statements and Closing Arguments - Not Included)

Charleston County v McAdory Condemnation -- 6

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October 16, 2013

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Look for an original signature in blue ink on the certification sheet to verify that the court reporter has certified the transcript you are viewing.

If you need an additional copy of this transcript or a sealed transcript or if opposing counsel requires a copy of the transcript, you should contact the court reporter.

Certification will satisfy Rule 80, Stenographic Report of Transcript as Evidence.

E X H I B I T S

NO.	DESCRIPTION	MARKED	ADMIT
CONDEMNOR/PLAINTIFF			
1	Color photocopy - aerial	45	45
2	Color Photocopy - aerial zoom	45	45
LANDOWNER/DEFENDANT			
1	Photo	45	140
2	Photo	45	
3	Photo	46	
4	Photo	46	141
5	Photo	46	152
6	Photo	46	
7	Photo	46	
8	Photo	46	
9	Photo	46	
10	Photo	46	
11	Photo	46	
12	Photo	46	
13	Photo	46	146
14	Photo	46	148
15	Photo	47	148
16	Photo	47	150
17	Photo	47	150
18	Est. Cost Damages	47	

NO.	DESCRIPTION	MARKED	ADMIT
19	Invoice - Landscape Pavers	47	
20	Personal Bank Statement	47	
21	Accountant Leasehold Improvement	47	
22	Plat	47	48
COURT			
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(WHEREUPON, jury panel enter the courtroom 10:07 a.m.)

THE COURT: Good morning, ladies and gentlemen. I hope everybody had a pleasant trip in this morning. We are going to select a jury for the case of the State of -- the County of Charleston versus Walter G. McAdory and Branch Banking and Trust and SCE&G, Case Number 2012-CP-10-4511.

And actually I apologize, it is just the County of Charleston versus Walter G. McAdory. And I hope I am pronouncing that last name correctly.

MR. MURPHY: Your Honor, it is McAdory.

THE COURT: McAdory. I apologize. That would make sense phonetically.

THE COURT: Ladies and gentlemen, this is what we call a condemnation case. And it is by state statute it is the kind of case where when the County is doing something that is called a condemnation of land a jury is entitled to determine the value of the taking of that property for public purposes.

Before we begin jury selection we are going to go through a process that is called voir dire which is simply a legal term meaning that I am going to ask you some questions so the attorneys can more effectively exercise their preemptory challenges in jury selection.

(JURY VOIR DIRE AND JURY SELECTION OCCURS AND JURORS ARE SWORN; HOWEVER, JURY VOIR DIRE AND JURY SELECTION AND

SWEARING IS NOT INCLUDED IN THIS PARTIAL TRANSCRIPT.)

THE COURT: Ladies and gentlemen, if you would stand for me please and raise your right hand so the clerk can administer the oath to you.

(WHEREUPON, the jurors were duly sworn.)

THE COURT: Ladies and gentlemen, as we have already indicated, we are ready to begin this condemnation case or eminent domain case. I'm going to give you all a brief recess to -- it has been a long -- we are use to this sort of schedule. I'm sure that the schedule is foreign to you all. To give you an opportunity to go to the restroom, rest yourselves, stretch your legs for a moment. And then we are going to begin with opening argument and the court's opening instructions and then we are going to begin testimony.

We anticipate that we should be able to finish this case today. I just do that to you for scheduling purposes. Worst case scenario it will go over into tomorrow morning. But we think we might be able to finish it today.

During this break please do not discuss the case in any manner whatsoever. Please do not speculate about what you think it may or could be about. I will turn you over into the hands of the bailiffs. I anticipate we will be out about five minutes, just enough time to give you an opportunity again to stretch your legs, go to the restroom if you need to. If you would go with the bailiffs, please.

(WHEREUPON, jurors exits courtroom approximately 11:41 a.m.)

THE COURT: You all can take your seats. Okay, do you all have any exhibits you need to have marked?

MR. FERRARA: Your Honor, we have already marked two for the County.

THE COURT: Have you given them to the court reporter?

MR. FERRARA: Yes, Your Honor.

THE COURT: Okay. Does the landowner have anything they needed to have marked?

MS. WALSH: Yes, Your Honor, we just got stickers and we are marking them.

THE COURT: I am sorry?

MS. WALSH: Yes, Your Honor, we just got stickers and we are marking them.

THE COURT: Okay. If you all could get that coordinated and then give that to the court reporter so that she can pre-mark all of those exhibits and if you all agree with all of those then we could just go ahead and admit that without having to -- that will save us some time.

Is there anything else we are going to need to take up before we begin opening instruction and argument?

MR. FERRARA: Your Honor, there are three items that the County would like to raise with Your Honor before we start the trial.

THE COURT: Okay. Let me ask one quick question.

Branch Banking and SCE&G have both been dismissed, correct?

MR. FERRARA: That is what I understand, Your Honor. I'm sorry, Your Honor, Branch Banking and Trust Company is a party to ---

THE COURT: Because they are a lien holder?

MR. FERRARA: Because they are ---

THE COURT: Okay.

MR. FERRARA: --- mortgage holder.

THE COURT: But that -- but that is just for -- they are not going to be ---

MR. FERRARA: That's correct, Your Honor.

THE COURT: --- presenting anything? Okay. Yes, sir.

MR. FERRARA: The County anticipates - and I haven't seen what exhibit it is that has been marked - is a list of invoices from Lex-Tech Automotive, LLC. And you can see, Your Honor, Lex-Tech Automotive, LLC, is not a party to this condemnation action. The landowner is Mr. McAdory. It is not Lex-Tech Automotive, LLC. Lex-Tech Automotive, LLC, is a lessee of the subject property.

So the County is going to seek to exclude any kind of evidence regarding improvements to the property since those improvements appear to be asserted by the lessee, not the landlord.

And, Your Honor, the problem that the court is going to have is we don't know who is asserting these claims, the

landlord or the tenant. And there is a whole body of law in South Carolina as to how you value a leasehold estate.

And these items in this invoice amounting to some $70,000, first the items aren't identified except by the name leasehold improvements. But there is a whole body of case law in South Carolina that addresses the value of a leasehold interest.

And if Lex-Tech Automotive is claiming some apportionment or some amount of the award of just compensation to McAdory then, Your Honor, that is not the proceeding before you today. That is in a separate proceeding, a proceeding in equity called an allocation hearing between Mr. McAdory and Lex-Tech Automotive, LLC, in a separate trial. And that is by statute. And I would be happy to hand up to Your Honor the controlling statute if you would like. I think it is 28-2 -- may I approach, Your Honor?

THE COURT: You can just give me the number.

MR. FERRARA: Section 28-2-460. So to the extent that Mr. McAdory wants to talk about these invoices amounting to some $70,000 we object to any reference to those invoices. We feel that it will confuse the jury and will be prejudicial to the County's case. The issue before the jury today, Your Honor, is what is the amount of just compensation to be paid to Mr. McAdory.

In order to arrive at the fair market value of the subject parcel Mr. McAdory adds this value of invoices to the purchase price of the property when he bought it in 2011.

And the County finds that problematic because he is, number one, like I said, $25,000 of the invoices are not identified as to what they are for. But he is taking the invoices and adding dollar for dollar to the value of the property as if you laid payment for the price of $13,000, that adds $13,000 to the market value of property. And that is just not the way the fair market value standard is in this state. The fair market value standard is a willing buyer and a willing seller in a market free of any kind of any undue influence.

So these invoices for improvements to the property we don't know whether they increased the value or decreased the value. And there is no one here to tell the jury or answer that question.

The statute defines just compensation as what the government -- the value of the dirt taken. And in this case Charleston County took almost $1,300 -- 1,300 square feet of property along the front of the McAdory's property on Folly Road. That's what the County took.

The County didn't take any part of the building. The County didn't take any part of the improvements. The County

didn't take any part of the renovations. So looking at the language of the statute these invoices for improvements should be disregarded. Just compensation does allow compensation for any reduction in the remaining parcel, what is left over, the remainder to the property.

And our argument is Lex-Tech, now not the landlord who is receiving these invoices, is arguing that these invo- -- that these improvements increased the value of what is left over. And that is directly in opposite to what the statute says which is you're compensated for what is left over if there is a decrease in that value of the remainder. So it is not consistent with the statute.

So for the reasons stated that this notion there is some dollar for dollar appreciation of $70,000 added to the fair market value because they bought a -- they installed a fence, they installed a lot drain and grading. They even got a survey which they are including. They got plumbing repairs. I mean to have the property serviced for plumbing repairs of almost $2,000 and add that on dollar for dollar to the fair market value that is just not the law in South Carolina. They have an HVA system that they have on here for $6,000. They have a repaving on here for $500. They have electrical work.

So my point is, Your Honor, these improvements to the leasehold are problematic. Again, for the reasons we don't

know who is making the claim.

Is it Lex-Tech Automotive, and if so that is a separate proceeding before Your Honor in a separate time between the landlord and tenant. And that separate proceeding involves some allocation awarded to the tenant from the just compensation that is awarded to Mr. McAdory.

It is problematic because it is like I said it doesn't flow with the statute. And that statute number is again it defines just compensation. It is Section 2 -- 28-2-370. And I have a copy if you would like for me -- okay.

So that is the problem, Your Honor; is it the landlord asserting the improvements or is it Lex-Tech. And for that reason it raises problems for the County. I think it is going to raise a problem for the jury. And it is going to be prejudicial to the County's case where he is simply to determine what is the fair amount of just compensation due Mr. McAdory.

The County is ready, willing and able to tender a fair market value of the just compensation due Mr. McAdory. And these items whether they are leasehold improvements of Lex-Tech should not be allowed for the jury to consider. We don't know whether these items were replacement items. Our argument is that they go to the condition of the property. The County didn't take the building. The County didn't take the renovations.

And when Mr. Crider, our appraiser, was asked in a deposition: Tell me why you didn't appraise the improvements if all is part of the project. Answer: Because they were not being affected. The improvements would continue so therefore the only way -- that is enough, Your Honor. The improvements are not being affected. They are going to continue on.

So with that said, Your Honor, we would like for Your Honor to consider excluding them from allowing the jury to consider them and should you allow them to be presented to the jury that we would like some continuing objection because we think this amount of $70,000 is not -- does not go to the determination of the amount of just compensation.

THE COURT: You said you had several objections. What is the other?

MR. FERRARA: The other objection is, Your Honor, to the extent that the landlord raises any questions as to loss of business pursuant to the County's condemnation of the property that is not an element of damage that is compensable ---

THE COURT: Could you repeat that again. I'm sorry, I missed the first part of what you said.

MR. FERRARA: To the extent that the landlord talks about any profit from operation of the business -- and again, Your Honor, that operation of business is the tenant.

It is not the landlord. And to the extent that they discuss that, loss of business is not an element of damage to be considered in an eminent domain proceeding.

So we would like for you to at least be aware that should that come up in trial the County will object to that. But we are laying our objection before we get the matter before the jury.

Your Honor, so we can all understand this notion of the value of Mr. McAdory's property, there is a principle called -- it is a fundamental foundation principle and it talks about if there is an award of just compensation for the taking of property that that award is looked at as a whole and that award of allocation satisfies whatever interests occupy that property whether it is a fee simple interest of the landlord, whether it is at lease fee interest of the tenant, whether it is a life estate or whatever, all of those interests can look to that fair market value of just compensation and make a claim for it.

So any claim that Lex-Tex may have, again, Your Honor, is against Mr. McAdory. And that is a separate proceeding, Your Honor, as I mentioned earlier.

The problem you have, Your Honor, is Mr. McAdory is the president of Lex-Tech Automotive, LLC. It is a single member LLC. He is Lex-Tech Automotive.

So I raised that, Your Honor, so we all understand that

is problematic in this case. And we move to exclude any kind of reference, any kind of showing of pictures of improvements to the property, any kind of introduction of this evidence to the jury. I will be happy to answer any questions, Your Honor.

I'm sorry, there is a third objection which within these invoices is a -- I don't know if it is an invoice, whether it is a proposed invoice, for $96,000 by an architect to do some kind of reworking of the existing building on the property. And the County objects to any kind of introduction of this document to the jury for their consideration. It is highly prejudicial. It will confuse the jury.

THE COURT: What is it for?

MR. FERRARA: Pardon me?

THE COURT: What is it for?

MR. FERRARA: I think it is to show that there is a figure of 96,000 out there that he will have to pay to make improvements to the property. It is an architectural invoice.

THE COURT: Make improvements for what?

MR. FERRARA: Pardon me?

THE COURT: Make improvements for what?

MR. FERRARA: Again, grading, paving, storm sewer, building pad, hardware doors, flooring, vinyl, interior

painting, building electric, civil engineering, miscellaneous engineering, materials and labor.

My point is this, Your Honor, and I will be happy to let you take a look at it if you would like.

THE COURT: Huh-uh.

MR. FERRARA: I didn't want to go -- go through each and every item.

THE COURT: I was just curious to know what it was for.

MR. FERRARA: But the architect is not here. Charleston County can't cross-examine this individual. So it contains hearsay. It -- it is highly prejudicial to the County's case. And again we think that it will confuse the jury.

THE COURT: Help me understand. You all took a 1,300 square feet. Was that for to extend the highway, to put a new curb in, to -- what did you all take it for?

MR. FERRARA: Your Honor, this is Folly Road (indicating). And here is -- do you mind?

MS. WALSH: No, go ahead.

MR. FERRARA: And here is the property. This is Folly Beach. This is the Charleston.

THE COURT: I liked it better the way you had it. I could see it better. Yeah.

MR. FERRARA: Charleston County is widening Folly Road from 38 feet to 59 feet. And there is his property

(pointing). The blue represents where cars will pass in front of the property.

THE COURT: So you didn't eliminate any driveways or anything like that?

MR. FERRARA: We did not eliminate the driveway.

THE COURT: Okay.

MR. FERRARA: What we did eliminate were two parking spaces up here (pointing). But within our amount of just compensation offered to the landowner we cured that cost by adding that into the amount of just compensation.

So in the after, after the acquisition by Charleston County of the property, this is going to remain virtually unchanged (pointing). We are going to have a four-foot bike path, a five-foot sidewalk. And then the right-of-way extends to this line here (pointing). And this red line is literally six feet from the -- from the side of the building -- from the front of the building.

And that raises another issue, Your Honor. If these jurors are going to go out and look at the property there is ---

THE COURT: Well, no, we haven't made that decision yet.

MR. FERRARA: Okay.

THE COURT: We will see.

MR. FERRARA: I will hold out -- hold off on that.

THE COURT: No, go ahead and address it.

MR. FERRARA: Well, they are going to go out and see a stake here (pointing). And what I would like for them to understand is that stake doesn't represent where the cars are going to be traveling along Folly Road.

Again, as I said, the cars traveling along Folly Road the distance remains virtually the same as in the before. It is some 20 feet from the front of that building to the side of the car traveling by.

What the County took was this section right here (pointing), 1,287 square feet; .030 of an acres, 3/100th's of an acre.

So, Your Honor, for those reasons the architect's invoice, this some $70,000 worth of leasehold improvements, we would like to exclude that evidence, not let the jury hear, see, or consider the evidence because it doesn't go to the determination of just compensation.

Again, the statute says you only look at what was taken by the government - we took the dirt in front - and then what if any value to the remainder was it decreased, what was left, is there any decrease in value to what was left.

And again, we cured the loss of the two parking spaces. There is another issue, we cured the loss of the sign in front and have that placed on the building. So we have built in those costs to our offer of just compensation to

Mr. McAdory. And he has rejected that.

What Mr. -- and I don't want to get into his methodology of how he arrives at his figure of just compensation. But it is largely predicated, premised, on adding some $70,000 to the purchase price of the property.

He bought the property in 2011 for $375,000. He wants to add dollar for dollar these $70,000 improvements to that 375 and come up with some $440,000 as his starting point to determine just compensation. And that is not the way it works in South Carolina, Your Honor.

THE COURT: Okay. Would you all like to respond?

MR. MURPHY: Yes, Your Honor. What Mr. Ferrara did is basically argued his questions, in fact the County's position in this case. This is exactly why we are here. Mr. Ferrara and the County don't believe this taking affects any of the improvements or damages to the remainder. Mr. McAdory disagrees. We believe that the improvements are damaged, which is the question of fact for the jury.

THE COURT: How are they damaged?

MR. MURPHY: How -- pardon?

THE COURT: How are they damaged?

MR. MURPHY: Because the highest and best use has changed from an auto repair garage to some other use. And he is going to testify about that, why he has to move his business as a result of this acquisition and can't use the

property as a garage.

THE COURT: What does that have to do with $70,000 in invoices for improvements ---

MR. MURPHY: Because --

THE COURT: --- if he is going to move his business?

MR. MURPHY: Because the improvements go to the value of the property in the before. You have to look at this case as what was the value before and what was after. And it doesn't matter if I made the improvements or somebody else ---

THE COURT: But that is not how you calculate just compensation. You have real estate experts do appraisals. That is like saying because I added a $50,000 bathroom to my house that it increases the value of my home.

MR. MURPHY: And you have that ---

THE COURT: If my house -- neighborhood is already topped out it really doesn't matter if I added a $50,000 bathroom. I may have just wasted some money.

MR. MURPHY: And that is an argument that they can make.

THE COURT: I don't think so. I think it is well grounded in case law. You have to -- there is a way to calculate fair and just compensation. Usually it is battling experts who do evaluations of the property.

A lay person would think -- again, if the house in my

neighborhood is worth $100,000 a lay person would think if I added a $50,000 bathroom or kitchen therefore my house is now worth $150,000. It doesn't work that way.

MR. MURPHY: Well ---

THE COURT: My house may actually have diminished in value. It may now be worth $90,000 which just means I made a bad investment.

MR. MURPHY: That might be the case. But, Judge, that is still a question of fact. Mr. McAdory, the landowner, is entitled to testify about ---

THE COURT: He is entitled to testify within a layperson's parameters pursuant to Rule 701 based on his rational perception. But he can't go into areas beyond his expertise.

I can say what I think my value of my property is worth. But it is different when I start adding on additional things to justify that opinion. It is problematic. And you are going to have to connect those dots for me.

Because the case law is very clear, which is just compensation pursuant to the statute means either the actual value of the land taken, any special damages resulting to the remainder of the land or a reason of such taking which by liberal reading I -- some of what you are saying might come within that. But you would still have to prove to me

that it is relevant and germane. And the benefits if any accruing to the remainder, the latter to be deducted from the total value of the land taken and any special damages found to exist.

But the statute is very clear and it is not ambiguous. 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 which is a statute that deals with, you know, the improvements ---

MR. MURPHY: I agree.

THE COURT: -- somehow accrue to the benefit of your property, that gets deducted.

MR. MURPHY: What -- what Mr. Mc- -- first of all, Your Honor, the buildings are considered an attachment to the property. So that is part of the property under the law. Second, is as you said, it's the value of the property taken less any damages to the remainder.

What Mr. McAdory did was he invested -- he paid $375,000 for the property to run it as a garage. He invested 77 -- no, $69,000 into this property to make it suitable as a garage, an auto repair shop. That has value to the landowners. And that is the highest and best use in the before is as a garage.

When that highest and best use changes, the improvements lose value. And he can testify to that under

the law. And if there's any issues with cross-examination, that can be brought out at that point.

THE COURT: Oh, no, you are going to have to bring the architect. You are not going to be able to go into an architect's report. Those are subjective opinions.

MR. MURPHY: Well, if Your Honor ---

THE COURT: They would have to be cross-examined. He is not going to be able to testify as to what the architect told him. He is not going to be able to be able to testify what improvements the architect suggested. It is all hearsay. It is not --

MR. MURPHY: But ---

THE COURT: --- based on his personal knowledge.

MR. MURPHY: Your Honor, I ---

THE COURT: He doesn't have the expertise to say ---

MR. MURPHY: In terms ---

THE COURT: --- what needs to be done to the property.

MR. MURPHY: In terms of hearsay it would follow the -- it would not fall within the hearsay. It would be an exception. Because, number one, it would not be offered for the truth of the matter asserted.

THE COURT: It is offered for its truth because you want the jury to rely on it and you want them to believe that these improvements need to be made and that is what it cost.

MR. MURPHY: No, we would be offering it to show that why he's -- the cost of those improvements -- well, first of all we are talking about two different things here, Judge.

The -- the construction estimate for the $96,000 is not offered for the truth of the matter asserted. It is offered to show why he has to relocate his business. He was faced with having to pay 96 ---

THE COURT: That is offered for its truth.

MR. MURPHY: Pardon?

THE COURT: That is bolstering his opinion that he has to move it. It is offered for its truth. You have some -- he is relying on someone else's opinion as to why he says he has to move his business.

MR. MURPHY: Right, and the case law says if he's -- it is not hearsay if it is because he is taking a certain action.

THE COURT: But the court -- it is hearsay. It is being offered for its truth or you wouldn't want to have it admissible. It would have no value to you otherwise.

MR. MURPHY: I disagree, Your Honor.

THE COURT: Well, that is your prerogative but.

MR. MURPHY: All right.

THE COURT: It is offered for its truth. I rarely find -- I rarely see lawyers offer anything that is not offered for its truth. It is very rare that someone else's

out of court statement is not hearsay.

MR. MURPHY: It would also ---

THE COURT: Or that it would constitute bolstering. You wouldn't be offering it any -- for any other purpose. It would have no value to you otherwise.

MR. MURPHY: And it would also come in under the business exceptions record, Your Honor.

THE COURT: It is not a business record. It is a subjective opinion. It is not records that are kept in the ordinary course of business to verify or keep some sort of record that is relied on by the public or by -- or for a business entity.

He provided an opinion for a price. It is subjective. If you got four or five other architects they would have different opinions.

It is no different than a doctor providing subjective opinions. Of although we have an exception for that, but that is only for diagnosis and treatment.

And those things -- those statements that are subject to veracity because people aren't going to make them up and the doctor is generally not going to make up somebody saying I have pain in my shoulder, I have whatever. But once a doctor goes on to say that, I think that report is malingering. I don't think they are telling me the truth or I don't think that's -- that they are necessarily being

forthcoming or that their range of movement does not verify or corroborate what they say their lack of range of movement is. All that moves into the subjective territory which has to be subject to cross-examination.

MR. MURPHY: And what -- if I may, Your Honor, Judge, ---

THE COURT: Uh-huh.

MR. MURPHY: --- this is not an architect's invoice. It is a construction invoice. Mr. McAdory is going to testify ---

THE COURT: No, that's -- that's even -- it's still hearsay. It is still somebody else's subjective opinion about work that needs to be performed.

MR. MURPHY: Okay, that goes to the construction folk's estimate. And I would just ask if we can lay a proper foundation at the correct time.

THE COURT: You can try. But I can tell you -- I am giving you a heads up. There is no foundation you can lay to get in somebody's subjective report on opinion.

MR. MURPHY: In terms of protecting the record then would you agree that we would note our exception to allowing this ---

THE COURT: These are all in limine. You need to protect your own record. The court is not an advocate. It is not my job. If you don't make an objection, you

don't ---

MR. MURPHY: I understand that, but the only ---

THE COURT: -- do what you need to do.

MR. MURPHY: I understand that, Judge. But the only way we protect the record then is by making it -- attempting to offer it through the witness.

THE COURT: Do whatever you think you need to do. I am just telling you in advance so you won't be surprised that you didn't have an opportunity to have the person present.

MR. MURPHY: Very well. Okay. That goes to issue number three. Issue number one and two there is no -- we are not claiming any leasehold interest here. All we are claiming is that there was improvements made to the building which added value to the building and as again the highest and best use is as a garage. The highest and best use is changing therefore he -- those improvements -- or that therefore the remaining property is damaged ---

THE COURT: But that he made the improvements ---

MR. MURPHY: Yes.

THE COURT: --- or did Lex-Tech make the improvements?

MR. MURPHY: Lex-Tech and him are the exact same thing. It is a single member LLC. It is a tax -- or pass through taxation. It is money out of his pocket or and it doesn't -- or directly money out of his pocket because he is Lex-Tech, Your Honor.

And again, it doesn't matter who made the improvements to the property. If there were improvements to the property, he owns the building. And that goes to his value. We are not talking about any lease ---

THE COURT: No, we are talking about a standing issues. We are talking about a true property -- who has the true interest in it.

MR. MURPHY: He is the ---

THE COURT: And that would be like -- that would be almost like -- they are separate entities. Under the law there is -- unless you are saying he is basically fraudulently not running his company the way he is supposed to pursuant to the LLC statute. And I doubt that's what you're trying to tell me.

They are separate entities in the law. Of course an entity needs a person to run it. But I don't think a corp- -- I don't think you get to come in and claim the interest of a separate legal entity when they are not a party.

MR. MURPHY: We are not claiming those, Judge. We are not calculating any leasehold interest at all or any loss of leasehold interest at all. That is not an issue here, okay.

The issue is what is the value of the total property prior to the acquisition. Mr. McAdory is going to testify about that. He is then going to testify what is the value

after the acquisition.

THE COURT: I think he can do that. But I don't think -- I don't necessarily think he gets to add these invoices in to bolster that opinion. Because he has to have spent the money, not the company. The company is not a party.

MR. MURPHY: Your Honor, if I may, those were permanent improvements to the building. They ---

THE COURT: I think as a lay person he can testify as to what he thought his property was worth before and what he thought it was worth after. Probably more prudent to have a real estate person say that in some level of expertise based on comparables. That that is generally how it is done.

But he certainly can testify -- like I said, I can come in and tell you that I think my house is worth a half a million dollars and I thought it was worth -- before this happened my property was worth $500,000 and now after this happened I think it is worth $200,000. I think the law allows you to do that. But I don't think you get to bolster your opinion based on extrinsic proof that may or may not meet the elements of the requirements of the rules of evidence. And I am going to have to see.

MR. MURPHY: I'm sorry, you have to see or ...?

THE COURT: I still have to see.

MR. MURPHY: Okay.

THE COURT: Motions in limine are not final. And I generally don't rule on them at all until I have heard the evidence ---

MR. MURPHY: Very well.

THE COURT: --- in the case because I don't know how it is going to develop. Because oftentimes -- probably 99.9 percent in the time what's told to me in a motion is not the way it develops during testimony. And I don't know.

But I can tell you that an LLC is a separate entity and it operates separately. It is supposed to operate the way the statutes and body of law say it is supposed to operate. Because it is a statutory creation. And he does not get to come in and say Lex-Tech spent this money therefore I spent this money. It doesn't work like that.

MR. MURPHY: Well, he can testify that -- well, I mean ---

THE COURT: He can testify as to what he thinks his property is worth ---

MR. MURPHY: Okay.

THE COURT: --- all day long.

MR. MURPHY: That's fine.

THE COURT: He can say that I think my property has diminished in value. That becomes a weight issue. A lay person can always say what they think their property is worth.

MR. MURPHY: Yes.

THE COURT: I don't think there is anything in the law that precludes that.

MR. MURPHY: No, I agree, Your Honor. I think we are done then.

THE COURT: Let's see here. What time is it? Okay. What use is the property being -- how is the property being used now?

MR. MURPHY: It is a garage, Your Honor. The project ---

THE COURT: So it has been a garage?

MR. MURPHY: The project hasn't started at all. So we have no loss -- that is a fair issue. There is no loss of business profits.

THE COURT: So why isn't it going to be able to be used as a garage after?

MR. MURPHY: Pardon?

THE COURT: We are only talking about 20 feet of -- I mean that is not even -- it's 20 feet.

MR. MURPHY: Yes, Your Honor.

THE COURT: I guess I am trying to figure out why wouldn't it still be able be used as a garage.

MR. MURPHY: And he is going to get into that testimony, Your Honor. I could give you a summary if you would like.

THE COURT: Yeah, why don't you.

MR. MURPHY: Well, what happens is they are eliminating all his parking in the front of his -- of his facility. Okay. So the only other option is to move the parking in the back of the facility. Okay.

And once you do that, that is problematic for customers because the business is set up for having parking in the front. You have the office and reception area in the front of the property. You have the bays in the back of the property.

And once you move that property -- the parking lot to the back of the property it changes the configuration of the building.

Because you can't have customers walking through the store -- or the bay area, the repair shop area to get to ---

THE COURT: I thought they only took two parking spaces.

MR. MURPHY: Well, we disagree. We think it took six. Our position is they took six parking spaces.

THE COURT: You can't move them to the side?

MR. MURPHY: No, you cannot. There is not enough room. And the problem ---

THE COURT: And there is plenty of property in the back?

MR. MURPHY: There is not -- well, no. Because that

has to -- that is a secured area for storing the cars that are being repaired or in need of repair.

But the problem we have, Judge, is the alley going from the street back is very narrow. It can only support one car. So you can't have two cars pass at the same time.

So the option is since you can't have customers go through the bay areas, you have got to have ---

THE COURT: So how did they take cars in and out to be test driven and all that once they have repaired them?

MR. MURPHY: They didn't have to have customers going -- they were the only ones going back and forth. They didn't have ---

THE COURT: Are you saying they only moved one car at a time?

MR. MURPHY: Yes, that is what you have to do. You can't do it any other way. But they didn't have their customers having to go in that back area before. They would park in the front.

THE COURT: Well, now that is diminution in value. And he can testify to that. But I don't see how these invoices support that.

What you're basically saying is I have made improvements to this property and therefore I think it should be added on to the property. And case law just does not support that position.

That is just like the case where the fellow said you know I have this land and therefore you -- I say the fair market value of my land is worth this; but I have timber on that land and I think that the value of that timber should be added to that and that is my fair market value.

MR. MURPHY: Well, that's ---

THE COURT: The Supreme Court says that is not how it is calculated.

MR. MURPHY: And I agree with that.

THE COURT: And this is the same concept.

MR. MURPHY: It's -- it's ---

THE COURT: Yeah, it is the concept.

MR. MURPHY: I mean what you are taking ---

THE COURT: That's like ---

MR. MURPHY: --- the assumption that ---

THE COURT: You could make improvements to your property all day long. It doesn't change the fair -- really as a practical matter when you talk about evaluating property you are talking about the dirt. As much as that hurts our feelings, because we all think our homes and our property is wonderful, what you are really talking about is location and dirt.

Because somebody could buy it and mow it down and put something -- I mean and do it all the time.

MR. MURPHY: As they -- you are absolutely correct,

Your Honor. But in terms of -- what you are making an assumption is that any improvement doesn't add to the value. He bought the property ---

THE COURT: I didn't say it didn't.

MR. MURPHY: Well, ---

THE COURT: But you don't get to say dollar for dollar I bought this property and I added a faucet therefore I've paid $300 for that faucet and I get to add that to what I paid. Lots of people overpay for property.

MR. MURPHY: And ---

THE COURT: All day long.

MR. MURPHY: And underpay as well.

THE COURT: And they end up feet up just the way you end up feet up in a car. I mean lots of times people -- it is just like when the market crashed. You had people West Ashley paying $400,000 for houses that weren't worth but $150,000. And now they are trying to unload them and they can't because the fair market value has come back. But your house is worth about $150,000 even though you paid 385 for it; what were you thinking.

And that's exactly -- I mean it is no difference. You don't get to say -- that would be like those people saying well I added a deck and it cost me $20,000 and therefore my house now is worth $20,000 more. That is not how you do the calculation.

MR. MURPHY: But the question -- that is a question of fact, Your Honor. If the ---

THE COURT: It is not a question of fact. It is a question of law. It is a question of how you calculate damages. It is an evidentiary issue. And the court as a gatekeeper has the responsibility -- it can't mislead a jury. And that is not the basic principle or tenant ---

MR. MURPHY: But ---

THE COURT: --- of how you calculate ---

MR. MURPHY: We are not ---

THE COURT: --- fair market value.

MR. MURPHY: Understand. But we are not attempting to mislead the jury. We are saying ---

THE COURT: No, it is my job to make sure you don't.

MR. MURPHY: I understand that.

THE COURT: Because I have to instruct them. And then when I have to instruct them then I have to clean it up. And it is better to do it at the front end. You don't get to say -- again, I may not be using the best example. But I don't get to say because I had a house for 20 years and I added all these things to it -- if the County comes through and -- it is no different than when they condemned all that property on Orleans Road to do the mall and cut through and do 526 and everything else. You don't get to say I owned my house for 25 years, when I bought it it was worth 80,000,

I've put 100,000 in improvements in it and now my house is worth $180.000

MR. MURPHY: And I think we are -- this might be we are talking apples and oranges, Your Honor. On your example you are talking about a house as opposed to a house.

THE COURT: It doesn't matter. Commercial property. Either way. It is all the same.

MR. MURPHY: But what we are doing, Judge, is we bought this. It was a title loan store. The highest -- they changed -- they made these improvements to change the highest and best use to a garage. Okay. And what we are saying is the improvement adds ---

THE COURT: We are not -- we are talking about different -- we are talking about the same thing, which is the highest and best use. How you calculate it however is not supported by the way you contend you think you should be able to ---

MR. MURPHY: But ---

THE COURT: -- which is I get a dollar for dollar value for every improvement I made. The law just doesn't support that.

MR. MURPHY: But the improvements are -- the value of the improvements is determinative of the highest and best use. So if ---

THE COURT: We're talking about fair market value and

diminution of value. How you show it is something else.

MR. MURPHY: That's ---

THE COURT: You don't get to say I added $80,000 in improvements and therefore the property is worth $80,000 more.

MR. MURPHY: The law entitles us to the highest and best use of the property.

THE COURT: That's correct. But how you show it is totally another matter.

MR. MURPHY: And what he had to do was make these improvements to bring it to the highest and best use of that property. And he converted this title loan to a garage. And the highest and best use was as a garage. Therefore he is entitled to that market value as of ---

THE COURT: He is entitled to the fair market value of what his property is.

MR. MURPHY: That is correct, Your Honor.

THE COURT: And what he -- but he doesn't get a dollar for dollar credit of every dime he put in his property. It doesn't work like that. The law just doesn't support that type of calculation.

That would turn condemnation law -- really it would turn real estate valuation law on its head. Because it just doesn't work that way.

MR. MURPHY: But Judge ---

THE COURT: If that were the case I mean people would buy property and say I paid $100,000, I put 400,000 into it so now it is worth 500,000.

MR. MURPHY: And that certainly could be the case, Your Honor. I mean ---

THE COURT: No, it couldn't be. It wouldn't be supported by case law. Fair market value is fair market value.

MR. MURPHY: I understand that, Judge. But fair market value changes once you do either add or take ---

THE COURT: Not always.

MR. MURPHY: What?

THE COURT: Not always.

MR. MURPHY: And that is where we get back to the question of facts because it is not always. Sometimes it does. Sometimes it doesn't. That would be ---

THE COURT: We are talking about the same concept but in the way you prove it. And I think I have been very clear in what the case law required. You don't get a dollar for dollar credit for every improvement you make to property.

It is just not supported by the way you cal- -- I don't know any real estate appraiser that would come in and tell you that they would say commercial or otherwise that says you get a dollar for dollar improvement for every improvement you make to property.

If that were the case you wouldn't have people to make bad improvements or otherwise. You can over improve property all day long. It doesn't mean you are ever going to get your money back.

MR. MURPHY: Put people wouldn't put in ---

THE COURT: Yes, they do all the time. All the time. People over improve all the time. And they do it to please themselves. They do it for lots of other reasons.

For example, in a certain neighborhood if a house is worth $50,000 you can put $5,000 worth of granite countertops in your house; it is not going to change the value of your house. You have over improved it. You are never going to get your money back.

MR. MURPHY: I understand that. But there's also a lot of improvements that are made that enhance the value of the property -- of a property.

THE COURT: Sometimes.

MR. MURPHY: I agree.

THE COURT: It depends.

MR. MURPHY: Right.

THE COURT: But not all improvements are enhan- -- not every time ---

MR. MURPHY: I understand.

THE COURT: You can over -- people over improve all the time.

MR. MURPHY: Judge, I get that ---

THE COURT: People that flip houses will tell you all the time we have made bad investments.

MR. MURPHY: I agree. And if we were putting a hot-tub in this facility or luxury bathrooms, I agree with you. But he was up -- he was renovating it ---

THE COURT: I am just using it as an analogy. Either way you can still over improve, whether it is commercial or real estate. It doesn't matter. You don't get a dollar for dollar improvement for what you make to property.

You can testify as to what you believe the value of the property is. You can testify as to what -- how you feel your property has been diminished. But there is nothing that supports you being able to say I made a dollar for dollar improvement and therefore I am entitled to a dollar for dollar.

You have to testify based within the parameters of fair market value as to what the valuation of what your property is and how you feel it has been diminished.

But it is just not supported for me to come in and say I bought a piece of property -- I am going to use real low values. So I am not that great at math. I bought a piece of property for $50,000; I need $90,000 worth of improvements and I am entitled to dollar for dollar $90,000 credit on that. It just doesn't work that way because the

fair market value of the property may not have changed from $50,000. Which just means you made a bad $90,000 reinvestment of property that was never going to give you back your value.

So you are going to have to figure out how you are going to prove your diminution of value. We will take it as it comes. I have expended as much time on this as I intend to.

MR. MURPHY: Thank you, Your Honor.

THE COURT: All right. Y'all take a quick break. We will resume with opening instruction and opening argument.

Please show your exhibits to the court reporter. Any exhibits that you all cannot agree on will be marked for ID only. And I need a list at the conclusion of the break so I can know what you all have agreed upon and what will be marked for ID only.

MR. MURPHY: Oh, Your Honor, also we would move to sequester the witnesses.

THE COURT: Any exception from the condemnor?

MR. FERRARA: Yes, Your Honor.

THE COURT: Your only -- your only witness is an expert, real estate?

MR. FERRARA: We have ---

THE COURT: He needs to be here to hear your client's testimony.

MR. FERRARA: Thank you. And I will be happy to go through the ---

THE COURT: You don't -- no.

MR. FERRARA: --- rule of evidence and the standards.

THE COURT: Experts generally -- they -- he needs to be able to hear his testimony.

(WHEREUPON, a break was taken until 12:13 a.m.)

MR. MURPHY: Your Honor?

THE COURT: Yes, sir.

MR. MURPHY: Just for a matter of housekeeping. We also made a motion to inspect the property, Your Honor.

THE COURT: I am aware of that.

MR. MURPHY: Yes, okay.

THE COURT: Did you -- did you -- did y'all just tell y'all -- I'm sorry, I'm shuddering. I apologize. Give me one second.

Yeah, what I was going to ask, you didn't file a written motion regarding that; you are just making an oral motion?

MR. MURPHY: We did not. That is correct, Your Honor.

THE COURT: All right.

THE COURT: Any exception from the County?

MR. FERRARA: Your Honor, no objection from the County. But one of our witnesses is from Greenville, Mr. Crider. So if the visit to the property could be after his testimony so

he can be relieved to get back to his home. We would only ask to proceed in that order if possible.

THE COURT: We will do our best to accommodate him. I assume there is no exception from the landowner?

MR. MURPHY: None, Your Honor.

THE COURT: Okey dokey.

MR. FERRARA: Thank you, Your Honor. You are welcome.

THE COURT: Did you all mark any exhibits? Did they mark any exhibits?

(Whereupon, review with court reporter as to exhibits marked.)

THE COURT: Plaintiff's 1 and 2 will come in without objection. Landowner's 1 through 21 will be marked for ID only.

(Plaintiff/Condemnor's Exhibit Number 1, color photocopy aerial view, was marked for identification.)

(Plaintiff/Condemnor's Exhibit Number 1 was admitted into evidence.)

Plaintiff/Condemnor's Exhibit Number 2, color photocopy aerial zoomed, was marked for identification.)

(Plaintiff/Condemnor's Exhibit Number 2 was admitted into evidence.)

(Defendant/Landowner's Exhibit 1, photo, was marked for identification.)

(Defendant/Landowner's Exhibit 2 was marked for

identification.)
(Defendant/Landowner's Exhibit 3 was marked for identification.)
(Defendant/Landowner's Exhibit 4, photo, was marked for identification.)
(Defendant/Landowner's Exhibit 5, photo, was marked for identification.)
(Defendant/Landowner's Exhibit 6 was marked for identification.)
(Defendant/Landowner's Exhibit 7 was marked for identification.)
(Defendant/Landowner's Exhibit 8 was marked for identification.)
(Defendant/Landowner's Exhibit 9 was marked for identification.)
(Defendant/Landowner's Exhibit 10 was marked for identification.)
(Defendant/Landowner's Exhibit 11 was marked for identification.)
(Defendant/Landowner's Exhibit 12 was marked for identification.)
(Defendant/Landowner's Exhibit 13, photo, was marked for identification.)
(Defendant/Landowner's Exhibit 14, photo, was marked for identification.)

(Defendant/Landowner's Exhibit 15, photo, was marked for identification.)
(Defendant/Landowner's Exhibit 16, photo, was marked for identification.)
(Defendant/Landowner's Exhibit 17, photo, was marked for identification.)
(Defendant/Landowner's Exhibit 18, estimate cost damages, was marked for identification.)
(Defendant/Landowner's Exhibit 19, invoice - Landscape Pavers, was marked for identification.)
(Defendant/Landowner's Exhibit 20, personal bank statement, was marked for identification.)
(Defendant/Landowner's Exhibit 21, Accountant Leasehold Improvements, was marked for identification.)

MR. MURPHY: Just very briefly.

THE COURT: Uh-huh.

(Counselors confer.)

MR. MURPHY: We would just mark Number 22, Landowner's 22, which is in ---

THE COURT: Is that without objection?

MR. MURPHY: --- by consent.

MR. FERRARA: Without objection, Your Honor.

THE COURT: Number 22 without objection.

(Defendant/Landowner's Exhibit 22, marked for identification.)

(Defendant/Landowner's Exhibit 22 was admitted into evidence.)

THE COURT: Number nine will be our foreperson. Do we have notebooks and pencils or pens?

MR. MURPHY: Your Honor, Number 9 I think was struck, Bartshe, Jury Number 9. Oh, I'm sorry. Go ahead.

THE COURT: No, Number 9 is Ms. Bartshe.

MR. MURPHY: No, yes, I'm sorry.

THE COURT: She is the first juror that was selected.

(Pause to check on notebooks for jurors.)

THE COURT: I assume the landowner will be going first since they have the burden of proof?

MR. MURPHY: That is correct, Your Honor.

THE COURT: I am going to alternatively refer -- I don't know how I am going to do it. I guess I could just refer to y'all as landowner and County. Is there any exception to that from the landowner?

MR. MURPHY: Just for clarification, because we have the burden of proof we go first with our arguments. But in terms of witness testimony the engineer would be the first person called by the County to explain -- as the court's witness to explain the project.

THE COURT: Well, it is not a court's witness.

MR. MURPHY: You ---

THE COURT: How do ya'll want to do it?

THE COURT: If y'all want to go in that way and you agree to it, that is fine with me.

MR. MURPHY: Fair enough. And in terms of opening arguments since the landowner goes first since we have the burden.

MR. FERRARA: I've always felt that we go first.

THE COURT: What do y'all want to do?

MR. MURPHY: We go first, Your Honor.

THE COURT: Now tell me again how we are going to do this ---

MR. MURPHY: Going ---

THE COURT: --- in terms of presentation and testimony.

MR. MURPHY: In terms of testimony the County will call the engineer as the first witness. After that point we will call our -- put on our case and call the landowner. He is going to be our only witness. We will close. At which time we will make motions. And then the County can put on -- call his -- call its case and put the engineer up.

THE COURT: Do you mean put the ---

MR. MURPHY: For the appraiser.

THE COURT: --- appraiser up?

MR. MURPHY: I'm sorry, Your Honor. The appraiser.

THE COURT: Okay. That is not anything really particularly different. Okay. All righty. You can bring in the jury for me please, Mr. Rivers.

(WHEREUPON, jury enters courtroom.)

THE COURT: Ladies and gentlemen, you have been incredibly patient with us this morning. And we appreciate it. We had some matters of law that we needed to try to work through before beginning the case. It took a little longer than we anticipated.

Oftentimes we will work through matters of law because it allows the proceeding to go about seamlessly without us having to stop and start. So again, we do not take your time for granted and we appreciate you all being so very patient with us and so generous with your time.

As I have explained, we are going to proceed with what is called a condemnation or eminent domain cause of action which is where a governmental entity condemns or eminently domains the property belonging to someone else for a public purpose.

And the law provides that when you have a case such as that, that the landowner has to be compensated for the land that is being taken. And it is your responsibility as jurors to determine the valuation of that property that is being taken.

So that is kind of in a nutshell the kind of case that we are going to be trying today, which is a little different than your average automobile accident or breach of contract cause of action or all the other multiplicity of kinds of

civil cases that we have the opportunity to hear in circuit court.

The first thing that will occur, ladies and gentlemen, is that the attorney for the landowner will make an opening argument which will be followed by an opening argument by the attorney for the County.

I need you to keep in mind that opening statements are not arguments. Arguments will come at the conclusion of the case. The purpose of the opening statements is for each party to outline his or her claims and the evidence which they intend to present in support of those claims.

In other words, in opening argument the lawyers will argue to you what they believe the evidence will show in this case.

Following the opening statements each side will present evidence. And again, in a condemnation case sometimes we deviate a little bit from the rules of procedure in the way we proceed. So first you will hear from the County which will give you the scope of the eminent domain proceeding.

You will then -- we will then revert back to what are our typical rules which is the person with the burden of proof gets to go first and present their case, and then the other party present their case. And then we at some point will have closing arguments and the court's instructions.

Evidence may take many forms. It may be testimony,

documents, models, photographs or the like. You should pay close attention to all of the evidence which is presented by each party because you the jury are the sole finders of the facts in this case. And no one else will be permitted to weigh the evidence and render a verdict based upon it.

After all the evidence has been presented the attorneys will make their closing arguments. And unlike the opening statements the final remarks will be true arguments. That is each side will emphasize certain portions of the evidence and try to persuade you to agree with their version of the facts.

Keep in mind that the opening statements as well as closing arguments of the attorneys do not represent evidence in this case. I would ask that you give them your undivided attention but keep in mind that what they say is not evidence.

After the arguments are finished I will explain to you the law which applies to this case. You will then retire to the jury room to consider the facts and the law. And once you have done so you will return a verdict in favor of one side or the other.

During the course of this trial the landowner has the burden of proving his claims. He must meet this burden by proving his claims by the greater weight or the preponderance of the evidence.

What we mean by the preponderance or greater weight of the evidence can be illustrated by imagining a traditional set of scales. When the case begins, the scales are even. After all of the evidence has been presented if the scales should remain evenly balanced or if they should tip even slightly in favor of the County or -- which acts as the defendant in this case, then the landowner would have failed to have met their burden of proof and your verdict would be in favor of the County. If on the other hand the scale should tip even slightly in favor of the landowner then he will have met his burden of proof and your verdict would be for the landowner.

As I mentioned earlier, although I am the only one who can tell you what the law is you are the only ones who can determine the facts. I do not have the right to indicate how I might feel about the evidence that is presented. And throughout this trial it will be my intention to be fair and impartial toward each of the parties involved as well as their attorneys.

Also, ladies and gentleman, from time to time you may hear one of the attorneys object to some bit of testimony or evidence which the other side is seeking to introduce. And that is normal.

In a good trial or very active, zealously advocated trial you will have many objections. So you should expect

that during the course of testimony and the presentation of evidence.

Just as in sports, business or any other structured activity there are certain rules that both sides must obey in the presentation of evidence. These rules have a definite purpose. They insure that the information you receive is the most trustworthy and reliable evidence available.

An objection is the procedure that an attorney uses to call a possible violation of those rules to my attention as the judge of this court. And for this reason you should never hold an attorney's objection against them nor should you conclude from the court overruling or sustaining an objection that I favor one side or the other.

Also from time to time we may hear us refer to matters of law that we need to take up. And sometimes we will have a bench conference and you will hear a noise over your heads that is designed to interfere with your hearing. That is a great time-saving measure for us. And sometimes we would utilize that in dealing with matters of law.

Other times it might be necessary for us to exclude you from the courtroom while we discuss matters of law. And the reason we do this is because you are the finders of the facts.

And sometimes when I am discussing matters of law with

the attorneys it might be necessary for me to make some comment about the facts in connection with ruling whether a rule of procedure applies or a statute or an evidentiary rule and for this reason we exclude you from the courtroom so that in no way will you be influenced by anything that the court may say or do in connection with the facts of the case.

Also during the course of this trial you will be given the opportunity to take notes. Note taking is a privilege that you may choose to exercise or choose not to exercise. Not everyone finds note taking helpful to them, so you should not feel that you are compelled to take notes.

If you should decide today to take notes, please don't try to record everything that is said. It is physically impossible. The average person speaks at the rate of about 200 words a minute.

So as you can well imagine, even if you thought you were taking it down verbatim if you were to go back and listen to it you would find that you have missed words.

I often invert sentences and often substitute words that I would commonly use or that I feel would summarized a certain portion of what I am listening to. And I think the average person taking notes does about the same thing.

So as I've explained, you are the fact finders. And it is absolutely essential that you rely on your powers of

observation in determining the credibility and the believability of witnesses who will testify in this case.

Please don't try to record everything that is said because that could dilute your ability to observe the witnesses and pass upon their credibility.

You may want to keep an outline of the main points that are being made so that when you retire to deliberate regarding this case you can allow your notes to refresh your memory.

During breaks and recesses your notes will be left in your seats. And we do this to make sure there is no premature temptation to talk about something or that has taken place in the courtroom or to prematurely deliberate regarding the case.

Again I would remind you that your notes are for your specific and your individual purposes. They are only to be used to refresh your memory.

And just also as a reminder that your notes should not be considered more reliable than someone else's memory. Another juror's memory should be considered just as reliable as notes that may have been taken by another juror.

Finally, ladies and gentlemen, I would ask that you pay close attention to all of the evidence that is presented. Because again you are the fact finders in this case. And as a result, you will determine the facts in this case. And as

a result you will have to evaluate the credibility which is simply a legal term meaning the believability of each witness who testifies in this case.

Ladies and gentlemen, you are participating in a time-tested system, and it is extremely important for each of you to listen carefully to all of the evidence presented. And I am sure that each of you will perform your duties accordingly.

Before we begin with opening argument I would ask are there any exceptions from the landowner to the court's instructions.

MR. MURPHY: None from the landowner.

THE COURT: From the County?

MR. FERRARA: None from the County, Your Honor.

THE COURT: Thank you. Ladies and gentlemen, I would ask that you give the attorneys your undivided attention.

MR. MURPHY: Thank you, Your Honor.

THE COURT: You may proceed, Mr. Murphy.

(OPENING STATEMENTS WERE PRESENTED APPROXIMATELY 12:32 P.M. TO 12:55 P.M. THEY ARE NOT INCLUDED IN THIS PARTIAL TRANSCRIPT.)

(Proceedings following opening statements as follows:)

THE COURT: Madam Forelady, ladies and gentlemen, we are going to take advantage of this break to take our lunch recess. We will break until 2:15.

During this break please do not discuss the case in any manner whatsoever. Please do not have any contact with anyone in our about the courthouse when you return. When you return you are going to return directly to your jury room and the bailiffs are going to show you how to do that. Please leave your notepads in your seats.

And also during this break please don't do any independent research of any type. That includes anything that could be found on the Internet or otherwise. As the fact finders you are bound to decide this case only according to the testimony you hear from sworn witnesses and other evidence that may be introduced during the course of this trial.

I hope y'all have a great lunch. It is supposed to be a gorgeous day. And we will see you all at 2:15. Enjoy your lunch.

(WHEREUPON, jury exited courtroom 12:56 p.m.)

THE COURT: You all may take your seats. Is there anything we need to take up before we break for lunch, by the landowner?

MR. MURPHY: Nothing from the landowner.

THE COURT: For the County?

MR. FERRARA: Nothing, Your Honor.

THE COURT: Have a good lunch. We will see you at 2:15.

(WHEREUPON, break for lunch 12:58 p.m.)

THE COURT: Is the landowner ready to proceed?

MR. MURPHY: We are, Your Honor.

THE COURT: Is the County ready to proceed?

MR. FERRARA: Yes, Your Honor.

THE COURT: Please bring in the jury, Mr. Rivers. Who is the first witness?

MR. FERRARA: Mr. Peter Valiquette for the condemnor.

THE COURT: Is he present?

MR. FERRARA: He is present, Your Honor.

THE COURT: Where is he?

(WHEREUPON, Mr. Valiquette stands.)

THE COURT: Okay.

(WHEREUPON, jurors enter courtroom 2:20 p.m.)

THE COURT: You may be seated. Ladies and gentlemen, I hope you had a pleasant lunch recess. We are now going to resume testimony.

You may proceed.

MR. FERRARA: Your Honor, Charleston County calls Peter Valiquette.

THE COURT: Sir, if you would come to the witness stand to be sworn.

(WHEREUPON, the witness was duly sworn.)

THE CLERK: Have a seat, please. State your full name and please spell your last.

THE WITNESS: My name is Peter Valiquette.

PETER VALIQUETTE, having first been duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. FERRARA OF PETER VALIQUETTE:

Q. Would you tell the ladies and gentlemen of the jury where you are employed.

A. I am an employee of the Michael Baker Corporation.

Q. And how long have you been employed with the Michael Baker Corporation?

A. I have been an employee with Michael Baker since August of 2005.

Q. All right. And before you worked with Michael Baker Corporation did you enjoy employment elsewhere?

A. Yes, I worked for another civil engineering company called PBS&J starting in May of 2004.

Q. All right. And where is PBS&J; is that located here in Charleston?

A. At the time they had an office in Columbia, South Carolina.

Q. Is that a regional firm?

A. It is a national firm. It has since been bought out by another company.

Q. All right. Is this your first appearance in the courtroom to testify?

A. In a civil matter, that is correct.

Q. In what other matters have you testified?
A. In family court a long time ago for ....
Q. Tell us where you live.
A. I live at 147 Carriage Ride Lane in Summerville, South Carolina.
Q. Is it in Dorchester County?
A. That is correct.
Q. Not Charleston County?
A. I did for a while. But I have since moved.
Q. Did you go to high school?
A. No, I went to college here in Charleston.
Q. All right. What college was that?
A. I went to the Citadel.
Q. All right. What did you graduate with?
A. A bachelor of science in civil engineering.
Q. Okay. Well, let's talk about your job duties with Michael Baker Corporation. Why don't you describe for the jurors what your job duty -- what is -- what is your title with Michael Baker?
A. My title with Michael Baker is operations manager.
Q. Operations manager, describe what those duties are.
A. Well, what I performed for Michael Baker specifically as relates to a contract we had with Charleston County is I -- I served as a project manager and we are acting as really an extension of Charleston County staff.

When the transportation sales tax was passed by voter referendum in 2004 the County hired my company to assist them with the management of the projects that were funded through the sales tax program.

And so I personally oversee the development of the project, all through the what I call the preconstruction phases which is all the upfront work you have to do before construction starts, all the oversight of the design, making sure you have all of the project permits, coordination with all of the local municipalities like the Town of James Island or the City of Charleston and also with the SCDOT because these are SCDOT roadways.

So pretty much my responsibilities cover everything that happened from the time that the project is started or is -- is funded I should say, up through the point where it goes to construction.

Q. All right. In my opening statement I talked to the jurors and told them that the county has completed Johnnie Dodds Boulevard, Harbor View Road, Wesley Drive, Glenn McConnell Parkway, Bees Ferry Road. Were you involved in those projects as a project engineer?

A. Yes, for all of those projects I was involved to some degree.

Q. In the same capacity as you are involved in the Folly Road, Camp Road, intersection project?

A. For Folly Road at Camp Road specifically I served as directly as the project manager. For the other projects you mentioned I was involved in other various roles assisting with review of the project design and that kind of -- that kind of thing.

Q. All right.

MR. FERRARA: Your Honor, may I approach the witness?

THE COURT: If they admitted it without objection you just need to have the court reporter mark it.

MR. FERRARA: Okay. Well, they are marked, Your Honor.

THE COURT: What numbers?

MR. FERRARA: Plaintiff's Exhibit Number 1 and Plaintiff ---

THE COURT: I have already admitted both of those without objection. You may proceed.

BY MR. FERRARA:

Q. Mr. Valiquette, I hand you Plaintiff's Exhibit Number 1 and 2, really Condemnor's Exhibits Number 1 and 2. And also in front of me is a large poster board showing some blue and green lines and some houses. Does what is on the poster board in front of the jury correspond to Exhibit Number 1?

A. Yes, it does.

Q. Is this just a larger blow-up of the exhibits I just handed you?

A. Yes, that's correct.

Q. And then I am also going to show you this exhibit, ladies and gentlemen. And is Exhibit Number 2 a smaller version of this exhibit?

A. That is correct.

MR. FERRARA: Your Honor, I would like to publish copies of these exhibits to the jurors.

THE COURT: You may proceed. I prefer you do it with the ELMO.

MR. FERRARA: Pardon me?

THE COURT: Do you have individual copies?

MR. FERRARA: I do.

THE COURT: Or can you do it on the ELMO?

MR. FERRARA: I do have individual copies.

THE COURT: Can you do it on the ELMO?

MR. FERRARA: Pardon me?

THE COURT: Can you do it on the ELMO ---

MR. MITCHELL: Yes, Your Honor.

THE COURT: --- so they can all see it at one time?

MR. FERRARA: Would you not like for me to publish these to the jury?

THE COURT: If you would like to. But they can all see -- oh, you have individual copies?

MR. MITCHELL: Yes, Your Honor.

THE COURT: Oh, you can do that. Yes, you may proceed.

(WHEREUPON, individual copies were distributed to jury

members.)

MR. FERRARA: All right, Mr. Valiquette, before we get into talking about Condemnor's Exhibits Number 1 and 2 does Charleston County actually build the road projects?

A. Well, Charleston County will hire a construction contractor which would be a private company that would actually build the project.

Q. All right. And is that the same process that is going to happen with the Folly Road, Camp Road, intersection?

A. Yes, that is correct.

Q. I am going to ask it anyway: Are you familiar with this project, the Camp Road and Folly Road intersection project?

A. Yes, I am.

Q. If you will, describe for the jury what your particular duties are with regard to that project.

A. Since I served as the project manager I was responsible for oversight of all the design activities that went on with the project.

The design of the project was performed by another firm working under contract with Charleston County, and then we had an oversight role making sure that the design that they prepared was consistent with all applicable standards for highway design in South Carolina.

We -- I personally also made sure that all permits that

were needed for the project are in hand before construction starts. Those are permits related to wetland impacts, grand-tree impacts, and storm water permitting.

I also coordinated approval of the project with the City of Charleston and the Town of James Island as well as approval of the project by the South Carolina Department of Transportation.

I also developed all of the construction specifications for the bidding of the project for construction.

Q. All right.

MR. FERRARA: Your Honor, with the court's permission I would like to ask Mr. Valiquette to step down from his seat and show the court this platted, ---

THE COURT: You may proceed.

MR. FERRARA: --- large version. Can you step down?

(Witness complied.)

THE COURT: You may proceed.

BY MR. FERRARA:

Q. Let's talk about the overall project first.

A. Sure. This ---

Q. And if you will, why don't you stand there a few minutes and tell the ladies and gentlemen of the jury what the Folly Road, Camp Road, intersection improvement project is.

And what I would like you to do is talk about

intersections, turn lanes, medians, painted medians, signage, sidewalks, somewhere in the general discussion.

A. Sure. Just to orient the jury, if you are looking at the display here, Folly Road runs up and down. And Camp Road is this road that runs left to right here.

If you are -- if you are familiar with James Island if you are heading towards Folly Beach on Folly Road that would be towards the bottom of the display heading south toward Folly Beach. And beyond the top of the display it would be heading towards West Ashley or Downtown Charleston.

The purpose of the project was to reduce traffic congestion at the intersection of Folly Road and Camp Road which is I think one of the worst intersections on James Island for congestion.

And the way that we are doing that -- or the primary way that we are doing that is by providing dual left-turn lanes for southbound Folly Road turning to eastbound Camp Road.

Right now there is just one turn lane and then in the after-condition there will be two turn lanes so that more traffic can move through the intersection at any given cycle of the traffic signal.

In order to do that we have to widen the road -- widen Folly Road essentially from the intersection of Eugene Gibbs Street and Rivers Point Row, which is right here (pointing)

to about 1,000 feet south of Camp Road on Folly Road.

And the purpose of that is to provide the additional width needed for the second left turn lane. And also we had to make sure that the alignment of the lanes through the intersection matched. So we have to widen Folly Road south of Camp Road.

Also on the Camp Road approaches to Folly Road we are providing dedicated left-turn lanes in each direction for vehicles turning left onto Folly Road from Camp Road and also a dedicated right-turn lane from Camp Road turning right and onto Folly Road heading into town for traffic. That is the general commuting traffic direction in the morning.

Also up here at Eugene Gibbs Street and Rivers Point Row the existing intersections of those two streets where they connect to Folly Road are somewhat offset. They don't have good alignment through the intersection. And so the project design is proposing to realign those streets somewhat so that they have better alignment for improved safety.

From the standpoint of bicycle and pedestrian accommodations there will be bicycle lanes provided on Folly Road as a part of the project from Eugene Gibbs Street down to the end of the project. Those are four-foot wide bicycle lanes. So there will be one basically adjacent to the

vehicular travel lane for a bicyclist going each direction.

There will also be sidewalks provided on both sides of Folly Road within the limits of the project. And on Camp Road the sidewalks will be provided on one side of the road.

Traffic signal improvements will be made at the intersections of Camp Road and Folly Road as well as Eugene Gibbs Street and Rivers Point Row at Folly Road. I think that ....

Q. All right. Well, if you will, will you point out where Mr. McAdory's property is on ---

A. Sure. The property ---

Q. --- that design sheet?

A. --- is located right here (pointing).

Q. Okay. If you will, what -- I see blue. I see green. I see yellow and red. What does the blue ---

A. Sure.

Q. --- signify?

A. The display is intended to represent with the color blue in here the existing pavement areas and to show you basically the width of the existing road as it exists today.

The green represents what would be new pavement areas or areas where the road is being widened to accommodate the additional lanes that I mentioned.

The yellow lines -- or the yellow shaded areas represent where the sidewalks are located. And you will see

also on here there are some red shapes here (pointing), down here (pointing), and along Folly Road.

And those represent raised concrete medians. And they are located in those areas where the engineers are restricting vehicles from turning left across Folly Road.

And they have been really incorporated for improved safety so that you can reduce the number of conflict points for if somebody is trying to pull out of a driveway in an unsafe area where there might be a lot of turn lanes, a lot of movements happening and you want to restrict that. That is the purpose of those.

Q. All right. One last question regarding this exhibit. I see various lines like an orange line that goes down the side of both sides of Folly Road and as well. What does that line depict?

A. The orange -- the orange line as you can see represents the new right-of-way that is needed to construct the road. The existing right-of-way is represented by a kind of a magenta pink line.

Q. All right. Well, just if you will stand there for a little bit longer. I am going to put up for you to talk about what the jury is is the condemnor's Exhibit Number 2.

And again if you will for the jurors ---

MR. FERRARA: Should I raise that for y'all? Or is that -- is it fine?

Q. If you will stand over here.
(Witness complied.)
Q. Again if you will, ---
A. Can I ---
Q. --- just show them ---
A. Can I turn it to orient to the same direction as the other?
Q. Yes, do that. I'm sorry. Yes, you are right.
A. Just to get oriented in the same -- in the same as the other display was. This is -- this is Folly Road in front of the subject parcel which is located right here (pointing).

The color scheme is the same as the other exhibit. So the blue represents the existing pavement. The green represents the new pavement. And the sidewalks are shown in yellow. And you can see it a little bit better here this orange line. That represents the new right-of-way.
Q. All right. Can you show the jurors access to and from Mr. McAdory's property before the intended acquisition?
A. The subject property was accessible from both directions on Folly Road. There is a single driveway where vehicles can pull in and out. They can turn either right out or left out. And likewise they can turn either left in or right in from Folly Road.

That is the same in the before or in the after

condition. There is not a restriction that would prevent somebody from turning into the site from either direction.

Q. So access to and from McAdory's property is the same before the County intended -- intends to acquire the property as after the acquisition?

A. That is correct.

Q. I see on here this line that starts off narrow and widens in front of his property and then narrows again into that red that you called a raised median. Would you describe to the jury what that ---

A. Oh, these?

Q. --- line represents.

A. The black lines on the exhibit here represent what the proposed pavement markings will be. They are simply just the striped markings that would be applied to the road.

The center median here is variable in width really throughout the limits of Folly Road, because what is happening is the pavement markings are delineating the left turns for -- the dual left-turn lanes for traffic turning southbound onto Camp Road. Camp Road would basically be right down here (pointing).

And then there is a left-turn lane for vehicles turning from Folly Road onto Eugene Gibbs Street just off -- would be just off of the edge of the display.

So the -- because of the way that the width of the dual

left-turn lanes are down here (pointing) in comparison to the single left-turn lane here (pointing). And this center median area sort of tapers. It is a variable width here within the limits of the project in the area.

Q. All right. Let's now talk specifically about Mr. McAdory's property. And let's go through these different -- the colors: the blue, the green, the yellow, and the orange.

THE COURT: Mr. Ferrara ---

MR. FERRARA: Yes, ma'am.

THE COURT: --- and Mr. Murphy, could y'all approach for me for just one second.

(WHEREUPON, bench conference was had.)

THE COURT: Madam Forelady, ladies and gentlemen, we are going to take a very brief break to take up a matter of law. During this break please do not discuss the case and please leave your notepads as well as your exhibit in your seat. And we should be out less than five minutes.

(WHEREUPON, jury exits courtroom 2:49 p.m.)

(WHEREUPON, a break was taken until 3:02 p.m.

(WHEREUPON, jury enters courtroom 3:03 p.m.)

THE COURT: Sir, you may step back down. And if you need the question repeated, Mr. Ferrara, you may certainly do that.

MR. FERRARA: Thank you, Your Honor.

BY MR. FERRARA:

Q. I am going to have Mr. Brad Mitchell place up on this screen the same exhibit that you have in front of you, the smaller version. And that is the same exhibit on the stand in front of you as well.

MR. FERRARA: I know it is getting late in the day, and I just have a couple more questions of Mr. Valiquette and then we will turn him over to Mr. McAdory's lawyer.

BY MR. FERRARA:

Q. Mr. Valiquette, what I want to talk about now again is let's talk about what Charleston County is going to acquire. Do you know how many acres, how many square feet; do you know what the size of the area of the acquisition is?

A. Yes, the area of the acquisition is 0.030 acres.

Q. Can you translate that into square feet?

A. I believe it is around 1,200 square feet.

Q. One thousand two hundred eighty-seven to be exact.

A. Okay. All right.

Q. If you will, let's show the jurors the acquisition of the property. Go ahead.

A. Sure. The subject property is this parcel right here (pointing). The -- as you can see, the road that is being widened it is represented by the green area. The new edges of vehicular travel way where the edges -- where motor vehicles would travel will be about six feet closer to the

property than it is today.

We are also adding a four-foot wide bicycle lane. There will be -- that has curb and gutter on it. Today it will have curb and gutter on it in the after condition which is about two feet wide. And then there will be another five-foot wide sidewalk beyond the curb and gutter.

So all toll I believe the road will be wider towards the building by about 17 feet. Beyond the 17 feet to the back of -- to the back of the sidewalk.

And then after the sidewalk there was some room for the contractor to work. So the right-of-way limit is about 10 feet beyond that.

And then from the edge of the right-of-way to the face of the building is going to be about another six feet or so.

Q. All right, that was a mouthful. So what I would like to do is just break that down real quickly.

A. Certainly.

Q. What does that line (pointing) represent?

A. That represents the new right-of-way for the project.

Q. And that is where the County is acquiring -- is the County acquiring like in this in this box here (pointing)?

A. That is correct.

Q. Okay. From the front of the building to the edge of the right-of-way, how many feet?

A. Approximately six feet.
Q. From the end of the right-of-way to the sidewalk, how many feet?
A. That is approximately ten feet.
Q. From the edge of the sidewalk to the -- what is that, bicycle lane?
A. That would be about another six feet. And four foot of it is the bicycle, and two feet of it is curb and gutter.
Q. Okay. Has the blue area where cars travel changed from the -- changed from before the acquisition of the property?
A. The ---
Q. I mean -- let me rephrase the question. Cars traveling in this lane, will they be any closer to this building after the -- after the County acquires the property?
A. Yes, they will be about six feet closer to the building.
Q. And again, from the front of the building to the road what is your estimation of feet?
A. To the proposed road?
Q. Yes, proposed road.
A. That is approximately -- I have got to do the math in my head again. Approximately 22 feet, I believe.
Q. Okay. All right. One other item. Let's talk about the property. What -- do you know what size the parcel Mr. McAdory owns what the size of that parcel is?

A. In the before condition it is 0.254 acres. Just over a quarter acre.
Q. Okay. And it is a rectangular shape?
A. That is correct.
Q. What is this along here beside the property (pointing)?
A. I think you're pointing to the property lines.
Q. That's right.
A. The boundaries.
Q. All right. Is there -- how close is the building to this property line; what is that distance?
A. It measures approximately three to five feet.
Q. Is that -- does that conform to zoning?
A. I am not familiar with zoning laws, but I understand it does not.
Q. On this side do you know if it ---
A. I don't know the measurement there to scale it off.
Q. Are you aware that Mr. McAdory had parking spaces in the front of the building?
A. Yes.
Q. How wide is it under the rule -- under the road standards for Charleston County is the width of a parking space?
A. I believe it is eight feet wide.
Q. Okay. Will there be any parking available as a result of the County's acquisition of property?

A. No, there would not be.
Q. Okay, parking available in front of the building?
A. There would not be parking available in front of the building.
Q. All right.
A. That is correct.
Q. Now are you aware that there is a sign as well in the right-of-way?
A. Yes.
Q. And will the sign be removed from the right-of-away?
A. It will have to be relocated.
Q. If you will take your seat. I may be finished but let me just see if I have any further questions for you.
(WHEREUPON, witness returned to witness stand.)
MR. FERRARA: If you will answer any questions from Mr. McAdory's counsel. Thank you.
THE COURT: You may proceed.
MR. MURPHY: Thank you, Your Honor
THE COURT: You are welcome.
CROSS-EXAMINATION BY MR. MURPHY OF MR. VALIQUETTE:
Q. Good afternoon, Mr. Valiquette. Mr. Valiquette, you are an engineer hired by the County; is that correct?
A. That is correct.
Q. And you are not here to give an opinion on value, are you?

A. No, I am not.
Q. And you are just discussing the facts of this case?
A. That is correct.
Q. And so basically you don't really have a dog in this fight, do you?
A. No, I don't.
Q. And how many times have you visited the site?
A. The project has been going on since it was passed by voter referendum November of 2006. I am out there every month or so.
Q. Okay. But did you actually walk the site and take measurements of the site?
A. I have not -- I have walked along Folly Road in front of the site. I have not entered into the site.
Q. Okay. And do you think that you would have to actually walk the site and take measurements to understand how this was impacting the property?
A. To get precise measurements the construction stakes would have to be placed out there. The measurements that we are talking about are based off of survey data that was collected to develop the project.
Q. And do you understand the setup of the building that is on the property? And when I say that, they have it set up for offices and for reception area to be in the front of the property and there's garages in the back of the property; is

that your understanding?
A. I am only generally familiar with that, yes.
Q. You haven't entered the property at all?
A. No.
Q. Now you understand the law -- under the law the County has an obligation to put the landowner in as good a position in the after as he was in the before?
A. That's my understanding.
Q. And if you could tell me how much depth is the County taking off the subject property?
A. The existing right-of-way I believe is 38 feet. And I believe it is going to 59 feet. So 21 foot difference.
Q. So it is going to be moving -- the right-of-way is going to be lined -- moving 21 feet closer to the building?
A. That is correct.
Q. And you would agree -- well, let me ask you this: Are you familiar with the setbacks as they apply to the front of the building?
A. No, I am not.
Q. And do you know if in the after the building will violate the front setbacks as required by the town?
A. I am not familiar with what the setbacks are.
Q. Okay. Now just from common sense, you said it was about six feet, the right-of-way, would be about six feet from the building?

A. That is correct.
Q. Okay. And briefly just explain what are setbacks.
A. Well, setback it is my understanding from a zoning perspective are the minimum distance between a road right-of-way or adjacent property line to a structure.
Q. And just from your own experiences does a six-foot setback sound like that would be in conformity with what is required?
A. The zoning laws are widely variable depending on where a property is located. So it is hard to say specifically.
Q. All right. Well, let's see -- let me ask you this: Assuming that the six feet right-of-way from the building violates the setbacks do you know when they would be triggered?
A. No, I do not.
Q. And you would agree that when you take off 17 feet of depth off the property you also that in turn reduces the developable area of the entire site?
A. Yes, the site would be smaller.
Q. All right. So the entire site would be affected by this taking?
A. Yeah, the remaining area is smaller than the existing area.
Q. And did the County ever consider shifting the roadway away from Mr. McAdory's property so it wouldn't have such an

impact on him?
A. Properties are impacted on both sides of Folly Road, and so the proposed plan was to widen Folly Road symmetrically so as not to impact one side more than the other.
Q. So the County made a conscious decision to move the right-of-way within six feet of Mr. McAdory's building?
A. That is what is necessary to accommodate the design that is proposed.
Q. And you are -- this is Mr. McAdory's building (pointing); isn't that correct?
A. Yes, it appears to be.
Q. And you see that sign there that we discussed or that you discussed with Mr. Ferrara?
A. Yes.
Q. Okay. And there is no question that sign has to be moved after this acquisition?
A. I believe that is correct, yes.
Q. And in the before -- well, since the project hasn't started, it is still there. But would you agree that that sign is in a good location on the property?
A. Not really. As far as visibility?
Q. Yes.
A. I mean ....
Q. Would you say it is highly visible?

A. I would say that it is a visible sign, yeah.
Q. In your opinion as an engineer and as a person, is there any better location to put that sign in the before on this property?
A. That would be more of a question for an architect or a site development firm. My specialty is in highway -- highway design and ---
Q. Well, you have been by the property several times, as you testified. Just as a layperson do you know of any better location for that sign?
A. I am not familiar with one.
Q. And I am trying to figure out - and this question hasn't been asked - is where are you going to put this sign or where can Mr. McAdory put this sign in the after?
A. The sign would be a moving item under the construction contract. And so the contractor would be directed to move it to a location on -- outside of the right-a-way on the property at the direction of the property owner.
Q. Okay. But my question is where could he move it; where would you propose that it be moved to?
A. I would not propose where it should be located. That would be subject to the property owner.
Q. Can it be moved to the roof, do you know?
A. I am not familiar with what the requirements would be for its location. It would be subject to the property

owner's direction.
Q. What about this, would you -- would it make sense to put the sign on the front of the building?
A. If -- it wouldn't really be my decision to make it. To specify a location that would be up to the property owner.
Q. Again, I am just asking a common sense point of view. Would it make sense to put the sign on the front of the building?
A. If the property owner wanted it there, that is where he could put it.
Q. And if they did -- if they did put it on the front of the building then you would agree that cars traveling either east or west wouldn't be able to see it?
A. I think that would depend on the angle of the driver and what direction they happen to be looking in.
Q. Well, if they are driving east and -- if they are driving this way (pointing) and the sign is facing here (pointing) how would they be able to see it? Do you see ---
A. Yeah, I understand what you are saying.
Q. Okay.
A. You are asking if it would be perpendicular to the roadway or parallel to the roadway and what effect that would have on the ---
Q. That is correct. And ---
MR. FERRARA: Your Honor.

THE COURT: Is there an objection?
MR. FERRARA: There is. I ---
THE COURT: Basis of the objection. No speaking objections.
MR. FERRARA: It is outside his expertise as a project engineer to talk about ---
THE COURT: Lack of foundation. Sustained. Move on, Mr. Murphy.
BY MR. MURPHY:
Q. Now you also testified that Mr. McAdory had parking in front of his building in the before?
A. That is correct.
Q. And we agreed that all of that parking is going to be eliminated in the after?
A. The parking spaces in front of the building would be encumbered by the road right-of-way.
Q. And he wouldn't have space to put any parking in the front of the building then?
A. Not -- not within the -- not outside of the right-of-way.
Q. And he is not allowed to park in the right-of-way is he, in the after?
A. That would be property owned by the State or the County and so.
Q. So that is my other question. Let's get back to that.

This property is going to be -- is acquired by the County but it is going to be transferred to the State?
A. That's correct.
Q. And SCDOT is only going to own that property in fee simple; isn't that correct?
A. Yes.
Q. And of course you can't speak for what SCDOT would do in the future with this property, can you?
A. No, I cannot.
Q. And in terms of -- can you -- do you have the plans up there? What I am asking is can you tell me what the dimensions are of the alley that someone would enter the property to go to the rear portion of it.
A. I would -- I would have to scale the dimension to be -- to be certain. It looks to be just based on the other features you can see there, maybe 16 feet wide or so.
Q. Okay. And I think that is about right, 16 feet wide. And do you have -- can you estimate how deep it is?
A. To the back of the property?
Q. Well, to the -- yeah, to the -- to the length of the building. I'm sorry.
A. I couldn't really estimate with any degree of accuracy just looking at it.
Q. And what is the -- let me ask you this: What is in the standard dimensions of a parking space?

A. A parking space is about eight feet wide as I understand it.
Q. All right. And let me just ask you this issue: In terms of parking along side of the building in the alleyway, is that possible at all?
A. That -- I think that would be dependent on what accessibility you would need ---
Q. Okay. Well ---
A. --- to another part of the property.
Q. All right. Well, let's do this. If the alleyway is sixteen feet wide and the standard parking space is eight feet wide, how wide is an average car; what is the width of an average car?
A. That's a little bit outside -- I think a fair assumption would be six to eight feet wide depending on the type of vehicle.
Q. All right. So if you have an eight feet car that is -- a parking space that is eight feet, that would take up eight of the sixteen feet, right; and would it be possible in your opinion to drive another eight-foot car past that?
A. It certainly would be a tight fit if it would.
Q. As an engineer would you recommend that site design?
A. My experience is with highway engineering, not necessarily civil site redevelopment type engineering.
Q. All right. Well, let's talk about this. If you have a

road design, if you have a double road, one going one way and the other going the opposite, would you recommend that both of those be 16 feet wide?
A. The minimum would generally be eighteen feet wide ---
Q. Okay.
A. --- for two nine-foot wide lanes.
Q. Okay. So would it be a fair assumption or would you agree that a car cannot enter the property and exit the property at the same time?
A. Based on just the width of that area if it is in fact sixteen feet it would be difficult for two large vehicles to pass.
Q. Difficult or impossible?
A. It just depends on the size of vehicle. I ....
Q. What about customers parking in the back of the parking lot, as an engineer does that cause you any issues?
A. No.
Q. No. You are not concerned about safety of -- well, let me ask you this: Where would the customers -- how would they get to the building -- or to the office area if they parked in the back?
A. They would have to walk from where ever they parked to the entrance of the building.
Q. And in your opinion would it be feasible to walk through the garage to get to the front of the building?

A. That would be more subject to the business owner's prevue.
Q. And then if they were walking on the -- through the alleyway which side of the alleyway would you expect them to walk on?
A. I would expect a person to walk in the most direct path from one point to the other.
Q. And as an engineer does that present any safety issues with you with customers walking towards the office and cars trying to enter and exit the premises?
A. From the perspective of safety it would come down I think to a matter of visibility and whether or not pedestrians can see the cars and the cars can see the pedestrians.
Q. In terms of -- I mean you wouldn't have -- if -- when you are designing a road you wouldn't have -- expect pedestrians be walking in the middle of the road or on -- would you?
A. I mean if it is a situation similar to a parking lot or an isle of a parking area I think it is fairly common for a pedestrian to walk down an aisle of a parking lot.
Q. And let's just talk about your experience with businesses. Typically businesses will have a main entrance; isn't that correct?
A. From my -- my observation.

Q. And from a design standpoint you would want the parking lot to be in front of the main entrance; would you make that assumption, or would you agree with that?
A. I think there -- that would really be dependent on the type of development. I think you can see development downtown Charleston where parking is not necessarily associated with the main entrance of the building.
Q. Okay. Can you give -- now in terms of downtown you are dealing with site and size issues, wouldn't you agree with that?
A. Yes.
Q. And that is not really comparing to the 11,000 square foot traffic property; is that right?
A. I don't know that the size of the property -- I think that would come down to a question of zoning and what the law would allow somebody to do for a minimum number of parking places relative to the size and location of a specific building.
Q. Would you agree that having parking opposite the main entrance of this -- of this garage puts Mr. McAdory in a lesser position in the after than he was in the before?
MR. FERRARA: Objection, Your Honor.
THE COURT: Basis?
MR. FERRARA: It's beyond the scope of the direct examination.

THE COURT: Sustained. Beyond the scope. And outside the scope of his expertise or his lay opinion.

BY MR. MURPHY:

Q. Do you have any experience with site design at all?

A. No, not since college.

Q. Okay. So you took some classes in site design?

A. We did a subdivision design class.

Q. Okay. Did you do any commercial design classes or projects?

A. No, I did not.

Q. Looking at the design of this site -- of this property right now from an engineering standpoint does that make sense to you?

A. You are asking in specific to ...?

Q. If you were going to design the site would you design it with parking in the back?

A. There -- there is a school of thought regarding kind of new urbanist design which does encourage parking in the back. It is to try to create a more urban feel that is being proposed in certain areas of the city.

Q. Okay. But that -- under that urban design you would also have the main entrance in the back as well?

A. Not necessarily. Because that design concept would encourage more pedestrian activity and so they would like to put the entrance near the sidewalk and try to put large

parking areas away from what would be the streetscape.
Q. And can you give us any examples of that type of urban design you are discussing?
A. Daniel Island is a good example or I'on in Mt. Pleasant where you try to push the large parking areas to behind the buildings.
Q. Okay. And that is not happening at all on Folly Road, is it?
A. The City of Charleston is -- has developed their what they call their Century Five Plan which identifies certain parts of the city for to try to create urban type nodes where the communities would be walkable and parking areas would be minimized and set behind buildings.
Q. In terms of -- let me ask you about -- in terms of you are familiar with like night-time or after-hours drop off with garages?
A. Just from my personal experience.
Q. Your personal experience. And tell me if folks were going to drop off cars after hours here where would they park them?
MR. FERRARA: Your Honor ---
THE COURT: Basis of the objection?
MR. FERRARA: Beyond the scope of the direct. Outside the scope of his expertise. And he is an engineer.
THE COURT: No speaking objections. Outside of the

scope of his expertise. Lack of foundation. You may proceed.

MR. MURPHY: Very well. That's all I have, Your Honor.

THE COURT: Any redirect of the witness?

MR. FERRARA: Just a couple of questions, Your Honor.

THE COURT: You may proceed.

MR. FERRARA: If he could have that visual real quickly of the front of the building with the cars.

(Visual displayed.)

REDIRECT EXAMINATION BY MR. FERRARA OF MR. VALIQUETTE:

Q. Mr. Valiquette, can you show the jury -- the jurors where the existing right-of-way is on that picture?

A. It is difficult to say with certainty. But it is most likely the -- you can see where the -- it looks like a Jeep Wrangler is parked. And you see a little bit of the grass.

MR. MURPHY: I am going to object, Your Honor. This is speculation. He said ---

THE COURT: He is ---

MR. MURPHY: --- it is difficult to see. And unless he can attest to a reasonable degree of certainty it is speculative.

THE COURT: Overruled.

MR. FERRARA: He is not an expert.

THE COURT: Don't talk to one another. The objection is overruled.

BY MR. FERRARA:

Q. Continue then. Or do we need to repeat the question?

A. It would be from my experience in how sites have been developed respective to where the right-of-way line would be you can see in most cases the parking lots would come up to the right-of-way which would then have a grass transition area before the edge of the roadway. And you can see the grass underneath the Jeep Wrangler there on the left side of the photo.

Q. All right. And Mr. Murphy asked you a question. Said well and when the County acquires this property the new right-of-way is going to be six feet from the front of the building and there won't be any available area for parking and you can't park on the right-of-way. Is the Jeep Wrangler parked in the right-of-way?

A. If the grass line represents the right-of-way, the jeep would be in the right-of-way.

Q. All right.

MR. FERRARA: That's all I have, Your Honor.

THE COURT: Any objection to the witness being excused, from the landowner?

MR. MURPHY: None, Your Honor.

THE COURT: From the County?

MR. FERRARA: None, Your Honor.

THE COURT: Sir, you are excused.

Landowner may proceed.

MS. WALSH: The landowner would like to call Glenn McAdory.

THE COURT: Sir, if you would come to the stand to be sworn.

(WHEREUPON, the witness was duly sworn.)

THE CLERK: State your full name and spell your last.

MR. MCADORY: My name is Walter Glenn McAdory, M-C-A-D-O-R-Y.

THE COURT: You may proceed.

WALTER GLENN MCADORY, first being duly sworn, testified as follows:

DIRECT EXAMINATION BY MS. WALSH OF MR. MCADORY:

Q. Mr. McAdory, could you please state your name for the record.

A. Walter Glenn McAdory.

Q. Mr. McAdory, where were you born?

A. Charleston, South Carolina.

Q. And what year were you born?

A. 1968.

Q. And how old are you?

A. Forty-five years old.

Q. Did you live in Charleston, South Carolina, your whole life?

A. I have.

Q. And where did you grow up?
A. James Island.
Q. And where did you go to school?
A. Between James Island and Mt. Pleasant.
Q. Where did you go to high school?
A. I went to Wando High School for a couple of years when I went to live with my mother.
Q. Are you currently married?
A. Yes, I am.
Q. How long have you been married?
A. Been married for 26 years.
Q. And what is your wife's name?
A. Jennifer.
Q. And what does Jennifer do for a living?
A. Jennifer is the office manager for Lex-Tech Automotive.
Q. And what is Lex-Tech Automotive?
A. Lex-Tech Automotive is an exclusively Lexis and Toyota repair and maintenance facility.
Q. And who owns Lex-Tech Automotive?
A. I do.
Q. Do you have any children?
A. I do.
Q. How many?
A. I have two children.
Q. And what are their -- how old are they?

A. My oldest daughter is 25, and my youngest daughter is 20.
Q. Do any of your children live with you?
A. Yes, my youngest lives with us.
Q. Did you graduate from high school?
A. No, I did not.
Q. Why not?
A. Unfortunately at that time in life I felt that work was more important than a high school diploma.
Q. Any why did you think work was more important than a high school diploma?
A. As a young child my father instilled in me one heck -- one heck of a work ethic. And I love to work. I had a job at my -- I started working at my uncle's salvage yard on James Island at approximately age 12.

I just I loved automobiles. I had a job, and that is where I wanted to be. I wanted to work on cars. I knew that is what I wanted to do.
Q. How long did you work at your uncle's salvage yard?
A. From about age 12 to age 16.
Q. Did you have any type of work as a young boy?
A. Yeah, I was pretty crafty as a child. Ages eight, nine, ten I would pull lawnmowers or bicycles or lawn equipment from off the side of the street. Either rebuild it, sell it, or for instance a lawnmower get it running

again and go cut the neighbor's grass.
Q. Did you ever get your GED?
A. I did not.
Q. And why didn't you do that?
A. Again, I didn't feel the need as an automotive technician that a GED would put me any further.
Q. Where did you learn to become an automotive technician?
A. Again, I started working in my uncle's salvage yard and garage at about age 12. I worked alongside, you know, him. I was -- just started off dismantling vehicles. And I just I had a good -- good automotive knowledge. I had a good mechanical knowledge.
Q. Did you ever work for any new car dealerships?
A. I did. I went to work for Hoover Chrysler Plymouth at about age 17.
Q. Where is that located?
A. Down Savannah Highway?
Q. And what was your title at Hoover?
A. I was a line technician.
Q. What is a line technician?
A. Just a technician that works on, you know, the cars that come in to be repaired.
Q. How long did you work there?
A. I worked there for about nine months.
Q. And where did you go after you stopped working at

Hoover?

A. I went to work for Gene Reed Toyota up on the corner of Rivers and Ashley Phosphate in 1988

Q. And what was your title at Gene Reed.

A. I was again a line technician.

Q. And where did you go in 1988?

A. I'm sorry?

Q. You worked at Gene Reed Toyota as a line technician from 1988 ---

A. Oh, I'm sorry.

Q. Okay.

A. Yes, from 1988 until about 1992 when Gene Reed obtained what we call -- obtained a Lexus franchise. He obtained the Lexus franchise, built a new showroom on our existing Toyota lot, added to the existing Toyota shop. I moved from the Toyota side to the Lexus side as a Lexus technician.

Q. Did you remain a line technician?

A. Actually I progressed pretty quick. I started off as a line technician at the bottom in '88, and then right around '91, '92, I became shop foreman and team leader and then again moved over to Lexus.

I was the only Lexus technician in Charleston for about two years because we were small. It was a new dealership. So there was no need to be a team leader because I was the team.

Q. So from 1990- -- from 1988 to 1992 you worked with Toyota?
A. I did.
Q. And then you stayed with the same dealer ---
A. Same -- same owner, yes.
Q. Same owner. And then you went to go work in 1992 for Lexus?
A. Yes.
Q. And how long did you work at Lexus?
A. I worked for Lexus of Charleston from 1992 until October of 2006.
Q. So for approximately 14 years?
A. Yes, for Lexus.
Q. While you were working for Lexus and Toyota did you have any training?
A. Yes, very very extensive training. Toyota and Lexus were very -- if you showed promise -- the dealer and obviously the manufacturers wanted to make sure that you got trained and that you knew their product so that you could obviously service their customer's vehicles properly. So yes, I have had very extensive training through Toyota and Lexus Motor Corporation.
Q. So in 2006 you left Lexus?
A. Yes.
Q. And what did you do?

A. I started my own Lexus and Toyota business, Lex-Tech Automotive.
Q. And what does the Lex mean in Lex-Tech Automotive?
A. Lexus.
Q. And what does Tech mean?
A. Technician.
Q. Is Lex-Tech -- what type of company is Lex-Tech Automotive?
A. It is a sole -- excuse me, sole member LLC.
Q. And what does LLC mean?
A. Limited liability company.
Q. And so when you say sole owner are you the president, CEO ---
A. I am. I am everything, the president, the CEO; everything.
Q. And you don't have any partners?
A. I have no partners.
Q. Who is responsible for writing checks for the expenses for that company?
A. I am.
Q. Can you please explain the type of work you do at Lex-Tech Automotive?
A. We do anything that the Lexus and the Toyota dealership does. We just do it -- it is less expensive. Same people, same parts. Different facility.

Q. How long have you run Lex-Tech Automotive?
A. From -- I started in late 2006 until present. Until current. Okay. And is signage important to your business?
A. Extremely important.
Q. All right. And so in 2006 when you open up Lex-Tech Automotive did you rent property?
A. No, I rent -- yes, I did rent property.
Q. Did you look to buy property at that time?
A. No, ma'am.
Q. Why not?
A. I was starting a new business. I didn't know if it was going to be a viable business. I wanted to rent. I couldn't afford to purchase property.
Q. Did you, Mr. McAdory, eventually start looking for commercial property?
A. We did. In about mid 2010 Lex-Tech was profitable and growing and we wanted to purchase a commercial piece of property to give us more visibility, more exposure and let everybody know who we were and where -- what we did.
Q. What were you looking for in terms of property; what were you going to put on a piece of property?
A. I was going to put Lex-Tech Automotive.
Q. Okay. And ideally what kind of characteristics were you looking for in purchasing a property?
A. I was looking for something in a high vehicle traffic

area. I was looking for something that had signage and visibility, exposure.

I was looking for a building that wasn't going to require a complete total retrofit that could be turned into a garage with minimal upfitting, vehicle access in and out, parking in the front, storage for cars in the back.

We have customers that drop a vehicle off and make the repair. It may take a day or two or three for them to pick it up. We have other vehicles that we order parts for. Parts may not be readily available. That may take a day or two or longer. We have employs that park in the back. I mean so obviously if you are dealing with automobiles you need places to put automobiles.

Q. What kind of price range were you looking for when you were looking for commercial property?

A. We were looking for something $400,000 or less.

Q. Okay. At the time in March of 2010 when you decided to look for commercial property did you have a real estate agent?

A. Yes, I did.

Q. And what was the name of your real estate agent?

A. It was Mark Mizell with the Saddler Group.

Q. And did you, Mr. McAdory, hire Mr. Mizell?

A. I did

Q. Okay. And how many properties did you look at?

A. We -- he showed me -- I looked at three. One on my own. And he showed me two.
Q. When -- did you ever look at -- when did you look at the property that is subject to the taking?
A. It was either in October or November of 2010.
Q. And did you, Mr. McAdory, look at it with your real estate agent?
A. I did.
Q. And did you -- what did you like about the property located at 873 Folly Road?
A. It had everything that I just mentioned. It had -- it was in the commercial core of James Island which has a high vehicle traffic area. It already had an existing what I call a billboard sign with the frame already existing.

Through some property research found out that that building had actually originally been built as an automotive repair business in the mid 80's. So I knew that it wouldn't -- it would take minimal upfitting to bring it back to what I wanted to use it for, a garage.

Q. Did it have parking?
A. Yes, it did.
Q. Where was the parking located?
A. We had parking in the front, and we had parking in the rear of the building.
Q. And the parking in front, who was going to use the

parking in the front?
A. Customers that pull in for vehicle service.
Q. Okay. And once customers pulled in for vehicle service what did you envision at the time when you were looking at the property how would the vehicles get from the front of the lot to the back of the lot?
A. Well, the way that works is pretty simple. Customer drives in, parks in the front, walks in the front door.

Our service writer, Richard Dennis, addresses that customer, listens to their needs, writes a repair order. He walks out. He obtains the vehicle. He drives the vehicle around back. He backs it in. He hangs the keys on our backboard in the shop. He generates a repair order. Boom, the technician sees the repair order. He grabs the keys. He walks out back. He either takes the vehicle for a test drive or he brings it in for whatever reason the vehicle is there for.

Q. Okay. And there is a building on the property, correct?
A. Yes.
Q. And is the building affixed to the property?
A. Yes.
Q. Is it on a concrete slab?
A. It is.
Q. And can you just pick up the building and move it?

A. No, I cannot.
Q. And if you wanted to move the building or removed the building what would you have to do?
A. I would have to obviously tear the building down. Then I would have to meet all of the latest and greatest Charleston County and James Island codes for setback. I would have had to add a drainage or retention pond.

I would basically just have to start from scratch and meet all of the latest and greatest codes and regulations.
Q. And when you were looking at the property in 2010 did it have signage?
A. It did.
Q. And what was the property -- what was occupying that building at the time you went to go look at the property in October 2010?
A. Prior it had -- it was an auto title money loan.
Q. And could you use the sign that was present on the property?
A. Actually I could use the existing post and the lighted 50 by 10 box frame that was there. It was going to be a minimal investment. The sign post was there. The illumination was there. The box was there. All I had to do was have two custom made lenses which just kind of insert into that box. Obviously it has backlighting, so it shines through at night.

Q. How many times did you visit the Folly site?
A. About three times.
Q. Okay. And do you recall the asking price for the property?
A. I believe it was $385,000.
Q. And at that time did you know the owner or the seller?
A. I did not.
Q. And can you please describe the negotiations.
A. They were difficult. The owner did not really -- he did not want to budge off the price.
Q. And did you finally settle on a price?
A. We did.
Q. And how much was that?
A. $375,000.
Q. And was the $375,000 purchase price a fair market value in your opinion?
A. Yes, it was.
Q. And who bought that property?
A. I did.
Q. Was there a mortgage on the property?
A. Yes.
Q. And when did the property close?
A. I believe we closed in late January of 2011.
Q. And who was on the mortgage note for the property?
A. Me, Glenn McAdory.

Q. Is there anybody else on the mortgage note for the property?
A. Lex-Tech Automotive.
Q. And who signed on behalf of Lex-Tech Automotive?
A. Me, Glenn McAdory.
MR. FERRARA: Your Honor, objection.
THE COURT: Approach, please.
(Bench conference was had 3:45 p.m.)
(Bench conference concluded as follows:)
MR. FERRARA: From this point forward continuing objection ---
THE COURT: You are going to have to make and objection.
MR. FERRARA: Every time?
THE COURT: Yes.
(Conclusion of bench conference.)
THE COURT: You may proceed.
Q. Mr. McAdory, what were your plans -- well, to go back. You, Mr. McAdory -- so Mr. McAdory, let's get this straight. You purchased the property and the property is titled in your individual name?
A. Yes, Walter Glenn McAdory.
Q. Okay. And are you responsible for a mortgage on the property?
A. Yes, I am.

Q. And how much is your monthly mortgage payment?
A. About $2,500 a month.
Q. And what were your plans when you got the property as a landowner?
A. To use it -- or to -- for Lex-Tech Automotive to use it as an automotive repair business.
Q. And are they a tenant?
A. Yes, as a tenant.
Q. Okay. And did you have any long-term plans for your property as a land owner?
A. Yes.
Q. Were --
A. I'm sorry.
Q. That's okay. What were you ---
A. Yes, I obtained a 15-year mortgage. My goal was to obviously move Lex-Tech Automotive in there, run that business for 15 years and in hopes that maybe a national chain 15 years after -- you know, after the 15 years would come in and buy the property.
Q. And buy the property out right or buy your business?
A. Well, ideally I would like -- the plan was for Lex-Tech Automotive -- I knew it was a viable, profitable business. If I could run it for 15 years somebody could come in, buy the business. I could still remain the landowner and collect rent.

Q. And as a landowner did the building have value to you before this condemnation action?
A. Yes.
Q. Okay. Did you -- were there any improvements made to the building, Mr. McAdory?
MR. MITCHELL: Objection, ---
A. Again, yes.
MR. MITCHELL: --- Your Honor.
THE COURT: Basis of the objection?
MR. MITCHELL: Basis ---
THE COURT: Approach, please.
(Bench conference at 3:48 p.m.)
(Bench conference concluded as follows:)
THE COURT: I am going to hear it in camera so I can hear exactly what his testimony is.
MR. FERRARA: Do you want to do that now?
THE COURT: Yes, that is the plan.
(Conclusion of bench conference.)
THE COURT: Madam Forelady, ladies and gentlemen, I have a matter of law to take up with the attorneys.
During the break please do not discuss the case and please leave your notepads and your exhibit in your seat. Thank you.
(WHEREUPON, jury exits courtroom 3:38 p.m.)
THE COURT: You may be seated.

MS. WALSH: Thank you, Your Honor.

THE COURT: You may proceed.

EXAMINATION BY MS. WALSH OF MR. MCADORY - IN CAMERA:

Q. Mr. McAdory, as the landowner when you bought the property did you intend to make any changes to the building?

A. To remodel the building. Not necessarily any structural changes. But yes, to remodel and upfit the building to meet our needs.

Q. To meet the needs of what?

A. Lex-Tech Automotive.

Q. And was it your opinion at the time as the landowner the highest and best use of the property was for an auto repair shop?

A. Yes.

Q. And what type of improvements did you make to the building?

A. I made -- I removed some crushed concrete from the back parking lot, added -- I wanted to pave the back parking lot. I was unable to pave it. To pave it, Charleston County denied the permit to pave the back parking lot. So we have to use an alternate product called reclaimed and recycled asphalt.

Q. Okay. And when you purchased the property did you know as the landowner that you would need to spend money on improvements?

A. Yes.
Q. And who paid for these improvement; was it the landowner, you as the landowner, or was it Lex-Tech Automotive?
A. It was me as the landowner and Lex-Tech Automotive.
Q. And how much did you as the landowner invest into the building on the property?
A. Out of my personal checking I wrote a check for $13,658 for again the above mentioned back asphalt -- or adding -- or reclaimed asphalt to the back of the property.
Q. And do you have personal knowledge as to how much money Lex-Tech Automotive invested in improvements on the building?
A. Yes, I do.
Q. And overall does the building have value to you as the landowner?
A. Yes.
Q. With respect to the improvements what type of improvements were made to the building?
A. To the building itself exterior paint, interior paint -- or basically remodeled the inside offices from floor to ceiling, replaced some damaged panel walls on the exterior of the building, had the exterior of the building painted, had the leaking skylights replaced, had the leaking roof fixed, had the roof repainted, had our sign lenses

installed. We added a lot of lighting to the shop area. That required more electrical. So we had to have a lot of the wiring redone inside the building to accommodate our car lifts, wheel balancers, brake lays, air compressors.

We had the entire shop sprayed with a product called closed cell foam. We had the interior walls of the shop covered with like a decorative plywood, and we had that painted. We painted the exterior of the floor. We added a bunch of crushed concrete to the back of the property.

We picked up -- took the fence down in the back. We realized there was some more available space to use, so we had the fence taken out.

We hired a site contractor to come in, remove a couple of trees, remove some over-brush. After that was done the fence contractor came back out and put up a new fence across the back. That required more crushed -- or crushed concrete to be brought in to fill the void. Added a small ten foot by forty foot wide concrete slab across the very back of the shop.

Currently the building only had one service bay door. We needed more vehicle access. We had Acme Doors come out and cut another hole in the back of the building, added another door, replaced the existing service bay door that had been there for almost 20 years or more. I am sure I could go on. The list is endless.

Q. And did these improvements to the building benefit you as the landowner?
A. Yes.
Q. And is it in your opinion the highest and best use of the building before the taking was as an auto repair shop in your opinion as the landowner?
A. Yes.
MS. WALSH: Your Honor, that is the extent.
THE COURT: What is the basis of the objection?
MR. MITCHELL: The basis is relevance. He keeps blurring the lines between the property owner, the landowner, and the lessee. He keeps saying we, we, we.
He mentioned that he personally had put in $13,000 into some paving, and obviously the receipt that I have been provided through discovery has it sold to Lex-Tech Automotive.
MS. WALSH: For which he paid for out of his personal checking account.
MR. MITCHELL: It is just going to be prejudicial to Charleston County. What he is trying to say is what we talked about earlier is ---
THE COURT: You don't get dollar for dollar.
MS. WALSH: We under -- we ---
THE COURT: He can talk about ---
MS. WALSH: He can talk about ---

THE COURT: But it is the same thing. You can -- he can give the diminution in value. He can testify about how he feels his property has been devalued, that he cannot -- he feels that he cannot -- there is a difference between saying I -- I don't have a problem and I don't think in terms of the evidentiary rules there is a problem with him saying I bought this property, I upfitted it for the best use.

How he upfitted it really does not become relevant because he can't be compensated for it. The issue is I bought it for this purpose, I upfitted it for this purpose, I feel now I cannot use it for that purpose and this is how I was damaged.

But, you know, you don't get a dollar for dollar value for everything you did to property to increase its value. It has to be reflected in some evaluation as having -- the only way I could even tangentially see it as relevant is if he bought it for one price but then the fair market value then increased somehow as a result of that -- and I lost my train of thought. Because that really wasn't what I was intending to say. Because the value that is relevant and germane is the value at the time of the taking.

So you would look at whether there was a diminution in value from that point as a result of something that was caused by the condemnation.

So again we get back to the whole logic that I feel like my property is worth all of this because I did all of this. Which I mean that is how a layperson would look at it. But that is not supported in the law.

He can of course testify as to what he feels the value of his property is, why he bought it, what use he intended to have for it, and how he now feels he cannot use it for that purpose. All of that is within the ambit of his lay opinion.

But what he spent, it is not germane to anything. He can't be -- he can't be compensated for it. He can't get $13,658 back in addition to what the fair market value is.

MS. WALSH: And we have already established the fact that he is seeking just compensation for $150,000 which is the difference between the 375 and the 225 which is the after value of the property that was given by Charleston County.

This is just going to show ---

THE COURT: What you pay for property is not the fair market value. You could pay 325 ---

MS. WALSH: He can testify as the landowner though as to what he thinks ---

THE COURT: Please don't interrupt the court.

MS. WALSH: I am sorry, Your Honor.

THE COURT: He can testify as to what he thinks it is

worth. But fair market value is something that is calculable. It is something that is refined down to a science and a formula.

People overpay for property all the time. If he paid 375 for it but the fair market value based on the comparables was only 300,000 he is not entitled to 375 if he made a poor business decision or somebody hoodooed him, which happens all the time in real estate. That is why it is called puffing, bargaining and then you don't have a deal until it is reduced to a writing.

He is entitled to whatever the fair market value is of the property at the time he purchased it and any diminution in value as a result of what the County did to it, less any improvements that resulted to him as a result of what the County did to it.

Which I haven't heard any testimony yet that the property somehow was improved because of some infrastructure or otherwise pursuant to the statute that the County put in.

But it becomes almost like a red herring when you start saying well I paid this much for that and I paid this much for that. Because then it confuses the jury in terms of once they have to be instructed that somehow I think that you know the property let's take it in the light most favorable to him the jury believes the property is worth 375 and then they start nickel and diming and saying well he

paid 13,000 for this so it increases it by that.

Well, that is not how the calcu- -- that is not fair market value. You don't get a dollar for dollar improvement for everything you put in a property. There is a calculation that you -- that is -- that you use to determine fair market value.

MR. MITCHELL: And Your Honor ---

THE COURT: And he can testify from his lay opinion as to what he feels the diminution in the value of his property is, you know, because the law allows that. And I am not going to restrict him from doing that.

But to go through every amount of money he feels he put into it and that somehow he should be compensated for that is misleading because it is not accurate and it is not supported by any legal theory. It is not supported by any statute, any case law, anything at least that I can find in the research.

Now he can testify that I did all these things to upfit my building because I wanted to use it as a car repair facility. I don't have a problem with that.

But when you start getting into all these figures it is problematic because he can't get compensated for that.

MR. MITCHELL: Well, Your Honor, I still have a problem with him even including that because when he talked about the repaving or the $13,000, that appeared to be the invoice

date was January 13 -- or January 3rd, 2013. The day of the taking was July 11th, 2012. So purely this was after the County ---

THE COURT: Oh, you are saying he repaved his facility after ---

MR. MITCHELL: And they are trying to imply that ---

MS. WALSH: And he did ---

MR. MITCHELL: --- those improvements ---

MS. WALSH: Well, we haven't come out with ---

MR. MITCHELL: Excuse me, Ms. Walsh. Those improvements were done and add to the value of the before are trying to bolster what his value is in the before.

THE COURT: Or is he saying he had to do it because now he needed to park in the back because ya'll took his parking spaces in front; is that what he is ---

MR. MITCHELL: They haven't said that yet, Your Honor. But ---

THE COURT: Well, they haven't connected the dots. I don't know. And I don't -- I don't know that it necessarily matters unless they can tie it to diminution in value.

MR. MITCHELL: Thank you, Your Honor.

THE COURT: Or unless they can tie it to somehow this has precluded my use of the property, which it seems to be in an absent position because if I can't use my property because you took my parking it really wouldn't matter if you

paved the back. Because that seems to me contrary to your position. Because if you could put parking in the back that means you haven't been deprived really of the use because you can park in the back.

MS. WALSH: But they can't ---

THE COURT: I don't know.

MS. WALSH: Which is what -- which is what ---

THE COURT: I am just telling you based on what I have heard so far. He can testify -- I think what the case law clearly supports that a landowner ....

(Pause for court's review.)

MS. WALSH: Your Honor, may I put something on the record?

THE COURT: Not while I am reading. I am getting ready to rule on the matter. I will allow you to speak in a moment.

(Pause for court's review.)

THE COURT: Yes, ma'am.

MS. WALSH: Thank you, Your Honor. I just wanted to point out -- okay, South Carolina Code 28-2-340, for purposes of -- basically evidence may be admitted in a condemnation trial from purposes of determining the value of the land sought and affixing just compensation.

The statute goes on to list five types of evidence. And it's -- it affirmatively says in addition to other

evidence which may be relevant, material, and competent may be admitted.

If you move on from there to South Carolina State Highway Department versus Wilson it's 175 S.E.2d 391 Supreme Court opinion from 1970 where it states the general rule of the landowner who is familiar with his property and its value is allowed to give his or her estimate as to the value of the land and damages thereto even though the owner be not -- not be an expert.

Further it goes on to say where the witness bases an opinion entirely or chiefly on incompetent or inadmissible matters the testimony must be rejected; however, if he bases it on his general personal knowledge and experience he can attest to that fact.

Mr. McAdory is the landowner. Furthermore, under condemnations landowners can testify as to highest and best use. Highest and best use for a property ---

THE COURT: I hate to interrupt you, but nothing you are saying is contrary to what I have already said and articulated for the record. Now -- because I'm not going to expend a whole bunch of more time on this because we are beating a dead horse.

The statute is very clear. The statute is not ambiguous. And the statute that is applicable is 28-237: To determine 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.

The landowner is entitled to the value of the property under its most advantageous or profitable use including any use reasonably anticipated in the future.

I have not restricted him from testifying as to what he thought the best and most reasonable use is. I have not restricted him from testifying his lay opinion what he believes the value of his property to be.

However, he is not going to speculate on a dollar for dollar basis how he feels the property was improved or how he is entitled to recover a dollar for dollar amount. It is not allowed by the law. It is not supported by any real estate principle that I am aware of in terms of determining the fair market value of property.

So we will move from that point on. Okay. Are we ready?

MS. WALSH: So we will leave numbers out?

THE COURT: I just don't -- first of all, you haven't established that it was done before. We have evidence of what he has testified to happened after the condemnation. So it wouldn't be relevant.

MS. WALSH: Well ---

THE COURT: It doesn't relate to diminution in value.

MS. WALSH: I'm going -- we started them in January 2011. We were going to get to that point. I was just going -- waiting for your court's ruling with respect ---

THE COURT: Actually the questions that you asked based on the objection many of the things he testified to happened after the condemnation including the paving of the back of the property, correct?

MS. WALSH: No, that's -- I'm sorry, Your Honor, that is not correct. He started all of those improvements that he listed in January of 2011 and completed those in August 2012.

THE COURT: When was the condemnation?

MS. WALSH: The condemnation was July 11, 2012. He started all the improvements in January of 2011.

THE COURT: But some of the improvements he testified to happened after the operative date which is July 11th.

MS. WALSH: And the only thing that would have happened after the operative date would have been the paving in the rear which was a result of taking. He attempted to pave it but the County ---

THE COURT: It would still have to be tied to diminution in value.

MS. WALSH: So we will stick to improvements before the date of condemnation?

THE COURT: Only to the extent that it relates to him

updating it for its most advantageous use. In other words, for the purpose for which he bought the property.

But he is not going to be able to testify that I spent this or I spent that. The other problem you have is that I don't have any independent proof other than his word that he spent this money. I don't know if the company spent the money, whether he spent the money.

MS. WALSH: He testified that he already ---

THE COURT: I understand that. But you need to have something extrinsic, some canceled checks, something. You can't -- because there is clearly an intermingling between these two entities where he has paid for something, the company is reimbursing him; or he is paying -- in the grand scheme of things, it doesn't matter because he does not get a dollar for dollar credit. Fair market value is fair market value. It is what a willing seller will take and what a willing buyer will pay.

MR. MITCHELL: Your Honor.

THE COURT: Yes.

MR. MITCHELL: I am still concerned about him blurring the lines between him being a Lex-Tech sole member and being the landowner. And I am afraid it is confusing the jury to the point that it is all ---

THE COURT: I really don't -- I guess I am a little confused as to why Lex-Tech is being mentioned at all except

ex to the extent that he runs that business and that is the purpose for which he bought the property which was to operate this business.

MR. MITCHELL: And I agree, Your Honor ---

THE COURT: They have no standing. They are not a party. They can't be reimbursed for anything. If they want to bring an action against him later for some equitable distribution of the proceeds pursuant to the statute, they can do that.

MS. WALSH: Him bring it against himself?

THE COURT: Sure can. It is a separate entity. And I will caution you again is I wouldn't want you to run into any difficulty later. If somebody slips on that property, somebody has an accident on that property, and they sue that entity he now has sworn testimony basically that he doesn't operate his business the way it is supposed to operate statutorily.

So it creates a problem for him later if he wants to come back into court later and say Lex-Tech is a separate entity and I really am just the sole -- you know, I am the only shareholder but Lex-Tech is a separate entity.

You just -- it is a very delicate, fine line he is walking. And I can see down the line because I don't have to win. I am not an advocate. I can kind of see the end at the beginning. So he needs to be very careful as to what he

is representing in sworn testimony about how he has been operating this entity.

MS. WALSH: The only thing he has testified to, Your Honor, ---

THE COURT: I didn't ---

MS. WALSH: --- as to ---

THE COURT: I didn't ---

MS. WALSH: I just respectfully disagree.

THE COURT: I didn't raise it for any discussion or debate. It doesn't matter to me.

MR. MITCHELL: Your Honor, I am just slow on the uptake. Is that -- are you going to allow him to testify as to Lex-Tech or ---

THE COURT: He is to testify as to the person who purchased this property for a particular purpose. He can testify that I bought it to run an automotive business. That happens to be in the name Lex-Tech.

He has already testified that it is an LLC for which he is the sole shareholder, that his wife is the secretary basically or the office manager. Anything beyond that really is not relevant or germane to anything.

He is the proper party that has been sued. He is the owner. For whatever reason even though he and Lex-Tech are joint owners on the title they were not sued. I don't know why.

MS. WALSH: It is not the title. It is the mortgage note. But yes.

THE COURT: Either way. It is still a whole -- it is still a party in interest. I mean they could have been brought into this action. There is nothing that precluded either of you from doing that. You didn't.

So we are left with him being the record owner of the property. Under the statute he is the only person that gets compensated. If there is some other entity that feels they are entitled to some of the proceeds that is why we have that other statute and they can sue him if they want to to equitably apportion the money.

But if I follow his logic, it really doesn't matter. It is all going into one pile, to him. Because he says even though he has Lex-Tech he is the sole shareholder, the sole owner, and basically he is -- even though he has this corporate entity he really is operating it as a sole proprietorship. So that's kind of where we are with the testimony. So it really doesn't matter really at this point.

But he is not going to be able to testify that Lex-Tech is entitled to recoup something. They are not a party to this action. Under case law they are a separate, corporate, limited liability corporation which can be sued and can sue. And they are not a party.

So I think we have expended enough energy and time. And I think we need to try to make some benefit of the rest of our afternoon since it is now 4:12. Are we ready to proceed?

MR. MITCHELL: Yes, Your Honor.

THE COURT: You would have something else?

MR. MITCHELL: No. Thank you, Your Honor.

THE COURT: Are we ready, Ms. Walsh?

MS. WALSH: Yes, Your Honor. Just please let the record reflect that please note our exception to your ruling.

THE COURT: The court has already made its ruling. I have already heard argument. Your objections are already preserved. The rules provide that once the court has ruled there is to be no further argument or comment.

Are we ready to proceed?

MS. WALSH: We are.

THE COURT: Thank you. Please bring in the jury.

(WHEREUPON, pause awaiting jury.)

THE COURT: I want to make sure my ruling is clear which is he can testify as to the actual value -- his lay opinion as to actual value of the land, any special damages he feels he has suffered as a result to the remainder of his land, which is just another way of saying the diminution in value.

As I understand it, there are no benefits that accrue to the property as a result of anything the County has done, in other words to improve the value of the property.

He can testify as to the best -- let me make sure the exact language -- the highest and best use of the property. I am going to use the exact language: the value of the property taken, the diminution in the value to his remainder, any benefits that he has accrued - which there is no testimony at this point or any indication that he has gotten any benefit - and that his lay opinion as to what he believed to be the most advantageous or profitable use of the property and if he can reason- -- if there is some reasonably anticipated use of a higher or best use or for profitable use of the property in the future, which includes -- he can say I bought this property for a particular purpose and now I feel like it is devalued because I can't use it for that purpose. He can testify that I upfitted it for this particular purpose. But it needs to be confined to the period prior to the actual condemnation.

MS. WALSH: And can he ---

THE COURT: The actual dollar amounts for that really are not relevant because he is not entitled to any increase in valuation based on that.

So the sole issue that becomes relevant is the purpose

for which he purchased the property and how he feels he cannot be made whole because he can no longer use it for that purpose.

Are we all clear?

MR. MITCHELL: Yes, Your Honor.

MS. WALSH: And can he testify as to the type of improvements on the property up until the date of condemnation?

THE COURT: Yes, but not the val- -- not what --

MS. WALSH: Not the value.

THE COURT: --- what it cost him.

MS. WALSH: We are leaving numbers out.

THE COURT: And some of those things are not upfitting. A leaky sky light it not upfitting. That is deferred maintenance.

MR. MITCHELL: Absolutely, Your Honor. And he also ---

THE COURT: You know, those are kind of things -- a new roof, I don't know. I mean did he inspect the property before and know the roof was bad; did he get some kind of credit on the property to fix the roof; I have no idea.

But when we start talking about upfitting that is when you start putting lifts in a property, you start reorienting openings, you put in new offices, things like that; not ordinary deferred maintenance.

I -- so to the extent that you look at that list. Shop

widening certainly would be. I don't know if foam spray insulation would be. I have no idea of knowing whether that is essential to operating a car business.

But his previous testimony was that the reason he was interested in the property was the high volume, its commercial location and the fact that it would require very minimal upfitting since it had been used for that purpose in the past.

So you would -- he would -- of course we have already determined that the reclaimed asphalt would not be applicable since that happened after the date of the condemnation. Unless that relates to diminution in value.

MS. WALSH: The reclaimed asphalt will go to -- and just so Your Honor understands as to the part of the reason and why in his opinion it has changed to highest and best use in the after, because he could not repave and he couldn't make it safe for customers because it is ---

THE COURT: He can ---

MS. WALSH: --- asphalt.

THE COURT: --- testify to that.

MS. WALSH: Thank you. None of the ---

THE COURT: But the value of it ---

MS. WALSH: I understand.

THE COURT: Yeah.

MS. WALSH: The numbers are out. I understand.

THE COURT: Yeah, I don't think the numbers -- I think that goes to the whole of the diminution in value he feels he suffered to his property.

Office remodeling he said it was office remodeling. But then he just basically said he repainted the offices and redid them.

MS. WALSH: We have ---

THE COURT: I don't know if that is -- I mean I think arguable that could be a part of upfitting. But you need to limit those things to things that actually were necessary for the upfitting of the building for its best use.

MS. WALSH: And we have photos that we would like to use which Your Honor may or may not admit into evidence to show it. And if not ---

THE COURT: They will have to ---

MS. WALSH: --- we would like to use them as demonstrative.

THE COURT: You know, again, I am not an advocate. They will have to make a contemporaneous objection.

Are you standing for a reason?

MR. FERRARA: No, ma'am. Just reposition, Your Honor. Tired of sitting so.

THE COURT: When people stand you make me nervous.

MR. FERRARA: Yes, Your Honor.

THE COURT: I think you want to tell me something.

All right. You may bring in the jury.

(WHEREUPON, jurors enters courtroom 4:20 p.m.)

THE CLERK: All jurors are present, Your Honor.

THE COURT: You may be seated. Ladies and gentlemen, we appreciate your patience. We will now resume testimony of the witness. You may proceed.

MS. WALSH: Thank you, Your Honor.

THE COURT: You are welcome.

RESUME DIRECT EXAMINATION BY MS. WALSH OF MR. MCADORY:

Q. Mr. McAdory, the date of filing this condemnation, to your understanding, was that not July 11th of 2012?

A. Yes.

Q. Okay. And you bought the property on January of 2011; ---

A. Yes.

Q. --- is that the closing?

A. Yes.

Q. And prior -- during the time from January of 2011 until July 12 -- July 11th of 2012 did you make any upfits or improvements to the building on the property?

A. Yes, I did.

Q. Okay. And can you please describe the upfitting that you did and the improvements you made to the building on the property during that time period, please.

A. We reconfigured the front offices, remodeled the front

offices. We added three car lifts to the shop area. We added a -- lighting to the interior of the shop. That required more electrical and the -- most of the electrical to be redone in order to house the three car lifts, the brake lathe, the wheel balancer, the air compressor and other miscellaneous shop equipment. So it required pretty extensive electric work.

Q. And -- I'm sorry, go ahead.

A. We had a door. The back of the property is how the -- how we enter and exit the shop. Those big doors are not visible from the street. You would never know they were there unless you walked around the back of the property.

When we got there there was only one door there on the far right side of the building. We saw that that was not utilizing the space correctly, so we removed -- or had -- the opposing side of the back of the building had an opening cut. Installed another door. More vehicles in the shop, more vehicle access. So that required a hole cut in the back of the building, a new door.

The other door was falling apart. We had to -- had the other door replaced. We painted the floors of the inside of the shop. Set the -- one of the offices up that I had talked about we reconfigured we turned that office into a parts room.

We house a lot of parts on site so that repairs are

done quickly and we have parts on hand. So we converted an office to a parts room.

The back parking lot was full of crushed con- -- or was a mud pit when we first got there. When the contractors were there we had to bring in a lot of crushed concrete because everybody was getting stuck. After about two or three days it was a mud pit. So we brought in a bunch of crushed asphalt -- or crushed concrete so that we could actually utilize the back area.

The vehicle -- the back of the property we realized after we got there that it had an available space behind the fence that wasn't being utilized. So we had the back fence removed.

We had a site contractor come in and clear the debris and the trees and the stumps, move the fence back roughly 10 or 13 feet.

That basically allowed us another row of vehicles in the back, allowed us more room to store more vehicles across the back.

Vehicles are the nature of my business. We have to have places to put vehicles. And as far as the upfitting that is really about it.

Q. And as a landowner do these improvements benefit you as a landowner?

A. Yes.

Q. And in your opinion as a landowner did these improvements in upfitting add value to your property?
A. Yes.
Q. When you bought the property in January of 2011 did you as the landowner take photos of the property?
A. Yes, we did.
Q. And during the time of this upfitting and renovations did you as the landowner take photos of the property?
A. I'm sorry, say the dates again.
Q. During the time of your renovations and repairs?
A. Yes, yes, we did. From before, during, and then after.
Q. Okay.
MS. WALSH: Your Honor, may I approach?
THE COURT: You may.
MS. WALSH: Thank you.
MR. MITCHELL: May we approach, Your Honor?
THE COURT: Yes, you may.
(WHEREUPON, bench conference and review of documents at 4:25 p.m.)
THE COURT: Madam Forelady, ladies and gentlemen, I have a very brief matter of law to take up outside of your presence. During this break please do not discuss the case among yourself and please leave your notepads in your seats.
(WHEREUPON, jury exits the courtroom 4:27 p.m.)
THE COURT: What is the County's objection to Exhibit

Number 1? Well, I guess the question is for what purpose is it being offered.

MS. WALSH: It is being offered to show the condition of the building when the landowner bought the property.

THE COURT: How is that relevant to fair market value or diminution of value? They are not contesting what he paid for the property, are they?

MS. WALSH: No, but it is going to show the before and after value -- it is going to show the before he bought the property --

THE COURT: Doesn't have any relation to value. How is it -- how does that have any relationship to what it was worth?

MS. WALSH: The improvements and the upfits that he does into the property he has already testified adds value to the property. This is just going to be used ---

THE COURT: That is still him trying to get a dollar for dollar value for what he contends ---

MS. WALSH: But we are not entering ---

THE COURT: --- he put in.

MS. WALSH: --- dollars amounts.

THE COURT: I -- yeah, I haven't really ---

MS. WALSH: And it is for demonstrative purposes.

THE COURT: No, it is not for demonstrative purposes. Because you are asking that it be admitted into evidence and

that the jury rely on it as some evidence of its value.

MS. WALSH: Well, initially obviously I am going to try to get it into evidence and Your Honor will rule. And then if Your Honor rules against me I am going to ask it be admitted for demonstrative purposes. Not admitted but just for use of demonstrative to show the jury what the property looked like when he bought it, the type of updating that he did.

Because the pictures reflect the changes in the office space. It shows the rear bay door as only a single one. It has moved into two. It shows the rear parking lot which was mud. Then he eventually outfitted and spent money, etcetera. But we are not going into dollar signs.

It also shows the lifts that were added. It goes from zero lifts to two lifts to three lifts on the property. Completely ---

THE COURT: Are you going to have any expert testify that somehow this has increased the fair market value of the property or that there was any diminution in value as a result?

MS. WALSH: No, just the landowner, Your Honor, because he can testify as to the value ---

THE COURT: I didn't say he couldn't.

MS. WALSH: I understand, Your Honor.

THE COURT: But you know what I think: I think my

house is worth a half a million dollars to me. It is probably worth a tenth of that. But this is what it is worth to me because I like it and what I think I have put in it.

But that -- the average person walking through my house probably would hurt my feelings if there was a hidden camera telling me what they think needed to be fixed, changed, and what they had actually paid for it. That is probably why I would not obsess.

What is the County's objection to Number 1?

MR. MITCHELL: Your Honor, the prejudice to the jury outweighs its probative value.

THE COURT: You need to be more specific than that for me. What is your actual objection to it? That is a boiler plate objection.

MR. MITCHELL: I have no objection, Your Honor.

THE COURT: All right. So Number 1 comes in without objection, correct? Number 1 will be marked and admitted without objection.

(Defendant Number 1 was previously marked.)

(Defendant Number 1 was admitted into evidence.)

THE COURT: What is your objection to Number 2?

MR. MITCHELL: Number 2 it is ---

THE COURT: Why don't we lump 2, 3, all together. Because I assume those are before pictures and during

construction pictures.

MS. WALSH: And the dates are at the bottom. It is signed by the landowner, Your Honor.

(Review of documents.)

MS. WALSH: Thank you for your patience, Your Honor.

MR. MITCHELL: Your Honor ---

THE COURT: Not a worry.

MR. MITCHELL: Your Honor, first, these do not go to fair market value. These go to the condition of the building.

Second, your former ruling was about upfit of the building. You were talking about lifts and that sort of equipment. This is office space. This is not upfits for a garage for his specific highest and best use.

THE COURT: Okay. We will set those aside for now. What about Number 4? Number 4 seems to me to be an accurate reflection of the back of the property. What is the objection of that?

MR. MITCHELL: I have no objection, Your Honor.

THE COURT: Number 4 will be marked and admitted without objection.

(Defendant Exhibit Number 4, photo, was previously marked for identification.)

(Defendant Exhibit Number 4 was admitted into evidence.)

THE COURT: Number 5 is sort of cumulative, doesn't it?

Aren't there several pictures that show the back of the property?

MS. WALSH: Well, one shows -- this one shows the back of the property but doesn't show the rear doors. One of them has one bay door. And that was in the before. And he has already testified that he added two doors in the back so we could operate two -- three forklifts for his repair shop and have two modes of entrance for his repair vehicles. And he just testified that he upfitted ---

THE COURT: Can I see the other one again ---

MS. WALSH: Yes, ma'am.

THE COURT: --- that I just gave you?

MS. WALSH: Sure.

(Document presented to the court.)

THE COURT: Thank you. Oh, that is just -- okay, I see.

MR. WALSH: Yes, thank you, Your Honor.

THE COURT: Is there an objection to Number 5?

MR. MITCHELL: Which one are we ---

THE COURT: This one (indicating).

MR. MITCHELL: Yes, Your Honor -- oh ---

THE COURT: Okay. I will put that aside.

MR. MITCHELL: Yes, Your Honor, there is a pile of rubbish there from obvious construction. And it still doesn't go to the evidence.

THE COURT: We will see. I will think about that. What is the objection to 6, 7, 8, 9; that all shows I assume some stage of renovation?

MR. MITCHELL: Yes, Your Honor. And the objection is the same as before. This is not showing upfits. This is showing -- it goes to the condition of the building and the repairs that they had to do at the time, not to the upfit to get to the highest and best use that he testified to.

MS. WALSH: May I see exactly.

THE COURT: Yeah, I am going to set those aside for the moment.

MS. WALSH: Your Honor, Number 6, 7, 8, and 9 is showing the upfits to the building because it is the rear portion of the building as to the repair shop during the process of the renovations. It also will show ---

THE COURT: It actually just shows it in its condition. It doesn't show any changes to it.

MS. WALSH: Well, it is going to show ---

THE COURT: It just shows what it looked like before.

MS. WALSH: Right. And then there's obviously photographs that are in there that have three lifts that shows exactly what it was before and then he upfitted and he added three lifts.

THE COURT: Yeah.

MS. WALSH: So it shows exactly the type of work the

landowner they put into the building.

THE COURT: You can set those aside for now. I need to think about those. Number 10 is sort of cumulative, isn't it; don't you already have a picture of the front of the building?

MS. WALSH: Can I see which picture you are talking about?

MR. MITCHE: Oh, here.

MS. WALSH: This was actually during the outfitting. Because as you note from the very beginning ---

THE COURT: I don't think it makes a difference. I mean whether it was green or cream what difference does it make?

MS. WALSH: Very good.

THE COURT: Yeah, I don't -- I think it is cumulative. It is the same picture as Number 1.

MS. WALSH: And actually, Your Honor, though, I would like to make note with respect to Number 10 that the landowner would testify that he actually did paving and did as such to the front to make it suitable ---

THE COURT: But the picture doesn't show that, does it?

MS. WALSH: Well, it is in the before; and then it actually does it in the after.

THE COURT: Yeah, well, if you ---

MS. WALSH: But if we are going to go to the parking

lot ---

THE COURT: I just think it is cumulative. It just shows the same front of the building ---

MS. WALSH: Sure.

THE COURT: --- with a different color. What is the objection to Number 11?

MR. MITCHELL: Number 11 I think it shows the lifts, and it shows they are updating. I have no objection.

THE COURT: Okay. Number 11 will come in without objection.

(Defendant Number 11, photo, was marked for identification.)

(Defendant Number 11 was admitted into evidence.)

THE COURT: What is the objection to Number 12?

MR. MITCHELL: Number 12 is back to the same thing. First off, it is cumulative. It shows the renovations being done, not the upfits that we discussed.

THE COURT: How is this relevant to fair market value? I just -- it just shows a hallway with some exposed wiring. I just -- I guess I am trying ---

MS. WALSH: He did -- he has already testified he had to do a complete and total electrical overall of the building in order -- and this is just to show that he did -- it is just comporting with his testimony.

THE COURT: Yeah, but how does it tie to fair market value?

MS. WALSH: Because all of the improvements in upfitting he has already testified to -- he has testified it benefits and adds value to his property.

THE COURT: What is the objection to Number 13? I think that shows the use of it, if he says he parks the vehicles in the back.

MR. MITCHELL: Yes, Your Honor, it shows a lot of parking spaces. I like that. I have no objection.

THE COURT: All right. Number 13 is marked and admitted without objection.

(Defendant Number 13, photo, was previously marked.)

(Defendant Number 13 was admitted into evidence.)

THE COURT: What is the objection to Number 14?

MR. MITCHELL: It goes to the renovations of the building, not ---

THE COURT: I think it shows the interior of his business. I mean what is the big deal?

MR. MITCHELL: Well, ---

MS. WALSH: He outfitted offices.

MR. MITCHELL: --- first, Your Honor, it is -- it shows the interior of his building and not necessarily his business. Because Lex-Tech is the business. But just besides that distinction ---

MS. WALSH: He owns the building. It adds value and benefit to him. He has testified as such.

THE COURT: Well, if you moved into any building you are going -- I know me. I would rip everything out and redo it because that is just my personality. I need things that are esthetically pleasing. What like somebody else might be able to tolerate, I couldn't.

I don't know than that actually improves the value of the building. It improves my quality-of-life. I don't know that it necessarily improves the quality or the fair market value of the building.

MS. WALSH: And the landowner can testify to that. And he ---

THE COURT: What he can testify to and what is relevant and germane to fair market value are different things. And so my question is how does this tie into fair value of -- or diminution in value.

MR. MITCHELL: Your Honor, it goes straight to the condition. It is back to the same discussion we have had numerous times.

THE COURT: I don't know that there is any harm in him showing the interior -- I guess I am just at a loss as to why it really matters ---

MS. WALSH: Because what ---

THE COURT: --- showing the interior ---

MS. WALSH: --- it is going -- what it is eventually going to matter, Your Honor, is that he -- one, he is --

just bear with me and just the court indulgence. One ---

THE COURT: Actually I was asking Mr. Mitchell that question and not you.

MR. MITCHELL: Could you restate ---

THE COURT: I said I don't understand what the real rub is. What difference does it make what it looks like on the inside. I mean it is a fair and accurate representation of what the business looks like.

MR. MITCHELL: I agree with Your Honor. I have no objection.

THE COURT: Fourteen and fifteen will come in without objection.

MS. WALSH: Thank you, Your Honor.

THE COURT: You are welcome.

(Defendant Exhibit 14, photo, was previously marked for identification.)

(Defendant Exhibit 14 was admitted into evidence.)

(Defendant Exhibit 15, photo, was previously marked for identification.)

(Defendant Exhibit 15 was admitted into evidence.)

THE COURT: What is the objection to Number 16?

MR. MITCHELL: I am not sure what they are trying to depict in this.

MS. WALSH: It shows three lifts instead of two. It was an ongoing progression of his upfitting of the building.

MR. MITCHELL: It is cumulative. We have already shown that he has put lifts in it.

THE COURT: I don't think there are any pic -- are there any pictures --

MS. WALSH: Yes, Your Honor.

THE COURT: --- in that stack of lifts?

MS. WALSH: I'm sorry. Yes.

THE COURT: Which number is that?

MS. WALSH: It is Number 11.

THE COURT: Can I see it right quick?

MS. WALSH: Yes, Your Honor.

(Document provided to the court.)

THE COURT: You can pick between Number 11 and Number 16.

MS. WALSH: Okay.

THE COURT: Because they are cumulative.

(Cell phone interruption.)

THE COURT: Do you want to -- do you want to substitute 16 for 11?

MS. WALSH: Yes, Your Honor, I would.

THE COURT: Which I think is a more accurate picture.

MS. WALSH: Thank you very much.

THE COURT: Number 16 will be marked and admitted without objection.

(Defendant Exhibit Number 16, photo, was previously marked

for identification.)
(Defendant Exhibit Number 16 was admitted into evidence.)
THE COURT: And what is the objection to 17? We have already seen this picture.
MR. MITCHELL: I have no objection with it, Your Honor.
THE COURT: All right. Seventeen is marked and admitted without objection.
MS. WALSH: Thank you, Your Honor.
THE COURT: You are welcome.
(Defendant Exhibit 17, photo, was previously marked for identification.)
(Defendant Exhibit 17 was admitted into evidence.)
THE COURT: Now let's deal with these other things. Two and three are not relevant. They will be marked for ID only. They do not add any probative value regarding the fair market value of the property or diminution in value of the property.
(Defendant Exhibit 2, previously marked for identification.)
(Defendant Exhibit 3, photo, was previously marked for identification.)
THE COURT: Six, seven, eight, and nine are fairly cumulative because the whole purpose of what we were trying to -- what the landowner wanted to show were the lifts and the modifications to the property. And we already have pictures in that are showing that. So those would be marked

for ID only.

(Defendant's Exhibit 6, photo, was previously marked for identification.)

(Defendant's Exhibit 7, photo, was previously marked for identification.)

(Defendant's Exhibit 8, photo, was previously marked for identification.)

(Defendant's Exhibit 9, photo, was previously marked for identification.)

THE COURT: We have already determined that Number 11 is cumulative to 16. I am at a loss as to what Number 12 is probative or relevant to which is the open ceiling. So that will be marked for ID only as it is not -- has not been shown to the court that it is tied to any fair market value or diminish in value.

THE COURT REPORTER: I'm sorry, what was that number; twelve?

THE COURT: Number 12.

(Defendant's Exhibit 12, photo, was previously marked for identification.)

THE COURT: Number 10 I thought we already talked about that is sort of -- it is cumulative.

MS. WALSH: No problem.

THE COURT: So that would be withdrawn and marked for ID only, Number 10. And then let me see what you already

have in right quick.

MS. WALSH: Yes, Your Honor, I have ---

THE COURT: Yeah, just let me look at them real quick.

MS. WALSH: Sure.

(Documents presented to the court.)

THE COURT: I don't have a problem with Number 5 as it shows an accurate condition of the back of building at the time of purchase.

MS. WALSH: Thank you, Your Honor.

THE COURT: Number 5 will be marked subject to the County's objection.

(Defendant Exhibit Number 5 was admitted into evidence.)

THE COURT: Okay, are we ready?

(Several requests for break.)

THE COURT: Just don't talk about -- I'm sorry, I am tongue-tied today. Do not talk about your testimony with anyone. We will be out as long as it takes you all to go to the restroom and then we will resume his testimony.

MS. WALSH: Thank you, Your Honor.

THE COURT: You are welcome.

(WHEREUPON, break approximately 4:36 p.m. and resumed approximately 4:47 p.m.)

THE COURT: Are we ready?

MS. WALSH: We are ready, Your Honor.

THE COURT: Mr. Rivers, if you could get the jury for

me, sir.

(WHERUEPON, jurors enter courtroom approximately 4:49 p.m.)

THE CLERK: All jurors are present, Your Honor.

THE COURT: Thank you, ladies and gentlemen, for your patience. You may be seated. We will now resume questioning the witness. You may proceed, Ms. Walsh.

MS. WALSH: Thank you, Your Honor.

THE COURT: You are welcome.

MS. WALSH: And for purposes of the record all these are admitted into evidence?

THE COURT: Uh-huh.

MS. WALSH: Do you want me to lay a foundation?

THE COURT: You may proceed with the witness.

MS. WALSH: Thank you, Your Honor.

THE COURT: You are welcome. Just make sure you refer to the numbers for the record.

MS. WALSH: Yes, Your Honor.

RESUMED DIRECT EXAMINATION BY MS. WALSH OF MR. MCADORY:

Q. Mr. McAdory, if you can look to your left up on the screen.

A. Yes.

Q. This is a photograph that is marked as Defendant Exhibit Number 1. When was this photograph taken?

A. January 26th of 2011.

Q. And did you take the photograph?

A. Yes, I did.
Q. And what does this photograph depict?
A. It depicts the -- depicts the building right as we bought it.
Q. Okay. And I see -- where -- is that the parking space in the front of the -- of the building?
A. As you can see, there's two cars currently parked there. And then there is still the for sale sign to the left.
Q. Okay.
A. Still in the pavement.
Q. In your opinion as the landowner how many parking spaces do you have out front of the building?
A. I have six.
Q. And how do you figure?
A. I can park three cars wide and three cars deep. That allows us up to six vehicles up front.
Q. And are you aware are those parking spaces when you park three cars -- three cars wide, three cars deep, as you said, are they within the current right-of-way?
A. I'm not sure if they are -- if the third car would be in the right-of-way or not. If they were -- if I had three big cars such as those SUV's then I would imagine the third car could be in the right-of-way. If I have three compact cars, then I could be well within the right-of-way.

Q. Meaning not within the right-of-way?
A. Meaning not ---
Q. Outside of the right-of-way?
A. Not outside of my property line.
Q. I am going to show you what is marked Defendant's Exhibit Number 4. Can you please identify this for me.
A. That was the -- that is the back of the property, picture taken January 26, 2011, right as -- probably the day after we are -- two days after we purchased the property. We are all there getting ready to get started.
Q. And did you make any improvements to the rear of the property?
A. Yes, I -- the fence that is along the back you can see - not a great picture - but you can see there is a bunch of brush and overburden and some trees.

Actually we removed that fence and were able to move that fence back, I forget, 10 or -- 10 or 13 feet further back to give us some more space. It's ---
Q. More space for what?
A. To park more vehicles.
Q. Okay. And what vehicles do you -- what vehicles are generally parked in the back?
A. The vehicles that are parked in the back are myself, the employee's, customer's vehicles to be worked on, customer's vehicles that we may be waiting on parts for,

customer's vehicles that we may be waiting to get into the service department.

Q. Okay, and before this condemnation was taking it was your -- is it your opinion that the highest and best use for this property was as an auto repair shop?

A. Yes.

Q. And is it your opinion that after this taking the highest and best use will continue to be an auto repair shop?

A. No, it will not.

Q. And why is that?

A. Because I have no parking out front. That is going to force customers to have to try and park in the back. That is going to interfere with my employee's parking. That is going to interfere with our ability to get in and out of the service department. It is going to interfere with just the overall inlet and outlet.

For instance, with no parking in the front the customer is going to drive in the back. We're tight and restricted on parking already. There is -- that is why we have the service writer takes the car from the front, drives it around back, puts it in the appropriate spot.

We typically put all vehicles to be worked on more toward the left-hand rear corner. That way we can stack them in and strategize who comes in next, which one comes in

next.

Customers are just going to pull in, get out of the car. The first thing they are going to be prompted to do it walk through the shop to get to the front office.

Q. And walk through the shop, what do you mean the shop?

A. Meaning the service department.

Q. So who works in the service department?

A. Technicians.

Q. And what is in the service department; are there a lot of vehicles?

A. Car lifts; you know, just all of our -- all of our automotive equipment. There is -- there may be air hoses that are dangling from the ground. There's car lifts that have what we call arms that fold in and out. Definitely don't want people walking through the shop.

Q. Why?

A. It is not safe.

Q. I am going to have to go back to Defendant's Exhibit Number 1. You mentioned a driveway along the side. Looking to -- where does the driveway began along the side of the property in this photograph?

A. Just to the right of the corner of the building.

Q. Okay. And approximately how wide is that driveway?

A. The driveway is 14.2 inches wide.

Q. Fourteen point two inches wide?

A. Fourteen point two.
Q. Have you measured it?
A. Actually I have a survey done that depicts the exact measurements of the drive.
Q. And do -- when you move vehicles -- earlier you testified that you move customer vehicles from the front of the property to the rear of the property?
A. Yes.
Q. Is it wide enough for two vehicles to pass simultaneously side by side going opposite directions in that driveway?
A. No.
Q. And why not?
A. Because as a -- as we've stated, vehicles are approximately seven feet -- seven feet wide. Fourteen point two, two vehicles are not going to pass each other safely without touching.
Q. Okay. So if a customer comes after the taking and you said that they would -- you said they would technically have to park in the back; is that correct?
A. Yeah, they are going to have to park in the back. We are not going to -- they are not allowed to walk from the -- you know, through the service department to get to the front offices they are going to have to walk from the back of building up that side driveway and then walk around the

front of the building.

That presents a problem when another customer may be pulling in and/or out of that driveway and/or one of our service technicians may be trying to get in or out of that driveway.

Q. Now if a car was coming and if -- and a customer was walking along the driveway where would that customer go?

A. They are either going to need to back up against the building or either step up onto an eighteen inch or two foot high elevated curb next to us.

Q. And that elevated curb does that align along the property boundary ---

A. Yeah, that ---

Q. --- between you and your adjacent property?

A. --- is what I would call the property line.

Q. Okay.

A. It is a raised, concrete retention wall.

Q. Which leads us into Defendant's Exhibit Number 5. You can look and you can see this is the rear portion of the property. Can you please describe this photograph.

A. That is the back of the property pre-upfit.

Q. Pre-upfit. And so is that the back of the -- is the repair portion of your shop in the rear?

A. Yes, it is.

Q. And how many bay doors do you have now?

A. I have two.
Q. Okay. So you added an additional bay door where?
A. To the far left. So there is one on the far right and now one on the far left?
Q. And is that the end of the driveway to the far left?
A. Yes, right where you can see the gate, gate posts, the large gate posts.
Q. And why do you have a gate post?
A. Because once a customer bring me his vehicle and leaves it in my possession whether it stays in the shop or stays overnight I am responsible for that vehicle. So I need to have a secure -- secured area to store and house their vehicles just to protect myself and to protect the customer's vehicles.
Q. Do customers ever drop off and pick up their vehicles on the property?
A. On a very regular basis we have -- and in most automotive places have this on either what we call an early bird or a late drop off. If you can't get there in the -- you know, if you can't get there in the morning before -- by the time -- if you need to be there before we open in the morning you can bring the vehicle in, park it and lock it. For the keys fill out an envelope, throw the keys in a drop slot. We come in, grab the keys. We handle it from there.
The same thing in the evening. Somebody wants to drop

a vehicle off after hours, same thing. Park it, lock it, envelope, keys in the drop box. We handle it the next morning.

Q. So after the taking of this property once construction begins you lose parking on the front?

A. Yes.

Q. So where are customers suppose to drop off their cars after hours?

A. They are going to be forced to put it in that driveway on the left of that picture.

Q. So has to move those cars in the morning?

A. Yeah, when we get there in the morning we are going to be faced with that is our in -- one and only access to the back of the property.

So some vehicles fortunately that are dropped off overnight are cranked up and drive. Some of them tow trucks deliver and drop off; we get there in the morning and we have no clue what is wrong with it. Not going to be just as simple as getting in, turning the key, cranking it up and moving it.

We have five employees at Lex-Tech Automotive. That means there's five employee vehicles. And imagine five people -- five vehicles trying to come into that property just as employees and having maybe one or two vehicles dropped off or towed and parked on the side of that

building. It is going to completely clog up our system.
Q. So ---
A. It is going to stop workflow.
Q. I'm sorry, sir. So if you had two customers who dropped off at the building and they were stacked in that driveway where would the employees park?
A. They would have to try and park in the alley or either remain out in the median until somebody could get over, unlock the doors, find the keys, get the vehicles moved to clear the drive.
Q. Or possibly park across the street?
A. If for -- if -- yes, that's a possibility.
Q. And that means they would have to walk across Folly Road?
A. Yes, if they are likely to park across the street.
Q. And would that -- would you consider that safe for your -- for employees?
A. Absolutely not.
Q. Or customers?
A. No.
Q. I'm going to show you what is marked as Defendant's Exhibit 13. Can you please identify this for me.
A. That is our back parking area. After the -- as you can see, the crushed concrete was installed. Not sure -- don't think the fence had been moved by -- at that time.

But that is kind of the gist of how we lay our vehicles out, typically six to seven cars wide, two to three cars deep. Those are cars -- those are either employee's cars, cars that have been -- or to be serviced or they are waiting on parts.

Q. You said sometimes tow trucks come to drop off vehicles to your -- to the property?

A. Yes.

Q. And that is tow trucks for the auto repair shop?

A. Yes.

Q. And do tow trucks ever drop off -- drive from the front of the property to the rear of the property by the driveway, through the driveway?

A. Yes, that is how -- that is the one and only way. They pull in, turn around, back up, drop a vehicle in the back lot.

Q. And tow trucks are pretty large, aren't they?

A. I think the average tow truck is about eight -- at least eight, eight and a half feet.

Q. Feet wide or ...?

A. Wide.

Q. Wide. And approximately how long?

A. I think the average flatbed is probably 30 -- in excess of 30 feet.

Q. So a tow truck has to come to the back, drop off a

service vehicle and then turn around to make an exit?
A. Yes.
Q. Okay. And it is supposed to turn around at the rear of the property?
A. Yes.
Q. And that is where you have service vehicles, employees park, and after the taking under the County's theory customers would -- where customers are parking?
A. Yes.
Q. I am going to show you what is marked as Defendant's Exhibit 14. Can you please identify this.
A. That is a picture taken of our interior office for the -- for our service advisor.
Q. And is this part of the upfitting you did on the property?
A. Yes.
Q. Okay. And so what about that front window?
A. My sign.
Q. Okay. And what -- what else; is that parking out in front of the window?
A. Yeah, that is -- obviously there are no vehicles out front currently at that time.
Q. So when customers come to your lot where are they supposed to park in and out of the building?
A. Right on the parking spaces provided right outside that

window.
Q. And is that a reception room?
A. Two on the -- flip -- very -- other side of the -- of that room is our waiting lounge, yes.
Q. Okay. And what is this (pointing)?
A. That is the service advisor's area.
Q. Okay. And I am going to show you what is marked as Defendant's Exhibit 15. Is this the waiting lounge you were referring to?
A. That is the lounge.
Q. So when customers come in they are supposed to stay there?
A. That is where they hang out until we are done, we are completed.
Q. And they don't go through the repair shop?
A. No, ma'am.
Q. Okay. And they don't have to walk down the driveway?
A. No, ma'am.
Q. I am going to show you what is marked as Defendant's Exhibit 16. Can you please identify this for us.
A. That is the interior of our shop. As you can see, there's three automotive lifts and work benches, some you know, normal automotive equipment. You can see the -- I mean just the inside of the shop. And it is pretty much in its finished state.

Q. And how many lifts approximately are in this picture?
A. There is one to the left and two to the right.
Q. And so if customers are parking in the rear after the taking of the property, because as you testified as to the best use of the property in your opinion it is not a repair shop, customers would have to walk through a driveway or the repair shop?
A. Correct.
Q. And that is the repair shop that customers would walk through?
A. Yes.
Q. Which you consider not safe for your customers?
A. Absolutely not.
Q. I'm going to show you what is marked as Defendant's Exhibit 17. Can you please identify this for the jury.
A. That is our front parking area. You can see there is currently roughly five -- or there were five cars parked out front. You can see our sign.
Q. As the landowner do you consider the sign important for property?
A. Extremely.
Q. And it is commercial property, correct?
A. Yes, it is.
Q. And do you lease that property?
A. Yes.

Q. And as a landlord and landowner in your experience in working with commercial property is signage important to tenants?
A. Extremely. It lets them know who they are and what they do.
Q. And is that sign visible if you are traveling from downtown to Folly Road and if you are traveling -- I mean to Folly Beach -- and if you are traveling from Folly Beach to downtown is it visible from both directions?
A. Yes, that is.
Q. Okay. Mr. McAdory, do you have any regrets for purchasing this property?
A. Yes, I do.
Q. And what is that?
A. Due to the property taking.
Q. And how is the property taking affecting you?
A. The property taking has forced me to go out and buy another piece of property to relocate to.
Q. Okay. With respect to this taking, how close is the right-of-way coming to the front door of the property?
A. Six feet.
Q. Okay. And it is approximately the right-of-way is 17 feet in depth?
A. Yes.
Q. And it leaves six feet -- six feet from the

right-of-way to the door?
A. To the front door, correct.
Q. And that it is 60 feet wide; is that correct?
A. It is.
Q. And do you know how many square feet that is?
A. Twelve hundred and I believe eighty-seven.
Q. And you were here during the opening testimony when everybody's making reference to the fact that the County is only taking 0.030 otherwise known as 1,287 square feet, correct?
A. Yes.
Q. And I guess it appears according to the County it doesn't seem like a lot of property. Does it -- is that a lot of property to you?
MR. MITCHELL: Objection, Your Honor.
THE COURT: Basis.
MR. MITCHELL: She is leading -- asking leading questions.
THE COURT: Sustained. Leading.
MS. WALSH: Thank you, Your Honor.
THE COURT: You are welcome.
BY MS. WALSH:
Q. How much -- how -- what is the square footage of the taking of the property?
A. I believe it is 1,287 square feet.

Q. Is that a lot of property to you, Mr. McAdory?
A. Yes. And if you put it in the form of my home it's approximately 1,500 square feet. That is roughly 1,300 square feet. That is roughly the footprint of my home.
Q. And what effect is this having on the property from your perspective as a landowner wanting to lease commercial property?
A. I'm sorry. Phrase again. I'm sorry, say again.
Q. Yes, I'm sorry. What effect is the taking having on your property for purposes of changing the highest and best use from an auto repair shop?
A. It has forced me to have to relocate the business.
Q. And is it affecting the parking?
A. Yes. Currently it does not. But when -- as soon as the construction equipment shows up and the silk fences and the big orange barrels show up six feet from my front door then I cease to operate.
MR. MITCHELL: Your Honor, objection to this line of questioning. May I approach?
THE COURT: Uh-huh.
(WHEREUPON, bench conference 5:07 p.m.)
THE COURT: Madam Forelady, ladies and gentlemen, we appreciate your indulgence. And I know we have gone beyond five o'clock. And please don't get concerned. I am not going to hold you hostage here. We are going to be breaking

shortly.

I need to take up a very brief matter of law. During the break please do not discuss the case and please leave your notepads as well as exhibit in your seats. But you don't have to go all the way down to the jury room, because this is only going to take a second.

(WHEREUPON, jury exits courtroom 5:30 p.m.)

THE COURT: What is the basis of the objection? You all can take your seats.

What is the basis of the objection?

MR. MITCHELL: Let me -- let me ---

THE COURT: Oh, I'm sorry. I didn't realize you didn't -- you heard me but you are gathering your stuff.

MR. MITCHELL: Yes, Your Honor.

THE COURT: That is fine.

MR. MITCHELL: The basis of the objection, he is now going to -- he is talking about he is going to have to move. And he is talking ---

THE COURT: Well, he has testified he already bought another building, didn't he?

MR. MITCHELL: Yes --- I believe he can testify that he has purchased another building. But when he -- the business is now moving. The loss of business is not a defensible element of damages.

THE COURT: Well, I don't think he said he lost

business. He said I was forced to purchase another piece of property to conduct business which is along the lines of why he now says his property is not suitable for the purpose for which he purchased it.

So I guess I am -- that is why I was trying to get some clarify on exactly what it is you are objecting to. He hasn't testified that I lost business and this is the amount of business I have lost. He simply testified that I bought this building for a particular business, I anticipated using it in a particular way, in my estimation I can no longer use it for that purpose so I bought another piece of property to conduct that business.

So I guess I am trying to figure out what is it you are objecting to.

MR. MITCHELL: Well, going back to that blending of him being Lex-Tech or the landowner. The way I interpret what he said - and that is neither here nor there - but it sounded like he was implying that his business, Lex-Tech Automotive, was being forced out of business due to this taking and now having to move. I don't know ---

THE COURT: I didn't interpret it that way. What I heard him say was he was forced to purchase another piece of property to conduct business.

I think to go any further beyond that would not be appropriate, relevant, or germane. You know, you can

testify to a lot of things. You almost box yourself in. Because the only thing I am going to instruct the jury is on diminution of value, fair market value then and after.

MS. WALSH: We are not going ---

THE COURT: And you almost get into a little tight spot because you hadn't shown that he could not conduct business there. You don't have somebody that can testify independently regarding these issues. Not that you have to. But I mean I, you know, I really haven't heard anything at this point that he was precluded from conducting his business. I

The construction hadn't even started yet. So we don't even really know effectively how it is going to affect him. They haven't even done the taking yet. We don't really -- you know, logistically we don't know. So I don't know.

I think that he can testify that he has purchased another building. But to go any further beyond that would be problematic.

All right. Are we ready to go forward?

MR. MITCHELL: Yes, Your Honor. Thank you.

THE COURT: Did you have any further questions of the witness, Ms. Walsh, or ---

MS. WALSH: Yes, Your Honor, I do.

THE COURT: --- was that the conclusion of your -- pardon me?

MS. WALSH: Yes, Your Honor, I do.
THE COURT: How many more questions do you have?
MS. WALSH: I will try to ---
THE COURT: I just need you to give me an estimate of how many minutes.
MS. WALSH: Maybe 30 -- maybe 20. Maybe.
THE COURT: We will see. All right. I am going to break shortly.
(WHEREUPON, jurors enters courtroom 5:13 p.m.)
THE COURT: You may be seated. Ladies and gentlemen, we appreciate your patience. We will now resume with questioning of the witness. You may proceed.
MS. WALSH: Thank you, Your Honor.
THE COURT: You are welcome.
RESUME DIRECT EXAMINATION BY MS. WALSH OF MR. MCADORY:
Q. Mr. McAdory, as the landlord you testified that you weren't going to have any parking spaces out front; is that correct?
A. Yes.
Q. Okay. Just to pick up from there. Did you ever discuss this parking issue with the County?
A. I discussed with the right-of-way agent.
Q. Did you ever discuss parking issue and your concerns with the County's appraiser?
A. I never spoke with the County's appraiser.

Q. And to your recollection did the County's appraiser ever attempt to contact you?
A. No, I was never contacted by the County appraiser.
Q. And did the County ever offer you any solution for the loss of parking?
A. Yes, they offered to take the affected area out front that was going to be taking and to put it right behind the gate in the back of the property.
Q. And that was the gate in the back of the property in reference to the pictures we looked at earlier?
A. Right. Right. And they had -- then they said basically take that square footage, add it to the back of the property, remove -- remove the fence and then fence around that and that would be my new parking.
Q. Okay. I am going to put just for the purposes so the jury can understand and all else present in the courtroom I am going to put Defendant's Exhibit Number 13.
Okay, you see the gate is on the left-hand side; is that correct?
A. Correct.
Q. Okay. And to the right of the gate is that the end of the driveway?
A. Yes.
Q. Okay. And where exactly would the parking go for customers?

A. It would -- what they had stated was to take the 1,277 square foot that was taken from the front and to put it starting at a little before where that is. Not the end of the gate but at the gate post back.
Q. In other words at the very dead-end portion of the driveway?
A. Yeah, they wanted me to put it on the right side back and then obviously fence around that. That way I could I guess still have my secured parking area.
Q. And would tow trucks be able to maneuver to that rear?
A. No, ma'am. Absolutely not.
Q. And why not?
A. Because you have got 60 foot of depth. I mean I have only got maybe on the back of the property maybe to the back of the property from the -- from the gate -- and I am purely guessing. I have a survey I can look and find out. But I am going to guess it is may be 60 or 80 feet total.
Q. And would this affect the flow of cars on the property?
A. Absolutely.
Q. And how is that?
A. Obviously if that is where everybody parks I can't utilize the vehicle parking to the left. I can't get to it.
Q. Let's go back to Defendant's Exhibit Number 17. It always helps to look at it when you talk. Is that your sign?

A. Yes, it is.
Q. Okay. And that sign as we have heard on testimony is currently in the right-of-way, correct?
A. Yes, it is.
Q. And so does that sign need to be removed as a result of the taking?
A. Yes, that sign is currently in the right-of-way.
Q. And did you -- are you concerned regarding the loss of your sign?
A. Absolutely.
Q. And why?
A. Because if I lose the sign I lose the visibility. I lose the exposure. Again, the sign is there for high vehicle traffic area. I am going to lose the ability to tell people who I am and what I do.
Q. And as the landlord -- I mean it is a commercial piece of property, and you obviously as a -- you are a landowner and you lease it ---
A. Correct.
Q. --- to a tenant, correct?
A. Correct.
Q. And in your experience with commercial real estate signage is important to tenants?
A. Exactly. Again, as I stated, a tenant needs to be able to show who they are and what they did with the sign.

Q. Once that sign is removed where -- where are you -- where is it going to be moved to?
A. Currently there is no solution for that problem.
Q. Did you discuss your concerns regarding the sign with the County?
A. They came up with an estimate of $4,500 to cure the sign but had no I guess recommendation or to tell me where I was going to have to put it.
Q. Can you put that sign onto the far what would be from where you are sitting left of the building?
A. No, because as you can see there are some trees there. And palm trees. Another tree. I mean who is going to see it?
Q. Okay. Can you put that sign to the far right of the building?
A. I can. But again, there is a Black Bean Cafe next to that. It is going to obstruct the view.
Q. And it would be where -- would it be in the driveway?
A. It would be on the driveway.
Q. And can you put the sign on top of the building?
A. No, I cannot.
Q. And why not?
A. Because there is an SCE&G power line transmission that goes over the -- that's going to go over the top of the building that restricts me to go -- I think I can't be any

more than 17 or 18 feet from that power line, power distribution line.

Q. After the taking and -- in the after, post taking of the property and once construction begins is there any configuration of signage that you as the landowner thinks will give as much visibility?

A. No.

Q. And why is that?

A. Because where am I going to put it? I am going to have to be -- I am going to have to take it out of its current location.

The only alternative is to take that post, move it, put in well within the right-of-way, well within whatever code says a sign needs to be off the right-of-way, and then again, presented with the trees how are you going to see it? Between the trees and the roof you are not going to see it.

Q. Okay. Mr. McAdory, you are losing approximately an additional 17 feet in depth off the front of the property, correct?

A. Yes, I am.

Q. And are you aware of the current setbacks of the property?

A. Yes.

Q. And what are they?

A. Fifteen foot from the front, twenty-five foot from the

rear.
Q. And that is 15 foot what; what -- can you do anything in the 15 feet?
A. No, it has to be a I think they call it a landscaped vegetated buffer.
Q. Before the taking by the County did your property comply with the current minimum setbacks?
A. Yes, it is currently 20-plus feet away from the property line.
Q. Okay. And after the taking and once construction begins by the County will your property comply with the minimum setbacks?
A. No, it will be what I guess they would call a nonconforming. It is only going to six feet from the property line.
Q. And after the taking and once construction begins do you know when and at what point the setbacks will kick in?
A. If the building is ever removed or if the building goes vacant for more than one year.
Q. What happens if the building is ever removed?
A. It will have to -- it will have to be moved back and fall within the new setbacks.
Q. Of 15 feet from the right-of-way?
A. Of 15 feet from the right-of-way.
Q. Okay. And if ---

A. That is if however if the building is configured that is 15 feet vegetated buffer. If anybody wants to have parking in the front then obviously the building goes further back than that.
Q. Okay. And you said if you are not able to lease the property in a year the setbacks kick in?
A. Yes. If I do not lease the property within one year all of the setbacks kick in.
Q. And what happens to you as the landowner if the building is destroyed if you don't lease the property within one year?
A. I would lose -- I would lose a tenant. I would lose the ability to generate income. I would lose money. It leaves me with in an uncertain future.
Q. And as a landowner you have a mortgage, correct?
A. Yes, I do.
Q. And if you aren't generating income can you pay your mortgage?
A. No.
Q. Can you pay your taxes?
A. No.
Q. And can you pay your insurance?
A. No.
Q. Okay. As the landowner did you attempt to correct the problems caused by the taking in anticipation of the

construction to begin?
A. Yes, we consulted with a commercial building contractor that specializes in metal building ---
MR. FERRARA: Objection, Your Honor.
THE COURT: Basis?
MR. FERRARA: Hearsay.
THE COURT: Please approach.
(WHEREUPON, bench conference 5:21 p.m.)
THE COURT: Sustained. Hearsay. Rephrase.
MS. WALSH: Okay.
BY MS. WALSH:
Q. Mr. McAdory, as the landowner did you have any opinion on how you could correct the problems that you have raised regarding the parking, the loss of signage, and the loss of depth?
A. Yes, as our first thought -- I don't know how -- the way you can depict from this picture. That is kind of I guess a two-stage building. There is a lower -- a lower roof. And then as you can see, there is another upper roof. The lower roof is the office area, slash, waiting lounge, slash, parts area.
The upper raised roof area is just a 20 -- or 40 by 40 square shop. Our first thought was we are going to lose all of our parking in the front and then we are going to lose our sign.

So my first thought was to remove the office off the front, move it to the back of the building. That gives me my parking back. That gives me enough space to basically put that pedestal sign not where it is at but in the same location just further back and it fit the right-of-way. And it gave me my parking.

Q. So you were going to move the office to the rear?

A. Yeah, we were basically just going to take the office off the front and put it on the rear. I guess they would call it leapfrog the building. Leave the shop where it is at; office off the front, put it to the back.

Q. So then how would you access the repair shop?

A. Well, that was a problem. When I fixed the parking problem it now created an access problem to the back of the shop.

Q. Please elaborate.

A. Well, as one of the pictures that you showed showed the back of the building with only one door. It now has two doors. That is how we access the building.

So if I take the office off the front and put it on the back, that obviously conflicts with our vehicle flow. We can't get the vehicles in and out if we put an office on the back.

The only way to solve that would be to put -- to kind of flip the shop and put the garage -- garage doors on the

front. We have got to get in and out of the shop.

So then again, there goes my front parking that I just created. So in the end it just -- it wasn't a viable option.

Q. Mr. McAdory, as the landowner you testified that your tenant was going to move out; is that -- is that a fair ---

A. That is correct.

Q. --- characterization? What are your plans for the property after the tenant moves out?

A. I have no plans. I don't know what I am going to be able to do with it. My hopes is is that I can sell it. I just -- I want to get -- I need -- I just want to get out of it. I need to sell it.

Q. When is the tenant moving out of the property?

A. Planned forecasted for the beginning of January.

Q. Is that a definite move out date?

A. It is close. But we -- there's contractors doing work over there. So it is going to be iffy. But we are shooting for the 1st of January. But it's not definite. But it should be around January.

Q. So just -- just to understand -- and we are almost done. It is your opinion that the highest and best use before the taking of your property by the County was an auto repair shop?

A. Yes.

Q. Okay. And it is your opinion if I understand your testimony correctly that the highest and best use after the taking by the County is not going to be for an auto repair shop?
A. No, if I can't use it -- you know, if -- if it can't be used for an automotive business by Lex-Tech Automotive, I can't rent it to another shop or someone else to run as a garage. I can't sell it to someone else to run it as a garage. If it doesn't work for Lex-Tech Automotive it is not going to work for someone else.
Q. Okay. Mr. McAdory, what do you think in your opinion as the landowner your property was worth before the taking?
A. Three hundred and seventy-five thousand dollars.
Q. And where do you get that number?
A. That was the amount that I purchased it for. When I purchased the property and obtained a mortgage the bank hired an appraiser. The bank appraisal came back at 375,000. That's what I paid. I believe fair market value is $375,000.
Q. And what do you think the property is worth after the taking?
A. After the taking I believe the property is just as the County states, $225,000.
Q. And how much do you as the landowner believe the County should pay you as just compensation?

A. The difference of 375 minus 225 which is 150,000.
Q. And would just compensation in the amount of $150,000 make you whole in your opinion as the landowner?
A. Yes, it would.
Q. And does this value of just compensation reflect your opinion as to the date of condemnation of July 11th, 2012?
A. Yes, it does.
Q. And do you believe that the improvements and outfittings to the building benefited you as the landowner?
A. Yes.
Q. And do you think the improvements and outfits that you did -- that were performed on the building add value to your property?
A. Yes.

MS. WALSH: May I have a moment, Your Honor?

THE COURT: Uh-huh.

MS. WALSH: Your Honor, thank you for the court's patience. We have no further questions.

THE COURT: Madam Forelady, ladies and gentlemen, we are going to take advantage of this break in testimony to take our evening recess. During the break please do not discuss the case in any manner whatsoever.

Please do not do any independent research of any type. That includes anything that could be found on the internet.

As the fact finders you are bound to decide this case

according to the sworn testimony that you have heard and the other exhibits that have been or may be introduced during the course of this trial.

We are going to resume in the morning at 9:30. And we will -- you will come directly to your jury room just as you did after lunch today. And I am sure the bailiffs have already shown you how to do that.

Again, please don't have any contact with anyone in or about the courthouse. Even an innocent conversation could be very easily misinterpreted. Because people look very different in the courtroom than they look outside the courtroom.

I don't know if you have noticed these little bubbles that are everywhere. Those are cameras, very high-definition cameras that record everything we do, almost -- this building I think is, what, 177,000 square feet. Almost all of it is recorded included the elevators.

I would hate to tell you how many videos I have had to watch to try to interpret what people are saying to one another.

There is a heightened level - I would like to say it in a more delicate way - a paranoia when people are trying cases and when advocacy is involved. And so the best route is to only talk to people who have juror stickers on. Especially with the advent of Smartphones you never know who

is recording you.

And so I again I would hate for a very innocent conversation to be misinterpreted because of that heightened scrutiny that happens during the litigation process.

I don't think there are any media accounts about this case. So I don't think you have to guard yourselves in any particularly way regarding the newspaper, radio or Internet or the local news.

You all have been incredibly patient with us. Today is our Monday. Mondays are typically a little rocky. Some Mondays go better than others.

But you all have been very generous with your time with us, and we appreciate your patience. Please know that we do not take your time for granted. We could not have jury trials without you all really being willing to donate your time to us.

Again, we will resume in the morning at 9:30. Have a great evening. If you would leave your notepads in your seats we will collect them and secure those during the evening recess. You can leave those as well. We will take care of them.

Thank you so very much. Have a good evening.

(WHEREUPON, jurors exits courtroom.)

THE COURT: You may be seated. Is there anything before we adjourn for the evening, from the landowner?

MR. MURPHY: Nothing, Your Honor.
THE COURT: From the County?
MR. FERRARA: Nothing, Your Honor.
THE COURT: Okay. We will resume in the morning at 9:30.
Sir, during this break please do not discuss your testimony with anyone. We will resume your cross-examination in the morning at 9:30.
Have a good evening. You all can leave your things in the courtroom if you would like.
MR. FERRARA: Thank you.
THE COURT: It is secure. Nobody is going to touch anything. And we clean during the day. So there is no cleaning crew that comes in in the evening. So don't tote anything unless you just want to.
(WHEREUON, recess October 16, 2013, 5:27 p.m.)
(October 17, 2013)
THE COURT: All right. Is the landowner ready to proceed?
MR. MURPHY: We are, Your Honor.
THE COURT: Is the County ready to proceed?
MR. MITCHELL: Yes, Your Honor.
MR. FERRARA: Yes.
THE COURT: Please bring in the jury, Mr. Rivers.
Mr. McAdory, if you will retake the stand I will remind

you you are still under oath.

(WHEREUPON, the jury enters the courtroom at approximately 9:41 a.m.)

THE COURT: Ladies and gentlemen, I hope that you all had a pleasant and restful evening. We are now going to resume the cross-examination of the witness.

Mr. -- or Mr. Mitchell, you may proceed.

MR. MITCHELL: Thank you, Your Honor. May it please the court.

THE COURT: Yes, sir, you may proceed.

CROSS-EXAMINATION BY MR. MITCHELL OF MR. MCADORY:

Q. Good morning, Mr. McAdory.

A. Good morning. I know we briefly spoke. And let me reintroduce myself quickly. My name is Brad Mitchell. I am an assistant county attorney in Charleston County.

Now yesterday you gave some testimony. One of the things you testified to was that the pictures that were shown up here by Ms. Walsh that you actually took those photographs. But in a deposition less than a month ago you said your wife took those photographs. Which person took those photographs?

A. My wife took them beside me. She is the photog in the family, not me. She knows how to operate the camera better than I do.

Q. But your testimony was that you took the pictures,

correct?
A. Yes, I guess I said yes.
Q. Additionally yesterday during your testimony you testified that yourself personally and Lex-Tech Automotive were signers to the mortgage; is that correct?
A. Yes, we are both Lex-Tech Automotive and Glen McAdory are also on note with BB&T for 873 Folly Road.
Q. Have you seen the mortgage?
A. No, I probably -- I am sure I had a HUD statement or a closing -- I know I have a closing statement. I can't say that I have seen the mortgage. That is something I guess the closing attorney would file with the county, and I would have no reason to see that.
Q. Quickly let's take a look at the mortgage here. And can you read -- turn around. Can you read who is on that mortgage? There is the button.
A. It says Lex-Tech Automotive.
Q. And can you point out where it sayings Walter G. McAdory?
A. I don't see it on any of those lines.
Q. And just real quick because I don't want to belabor this point to much. Is this your signature on the back?
A. Yes, to the far right; yes, it is.
Q. And below your signature does it say president?
A. Yes, it does.

Q. So you signed that as the president of Lex-Tech, not as Walter G. McAdory?
A. Okay. Yes, sir.
Q. In fact, you are not on the mortgage, Lex-Tech is; is that correct?
A. No, as I understand it I am responsible as Glen McAdory and Lex-Tech Automotive is also responsible.
Q. Okay. Thank you. Let's talk about Exhibit 17. This is where you are claiming that you have six parking spaces; is that correct?
A. Yes, sir.
Q. Now can you point out the six parking spaces. Because when I customarily pull into a business I don't put my car in the back of a lot to have somebody pull in front of me and I can't leave.
A. Right, those are vehicle that we actually will park there towards the end of the afternoon. People come in. Typically the front of the lot is the empty. That is where customers come. We make the repairs.

When we are done with the vehicles we park what we call ready vehicles in the front of the building so that customers can come in the office, do their business in the office, walk out the front door, drive in their vehicle, have -- drive right out.

Q. But still not ---

A. The customers are not in the back of property.
Q. It is still not six parking spaces; you just have five cars parked there; is that correct?
A. Well, obviously if you backed another car there that would be an available six.
Q. Okay, let's move on to your damages. Yesterday you testified that the -- you believe the property in the before was worth $375,000; is that correct?
A. Correct. Yes, sir, it is.
Q. Now of that $375,000 how far is that apportioned out; do you remember?
A. I do not know though.
Q. Well, according to the appraisal by the financing institution that you mentioned yesterday ---
A. Yes, sir.
Q. --- it does give a value to the land - and I am going call that the dirt.
A. Okay.
Q. It simplifies. And it gives a value to the building. It gives a value to the land of $280,000 and a value to the building of $95,000; isn't that correct?
A. I don't have the appraisal if front of me. But I am sure it has it. I don't know how to parse it out one for one. To me it is the entire piece of property $375,000.
Q. So what are your damages then?

A. The damages are I paid 375, it is now worth according to the County $275,000. I cannot operate my -- I cannot operate -- Lex-Tech Automotive cannot operate in that building. That building now is not usable.

Q. Now, $225,000. I think you might have said 275, but I believe it was $225,000.

A. You are correct.

Q. Do you know how Mr. Carter did that appraisal that you are relying on, how you come about to that number?

A. No, sir, I do not.

Q. It's he just appraised it as the dirt value, correct?

A. I do not know that.

Q. He does not apportion a building value because he just looked at the land, correct?

A. I am not an appraiser. I don't know how that was come to.

MR. MITCHELL: Your Honor, I am going to need to use the board. Do you mind if I approach?

THE COURT: That's fine.

BY MR. MITCHELL:

Q. If you can turn around, Mr. McAdory. Let's go over some quick math. I will try not to bore everyone. If it is gets too complicated I myself might get lost. So let's keep it basic like you did yesterday.

You have $375,000 in the before, correct?

A. Yes.
Q. And you just subtracted out the $225,000 in the after, correct?
A. Correct. Yes, sir.
Q. And that gets you to the $150,000 that you believe is owed to you as just compensation?
A. Yes, sir.
Q. Now what we just talked about is how that 375 was apportioned out?
A. Yes, sir.
Q. Correct?
A. Yes, sir.
Q. Your appraiser -- or the bank's appraiser came out with a land value of 280,000. More importantly he comes out with a building value of 95,000.

Now let's break down this 150,000. Which portion goes to the dirt value and which portion goes to the building value?
A. After the taking the building has no value.
Q. The building has no value?
A. The building has no value.
Q. So do you know how much dirt we took, Mr. McAdory?
A. Twelve hundred and seventy-seven square feet.
Q. Twelve hundred and eighty- ---
A. I'm sorry.

Q. --- seven, right?
A. Twelve hundred and eighty-seven square feet.
Q. Feet square. Does it surprise you that Mr. Crider actually assigned a square footage value to come up with his value of $25 a square foot?
A. I am not sure how the appraisal -- I don't have the appraisal -- it has been years since I have looked at an appraisal. I don't know how it is broken down.
Q. Additionally the appraisal for the bank said the dirt itself is worth $25 a square foot.
A. Okay.
Q. Okay. That's how that gets to this 225. So what you are telling me is that this is just the value of the dirt of this 1,287 square feet?
A. What I am telling you is that after the taking the building has no value. The building is now after the taking and after the tenant leaves the building is now a liability; it is not an asset.

I cannot use the building. I can't rent it. It is going to be difficult to sell. I am going to still have to pay taxes on it. I am still going to have to pay insurance on it. I am still going to have to make the premium. But yet I am not going to be able to have a tenant.
Q. Yes, sir, I understand that. So you are saying the building value is now zero?

A. Correct, after the taking and after the tenant leaves. The taking has already happened. The tenant leaves in roughly January.
Q. So this $150,000 represents how much of the value -- represent the value of the dirt that we took, that 1,287 square feet; is that correct?
A. Yes, but I am not assigning that 150 value to the value of the dirt. I am assigning that value to the after the taking worth of the property. The building is no longer worth anything. It can't house a garage. It was built and outfitted to be a garage. It can no longer be used as a garage any longer.
Q. Absolutely. I understand. Zero dollar value, that is what you are assigning it has ---
A. It has zero dollar value. It is a liability now. It is not an asset.
Q. So this $150,000 represents the value of the taking of this dirt; if we do the math, that is above $25 a square foot; so what you are actually testifying to is that after the taking the dirt value, the square foot value of the dirt, actually increases almost exponentially; correct?
A. You are twisting it around.
Q. Then straighten me out.
A. You are twisting it around. I'm -- what I am saying is after the taking and after the tenant leaves, the building

has no value. I paid -- I didn't buy the property in an overinflated market and fall on hard times and have to sell the property at a reduced rate. If that were the case then I would expect as anyone would to take a loss.

The County has come in. They have taken my property. And now what am I going to do -- I didn't ask for -- I didn't cause this problem. The County came in and took my property. So now I've bought a property that I was going to hang on to for 15 years, run an automotive repair business out of, and now I can't do that.

I am forced to leave. I can't have a tenant. I made a substantial investment above the 375 to get the place outfitted to house the garage that was going to be there for 15 years. Now I can't have the garage there because of the taking. So now I am stuck with a piece of dirt that has no value. Or the building has no value. The dirt.

I think in my professional -- or not professional opinion. In my opinion as the landowner, that after the taking -- the taking has already happened. The tenant leave. The construction equipment shows up. I can't sell it. I can't rent it. The business has no value.

I think and believe as the landowner that the dirt would be easier to sell for 225,000 with the building removed because the building is a liability.

I have still got to do the maintenance and upkeep

whether it is rented or not, whether it has a tenant or not. I have still got to pay the taxes. I have still got to pay the insurance on it. The bank is going to make me pay insurance whether it has a tenant or not. If it's -- if there is no building there, I don't have to pay insurance. The bank can't make me pay insurance on dirt.

Q. So you are saying that $150,000 that represents that taking of 1,287 square feet now increases the value of the dirt ---

A. What I am saying is you guys have damaged me. I want $150,000.

Q. And that is what we are trying to get to, the damages, Mr. McAdory.

A. I'm not asking for -- and actually I am not -- I am not asking for the monies that I have had to spend to move Lex-Tech Automotive to another facility. That was an expense incurred because of the taking of the property.

Q. And ---

A. I am not asking for damages. I am not asking for the extra tens of thousands of dollars that I put into this place above the 375 to get it outfitted as a garage. I am not trying to be greedy. I am not trying to ask for more than what I think I am owed.

I think 150,000, 375. Your appraiser says it is 225. Yeah, he thinks there is a building on it and that has

value. The building has no value after the taking and after the tenant moves out.
Q. Well, let's get to the how you figure your building has no value. Yesterday you used a term which usually appraisers use. It is called highest and best use. And you testify the highest and best use for the property in the before was as a garage; is that correct?
A. That is what it is outfitted. That is what it was originally built for. That is what it is now outfitted for is a garage.
Q. What criteria did you use to determine that?
A. Because it is a what we would call a butler style building. It is a small office in the front. It has a large raised elevated shop area. It allows for car lifts. It had a door on the back. We added another door to make it more usable friendly. It is an automotive repair shop. That is how it is rigged. That is how it is wired.
Q. So if the original owner had built a hotdog stand on it then your contention would be the highest and best use is as a hotdog stand; is that correct?
A. I think to sell hotdog is a little different than to rebuilt engines in vehicles. There is a little more space and logistics involved in working and services cars than it is boiling hotdogs.
Q. Now let's talk about your highest and best use in the

after. You've never come out and said what that was. You just said it is not a garage.

A. Okay.

Q. So what is the highest and best use in the after?

A. Zero.

Q. I am talking about what the highest and best use. Not what the value is. What is the highest and best use ---

A. After ---

Q. --- of the property?

A. --- the taking?

Q. Yes, sir.

A. Zero. It has no value. It is built and outfitted as a garage. After the taking and after the tenant leaves, the building has no value. Someone can come in and possibly rent it for a very reduced rate, whatever it be.

Maybe it is a Pappa Johns or a Dominos or a florist. Somebody is going to have to come in and make a substantial investment in the property to change it to meet whatever needs it may be.

Q. And what rate do you think that would be if they had to rent it?

A. Seventeen hundred dollars a month rent I think would be the max rent that that place would pull. And I come to that because I consulted with a commercial real estate broker and said, hey, if -- and I explained to him about the loss of

signage and the loss of parking. And I said what can I rent this for or what could I sell it for.

He -- whatever -- however they come up with value, he said Glen, he said I think I can -- maximum would be $1,700 of rent -- a month in rent, and if you do whatever formulate -- formula they use to come to a total value. He came up with $224,000 as the value of the property, meaning the place.

Q. You mean the dirt?

A. I couldn't -- no, the place. If I can rent it for 1,700 -- obviously they are not going to rent dirt.

Q. So the building ---

A. He came -- anyway he came to a conclusion it was worth $224,000. I am like wow, the County says it is worth 225. I have got two independent people giving me about the same number. How can I argue with that.

Q. Is -- who is this appraiser -- or ---

A. It was -- I believe it was ---

Q. Well, how about this. We will make it easy. Is that person in this courtroom anywhere?

A. No.

Q. Okay. Now, if somebody is going to rent property there's not going -- they are not -- they are going to rent for use of the building, correct?

A. Yeah, they are not going to ---

Q. So that building ---
A. --- come in and rent the dirt.
Q. --- does have value, correct; you put -- placed that value of $1,700 a month on that, correct?
A. That is what I was -- or when I asked I was told that would be the maximum place -- or amount of rent that I could receive.

MR. MITCHELL: Thank you, Your Honor. I have no other questions.

THE COURT: Any redirect of the witness?

MS. WALSH: No further questions, Your Honor.

THE COURT: Sir, you may step down.

THE COURT: Anything further from the landowner?

MR. MURPHY: Nothing, Your Honor. We rest.

THE COURT: Madam Forelady, ladies and gentlemen, the landowner has rested its case. There are some motions and matters of law that I need to take up outside of your presence. During this break please do not discuss the case in any manner whatsoever. And please leave your notepads in your seats.

We should be out fairly briefly after which we will proceed with the County's presentation. If you would go with the bailiffs.

(WHEREUPON, the jury exits the courtroom at 9:58 a.m.)

THE COURT: You may be seated. The landowner has

rested. Are there any motions?

MR. MURPHY: Yes, Your Honor. For the record -- and I realize it is kind of odd in a condemnation case given the dynamics. But we move for a directed verdict in the amount of $150,000 in favor of the landowner since that was the only testimony that has been proffered at this point and there has been nothing to contest that amount of just compensation.

THE COURT: Any response from the County?

MR. FERRARA: Yes, Your Honor.

THE COURT: You may proceed.

MR. FERRARA: Well, first of all the landowner testified that the fair market value is $150,000 for the lot because the building has no value. But then he turns around and says but I can rent it for $1,700 a month and no one is going to rent dirt so $1,700 a month includes renting the dirt and the building so the lot does have value. So the methodology that the landowner proposed to the court and to the jurors is flawed.

Then he says well he can sell the lot for $225,000 but then the highest and best use of the property is zero. So based on methodology that the landowner uses to arrive at this value of $150,000 is flawed.

The County hasn't presented any evidence because we haven't put up our appraiser to refute this absurd, flawed

methodology to arrive at a value of $150,000.

The standard for a directed verdict, Your Honor, is whether there is any evidence supporting the County's position in the matter. And you must view that evidence and all reasonable inferences in the light most favorable to Charleston County.

Our evidence is what we presented through Peter Valiquette and what you have heard from the landowner. Our evidence is that the County took 1,287 square feet but there's a reasonable per square foot value of 825 dollars. You arrive at $31,000 dollars in value of the dirt taken. And that's in conformance with the statute.

The statute also allows any reduction in value to the remainder. The County cost - it cured the cost for the termination of the parking up front at a cost of $15,000. The County cured the cost of the sign for a cost of 4,500. The County tendered a total of 31,000 -- 19,000 -- I mean 15,000 plus 4,500 into the court, 51,560 which this gentleman has had the benefit of, walked away with it to buy a new building or do whatever.

But back to the methodology of how you arrive at his value of $150,000 is flawed. And he said when Mr. Mitchell asked him a question, how did -- what is the $225,000 that you deduct from the 375 what does that represent? He said I don't know.

Mr. Mitchell said do you understand that's just the dirt value. He said I'm not an appraiser; I do not know how Crider appraised the property. Yet he is giving a value of the fair market value of the property.

Your Honor, there's -- the evidence is flawed. The evidence is not there to support McAdory's value of $150,000. So with that we ask that you deny the motion for the directed verdict, allow us to put up the appraiser so the appraiser can tell the court, tell the jury accurately with expertise what the just amount -- the amount of just compensation is and how the jury should determine the amount of just compensation.

THE COURT: Anything further from the landowner?

MR. MURPHY: Your Honor, we would also just renew our objection for your limiting instruction with regard to Mr. McAdory testifying about how the improvements enhanced the value of the property.

THE COURT: I'm sorry, I didn't hear you.

MR. MURPHY: We would just renew our objections with regard to the court's instructions limiting Mr. McAdory from testifying about how the improvements enhance the value of his property.

THE COURT: I didn't limit him in discussing the enhancements. He discussed those. I just limited any dollar amount because he is not entitled to a dollar for

dollar reimbursement.

MR. MURPHY: I stand corrected. With regard to the dollar amount we just renew our objections, Your Honor.

THE COURT: The court stands by its earlier ruling on the evidentiary issue as the landowner's position is not supported by black letter precedent.

The court allowed him to testify regarding any enhancements or updating that he provided to the building as it was relevant on the issue of the highest and best use of the property and his lay opinion as the landowner.

Any dollar for dollar amounts were not relevant and would mislead the jury, were more prejudicial than probative. As under case law any sort of real estate evaluation formula he is not entitled to a dollar for dollar reimbursement of those upfits. He is entitled to the fair market value of the property, any diminution in addition to his remainder and any benefits provided pursuant to 28-2-360 as defined by 28-2-370.

In considering a motion for directed verdict the court looks at the evidence in the light most favorable to nonmoving party. If there exists any questions of facts those are to be resolved by the jury and if those questions of facts were susceptible to more than one inference.

The motion is denied. Clearly the landowner pursuant to statute is entitled to compensation as a matter of law.

However, the amount of just compensation pursuant to 28-2-370 is clearly a question of fact to be resolved by the jury.

Are we ready to proceed?

MR. MURPHY: Yes Your Honor.

MR. FERRARA: Yes, Your Honor we are.

THE COURT: Please bring in the jury.

THE COURT: I need to ask a question while they are bringing in the jury. What is the -- and we have used these numbers several times. I want to make sure that my notes are accurate.

Mr. Rivers, please close that door for me.

(Mr. Rivers complied.)

THE COURT: Thank you, sir.

It is my understanding that the total size of this parcel before the taking was 1,164 square feet or point -- 0.5424 acres.

MR. MURPHY: It was 11,064 square feet.

THE COURT: I'm sorry, did I say one thousand one hundred ---

MR. FERRARA: Yes.

THE COURT: I mean to say ---

MR. FERRARA: Eleven thousand sixty-four square feet.

THE COURT: Eleven thousand sixty-four square feet.

MR. FERRARA: Or .254 acres.

THE COURT: Wait one second. .254 acres. And what is it after the taking?

MR. FERRARA: After the taking it is .224 acres.

THE COURT: And how many square feet?

Don't let them in here.

MR. FERRARA: If you will -- 9,777 square feet.

THE COURT: Nine thousand seven hundred and seventy-four square feet?

MR. FERRARA: Seventy-seven.

MR. MURPHY: Seventy-seven.

THE COURT: Seventy-seven square feet. So it is 9,777 square feet after?

MR. FERRARA: Yes, ma'am.

THE COURT: Eleven thousand sixty-four before?

MR. FERRARA: Yes, ma'am.

THE COURT: Point-two-five-four acres before and point-two-two-four after?

MR. FERRARA: Yes, ma'am.

THE COURT: Okay. I needed to make sure those figures were accurate. Thank you so much.

You may bring them in if they are out there, Mr. Rivers.

(WHEREUPON, the jury enters the courtroom at approximately 10:08 a.m.)

THE CLERK: All jurors are present, Your Honor.

THE COURT: You may be seated. Ladies and gentlemen, we will now resume testimony. The County may proceed.

MR. MITCHELL: Thank you, Your Honor. The County would like to call Mr. Charles M. Crider to the stand.

THE COURT: Sir, if you would come to the stand to be sworn.

CHARLES CRIDER, having first been duly sworn, testified as follows:

THE CLERK: State your full name, sir, when you are seated and spell your last.

THE WITNESS: Charles Franklin Crider, C-R-I-D-E-R.

THE COURT: You may proceed.

MR. MITCHELL: Thank you, Your Honor.

THE COURT: You are welcome.

DIRECT EXAMINATION BY MR. MITCHELL OF MR. CRIDER:

Q. Mr. Crider, can you briefly introduce yourself to the jury.

A. Yes. My name is Chuck Crider. I am a real estate appraiser, Counselor, of real estate as well as an educator of real estate courses and materials.

I currently live in Simpsonville, South Carolina, but grew up right here over on James Island and lived here all my life up until the time I graduated from the Citadel and moved up.

Q. And why are you here today?
A. I have been asked to opine as far as the valuation of a piece of property over on Folly Road. It is not a voluntary thing. I am actually under subpoena to be here. So I guess the answer to your question is I have to.
Q. Fair enough. Let's talk about your educational background. Can you talk to us about high school and on past that?
A. As I mentioned, I grew up over on James Island back when there was a Fort Johnson High School. I went there. And like I said, lived there. Graduated from the Citadel. At that time my parents moved up to Greenville.

And after graduating from the Citadel I went to work with other companies and moved to various places and ultimately went to work with my dad in Greenville as a real estate appraiser.
Q. And can you talk to us a little about your professional education?
A. I when I decided to become an appraiser my actually I guess you would call him my God father lives here in Greenville and he is also an appraiser -- oh, I'm sorry in Charleston. He is also an appraiser.

At that time the University of Florida was starting a program for receiving the MAI designation. It was the only program that was available at the time at the college -- or

graduate level.

So I decided to go back to school. And I got my master's degree from the University of Florida with a concentration in real estate and urban analysis and ultimately performed a demonstration report which is basically the same thing as a thesis as far as real estate is concerned.

Took the comprehensive examine which is a two-day four-part exam, format wise similar to the Bar or the CPA exam and after being reviewed and critiqued by my peers received the MAI designation.

Q. Does that designation do anything for you?

A. It is -- it is the highest designation that an appraiser can achieve. I don't want to imply I am the only one that has that designation. There are many here in Charleston as well.

But it is a very prestigious I believe designation that an appraiser can achieve. And it is the highest designation that they can achieve.

Q. Is there any other certificate you hold?

A. I am a certified general designation from the State of South Carolina which again is the highest designation an appraiser can get from the State. I am also a real estate broker.

Q. Okay. I understand the highest real estate thing. But

can you appraise residential property?
A. Yes.
Q. Can you appraise commercial property?
A. Yes.
Q. Is there any property in the State of South Carolina you cannot appraise?
A. Given competency - and that is always a criteria - no there would not be. Again, given competency.
Q. Another unique thing about you is your teaching experience. Can you tell us about that?
A. I have always had a passion for teaching. I have got two daughters right now studying to be teachers. I have been an adjunct professor at Clemson University teaching in the areas of real estate, real estate appraiser, specifically as well as real estate finance.

I currently am an instructor at Greenville Tech where I teach the introductory appraisal courses. I teach for the Appraisal Institute and the Appraisal Qualification's Board and the Appraisal Standard's Board. And for the Standard's Board I teach the ethics class that all real estate appraisers must adhere to.
Q. You mentioned this API or Appraisal Institute. What is that?
A. The Appraisal Institute is the world leader in providing appraisal education. And that is who provides the

MAI designation.

Q. Okay. Have you ever been qualified as an expert before?

A. I have been qualified in both state and federal courts as an expert witness, yes.

Q. Are you familiar with the Charleston area?

A. Again having grown up here or on James Island actually, I lived Fort Johnson Estates and then ultimately Stiles Point. My wife and I used to ride horses actually on Folly Road.

Q. Did you not work at the Bradley Hess Station on Folly Road?

A. Yes, I did.

Q. That was just down the street from where this property is at; is that right?

A. Yes, that was before the Connecter and before everybody else moved to James Island, yes.

MR. MITCHELL: Your Honor, we would like to tender Mr. Crider as an expert in real estate -- in real estate appraisal.

THE COURT: Any objection?

MR. MURPHY: No objection.

THE COURT: So admitted.

MR. MITCHELL: Thank you, Your Honor.

BY MR. MITCHELL:

Q. Mr. Crider, let's get this out of way real quick. Are you being paid to be here?
A. Yes, I am.
Q. Do you know of any experts that volunteer their time to come testify in court?
A. No, sir.
Q. Now let's talk in general just about an appraisal. Can you tell us about what an appraisal is?
A. Generally speaking an appraisal is a process where a trained professional goes out and looks at a piece of property, walks through, measures, evaluate if you will the condition of the property, looks at things like highest and best use, considers comparable properties whether it be in form of sales or rental, and then ultimately value the property based upon that information and concludes their opinion as to what that property is worth.
Q. Is there a difference between like an appraisal for say like a bank and an appraisal in this case a condemnation or eminent domain?
A. There are a couple of differences I guess. In the -- in a bank appraisal we do exactly what I just described. You may have had one if you have refinanced or bought a home, the appraiser came out and gave their opinion of value.

In a condemnation or eminent domain type of appraisal

in the before, which is just basically the same as the bank appraises, one of two things happens. Either the entire property is valued, and if that's the case it is done exactly the same way as a bank appraisal. Or only the land portion is valued.

The way the requirements are for appraisers, an eminent domain is you either value the total before and the total after recognizing benefits or damages or you value part taking.

And so there are two possibilities of how to evaluate it in the before. The big difference is in the after and understanding how to consider value recognizing that now the road improvement or power line or sewer line or whatever it may be is in place and what's the impact on the remaining property.

Q. Now, I can't remember if we discussed this. Can you kind of teach us about fair market value. What is fair market value?

A. Fair market value is a term that appraisers recognize, the what a willing buyer and willing seller would buy or sell a property for in the open market each being knowledgeable and prudent, each acting in their own best interest and ultimately determining what the value of the property is.

And there's a small caveat to that. Because if there

wasn't, we wouldn't need appraisers. Sometimes buyers and sometimes sellers make mistakes. And that's why we have to have an appraisal, a third party if you will, to look at the market to determine if in fact that is the right price. Sometimes sellers sell too cheap. Sometimes buyers pay too much for property.

Q. Now we have thrown around these two terms. And I don't know if anybody has defined them. But when we are talking about in the before, what does that mean?

A. In the before is what the property looks at without the project whatever it would be being in place. So that's the before value. There is no in this case widening of Folly Road; there is no impact at all to the subject. What is its value as it sits today. That's the before.

Q. And when you say value you mean fair market value?

A. Fair market value, yes.

Q. And when you talk about in the after?

A. The after it's kind of unique to this process. There is a snapshot in time where we have the before value and literally that same instant the project is in place, the road widened, everything is down at that instant. And that's the difference that we talk about before minus after. They both happen simultaneously. That's how we come up with our opinion of what's shown paid to the landowners.

Q. Now when you are doing these appraisals there's three

different methods that you use; is that correct?
A. There potentially is, yes.
Q. And what are those three methods?
A. The three methods of valuation might be the cost approach, the sales comparison approach, and the income approach are the three methods of valuation. Not all are always necessary. But those are the three that are available to appraisers.
Q. And can you quickly discuss on the comparable approach - I think that is what you called it - what does that exactly deal with?
A. The sales comparison approach is looking at properties that are similar to the subject that have sold and what did the market pay for those properties. And we take those sales, compare that to our subject to get an indication of value.
Q. Now how about the cost approach?
A. The cost approach briefly is what it would cost to build a building knew and then depreciate it into its current state.
Q. And the income approach?
A. We look at comparable rentals of other properties in the market and what are they leasing for. We subtract from that rental income the expenses of owning real estate pursuant to that lease.

In other words, leases are different. In a house lease you are probably paying the taxes and the insurance if you are the landowner. And a commercial property it is not unusual for the landlord to pay virtually no expenses, minimal. And then we take that income that's left after the expenses and we turn that into value. It's what someone would pay to receive that income stream every month.

Q. Now I was just thinking about this while you were talking. On the comparable sales method how do you make those other properties out in the market, when they sell how do you make them similar to the subject property? When I say subject property I mean the property we are discussing.

A. You make adjustments to those sales. You again you are trying to make those comparables as similar as possible. And not all properties are created equal. Some have better access, some have worse. Some have more frontage. Some have less. There are differences in properties. And as a result of that we make adjustment to make them like the subject.

Q. And so adjustments can be like one lot is much larger than the other?

A. Potentially, yes.

Q. Like if one is on the corner versus this subject property not being on the corner?

A. Potentially, yes.

Q. Now when you look at these three methods inside your appraisal at the end of the day how do you decide which one to use?

A. It is based primarily on experience and training. You really have to understand the property and what you are trying to appraise and what's most effective in reflecting the value, or in this case the compensation that would be paid as a result of the acquisition.

Q. Okay. We are going the talk about another term I think was thrown around. It is called a cost to cure. Can you describe what a cost to cure is?

A. Sometimes when property is impacted by an acquisition something gets broke if you will and a cost to cure is a method of fixing that problem as it relates to the market for a commercial building or some other type of property. And the cost to cure is the cost that it takes to fix what has gone wrong as part of the acquisition.

Q. Now, during your appraisal process there is another one that's been thrown around here a lot here lately is highest and best use. What does that mean to you?

A. Highest and best use is the -- let me first start by saying there are two ways of looking at highest and best use. One as though vacant.

In other words, for just a moment we put our blinders on and we say that building is not there; it is vacant land.

And we evaluate all property. And it's a requirement for market value to evaluate the highest and best use as though vacant. That must be done.

The second analysis is the highest and best use as improved, and dependent upon the scope of the assignment that may also have to be considered.

In both scenarios we consider four criteria: what is legally possible, what is physically possible, what is financially feasible, and what is maximally productive. All four of those tests must be met for the highest and best use to be satisfied.

Q. Now the current use of the property, say there is a hotdog stand on it. Does that necessarily mean it is the highest and best use?

A. No.

Q. You still go through this analysis to determine what would best be on that property?

A. Yeah, the use that a property is being put to does not mean that that is the highest and best use of a property. That's what that particular person is using the property for. That does not mean it is the highest and best use.

Q. Now let's talk about the specific appraisal you did for this condemnation. Do you remember what the date of value of your appraisal was?

A. The date of value is the date of condemnation which is

July 11th of 2012.

Q. Now can you describe generally the Folly Road area.

A. I consider Folly Road basically when you come over the bridge. And I am talking about the Wappoo Cut bridge. Cross over Maybank Highway. There are banks. There are medical buildings based on built -- medical building right there as you come across.

There are older homes on the left-hand side. Many of them have been renovated inside into office space. There, going on down, are restaurants. There are convenience stores. It is a very developed area and very heavy travelled road.

Q. Now when you look at -- looked at property was there a legal nonconforming use in the before for the property?

A. Legal nonconforming use is a term that we talk about as part of highest and best use. When I said what's legally permissible, what would zoning allow. And the property in the before was a legal nonconforming use.

As the appraisal that I performed, just so you know on Page 3, I actually said it is a legal conforming use. But several other places within the report I point out it was a legal nonconforming use, and that just was a typo.

But as you heard, the engineer Peter -- like I don't know how to say his last name. Peter stated the side setback of the property was only about four feet from the

property line, and zoning requires that a minimum side setback of ten feet. So just that one issue by itself makes as property a legal nonconforming use.

Q. Now, the landowner you hear him testify that in the after the legal nonconforming use and then he went through all of the scenarios and how if the building got blown down and he had to redo it and that he didn't have a tenant for a year and he would have to go through rezoning and all that good stuff and have to abide by the setbacks.

Would he have to abide by the setbacks now if that same happened in the before?

A. Yeah, the -- I wasn't really clear on why he was saying that. Properties are grandfathered in as part of a legal nonconforming use. The use that a property is put to if it becomes a more intensive use there may be some additional requirements that would have to be adhered to.

But if you just look at the potential uses for the property as it relates to zoning it is zoned CC which is a commercial zoning classification by the Town of Mount Pleasant. I have got a list of potential uses ---

Q. Excuse me, Mr. Crider, you said Town of Mount Pleasant.

A. I'm sorry, the Town of James Island.

Q. Thank you.

A. The potential uses that range from manufacturing to wood furnishing to -- I mean I don't know many you want me

to read.
Q. But there's basically there's other permitted uses for the property in the commercial -- being in the commercial district; is that correct?
A. Yeah, just eyeballing 50, 60 different types of uses with the grandfathering of the nonconformities. So that's just not the case that they would have to tear down or move the building or anything like that.
Q. So long before the County showed up there ---
A. Right.
Q. --- if Mr. McAdory's building had been burned down would he have to conform to the new setbacks?
A. No, you can rebuild on the existing foundation. You can't increase the nonconformity. But you can rebuild what was there.
Q. In the after does that also hold true?
A. Yes.
Q. Now let's talk about what did -- what do you believe just compensation is in this case?
A. Fifty-one-thousand six-hundred-and-seventy dollars.
Q. Can you say that again?
A. Fifty-one-thousand six-hundred-and-seventy dollars.
Q. Now you got to that just compensation of $51,670?
A. Yes.
Q. You determine the before value. What was that before

fair market value?
A. The value of the site, the land, $276,600.
Q. And that was in the before, correct?
A. That is in the before, yes.
Q. And what was that number again?
A. Two hundred-and-seventy-six thousand six-hundred dollars. And that is land.
Q. Now, after the County took that portion up front -- I don't want to say took because we are paying -- acquired that portion up front, you also -- or your appraisal process assigned a fair market value to what was left over?
A. That is correct.
Q. And what was that value?
A. Two hundred-and-twenty-four thousand nine-hundred-and-thirty dollars was the after value. That after value has subtracted from it as well a cost to cure.

So if you just went back to the land -- so kind of compare apples and apples here. The actual value of the land that was left is $244,430. That's the land. And like I said, from that was the cost to cure.
Q. Now, sometimes I'm a little slow on the uptake. You said just compensation was the 51,000 number?
A. Fifty-one-thousand six-hundred-and-seventy dollar.
Q. So that $51,000 was comprised of the dirt value which was 31 -- 32,000?

A. Thirty-two-thousand one-hundred-and-seventy dollars. That is the value of the dirt if you will.
Q. Plus the cost of cure for the sign which was ...?
A. For the sign and the parking of 19,500. That's divided. Sign, $4,500. I got a sign estimate from a sign company, Mr. Sheffield. And he told me that $4,500 to fix the sign issue. And then a -- the parking issue to relocate the parking toward the rear of the building was an additional $15,000 for a total of 19,500 as the cost to cure.
Q. Now, you talked about the before value and your after fair market value, and you said that's a land only?
A. That's correct.
Q. Now but there is a building sitting on it. So why did you just go after the land only?
A. When you evaluate a property, first of all I go out there. I look at the plans. I visit the site. I go inside. I walk the area. And I look at what's being affected. The first thing I looked at is the building itself was not being hit by the right-of-way. Because sometimes that happens.
Q. When you say hit, what do you mean by that?
A. The right-of-way going through the middle of the building.
Q. So the County is not taking any part of the building?

A. No.
Q. Okay.
A. So that's the first thing you look at. You look at the plan sheets. You look at the property on the ground and determine first of all that the building itself was not being hit.

I then said well what is being affected as far as the building is concerned. And in this case it was primarily the parking but additionally the sign that needed to be cured.

And I look at is there a method to cure what is being taken for the market so that that building can live and continue to get rent and have value and the property can continue in existence. And in this case there was.

There was a sign estimate to fix it. I talked with the Town of James Island. And they told me how that could be configured. It is in my appraisal. And also that the parking could be relocated. And now that building can continue. That's step two.

Once that's realized -- I also quite frankly looked at where does the landowner get treated most fairly. It's possible that as part of an acquisition the value of the before minus the value of the after is zero.

If you have got a hundred acres of land and somebody takes two square feet, there is no real difference. Where

does the landowner get treated best.

And in this case because land values on Folly Road are $25 a square foot if I had looked at the total property value -- and there's evidence of this. The landowner would have received about $16,000 in compensation. That is the difference in the value of the before and the value of the after. In my case the way I did it he received $51,670 which I thought was fair.

Q. Now, as part of your appraisal amounts you look at the highest and best use of the property in the before.

THE COURT REPORTER: I'm sorry, Your Honor, I am having trouble hearing.

THE COURT: Mr. Mitchell, if you could speak up. The court reporter is having a problem hearing your questions.

MR. MITCHELL: Absolutely, Your Honor. I can speak up for you.

THE COURT: Thank you.

BY MR. MITCHELL:

Q. Now Mr. Crider, in the before you did a highest and best use analysis; correct?

A. That's correct.

Q. Can you talk us through that highest and best use analysis?

A. Sure. The same core criteria we just talked about. I looked at zoning, what was permitted to be used in the

property, what did the existing site have to offer as far as its physical location and physical size. Those are our first two criteria, legally permissible and physically possible.

And the third thing was financially feasible. And you look at Folly Road and you see the commercial development in the area, you see the new buildings where the Nason Centers have gone up, you look at where McDonald's relocated. And there is commercial activity.

There's no question that -- you wouldn't put a house on this site. So that leads us to a commercial use. And because of the potential for commercial construction, that became the financially feasible use.

Now you have to determine timing. Maximumly productive deals with timing as well. If you remember a year or two ago and even quite frankly today there is still a lot of uncertainty in the market. And investors don't like uncertainty. They don't like when we can't balance our budget or meet our debt ceiling. They don't like when financing is difficult to obtain. They don't like it when markets are uneasy or there is turmoil.

And things are only now starting to return to what I would call stability where an investor might look to now start building a new building. So it was my opinion the highest and best use as though vacant was a commercial use

which is consistent with everything else on Folly Road.
Q. Now when you say commercial use it could be an office, nail salon; any of those?
A. It could be, yes.
Q. Now, after you did your highest and best use analysis in the before, you did a sales comparison analysis; correct?
A. That is correct.
Q. Can you talk us through what you did there?
A. As I mentioned, I -- once you determine how you're going to value the property, in this case the primary consideration was land value.

I went to the market, if you will, and started doing research. And that's what this book represents is just most of the research that we did in finding availability land sales in the area.

I found the sale of Bojangles that is right down the street. It sold for about $34 a square foot. I found this sale right next door -- or just down the street of the Duncan Donuts. And after evaluating it, it sold for about $21 a square foot.

Went over to Maybank Highway and found the sale of another commercial property. And it sold for about $34 a square foot. And then I looked at the old McDonald's site. I still call it the old C&S Bank because that is where my mom used to work. But right kind of cattycorner -- where

the Nason building is right now. And that building obviously closed and was torn down and the new Nason Center built.

That land sale by itself sold after consideration of demolition of the old McDonald's for about $20 a square foot -- I'm sorry, for about $16 a square foot. I apologize. It's inferior than the subject because of the way they reconfigured Old Folly Road and Folly. You actually have a median that separates that.

So I made a positive adjustment to that to make it like the subject and ultimately concluded that the value of the subject site per square foot of land was $25 dollars per square foot.

Q. Now can you describe the acquisition by the County?

A. The area being acquired has previously been discussed. And I won't go too far into this. I know you have heard enough. Is across the front the property has about 60 feet of frontage across the front. And it's coming into the property to within about six feet of the building. That's the right-of-way now.

From the current road travelled area there's about five or six feet that the road itself is coming in. The present right-of-way if you happen to see a picture or if you go out there or whatever you are going to do, there's a telephone pole right in front of the subject property. And there is a

little grassy area where the asphalt starts on the building side of that telephone pole.

The present right of way is just inside that grassy area in front of the current telephone pole. That is where the present right of way is.

The road is moving to within that present area. Then you will have a bike path. And then you will have the sidewalk. And then there's about I think Peter testified about ten feet of open area to where the new right of way is going to be. And then it is about roughly six feet from that point over to the building.

Q. So now you have concluded that the value of the property that -- just the dirt is worth $25 a square foot?

A. Yes, sir.

Q. And you take that and you multiply it times how many square feet, and what number do you come out with?

A. When you say the square feet are you talking about the acquisition area or the total property?

Q. I am sorry. The total property.

A. The total property you get $276,600.

Q. And that is your before value that we discussed earlier?

A. That is correct.

Q. Okay. Now, let's talk about how you determined the after value. Can you talk us through your highest and best

use analysis in the after?

A. Again, I looked at was the building being affected, what was being acquired whether it was parking or what have you. And then I also looked at where the property owner would be most appropriately compensated.

And in that highest and best use it was apparent to me that that in valuing the building as it relates to market value - and that is so that building can survive - we needed to cure the sign issue. We needed to cure the parking issue. And that relates to physical, legal, financially feasible, and maximally productive uses of the site.

Q. And so your highest and best use opinion in the after is?

A. Is the same, a commercial utilization.

Q. As vacant, correct?

A. As though vacant, yes.

Q. Does that mean that he has to go tear down the building?

A. No.

Q. Now, you did -- did you do a completely different market or sales comparison approach?

A. The same sales used in the before were also used in the after to determine the value per square foot. So after the acquisition the land is still worth $25 a square foot. We didn't -- we didn't change that at all.

Q. So you took that $25 a square foot times the size of the remaining property -- remaining property?
A. That's correct.
Q. And you come up with an after value of?
A. It actually is $244,425. That is the land value. But methodology wise I have still got to -- everything has got to balance. So I have got a back page here that everything has to balance on. So I have to subtract from the land the cost to cure. That's mathematically the only way it would balance. But that doesn't mean the land is not worth 244. It is. But the cost to cure had to be subtracted from that.
Q. Now, you didn't mention using the cost approach. Why didn't you use the cost approach?
A. The building is almost 30 years old. Generally a cost approach on a building 30 years old is an exercise in mathematics. It just doesn't make sense.
Q. Now, you didn't mention you did an income approach.
A. No.
Q. Now why didn't you do the income approach?
A. Had I valued the property in its entirety in the before -- and I have looked at two income analysis. And I have, and I do have rentals in the area that -- that were considered.

Had I valued the property in its before in its entirety the property owner would have received about $16,000 for the

loss of 1,287 square feet, which is just not right. And that's why I just did the land value plus the cost to cure.

Q. Now, we mentioned an appraisal done for the bank ---

A. That's correct.

Q. --- to acquire the property or the mortgage for the property. Did you have a chance to look at that appraisal?

A. Yes, I did.

Q. Can you discuss your thoughts on that appraisal?

A. I know the appraiser that did it very well. We are very similar in our discussions of James Island. We are very consistent in our discussions of highest and best use for the property.

In fact, we are -- when I say very, we are the same. We are very consistent in our land value. He put $25 a square foot on the land. I put $25 a square foot on the land.

Q. No, whoa; wait a second. He put $25 a square foot on the land when he purchased the property?

A. That's correct.

Q. Isn't that what you put?

A. It's exactly the same.

Q. Okay.

A. And I saw his appraisal about three days ago maybe. So it is not like I saw his and did mine or he saw mine and did his. He did his two years or so before. So we are exactly

the same in that -- he -- he also did look at the property as improved. Because again he was doing it for the bank.

And he went through an income approach as part of that analysis. And I've gone through and looked at his income approach. And I've looked at the income that Mr. McAdory just testified to that I think it was Mr. Mizell told him, the $1,700 a month that could be generated. I compared that to the bank, financing, and the Mr. Mizell rental. And the difference is less than 14 -- about $1,400 a year difference in income.

If you convert that into value there's the $16,000 I was talking about. Because that's the total property value. That is what the bank financing looked at. That is kind of the before.

Mr. Mizell looked at it in the after and said I can rent it for $1,700 after. The difference in those before and the after is $16,000. And I just didn't think that was fair. Okay, that is why I did it my way.

Q. That's fine. When I go to talk to the car dealer I ask him what is my monthly payment going to be. So what does that break down into for the appraisal that he did for financing; did the appraiser discuss a monthly rental amount?

A. Yes, he did.

Q. And what was that amount?

A. It was around nine dollars a square foot for the building. I actually think you have my sheet of paper.
Q. Does that equate to about $1,800 a month?
A. Something like that, yeah.
Q. And that was before the County ---
A. That is correct. Yeah, his is a true before. He -- he -- that was a before.
Q. And in the after Mr. McAdory said he could get $1,700 a month out of it?
A. Right.
Q. So the value with his income approach didn't change from the before to the after, did it?
A. Sixteen thousand dollars is the value difference had we looked at the total property versus the way I did it with a land value plus the cost to cure.
MR. MITCHELL: Your Honor, the court's indulgence for a second?
THE COURT: Uh-huh.
(Pause.)
MR. MITCHELL: Just a few more questions and then I will shut up.
Q. You heard Mr. McAdory's testimony and you heard his methodology how he comes to value.
Mr. McAdory is not an appraiser. He doesn't profess to be an appraiser. He just -- somebody is trying to buy some

property to do -- to make some money off of it later.

Is there anything with his methodology that you have concern with?

A. He -- there's an apples and oranges kind of process. You can't do it one way in the before and say building and land and then another way in the after and just say land. You've got to be consistent in the way you approach value and the way you assign value to property. I just don't think he was consistent in that approach.

Q. Now when he testified that the building after the taking is worth zero dollars, that means the dirt value; because there's no longer building value, the dirt value is $150,000; is that correct?

A. No, that's not -- you are not exactly right in the way you are doing that.

Q. Then ---

A. I apologize.

Q. Then correct me, please.

A. The -- again, we are kind of mixing two different things. It's the before value minus the after value. And if we -- if we would look at it that way it would not have been most advantageous to the property owner.

In this case it was a strip take. It was -- it was $31,000 or something for the land. The building still has value. The realtor said so. Mr. McAdory thought he could

rent it for $1,700 a month. Nobody is renting the dirt for $1,700 a month. The building has value. And that's what we had to recognize.

If you do it with the building in the before, you have got to recognize it in the after the building is still there.

See, at the end of the day he still gets to go home and have the building and the remaining property that he is going to rent for $1,700 a month. And you can't ignore that.

MR. MITCHELL: Thank you, Mr. Crider. Your Honor, that concludes.

THE COURT: Any cross-examination of the witness?

MR. MURPHY: Yes. Thank you.

THE COURT: You may proceed.

CROSS-EXAMINATION BY MR. MURPHY OF MR. CRIDER:

Q. Good morning, Mr. Crider.

A. Good morning.

Q. If I understand you correctly when you talked about the $16,000 difference if you applied the income approach in the before and the after of the property is that what you were talking about?

A. Would you ask me again. I'm sorry.

Q. When you were talking about how you were doing the landowner a favor by not -- by appraising it this way you

talked about an alternative approach that you would have -- that would have ended up with a $16,000 difference; and what was that?

A. Yes, sir. Well, what I did -- and I didn't mean to say I would be doing him a favor. If that is the way it came out, I didn't mean it that way.

I thought it was most advantageous to do it the way I did. The basic way that I looked at it was the bank appraisal and how that appraisal was done.

In fact if you look at the exact numbers and got down to NOI you get a number. And I looked at the $1,700 a month that Mr. McAdory and Mr. Mizell said they could rent in the after.

So now I have got apart from me two different people, a bank appraiser and the property owner, saying here is what it could rent for.

And I took the difference in those two incomes, those net operating incomes after expenses and converted that into value. And it come out to around $16,000.

Q. Okay. And let's talk a little bit about the history of this property. This was purchased back in -- the former owner purchase the property back in 2005; is that correct?

A. Yes, that is correct.

Q. And it was purchased -- and it was purchased for a car title loan shop; is that correct?

A. That is what was there, yes.
Q. They paid $325,000 for this property; is that correct?
A. Land and building. That is correct.
Q. Okay. And at that point what was the highest and best use of the subject property?
MR. MITCHELL: Objection ---
A. Commercial
MR. MITCHELL: --- Your Honor.
(WHEREUPON, a bench conference was had.)
THE COURT: The objection is sustained. You may proceed.
Q. And did you do any research into that sale at all?
A. Other than to report it.
Q. And you could have used that sales comparable sale, couldn't you in this case?
A. For what? I don't ---
Q. No, you couldn't? Okay. And this comes down to about $29 a square foot?
A. Okay.
Q. And since that appraisal that property was purchased by Mr. McAdory in 2010, right?
A. That's correct.
Q. And he paid $375,000 for it?
A. That is correct.
Q. So between 2005 and 2010 we know the property

appreciated $50,000; is that correct?
A. We know two different people paid different amounts for the property. That's true, 50,000.
Q. And was the sale between Mr. McAdory and the former tenant an arm's length transaction?
A. Mr. McAdory tended to indicate that he thought it was, yes.
Q. Do you have any evidence to contest that it was not a fair market -- or an arm's length transaction?
A. I don't think he didn't tell the truth. I think he did.
Q. Okay. And if you -- that comes to about $33.89 per square foot using the 375 purchase price; is that correct?
A. I assume you are taking the purchase price dividing by the square footage of the building; it that what you are doing?
Q. I am taking the purchase price divided by the square footage of the land.
A. Why would you do that?
Q. Well, I get to ask the questions. If you could ---
A. I didn't mean to -- I didn't mean that to be ugly. It doesn't make sense. I don't ---
Q. Well, we know that he purchased this property to use as a garage; is that correct?
A. Yes, I believe that is true.

Q. And we know that when he purchased the property it needed to be -- improvements to be utilized as garage; is that correct?
A. I think that is why he bought it, yes.
Q. Okay. And have you seen these improvements?
A. Other than photographs, no.
Q. Okay. And have you been to the property since it has been improved?
A. Yes.
Q. And have you walked inside?
A. No, I have not.
Q. Okay. And do those improvements in your opinion contribute to the value of the property?
A. I can't answer that. I haven't been inside. I have only looked at pictures.
Q. That wasn't within the scope of your assignment?
A. I started this process before Mr. McAdory even bought the property. I went into the building and measured and walked the site back originally when it was owned by the title company is when I was looking.
Q. That's fair enough. But once Mr. McAdory did purchase the property and make the improvements did the County go back and ask you and say Mr. Crider they have changed the use, take a look and see if these improvements add to the value of the property?

A. No, the County at that time asked me to update. I am required to update the appraisal to the date of condemnation. And that's what I did.

But by then Mr. McAdory I am certain had been contacted and was fully aware of what was going on with the road project so.

Q. And you talked about -- let's talk about the after the improvements. Is the highest and best use as an improved as a garage prior to the condemnation?

A. Would you -- can I ask you to just to slow down just ---

Q. I'm sorry. Prior to the condemnation do you have an opinion as to whether or not the highest and best use of the property as improved is as a garage?

A. I again look at it as a commercial building. Anything more specific becomes something over than market value. It actually becomes value in use, which is completely different.

Q. But you understand that there were improvements made to this building?

A. I heard Mr. McAdory talk about it.

Q. And you didn't look into what those improvements were at all?

A. I received the list that was referred to as part of the improvements. I heard him talk about the improvements.

Q. And in terms -- in terms of the taking, you are of the opinion that the taking does not affect the improvements at all?
A. I am of the opinion that the improvements with the cost to cure continue to operate as real estate, yes.
Q. Okay. And when you talk about operate as real estate we are talking about specifically as a garage?
A. No, I am talking about the market value of the real estate. And that's -- we are not -- it is not a use value. It is a market value.

And at the end of the day whether Mr. McAdory stays and operates as a garage, that is his choice. But at the end of the day the property is still generating at least according to two appraisers $1,700 a month.
Q. Okay. And what is the market rent for leasing commercial property in that area?
A. I've got a couple. Between $8.00 and $9.50. These are just a couple.
Q. And this is a 2,000 square foot building?
A. No, there are various sizes. This is a six thousand square foot building. It is leasing for $7.28 a square foot. It happens to be a garage.
Q. And what do you believe this property would lease for if it was on the open market?
A. I don't disagree with the bank appraisal. And he was

saying $9.00, I believe. The $1,700 a month works out to about $8.00. When I look at the rentals that I have put together, between eight and nine is not unreasonable.
Q. And does $1,700 a month rent make sense when he has a $2,500 mortgage on the property?
A. I can't ---
Q. I mean he is losing money every month at that rate?
A. I can't answer why it's $1,700 a month.
Q. Okay.
A. I can't account for the mortgage. The mortgage is not a function of the value of the real estate.
Q. I understand that. But just looking at simple cost does it make sense for him to rent out a piece of property at $1,700 a month when he has to lose money paying a mortgage of $2,500 a month; he would lose $800 a month?
A. I understand that. I can't help the market and what it is.
Q. Okay. Now talk about this sign being moved. And tell me. It's unclear where this sign is going to be moved in the after.
A. Are you asking me ---
Q. Tell me please where is it going to go.
A. I heard Mr. McAdory say something I had not thought of maybe of. Maybe it works. Maybe it doesn't. He mentioned cutting down trees back here. I'm assuming he is talking

about the palmetto trees. Cutting those down I guess that is a possibility. I don't know.

Q. Okay. But if terms of -- I'm sorry. But you talked about in your appraisal putting the sign on the side of the building?

A. Right.

Q. Which side of the building?

A. He talked about that -- he asked me just now. And I said well I -- I didn't even think of that. The sign itself I called the Town of Mount Pleasant -- I did it again. I'm sorry. James Island and asked them could the sign go on the front of the building, could a monument sign of some kind be erected.

See, normally signage is not an appraisal issue. They asked me to consider it this time. They call it a moving item. In fact, Peter called it a moving item. It is not -- normally not something we are involved in. They just move it.

And in this case because there was going to be some difficulty they asked me to contact the Town of James Island. They asked me to find a cost to fix that. And that's what I did.

Q. Okay, but it says in your appraisal it says the sign could be placed on the building bow legs wall facade?

A. Right, the front area of the building.

Q. Okay. Is that as good a position in the after as he had in the before in your opinion?
A. Is it as good ---
Q. Yes?
A. I think it is adequate. I think it serves a purpose. I think it works as far as going on the front. If you put a monument sign -- remember you have still got six feet. You could put a monument sign within that six feet area. All of those things are possible. Mr. McAdory may have the perfect solution in cutting down the palmetto trees.
Q. Well, if he cut down the palmetto trees then only people coming towards the city would be able the see the sign?
A. That is -- I just -- that is just what he said. I didn't ---
Q. And in the before folks could see the sign coming both ways, right?
A. That's correct, yes.
Q. And signage is a huge asset for businesses; isn't that -- wouldn't you agree with that?
A. I think signage is important, yes.
Q. And in terms of the parking spaces if I were looking toward the left it says that there is some parking along the side of the building. Is that in the alleyway that you were referring to?

A. Yeah, while I was there I saw a couple of people pull up and just stop right there. So yes, they were -- whether it is a good idea or a bad idea, they were stopping there.
Q. And after hearing the testimony of the engineer do you still think that there's parking spaces on the side of the building; are you of that opinion?
A. I didn't say there were parking spaces. I said people were parking.
Q. So that wasn't meant to be a permanent ---
A. No, I think he's got two in the front of the building, two defined parking spaces, while I was there, plus all the room in the back that he could park or store.
Q. Okay. And you have seen the pictures where he has room for six cars in the front?
A. Yeah, I saw.
Q. But you made the decision to compensate him for two, lost spaces?
A. Yeah, they saw the pictures; two and six. That's not -- there is not six parking spaces there.
Q. If there were six parking spaces then he would be entitled to more compensation?
A. There's not six parking spaces.
Q. I understand that. But hypothetically let's just ask you to make the assumption that there are six spaces.
A. Well, then we just created more land. And if we

created more land then we probably wouldn't be here because all of the parking wouldn't be taken.

Q. Okay. So but we agree all the parking is taken in the front of this property?

A. And we agree there is not six parking spaces there.

Q. Well, let's just say how much more would you compensate him if there were six spaces?

A. I think that is just not a possibility. It is just not six spaces.

Q. Can't do it; you couldn't cure that?

A. There's not six spaces.

Q. Okay. If there were three spaces how much more would you compensate him?

A. There's two to three spaces. I think the bank appraisal said there were three. There were three lined spaces, but again they didn't meet the criteria of being eight to nine feet. There were two spaces that appears when I was there. I've got photographs to support that.

Q. If there were three spaces how much would you compensate?

A. Again, I don't think there's a problem there because in the back where we cured it we created about 900 square feet of parking. And 900 square feet you could probably park -- well, just 30 spaces you could park four cars at minimum.

Q. And the only place we could put this marking is in the

back of property; is that correct?
A. That is my opinion, yes.
Q. And is your opinion that that place puts him in as good a position in the after as he was in the before?
A. As far as the market is concerned -- and the evidence of that is Mr. Mizell's testimony or statement that he could rent it for $1,700 a month compared to the bank appraisal. It is the same numbers so.
Q. In terms of use as a garage with the relocation of those parking spaces is that ---
THE COURT REPORTER: I'm sorry, Your Honor.
MR. MURPHY: I'm sorry.
THE COURT: Can you slow down, please.
MR. MURPHY: I'm sorry.
Q. In terms of use as a garage does the relocation of those spaces to the back of the property place him in the same position as in the before as in -- or in the after rather than as the before?
A. I am appraising market value of the real estate. I can't speak directly to the garage. I know it has created an inconvenience. He'll make a decision on what's right. At the end of day he still has $1,700 a month.
Q. And is it your opinion that this property can function as a garage in the after?
A. I'm not in that business.

Q. And Mr. -- you would agree Mr. McAdory would be the best person to evaluate the affect on his business?
A. I don't know that that's true either.
Q. Okay. Well, if he's not, who else would be?
A. The point is obviously he has an interest. I mean I can't say that.
Q. And would you agree that this driveway or the alleyway is not wide enough to move -- have two cars pass at the same time?
A. I would agree that that is the same in the before and the after.
Q. And have you evaluated the problems that this acquisition is causing on the business at all?
A. I'm not sure what your question is.
Q. Well, have you evaluated -- you heard Mr. McAdory's concerns about this -- the impacts of this condemnation. And my question is have you taken those into consideration at all?
A. Yes.
Q. Okay. And have you done an analysis of them, a prepared sale analysis showing the difference between the loss of six spaces as opposed to the -- to the property with six spaces in the front and property without any spaces in the front?
A. Yeah, I -- we did. That is the whole purpose of --

first of all, there's still not six spaces. We are still dealing with two. And you can argue three. I won't argue. And that is how we cured it. So there is an analysis and there is a cure.

Q. In terms of use of the property if some type of -- if a new tenant came in with a different use you would agree that there would have to be a substantial investment to upfit that property to the -- to the tenant's intended use?

A. No.

Q. You don't think so?

A. I don't know that at all.

Q. Okay.

MR. MITCHELL: Objection, Your Honor.

THE COURT: Sustained. It is not proper measure of damages. Ladies and gentlemen, you are to disregard the last question and last answer. You are to give it absolutely no consideration in your consideration in your deliberation.

Q. Mr. Crider, if the highest and best use in the before was as a garage and it changed as a result of this taking would you have to analyze the impact on the building?

A. We speak in terms of highest and best use in terms of more generality of commercial property. So the answer to your question I believe is no. It is still a commercial property before. It is still a commercial property in the

after.
Q. And you've seen examples of businesses having to relocation as a result of condemnation actions?
A. I'm sure, yes.
Q. And business -- businesses have had to relocate ---
MR. MITCHELL: Objection Your Honor.
THE COURT: Basis?
MR. MITCHELL: The basis ---
THE COURT: Please approach.
(WHEREUPON, a bench conference was had as follows:)
MR. MITCHELL: Your Honor, they can't go into the fair market value of the property.
THE COURT: It is outside the scope of property measure of damages. They have let you go on really for a while with it. I don't know why they haven't objected, but it is not my job to object. But I am not going to instruct that. So you might want to keep it in the appropriate boundary. Sustained. You may proceed.
(WHEREUPON, end of bench conference.)
THE COURT: Sustained. You may proceed.
Q. And let's talk about the County has taken 17 feet of depth off the front of the property?
A. That is true.
Q. Okay. And let's talk a little bit about these setbacks. You mentioned these side setbacks of 10 feet.

And then there is also a front setback of 15; isn't that correct?
A. That's correct.
Q. Okay. So if the property is vacant for a year then those setbacks would be triggered, correct?
A. No, the setbacks are in effect today.
Q. Okay. I understand. But it is a nonconforming use, correct?
A. Both before and after.
Q. Okay. Well, in the before the front setbacks weren't violated?
A. That's correct. Only the side.
Q. Only the side.
A. But you are -- once you are nonconforming, you are nonconforming. There is no kind of nonconforming.
Q. And at what time -- at what point would the setbacks would he be forced to come in compliance with these setbacks?
A. Well, they are not going to make him move the building. I mean they are not going to -- I mean right now the side they are not going to make him slide it over. Forget ---
Q. No, I agree with that. They are not going to make him do it at this point. But if it is vacant for one year, they will make him do that?
A. No.

Q. You don't believe so?
A. No.
Q. That was Mr. -- you disagree with Mr. McAdory's testimony?
A. Absolutely.
THE COURT REPORTER: I'm sorry, Your Honor.
THE COURT: Watch pitting, Mr. Murphy. And I need you to slow down so the court reporter can hear you.
Q. Now you were hired by the County to appraise a number of tracks on this property -- or on this project. I'm sorry.
A. That's correct.
Q. And did you appraise all the tracks of this project?
A. No.
Q. How many did you appraise?
A. I would -- I am going to guess probably 30.
Q. Thirty. And you charged $2,500 each?
A. No.
Q. How much did you charge?
A. It would be varying amounts.
Q. How much did you charge for this appraisal?
A. About $2,500.
Q. And that was for your initial appraisal?
A. I believe so, yes.
Q. And that was a flat fee, correct?

A. Yes.
Q. And you would agree that appraising property is a subjective analysis?
A. A subjective analysis based on training and experience and fact.
Q. Okay. Well, let's first talk about the three approaches. You have the income approach, the cost approach, and the sales approach. Okay. And ideally under ideal conditions as an appraiser if you applied all three approaches they should all equal the same in terms of value; is that correct?
A. I don't necessarily agree with that at all, no. They are done independently. And they are intentionally probably not going to give the same indication of value.
Q. But the intent -- the process would be that they would come close to the same value, right?
A. Within reason, yeah ---
Q. I mean ---
A. Dependent -- dependent upon the data and the type of property. I mean I assume we are talking hypothetically again. You know given the amount of data, sometimes data is plentiful. Sometimes it is not. Sometimes those value indications from various approaches are very different.
Q. And if they are very different, that would require an additional analysis or ---

A. Not necessarily.
Q. In term of picking comparable sales, that would be subjective analysis or subjective decision by the appraiser?
A. Subjective is a very loose term. It's really more than just guesswork. It truly is based upon opinions. But experience education, knowledge of the market, knowing where to go to find comparables. It is a lot more than just being subjective.
Q. And making adjustments to these comparable sales is also subjective, correct?
A. Same answer.
Q. And the purpose of making adjustments to the sales is to try to make the sales equal with the subject, correct?
A. That is true.
Q. And the purpose of adjustments is you have to make adjustments because no two pieces of property are alike, are they?
A. That's not true. We don't have to adjust every sale. The only sale I needed to adjust was the old McDonald's on Old Folly Road.
Q. And there is no hard and fast formula for determining market value of the -- of a subject property, is there?
A. Would you repeat, please.
Q. Is there any hard and fast formula that would accurately determine market value of the property?

A. Yes, I do -- I do believe.
Q. What was that formula?
A. I think it is the appraisal that I have done. As far as talking about this property I think it accurately depicts the value.
Q. So you have applied the sales approach methodology?
A. That's correct.
Q. And you did not apply the cost approach?
A. No.
Q. And that was ---
A. That was not applicable.
Q. And that was another subjective decision you made as an appraiser in this?
A. It is not subjective when your peers would agree that a 30-year old building or almost 30 years old doesn't need to be calculated to cost new then depreciated. That is an exercise in math.
Q. Well, what you have really done is you have applied a methodology to try to predict what the market value is; isn't that a fair statement?
A. No, I think it is based a lot more than you are giving credit on of an understanding of the market.
Q. Well, Mr. Crider, if you can have two appraisers, two MAI appraisers appraise the exact same property with the exact same data and come up with different values; isn't

that true?
A. I guess it's possibly. But in this situation the two MAI appraisers, one for the bank and me came up with exactly the same value independent of one another.
Q. And in the old days didn't the MAI used to enforce some type of procedure at two MAI ---
MR. MITCHELL: Objection, Your Honor.
THE COURT: Basis?
MR. MITCHELL: He is going back and talking about the old ---
THE COURT: Please approach. No speaking objections.
(WHEREUPON, bench conference was had as follows:)
MR. MITCHELL: He is going back to discuss old methodologies that ---
THE COURT: How is this relevant?
MR. MURPHY: It goes to show that it is a subjective analysis that of MAI -- they have gone into all of this detail ---
THE COURT: What is -- standards ethically they are required to apply not what used to be done. What used to be done implies past and is no longer valid. Give me some reason to change that.
MR. MURPHY: There was because they had so many MIA appraisers differ more than ten percent that they changed it and they just stopped doing it.

THE COURT: Didn't apply that method in that case, so it is not relevant to the weight of his opinion. Objection sustained.

(WHEREUPON, end of bench conference.)

Q. Now I'm looking at Page 14 of your appraisal. And this is the comps that you used?

A. I think you've got the wrong ....

Q. Now this is the initial appraisal. This is not the update.

A. I don't have the original appraisal with me. I have got the one that we are talking about today.

Q. Well, we will get a copy for you.

MR. MITCHELL: Objection, Your Honor.

THE COURT: Basis?

MR. MITCHELL: Relevance.

THE COURT: Please approach.

(WHEREUPON, a bench conference was had as follows:)

THE COURT: Repeat the question for me, please.

MR. MURPHY: The question is did a comparable sales analysis ---

THE COURT: I asked you to ask the -- repeat the exact question you just asked.

MR. MURPHY: I said is this -- is Page 14 of your appraisal -- I believe -- I didn't even get to anything. It was ....

THE COURT: Is this the appraisal he utilized to ---

MR. MURPHY: Yes.

THE COURT: --- his opinion? What is the objection?

MR. MITCHELL: Is this the before appraisal or the after?

MR. MURPHY: This is the before.

MR. MITCHELL: This is the appraisal that was prior to before for negotiation for settlement. He did an update of the appraisal after the date of value. In condemnation cases the only appraisal that comes in is the one that has the date of value as of the taking. This one does not have a date of value as to the taking.

Generally the process is that by statute we have to provide an appraisal to the landowner to be able to negotiate the price. Then if he decides not to agree to that or we can't reach a settlement then we file and that is when we do the appraisal. So he is trying to put this appraisal up there to show the value that he is coming to which is actually in the updated appraisal, not the former appraisal.

THE COURT: And I want to hear it again. You can stand down. And I need to hear it.

(WHEREUPON, bench conference ends.)

THE COURT: Madam Forelady, ladies and gentlemen, we are going to -- this is probably a good time for you all to

take a short morning break as well. I have a matter of law I need to take up with the attorneys.

During the break please do not discuss the case in any manner whatsoever. And please leave your notepads in your seats.

(WHEREUPON, the jury exits the courtroom at 11:20 a.m.)

THE COURT: Now what is this that you are seeking? You all may be seated. What is this that you are seeking?

MR. MURPHY: I am seeking to question him on his initial appraisal of the property, of the property which includes his comparable sales and adjustments he made, and go through each one of them.

And this is how he determines his -- made his initial determination of value. He updated his appraisal and the value didn't change. And I am entitled to cross-examine him on the work he did in this project.

THE COURT: You're asking the court to lead to question him about ---

MR. MURPHY: No, well, no ---

THE COURT: You are entitled based on what the rules of evidence say and how the court rules, correct?

MR. MURPHY: Correct, yes.

THE COURT: Okay. So let's backtrack.

Now, what is your objection?

MR. MITCHELL: Your Honor, the appraisal he is

referencing it was done as part of a settlement negotiation prior to the filing of the condemnation.

THE COURT: Is that done pursuant to statute?

MR. MITCHELL: Yes, Your Honor.

THE COURT: And what statute are you referring to?

MR. MITCHELL: I have a hard time remembering numbers. But that statute say that ---

THE COURT: I need the statute number.

MR. MITCHELL: Yes, ma'am.

MR. FERRARA: Your Honor, Section -- go ahead.

MR. MITCHELL: 28-2-70. May I approach, Your Honor?

THE COURT: 28-2-70?

MR. MITCHELL: Yes, ma'am. And it says ---

THE COURT: Wait one moment for me, please.

MR. MITCHELL: Yes.

THE COURT: Okay. You may continue.

MR. MITCHELL: Your Honor, as you see, the statute requires us to provide an appraisal to the landowner. And then the next portion, Part B, says we must negotiate with the landowner based on that appraisal.

MR. MURPHY: Judge, the appraisal is required to do to determine the amount of just compensation be tendered to the clerk of court. This is an appraisal that was done pursuant to USPAP.

He did an update which did not change his opinion in terms

of value. Therefore, I believe I am ---

THE COURT: It's a little different though, isn't it; it is similar to the mediation that is required before you proceed with a medical malpractice case. That would not be admissible because it would be settlement negotiations, would it not? And so would this not be within the same sort of parameters as required by statute for the purposes of settlement?

MR. MURPHY: I don't believe so, Your Honor, because it is a report that he has -- that has to comply with USPAP. Now if this was just an informal report ---

THE COURT: That's not what the statute says though, does it?

MR. MURPHY: No.

THE COURT: It says it requires a state to do an appraisal prior to before initiating the condemnation to give the landowner notice of it and notice of value such -- or the sole purpose of negotiating a settlement prior to the necessity of filing an action, does it not?

MR. MURPHY: It does, yes.

THE COURT: And it says it is for limited purposes. Says negotiation. What is the difference between that appraisal and this appraisal?

MR. MURPHY: It is one comp.

THE COURT: Pardon me?

MR. MURPHY: One comparable sale.

THE COURT: So I guess what's the purpose of asking the question?

MR. MURPHY: Well, the purpose is, Judge, it goes into -- and if I -- I'd like to argue before the bench with the white noise on if I may.

THE COURT: Pardon?

MR. MURPHY: I prefer to argue before the bench with the white noise on.

THE COURT: Okay.

(WHEREUPON, bench conference was had as follows:)

THE COURT: The purpose is he did multiple tract appraisals on this project. He used the same comps on every one one of those tracks.

THE COURT: Well, they are all in the same area. They are all comparable ---

MR. MURPHY: He made zero adjusts to all - he didn't make any adjustments to any of the comps on any of the tracts. And it goes directly to his credibility as he got in there and said that we have to talk about -- we -- appraisers make adjustments and we look at everything and no property is alike. And it is directly relevant on that - on that issue.

THE COURT: I don't know if it is, but I am going to hear your questions. Every piece of property is different.

But they are all clustered right there in that area. There are no other comparables he would have to use. Where else would he go? If he went further down the highway it would artificially inflate it. Because property down that other end is far more valuable.

MR. MURPHY: But in term of -- I am not going to disagree about the comps ---

THE COURT: Essentially getting near those huge subdivisions.

MR. MURPHY: But ---

THE COURT: And they are residential. They are not commercial.

MR. MURPHY: But when you get into adjustments, no two properties are alike. You have all different sizes, different uses. And then ---

THE COURT: I don't know. That is all commercial property right there in that strip all being used almost for the same purposes.

MR. MURPHY: You have different locations.

THE COURT: Doesn't matter. It is all commercial property being used for business.

MR. MURPHY: But ---

THE COURT: They all have the same complaint, ---

MR. MURPHY: They make ---

THE COURT: --- they are taking our parking.

MR. MURPHY: They make a specific adjustment for location. They make specific adjustments for access. There is ---

THE COURT: You would have to prove that it is relevant to those other cases or somehow completely the same as your clients and that somehow an adjustment was made to theirs and not theirs for it to become relevant. Because they are not the same. That's almost like Lile evidence in a criminal case.

MR. MURPHY: In terms of -- I ---

THE COURT: Just because they all -- it is not the same thing. It is apples and oranges really.

MR. MURPHY: If it is apples and oranges then he's treated everything like apples. He treated everything the same.

THE COURT: I don't know that he did.

MR. MURPHY: Well, that's what I am trying to question him about.

THE COURT: I'm going hear your questions in camera and then I am going to make a decision about whether they are relevant or not.

MR. MITCHELL: Your Honor, may I add?

THE COURT: Uh-huh.

MR. MITCHELL: I have no issue with him looking at the comps of the date of value paper that is before the court.

It is just that appraisal, that initial appraisal that was used for settlement. That is ---

THE COURT: You don't have a problem with him asking about the fact that he only did one comparable in this first appraisal, but that he did other comparables in the second appraisal, ---

MR. MITCHELL: No, I have ---

THE COURT: --- the updated appraisal?

MR. MITCHELL: No, I have -- I don't a problem with him asking any questions on the initial appraisal.

MR. MURPHY: But the value didn't change.

THE COURT: The problem you are going to get into is he is going to say why did you only -- why did you do this first one. Because the state law requires ---

MR. MURPHY: I'm not going to ask him that.

THE COURT: --- us to negotiate and settle. No, he is entitled to.

MR. MURPHY: Right.

THE COURT: You can't restrict him.

MR. MURPHY: No, I know that.

THE COURT: Because then it goes and misleads the jury about the scope of this first appraisal. So it is a tight rope you are walking with it. Because I really -- I am really at a loss as to why it really is relevant. It doesn't hurt your -- it really -- I don't know in the scope

of comparables he has provided there is really makes any appreciable difference. It various from a low of 16 to a high of 30-something dollars.

MR. MURPHY: I understand that. But what I'm saying is if I could -- it goes directly ---

THE COURT: You -- when you start saying well you only did one appraise -- one comparable and this preliminary appraisal and therefore you were not thorough then he gets to ask why did you do it. Because state law requires us to do it and it requires us to negotiate. It is not your prerogative ---

MR. MURPHY: No, I know that.

THE COURT: --- to limit his cross -- his redirect of his witness because it leaves the jury with some - with a misapprehension as to why he did it the way he did it. They are entitled to rehabilitate their witness and clarify. So then it gets into a Pandora's box that really isn't relevant.

MR. MURPHY: But I'm not trying to do anything -- it is the proper procedure to do an appraisal and to do an up update. There is no question about that. And I am not trying to make any issue of that in front of the jury. That is not the intention at all.

THE COURT: Okay, then what is your intention?

MR. MURPHY: The intention is to talk about what he did

in his first appraisal and how -- what he did and compare it to what he did in the second appraisal.

And I would like to be able to compare -- show that he he the same comps for all the track that he did initially and that he didn't make any adjustments to it and then in the update he used the exact comps and made only one adjustment.

THE COURT: See, I don't know why he does it that way. I would imagine because trying to do more local in the first -- when they are trying to settle it.

MR. MURPHY: Well, it didn't change. So there is no -- there is nothing to be more liberal about.

THE COURT: I don't know. We will hear the questions, and then why don't - well, I want to hear the questions and then we will take a restroom break.

(WHEREUPON, end of bench conference.)

THE COURT: You may proceed.

EXAMINATION IN CAMERA BY MR. MURPHY OF MR. CRIDER:

Q. All right. Mr. Crider, under the initial appraisal that you performed on this property you used four comparable sales?

A. Yes.

Q. Okay. And you used the first site was a Bojangles site, I believe?

A. Yes, that's true.

Q. And you added $15,000 to -- as a condition of sale to this -- this comp?
A. That is correct.
Q. And that was for demolition of buildings?
A. Yes, sir.
Q. And in that instance the buildings did not have any value to the property?
A. That's correct.
Q. And if Bojangles bought Mr. McAdory's site would they also demolish the buildings?
A. I would assume.
Q. And in that case then the building on Mr. McAdory's site would not have any value?
A. That -- that again is an individual purchaser decision, not a specific requirement that they have to.
Q. And the second comparable sale, that was the Duncan Donut site?
A. Correct.
Q. And if Duncan Donuts purchased Mr. McAdory's site would you be of the opinion that they would demolish that building?
A. Individual decision.
Q. Okay. And do you -- are you familiar with the Duncan Donut franchises at all?
A. Yes.

Q. Okay. And do they have certain requirements for building design and layout?
A. I would agree.
Q. And would Mr. McAdory's building conform with that required design and layout?
A. Probably not.
Q. So they'd have to destroy it?
A. Makes sense. But that is an individual decision that they would make.
Q. And Comp Number 3, what was that used for?
A. Best I recall it was still vacant.
Q. Okay. And what was the -- the purchaser had some plan and ---
A. I believe it was a shopping center if I am not mistaken.
Q. And would a shopping center want to destroy Mr. McAdory's building if they had purchased the site?
A. Potentially. I mean it has got some potential for retail.
Q. Okay. And in terms of the last sale, CL 4, what was that purchase for?
A. That is the Nason site. Oh, I'm sorry. That's -- wrong -- again, a retail use.
Q. And again you added $15,000 for conditions at sale?
A. That is correct.

Q. And that is to demolish the three buildings that are on the property?
A. That is correct.
Q. And in those cases the building have no value to the property in the before?
A. That's correct.
Q. And if that buyer had purchased Mr. McAdory's site that buyer would most likely demolish the buildings?
A. That is an individual decision that they would make. I don't know.
Q. It would be either demolish the buildings or expend money to make it fit the intended use?
A. For all I know, it would fit their use.
Q. And what was the use?
A. They were going to put a retail ---
Q. Okay.
A. --- business.
Q. And you used the same comparable sales for all of the appraisals you did -- you initially did on this project?
A. No, sir.
Q. You didn't? Let me take a look at Track 18. I am looking at Page 16 of your appraisal. Can you see that? Let me just hand it to you. That is an excerpt from your appraisal for Tract 18.
A. I will trust that it is. It looks like it -- yes.

Q. And are those the same comps that you used for the McAdory site?
A. Yes.
Q. And you made no adjustments to any of those comps?
A. Other than the ones we just discussed.
Q. Okay. Okay. But in terms of location, size, topography, zoning and utilities there were no adjustments?
A. That's correct.
Q. And you didn't make any adjustments to the McAdory tracts?
A. No, that ---
Q. What ---
A. I mean I was consistent.
THE COURT REPORTER: Your Honor, I'm sorry.
THE COURT: You are going to have to slow down. She is having a lot of difficulty.
MR. MURPHY: I apologize.
Q. And for Track 23 that was an appraisal that you prepared as well?
A. Yes, all the same answers.
Q. Okay. The same number of tracks?
A. Correct.
Q. No adjustments to anything?
A. Correct, other than the ones we had already discussed.
Q. Okay. And then I'll hand you Track 20 which was an

appraisal you did as well?
A. Correct.
Q. And you used the exact same comps as Mr. McAdory?
A. Correct.
Q. And again, you did not make any adjustments other than conditions of sale?
A. That is correct.
Q. And that's all I have, Your Honor.
THE COURT: Any exception to that line of questioning?
MR. MITCHELL: No, Your Honor, I don't think he got to the area that he was originally going to where he was trying to compare sales six to a sales four ---
THE COURT: Well, my question is do you have any exception to him ---
MR. MITCHELL: No, Your Honor.
THE COURT: --- asking these questions?
MR. MITCHELL: No, Your Honor.
THE COURT: Okay. Then we will take a short restroom break and we will resume. You may also go to the restroom if you would like. Just please don't discuss your testimony with anyone.
MR. MURPHY: In terms -- Judge, I just want to make clear with Brad, that would be the line of questioning that I would have. I would also just have one question ---
THE COURT: You need to ask all the questions you

intend to ask ---

MR. MURPHY: Okay.

THE COURT: --- if you know he has an objection. Proceed.

EXAMINATION IN CAMERA BY MR. MURPHY OF MR. CRIDER:

Q. And Mr. Crider, you did an update to this appraisal?

A. That is correct.

Q. And in that update you exchanged sale number four with sale number six?

A. That is correct.

Q. And other than changing the data valuation and changing that comp sale there were no other changes?

A. Not that I can recite off the top of my head. I honestly don't recall.

MR. MURPHY: Then that's it, Your Honor.

THE COURT: Any exception to that question?

MR. MITCHELL: No, Your Honor.

THE COURT: All right. Let's take a quick restroom break.

(WHEREUPON, break was taken.)

THE COURT: Are you ready to proceed?

MR. MITCHELL: Yes, Your Honor.

MR. MURPHY: Yes, Your Honor.

THE COURT: Please get the jury.

(WHEREUPON, the jury enters the courtroom at approximately

11:47 a.m.)

THE CLERK: The jurors are present, Your Honor.

THE COURT: Thank you. You may be seated. Ladies and gentlemen, I hope you enjoyed your break. We are now resuming the witness's testimony. You may proceed.

RESUME CROSS-EXAMINATION BY MR. MURPHY OF MR. CRIDER:

Q. Mr. Crider, I neglected to ask you whether or not you believed the improvements have -- or add value to the property; do you have an opinion as to whether or not the improvements may add value to the property?

A. I do believe they can, yes.

Q. Okay. And tell me why you believe they can.

A. I think they can be put to a use that would generate a return that is sufficient to make them viable for a commercial use.

Q. And I'm going to hand up a copy of your deposition. If you could open that, please.

THE COURT: No, the court opens it. If there's a question you need to ask, you need to follow.

MR. MURPHY: I would hand up a sealed deposition, Your Honor.

(WHEREUPON, deposition opened by the court.)

Q. Mr. Crider, I would direct your attention Page 6, Line 10. Or, I'm sorry. Line 11. And I ask you in your opinion do the improvements add any value to the property.

And your answer?

A. I believe -- I believe they could, yes.

Q. And then I ask, tell me what factors you would need to determine whether or not they could add value. And your answer?

A. I would like a copy of the lease. I again like -- would like to go inside the renovated building. Obviously it looks like the defendants have done a good deal of work or the landlord, I'm not sure whom; but somebody put a good deal of money into it.

So at least they believe there is some value in those improvements. And I think a physical inspection, a review of the lease, would go to me being able to answer that question.

Q. And did the court -- the County ever get you a copy of that lease you requested?

A. I was provided with the terms of that lease, yes.

Q. You never actually saw the lease?

A. I don't recall seeing it. It's possible I've got it in here somewhere.

Q. All right. Let's go on to your initial appraisal. And in your initial appraisal you used four comparable sales to determine value?

A. Yes, sir.

Q. And the first comparable sale was the Bojangles

property?
A. That is correct.
Q. And you added $15,000 as a condition of sale to that property?
A. That is correct.
Q. And the reason being is that there was a building that had to be demolished as a result of this purchase?
A. That is correct. There were actually six duplex residential prop- -- buildings on the property.
Q. And in that instance the buildings didn't add value to the property?
A. That is true.
Q. And if Bojangles had purchased the McAdory site the building would most likely meet the same fate?
A. An individual purchaser determines whether or not an existing building does or doesn't add value to them.
Q. Okay. And Bojangles is a franchise that would have certain standards for a building layout and appearance?
A. That's true.
Q. And do you believe that those standards could be upfitted into Mr. McAdory's building?
A. I would say that is very outstanding.
Q. And the next comp you used was a Duncan Donuts?
A. That's true.
Q. And again if Duncan Donuts purchased the McAdory site

they would most likely demolish the building?
A. Kind of the same answer. Purchasers determine what they are going do with the property. And it's likely that Duncan's would do something different.
Q. And same questions with regard to Duncan Donut's being a franchise, they have a certain standard?
A. I would agree.
Q. Okay. And if they had purchased the McAdory site they wouldn't be paying -- the building would not have value; is that a fair assumption?
A. If they had purchased it, yeah, they would probably do something different with it.
Q. And the third comp you used was a vacant site? Or that would have been the James Island, Maybank Highway site?
A. That's correct. I believe so.
Q. And that was purchased for a shopping center?
A. I believe that to be true.
Q. Okay. And if those purchasers had purchased the McAdory site they would most likely demolish the building as well?
A. I don't know that to be true. Again, it is going to be a retail use. But an individual purchaser determines whether existing improvements do or don't contribute to that.
Q. And the fourth comp, that was on Folly Road as well?

A. That's correct.
Q. And that you did a $15 -- or $15,000 adjustment as conditions of sale?
A. That's correct.
Q. Because there are three buildings that need to be demolished on that?
A. That is correct.
Q. And in that case those buildings add no value to the property?
A. That is correct.
Q. And in arriving -- reconciling these numbers you determined the land value equaled $25 per square foot?
A. Yes, sir.
Q. And that is actually less than the average of all those comps?
A. I didn't do it that way. I don't know.
Q. Well, how far did you arrive -- well, let me ask you this: How did you arrive at $25 dollars a comp per square foot when you had two $34's per square foot and going down to 20 and 21?
A. Would you put the grid down just a second for me, please.
Q. And if it helps I can ---
A. Yeah, that would be much better.
(WHEREUPON, document presented to the witness.)

A. The selection of comparable sales is where the experience, education, and training of an appraiser comes from. The reconciliation of a range of values is where the opinion of the appraiser comes from.

In looking at these sales we have a low of about $18 and some change, 18.76, to a high of about $34.70. We have got one 21 and then another at 34. We tended to indicate somewhere around $25 as square foot as being reasonable. It is not about averaging sales. That's just not the way we come up with conclusions.

Q. And that would be another subjective decision that you would make when appraising a property?

A. I don't know of anyone that averages sales. I think that is just not a proper process at all.

Q. But you could have found above the average?

A. I guess if someone chose that. In this case $25 was -- was right.

Q. And you appraised number of subjects on this project?

A. Yes, sir.

Q. Okay. And you used the same exact comparable sales on those assignments as you used on McAdory?

A. I believe we discussed that -- and again, it is my best estimate. Around 30 or 40, something like that, other properties. And no, I did not use the same for every one of those.

Q. And let's just turn back to the McAdory track. You made zero adjustment for location and access to the comparable sales?
A. That's correct.
Q. You made zero adjustments for size of utility?
A. That's correct.
Q. You made zero adjustments for topography and shape?
A. Correct.
Q. You made zero adjustments for zoning ---
A. That's ---
Q. --- and you made zero adjustments for utilities, correct?
A. That is all correct.
Q. And I am putting up here Track 18 which was an assignment of yours as part of this project?
A. Yes, sir.
Q. And in this assignment you used the exact same comps as you used in the McAdory track?
A. Yes, sir. And obvious the reason is it is virtually next door. And look at the size. It's similar.
Q. And you made zero adjustments for location, size, topography, zoning and utilities?
A. That's consistent. That's correct.
Q. And you also prepared an appraisal for Track 23?
A. I think two doors down, yes, sir.

Q. And again, you used the exact same comps?
A. Yes, sir, it was also .478 in acres. That made sense. We are again being consistent.
Q. And you made zero adjustments?
A. Correct.
Q. And then you also appraised Track 20 as part of this assign- -- project?
A. That's correct.
Q. And you used the exact same comps?
A. That's correct.
Q. And you made zero adjustments?
A. Same thing, yes.
Q. And you then updated your appraisal in this case to the date of valuation?
A. That is correct.
Q. And in doing so you changed one comp; you exchanged Comp 6 with Comp 4 -- or, I'm sorry, Comp 4 with Comp 6?
A. I -- yes, I took out one of the sales and added a more recent sale.
Q. And you also obviously changed the date of valuation?
A. That is correct.
Q. And you charged $2,500 for this initial appraisal?
A. I believe something like that.
Q. And you charged $2,500 for the update?
A. I don't know that to be true.

Q. Do you have your invoice with you?
A. No, sir.
Q. And how much are you charging an hour for your testimony here?
A. It is $300 an hour.
Q. Okay. And as part of this when did you arrive in Charleston?
A. Yesterday morning probably around nine o'clock.
Q. Okay. How many hours did you bill for yesterday?
A. I haven't yet. I'll go back and add up everything. Everything gets capped. I don't think it's right to charge any more than -- I charge about $2,000 a day. So it will get capped at that.
Q. Okay. So $2,000. And do you expect to charge $2,000 for today?
A. It is possible, yes, sir.
MR. MURPHY: One moment, Your Honor.
THE COURT: Uh huh.
Q. Just to be clear about adjustments, no two pieces of property are alike if -- even if they are identical size, shape, dimensions, or anything, because they are not in the same location; is that fair?
A. I would agree in a literal sense no two properties are alike. The question is can the market -- or does the market differentiate between any difference.

Q. And adjustments the whole purpose of adjustment is to try to make the subject -- the comparable sales similar with the subject?

A. That is correct. As far as the market can distinguish differences. That's correct.

MR. MURPHY: That's all I have. Thank you.

THE COURT: Any redirect examination?

MR. MITCHELL: Your Honor, I have nothing -- no other questions.

THE COURT: Any objection to the witness being excused?

MR. MURPHY: None, Your Honor.

MR. MITCHELL: I have no objection, Your Honor.

THE COURT: Sir, you are excused.

THE COURT: Anything further from the County?

MR. MITCHELL: No, Your Honor.

THE COURT: Does the County rest?

MR. FERRARA: Yes, Your Honor.

THE COURT: Reserve motions. Any rebuttal -- anything further from the landowner?

MR. MURPHY: Nothing Your Honor.

THE COURT: Madam Forelady, ladies and gentlemen, I have some very brief matters of law to take up with the attorneys. During this break please do not discuss the case among yourselves. Please leave your notepads in your seats.

I'm investigating right now the possibilities of

bringing in lunch for you. There are some other things we may be doing in connection with this case, the decision of which I will make shortly. And then I will update you as to how we will be proceeding for the remainder of the afternoon.

If you would go with the bailiffs, please.

(WHEREUPON, juror exits courtroom 12:00 a.m.)

THE COURT: You may be seated. Are there any motions?

MR. MURPHY: The landowner would just renew the same motions we made at the close of -- of our case.

THE COURT: Any motions from the County?

MR. FERRARA: And Charleston County would also renew its motion in limine as to any references to Lex-Tech being ---

THE COURT: Let me -- bear with me one moment.

(Pause.)

THE COURT: Okay. Yes, sir.

MR. FERRARA: We just want to go ahead and just for the record renew our motion that we made in limine regarding this problematic issue we feel that the jury may encounter viewing the owner as Mr. McAdory and Lex-Tech Automotive L.L.C. and then these improvements ---

THE COURT: I think that goes to the scope of argument and the scope of the introduction of evidence which you are required to make a contemporaneous objection. Although we

discussed it in limine you know that is not a final ruling.

MR. FERRARA: I understand, Your Honor.

THE COURT: And every time there has been a contemporaneous objection I have ruled on it.

MR. FERRARA: Okay.

THE COURT: I think the law is very clear. Lex-Tech is not a party therefore they cannot recover. So there cannot be any argument as to their losses so to speak.

Now, as regards improvements, ---

MR. FERRARA: That's what ---

THE COURT: --- or dollar for dollar improvements ---

MR. FERRARA: That is my next argument.

THE COURT: To the extent that that has been elicited from testimony is at the landowner's own peril because black letter precedent doesn't support it, and I am not going to instruct it.

MR. FERRARA: Well, that's -- that's ---

THE COURT: Those are matters I think for a charge conference, not for a directed verdict.

MR. FERRARA: Thank you, Your Honor.

THE COURT: You are welcome. Anything further from the landowner?

MR. MURPHY: Nothing, Your Honor.

THE COURT: Okay. What I think we are going to do -- does the County have any objection to us going to view the

property?

MR. FERRARA: Your Honor, if that is ---

THE COURT: That is ---

MR. FERRARA: --- what Your Honor wants to do and the jury wants to do.

THE COURT: Well, I need to know if you have any exceptions.

MR. FERRARA: No ---

THE COURT: It is not a jury decision. They made a motion. I need to know if you ---

MR. FERRARA: No except- ---

THE COURT: --- except it.

MR. FERRARA: None from County, Your Honor.

THE COURT: Well, I guess we are going on a field trip. Okay. The van is here, correct?

THE DEPUTY: To my knowledge, yes, ma'am.

THE COURT: Can you double check that for me right quick.

THE DEPUTY: Yes, ma'am.

THE COURT: We are going to then load up the vans and go -- I think we are going to hit a little bit of lunch traffic going over the Connector. We are going to then load up the vans and go over to the property.

I have -- Don is now taking the jury's lunch orders. I anticipate that when we return they will then be able to eat

their lunch and then we will resume and you all will be able to grab yourselves something to eat and then we will resume with closing argument and instruction.

Any exception from the landowner?

MR. MURPHY: No, I just want to understand. We are going to go eat lunch -- have the jurors each lunch here and then go in the van?

THE COURT: No, we are going in the van right now.

MR. MURPHY: Go right now. Okay. No problem.

MR. FERRARA: Your Honor, just to be clear, the attorneys are staying here; we are not going out with ---

THE COURT: It is up to you. I'm going.

MR. MURPHY: And I'm going.

MR. FERRARA: Your Honor ---

THE COURT: Generally you go. I mean it is up to you. If y'all want to stay, that's fine. There is not going to be any discussion or anything.

MR. FERRARA: Are we going to drive by the building or ---

THE COURT: No, we are going there and look.

MR. FERRARA: Are we going to go inside the building to look?

THE COURT: We are going to look at the land.

MR. FERRARA: Pardon me?

THE COURT: We are going to look at the land. That is

what is being condemned.

MR. FERRARA: But are we going inside the building?

THE COURT: No, we are ---

MR. FERRARA: Okay, just ---

THE COURT: --- going to look at the property.

MR. FERRARA: --- the land that is being condemned?

THE COURT: Uh-huh. They are conducting business inside the business. We are not going in there.

THE DEPUTY: The van is ready.

THE COURT: Okey doke.

THE DEPUTY: When would you to use it?

THE COURT: Where is it at?

THE DEPUTY: Downstairs.

THE COURT: Downstairs in the Salley Court or downstairs in my garage?

THE DEPUTY: It is out on Meeting Street outside the courtyard, Your Honor.

THE COURT: Oh, so we can just walk them outside in the sunshine. Perfect. Tell them we can leave it right there and we will get the bailiff's assistance and y'all's assistance to load up as soon as we do lunch order.

MR. MURPHY: Your Honor.

THE COURT: Yes, sir.

MR. MURPHY: Your Honor, just -- so I have an understanding in terms of when the folks -- the jury visits

the property that they be allowed to walk in the back -- or just walk the entire property?

THE COURT: They can walk the entire property. We are going to go in the back to see where the parking would be. Because that is one -- that is some of the testimony about curing the deficits to the property ---

MR. MURPHY: And I would also ---

THE COURT: --- as a result of the condemnation.

MR. MURPHY: I would also request they be allowed to go inside the office area ---

THE COURT: For what purpose?

MR. MURPHY: There has been testimony that the improvements don't have value in the afterwards.

THE COURT: He doesn't get compensated for improvements to the building. He gets compensated for the fair market value and the diminution in value. I am not going to fudge that issue. I am not going to mislead this jury. I have been liberal and I let those pictures in.

MR. MURPHY: Thank ---

THE COURT: And that will suffice.

MR. MURPHY: Thank you, Your Honor.

THE COURT: They are conducting business in that building, and we are not going to parade through it. We will look at the front. We will look at the back. We will look at the periphery. There will be no discussion. There

will be no demonstrations. We will come back. We will have lunch. We may have charge conference before we go while they are loading them up and then we will proceed.

MR. MURPHY: Thank you, Your Honor.

THE COURT: You're welcome.

MR. MURPHY: If the court would note my exception.

THE COURT: It was noted when you made it.

MR. MURPHY: Thank you.

THE COURT: The court's ruling stands. Because I am being liberal in going.

MR. MURPHY: Thank you, Your Honor.

THE COURT: I'm being liberal in visiting. Because there really is no necessity on visit. Because I don't think -- we don't have any ambiguity about what the property looks like in its previous or current condition.

MR. FERRARA: Can we ask ---

THE COURT: Yes, sir.

MR. FERRARA: --- the landowner's counsel to reconsider his request to visit the property?

MR. MURPHY: No.

(WHEREUPON, break to confer regarding transportation.)

(WHEREUPON, Court's Exhibit Number 1, Condemnor Charge, was marked.)

(WHEREUPON, Court's Exhibit Number 2, Landowner's Request, was marked.)

(WHEREUPON, Court's Exhibit Number 3, Landowner's Request, was marked.)

THE COURT: We are not in recess. We are not in recess. I still have to instruct the jury before we go anywhere. And I am still going to do charge conference, because it is going to take them a minute to load them up in the van.

MR. MURPHY: I apologize, Your Honor.

THE COURT: You all can take your seats. I will give the jury a general instruction regarding their responsibility and my responsibility as well as a general description of what a condemnation or eminent domain case is.

What I need to know is what is the exact acreage of the property that is being condemned.

MR. MURPHY: Your Honor, it is 12,087 square foot.

THE COURT: This is an acreage that I believe was 0.03 or something.

MS. WALSH: 0.030.

THE COURT: Is that accurate from the County? Because that is what I wrote down, but I wanted to make sure that I was accurate. Three hundredths of an acre?

MR. FERRARA: That's correct, Your Honor.

THE COURT: Is the 0.030 accurate?

MR. FERRARA: That is correct, Your Honor.

THE COURT: Okay.

MR. FERRARA: One thousand two-hundred-eighty-seven square feet or zero point zero three zero acres is what the Charleston County acquired.

THE COURT: Again, I will give them a general instruction regarding their responsibility and my responsibilities.

Well, first I will give them a general description of what a condemnation case is, the amount of property that is in fact being condemned.

I will give them a general instruction regarding their responsibility and my responsibilities, how they are to judge witness credibility and believability.

Give them a general instruction regarding expert witness testimony. I will give them general -- I gave -- I will give them a general instruction regarding their responsibility to follow the law as I instruct it as well as the general instruction on the burden of proof.

I will give them a general instruction regarding just compensation which includes all of the language required by statute and case law as well as fair market value.

I will give them a general instruction regarding the fair and impartial and regarding the unanimity of their verdict. And I will utilize the verdict form that I will allow you all to review shortly.

As regards the request to charge from landowner Number 8 the court will use its standard instruction on credibility as well as 9 on expert witnesses and standard instruction on just compensation which is the request 10.

MS. WALSH: Thank you, Your Honor.

THE COURT: You're welcome. As regards to condemnnor's request, Charleston Number 1, fair market value the court will use standard instruction as well as Number 2 which is highest and best use as well as Number 3 which is expert witnesses and Number 4 which is burden of proof. Number 5 is inapplicable factually to this case as well as Number 6 and Number 7 as well as Number 8.

And Number 9 is an as a matter of law for the court and of legal procedure to be utilized; therefore, it is not appropriately instructed to the jury.

Number 10 is cumulative on damages and the court will use the standard instruction. I may consider Number 11, but I think that is already included in my standard instructions.

MR. MURPHY: Also, Your Honor, there hasn't been any testimony on loss of business at all.

THE COURT: Yeah, your client did mention it tangentially. And I may need to address it. I don't want the jury left with the impression that he is entitled to some loss of use of business as element of actual or special

damage.

In a condemnation case special damages is defined as the devaluation to the remainder of the property, not anything else. So I don't want the jury left with the impression that somehow he lost business or his testimony regarding that he had to buy a new building for the relocation of his business and somehow he needs to be compensated for that. Because he's not.

So I may -- but I think my instructions may encompass it. I just need to go back and read them again to make sure. But if not, I am not certain that I would actually use Number 11, but I might use some other language that would address that issue.

MR. MURPHY: And, Your Honor, we have -- have also sent in charges one threw ---

THE COURT: I'm going to go through all of them.

MR. MURPHY: Okay.

THE COURT: Landowner's request Number 1, actual value, the court is going to use its standard instruction as well as Number 2, Number 3, Number 4, Number 5, and Number 6 as well as number -- 7 is really an inappropriate comment on the facts. That is as a matter of law for the court, not a matter for a jury.

It is a matter of law that a landowner may testify as to the value of its own use of property. The court will

give a standard instruction on the believability, credibility of the witnesses and how the jury is to weigh testimony.

But it is not appropriate to instruct a jury that a landowner can testify as to value of his own property. It's -- it's -- that's not -- that would be me somehow really actually giving more credibility to his testimony or me making an inappropriate comment on his -- on the factual nature of his testimony.

It is a matter of law for the court as to whether a layperson can testify regarding the value of their property. And I have already allowed it, and it has already been introduced into evidence. And the court's standard instruction more appropriately addresses that issue. I am not going to comment on one person's testimony versus another.

The request for instruction will be marked as court's exhibits. Have that one marked too. If you will give it back to me so I can look at Number 11 again. Are there any exceptions to the charges proposed from the landowner?

MR. MURPHY: Yes, Your Honor, we would ask ---

THE COURT: You may proceed.

MR. MURPHY: We would ask you to charge condemnor's Request Number 3 which is the before and after ---

THE COURT: I have included it in the standard

instructions.

MR. MURPHY: Oh, okay. Then it is -- all right. Very well. And then also we just note exception to charge Number 7 which you addressed allowing the landowner to testify on his behalf.

THE COURT: I have already indicated that it is a matter of law for this court to determine, not for the jury. He has been allowed to testify regarding the value of his property. I am not going to comment or give any more weight to the credibility to be afforded to his testimony. It would be an inappropriate charge on the facts.

Any exception from the County?

MR. FERRARA: None, Your Honor.

THE COURT: If you all could approach for me, please, and look at the verdict form.

(WHEREUPON break was had.)

THE COURT: I need the jury.

(WHEREUPON, break awaiting jury.)

(WHEREUPON, the jury enters the courtroom at approximately 12:22 p.m.)

THE BAILIFF: All jurors present, Your Honor.

THE COURT: Thank you. You may be seated. Ladies and gentlemen, we are going on a little field trip. We are going to visit the property.

There's a van downstairs, so we will transport you in.

We anticipate that once we have visited the property and returned, your lunch will be here and you will be able to eat. And I know it is a little probably beyond most people's lunchtime, and we appreciate your indulgence. If you need a snack on the way, let know and I will have the bailiffs accommodate you.

We will be travelling in a 15-passenger van. A bailiff will be accompanying you as well as the deputy who will be driving the van. And then again we will come back and have lunch. And after that I anticipate we will have closing arguments and the court's instructions after which you will be allowed to deliberate regarding this case.

I instruct you that while you are on the way to and from the scene and at the scene you are not to discuss the case in any manner whatsoever among yourselves or with anyone else.

You are not to ask any questions of the lawyer or of the attorneys or of the court or of the deputies or anyone else regarding the facts and circumstances of this case.

Of course if you are in some distress or, you know, average, ordinary conference is not precluded. But you are not to have any discussion in any manner whatsoever regarding the case.

The purpose of going on a site visit is not to have any deliberative process during the visit. It is not for the

purposes of presentation of evidence from either party. And it is not for under any circumstances for the purposes of trying to perform any type of experiments or otherwise, if that makes sense, or any kind of demonstrations or otherwise regarding the property. It is for the sole purpose of you being able to view the property which is the subject of the condemnation in this case.

If you have any questions or concerns while we are at the property, you are to ask those only of me and then I will make the attorneys aware of any questions and we will place those on the record when we return to the courthouse.

Now I'm going to ask that you return -- you are going to -- if you need to get your pocketbooks or anything, you will be allowed to get those. And then the bailiffs are going to take you down.

The van is in Meeting Street Courtyard which is -- I am trying to think my orientation. Because I get turned around when I am in the building. It is in that -- it is right by where those pylons are, right? Out in front?

THE DEPUTY: It will be on Meeting Street side, Your Honor.

THE COURT: Meeting Street side.

THE DEPUTY: Directly outside of the County Office Building.

THE COURT: All right. You mean outside the -- where

we are on the garage, by Hibernia?

THE DEPUTY: Once you come out through the front door and just go out through the -- by the stairway there.

THE COURT: Oh, right there. But you -- are you going to help me with the bailiffs to take them where they need to go, or ---

THE DEPUTY: Yes, ma'am.

THE COURT: --- are you going with me?

THE DEPUTY: Yes, ma'am.

THE COURT: Okay. All right. I am directionally challenged, so they will help you find out where you are suppose to go. They are going -- we are going to load you to the van. We are going to head over to James Island. And then leave we will leave the property together. We will return to the courthouse. And at that time I anticipate your lunch will be here. Or and if not, shortly within the time of us returning. And we will go from there.

We appreciate -- you can leave your notepads here at the courthouse in your seats as well as the exhibit that you have of the property. All right. I will see you all shortly.

No phones. If they have phones they will have to be off. They can take their phones with them if they want to, but they have to be off.

(WHEREUPON, the jury leaves the courtroom at 12:25 p.m.)

THE COURT: You may be seated. Any exception to the court's instructions regarding visiting the scene, from the landowner?

MR. MURPHY: None, Your Honor.

THE COURT: From the County?

MR. FERRARA: None, from Charleston County, Your Honor. Thank you.

THE COURT: All right. Let's see.

MR. MURPHY: Just for timing, Your Honor, when the jurors come back will it be necessary -- were you -- I don't anticipate you pulling back in the jury room. I would assume you just give them lunch and then resume at some point?

THE COURT: Yeah.

MR. MURPHY: Okay. And what time -- well, I guess it depends on how long it takes.

THE COURT: It depends on how long it takes. And just for your planning purposes, it usually takes them about 30 minutes to eat or 20 minutes. So you might want to have somebody bring you something because you are not going to have time to go out.

MR. MURPHY: All right. Thank you.

THE COURT: You might have somebody from you office bring you a sandwich or something so you can eat it in one of the conference rooms while the jury is eating. Or you

can always run through a drive-thru I guess on your way back.

MR. FERRARA: Your Honor, may I approach?

THE COURT: Yes. See you all shortly.

(WHEREUPON, the trial of this case was on break for the jury to view the scene and eat lunch.)

THE COURT: You may be seated. Is the landowner ready to proceed?

MR. MURPHY: We are, Your Honor.

THE COURT: Is the County ready to proceed?

MR. MITCHELL: Yes, we are, Your Honor.

MR. FERRARA: Yes, ma'am, Your Honor.

THE COURT: That's okay. I'm rather used to it. All right. Please bring in the jury, Mr. Rivers.

(WHEREUPON, the jury enters the courtroom at approximately 2:35 p.m.)

THE BAILIFF: All jurors are present, Your Honor.

THE COURT: Thank you. You may be seated.

Madam Forelady, ladies and gentlemen, both the landowner and the County have rested their case. The next part of the process is closing argument and the court's instruction on the law -- instructions on the law.

I would ask that you give the attorneys your undivided attention. The landowner may proceed.

MR. MURPHY: Thank you, Your Honor.

THE COURT: You are welcome.

(WHEREUPON, closing arguments were heard but are not a part of this partial transcript.)

(Following closing arguments:)

THE COURT: Does anyone need go to the restroom or is everyone comfortable?

(WHEREUPON, there was no response.)

THE COURT: Why don't y'all stand up and stretch a little bit.

(Pause.)

THE COURT: Madam Forelady and members of the jury, you have heard the evidence and the arguments of both parties. I will now explain to you the law which applies to this case.

As I have explained, this is a condemnation case arising under the law of what we call eminent domain. Eminent domain means that the State has the right to take private property for public use. This action is called condemning the property.

In this case Charleston County has condemned a certain tract of land in order to widen a roadway. A parcel consisting of .25 acres or 11,064 square feet is owned by Mr. Walter G. - I knew I was going do hesitate ---

MR. MURPHY: McAdory.

THE COURT: McAdory. I did not. Because I did not

want to mispronounce it. And I apologize. McAdory out of which 287 square foot or .030 which computes to 3/100's of an acre is subject to condemnation. The State must pay for the .030 acre piece of property which has been taken for public use.

Both parties in this case agree that payment must be made for the property. However, they disagree as to how much should be paid.

You are not to be concerned with whether the State had a right to take the property or whether the roadwork should be constructed on this particular piece of property. You must only decide the amount the landowner should be paid in order to be adequately compensated or paid for the property.

This amount is called just compensation. You, the jury, must determine the amount which would represent just compensation to the landowner. The values which you must apply are those which reflect the worth of the property on July 11th, 2012, the date of the taking and not the value of the property today.

Under our constitution and code of laws only you, the jury, can make the findings of fact in this case. I am not permitted to indicate to you how I may feel about the testimony and evidence which has been presented. The constitution of our state does not allow me to have an opinion about the facts of a case.

And throughout this trial it is been my intention to be fair and impartial toward each of the parties involved as well as their attorneys.

To determine the facts in this case, ladies and gentlemen, you will have to evaluate the credibility which is simply a legal term meaning the believability of each witness who has testified.

Some of the things you may consider as you decide whether to believe a witness's testimony about a particular matter include: what was the manner and appearance of the witness who testified, was he or she straightforward or hesitant in answering, was the testimony of a witness consistent or inconsistent, how did the witness come to know the facts that he or she testified to or what was his or her ability to know these facts, is there some reason that a witness would want to give testimony which would help or hurt one side or the other, in order words, was the witness biased or prejudiced, and was the testimony of a witness strengthened or weakened by other testimony or evidence.

Ladies and gentlemen, you can believe as much or as little of each witness's testimony as you think proper. You may believe the testimony of a single witness against that of many witnesses or just the opposite. Of course you do not determine the truth merely by counting the number of witnesses presented by each side.

Throughout this process, ladies and gentlemen, you have but one objective, to seek the truth regardless of its source. Our rules of evidence ordinarily do not permit witnesses to testify to opinions or conclusions.

An exception to this rule exists for witnesses we call expert witnesses, a witness who by their education, training and experience has become an expert in some art, science or profession, may give an opinion as to the subject the witness claims to be an expert in and may also give the reasons for that opinion.

You should consider any expert opinion given in this case like any other evidence. Give it the weight you think it deserves.

If you decide that an expert witness's opinion is not based on sufficient education, training and experience or if you decide that the reasons given in support of the opinion are not sound or that the opinion is outweighed by other evidence you may disregard the opinion entirely.

An expert witness's testimony is to be given no greater weight than that of other witnesses simply because the witness is an expert. And you do not have to accept an expert's opinion even though it is uncontradicted.

The same constitution and laws which designate and make you the finders of the facts as I just explained make me the instructor of the law. You must accept the law as I

instruct it. If I am wrong there is another place and time for that error to be corrected.

But for this case you must apply the law as I instruct it. And this means, ladies and gentlemen, that you should not be concerned with what you may think the law should be but only with what I instruct you the law actually is.

Members of the jury, the landowner in this case has the burden of proving the amount of just compensation by the greater weight or the preponderance of the evidence.

What we mean by the greater weight of the evidence can be illustrated by imaginary -- by imagining a traditional set of scales.

When the case begins the scales are even. After all the evidence has been presented if the scales should remain evenly balance or if they should tip even slightly in favor of the County of Charleston then the landowner will have failed to have met his burden of proof and he will not be entitled to recover on that particular issue.

If on the other hand the scales should tip even slightly in favor of the landowner then he will have met his burden of proof and your verdict would be for the landowner on that particular issue in dispute.

By a preponderance or greater weight of the evidence we mean evidence which as a whole shows that the fact or facts sought to be proven are more probably than not.

Of course there is no way to weigh evidence except through the exercise of your good common sense and judgment. It is entirely a mental process. And the evidence you should give the most weight to is that evidence which convinces you of its truth regardless of from whom or what source it has come.

As I have just explained to you, the issue you are to determine in this case involves just compensation to the landowner for the property which has been taken from him.

Just compensation is based upon the most advantageous and profitable use of the property on the date it was acquired by the County.

Just compensation refers to the full and perfect equivalent in money to be exchanged for the taken property so that the owner of the property shall be in as good a position financially as she -- he or she was in before their land was taken.

In other words, an owner who receives just compensation will be no richer and no poorer than he was before the property was taken.

An alternative -- alternative way to determine just compensation is to determine the difference in the value of the land before and after the taking.

You may also consider the cost to cure the damage to the remaining property.

Compensation for damages to the remaining property of the landowner must be limited to the decreased market value of the property resulting there from.

To award just compensation you will first have to determine the fair market value of the condemned property and the property which remained after the taking.

Fair market value is the price a willing buyer would pay and a willing seller would accept in the ordinary course of business when neither person is being compelled to act.

Fair market value is not sentimental value or the price the property would sell for under special or extraordinary circumstances.

In determining fair market value you must not consider speculative or imagine -- or imaginary damages or enhancements to the property, as well as a loss of business is not an independent element of damages in this case.

You must confine your consideration only to those elements which actually affect the property's market value. A landowner is only entitled to compensation for loss of access to an existing highway to the extent that such a loss adversely affects the fair market value of the property.

Fair market value is the actual value of the land at the time of the taking. Just compensation is based upon the most advantageous and profitable use of the property on the date it was acquired by the County.

In estimating its value you may consider all of the uses which could have been made of the land and which would have had some affect upon its market value.

You are permitted to consider comparable sales of the property to determine the fair market value of the taken property.

A comparable sale is a sale which is not too remote in time and which has some basis for comparison. The sale does not have to be in the same location, but it should be reasonably comparable.

Ladies and gentlemen, you have been selected as fair and impartial jurors sworn to impartially try the facts of this case. And when you comply with your oath to do so then no one will have the right to criticize your verdict and you will have fully discharged your duty as jurors in this case.

You should not be influenced by opinions or expressions of opinions if any which you may have heard outside of the evidence of this case, but you are to decide this case according to the testimony that you've heard from the lips of the sworn witnesses along with the other evidence that has been introduced.

Madam Forelady and members of the jury, in consideration of your verdict in this case in reaching a verdict your verdict must be a unanimous one which mean that all 12 of you must agree in order to reach a verdict.

Your verdict cannot be based on sympathy, passion, prejudice, emotion or any other consideration not found in the evidence of this case.

When we say unanimous we mean the verdict of all 12 of you. That is it must be the verdict of each and every one of you, a verdict that will speak the truth and do justice to both the landowner and the State.

Madam Forelady, I have prepared -- Madam Forelady and ladies and gentlemen of the jury, I have prepared for you a verdict form upon which you are to write your verdict once you reach a unanimous verdict.

And it reads as follows: We the jury unanimously find for the landowner in the amount of blank dollars as just compensation. Once the jury has reached a verdict it is your responsibilities to write out that verdict in numeric form as well as in alphabetic form.

In order words -- I hope that was clear. I always wonder if it is when I say it. But I think you understand what I meant.

And once the jury has reach a verdict you are to sign and date the form and knock on the door and advise the bailiffs that you have reached a verdict.

Again, ladies and gentlemen, your verdict must be a unanimous one which means that all 12 of you must agree in order to reach a verdict.

If you have any questions during deliberations they will need to be written out. And that would be written out by the foreperson. And you will follow the same procedure. Write out any questions. Knock on the door and advise the jury that -- advise the bailiffs that you have a question which they will in turn give to me.

Ladies and gentlemen, I need to advise you that if you have any questions during deliberations please know that there will be a delay in our response. And that is because there's a procedure that I have to follow in answering any questions that you may have.

Also I neglected to explain this earlier. The foreperson is merely an administrative function. That person does not have any greater vote or voice than you do. It is a purely random process that the court employs in selecting a foreperson, and it is that person's responsibility to fill out the verdict form and to write out any questions the jury may have during deliberations. Again, it is purely random and that person does not have any greater vote or voice than you do.

Ladies and gentlemen, I am going ask that you return to your jury room. But do not yet begin your deliberations. I may have to -- there are some matters of law I need to take up with the attorneys that may require clarification of an instruction or further instruction.

However, if there is no further instruction we will send in the verdict form to you along with the exhibits and your notebooks. And at that time you will be allowed to begin your deliberations. If you would go with the bailiffs, please.

(WHEREUPON, the jury leaves the courtroom at 3:25 p.m.)

THE COURT: You may be seated. Does the court reporter have all of the exhibits?

THE COURT REPORTER: Yes, ma'am.

THE COURT: Are there any exceptions from the landowner?

MR. MURPHY: No exceptions, Your Honor.

THE COURT: From the State -- I mean the County. I'm sorry.

MR. FERRARA: None, Your Honor. Thank you.

THE COURT: Can y'all make sure all of the evidence is in place so that we can send that -- you can go ahead and start getting the notebooks, Mr. Rivers.

(Pause for review of exhibits.)

THE COURT: Sir, we want to thank you for your time and your attention to this case. We know being an alternate is thankless. However, I think I have good news for you because I can excuse you for the week.

ALTERNATE JUROR: All right.

THE COURT: We will mail your check to you. If you

need a work excuse you can get that downstairs on the first floor on the circuit court side of the clerk's office. And any of the deputy clerks can give you one. You are welcome to discuss this case, but I would ask that you not do it until after Friday after the entire panel is excused. Because sometimes ---

ALTERNATE JUROR: How am I going to know the verdict?

THE COURT: Huh?

ALTERNATE JUROR: How am I going to know the verdict?

THE COURT: You can stay if you want.

ALTERNATE JUROR: In the court -- in the deliberating room or ---

THE COURT: We will keep you -- no, we will keep you in the multipurpose room and you can ---

ALTERNATE JUROR: Someone will tell me.

THE COURT: Or we'll give you a call.

ALTERNATE JUROR: Okay.

THE COURT: Lots of times lawyers will contact you because they just want to know how they can do things better. And so you are welcome to talk about that with them if you like. By the same token if someone should go beyond your comfort level, please let us know so we can protect your privacy. But we thank you ---

ALTERNATE JUROR: Yes, ma'am.

THE COURT: --- for your willingness to serve. Have a

wonderful day. You're excused.

(Whereupon the alternate leaves the courtroom at approximately 3:30 p.m.)

(Whereupon, the exhibits and verdict form was given to the jury and they were told to begin for their deliberations.)

THE COURT: We'll be at ease until the jury gives us further instructions.

(Break.)

THE COURT: We have a question from the jury: Could we have the copy of law relative to just compensation. And my response to them will be, ladies and gentlemen, our procedures do not allow for a copy of the jury charge, slash, instructions to be given to you; if there is a specific instruction like you would like given again or the entire instruction, please advise us and I will accommodate your request immediately.

Is there any exception to that response, from the landowner?

MS. WALSH: No, Your Honor.

THE COURT: From the County?

MR. FERRARA: None, Your Honor.

THE COURT: That will be stapled to their original response and it will be kept as a court's exhibit.

(WHEREUPON, Court's Exhibit 4 was marked and made a part of the record.)

MS. WALSH: Thank you, Your Honor.

THE COURT: You are welcome. We will await further instructions.

(Break.)

THE COURT: The jury asked for a calculator, so I had Don give them one. Is there any exception from the landowner?

MS. WALSH: None.

THE COURT: From the County?

MR. FERRARA: None, Your Honor.

THE COURT: Have the note marked as a court's exhibit.

(WHEREUPON, Court's Exhibit Number 5 was marked and made a part of the record).

(Break.)

(WHEREUPON, resumed 5:45 p.m.)

THE COURT: The jury has sent a note. And that note reads as follows: Could someone read the just compensation portion of the South Carolina law pertaining to this case.

Signed by the foreperson.

And in response I will reinstruct them just compensation which also encompasses fair market value, a portion of the instruction.

Is there any exception from the landowner?

MR. MURPHY: Which charge is that, Your Honor?

THE COURT: Just compensation which deals with how you

calculate the cost of compensating the landowner. Which is what the jury has requested.

MR. MURPHY: And you propose to read the full charge or ---

THE COURT: No, I'm just going to read that portion that deals with ---

MR. MURPHY: Okay.

THE COURT: --- just compensation and fair market value.

MR. MURPHY: Judge, I'm sorry. But I would just request that if you could just read that portion. Because I'm looking at ---

MS. WALSH: I am looking ---

MR. MURPHY: --- charge ---

MS. WALSH: Can't argue if we don't have the standard in front of us. So I -- you just said just compensation which includes fair market value is that all ---

THE COURT: Just compensation I interpret their note to mean how do we calculate the value of what -- how do we determine damages, how do we determine how the landowner is compensated for this property.

So I am going to read everything that deals with how you calculate, how you come to the figure of compensating him for his property.

MR. MURPHY: Okay. And that would include damages to

the remainder as well, Your Honor?

THE COURT: Oh, yes.

MR. MURPHY: Okay. That is what I was asking.

THE COURT: Any exception from the landowner?

MR. MURPHY: No, none from the landowner.

THE COURT: Any exception from the County?

MR. FERRARA: None from the County, Your Honor.

THE COURT: That's the third note.

(WHEREUPON, Court's Exhibit Number 6 was marked and made a part of the record.

THE COURT: If you'd get jury for me, please.

(WHEREUPON, the jury enters the courtroom at approximately 5:50 p.m.)

THE COURT: You may be seated. Madam Forelady and ladies and gentlemen -- ladies and gentlemen, in response to your note the court reinstructs you as follows:

As I've explained to you the issue you are to determine in this case involves just compensation to the landowner for the property which was taken from him, just compensation based upon the most advantageous and profitable use of the property on the date it was acquired by the County.

Just compensation refers to the full and perfect equivalent in money to be exchanged for the taken property so that the owner of the property shall be in as good of a position financially as he was before his land was taken.

In other words, an owner who receives just compensation will be no richer and no poorer than he was before the property was taken.

An alternative way to determine just compensation is to determine the difference in the value of the land before and after the taking. You may also consider the cost to cure the damage to the remaining property.

Just compensation for damages to the remaining property of the landowner must be limited to the decreased market value of the property resulting there from.

To award just compensation you will have -- you will first have to determine the fair market value of the condemned property and the property which remained after the taking.

Fair market value is the price a willing buyer would pay and a willing seller would accept in the ordinary course of business when neither person is being compelled to act.

Fair market value is not sentimental value or the price the property would sell for under special or extraordinary circumstances.

In determining fair market value you must not consider speculative or imaginary damages or enhancements to the property or loss of business. And loss of business is not an independent element of damages in this case.

You must confine your consideration only to those

elements which actually affect the property's market value. A landowner is only entitled to compensation for loss of access to existing highways to the extent that such a loss adversely affects the fair market value of the property. Fair market value is the actual value of the land at the time of the taking.

In estimating its value you may consider all of the uses which could have been made of the land and which would have had some affect upon its market value.

You are permitted to consider comparable sales of property to determine the fair market value of the taken property.

A comparable sale is a sale which is not too remote in time and which has some basis for comparison. The sale does not have to be in the same location, but it should be reasonably comparable.

That concludes the additional instruction. If you need anything further, please let us know and we will accommodate your request immediately.

(WHEREUPON, the jury leaves the courtroom at 5:55 p.m.)

THE COURT: You may be seated. Any exceptions from the landowner?

MR. MURPHY: None, Your Honor.

THE COURT: From the County.

MR. FERRARA: None, Your Honor.

THE COURT: Okay. We will await further instructions from the jury.

MS. WALSH: Thank you, Your Honor.

THE COURT: You're welcome.

(WHEREUPON, court was recessed while awaiting verdict from the jury.)

THE COURT: We have a verdict. Is there anything before we bring in the jury, from the landowner?

MR. MURPHY: None, Your Honor.

THE COURT: From the County?

MR. FERRARA: No, Your Honor.

THE COURT: They should be right behind me, Mr. Rivers.

(WHEREUPON, the jury enters the courtroom at approximately 6:57 p.m.)

THE BAILIFF: All jurors are present, Your Honor.

THE COURT: Thank you. Madam Forelady, has the jury reached a verdict?

MADAM FORELADY: We have, Your Honor.

THE COURT: If you would give the verdict form to the bailiff for me, please.

(Complied.)

THE COURT: Thank you. If you would publish the verdict. Thank you, sir.

THE CLERK: In the Court of Common Pleas for the Ninth Judicial Circuit, Case Number 2012-CP-10-4511, State of

South Carolina, County of Charleston; County of Charleston condemner versus Walter G. McAdory, landowner.

We the jury unanimously find for the landowner in the amount of $63,158 as just compensation. Signed -- excuse me, Mary Bartshe, foreperson of the jury, dated October 17, 2013.

Madam foreperson, ladies and gentlemen of the jury, if this is your verdict please signify by raising your right hand.

THE CLERK: Thank you. You may put them down.

THE BAILIFF: Your Honor, let the record reflect all jurors raised their right hands.

THE COURT: Thank you. Is there any request to poll the jury ---

MR. MURPHY: Yes, we would request it.

THE COURT: --- from the landowner?

THE CLERK: Ladies and gentlemen, I am going to ask you each two questions. First, is this your verdict; and second, if this still your verdict. Please just answer accordingly. And when I call your name if you would raise your hand so I know who I am speaking with.

(WHEREUPON, the jury was polled.)

THE CLERK: Your Honor, the jury has been polled. The verdict stands.

THE COURT: Madam Forelady, ladies and gentlemen, we

thank you for your time and your attention to this case. We know that jury service is thankless and basically at $10 a day you certainly are donating your time to us for the purposes of acting as the fact finders in cases.

Our system is the only system of its kind in the world where 12 ordinary people sit as fact finders and then apply really what is at best and often times a very complicated set of laws to those facts and render verdicts.

Charleston County is probably -- it is not probably; it is one of the busiest circuits in the state probably running neck and neck with Columbia which is the capital and Greenville County which is in the Upstate.

South Carolina has the largest case filings only second to another state in the nation at over 5,000 case filings per judge. We have 49 circuit judges. We just added some new circuit judges the other day, so I don't know what number that brings it up to. I think it brought it up to either 51 or 52 judges who rotate throughout the state and hear cases.

Just to give you some point of reference, we often all attend what is called continuing legal education and we often go to a place called the National Judicial College where the majority of judges across the country come to be educated about how to do our jobs better and to learn about different topics.

And in the course of that, you make friend with other judges across the country I have made friends again across the country. Two of my friends sit on what is called Homicide Court in Philadelphia. For the City of Philadelphia they have nine judges whose only job is to hear murder around capital cases. Nine. All they hear all year are murder cases.

South Carolina has 51 judges that hear everything from capital cases down to anything civil above $7,500 in addition to appellate jurisdiction over the magistrate's court and the probate court. And we all hear all of those cases. And even with that we still dispose of cases faster than most states with an average of eighteen months, where a lot of states take about five years to dispose of most of their cases.

So I give you those statistics so that you will know how very valuable you are to us. Of the 52 weeks of the year Charleston County probably holds jury trials 46 of those weeks. We only don't have court during chambers where we go to our conferences and when we have holidays, Christmas, Thanksgiving. And then we have a couple of other chambers weeks spread out through the year. But on average we have two civil courts operating.

This week I think we have three -- four -- five. And we have two nonjury courts operating as well, which I

neglected to mention. We hear cases nonjury where we act as the fact finders which are motions and often nonjury trials. But we also have two criminal courts that are operating at the same time. So as you can well imagine, we generally have those four courts with the exception of very few weeks like next -- well, next week we will have criminal court. This week I don't think we have any criminal court.

But needless to say without going through all that, we have a very, very heavy, busy docket. And the majority of that are jury trials.

And of course we could not be able to perform that function without you all being willing really to give us your time to do that. So I hope you know how very valuable you are to us and to the system.

You are excused for the week. This is the last case that we will try. You are welcome to discuss this case if you would like. Often times lawyers will contact you so that they can get feedback as to how they can do their jobs better, how they can present issues better.

And, you know, lawyers we are kind of stuck in a way we think and so it helps often times to talk to a layperson to see how they perceive the issues in a case, how they perceive how a case was tried.

So you should not be surprised if any of the lawyers might contact you to get some feedback. By the same token

you are not required to speak with anyone. And if a conversation should go beyond your comfort level please notify the clerk's office so that we can take the appropriate action to protect your privacy.

If you would like someone to escort you to the garage because it is getting a little dark, we can have one of the deputies escort you to make sure that your safety is insured until you reach your vehicle. So if you want to be escorted, please let the bailiffs know and we will take care of that.

Your work excuses as well as your checks will be mailed to you. If you absolutely need a work excuse tonight we will provide that to you before you leave. Again, just let the bailiffs know if you need that. Otherwise we will mail them to you. Thank you so very much for your service. And you are excused with the court's profound thanks.

I will hear post-trial motions in just a moment.

(WHEREUPON, the jury leaves the courtroom at 7:04 p.m.)

THE COURT: All right. Are there any post-trial motions, from the landowner?

MR. MURPHY: Your Honor, we would request ten days to file post-trial motions ---

THE COURT: I hear post-trial motions at the conclusion of trial. It is never going to be more fresh to me than it is right now. I am going into a heavy criminal docket. And

I have three terms of post-trial -- of PCR's that I have to do orders for so ---

MR. MURPHY: Very well, Your Honor.

THE COURT: No time like the present.

MR. MURPHY: We would move for a motion for a new trial pursuant to Rule 59E as the verdict was the result of passion, caprice or prejudice.

Specifically there was the court's failure to allow landowner to testify about the monetary value of the improvements and/or investments into the building which were affixed to the property. Number two, the failure to allow the jurors to enter inside the building during the jury visit. Number three, the verdict is not supported by the evidence. And number four, the failure to charge the jury on the landowner being able to testify about the value of his property.

THE COURT: Would the County like to respond?

MR. FERRARA: Yes, Your Honor. The County would like Your Honor to deny the landowner's motion pursuant to Rule 59 for a new trial because all charges to the jury were correct in that improvement costs are in direct contravention to law because damages are calculated using the diminution in addition of the property and already account for some other use of the building on a property.

And your instruction not to consider the improvements

extended to not allowing them to go into the building to look at the improvements.

THE COURT: And actually I would say for benefit of the record, while I did that, they still went into the back of the building.

MR. FERRARA: That is correct, Your Honor.

THE COURT: They saw while we were on the property every single one of them went in there and looked in. So I don't think you can really claim any prejudice from that. When we went to the back of the building all of them went. They looked inside the shop, and they saw it.

So even though I said they weren't going to go, when we got there I just went ahead and let them do it because I just wasn't going to interrupt -- I felt to interject myself at that point would have had a more disruptive influence. And so they went into the building. They went into the back of the building. They saw the lifts. They went inside. They all went beyond the threshold of the back of the building. And they all went inside and they looked at it.

MR. FERRARA: Further, Your Honor, the definition of just compensation, South Carolina, just compensation does not include damages associated with improvements to the property. That is not a component of damages that are compensable. Improvements are not a compensable element of fair market value in determining just compensation.

Improvement value like you said earlier does not increase the fair market value. It has no relation to fair market value. I believe you instructed the jury on that. I think your jury instruction was specific.

I think you said fair market value -- well, this goes to the highest and best use includes all uses upon land -- well, strike that last cite about the instruction.

But nevertheless improvements are not a component of damages that are compensable when you calculate the just compensation. And I would have to go through many other reasons why I think that you ought to deny the motion.

I think that the judgment is based on accepted methodology of Crider which was an appraisal done in conformance with the uniform standards of the professional appraisal practice.

The testimony of the landowner was certainly confusing. He asked them to find for him in the amount of $150,000 claiming on one hand that the building had no value but then again the building had value because it could be rented for $1,700 a month.

So I don't see how that that creates some passion of prejudice to the landowner. It was his argument. It certainly was a confusing argument to me. I think the jury disregarded it and relied on Crider's appraisal. So you

should deny the motion for a new trial.

THE COURT: Thank you, sir. The court has considered the post-trial motions and would find for the record that the judgment of the jury it is not -- is not the result of passion, caprice, prejudice or some other influence outside of the evidence.

The court would also find that consistent with case law if there is any evidence to sustain the factual findings implicit in a jury's verdict the court must affirm and uphold that verdict.

There is no evidence of corruption or other improper motive in the jury's verdict. And the verdict does not shock the conscience of the court. The court finds that there is no basis for a new trial and therefore the motion is denied.

Now to address each of the grounds more specifically, the landowner was allowed to testify regarding the value of the property, his estimation of what he felt the property was worth.

And while he was not allowed to give specific figures, partly because it was speculative, some of the expenses he was talking about were made after the taking.

And I forget the rest of the grounds that I found at the time of the contemporaneous motion and when I ruled contemporaneously on the matter.

But there is absolutely no support in case law in determining evaluation of this property to have allowed the jury to have taken into consideration the monetary value of enhancements.

Frankly the court was quite liberal in allowing testimony regarding enhancements. Because the case law is very clear that in determining fair market value enhancements to the property cannot be considered. And the court stands by its earlier ruling that enhancements are not a part of the elements of damages nor is it a part of how fair market value is computed.

In addition to that, the case law very clearly states that special damages would be those damages to the remainder of the property, that being either the cost to upfit or to bring the property into -- to bring it into the place where it could continue to be used which is the testimony regarding the signage as well as the parking or the diminution in value to the remainder.

And certainly he was allowed to testify at length regarding each of those issues. And so the court stands by its earlier ruling.

I've already made my observations regarding the jury entering the building. And they did enter the building during the visit. And they did look at length to the back of the building, the lifts, the two doors and otherwise.

But even if I had not allowed them to go into the building, how the building looks still falls within the parameters of enhancements. And he is not entitled to be compensated regarding enhancements.

And he is only entitled to the fair market value of his property, the cost to cure the damage to the remaining property, and any diminution in value to the remainder of his property, subtracting of course any enhancements made by the County. And there was no testimony that the property was enhanced in any way pursuant to the statute.

Each party amply argued and advocated their own formulas as to how the jury should consider just compensation with reach of them articulating what they believed to be how the difference in value before and after the taking should have been calculated. And so and evidence on both of those postures was allowed to be presented to the jury.

There's still in my estimation no basis for the court to instruct the jury regarding the landowner's ability to testify regarding his lay opinion of his -- or the valuation of his property. That's a legal issue instructing the court that a layperson can testify as to the value of their own property.

(Disruptive outside noise.)

THE COURT: Please close that door.

Because generally and under general evidentiary principals ---

THE COURT: I need you to close that door, please.

Under general evidentiary principals a layperson would not be entitled to testify to something that required specialized knowledge, training, and experience such as the valuation of property.

But there are exceptions to that rule, that being condemnation proceedings and probably some other situations where generally the precedent is a person can testify as to what they believe the valuation of their property to be. But that's a legal issue for consideration by the court. It is not something that should be instructed to the jury.

And the language that was cited from the case deals with instructions to the court regarding the ability to allow that type of testimony.

But even looking at that issue in the light most favorable or even let's just say for argument's sake that the landowner was correct. I very clearly instructed the jury regarding how they are to judge witness credibility and believability that clearly is within their prerogative to give testimony the weight they think it should have and their prerogative as fact finders.

And in addition to that, the expert instruction is very clear and it has an equalizing affect. It basically says

that while an expert has specialized training his testimony is not considered -- not to be given any greater weight than any other witness. You can disregard it if you want to if you think it is outweighed by other testimony in evidence, if you think it is not supported by the appropriate training, education, and experience; if you think it's contrary to the weight of the evidence.

In other words, it is the great equalizer. It simply says yeah we allow experts as an exception to testify to opinions and conclusions but you don't have to accept them even if they are uncontradicted.

So in light of that instruction as a whole, that being the charge on credibility and believability of witnesses, how far they are to judge the testimony of witnesses, along with expert witness testimony, I can ascertain no reason why -- for the jury to have been instructed regarding -- regarding that.

And the way the instruction was structured in my estimation would have been an impermissible comment regarding the factual nature of the landowner's testimony.

I think I covered everything that was raised. And based on that, the motion for a new trial is denied. And it's very clear from the figure that was rendered by the jury there is a difference of -- and I just wrote it down. I think it is eleven thousand dollars and some change. I

apologize. This late hour I am not -- I am not good at math at the best of circumstances. So it is seven o'clock. I am definitely challenging my math skills.

It was a difference of $11,488. So it is very clear to me that the jury did not wholeheartedly accept the testimony of the expert. Because if they did, their verdict would have been $51,670.

So they clearly took into account some -- they would have to have taken into account other factors that the landowner testified to or they would not have given him a verdict almost $12,000 above that which the County says the property is worth.

So clearly there's factual testimony to support their finding. And I can discern no basis to disturb it. If anything I think it would be more within the court's responsibilities to have remitted the verdict because clearly I think they may have relied on some things that are not compensable.

But I don't -- I think there's sufficient evidence in the record to support his, the landowner's, contention that he can no longer use the property for the purpose for which he purchased it. I hope that wasn't too redundant. To which he bought it.

And so I think clearly the verdict is within the realm of -- so clearly the jury believe the landowner and they

believed -- they drew the line somewhere in the middle of what -- of what they believed the loss -- or the diminution in value to the remainder was of this property and the cost to upfit it.

Because I am very observant. And I watched them. They looked at the sign. They looked at the parking spaces. They were looking at the width of the parking spaces. They were looking at the distance of the sign from the building. They went on the other side. They looked at its visibility from the carwash which is next door over into -- they were very observant. And they took about 35 minutes to -- I think we were there about 35 minutes to look at that property. And they were very observant.

And again, I, in my exercise of authority determined I would just let them go inside of the building. I wasn't going to have the deputies go over there and say stop, don't go into the building. Because I thought that would have -- it would have just been an unnecessarily heavy hand. And I just didn't see the point of it. And they had already seen the pictures anyway so.

And that is the other point. They had already seen pictures of the interior of the building. So I could really discern no prejudice from that either. I will note your post-trial motions were heard and denied.

If you need anything more specific than that you will

get a copy of the transcript and specific findings of fact and conclusions of law. And we'll do a Form 4.

Now, I think that we need to deal with -- give me one moment. It is my understanding pursuant to 28-2-510 that when the landowner prevails in a condemnation action in addition to his compensation for the property may recover his reasonable litigation expenses by serving on the condemnor and filing with the Clerk of Court an application there within 15 days.

Okay. So they -- y'all have 15 days to do that. So that's not something I need to deal with right now. Let's see here. For the purposes of this section prevails means that the compensation awarded other than by settlement for the property exclusive of interest is at least as close to the highest valuation of the property that is attested to at trial on behalf of the landowner as it is to the highest valuation of the property that is attested to at trial on behalf of the condemnor.

MR. MURPHY: Your Honor ---

THE COURT: That's a little convoluted.

MR. MURPHY: It does not apply to us.

THE COURT: Okay.

MR. MURPHY: We did not prevail on this statute.

MR. MITCHELL: The County agrees.

THE COURT: Okay. You won't get an argument from me.

If y'all feel you did it, I'm fine with that. I have to be honest, I'm not really particularly familiar with this statute anyway. We try so very few condemnation cases anymore that -- I thought it was similar to the mechanic's lien statute. But as I'm reading I am thinking it is a little different. Okey doke.

Is there anything further before we adjourn for the evening, from the landowner?

MR. MURPHY: Nothing, Your Honor.

THE COURT: From the County?

MR. FERRARA: Nothing, Your Honor.

MR. MITCHELL: No, Your Honor.

THE COURT: Y'all have been troopers. Have a wonderful evening.

(Whereupon the trial concluded.)

(NOTE: A transcript which has been certified by the court reporter will bear an original signature on the below certification sheet. Please contact the court reporter for additional certified transcripts.*)*

CERTIFICATE

I, the undersigned Phyllis Norton, Official Court Reporter for the Ninth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the captioned case, relative to appeal, in the court for Charleston County, South Carolina, reported by court reporters Phyllis Norton on October 16, 2013 and Sharon Vizor October 17, 2013.

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

PHYLLIS NORTON, CVR
(Signature in blue ink.)

Date: December 29, 2013

Certified Transcript Provided For: MURPHY w/ Williamson Walker
Certification Reference # 12913 07216

State of South Carolina	)	Court of Common Pleas
County of Charleston	)	Ninth Judicial Circuit
County of Charleston,	)	Transcript of Record
Plaintiff,	)	2012-CP-10-4511
V.	)	
Walter G. McAdory,	)	
Defendant.	)	

October 17, 2014

Charleston, South Carolina

B E F O R E:

The Honorable Deadra L. Jefferson, Judge, and a Jury

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

Bernard Ferrara, Esquire

Attorney For the County

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Abigail B. Walsh, Esquire

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SHARON L. VIZER

CIRCUIT COURT REPORTER

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Thursday, October 17, 2014

(The following requested portion of the transcript of record was reported as follows.)

MR. MURPHY: Madam foreman, ladies and gentlemen of the jury, I think you can see why there's never going to be a movie about a condemnation case, but that doesn't mean it's not important.

And we appreciate your time. We know this is an inconvenience to you. So myself, Ms. Walsh, and Mr. McAdory thank you for serving.

Now, this case is about theory versus reality. Now, in theory you could never walk through that door because you could always get a little bit closer without passing through it, but that's not reality.

Reality in this case is that Mr. McAdory paid $375,000 for this property. The reality is that he had to make permanent improvements to update it for his intended use as a garage, and the reality is he has to move his business as a result of this taking.

Now, no one would go through the hassle and the inconvenience of moving their business unless they absolutely had to. And that is, I think, the strongest evidence that the highest and best use has changed. It was a garage and the garage left because it wasn't functionable.

Now, when the highest and best use changes the value of the buildings change as well because they are outfitted for a garage and that's the use that they are outfitted for, and nobody is going to pay money for a use that they are not going to apply to the project -- to their property. So in essence, the buildings automatically lose value, and the reasoning is that if someone comes in and rents this place or buys it they are going to have to make improvements to the property. If it's a restaurant they are going to have to make changes, and that's going to be a substantial investment.

The other option they have is to demolish the building. Neither of these options affects the market value of $375,000, and the logic is because Glenn is not going to sell it for less than what he paid for it. That makes perfect sense.

So really, the only prospective buyers or tenants are going to be national chains; Dunkin' Donuts, Starbucks, some big-time developer that's going to come in, and that's evidenced by the four comparable sales that Mr. Crider used. He had a Dunkin' Donuts, a Bojanles', a shopping center, and something else I can't recall, but as he testified, assuming that those buyers purchase this property they would demolish the building. They pay the 375 but they would demolish the building and

redevelop the property.

Now, here, had Glenn bought a turnkey garage he would have paid a lot more for it, but he bought a piece of property that had an old building on it and he in turn only had to pay 375,000. Now, he thinks the market value of this property in the before is 375, and you can understand that because that's what he paid for it.

Now, the County is playing games with this before value. They are saying we didn't consider the building; it might have value, it might not but I didn't look at it. And since it wasn't touched it's not part of the taking, it's not affected, and the improvements might have added value but I don't know.

And the reason that they are taking that position is because of a theory, and the theory is that I don't know if this is the highest and best use, was as a garage. It's as commercial.

Well, all the properties are commercial. Everything is commercial out there. It's easy to sit up there and say, Well, it's a commercial use in the before, it's a commercial use in the after.

Well, of course it is, but you have to look at what the people invested into the property and what the use is because depending on the use of the property directly correlates to the value of the improvements.

Now, when you are dealing with the taking I would submit that the government has the responsibility to consider everything the landowner believes is relevant. They need to ask the landowner how this project is impacting his property, how it's impacting his business. He has absolutely no choice and he should get every benefit of the doubt here.

The reality is that this project, Mr. McAdory testified, impacts the land in three ways. It eliminates all the parking in front, it eliminates the signage, and it reduces the developable area in the after. And all three of those impacts reduce the market value of the property.

And then we are getting more games from the County. With regard to the parking spaces, You didn't have six spaces out there; you only had two. Well, then it changed to maybe three.

Well, the fact of the matter is he had six spaces, and when you are pressed for space you make the use of every inch of space you get. My law office is right down the street, my former office. We had the exact same parking. We parked three cars in and three cars would come behind, and if you look down Meeting Street you'll see a number of houses that do the exact same thing.

The County is sitting there saying, We know you had

great signage in the before but just put it on the wall, put it over here. It's just as good as before, trust me. We know we reduced the area that you could develop but in theory that doesn't change the market value, so just take this. Take this money and go.

And the reality is they are trying to force Mr. McAdory in a lesser position in the after than he was in the before, and that's just not the law.

Now, the after value, Mr. McAdory testified, is worth $225,000, which is the land value that Mr. Crider put on the property. He also testified that he had a real estate agent, he consulted a real estate agent who told him that $225,000 was the after value as well.

Now, this is just compensation. Your job is to make him whole. Mr. McAdory wants $150,000, which is the difference between what he paid and what he could sell the property for.

Now, the County applies theory. They are not looking at reality. They want you to ignore the impacts to the business, ignore the impacts to the improvements. It's 25 bucks a square foot. Here is a little money to fix these problems that you think with regard to parking and signage and be on your way because we hired an appraiser. And Mr. Ferrara stood up there and said, He is the best appraiser. He is best. We've got the best

here.

And that appraiser did a number of tracts in this case and he used the exact same comps on every property and he made zero adjustments, and when he did his update he changed one comp and charged an additional $2500. And, folks, what that tells me is that was like a shop. He was spitting these appraisals out. He wasn't giving them much thought because time is money. He was charging a flat fee and the more time he spent on it the more money he lost.

Now, the reality is is that Glenn has a 2500 dollar a month mortgage on this property. He has to pay taxes on the property. He has to maintain the property. He has to pay insurance on the property. And to get up here and say, Oh, he could rent it for $1700 a month, that doesn't affect him. He's in good shape then.

Well, that's ridiculous and I found that obscene because nobody is going to keep this property and rent it out at an 800 dollar a month loss. The reality is he's going to have to sell this property. He cannot keep it. He testified he cannot afford to keep it, and he's either going to have to rent it for 6 or $7,000 a month, which we know is impossible, or sell it, and that's really what he's left. And if he can't sell it fast he's going to have to sell it under duress for less than $225,000.

And what the County says is in theory, Yeah, he could rent it out and he could sell it, so there's no damage.

But the reality is if that property is vacant for a year he loses the building anyway. If he falls behind on payments he's going to lose the whole property.

Now, the County doesn't care about his situation in the after, and the reason I could say that with such authority and such conviction is that they had the option to buy the entire tract of land from Mr. McAdory. They could have purchased the entire tract, and if they did that we would not be here.

And I say that because if you have a land value of $224,000 in the after they say just compensation is $52,000. And then they've elicited testimony from the bank appraisal that the house or the building was worth approximately $95,000 in the after. And when you add them all up you have $371,000 that they could have collected or that they were entitled to.

And had they purchased the property for $375,000 from Glenn they could have turned around and sold it and recouped all of their money. They would have only paid an extra $4,000 in this case. That's it. But the reason they didn't buy the property, because it's all theory. Okay. If they really believe their numbers they would

have bought the property and turned around and sold it and made up all the difference, but they didn't do that because you can't. It's not the reality. It's not going to sell for that much money.

Now, we told you at the beginning that your job is to make Mr. McAdory whole. This is his one shot. The testimony before you is a low of 52,000, a high of $150,000. You folks have the right to find either one of those sides or anywhere in the middle, and absolutely your right as jurors.

And what I would suggest as an alternate way to look at this; in the before we have the land and the building under Glenn's testimony at 375. We have the land in the after at 244, and when you deduct those that's a difference of $131,000. The County has offered an additional 19.5 to bring the total amount of just compensation -- or I'm sorry, to bring the -- this gives you the $150,000 just compensation.

Now, if you folks can look at this and say, Well, maybe he shouldn't get the cost to cure because the buildings are going to be destroyed any ways, and then you would be absolutely within your right to give him just $131,000, which would be the difference in the land values.

Now, when you go back to that jury room and make a

decision how to make Glenn whole I would ask that you look through this from Glenn's eyes. Look at the reality that he faces rather than the theory that the County is trying to force on you. Thank you.

THE COURT: You may proceed.

MR. FERRARA: Thank you, Your Honor.

THE COURT: You're welcome.

MR. FERRARA: Ladies and gentlemen of the jury, first of all I'd like to begin my closing statement by thanking you all for listening to all the evidence presented by the lawyers in the courtroom.

Throughout most of the trial the evidence has been technical and it's been graphic, and I appreciate your patience. And the subject matter of this lawsuit is a field of knowledge that we are not accustomed to in settling disputes, and I hope you find that the evidence was both revealing and probative.

And before I get to the next part of my closing statement I want to just give you some facts so when you go back in the deliberation room you've got the actual acreage and square feet. I know you heard it from the County's witnesses, I know you've heard it from the landowner's witnesses, you're likely to hear it again in the charge from the Judge, but I want all of you all to hear so we are all operating on the same page.

This will only take a couple of seconds, and it's only going to be six figures. The parcel before the County acquired it, we call that an in the before, .254 acres, 11,064 square feet. The size of the property after the acquisition, .224 acres or 9,777 square feet. The amount of the acquisition, .030 acres or 1,287 square feet.

During my opening I told you what the evidence would show, and the theme of the County's case through this whole trial has been to conform with the words of the statute, to conform with the letter of the law, and that letter of the law is when you determine just compensation in South Carolina only the value of the property to be taken and any diminution in value of the landowner's remaining property, and that's what you all are here to determine, those two components, to arrive at the amount of just compensation.

You heard Charles Crider, the expert, and he is the highest licensure appraiser in the State of South Carolina. He is good. And I told you why the County hired him, because it is an important reason to Mr. McAdory and to the County because it is the subject of the surrender of a liberty. It's a surrender of a private right. It's a surrender of your property.

So we went out and hired someone professional, an

expert in their field. He testified today before you as an expert in that field, top of that field. You all heard his testimony, and his testimony is basic. He looked at the value of the land that was taken and assigned a value. He looked at the termination of two parking spaces, assigned a value. He looked at moving the business sign and he assigned a value.

Just compensation is all about the determination of fair market value. Fair market value, again, is a standard in South Carolina defined as what a willing seller and a willing buyer will do in a market uninfluenced by any other matters. That's what fair market value is.

So you may make improvements to a property and when it's placed on the market the property might not sell because of whatever you've placed on the property to improve it. The market conditions as we are all aware declined from 2007 and 2009. So million dollar properties sold for $500,000.

That's what fair market value is all about. It's not about how many improvements I placed on my property. It's a fluctuating standard. It's a fluctuating market. Values for real estate are determined by market conditions, what the market can be, and I'm sure all you all are aware of that.

Crider, Mr. Crider, his appraisal again is consistent with the County's theme in this case. Mr. Murphy called it the theory, the County is theoretical or our value is based on some theory that's not practical. Well, I submit to you that it's based on reality.

Then you heard testimony from Mr. Valiquette, the project engineer, and he said the roadway is going to stay where it is. The only thing that's going to change is the new right-of-way line which will be six feet from the front of the building and eliminate the parking spaces in the front. And because the sign is in the right-of-way the sign will have to be moved.

Next you heard testimony of Mr. McAdory. McAdory, as his counsel just told you, is seeking $150,000 for just compensation to him due from the County. And he testified, again, that he made improvements to the property and that he lost the parking in the front and that he has got to move the sign and he can't sell it, and if he does sell it he's going to lose money then when he purchased it in 2011.

But I want to talk to you about -- let's follow Mr. McAdory's logic to its end. What Mr. McAdory has told you all is that I want $150,000, but as recently as this morning you all heard testimony from Mr. McAdory and

he said, I'm not an appraiser. You heard testimony from Mr. McAdory when he said, I want $150,000, that's the value of the dirt. The building has no value. And then he turns around and says, I can rent it for $1700 a month. I can get $20,000 a year for that. So the building does have value.

So what he's asking you all to do is to consider his argument, his methodology, his way to arrive at this figure of 150,000 by saying to yourself, Okay, the building has no value. The 150,000 represents just the dirt. Okay. Got that. And then walk over here and say, Oh, but you know what? The building does have value because I can rent it and I can make $20,000 a year on it.

That's the problem with this case. That's the problem with his case, and that's not theoretical. That's just some kind of flawed methodology.

And you heard Mr. Crider's methodology; succinct, by the book and accurate. And I'm going to show you that methodology, and it's not going to take long. I know we've had a long day. This is Crider's appraisal in a nutshell. You've heard it verbalized. You've taken notes to try to, I'm sure, come to these figures but let's talk about -- let's break it down.

This is called the value of components. Again, we

are looking at just the land. The land value before the acquisition, Mr. Crider assigned the value of $276,600, just the land. When you get your taxes from Charleston County Auditor and you look at the -- I mean, your assessment from Charleston County Assessor, you see how she breaks down the value of the property. You'll have a land value and you'll have a building value. Well, this is the land value. The land value of the property just went -- this identified it for you.

And by the way, Mr. McAdory purchased the property in 2011 and the land value assigned to the property then was $280,000. So we are there. Land value after the acquisition 224,930. How did Mr. Crider arrive at that number? Again, without going through all the math, found sales comparables in the neighboring area, came up with a per square foot value. I think his range was $17 per square foot to $34 per square foot. He arrived at $25 per square foot and he applied it times the remaining square feet that I gave you all earlier in my opening statement and came up with that figure.

Oh, and by the way, the $25 per square foot, remember when Mr. McAdory talked about buying the property in 2011? That's the same square foot amount that his appraisal appraised on the property.

So we've taken the before value, you subtract the

after value and you come up with your difference 51,670. In a condemnation action we place that amount of money into the clerk of court's office and this gentleman can either leave it there until you all deliberate and decide and make 8 percent interest on that money or he can withdraw it after the next day of filing the action. He's withdrawn that money. He has that money.

The next group of figures is what we identified as the value components of the acquisition. There is the magic figure, the 1,287 square feet times the $25 per square foot equals the value of the land, 32,170, plus the cost of cure, 19,500 is 51,670. That cost to cure, again, $15,000 to improve the parking in the rear, to take down the fence, extend the fence, pave a 32-by-30 area, some 960 square feet for much more than two parking spaces, and the $4,500 to move the sign. There's your 19,500. Again, there's the just compensation of the County deposited with the Court.

Here's the final statement of value, and all this is is this figure done a different way.

The reason why Mr. McAdory's methodology is flawed is according to Mr. McAdory the $150,000 that he wants the jury to award him as just compensation -- now, I don't have a calculator but I did it on break. If you divide $1,287, 87 square feet, which is what the County

acquired, into 150,000, that price per square foot is $116.55 per square foot, four times the $25 per square foot. That fact coupled with this whole notion that he wants you to give no value to the building because if 150,000 represents just dirt and then you step over here and say, Oh, yeah, but see there is value to the building because I can rent it out for $1700 a month or 20 some thousand dollars a year, I'm struggling with that. Crider is struggling with that.

So that brings us to this appraisal. This is genuine, this is authentic, this is supported. And I'm not going to hold you here much longer. I had a closing around 25 minutes and I said I can't hold the jurors that long, so I'm going to make it eight to ten. I hope to have a couple minutes left. But I'd like to add a couple things. I want to add a few words about Mr. McAdory.

Mr. McAdory appears like a self-made man, a hard worker, appears like a genuine individual. He's a likable person. But this case involves the determination of fair market value, the determination of just compensation, and that's not something Mr. McAdory does.

He told you he's not an appraiser. He doesn't appraise property. So I struggled with has Mr. McAdory ever appraised a piece of property? I don't think so. And he's presented you all this methodology that we think

is flawed. And so I submit to you, ladies and gentlemen of the jury, is this the kind of expertise you all want to rely on to arrive at the amount of just compensation or do you want to rely on the experience and the expertise of Crider to help you all arrive at the amount of just compensation?

When you compare Mr. McAdory's expertise with Mr. Crider's experience and expertise in how you appraise property, in how you determine fair market value, and how you determine just compensation you can only come to one conclusion. So I'll let you guys -- I want to wrap it up with one last bit.

Accordingly, Charleston County as the condemnor in this action asks that when you return a verdict that you look at the evidence and the facts and that you compensate Mr. McAdory $51,670 for the land taking and the cost to cure, the parking, and the sign.

Again, I appreciate you all sitting through this. Again, it's an area of the law that we don't get to hear cases every day on. I know it's a new feel to you all. But again, I appreciate your patience. I appreciate your attention, and thank you again for your time.

THE COURT: Mr. Murphy, you may proceed.

MR. MURPHY: Thank you, Your Honor.

Mr. McAdory is not well educated. He's a simple

man, and he doesn't have all the fancy credentials that Mr. Crider had but you don't have to be a Harvard graduate to realize that if you are going to lose $800 a month, almost $10,000 a year maintaining a piece of property that it doesn't have value.

And you're right, Mr. McAdory did accept that $51,000 that was initially offered because he had to. It would be real nice if he could just let it sit and earn eight percent interest but he can't afford to do that. I know I can't.

The road being moved closer or not being moved at all towards the property is a complete red herring. We haven't made one complaint about the road moving closer or not moving closer. It's the right-of-way and moving closer that affects the parking, that wipes out the signage.

And again, I will go back to the theory. If they really thought the building was worth about $95,000 and they really thought that the property was worth $225,000 in the after they could have bought it and sold it for and recouped $319,00.

Now, as for this cost to cure, you folks saw that parking lot. It was a mess out there, and you actually got pretty lucky because there was a tow truck leaving as you guys were coming in, and that tow truck dropped that

car off right in front of where that proposed parking lot is. It couldn't get back there to maneuver around.

And finally, I belive, he made improvements to the property to update his garage. He's not asking for those improvements. He doesn't want them because he realizes they didn't add value to the property, because whoever buys it is not going to utilize those improvements. They are going demolish the building. What he wanted was to use those improvements for 15 years and he only got to use them for two.

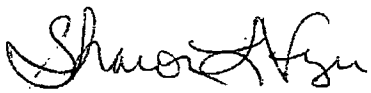
** END OF REQUESTED PROCEEDINGS **

C E R T I F I C A T E

I, Sharon L. Vizer, Official Court Reporter for the Ninth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of all the proceedings had and the evidence introduced in the hearing of the captioned case in Circuit Court on the 17th day of October 2013.

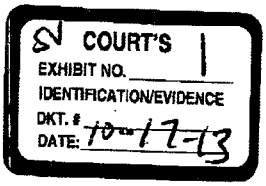
I do further certify that I am neither of kin, counsel nor have an interest to any party hereto.

September 6, 2014



SHARON L. VIZER

CIRCUIT COURT REPORTER



STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO. 2012-CP-10-3801
County of Charleston,	)	
Condemnor,	)	
vs.	)	**CONDEMNOR COUNTY OF CHARLESTON'S JURY CHARGE NO. 1**
Walter G. McAdory, LLC,	)	
Landowner,	)	
and	)	
Branch Banking Trust and Company,	)	
Other Condemnee.	)	

FAIR MARKET VALUE

Just compensation is the amount of money which would put the landowner in as good a position financially as he was in prior to the condemnation of the property.[1]

In deciding what is "just compensation", you should consider the fair market value of the property taken on the date of the taking, any decrease in the fair market value of the remaining property, and any benefits from the proposed project including the value of any property or rights given up or given to the landowner as a result of the project.

Fair market value is the price a willing buyer would pay and willing seller would accept in the ordinary course of business if there were no forced sale.[2]

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[1] Blue Ridge Elec. Coop. v. Combined Utility of Easley, 279 S.C. 135, 303 S.E.2d 91 (1983)

You may consider comparable sales of property to determine the fair market value of the property. A comparable sale is one which is not too remote in time and which has some similarities. The sale does not have to be in the same location as the property condemned, but it should be reasonably comparable.[3]

Fair market value is not sentimental value or the price the property would sell for under special or extraordinary circumstances.[4]

You should not consider any inconvenience or damage of a temporary nature to the landowner arising from the construction. The inconvenience and temporary effects which occur during the construction period are not to be considered as permanent and, therefore, should not be included in the basis for the award.[5]

In determining fair market value you may consider this example: Imagine that the landowner had put the property in question up for sale. A buyer expressed interest and they both agreed upon a price on the date of taking. During the negotiations, the landowner would have pointed out all the features that enhance the value of the property. The buyer, on the other hand, would have pointed out things that diminish its value. Only after discussing all these factors, and taking the time to consider them carefully, would the buyer and the landowner finally agree upon a price. That figure would be the property's fair market value, the amount you have to determine by your verdict.

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[2] S.C. State Highway Dep't v. Bolt, 242 S.C. 411, 131 S.E.2d 264 (1963)

[3] City of North Charleston v. Claxton, 315 S.C. 56, 431 S.E.2d 610 (Ct. App. 1993)

[4] S.C. State Highway Dep't v. Grant, 265 S.C. 28, 216 S.E.2d 758 (1975)

[5] Collins v. City of Greenville, 233 S.C. 5065, 105 S.E.2d 704 (1958)

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO. 2012-CP-10-3801
County of Charleston,	)	
Condemnor,	)	
vs.	)	**CONDEMNOR COUNTY OF CHARLESTON'S JURY CHARGE NO. 2**
Walter G. McAdory, LLC,	)	
Landowner,	)	
and	)	
Branch Banking Trust and Company,	)	
Other Condemnee.	)	

HIGHEST AND BEST USE

The fair market value of property is not necessarily limited to what the landowner uses it for. The use to which an owner may realistically and legally put the property is one thing you must consider in arriving at its value. In other words, you must consider the property's highest and best use.

This means the landowner is entitled to compensation upon the basis of the most advantageous and profitable use of his land. In estimating the value of the property condemned, all of the uses to which it may be applied, or for which it is adapted, which affect its value in the market, are to be considered, and not merely the condition it is in at the time and the use to which it was then applied by the owner.[6]

[6] S.C. State Highway Dep't v. Bolt, 242 S.C. 411, 131 S.E.2d 264 (1963) (citing City of Orangeburg v. Buford, et al., 227 S.C. 280, 87 S.E.2d 822; 29 C.J.S. Eminent Domain § 160)

Therefore, you may consider the potential of property as an element affecting value. However, it is not sufficient to show that the potential is a mere possibility; it must be shown that the potential is reasonably probable.[7]

Thus, you must be realistic. In considering whether a "use" advanced by either party is the property's highest and best, you must determine if the property is suitable for that use, and whether anybody would want it for that use.

[7] S.C. State Highway Dep't v. Miller, 237 S.C. 386, 117 S.E.2d 561 (1960); Housing Authority of City of Charleston v. Olasov, 320 S.E.2d 478 (1984); Carolina Power and Light Co. vs. Copeland, 188 S. E. 2d 188 (1972)

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO. 2012-CP-10-3801
County of Charleston,	)	
Condemnor,	)	
vs.	)	**CONDEMNOR COUNTY OF CHARLESTON'S JURY CHARGE NO. 3**
Walter G. McAdory, LLC,	)	
Landowner,	)	
and	)	
Branch Banking Trust and Company,	)	
Other Condemnee.	)	

EXPERT WITNESSES

No one will ever know for sure what the price would have been if a sale really had taken place on the date of taking. Your job is to determine what the price *probably* would have been. To help you do this, the County of Charleston has presented an expert whose explanations and opinions may help you.

The rules of evidence ordinarily do not permit witnesses to testify to opinions or conclusions. An exception to this rule exists for witnesses we call expert witnesses. A witness who, by education, and experience, has become expert in some art, science, or profession, may give an opinion as to the subject the witness claims to be an expert in, and may also give the reasons for the opinion.

The source of the expert's knowledge must be revealed to remove his opinion from the realm of mere guesswork. A bare declaration of his knowledge of the value of the property is insufficient.

The testimony of the experts is offered only to aid and assist you, not to impose a set value upon you. You may consider any expert opinion given by a witness and, like any other evidence, give it the weight you think it deserves. If you decide that an expert witness's opinion is not based on sufficient education, and experience, or if you decide that the reasons given in support of the opinion are not sound, or that the opinion is outweighed by other evidence, you may disregard the opinion entirely.

S.C. State Highway Dep't. v. Westboro Weaving Co., 244 S.C. 516, 137 S.E.2d 776 (1964)

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO. 2012-CP-10-3801
County of Charleston, Condemnor, vs. Walter G. McAdory, LLC, Landowner, and Branch Banking Trust and Company, Other Condemnee.	)	**CONDEMNOR COUNTY OF CHARLESTON'S JURY CHARGE NO. 4**

The landowner has the burden of proving his damages as to the actual value of the land to be taken and any special damages resulting from the taking.[8] In order for damages to be recoverable, the evidence should be sufficient to "enable the court or jury to determine the amount thereof with reasonable certainty or accuracy."[9]

[8] Leventis v. S.C. Dep't of Health and Envtl. Control, 340 S.C. 118, 530 S.E.2d 643 (Ct.App.2000)
[9] Whisenant v. James Island Corp., 277 S.C. 10, 13, 281 S.E.2d 794, 796 (1981)

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON County of Charleston, Condemnor, vs. Walter G. McAdory, LLC, Landowner, and Branch Banking Trust and Company, Other Condemnee.	)	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT CASE NO. 2012-CP-10-3801 **CONDEMNOR COUNTY OF CHARLESTON'S JURY CHARGE NO. 5**

LEASE PROVISIONS

Lease provisions are construed under rules of contract interpretation.

It is also a question of law whether the language of a contract is ambiguous. When a contract is unambiguous, clear, and explicit, it must be construed according to the terms the parties have used, to be taken and understood in their plain, ordinary, and popular sense.

Where an agreement is clear and capable of legal construction, the court's only function is to interpret its lawful meaning and the intention of the parties as found within the agreement and give effect to it.

S.C. Dep't. of Transp. v. M &T Enterprises of Mt. Pleasant, 379 S.C. 645, 667 S.E.2d 7

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO. 2012-CP-10-3801
County of Charleston,	)	
	)	
Condemnor,	)	
	)	
vs.	)	**CONDEMNOR**
	)	**COUNTY OF CHARLESTON'S**
Walter G. McAdory, LLC,	)	**JURY CHARGE NO. 6**
	)	
Landowner,	)	
	)	
and	)	
	)	
Branch Banking Trust and Company,	)	
	)	
Other Condemnee.	)	
	)	

LEASE PROVISON

A court must enforce an unambiguous contract according to its terms regardless of its wisdom or folly, apparent unreasonableness, or the parties' failure to guard their rights carefully.

S.C. Dep't. of Transp. v. M & T Enterprises of Mt. Pleasant, 379 S.C. 645, 667 S.E.2d 7 (2008)

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO. 2012-CP-10-3801
County of Charleston,	)	
Condemnor,	)	
vs.	)	**CONDEMNOR COUNTY OF CHARLESTON'S JURY CHARGE NO. 7**
Walter G. McAdory, LLC,	)	
Landowner,	)	
and	)	
Branch Banking Trust and Company,	)	
Other Condemnee.	)	

CONDEMNATION CLAUSE IN LEASE

It is generally held that parties may agree in the lease to a method or formula of valuation or compensation in the event of condemnation Where a landlord and tenant have contractually agreed as to the disposition of compensation in the event of condemnation, such an agreement is generally held binding. If the lease itself includes a provision in respect of the rights of the parties in the event of the condemnation of the leased premises, such provision is controlling, if applicable to the particular case. Specific provisions in a lease spelling out the respective rights of the parties to that lease are valid and controlling in the event the property is condemned. Such lease provisions have uniformly been upheld.

S.C. Dep't. of Transp. v. M & T Enterprises of Mt. Pleasant, 379 S.C. 645, 667 S.E.2d 7(2008)

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO. 2012-CP-10-3801
County of Charleston,	)	
	)	
Condemnor,	)	
	)	
vs.	)	**CONDEMNOR**
	)	**COUNTY OF CHARLESTON'S**
Walter G. McAdory, LLC,	)	**JURY CHARGE NO. 8**
	)	
Landowner,	)	
	)	
and	)	
	)	
Branch Banking Trust and Company,	)	
	)	
Other Condemnee.	)	
	)	

COMMON LAW

When a lease contains no provision as to the effect upon it of the condemnation, the court looks to the common law rule.

S.C. Dep't of Transp. v. M & T Enterprises of Mt. Pleasant, 379 S.C. 645, 667 S.E.2d 7 (2008)

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO. 2012-CP-10-3801
County of Charleston,	)	
Condemnor,	)	
vs.	)	**CONDEMNOR COUNTY OF CHARLESTON'S JURY CHARGE NO. 9**
Walter G. McAdory, LLC,	)	
Landowner,	)	
and	)	
Branch Banking Trust and Company,	)	
Other Condemnee.	)	

ALLOCATION PROCEEDING

A proceeding to allocate any condemnation funds is by statute a proceeding in equity.

S.C. Dep't. of Transp. v. M & T Enterprises of Mt. Pleasant, 379 S.C. 645, 667 S.E.2d 7(2008) quoting S.C. Code Ann. Section 28-2-460.

Unless the persons served with the Condemnation Notice agree in writing as to whom just compensation must be made and paid, the appraisal panel determination, verdict, or judgment must be made jointly to all the parties and may be paid to the clerk of court. Upon making the payment, the condemnor's obligation to pay interest upon the funds shall terminate. The payment of the funds so awarded must be held by the clerk of court pending the final order of the court of common pleas in an equity proceeding to which all persons served with the Condemnation Notice must be necessary parties. From the order of the court of common pleas there may be an appeal as provided for appeals from the court in equity cases.

S.C. Code Ann. Section 28-2-460

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO. 2012-CP-10-3801
County of Charleston,	)	
Condemnor,	)	
vs.	)	**CONDEMNOR COUNTY OF CHARLESTON'S JURY CHARGE NO. 10**
Walter G. McAdory, LLC,	)	
Landowner,	)	
and	)	
Branch Banking Trust and Company,	)	
Other Condemnee.	)	

As to damages, the burden is on a party pleading a fact to prove it. This general principle of litigation has been applied to disputes concerning apportionment of condemnation awards in other jurisdictions, and we apply it here as well. The owner of the leasehold estate bears the burden of establishing the damages sustained to its leasehold estate as a result of the partial taking of the land. The lessee has the burden to show any damages attributable to the loss of leasehold interest, and the balance of damages, if any, belong to the reversionary interest of landowners. During the apportionment trial, the burden was on [lessee] to establish her damages. Proof of tenancy in the condemned premises is not necessarily proof of compensable loss. The lessee has the burden to show the amount of the damages attributable to his leasehold interest, if any. The balance of the damages, if any, would belong to the reversionary interest of the landowners.

S.C. Dep't. of Transp. v. M &T Enterprises of Mt. Pleasant, 379 S.C. 645, 667 S.E.2d 7 (2008).

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO. 2012-CP-10-3801
County of Charleston,	)	
Condemnor,	)	
vs.	)	**CONDEMNOR COUNTY OF CHARLESTON'S JURY CHARGE NO. 11**
Walter G. McAdory, LLC,	)	
Landowner,	)	
and	)	
Branch Banking Trust and Company,	)	
Other Condemnee.	)	

Loss of business is not an independent element of damage in this case.

S.C. State Highway Dep't v. Bolt, 242 S.C. 411, 131 S.E.2d 264 (1963)

SV COURT'S EXHIBIT NO. 2
IDENTIFICATION/EVIDENCE
DKT. #
DATE: 10-17-13

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

CASE NO. 2012-CP-10-4511

COUNTY OF CHARLESTON,

Condemnor,

vs.

WALTER MCADORY

Landowner,

and

BRANCH BANKING AND TRUST COMPANY AND SOUTH CAROLINA ELECTRIC & GAS COMPANY,

Other Condemnees.

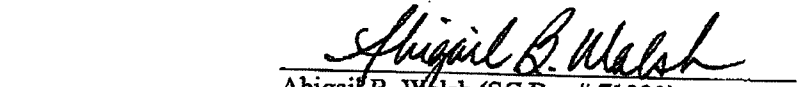
LANDOWNER'S REQUEST FOR JURY INSTRUCTIONS

The Landowner, Walter McAdory, by his undersigned attorneys, requests the Presiding Judge, Court of Common Pleas, Ninth Judicial Circuit, give the attached requests for jury instructions numbered 1 through 7 pursuant to Rule 51, S.C.R.C.P. The Landowner submits these requests for instructions prior to the commencement of trial to afford the Court and opposing counsel an opportunity to review the Landowner's requests. The Landowner requests the Court to advise which of the requested instructions the Court will grant or reject, in whole or in part, thereby affording the Landowner a reasonable opportunity to submit proposed instructions in an alternative form in accordance with the Court's rulings. The Landowner further requests that the Court indicate all instructions it will give the jury on its own motion, at the request of the Landowner, and at the request of the Condemnor, prior to the commencement of closing

arguments. Finally, the Landowner further requests to have any requested instructions refused or modified by the Court made an exhibit to the record for purposes of any possible appeal.

Respectfully submitted,

WILLIAMS & WALSH, LLC
125-A Wappoo Creek Drive, Suite 202
Charleston, SC 29412
Tel: 843-722-0157
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abigail@williamsandwalshlaw.com
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Abigail B. Walsh (SC Bar # 71291)
Christopher Murphy (SC Bar # 14184)

ATTORNEYS FOR LANDOWNER

October 14, 2013
Charleston, South Carolina

CONDEMNOR'S REQUEST TO CHARGE NO. 1

Actual Value

The "actual value" of land taken in condemnation means the market value of such land.

South Carolina State Highway Department vs. Bolt, 242 S.C. 411, 131 S.E.2d 264 (1963).

CONDEMNOR'S REQUEST TO CHARGE NO. 2

Comparable Sales

I charge you that the value of real property may be shown by evidence of the price realized from sales of similar property in the vicinity when not too remote in point of time. Such sales are known as comparable sales. To be comparable, such sales must occur in an open market and must be similar as to time of sale, location, size, and character.

S.C. State Highway Department v. Estate of Leogue, 251 S.C. 368, 162 S.E.2d 532, 533 (1968); S. C. State Highway Department v. Hines, 234 S.C. 254, 107 S.E.2d 643 (1959).

CONDEMNOR'S REQUEST TO CHARGE NO. 3

Before and After Rule

An alternative way to determine just compensation is to determine the difference in the value of the land before and after the taking.

South Carolina Department of Highways and Public Transportation vs. Cheston, 278 S.C. 464, 298 S. E. 2d 447 (1982).

CONDEMNOR'S REQUEST TO CHARGE NO. 4

Highest and Best Use

The value of property condemned is not to be estimated simply with reference to the condition in which the owner has maintained it, or to the use to which it is applied at the time, or to any particular use, but with reference to any and all uses or purposes for which it is suitable, or to which it is reasonably and lawfully adapted or adaptable, or convertible.

The best and highest use, or the most valuable, advantageous, or profitable use, to which property taken for the public use or purpose is reasonably, practically and lawfully adapted or available, or for which it is needed, or is likely to be needed, in the reasonably near future, should be considered.

South Carolina State Highway Department vs. Bryant, 242 S.C. 411, 171 S.E.2d 349 (1963).

CONDEMNOR'S REQUEST TO CHARGE NO. 5

Cost to Cure

In awarding the Landowner a just compensation, you may consider the cost to cure the damage to the remaining property.

Nichol's Law of Eminent Domain, Section 18.18; State Highway and Transportation Comm'r vs. Allmond, 220 Va. 235, 257 S.E.2d 832 (1979).

CONDEMNOR'S REQUEST TO CHARGE NO. 6

Damage to the Remainder

I charge you that it is your responsibility to set a price on the amount of land taken. In doing so, you will use as your guide the fair market value of the property. The term "fair market value" (has been/will be) explained to you. Also, you must determine whether or not the landowner's remaining land has depreciated in value because of this take. Bear in mind that simply because a portion of a lot or piece of property is taken does not necessarily mean that the remaining land has depreciated in value. It is the responsibility of the landowner to establish such depreciation by affirmative evidence furnishing a basis from which a reasonable and proper estimate of the amount of damage can be made. If you find that the remaining parcel has not depreciated in value because of the take, then your verdict will be in an amount that you determine is the fair market value of the property taken. If, on the other hand, the landowner has convinced you that the remaining parcel has been damaged, then you must find not only the fair market value of the property taken, but you must find a fair price for the damage to the remaining land.

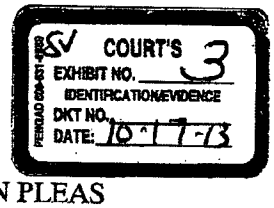
South Carolina State Highway Department vs. Wilson, 254 S.C. 360, 175 S.E.2d 391 (1970); South Carolina State Highway Department vs. Westboro Weaving Company, 244 S.C. 516, 137 S.E.2d 776 (1964)

CONDEMNOR'S REQUEST TO CHARGE NO. 7

Landowner Can Testify to Value of and Damage to Property

The general rule in South Carolina is that a landowner is permitted to testify to the value of his/her land and his/her damages. It is not necessary for a landowner to show any special knowledge or expertise for such testimony as to the value of or damages to his/her land to be competent. The extent of a property owner's experience in real estate goes more to the weight of his or her testimony rather than to competency to testify. Likewise, the fact that a landowner's knowledge may be based in large part on hearsay or other incompetent evidence goes more to its weight than its admissibility.

Stanley v. Atlantic Title Ins. Co., 377 S.C. 405, 661 S.E.2d 62 (2008); South Carolina Dept. of Transp. v. Richardson, 335 S.C. 278, 516 S.E.2d 3 (Ct. App. 1999); City of Spartanburg v. Laprinakos, 267 S. C. 589, 596, 230 S. E. 2d 443, 446 (1976); South Carolina State Hwy. Dep't v. Wilson, 254 S. C. 360, 175 S. E. 2d 391 (1970); South Carolina State Hwy. Dep't v. Hines, 234 S. C. 254, 259, 107 S. E. 2d 643, 645 (1959); 18 S.C. Jur. Eminent Domain § 27



STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

CASE NO. 2012-CP-10-4511

COUNTY OF CHARLESTON,

Condemnor,

vs.

WALTER MCADORY

Landowner,

and

BRANCH BANKING AND TRUST COMPANY AND SOUTH CAROLINA ELECTRIC & GAS COMPANY,

Other Condemnees.

LANDOWNER'S ADDITIONAL REQUEST FOR JURY INSTRUCTIONS

The Landowner, Walter McAdory, by his undersigned attorneys, requests the Presiding Judge, Court of Common Pleas, Ninth Judicial Circuit, give the attached requests for jury instructions numbered 8 through 10 in addition to previously provided jury instructions numbered 1 through 7 pursuant to Rule 51, S.C.R.C.P. The Landowner submits these requests for to afford the Court and opposing counsel an opportunity to review the Landowner's additional requests. The Landowner requests the Court to advise which of the requested instructions the Court will grant or reject, in whole or in part, thereby affording the Landowner a reasonable opportunity to submit proposed instructions in an alternative form in accordance with the Court's rulings. The Landowner further requests that the Court indicate all instructions it will give the jury on its own motion, at the request of the Landowner, and at the request of the Condemnor, prior to the commencement of closing arguments. Finally, the Landowner further requests to have any

requested instructions refused or modified by the Court made an exhibit to the record for purposes of any possible appeal.

Respectfully submitted,

WILLIAMS & WALSH, LLC
125-A Wappoo Creek Drive, Suite 202
Charleston, SC 29412
Tel: 843-722-0157
Fax: 843-762-2198
abigail@williamsandwalshlaw.com
chris@williamsandwalshlaw.com

Abigail B. Walsh (SC Bar # 71291)
Christopher Murphy (SC Bar # 14184)

ATTORNEYS FOR LANDOWNER

October 17, 2013
Charleston, South Carolina

CONDEMNOR'S REQUEST TO CHARGE NO. 8

Credibility of Witnesses

Necessarily, you must determine the credibility of witnesses who have testified in this case. Credibility simply means believability. It becomes your duty as jurors to evaluate the evidence and determine which evidence convinces you it is true.

In determining the believability of witnesses who have testified in this case, you may believe one witness over several witnesses or several witnesses over one witness. You may believe a part of the testimony of a witness and reject the remaining part of the testimony of that same witness. You may believe the testimony of a witness in its entirety or reject the testimony of a witness in its entirety. You may consider whether the witness has an interest in the result of the trial, whether the witness is prejudiced toward either the plaintiff or the defendant, the opportunity for the witness to have seen the matters

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Small v. Pioneer Mach., Inc., 329 S.C. 448, 494 S.E.2d 835 (Ct. App. 1997).

CONDEMNOR'S REQUEST TO CHARGE NO. 9

Expert Witnesses

The rules of evidence ordinarily do not permit witnesses to testify to opinions or conclusions. An exception to this rule exists for witnesses we call expert witnesses. A witness who, by education and experience, has become expert in some art, science, or profession, may give an opinion as to the subject the witness claims to be an expert in, and may also give the reasons for the opinion.

You should consider any expert opinion given by a witness and, like any other evidence, give it the weight you think it deserves. If you decide that an expert witness' opinion is not based on sufficient education and experience, or if you decide that the reasons given in support of the opinion are not sound, or that the opinion is outweighed by other evidence, you may disregard the opinion entirely.

An expert witness' testimony is to be given no greater weight than that of other witnesses simply because the witness is an expert, and you do not have to accept an expert's opinion, even though it is uncontradicted.

Berkeley Elec. Coop., Inc. v. South Carolina Public Serv. Comm'n, 304 S.C. 15, 402 S.E.2d 674 (1991).

CONDEMNOR'S REQUEST TO CHARGE NO. 10

Just Compensation

This is a condemnation case arising under the law of eminent domain. Eminent domain means that the state of south carolina, or one of its agencies or branches, has the right to take private property for public use. This action is called condemning the property.

In this case, Charleston County has condemned 0.030 acres (1287 square feet) of land belonging to Walter McAdory, the landowner, for the construction of improvements to the Folly Road/Camp Road Intersection in Charleston County. Charleston County must pay for the property which has been taken for public use. Both parties in this case agree that payment must be made for the property. However, they disagree as to how much should be paid.

You are not to be concerned with whether the Charleston County had a right to take the property. You must only decide the amount the landowner should be paid in order to be adequately paid for the property. This amount is called just compensation. The landowner has the burden of proving the amount of just compensation by the preponderance, or greater weight, of the evidence.[1]

Just compensation is the amount of money which would put the landowner in as good a position financially as he was in prior to the condemnation of the property.[2] In deciding what is just compensation, you should consider the value of the property taken on the date of the taking, any decrease in the value of the landowner's remaining property, and any benefits from the proposed project including the value of any property or rights given up or given to the landowner as a result of the project.[3]

To determine just compensation, you must first determine the fair market value of the condemned property and the fair market value of the property which the landowner had after the condemnation. Fair market value is the price a willing buyer would pay and a willing seller would accept in the ordinary course of business if there were no forced sale.[4] You may consider comparable sales of property to determine the fair market value of the property. A comparable sale is one which is not too remote in time and which has some similarities. The sale does not have to be in the same location as the property condemned, but it should be reasonably comparable.[5]

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[1] S.C. Code Ann. § 28-2-320.

[2] Blue Ridge Elec. Coop. v. Combined Utility of Easley, 279 S.C. 135, 303 S.E.2d 91 (1983).

[3] S.C. Code Ann. §§ 28-2-360 and -370.

[4] South Carolina State Highway Dep't v. Bolt, 242 S.C. 411, 131 S.E.2d 264 (1963).

[5] City of North Charleston v. Claxton, 315 S.C. 56, 431 S.E.2d 610 (Ct. App. 1993).

Fair market value includes the fair price for any current use of the property or any use which may be reasonably anticipated in the near future. The uses which may be considered must be so reasonably probable as to have an effect on the present market value of the land. You may consider all uses to which the property is and might be adapted. Compensation should be awarded based on the most advantageous and valuable use of the property, considering the existing or reasonably expected future businesses or wants of the community. You cannot consider a purely imaginative or speculative value. There must be a possibility considerable enough to practically affect the property's market value.[6]

Fair market value is not sentimental value or the price the property would sell for under special or extraordinary circumstances.[7] However, if the landowner has proven that the land possesses special value to him which can be measured by money, that value may be considered in determining the fair market value of the property.

The property of the landowner must be considered together as one tract, even though the landowner may have at one time filed plats showing a subdivision of the property.[8]

You should not consider any inconveniences or damages of a temporary nature to the landowner arising from the Folly Road/Camp Road Intersection Road Improvement Project. The inconvenience and temporary effects which occur during the construction period are not to be considered as permanent and, therefore, should not be included in the basis for the award.[9]

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[6] Carolina Power & Light Co. v. Copeland, 258 S.C. 206, 188 S.E.2d 188 (1972).

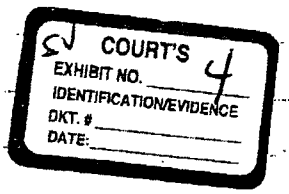
[7] South Carolina State Highway Dep't v. Grant, 265 S.C. 28, 216 S.E.2d 758 (1975).

[8] South Carolina Highway Dep't v. Terrain, Inc., 267 S.C. 186, 227 S.E.2d 184 (1976).

[9] Collins v. City of Greenville, 233 S.C. 5065, 105 S.E.2d 704 (1958).

Could we have a copy of law relative to just compensation?

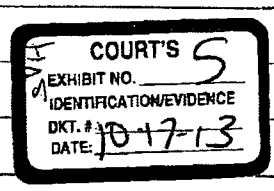
M. Sharon Bartle
Foreperson



Ladies and Gentlemen of the Jury our procedures do not allow for a copy of the jury charge/instructions to be given to you. If there is a specific instruction that you would like given again or the entire instruction please advise us and I will accommodate your request immediately.

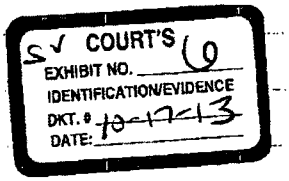
Could me get a calculator?

M. Sharon Barthe
Foreperson



Could someone read the "Just Compensation" portion of the SC law pertaining to this case.

M. Sharon Barton
Foreperson



DEFENDANT'S
EXHIBIT
11/26/11

DEFENDANT'S
EXHIBIT

DEFENDANT'S
EXHIBIT

DEFENDANT'S
EXHIBIT

11x11

A. Abell

Inset

RECORD 0446

DEFENDANT'S
EXHIBIT

LEXUS
TOYOTA
LEX-TECH
AUTOMOTIVE, LLC
SCION
225-5191
BRYAN
DEFENDANT'S
EXHIBIT
10
11/20/11

DEFENDANT'S
EXHIBIT

RECORD 0450

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DEFENDANT'S
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DEFENDANT'S
EXHIBIT
7

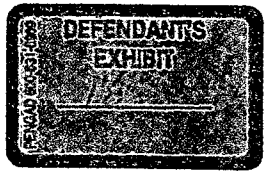
DEFENDANT'S
EXHIBIT

DEFENDANT'S
EXHIBIT

Budget		Crest Industries, INC	20x40	Updated Budget	[redacted]012
Scope	[redacted]	4230 River Road			[redacted]as
0		Johns Island, Sc 29455		3 Months	
		Paul Koenig		1,200.00 843-347-8875	

Phase	Comments		Costs	$/sq ft				
Design			$ -					
Engineering								
Permits			[redacted]	$ 0.42				
Temp Services	toilet,dumpster,etc		$ -	$ -				
	dumpster		$ 1,000.00	$ 0.83	[redacted]months	2	[redacted]per month	500
Site engineering and survey			$ -	$ -				
			$ -	$ -				
Site Work			[redacted]	$ -				
	Grading/fill			$ -	$ 5,500.00			
	Paving			$ -		622.222222 yards	7	4355.55556
	Storm sewer			2.08		277.777778 yards	$ 8.00	2222.22222
	Utilities			2.50		0 ft	22.65	0
	final grade and top soil			-		0 yards	34.4	0
	Building Pad			$ -		8 hours	200	1600
	Landscaping			$ -	0	50 80	4000	
	Sewer service			$ -				
	Water Service			$ -				
	Utilities	Gas		$ -				
Foundation	Slab	Concrete	$ 4,400.00	$ 3.67	800 miller	5.5		
			$ -	$ -				
Building Materials	Steel Building		$ 18,445.00	$ 15.37				
Anchor Bolts			$ -	$ -				
			$ 100.00	$ 0.08		3/4"	72	6 432
Doors				$ -		1/2"	48	0 0
	0 Overhead		$ -	$ -				
	6 window		$ 3,000.00	$ 2.50	1300 Large			
	0 Walk doors	3-0x7-0	$ -	$ -	500 Large			
	store front impact		$ -	$ -	$ 1,000.00 In steel building price			
	1 store front doors	3' x 8'	$ 1,200.00	$ -	$ 42.00	5	140	700
	0 store front doors	6'x8'	$ -	$ -				
	4 interior doors	3'x7,	$ 1,600.00	$ -	400			
				$ -				
Hardware				$ -				
	1 Door hardware		$ 400.00	$ 0.33		door handle		
	1 Bath hardware		$ 300.00	$ 0.25	$ 400.00	closser		
	0 Dock Levelers		$ -	$ -	300	TP, Grab bars,soap, mirror		
				$ -	3000			

Costs to Cumberland



	5 Int door hardware		$	1,000.00	$			200			
Building Labor	erector		$	4,400.00	$	3.67		5.5	800		
Insulation	Materials and labor		$	1,003.11	$	0.84		0	sq ft of insulation		
Other building construction					$	-					
	Second floor framing	0	$	15,000.00	$	12.50					
	Stairs	3	$	-	$	-		10	40	1200 sq ft	3.75
		1	$	-	$	-		10	60	800 sq ft	3.5
Plumbing	water heaters		$	200.00	$	0.17		2	1300		
	Fixtures		$	500.00	$	0.42		2	200		
	Labor others	3	$	2,000.00	$	1.67		625			
Finishes	Flooring	1,200.00	$	2,400.00	$	2.00		2	1200		
	Vinyl Base	260	$	455.00				1.75			
	ACT ceiling	1,200.00	$	3,600.00				3	1200		
	Interior Painting	234.00	$	2,106.00				0.65 walls	360	9	
	painting doors		$	350.00				70 doors	5		
Electrical	building elect		$	5,000.00	$	4.17		0	20 touches		
								0	30		
Hvac			$	9,000.00	$	7.50		sq ft	sq ft/ton	$/ton	
								1200	400	3000	
Fire suppression			$	-				0			
Continency		0%	$	-	$	-					
	Sub Total		$	83,459.11	$	69.55					
15.50%	**Crest Management Fee**		$	12,936.16	$	10.78					
	Total Project		$	96,395.28	$	80.33					
	Bid Price		$	-				sq ft	const $/sf	%	
Arch.	Design		$	-				0	0	0	
	Civil Engineering		$	-							
	Misc. Engineering		$	-							
GRAND TOTAL			$	96,395.28			$	80.33			

RECORD 0457

Landscape Pavers, LLC
Post Office Box 31832
Charleston, South Carolina 29417
PHONE (843) 766-2363
FAX (843) 766-2226

INVOICE

SOLD TO:

Lex-Tech Automotive, LLC
873 Folly Road
Charleston, SC 29412

INVOICE DATE:	3-Jan-13
NUMBER:	10184
LPL JOB NO:	12-1606
LPL COST CODE:	2500
TERMS:	In full upon receipt
PO NUMBER:	

QUANTITY	DESCRIPTION	UNIT PRICE	AMOUNT
	Remove existing gravel and install new crushed asphalt in parking area as agreed.		$ 13,658.00
		Tax	
		Freight	
			$ 13,658.00

PAID IN FULL
ABS

For questions concerning this invoice
Call: Joyce Schirmer
(843) 766-2363

MAKE ALL CHECKS PAYABLE TO:
Landscape Pavers, L.L.C.

Interest will accrue beginning on the date of this invoice on any unpaid balance pursuant to the terms of S. C. Code Ann. § 29-6-50. Further, please be advised that pursuant to S. C. Code Ann. § 29-6-230, pay when paid clauses are unenforceable in South Carolina

THANK YOU FOR YOUR BUSINESS!

DEFENDANT'S EXHIBIT 10

Messages Help Security Logoff

ACCOUNTS TRANSFERS BILL PAYMENT STATEMENTS ALERTS CUSTOMER SERVICE

Accounts Overview **Account History** **My Account Profile** **My TurboTax**

Account History

Printable Version

Account: Checking 6102 / $580.31

Checking 6102 (Checking...26102)

Available Balance	**$580.31**
Posted Balance	$580.31
Interest Paid (YTD)	$0.56
Interest Rate	0.010%

Change Overdraft Protection

BB&T Home Mortgage
Low rates. Flexible terms.
Apply Online »

Prime + 0% for life of line
(Now 3.25% variable APR)
Home Equity Lines »

Quick Links

Overdraft Options NEW
Checks and Deposit Slips
Stop Payment on Checks
Open New Account
Buy Quicken
Direct Deposit Form
Add Plus Package
Add Identity Protection
Debit Card Dispute NEW

Posted Transactions Pending Transactions Bill Payment Checks

Search by: Date Range **From:** 01/10/2013 (mm/dd/yyyy) **To:** 01/11/2013 (mm/dd/yyyy) Back to Basic Search

Type: All Types **Description:** **Search**

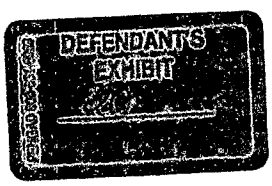
Date	Type	Check Number	Description	Debit	Credit	Daily Posted Balance
01/11/2013	Check	10810	CHECK #10810	$13,658.00		$14,188.18
01/11/2013	Check	10809	CHECK #10809	$56.00		
01/11/2013	Debit		PAYMENT TO RETAIL LOAN 90250936639001 01-11-13 BB&T ONLINE CREDIT LINE PMT	$2,500.00		
01/11/2013	Debit		PAYMENT TO CREDIT CARD 4616081103097299 01-11-13 BB&T ONLINE CREDIT CARD PMT	$806.36		
01/11/2013	Deposit		DEPOSIT		$770.66	

Note: Transactions are paid from your Available Balance at the time of posting consistent with payment guidelines in your Bank Service Agreement.

Available Balance: The amount of money you have to draw upon. Your Available Balance does not include funds that are being held.

Posted Balance: The amount of money posted in your account after final nightly processing is completed.

Daily Posted Balance: The posted balance after nightly processing is completed. Please note that transactions are paid from your Available Balance consistent with our payment guidelines, and that the Available Balance may be different than your Daily Posted Balance. Important: The Daily Posted Balance does not reflect all pending transactions and fees and should not be used to determine how overdraft fees were assessed.



Online Banking/Account Support 1-888-BBT-ONLINE (1-888-228-6654) Credit Cards 1-800-476-4228
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Date	Reference	T	Description	Beginning Balance	Current Amount	Period End Amount	YTD Balance
	1228 LEASEHOLD IMPROVEMENTS			20,000.00			
02/28/11	10				5,348.00		
02/28/11	50				2,000.92		
02/28/11	3820		LEASEHOLD IMPROVEMENTS		346.15		
02/28/11	3821		LEASEHOLD IMPROVEMENTS		113.75		
02/28/11	3822		LEASEHOLD IMPROVEMENTS		3,405.30		
02/28/11	3827	V	LEASEHOLD IMPROVEMENTS		2,750.00		
02/28/11	3841		LEASEHOLD IMPROVEMENTS		150.00		
02/28/11	3845		LEASEHOLD IMPROVEMENTS		125.00		
02/28/11	3850		LEASEHOLD IMPROVEMENTS		1,900.00		
02/28/11	3851		LEASEHOLD IMPROVEMENTS		1,454.00		
02/28/11	3864		LEASEHOLD IMPROVEMENTS		4,110.00		
02/28/11	3867		LEASEHOLD IMPROVEMENTS		900.00		
02/28/11	3875		LEASEHOLD IMPROVEMENTS		572.09		
02/28/11	3876		LEASEHOLD IMPROVEMENTS		925.00		
				February	24,100.21	44,100.21	
03/31/11	3910		LEASEHOLD IMPROVEMENTS		1,658.00		
03/31/11	3927		LEASEHOLD IMPROVEMENTS		5,180.00		
				March	6,838.00	50,938.21	
04/30/11	50				199.49		
				April	199.49	51,137.70	
05/31/11	4027		LEASEHOLD IMPROVEMENTS		900.00		
05/31/11	4063		LEASEHOLD IMPROVEMENTS		2,700.00		
				May	3,600.00	54,737.70	
06/30/11	4094		FENCE		905.00		
				June	905.00	55,642.70	
08/31/11	4221		LEASEHOLD IMPROVEMENTS (parking lot drain install & grading)		2,100.00		
				August	2,100.00	57,742.70	
10/31/11	4393		LEASEHOLD IMPROVEMENTS (land/property surveying)		1,166.00		
10/31/11	4412		LEASEHOLD IMPROVEMENTS (plumbing repairs)		832.00		
				October	1,998.00	59,740.70	
11/30/11	4434		LEASEHOLD IMPROVEMENTS(Heating & Air installation)		6,200.00		
11/30/11	4458		LEASEHOLD IMPROVEMENTS (Heating & AC)		300.00		
				November	6,500.00	66,240.70	
12/31/11	4507		LEASEHOLD IMPROVEMENTS (repave front lot)		550.00		
12/31/11	4522		LEASEHOLD IMPROVEMENTS (electrical work)		965.00		
				December	1,515.00	67,755.70	
05/04/12	10		LEASEHOLD IMPROVEMENTS		1,088.65		
05/04/12	4781		LEASEHOLD IMPROVEMENTS		1,746.35		
05/04/12	4819		LEASEHOLD IMPROVEMENTS (land Survey)		68.00		
05/04/12	4824		LEASEHOLD IMPROVEMENTS (Garage Door		54.00		

DEFENDANTS EXHIBIT

Date	Reference T	Description	Beginning Balance	Current Amount	Period End Amount	YTD Balance
1228 LEASEHOLD IMPROVEMENTS (cont.)						
			May	2,957.00	70,712.70	
06/30/12	4862	LEASEHOLD IMPROVEMENTS (wiring garage doors)		1,045.78		
			June	1,045.78	71,758.48	
07/31/12	4916	LEASEHOLD IMPROVEMENTS		179.00		
			July	179.00	71,937.48	
08/31/12	4995	LEASEHOLD IMPROVEMENTS (NEW OFFICE A/C SYSTEM)		3,475.00		
			August	3,475.00	75,412.48	
				55,412.48		75,412.48

Range of Accounts Specified:

Total Profit/(Loss) 0.00

Number of Transactions 34

The General Ledger is in balance 0.00

RECEIVED

OCT 2 9 2014

SC Court of Appeals

Certificate of Counsel

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

Abigail B. Walsh, Esquire
S.C. Bar # 71291
Williams & Walsh, LLC
125-A Wappoo Creek Drive
Suite 202
Charleston, SC 29412
(843) 722-0157
Attorney for Appellant