

SOUTH CAROLINA EMINENT DOMAIN FROM BOTH SIDES

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Hilton Head Island Bar Association

February 3, 2024

NOT GOING TO TALK ABOUT

- Inverse condemnations Regulatory takings
- Challenging the right to condemn
- What constitutes a public purpose?
- Landowners right to deposited tender during suit
- Abandonment of the condemnation proceedings
- Right to Attorneys Fees and Litigation Costs
- Expert witness issue
- Appraisal Panel

EMINENT DOMAIN PROCEDURE ACT

Appraisal and Negotiation Prior to Filing a Condemnation Action:

- Before a property can be condemned, “the condemnor shall cause the property to be appraised to determine the amount that would constitute just compensation for its taking and shall make the appraisal available to the landowner.” S.C. Code §28-2-70(A).
- Landowner is required to allow access to the property for “the purpose of making a survey, determining the location of proposed improvements, or making an appraisal.” S.C. Code §28-2-70(C).
- The condemnor must make “reasonable and diligent” efforts to negotiate a fair purchase agreement for the land. S.C. Code §28-2-70(B).

NOTICE OF CONDEMNATION

- Condemnor initiates condemnation by sending a notice to the landowner with the determined compensation amount, which shall constitute a tender of that amount. S.C. Code §28- 2-220(B).
- Notice must be served on the Landowner and all other parties with an interest in the Property to be condemned. §28- 2-220 (C)2.
- (3) Contain legal description of Property, (4) state the basis of Condemnor's right to use eminent domain

SECTION 28-2-280 Form and Content of Condemnation Notice

STATE OF SOUTH CAROLINA)
)
 COUNTY OF BEAUFORT)
)
 Dominion Energy South Carolina, Inc.,)
)
) **Condemnor,**)
 vs.) **CONDEMNATION NOTICE AND**)
) **TENDER OF PAYMENT**)
)
 Cregger Capital Investments, Inc.,)
)
) **Landowner,**)
)
 Wells Fargo Bank, NA; Ulmer Associates;)
 Central Electric; Palmetto Electric;)
 Beaufort-Jasper Water and Sewer)
 Authority; U.S. Army Corps of)
 Engineers; Beaufort County, South)
 Carolina,)
)
) **Other Condemnees,**)
)

TO THE LANDOWNER ABOVE NAMED:
 Pursuant to the South Carolina Eminent Domain Procedure Act, S. C. Code Ann. § 28-2-10, *et seq.*, (Supp. 2011), you are hereby notified as follows:

1. **Domination Energy South Carolina, Inc. is the Condemnor** herein and seeks to acquire a portion of the real property described herein for public purposes. The term "Condemnor" shall include Condemnor's heirs, executors, administrators, successors and assigns, as the case may be.
2. Landowner is the owner of property conveyed by Deed from Scott's Real Properties, LLC, dated November 14, 2013 and recorded in the Office of the Clerk of Court for Beaufort County, South Carolina on November 26, 2013 in Record Book 3289 at Page 401 and

described as follows:

ALL that certain piece, parcel or lot of land containing 0.182 acre, more or less, and all improvements thereon, if any, now or previously owned by Scott's Real Properties, LLC, shown as the "Area of Acquisition" on Exhibit A on a deed given to the South Carolina Department of Transportation by Scott's Real Properties, LLC, dated July 10, 2008 and recorded August 4, 2008 in Book 2752 at Page 1171; having the boundaries and measurements as shown on said plat, reference being craved thereto for a more complete and accurate legal description.

This being a portion of the same property conveyed to the within named Grantor by deed of Rodbell Hilton Head Properties, LLC, dated March 31, 2008 and recorded in Record Book 2717 at Page 1976.

TMS #R600-031-000-0176-0000 (the "Property")

The term "Landowner" shall include Landowner's heirs, executors, administrators, successors and assigns, as the case may be.

3. The following entities are named hereto as Other Condemnees:
 - (a) **Wells Fargo Bank, NA is made a party** in this action by virtue of a Mortgage and Assignment Rents and Leases between Cregger Capital Investments, Inc. and Wells Fargo Bank, NA recorded in the Office of the Register of Deeds for Beaufort County, South Carolina on November 26, 2013 in Deed Book 3289 at Page 404; and First Modification of Mortgage and Assignment of Rents and Leases recorded July 23, 2019 in Book 3779 at Page 534. The rights and interest to be acquired by the Condemnor in the subject action will not be subordinate to and subject to those of Wells Fargo Bank, NA.
 - (b) **U.S. Army Corps of Engineers is made a party** in this action by virtue of that indenture between Ulmer Associates and U.S. Army Corps of Engineers ("CORPS"), Declaration of Restrictive Covenants recorded in the Office of the Register of Deeds for Beaufort County, South Carolina in Deed Book 1292 at Page 160. The rights and interest to be acquired by the Condemnor in the subject action are specifically subordinate to and

subject to those of CORPS, and any conflict between the occupation or use of the subject property as between the Condemnor and CORPS shall be resolved to the satisfaction of CORPS.

- (c) **Palmetto Electric is made a party** in this action by virtue of that indenture between J.W. Ulmer Associates and Palmetto Electric Cooperative, Inc. ("PALMETTO"), Easement for electrical underground 15kv power cables. Easements recorded in the Office of the Register of Deeds for Beaufort County, South Carolina in Deed Book 717 at Page 1656; Book 942 at Page 46, and Book 2823 at Page 676. The rights and interest to be acquired by the Condemnor in the subject action are specifically subordinate to and subject to those of PALMETTO, and any conflict between the occupation or use of the subject property as between the Condemnor and PALMETTO shall be resolved to the satisfaction of PALMETTO.
- (d) **Central Electric is made a party** in this action by virtue of that indenture between J.W. Ulmer and Central Electric Power Cooperative, Inc. (COOPERATIVE), Easement for electric transmission line, recorded in the Office of the Register of Deeds for Beaufort County, South Carolina in Deed Book 167 at Page 132. The rights and interest to be acquired by the Condemnor in the subject action are specifically subordinate to and subject to those of COOPERATIVE, and any conflict between the occupation or use of the subject property as between the Condemnor and COOPERATIVE shall be resolved to the satisfaction of COOPERATIVE.
- (e) **Beaufort-Jasper Water and Sewer Authority is made a party** in this action by virtue of that indenture between Ulmer and Associates and Beaufort-Jasper Water and Sewer Authority (BJWSA), Blanket Easement, recorded in the Office of the Register of

I. Designate the Condemnor

2. Designate Landowner and all other Condemnees

SECTION 28-2-280 Form and Content of Condemnation Notice

Deeds for Beaufort County, South Carolina in Deed Book 986 at Page 1340. The rights and interest to be acquired by the Condemnor in the subject action are specifically subordinate to and subject to those of BJWSA, and any conflict between the occupation or use of the subject property as between the Condemnor and BJWSA shall be resolved to the satisfaction of BJWSA

(f) Beaufort County is made a party in this action by virtue of that indenture between Ulmer Associates and Beaufort County (BEAUFORT), drainage easement, recorded in the Office of the Register of Deeds for Beaufort County, South Carolina in Deed Book 3310 at Page 1093. The rights and interest to be acquired by the Condemnor in the subject action are specifically subordinate to and subject to those of BEAUFORT and any conflict between the occupation or use of the subject property as between the Condemnor and BEAUFORT shall be resolved to the satisfaction of BEAUFORT.

(g) Beaufort County is made a party in this action by virtue of that indenture between Kittie's Landing, Ulmer Associates and Beaufort County (BEAUFORT), road setback lines and drainage easement, recorded in Beaufort County Records, South Carolina in Plat Book 59 at Page 39, revised in Plat Book 62 at Page 198. The rights and interest to be acquired by the Condemnor in the subject action are specifically subordinate to and subject to those of BEAUFORT and any conflict between the occupation or use of the subject property as between the Condemnor and BEAUFORT shall be resolved to the satisfaction of BEAUFORT.

(h) Ulmer Associates is made a party in this action by virtue of Restrictive Covenants placed on the property recorded in the Beaufort County Records in Book 922 at Page 120; and Restrictive Covenant Modification recorded in Book 2608 at Page 1888, and

2. Designate Landowner and all other Condemnees

any amendments thereto. The rights and interest to be acquired by the Condemnor in the subject action will not be subordinate to and subject to those of Ulmer Associates.

4. The following is a description of the interest sought to be acquired in and to the

Property by Condemnor:

All that certain piece, parcel or tract of land shown as "PROPOSED DESC R/W 28,058 SQ. FT. +/- OR 0.644 ACRE +/-" on that certain survey drawing entitled PROPOSED DESC R/W 28,058 SQ. FT. +/- OR 0.644 ACRE +/-" ACROSS THE PROPERTY OF CREGGER CAPITAL INVESTMENTS, INC., BEAUFORT COUNTY, SOUTH CAROLINA," prepared by Dominion Energy South Carolina, Inc., dated 3/02/2020, attached hereto as Exhibit "A" and incorporated herein by reference.

A Portion of TMS: R600-031-000-0176-0000

5. The interests sought to be acquired in and to the Property by the Condemnor are described above and include the following:

(a) Together with the right to construct, maintain, operate, replace and alter thereon and thereunder one or more lines for the transmission or distribution of electric energy, consisting of supporting structures, overhead and underground conductors and lightning protective wires, municipal, public or private communication wires, guys, push braces and other accessory apparatus and equipment deemed by Condemnor to be necessary or desirable thereof, as well as the right to install, maintain and use anchors and guy wires on land adjacent to the easement herein granted.

(b) Together also with the right from time to time to redesign, rebuild or alter said lines and to install such additional lines, apparatus and equipment as Condemnor may at any time deem necessary or desirable and the right to remove any electrical line or any part thereof;

3. Legal description of party and interest to be taken

(c) Together also with the right of ingress, egress, and access to and from the Right of way across and upon the Property as may be necessary or convenient for purposes connected with said right of way;

(d) Together with the right from time to time to remove or clear and keep clear such trees, underbrush, structures and other obstructions, upon said right of way and such trees ("Danger Trees") beyond the same as in the judgment of Condemnor may interfere with or endanger said lines or appurtenances when erected, provided that Condemnor will pay to Landowner the fair market value of such Danger Trees at the time of cutting as determined by a registered professional forester, and the right of entry upon said Property of Condemnor for all of the purposes aforesaid;

(e) Provided, however, that any damage to the Property of Landowner (other than to property cleared or removed as hereinbefore provided) caused by Condemnor in the course of constructing, rebuilding or repairing said lines shall be borne by Condemnor.

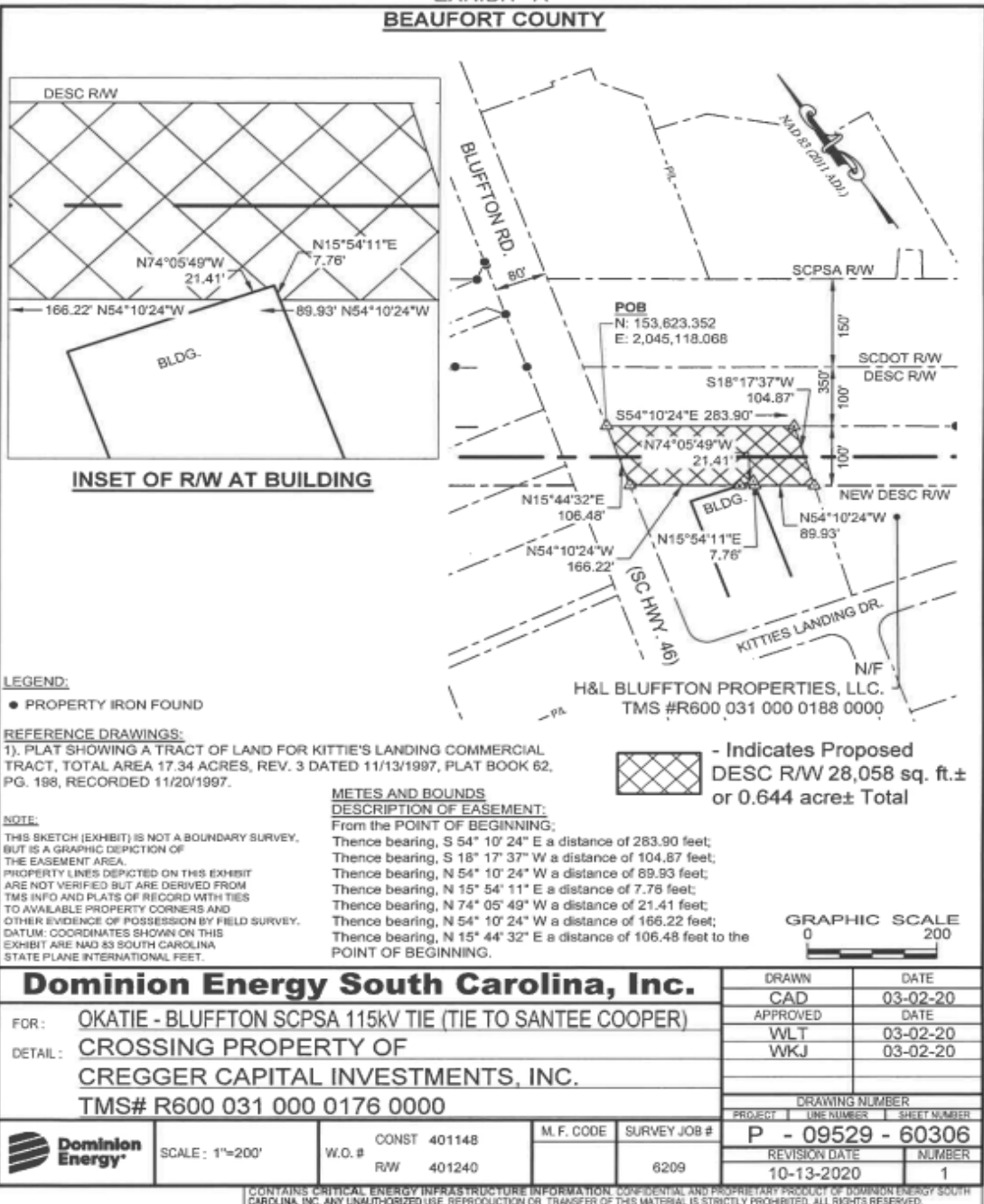
(f) Landowner shall reserve the right to cultivate and use the ground within the limits of the Right of way, provided that such use shall not interfere with or obstruct the Condemnor's rights herein granted, and provided further than no building or other structure shall be erected by Landowner within the width of the said right of way.

6. Condemnor is vested with the power of eminent domain pursuant to Section 28-2-60 and Section 58-27-130, Code of Laws of South Carolina, 1976, as amended.

4. Allege the basis of the Condemnor's right to take the property by eminent domain

EXHIBIT "A"
BEAUFORT COUNTY

PLAN "SAFETY" INTO EVERY JOB



CAD DRAWING - DO NOT REVISE MANUALLY

Dominion Energy South Carolina, Inc.		DRAWN	DATE
FOR: OKATIE - BLUFFTON SCPSA 115kV TIE (TIE TO SANTEE COOPER)		CAD	03-02-20
DETAIL: CROSSING PROPERTY OF		APPROVED	DATE
CREGGER CAPITAL INVESTMENTS, INC.		WLT	03-02-20
TMS# R600 031 000 0176 0000		WKJ	03-02-20
DRAWING NUMBER			
PROJECT		LINE NUMBER	SHEET NUMBER
P - 09529 - 60306			
REVISION DATE		NUMBER	
10-13-2020		1	
	SCALE: 1"=200'	W.O. #	CONST 401148
		R/W	401240
M. F. CODE	SURVEY JOB #		
	6209		

CONTAINS CRITICAL ENERGY INFRASTRUCTURE INFORMATION. CONFIDENTIAL AND PROPRIETARY PRODUCT OF DOMINION ENERGY SOUTH CAROLINA, INC. ANY UNAUTHORIZED USE, REPRODUCTION OR TRANSFER OF THIS MATERIAL IS STRICTLY PROHIBITED. ALL RIGHTS RESERVED.

FILE: P-09529-60301-60326-R4_RCH_2.dwg

SECTION 28-2-280 Form and Content of Condemnation Notice

- 5. Contain map, plat or project plans showing the property to be taken.

SECTION 28-2-280 Form and Content of Condemnation Notice

7. The property sought herein is to be acquired for public purposes.

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

9. Condemnor 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 Condemnor at Dominion Energy South Carolina, Inc., 220 Operation Way, Cayce, South Carolina 29033.

11. THE CONDEMNOR HAS DETERMINED JUST COMPENSATION FOR THE PROPERTY AND RIGHTS TO BE ACQUIRED HEREUNDER TO BE THE SUM OF THREE HUNDRED ONE THOUSAND FOUR HUNDRED AND 00/100 DOLLARS (\$301,400.00) AND HEREBY TENDERS PAYMENT TO THE LANDOWNER FOR ACCEPTANCE.

Should any liens and/or encumbrances exist against the property which is the subject of this action, Condemnor reserves the right, at its discretion, to pay all or any portion of the just compensation to the holders of any liens or encumbrances – and any such payment(s) shall be part of the just compensation to the same effect as if made directly 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 instruments necessary to convey to the Condemnor the property interests and rights described hereinabove. A “Request for Payment and Agreement” form is attached. The “Request for Payment and Agreement” must be sent by first class certified mail with return receipt requested to the Condemnor at Alford Law Firm, LLC, P.O. Drawer 8008, Hilton Head

Island, South Carolina, 29938, or hand delivered in person to Alford Law Firm, LLC, 18 Executive Park Road, Building 1, Hilton Head Island, South Carolina, 29928, within thirty (30) days of the service hereof. If no “Request for Payment 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 Landowners notice that it has done so and may then proceed to take possession of the property interests and exercise the rights described in this Condemnation Notice. Should the Condemnor elect to exercise its right to take possession, it shall notify the Landowner by separate Notice prior to taking possession.

14. ANY 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 herein is rejected, the Condemnor shall notify the Clerk of the 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 the right to demand a trial by jury. The case may not be called for trial before sixty (60) days after the service of that Notice, but it may thereafter be given priority for trial over other civil cases. The Clerk of Court shall give the Landowners written notice by mail of the call of the

case for trial.

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

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

6. Specify a location within the County where plan can be inspected

7. Just Compensation

8. Action brought under Section 28-2-240

CONDEMNOR CAN TAKE POSSESSION OF
EASEMENT 30 DAYS AFTER SERVICE OF NOTICE.

- The landowner has thirty (30) days after service of the Condemnation Notice to accept or reject the amount tendered and “[a] failure to respond to the tender constitutes a rejection.” S.C. Code §28-2-220(C).
- “If the landowner rejects or does not accept the amount tendered as just compensation within the thirty-day period, then the condemnor may file the Condemnation Notice with the clerk of court and deposit with the clerk the amount of just compensation stated in the notice.” S.C. Code §28-2-230(A).

EMINENT DOMAIN PROCEDURE ACT CONTROLS

- **SECTION 28-2-120.** Eminent Domain Procedure Act to prevail over Rules of Civil Procedure.

In the event of conflict between this act and the South Carolina Rules of Civil Procedure, this act shall prevail.

HOW TO GET TO TRIAL- JURY OR NON-JURY

- **SECTION 28-2-240.** Election to proceed with condemnation by way of trial after rejection of amount tendered.

(A) If the condemnor elects to proceed under this section, and the amount tendered in the Condemnation Notice is rejected, the condemnor shall file the Condemnation Notice with the clerk of court, if not already filed, and shall serve upon the landowner and file with the clerk an affidavit stating:

- (1) that the amount tendered in the Condemnation Notice has been rejected;
- (2) that the condemnor demands a trial not earlier than sixty days after the date of service of the affidavit, which date must be certified on the copy filed with the clerk;

HOW TO GET TO TRIAL- JURY OR NON-JURY

- **SECTION 28-2-240.** Election to proceed with condemnation by way of trial after rejection of amount tendered.
 - (3) whether the condemnor demands a trial by jury or by the court;
 - (4) whether the condemnor demands that the trial be given priority over other cases; and
 - (5) the name and known address of each landowner whom the clerk should notify of the call of the case for trial. The affidavit may be executed by the condemnor or by its attorney.
- (B) After the filing of the affidavit, the case shall proceed as provided in Article 3.

RIGHTS OF LANDOWNER VS. OTHER CONDEMNNEES

SECTION 28-2-30.Definitions:

"Landowner" means one or more condemnees having a record fee simple interest in the property condemned or any part thereof, as distinguished from condemnees who possess a lien or other nonownership interest in the property; where there are more than one, the term means the condemnees collectively, unless expressly provided otherwise."

We conclude the Act provides only the landowner and condemnor—as opposed to other condemnees—the right to a jury trial in a condemnation action. . . The definition of landowner does not include "condemnees who possess a lien or other non-ownership interest." See § 28-2-30(12). *S.C. Dep't of Commerce v. Clemson Univ.*, 432 S.C. 352, 851 S.E.2d 735 (S.C. App. 2020)

WHO GETS THE MONEY?

- **SECTION 28-2-460.** Parties to whom just compensation must be made and paid.

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.

- The Landowner gets the right to try or settle the case. But cannot get to the funds without this equity hearing which gives the holders of easements, liens and other rights to be heard as to the equitable distribution of the agreed upon or awarded just compensation

TRIAL OF CONDEMNATION ACTIONS PROCEDURE

- **SECTION 28-2-310.** Application of Article 3; demand for nonjury trial; precedence of action; minimum time between notice and trial.
 - (A) Upon the filing of the affidavit described in Section 28-2-240(A) or the filing of a Notice of Appeal under Section 28-2-260(B) or (C), the action must be tried as provided in this article.
 - (B) If the condemnor and the landowner have demanded trial by the court without a jury, the clerk shall place the action on the nonjury trial roster. Otherwise, the action must be placed on the jury trial roster.
 - (C) If either the condemnor or the landowner so demands, the action must be given precedence over other civil cases for trial.
 - (D) The case may not, in any event, be called for trial until at least sixty days after the date of service upon the landowner of the Condemnation Notice, in cases brought under Section 28-2-240, or the Notice of Appeal, in cases brought under Section 28-2-250, unless both the condemnee and the landowner agree to a shorter period.

EVIDENCE AT TRIAL

SECTION 28-2-330.Rules of evidence.

Actions under this act are governed by the rules of evidence applicable in civil actions.

SECTION 28-2-340.Evidence which may be admitted in trials of condemnation actions; inspection of property.

(A) For the purpose of determining the value of the land sought to be condemned and fixing just compensation in a hearing before a judge or in a trial before a jury, the following evidence (in addition to other evidence which is relevant, material, and competent) is relevant, material, and competent and may be admitted as evidence and considered by the judge or the jury:

(1) evidence that a building or improvement is unsafe, unsanitary, or a public nuisance or is in a state of disrepair and evidence of the cost to correct the condition, even if no action has been taken by local authorities to remedy the condition;

(2) evidence that any state public body charged with the duty of abating or requiring the correction of nuisances or like conditions or demolishing unsafe or unsanitary structures issued an order directing the abatement or correction of any conditions existing with respect to the building or improvement or demolition of the building or improvement and of the cost of compliance with an order;

EVIDENCE AT TRIAL

(3) evidence of the last assessed valuation of the property for purposes of taxation and of any affidavits or tax returns made by the owner in connection with the assessment which state the value of the property and of any income tax returns of the owner showing sums deducted because of obsolescence or depreciation of the property;

(4) evidence that the property or improvement is being used for illegal purposes or is being so overcrowded as to be dangerous or injurious to the health, safety, morals, or welfare of the occupants and the extent to which the rentals therefrom are enhanced by reason of the use;

(5) evidence of the price and other terms upon any sale or the rent reserved and other terms of any lease or tenancy relating to the property or to any similar property in the vicinity when the sale or leasing occurred or the tenancy existed within a reasonable time of the hearing.

(B) Upon motion of either party, the court shall permit the jury to inspect the property which is the subject of the action, and if the trial is without a jury, the court shall make the inspection.

JUST
COMPENSATION

STATE OF SOUTH CAROLINA)

COUNTY OF _____)

_____)

Condemnor,)

vs.)

_____)

Landowner,)

_____)

IN THE COURT OF COMMON PLEAS
FOR THE _____ JUDICIAL CIRCUIT
CASE NO. 2022-CP- -

Project:

.

VERDICT FORM

We, the jury, unanimously find just compensation is the amount of

_____ dollars.

JURY FOREMAN

JUST COMPENSATION

- “It rests on equitable principles and it means substantially that the owner shall be put **in as good position pecuniarily as he would have been if his property had not been taken.**”
Seaboard Air Line Ry. Co. v. U.S., 261 U.S. 299, 304, 43 S. Ct. 354, 356 (1923); Blue Ridge Elec. Co-op. v. Combined Util. System of City of Easley, 279 S.C. 135, 139, 303 S.E.2d 91, 93 (1983).
- “No better, but no worse.”
- “In all condemnation actions, the date of valuation is the date of the filing of the Condemnation Notice.” S.C. Code § 28-2-440.

TOTAL TAKING VS. PARTIAL TAKING

- “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” to the land as a result of the particular public project.” S.C. Code § 8-2-370.
- Total taking: property value (including all improvements).
- Partial taking: value of the property taken and damages, minus any benefit.

PARTIAL TAKING

- “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**” to the land as a result of the particular public project.” S.C. Code § 8- 2-370
- “cutting off the big toe”
- The foot can’t function without a big toe

PARTIAL TAKING

- The special damages referred to in the above statutes relate to injury or damage to the remainder of the property from which a portion is taken. They would include **any damage or any decrease in actual value of the remainder of the landowner's property** which are the direct and proximate consequence of the acquisition of the right of way. In other words, as a general rule, special damages include all injuries or damages which cause a diminution in the value of the remaining property. *S. Carolina State Highway Dep't v. Touchberry*, 248 S.C. 1, 5, 148 S.E.2d 747, 748 (1966).
- The **different elements of damage** to remaining land recoverable when part of a tract is **taken are as numerous as the possible forms of injury**. *S. Carolina State Highway Dep't v. Touchberry*, 248 S.C. 1, 7, 148 S.E.2d 747, 749 (1966) (citing 4 Nichols on Eminent Domain, Section 14.24, at 556).

TOTAL TAKING

- How can the parties disagree much?
- Case Study: Office building or technology facility?



EXHIBIT
7



CONDEMNOR EXPERT

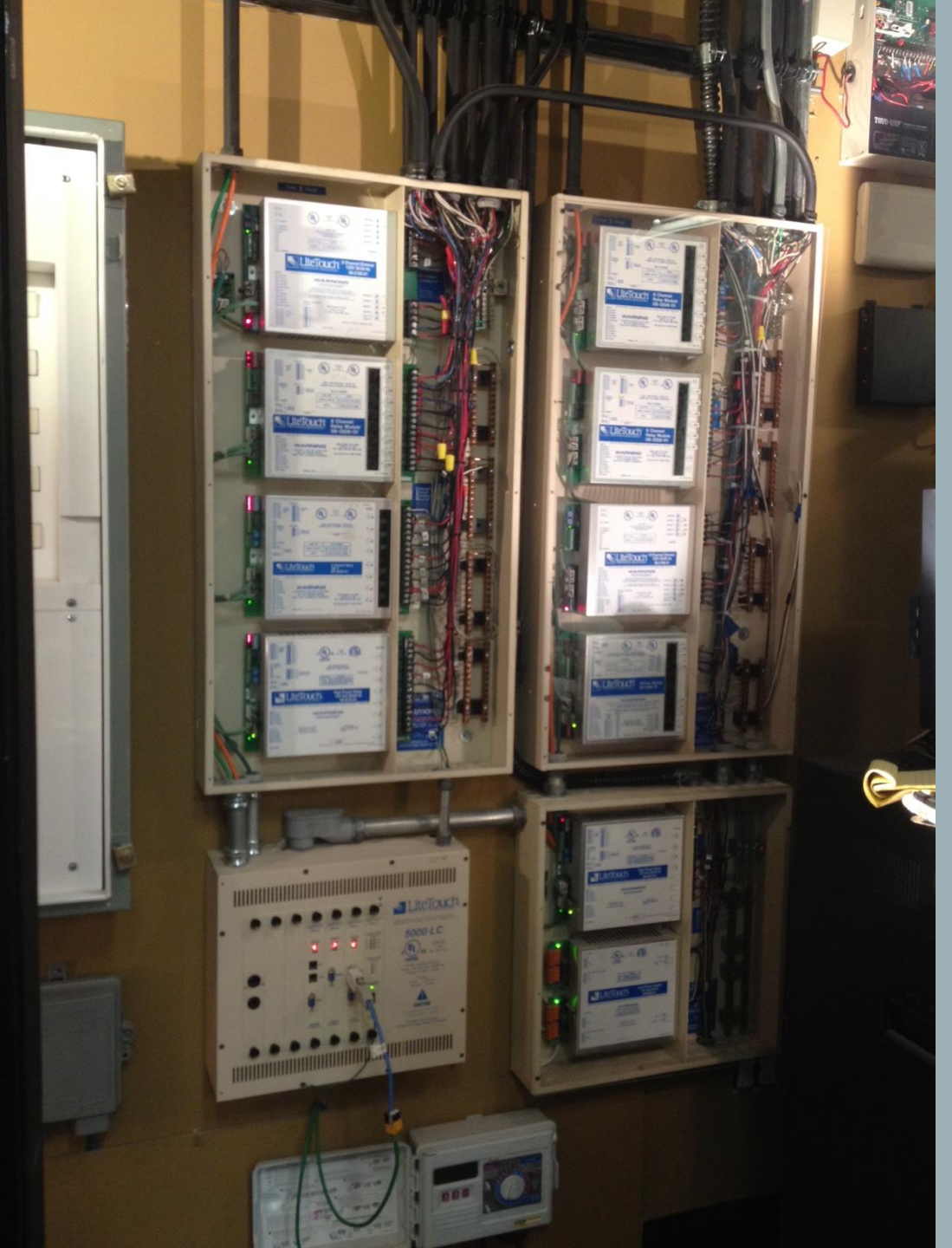
16 Q. The bottom line of your opinion is that this was,
17 plain and simple, an office building and it should be
18 compared with the sale of other office buildings in the
19 immediate area or Charleston market?

20 A. Yes.

21 MR. WALKER: That's all I have at this time, Your
22 Honor.











LANDOWNER'S EXPERT

8 Q. And was this a normal office building?

9 A. Mr. Linton, I noticed right away, upon entering the
10 building, that it was not constructed like any ordinary
11 or any typical office building.

12 I saw steel conduits running everywhere with wiring
13 in it. It had a special theater in it. It had a special
14 audio room in it.

15 It was not like any other office building that I
16 have appraised, or that I have been in, anywhere in South
17 Carolina.

18 Q. And did you go in that theater room that you just
19 mentioned?

20 A. I did.

21 Q. Can you tell us, what was it like in that theater
22 room?

23 A. It was almost eerie. It's like you're the only
24 person on earth. If you -- you know, you can't hear --
25 it's almost like being underground in a tomb. You can't

VALUATION DIFFERENCE

- Condemnor's appraiser valued the property as a standard office building.
- Landowner's appraiser valued the property as a unique technology facility that did not have other comparable properties in the area. The only way to value the taking was to estimate the costs to rebuild the facility.
- \$1,800,000 v. \$4,580,000.

CASE STUDY

CONDEMNOR WAS
ONLY TAKING .714
ACRES OF 294 ACRES
OF POA PROPERTY



- The Condemnor's appraiser determined that the subject property is an uneconomic parcel of real estate, and the subject property's highest and best use as though vacant would be as common area for a planned unit development.
- The Condemnor's appraiser also determined that there were no damages.

TAKING .714 ACRES CREATED SERIOUS PROBLEMS FOR THE NEIGHBORHOOD

- Landowner's Appraiser determined there were damages in addition to the value of the property taken:
 - Gate house needs to be relocated (traffic report).
 - Stormwater management impacts and repair needed due to increased run-off
 - Loss of landscaped areas, plantings, irrigation, the reestablishment of buffer areas required by the applicable zoning ordinances.
 - Noise impacts-noise abatement.

MOVING THE GATEHOUSE

RECOMMENDATIONS

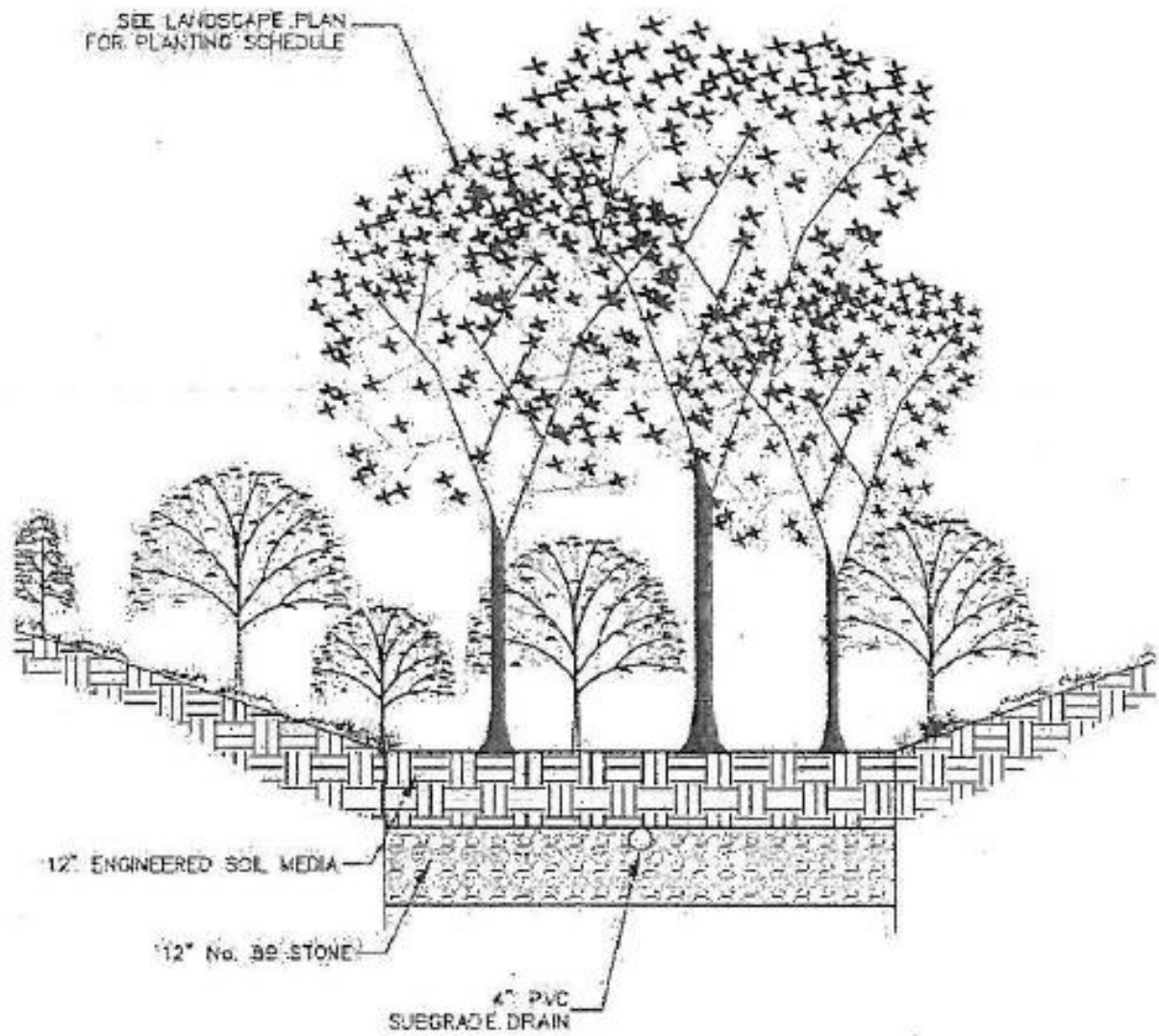
In review of the capacity issues at the access drive for Rose Hill to/from US 278 and assuming the widening project of US 278 to the six-lane divided cross-section, a concept has been developed which will result in additional stacking lengths/areas through the guard-house area both entering and exiting Rose Hill. The proposal is to relocate the guard-house a greater distance internal of Rose Hill. By relocating the guard-house and its security functions approximately 100-feet further internal of the development, vehicle stacking for both exiting and entering vehicles is enhanced. Over-all this concept will enhance safety for vehicles entering the development as well as reduce the possibility of vehicles queuing from US 278 into the guard-house area.

DRAINAGE SYSTEM

The Rose Hill Plantation POA has spent the past several months negotiating with the South Carolina Department of Transportation (SCDOT) over the construction mitigation costs associated with the widening of Highway 278 in front of the Plantation. The purpose of this report is to quantify the additional run-off generated from the widening and determine the approximate size of a stormwater infiltration BMP that is capable of treating an equal amount of stormwater volume from within the Plantation. **The proposed BMP would ensure the existing stormwater management facilities within the Plantation would not be overburdened by the increased run-off.**

Beaufort County is initiating water quality testing and monitoring at strategic locations such as drainage outfalls as they enter into the marshes, creeks, and rivers throughout the county. These locations include high density areas of development, master planned communities, and areas known to contain high levels of pollution. The concern is to determine whether or not existing BMP's are in place and providing sufficient/acceptable levels of pollutant removal. The Rose Hill Plantation stormwater BMP's were designed to provide water quantity and quality for the areas draining to them at the time of initial development. The run-off coming from the lane widening will diminish the pollutant removal rates of the existing BMP's and reduce the capacity of the infrastructure. **To maintain the current treatment rates and lessen the impact from the lane widening project, the existing BMP's need to be modified and/or new BMP's shall be constructed.**

demanded on the following column



TYPICAL RAINGARDEN

NOISE IMPACTS

In accordance with the Department's noise abatement policy, a noise impact will occur if the predicted design year noise level approaches (falls within 1 dBA) or exceeds the NAC. Noise impacts will also occur if the difference between the existing noise level and the predicted noise level is 15 dBA or greater. A 15 dBA increase is considered to be a "substantial increase."

Results of the noise analysis indicate that twenty-six receptors along US 278 would have traffic noise impacts as a result of the project (see Table 9). Figures 7a-7e show the location of impacted receivers within the project corridor. The twenty-six impacted receivers include ten lots (i.e. greens or tees) within three privately-owned golf course facilities, six

	Barrier Height (ft.)	Total Area (sq. ft.)	Cost (per sq. ft.)	Total Cost	Cost Per Benefited Receiver	Receiver Numbers	Insertion Loss	
	6.5	10,848	\$20	\$216,960	\$72,320	13 14 15	1.8 dBA 1.8 dBA 2.1 dBA	
2	1661	6.5	10,796	\$20	\$215,920	\$215,920	17	1.4 dBA
3	1458	6.5	9,477	\$20	\$189,540	\$94,770	20 21	1.8 dBA 2.3 dBA
4	1332	6.5	8,658	\$20	\$173,160	\$86,580	25 26	1.6 dBA 3.7 dBA
5	1642	6.5	10,673	\$20	\$213,460	\$213,460	28	1.5 dBA
6	1133	6.5	7,364	\$20	\$147,280	\$147,280	40	2.7 dBA
7	892	6.5	5,798	\$20	\$115,960	\$115,960	47	1.8 dBA

⁵ According to SCDOT's Noise Abatement Policy, a benefited receiver is defined as one who receives at least a 5dBA reduction in noise levels.

VALUE DIFFERENCE

- Condemnor presented just compensation of \$8,600 for value of the property taken, claiming the property taken had little to no utility.
- Landowner's appraiser determined just compensation was \$1,146,371, comprised of the property and site improvements taken *and* damages to the remainder parcel.



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