CHAPTER 2

The Eminent Domain Procedure Act

CROSS REFERENCES

Rights, powers and privileges of telegraph and telephone companies conferred on pipeline companies, exception, see Section 58‑7‑10.

ARTICLE 1

General Provisions

**SECTION 28‑2‑10.** Short title.

 This chapter may be cited as “The South Carolina Eminent Domain Procedure Act” and any references to the term “act”, unless the context clearly indicates otherwise, mean the South Carolina Eminent Domain Procedure Act.

HISTORY: 1987 Act No. 173, Section 1.

CROSS REFERENCES

Application of this chapter to acquisitions by the Department, see Section 1‑11‑110.

Application of this chapter to the acquisition of land by the Trustees of the University of South Carolina, see Section 59‑117‑70.

Application of this chapter to the condemnation of air space rights, see Section 55‑9‑80.

Application of this chapter to the condemnation of land by municipalities for purposes of operating waterworks and electric light works, see Section 5‑31‑430.

Application of this chapter to the condemnation of land for enlarging, extending, or establishing a sewerage system or water system, see Section 5‑31‑420.

Application of this chapter to the condemnation of land for waterworks and to protect watersheds, see Section 5‑31‑440.

Application of this chapter to the condemnation of land not affected by the drainage project but necessary for a right‑of‑way or outlet, see Section 49‑17‑1050.

Application of this chapter to the condemnation of lands by school trustees, see Section 59‑19‑200.

Application of this chapter to the condemnation of rights‑of‑way, holding basins or other works or that may be necessary for material to be used in constructing drainage works, see Section 49‑19‑1060.

Application of this chapter to the locating of solid waste disposal resource recovery facilities, see Section 6‑16‑160.

Application of this chapter to the opening, closing or otherwise altering of streets in cities containing more than five thousand inhabitants, see Section 5‑27‑150.

Powers and duties of Authority, see Section 55‑11‑630.

Library References

Eminent Domain 1, 3.

Westlaw Topic No. 148.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Damages Section 55, Eminent Domain.

S.C. Jur. Eminent Domain Section 1, Scope Note.

S.C. Jur. Eminent Domain Section 19, Basic Measure of Recovery.

S.C. Jur. Eminent Domain Section 37, Scope and Applicability.

S.C. Jur. Lis Pendens Section 16, Condemnation.

Forms

South Carolina Litigation Forms and Analysis Section 3:54 , Eminent Domain.

LAW REVIEW AND JOURNAL COMMENTARIES

Annual Survey of South Carolina Law: Property‑Eminent Domain. 30 S.C. L. Rev. 154.

Annual Survey of South Carolina Law: Property‑Eminent Domain. 31 S.C. L. Rev. 119.

Annual Survey of South Carolina Law: Property‑Eminent Domain‑Determination of a Public Use. 32 S.C. L. Rev. 203.

**SECTION 28‑2‑20.** Intent of General Assembly.

 This act amends the law of this State relating to procedures for acquisitions of property and to the exercise of the power of eminent domain. It is the intention of the General Assembly that this act is designed to create a uniform procedure for all exercise of eminent domain power in this State. It is not intended by the creation of this act to alter the substantive law of condemnation, and any uncertainty as to construction which might arise must be resolved in a manner consistent with this declaration. In the event of conflict between this act and any other law with respect to any subject governed by this act, this act shall prevail.

HISTORY: 1987 Act No. 173, Section 1.

Library References

Eminent Domain 3, 166.

Westlaw Topic No. 148.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Eminent Domain Section 37, Scope and Applicability.

United States Supreme Court Annotations

Supreme Court’s views as to what constitutes “taking,” within meaning of Fifth Amendment’s prohibition against taking of private property for public use without just compensation. 89 L Ed 2d 977.

**SECTION 28‑2‑30.** Definitions.

 As used in this act:

 (1) “Action” means condemnation action.

 (2) “Appraisal” means an opinion as to the value of compensation payable for property, prepared by or under the direction of an individual qualified by knowledge, skill, experience, training, or education to express an opinion as to the value of the compensation. An appraisal includes the assessment of general and specific benefits to the owner as offsets against any damages to the property.

 (3) “Clerk of court” or “clerk” means the clerk of court of common pleas of the county in which the real property sought for acquisition by a condemnor, or the major portion of the property, is located.

 (4) “Condemn” means to take property under the power of eminent domain.

 (5) “Condemnation action” includes all acts incident to the process of condemning property after the service of a Condemnation Notice.

 (6) “Condemnee” means a person or other entity who has a record interest in or holds actual possession of property that is the subject of a condemnation action.

 (7) “Condemnor” means a person or other entity empowered to condemn.

 (8) “Court” means a circuit court of this State and includes, when the context requires, any judge of the court.

 (9) “Crops” means any form of vegetation intended to be removed and used or sold for commercial purposes, including without limitation grass, flowers, fruits, vegetables, trees, vines, and nursery stock.

 (10) “Federal agency” means the United States or any agency or instrumentality, corporate, or otherwise of the United States.

 (11) “Improvement” includes any building or structure, and any facility, machinery, or equipment that cannot be removed from the real property on which it is situated without substantial damage to the real property or other substantial economic loss.

 (12) “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.

 (13) “Lien” means a security interest in property arising from contract, mortgage, deed of trust, statute, common law, equity, or creditor action.

 (14) “Litigation expenses” means the reasonable fees, charges, disbursements, and expenses necessarily incurred from and after service of the Condemnation Notice, including, but not limited to, reasonable attorney’s fees, appraisal fees, engineering fees, deposition costs, and other expert witness fees necessary for preparation or participation in condemnation actions and the actual cost of transporting the court and jury to view the premises.

 (15) “Local public entity” means a public entity other than the State.

 (16) “Person” includes a natural individual, partnership, corporation, association, other legal or fiduciary entity, and a public entity.

 (17) “Property”, “real property”, or “land” means all lands, including improvements and fixtures thereon, lands under water, easements and hereditaments, corporeal or incorporeal, every estate, interest and right, legal or equitable, in lands or water and all rights, interests, privileges, easements, encumbrances, and franchises relating thereto, including terms for years and liens by way of judgment, mortgage, or otherwise.

 (18) “Public body” means this State or any county, city, town, municipal corporation, municipality, authority or other subdivision, agency or body or instrumentality, corporate or otherwise, authorized by law to exercise the power of eminent domain.

 (19) “Public works project” means any work or undertaking which is financed in whole or in part by a federal agency or a public body, or is administered or supervised or regulated by a federal agency or a public body.

HISTORY: 1987 Act No. 173, Section 1.

Library References

Eminent Domain 3.

Westlaw Topic No. 148.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Costs Section 46, Condemnation Actions.

S.C. Jur. Eminent Domain Section 38, Joining the Issues.

S.C. Jur. Eminent Domain Section 44, Interests of Landowners and Condemnees in the Action.

United States Supreme Court Annotations

Supreme Court’s views as to what constitutes “taking,” within meaning of Fifth Amendment’s prohibition against taking of private property for public use without just compensation. 89 L Ed 2d 977.

NOTES OF DECISIONS

In general 1

Drainage projects 5

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Inverse condemnation 3

Removal of personal property 2

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1. In general

Reconfiguration of road that led to highway did not constitute a taking of landowner’s property, although reconfiguration situated property on cul‑de‑sac and limited landowner’s access to highway by requiring landowner to navigate series of secondary roads; no aspect of property had been physically taken. Hardin v. South Carolina Dept. of Transp. (S.C. 2007) 371 S.C. 598, 641 S.E.2d 437, rehearing denied. Eminent Domain 106

When only a portion of a public road abutting a landowner’s property is closed, leaving the property in a cul‑de‑sac, no taking has occurred; as long as the landowner has access to and from the remainder of the road that continues to abut his property, his easement with respect to that road remains intact. Hardin v. South Carolina Dept. of Transp. (S.C. 2007) 371 S.C. 598, 641 S.E.2d 437, rehearing denied. Eminent Domain 106

There is no taking when a government entirely closes one of the roads that abuts a corner lot; so long as a landowner has access to the public road system, the landowner’s easement by necessity is intact. Hardin v. South Carolina Dept. of Transp. (S.C. 2007) 371 S.C. 598, 641 S.E.2d 437, rehearing denied. Eminent Domain 106

Reconfiguration of divided highway’s intersection did not constitute a taking of property on either side of highway’s intersection with road, although reconfiguration resulted in inability to make any left turns at intersection; landowners continued to have access to and from highway and public road system. Hardin v. South Carolina Dept. of Transp. (S.C. 2007) 371 S.C. 598, 641 S.E.2d 437, rehearing denied. Eminent Domain 106

In determining whether a road re‑configuration amounts to a taking of property, the focus is on how the reconfiguration affects property owner’s easements to access public road system, not on whether property owner has suffered special injury that is different in kind and not merely in degree from that suffered by public at large; overruling City of Rock Hill v. Cothran, 209 S.C. 357, 40 S.E.2d 239, and Gray v. South Carolina Dep’t of Transp., 311 S.C. 144, 427 S.E.2d 899. Hardin v. South Carolina Dept. of Transp. (S.C. 2007) 371 S.C. 598, 641 S.E.2d 437, rehearing denied. Eminent Domain 91; Eminent Domain 106

An actual physical taking is not necessary to entitle a property owner to just compensation under the constitutional prohibition against taking private property for public use without just compensation to the property owner. Tallent v. South Carolina Dept. of Transp. (S.C.App. 2005) 363 S.C. 160, 609 S.E.2d 544, rehearing denied, certiorari granted, reversed 371 S.C. 598, 641 S.E.2d 437. Eminent Domain 2.1

2. Removal of personal property

The trial court properly refused to allow testimony by the landowner concerning costs for the removal of mobile homes from his condemned property; the removal costs of personal property cannot be considered as an element of damage since it is not a taking of property. City of North Charleston v. Claxton (S.C.App. 1993) 315 S.C. 56, 431 S.E.2d 610, rehearing denied, certiorari denied.

3. Inverse condemnation

Reconfiguration of road that led to highway did not constitute a taking of landowner’s property, although reconfiguration situated property on cul‑de‑sac and limited landowner’s access to highway by requiring landowner to navigate series of secondary roads; no aspect of property had been physically taken. Hardin v. South Carolina Dept. of Transp. (S.C. 2007) 371 S.C. 598, 641 S.E.2d 437, rehearing denied. Eminent Domain 106

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One basic difference between condemnation and inverse condemnation is that in condemnation proceedings, the governmental entity is the moving party, whereas, in inverse condemnation, the property owner is the moving party. Hawkins v. City of Greenville (S.C.App. 2004) 358 S.C. 280, 594 S.E.2d 557. Eminent Domain 176; Eminent Domain 289

4. Highway projects

Reconfiguration of road that led to highway did not constitute a taking of landowner’s property, although reconfiguration situated property on cul‑de‑sac and limited landowner’s access to highway by requiring landowner to navigate series of secondary roads; no aspect of property had been physically taken. Hardin v. South Carolina Dept. of Transp. (S.C. 2007) 371 S.C. 598, 641 S.E.2d 437, rehearing denied. Eminent Domain 106

When only a portion of a public road abutting a landowner’s property is closed, leaving the property in a cul‑de‑sac, no taking has occurred; as long as the landowner has access to and from the remainder of the road that continues to abut his property, his easement with respect to that road remains intact. Hardin v. South Carolina Dept. of Transp. (S.C. 2007) 371 S.C. 598, 641 S.E.2d 437, rehearing denied. Eminent Domain 106

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A town’s building up of a road, which raised the level of the road approximately 17 inches, resulting in flood damage to a property owner’s house during a heavy rainfall, satisfied the requirement of an overt or positive action taken by the town necessary to prove a taking under a cause of action for inverse condemnation. Newsome v. Town of Surfside Beach (S.C.App. 1989) 300 S.C. 14, 386 S.E.2d 274.

5. Drainage projects

City’s design and maintenance of drainage system did not constitute affirmative, positive, aggressive act on part of city as required to support business owner’s claim for inverse condemnation claim when his business property near drainage system flooded during rainstorm; city’s replacement of double‑box culvert with large arched pipe and installation of riprap material along banks of creek near owner’s business did not cause flooding of business, and business owner’s own expert testified that installation of large arched pipe likely improved drainage situation in stormwater basin. Hawkins v. City of Greenville (S.C.App. 2004) 358 S.C. 280, 594 S.E.2d 557. Eminent Domain 2.18

6. Service of notice

A condemnor’s service of a condemnation notice marks the time for commencement of the condemnation action as defined in the Eminent Domain Procedure Act. Kiriakides v. School Dist. of Greenville County (S.C. 2009) 382 S.C. 8, 675 S.E.2d 439. Eminent Domain 179.1

School district’s service of a condemnation notice on property owner commenced its condemnation action, and thus, under statute allowing fees in the event a condemnor abandons a condemnation action, district could be liable for attorney fees after it abandoned its condemnation efforts, even though district never filed the notice. Kiriakides v. School Dist. of Greenville County (S.C. 2009) 382 S.C. 8, 675 S.E.2d 439. Eminent Domain 246(4)

**SECTION 28‑2‑40.** Compromise or settlement permitted.

 At any time before or after commencement of an action, the parties may agree to and carry out, according to its terms, a compromise or settlement as to any matter, including all or any part of the compensation or other relief.

HISTORY: 1987 Act No. 173, Section 1.

Library References

Compromise and Settlement 3.

Westlaw Topic No. 89.

C.J.S. Compromise and Settlement Sections 1, 5.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Lis Pendens Section 16, Condemnation.

**SECTION 28‑2‑50.** Compliance with federal requirements permitted.

 A condemnor may comply with any federal statute, regulation, or policy prescribing a condition precedent to the availability or payment of federal financial assistance for any program or project for which the condemnor is authorized to exercise the power of eminent domain.

HISTORY: 1987 Act No. 173, Section 1.

Library References

Eminent Domain 166.

Westlaw Topic No. 148.

**SECTION 28‑2‑60.** Application of act.

 A condemnor may commence an action under this chapter for the acquisition of an interest in any real property necessary for any public purpose. The provisions of this chapter shall constitute the exclusive procedure whereby condemnation may be undertaken in this State.

HISTORY: 1987 Act No. 173, Section 1.

CROSS REFERENCES

Power of eminent domain pursuant to procedures provided in this chapter applicable with respect to certain properties in connection with Trident Economic Development Finance Authority, see Section 13‑12‑210.

Library References

Eminent Domain 13 to 42.

Westlaw Topic No. 148.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Eminent Domain Section 37, Scope and Applicability.

LAW REVIEW AND JOURNAL COMMENTARIES

Annual Survey of South Carolina Law: Property‑Eminent Domain. 31 S.C. L. Rev. 119.

Annual Survey of South Carolina Law: Property‑Eminent Domain‑Determination of a Public Use. 32 S.C. L. Rev. 203.

United States Supreme Court Annotations

Supreme Court’s views as to what constitutes “taking,” within meaning of Fifth Amendment’s prohibition against taking of private property for public use without just compensation. 89 L Ed 2d 977.

Water rights, rights of littoral owners, eminent domain, future accretions, see Stop the Beach Renourishment, Inc. v. Florida Dept. of Environmental Protection, U.S.Fla.2010, 130 S.Ct. 2592, 560 U.S. 702, 177 L.Ed.2d 184.

When is taking of property for “public use” so as to be permissible under Federal Constitution if just compensation is provided—Supreme Court cases. 81 L Ed 2d 931.

Attorney General’s Opinions

A county has the power of eminent domain to acquire property to be used for a public works project. 1971‑72 Op. Atty Gen, No. 3302, p 119.

Power of eminent domain must be conferred by law on State agencies and will not be inferred under the Public Works Eminent Domain Law. 1966‑67 Op. Atty Gen, No. 2319, p 142.

NOTES OF DECISIONS

In general 1

1. In general

This section [decided under former law] is not the appropriate remedy when the right to compensation is in issue. In such a case the appropriate remedy is an action at common law in the courts of general jurisdiction. Gregory v. Town of Pageland (C.A.4 (S.C.) 1967) 374 F.2d 490.

A county’s condemnation of land for purposes of constructing a public access road did not constitute an abuse of discretion, even though the county might sell the land to a single individual, where the proposed road would be open to the public, notwithstanding the county’s ultimate disposition of the property; it is the right of the general public to use the road which is determinative of whether the taking of private property is for “public use,” rather than the number who actually exercise the right. Greenwood County v. McDonald (S.C. 1990) 302 S.C. 157, 394 S.E.2d 325.

This chapter, which provides that the procedure therein shall be exclusive, contemplates that the exclusiveness shall only apply to those cases or situations which are embraced within the machinery of the chapter. Godwin v. Carrigan (S.C. 1955) 227 S.C. 216, 87 S.E.2d 471.

The denial of a landowner’s right to compensation removes the issues from the exclusiveness of the prevailing condemnation statutes. Godwin v. Carrigan (S.C. 1955) 227 S.C. 216, 87 S.E.2d 471.

Under SC Const, Art 1, Section 17 (now Art 1, Section 13), it is left to the legislature to enact procedure by which private property may be condemned for public use, together with the means by which just compensation is to be made, and this law fully provides these essentials. City of Spartanburg v. Belk’s Dept. Store of Clinton (S.C. 1942) 199 S.C. 458, 20 S.E.2d 157.

**SECTION 28‑2‑70.** Appraisal of property; necessity of negotiation; condemnor’s right to enter upon land for limited purposes.

 (A) Before initiating a condemnation action, 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.

 (B) The condemnor and landowner shall make reasonable and diligent efforts to negotiate an agreement upon the amount of compensation to be paid. The condemnor shall certify to the court that a negotiated resolution of the conflict was attempted prior to the institution of the condemnation action. A failure of any party to comply with this subsection is not a defense to a condemnation action.

 (C) The condemnor shall have the authority, after reasonable notice to the landowner, to enter upon the real property in which an interest is proposed to be acquired for the purpose of making a survey, determining the location of proposed improvements, or making an appraisal. In the event a landowner refuses to allow entry, the circuit court may issue an ex parte order enforcing this section. A landowner shall have no cause of action for trespass arising out of the exercise of authority pursuant to this section.

HISTORY: 1987 Act No. 173, Section 1.

CROSS REFERENCES

Form and content of the condemnation notice, see Section 28‑2‑280.

Requirement that the condemnation notice set forth the amount of compensation determined pursuant to this section, see Section 28‑2‑220.

Right of condemnor to take possession of property after depositing with clerk of court amount determined pursuant to this section, see Section 28‑2‑90.

Library References

Eminent Domain 169, 170, 187.

Westlaw Topic No. 148.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Damages Section 55, Eminent Domain.

S.C. Jur. Eminent Domain Section 43, Taking of Possession by Condemnor.

Forms

South Carolina Litigation Forms and Analysis Section 3:54 , Eminent Domain.

LAW REVIEW AND JOURNAL COMMENTARIES

Annual Survey of South Carolina Law: Property‑Eminent Domain. 30 S.C. L. Rev. 154.

**SECTION 28‑2‑80.** Service of process.

 Any service required under this chapter may be made by certified mail with return receipt requested or by any other means permitted by law for service of a summons in civil cases. When service is made by certified mail, the date of service must be the date of delivery, refusal, or last attempted delivery as shown on the return receipt.

HISTORY: 1987 Act No. 173, Section 1.

Library References

Eminent Domain 179.

Westlaw Topic No. 148.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Eminent Domain Section 38, Joining the Issues.

**SECTION 28‑2‑90.** When condemnor may take possession of property.

 A condemnor may take possession of property:

 (1) at any time upon receipt of written consent of the record owner or owners of fee simple title to the property;

 (2) upon payment to the owner of mutually agreed compensation;

 (3) upon deposit with the clerk of court in the county in which the property to be condemned is situated, the amount stated in the Condemnation Notice as just compensation for the property, the amount having been determined by the condemnor pursuant to Section 28‑2‑70(a) before initiating the action;

 (4) upon payment to the owner or deposit with the clerk of court of the amount determined by the appraisal panel or awarded by the judgment in the condemnation action.

HISTORY: 1987 Act No. 173, Section 1.

CROSS REFERENCES

Right of condemnor to take possession of property pursuant to this section upon giving notice of filing of condemnation notice, see Section 28‑2‑230.

Library References

Eminent Domain 187, 244.

Westlaw Topic No. 148.

RESEARCH REFERENCES

Forms

South Carolina Litigation Forms and Analysis Section 3:56 , Eminent Domain‑Response in Opposition to Plaintiff’s Motion to Withdraw Condemnation Action.

**SECTION 28‑2‑100.** Acquisition of uneconomic remnant or remaining property.

 (A) If the acquisition of only part of a property would leave its owner with an uneconomic remnant, the condemnor may acquire the remnant concurrently by purchase or condemnation.

 (B) “Uneconomic remnant”, as used in this section, means a remainder following a partial taking of property, of that size, shape, or condition as to be of little value or that gives rise to a substantial risk that the condemnor may be required to pay in compensation for the part taken an amount substantially equivalent to the amount that would be required to be paid if it and the remainder were taken as a whole.

HISTORY: 1987 Act No. 173, Section 1.

Library References

Eminent Domain 58.

Westlaw Topic No. 148.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Damages Section 55, Eminent Domain.

**SECTION 28‑2‑110.** Reimbursement for penalty costs for prepayment of secured debt; payment of taxes on property for year in which taking occurs; payment of interest.

 (A) As soon as practicable after payment of the purchase price or payment of or deposit in court of funds to satisfy the judgment in a condemnation action, whichever is earlier, the condemnor shall pay or reimburse the owner for any penalty costs for prepayment of any debt secured by a preexisting lien, entered into or created in good faith, encumbering the property, except where preempted by federal law. No prepayment penalty may be imposed on any debt secured by a lien on real property which is subject to condemnation if the lien was recorded subsequent to the effective date of this act.

 (B) The condemnor is allowed a credit against the amount owed the landowner for the tax year in which the compensation is paid allocable to a period between the first day of that year and the date of vesting of title in, or the effective date of possession of the property by the condemnor, whichever is earlier. The condemnor shall pay the taxes on the property taken for that year. This applies only when fee simple title to the property is condemned. If the condemnor is the State or any of its agencies or political subdivisions, taxes on the property must be abated by the county treasurer effective upon the date of possession by, or the date of vesting of title in, the condemnor, whichever is earlier.

 (C) The condemnor shall pay interest as provided in Section 28‑2‑420.

HISTORY: 1987 Act No. 173, Section 1.

Library References

Eminent Domain 122.

Westlaw Topic No. 148.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Costs Section 46, Condemnation Actions.

NOTES OF DECISIONS

In general 1

1. In general

Owners of the land should pay taxes on it to the date on which the condemnor received a deed for the land and the title passed. South Carolina Public Service Authority v. 11,754.8 Acres of Land, More or Less, in Berkeley County, S.C., 1941, 123 F.2d 738.

The constitutionality of a former section relating to payment of taxes on property being condemned was upheld in South Carolina Public Service Authority v. 11,754.8 Acres of Land, More or Less, in Berkeley County, S.C., 1941, 123 F.2d 738.

**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.

HISTORY: 1987 Act No. 173, Section 1.

Library References

Eminent Domain 166, 167(3).

Westlaw Topic No. 148.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Eminent Domain Section 37, Scope and Applicability.

Forms

South Carolina Litigation Forms and Analysis Section 3:54 , Eminent Domain.

NOTES OF DECISIONS

In general 1

1. In general

Rule allowing judgment debtor to avoid further accrual of post‑judgment interest pending resolution of appeal by depositing judgment with court conflicted with provision of state Eminent Domain Procedure Act that required post‑judgment interest to be added to any judgment that was not paid within 20‑day period, and thus Act would prevail over rule. South Carolina Dept. of Transp. v. First Carolina Corp. of South Carolina (S.C. 2006) 369 S.C. 150, 631 S.E.2d 533. Eminent Domain 247(4)

ARTICLE 2

Actions in Condemnation

**SECTION 28‑2‑210.** Right to institute action; exclusive procedures.

 Any condemnor may institute an action under this chapter for the acquisition of an interest in any real property necessary for any public purpose. The provisions of this act constitute the exclusive procedure whereby condemnation may be undertaken in this State.

HISTORY: 1987 Act No. 173, Section 1.

Library References

Eminent Domain 167(3), 168(1).

Westlaw Topic No. 148.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Damages Section 55, Eminent Domain.

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Annual Survey of South Carolina Law: Property‑Eminent Domain‑Determination of a Public Use. 32 S.C. L. Rev. 203.

NOTES OF DECISIONS

In general 1

1. In general

The South Carolina Public Service Authority (SCPSA) was properly estopped from condemning a portion of a golf course for the construction of a high voltage electric transmission line where, prior to its purchase of the land, the developers of the course arranged with SCPSA to bury all existing power lines over the pre‑existing easement, but SCPSA failed to inform the developers that a much larger transmission line was planned. Southern Development Land and Golf Co., Ltd. v. South Carolina Public Service Authority (S.C. 1993) 311 S.C. 29, 426 S.E.2d 748.

Fact that plans for contemplated future use of property were not firm or definite at the time of the condemnation is insufficient to show either bad faith or abuse of discretion on the part of the condemnor. Brown v. Aiken County (S.C. 1978) 271 S.C. 8, 244 S.E.2d 514. Eminent Domain 317(2)

**SECTION 28‑2‑220.** Election between trial and appraisal panel; condemnation notice; acceptance or rejection of offer tendered in notice.

 (A) Prior to commencing a condemnation action, a condemnor must elect to proceed either under Section 28‑2‑240, in which case the form of Condemnation Notice prescribed by Section 28‑2‑280(C)(8) must be used, or under Section 28‑2‑250, in which case the form of Condemnation Notice prescribed by Section 28‑2‑280(C)(9) must be used.

 (B) In the Condemnation Notice, the condemnor shall set forth the amount it has determined to be just compensation pursuant to Section 28‑2‑70(A) which shall constitute a tender of that amount.

 (C) The landowner has thirty days after service of the Condemnation Notice to give the condemnor written notice either that he rejects the amount tendered, or that he accepts the amount tendered and agrees to execute those instruments as may be necessary to convey to the condemnor the property or interest therein described in the Condemnation Notice. A failure to respond to the tender constitutes a rejection.

HISTORY: 1987 Act No. 173, Section 1.

Code Commissioner’s Note

At the direction of the Code Commissioner in 2016, in (B), “n” was changed to “In”, and in (C) “he landowner” was changed to “The landowner”, to correct a typographical error.

CROSS REFERENCES

Requirement that condemnor appoint one member to the appraisal panel in the condemnation notice, see Section 28‑2‑250.

Library References

Eminent Domain 169, 170.

Westlaw Topic No. 148.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Eminent Domain Section 38, Joining the Issues.

S.C. Jur. Eminent Domain Section 40, Use of the Appraisal Panel.

S.C. Jur. Eminent Domain Section 44, Interests of Landowners and Condemnees in the Action.

S.C. Jur. Lis Pendens Section 16, Condemnation.

Forms

South Carolina Litigation Forms and Analysis Section 3:54 , Eminent Domain.

United States Supreme Court Annotations

Due process requirements as to notice in condemnation proceedings. 1 L Ed 2d 1635.

**SECTION 28‑2‑230.** Filing of condemnation notice; deposit of amount of compensation; filing fees; notice of filing; right to take possession; abandonment of action.

 (A) 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. If the Condemnation Notice is filed with the clerk of court, the clerk shall charge a fee for filing the notice which must be the same as the fee charged for filing a summons and complaint.

 (B) The condemnor then shall serve written notice of the action upon the condemnees and may proceed to take possession of the property or interest in the property described in the Condemnation Notice pursuant to Section 28‑2‑90. The condemnor may not abandon the condemnation action after taking possession if material alterations have been made in the property, except with consent of the landowner.

HISTORY: 1987 Act No. 173, Section 1; 1990 Act No. 575, Section 1.

CROSS REFERENCES

Means of service available under Eminent Domain Procedure Act, see Section 28‑2‑80.

Right of condemnor to take possession of property upon payment to owner or deposit with clerk of court the amount awarded by judgment in the condemnation action, see Section 28‑2‑90.

Library References

Eminent Domain 170, 170, 182, 187, 246(2).

Westlaw Topic No. 148.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Eminent Domain Section 43, Taking of Possession by Condemnor.

S.C. Jur. Eminent Domain Section 44, Interests of Landowners and Condemnees in the Action.

S.C. Jur. Lis Pendens Section 16, Condemnation.

Forms

South Carolina Litigation Forms and Analysis Section 3:54 , Eminent Domain.

South Carolina Litigation Forms and Analysis Section 3:56 , Eminent Domain‑Response in Opposition to Plaintiff’s Motion to Withdraw Condemnation Action.

United States Supreme Court Annotations

Due process requirements as to notice in condemnation proceedings. 1 L Ed 2d 1635.

**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;

 (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.

HISTORY: 1987 Act No. 173, Section 1.

CROSS REFERENCES

Condemnor’s obligation to elect to proceed either under Section 28‑2‑240 or Section 28‑2‑250, and the form of notice required under each section, see Section 28‑2‑220.

Form and content of the condemnation notice, see Section 28‑2‑280.

Requirement that action be tried as provided in Article 3 upon the filing of the affidavit described in this section, see Section 28‑2‑310.

Requirement that trial not be held until at least sixty days after the date of service upon the landowner of the condemnation notice in cases brought under this section, see Section 28‑2‑310.

Library References

Eminent Domain 170.

Westlaw Topic No. 148.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Eminent Domain Section 40, Use of the Appraisal Panel.

S.C. Jur. Eminent Domain Section 44, Interests of Landowners and Condemnees in the Action.

**SECTION 28‑2‑250.** Election to proceed with condemnation by way of appraisal panel after rejection of amount tendered, appointment of panel; time for making appointments; failure to appoint.

 (A) If the condemnor elects to proceed under this section and if the amount tendered in the Condemnation Notice is rejected, an appraisal panel must be established which shall determine an amount as just compensation for the property taken, as provided in this section. The condemnor shall bear the cost of the appraisal panel which must be a fee of not more than one hundred dollars for each member plus the actual expenses, if any, of the panel incurred in performing its duties.

 (B) The appraisal panel shall consist of one member appointed by the condemnor, one member other than a condemnee in that action appointed by the landowner, and one member who must, as a minimum qualification, possess a South Carolina real estate broker’s license, appointed by the first two so appointed.

 (C) The condemnor shall appoint one member in the Condemnation Notice. The condemnor’s appointee must not be an employee or former employee of the condemnor. The landowner, acting jointly if there are more than one, shall have until the thirtieth day following service of the Condemnation Notice to appoint one member other than a condemnee in that action by written notice served upon the condemnor. Within five days of the appointment of the landowner’s member, the two so appointed shall appoint a disinterested third member who as a minimum qualification must hold a South Carolina real estate broker’s license. The third member appointed must be the chairman of the appraisal panel and is responsible for convening the panel and reporting its determination to the condemnor. The chairman of the appraisal panel shall receive additional compensation of fifty dollars for services as chairman.

 (D) If the landowner fails to appoint a member within the times provided above, the clerk of court, upon written request by the condemnor, shall appoint the member. If the first two fail to appoint a qualified third member within the times provided above, the clerk of court, upon written request by the condemnor or the landowner, shall appoint the member.

HISTORY: 1987 Act No. 173, Section 1.

CROSS REFERENCES

Condemnor’s obligation to elect to proceed either under Section 28‑2‑240 or Section 28‑2‑250, and the form of notice required under each section, see Section 28‑2‑220.

Form and content of the condemnation notice, see Section 28‑2‑280.

Requirement that trial not be held until at least sixty days after the date of service of the notice of appeal in cases brought under this section, see Section 28‑2‑310.

Library References

Eminent Domain 225.1.

Westlaw Topic No. 148.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Eminent Domain Section 40, Use of the Appraisal Panel.

S.C. Jur. Eminent Domain Section 44, Interests of Landowners and Condemnees in the Action.

**SECTION 28‑2‑260.** Determination by appraisal panel of just compensation; filing of appraisal panel’s report; notice requirements; acceptance of or appeal from determination.

 (A) Within twenty days of the appointment of the third member, the appraisal panel shall determine an amount as just compensation for the property taken and shall report the determination in writing to the condemnor. In making this determination, the appraisal panel shall conduct an informal proceeding and shall consider all relevant evidence and information as may be offered by the condemnor or the landowner.

 (B) Within ten days of receipt of the appraisal panel’s report:

 (1) if the Condemnation Notice has not already been filed with the clerk of court and the amount tendered therein deposited with the clerk, the condemnor shall file the Condemnation Notice and a copy of the appraisal panel’s report and deposit the amount determined by the appraisal panel with the clerk; or

 (2) if the Condemnation Notice has already been filed and the amount tendered therein deposited with the clerk of court, the condemnor shall file a copy of the appraisal panel’s report with the clerk and, if the amount determined by the panel exceeds the amount already deposited, excluding any interest thereon, shall deposit the amount of the excess with the clerk; and

 (3) the condemnor must serve upon the landowner written notice of the amount determined by the appraisal panel and of the filing of the Condemnation Notice and deposit of the amount determined. The notice shall also state whether the condemnor accepts the determination of the appraisal panel or appeals therefrom and must be in the form prescribed by Section 28‑2‑290.

 (C) If the notice required by this section states that the condemnor accepts the determination of the appraisal panel, then within thirty days of receipt of the notice, the landowner must elect in writing served upon the condemnor either to accept the amount determined by the appraisal panel or to appeal from the determination. A failure to elect constitutes an acceptance of the amount so determined.

HISTORY: 1987 Act No. 173, Section 1.

CROSS REFERENCES

Extension of time allowed for appraisal panel to make its report, see Section 28‑2‑270.

Failure of appraisal panel to make a determination of just compensation, see Section 28‑2‑270.

Proceedings on appeal from determination of appraisal panel, see Section 28‑2‑320.

Requirement that action be tried as provided in Article 3 upon the filing of a notice of appeal under this section, see Section 28‑2‑310.

Library References

Eminent Domain 225.

Westlaw Topic No. 148.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Damages Section 55, Eminent Domain.

S.C. Jur. Eminent Domain Section 40, Use of the Appraisal Panel.

S.C. Jur. Eminent Domain Section 44, Interests of Landowners and Condemnees in the Action.

LAW REVIEW AND JOURNAL COMMENTARIES

Annual Survey of South Carolina Law: Property‑Eminent Domain. 30 S.C. L. Rev. 154.

United States Supreme Court Annotations

Due process requirements as to notice in condemnation proceedings. 1 L Ed 2d 1635.

Attorney General’s Opinions

Death of the landowner does not extend the statutory time for appeal in State highway condemnation matters. 1969‑70 Op. Atty Gen, No. 2976, p 246.

The posting of the landowner’s notice of intention to appeal from the resolution of the condemnation board on the twenty‑first day after receipt of the resolution, when the twentieth day was a Sunday, was timely service of the notice upon the State Highway Department although the notice was not received until later. 1969‑70 Op. Atty Gen, No. 3015, p 300.

NOTES OF DECISIONS

In general 1

1. In general

In an action appealing an award made by the Board of Condemnation to a landowner, the time for notice of the appeal does not begin to run until the resolution was actually served even though the parties knew of the award prior to service. South Carolina Dept. of Highways and Public Transp. v. Manning (S.C. 1984) 283 S.C. 394, 323 S.E.2d 775. Eminent Domain 238(4)

Letter from attorney to highway department stating that statutory period for filing appeal “had expired” and that landowner “would like the right” to pursue her appeal in the court was insufficient to constitute notice that appeal was thereby taken from award of the Board. South Carolina State Highway Dept. v. Kemmerlin (S.C. 1975) 265 S.C. 569, 220 S.E.2d 652.

The statutory method provided by this article for condemnation of land for highway purposes by the State Highway Department is exclusive and the trial court has no authority to indirectly extend time for taking appeal in such case. Burnett v. South Carolina State Highway Dept. (S.C. 1969) 252 S.C. 568, 167 S.E.2d 571.

A motion to be relieved from a failure to timely appeal is not one to set aside a judgment, order or proceeding but is, in effect, an application to extend the time for appeal so as to give the court jurisdiction; for, without a timely notice of appeal, the court would have no jurisdiction. Such a motion is not addressed to the discretion of the court. Burnett v. South Carolina State Highway Dept. (S.C. 1969) 252 S.C. 568, 167 S.E.2d 571.

The trial court has no authority to indirectly extend time for taking appeal. South Carolina State Highway Dept. v. Spann (S.C. 1962) 239 S.C. 437, 123 S.E.2d 648.

Under former Section 28‑9‑50] a city had a right of appeal from decision of condemnation commissioners in proceeding to condemn property for street use, notwithstanding such section provides for appeal only by property owner, in view of SC Const, Art 1, Sections 5 and 17 (now art 1, Sections 3 and 13), guaranteeing equal protection of laws and prohibiting taking of private property for public use without just compensation, since “appeal” as used does not mean technical appeal but connotes notice. City of Spartanburg v. Cudd (S.C. 1925) 132 S.C. 264, 128 S.E. 360.

**SECTION 28‑2‑270.** Filing requirements upon acceptance of or appeal from report of appraisal panel; recording of acceptance of report; disposition of funds on deposit with clerk of court; extension of time allowed for making report; failure of panel to make determination.

 (A) If either the condemnor or any landowner appeals from the determination of the appraisal panel, this party shall file a copy of the notice thereof with the clerk of court within the time required for giving the notice to the other party and shall certify on the filed copy the date the notice was served.

 (B) If both condemnor and landowner accept the determination of the appraisal panel, the condemnor shall file with the clerk of court an affidavit that the time for appeal has expired and no notice of appeal has been given by either party. Thereupon, the clerk of court shall note upon a copy of the Condemnation Notice the amount of the determination and the payment thereof by the condemnor and shall cause the copy so annotated to be recorded and indexed in the same manner as is provided by law for recording and indexing of deeds. If there is no register of mesne conveyance, the clerk shall so record and index this copy of the Condemnation Notice.

 (C) If neither the condemnor nor the landowner appeals from the determination of the appraisal panel, and the amount of the determination is less than the amount already deposited by the condemnor, if any, then upon the filing of the affidavit described in the preceding subsection, the clerk of court shall remit to the condemnor the amount of excess deposited funds together with a pro rata portion of the interest earned on the deposited funds.

 (D) The time allowed for the appraisal panel to make and report its determination may be extended by written consent by both condemnor and landowner.

 (E) If the appraisal panel fails to make a determination of just compensation within the time allowed or an extension thereof, if any, the panel chairman shall certify this fact in writing to the condemnor, a copy of which the condemnor shall serve upon the landowner and file with the clerk of court which shall have the same effect as appeal by both the condemnor and the landowner from a determination of the appraisal panel.

HISTORY: 1987 Act No. 173, Section 1.

Library References

Eminent Domain 234(5), 238(0.5).

Westlaw Topic No. 148.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Eminent Domain Section 40, Use of the Appraisal Panel.

**SECTION 28‑2‑280.** Form and content of condemnation notice.

 (A) The Condemnation Notice must contain the information and allegations required in this section and may contain any other information relevant to the action.

 (B) The Condemnation Notice must be captioned: CONDEMNATION NOTICE, TENDER OF PAYMENT, and if applicable, AND NOTICE TO APPOINT APPRAISER.

 (C) The Condemnation Notice must:

 (1) designate the condemnor on whose behalf the property is to be taken;

 (2) designate as “landowner” all persons who are record owners of fee simple title and as “other condemnees” all persons who, to condemnor’s knowledge, have or claim any record interest in the property to be taken; condemnees whose names are not known, including heirs, infants, persons under disability, and persons who may be in military service, must be made parties by the collective name of “unknown claimants”;

 (3) contain an appropriate legal description of the property to be taken or out of which an interest will be taken, and of the interest to be taken;

 (4) allege the basis of the condemnor’s right to take the property by eminent domain and maintain the action, including (i) a reference to the condemnor’s legal authority to take the property; (ii) a statement of the purpose for which it is to be condemned; (iii) a declaration of whether the action is one under Section 28‑2‑240 or under Section 28‑2‑250; and (iv) a statement that the condemnor has complied with Section 28‑2‑70(A);

 (5) have attached a map, diagram, sketch, or reference to project plans showing, as far as practical, the property to be taken and, if less than all of a whole parcel, the location of the interest taken upon or within the whole parcel;

 (6) specify a location within the county where the property to be taken is situated at which the landowner may inspect the project plans;

 (7) contain at least the following notice:

 THE CONDEMNOR HAS DETERMINED JUST COMPENSATION FOR THE PROPERTY AND RIGHTS TO BE ACQUIRED HEREUNDER TO BE THE SUM OF (insert the amount determined under Section 28‑2‑70(A) in words and numbers) AND HEREBY TENDERS PAYMENT THEREOF TO THE LANDOWNER.

 Payment of this amount will be made to the landowner if within thirty 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. The request and agreement must be sent by first class certified mail with return receipt requested or delivered in person to the condemnor at (insert the address to which the request should be delivered) . If no request and agreement is received by the condemnor within the thirty‑day period, the tender is considered rejected.

 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 then proceed to take possession of the property interests and exercise the rights described in this Condemnation Notice.

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

 (8) if the action is brought under Section 28‑2‑240, contain at least the following notice:

 “THE CONDEMNOR HAS ELECTED NOT TO UTILIZE THE APPRAISAL PANEL PROCEDURE. Therefore, if the tender herein is rejected, the condemnor shall notify the clerk of court and shall demand a trial to determine the amount of just compensation to be paid. A copy of that notice must be served on the landowner. 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 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.

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

 (9) if the action is brought under Section 28‑2‑250, contain at least the following notice:

 “If the tender is rejected, the landowner has until the thirtieth day after service of the Condemnation Notice within which to appoint a person who is not a party named in this action to serve as a member of an appraisal panel. Notice of appointment giving the name, address, and telephone number of the person appointed must be delivered to the condemnor at (insert the condemnor’s address to which the notice of appointment should be delivered) within this period. If the landowner fails to appoint a member within the time allowed, one will be appointed for the landowner by the clerk of court upon the condemnor’s request. The condemnor hereby appoints (insert the name of the member appointed by condemnor) , whose address is (insert the member’s address) and whose telephone number is (insert the member’s telephone number) as a member.

 “The two members so appointed must appoint a disinterested third member who holds at least a South Carolina real estate broker’s license. If the two fail to appoint a third, the clerk of court shall appoint the third.

 “The appraisal panel shall determine an amount to be paid as just compensation for the property interest and rights described hereinabove, within twenty days after appointment of the third member. The appraisal panel shall report its determination to the condemnor which shall notify the landowner of the amount thereof. The landowner has thirty days from receipt of that notice in which to either accept the determination of the appraisal panel or to appeal therefrom.”

HISTORY: 1987 Act No. 173, Section 1.

CROSS REFERENCES

What form of notice is to be used when condemnor elects to proceed either under Section 28‑2‑240 or Section 28‑2‑250, see Section 28‑2‑220.

Library References

Eminent Domain 181.

Westlaw Topic No. 148.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Eminent Domain Section 38, Joining the Issues.

S.C. Jur. Eminent Domain Section 39, Challenging the Right to Condemn.

S.C. Jur. Eminent Domain Section 44, Interests of Landowners and Condemnees in the Action.

S.C. Jur. Lis Pendens Section 16, Condemnation.

Forms

South Carolina Litigation Forms and Analysis Section 3:54 , Eminent Domain.

United States Supreme Court Annotations

Due process requirements as to notice in condemnation proceedings. 1 L Ed 2d 1635.

**SECTION 28‑2‑290.** Form and content of notice of report of appraisal panel.

 (A) The notice of the determination of the appraisal panel required to be given by the condemnor to the landowner under Sections 28‑2‑260(B) and (C) must be captioned NOTICE OF DETERMINATION OF APPRAISAL PANEL AND (NOTICE OF APPEAL) or (NOTICE TO ELECT).

 (B) The notice must at least:

 (1) designate the parties to the action in the same manner as the Condemnation Notice;

 (2) state in words and numbers the amount determined by the appraisal panel to be just compensation;

 (3) contain one of the following statements: “THE CONDEMNOR REJECTS AND APPEALS FROM THE DETERMINATION OF THE APPRAISAL PANEL AND DEMANDS A TRIAL DE NOVO;

 (or)

 THE CONDEMNOR ACCEPTS THE DETERMINATION OF THE APPRAISAL PANEL. WITHIN THIRTY DAYS OF RECEIPT OF THIS NOTICE, THE LANDOWNER MUST NOTIFY THE CONDEMNOR IN WRITING, DELIVERED IN PERSON OR BY CERTIFIED MAIL, WITH RETURN RECEIPT REQUESTED, TO CONDEMNOR AT (insert the condemnor’s address) THAT THE LANDOWNER ELECTS EITHER TO ACCEPT THE DETERMINATION OF THE APPRAISAL PANEL OR TO APPEAL THEREFROM AND DEMAND A TRIAL DE NOVO. A NOTICE OF APPEAL MUST ALSO BE FILED WITH THE CLERK OF COURT WITH THE DATE OF SERVICE NOTED THEREON.

 A FAILURE TO GIVE NOTICE OF ELECTION WITHIN THE THIRTY‑DAY PERIOD WILL CONSTITUTE AN ACCEPTANCE OF THE APPRAISAL PANEL’S DETERMINATION AND A WAIVER OF THE RIGHT TO APPEAL.

 (and in either case)

 A trial to determine just compensation will be by jury unless both parties request trial by the court without a jury. The case may not be called for trial before sixty days after the service of the Notice of Appeal but it may thereafter be given priority for trial over other civil cases. The clerk of court shall give the landowner notice by mail of the call of the case for trial.

 THEREFORE, IF THE DETERMINATION OF THE APPRAISAL PANEL IS REJECTED, THE LANDOWNER IS ADVISED TO OBTAIN LEGAL COUNSEL AT ONCE, IF NOT ALREADY OBTAINED.”

 (4) if notice of depositing funds with the clerk has not already been given or possession has not already been taken, contain the following statement:

 “The amount of the determination has been deposited with the clerk of court. The condemnor now has the right to take possession of the property interests and exercise the rights described in the Condemnation Notice.”;

 (5) contain the following statement:

 “If the landowner accepts the determination of the appraisal panel, payment of that amount will be made by the clerk of court.”

HISTORY: 1987 Act No. 173, Section 1.

Library References

Eminent Domain 234.

Westlaw Topic No. 148.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Eminent Domain Section 40, Use of the Appraisal Panel.

S.C. Jur. Eminent Domain Section 44, Interests of Landowners and Condemnees in the Action.

United States Supreme Court Annotations

Due process requirements as to notice in condemnation proceedings. 1 L Ed 2d 1635.

ARTICLE 3

Trial of Condemnation Actions

**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.

HISTORY: 1987 Act No. 173, Section 1.

CROSS REFERENCES

Election to proceed with condemnation by way of trial after rejection of amount tendered in condemnation notice, see Section 28‑2‑240.

Power of eminent domain pursuant to procedures provided in this chapter applicable with respect to certain properties in connection with Trident Economic Development Finance Authority, see Section 13‑12‑30.

Library References

Eminent Domain 166, 174, 209.

Westlaw Topic No. 148.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Eminent Domain Section 40, Use of the Appraisal Panel.

S.C. Jur. Eminent Domain Section 41, Jury Trial.

S.C. Jur. Public Health Section 3, Enforcement.

LAW REVIEW AND JOURNAL COMMENTARIES

Annual Survey of South Carolina Law: Property‑Eminent Domain. 30 S.C. L. Rev. 154.

Annual Survey of South Carolina Law: Property‑Eminent Domain. 31 S.C. L. Rev. 119.

Annual Survey of South Carolina Law: Property‑Eminent Domain‑Determination of a Public Use. 32 S.C. L. Rev. 203.

NOTES OF DECISIONS

In general 1

Inverse condemnation actions 2

Jury trial 3

1. In general

Civil Action No.2001‑CP‑32‑0711 Carolina Water Service, Inc. v. Lexington County Joint Mun. Water and Sewer Com’n (S.C.App. 2005) 2005 WL 3110670, withdrawn and superseded 367 S.C. 141, 625 S.E.2d 227, [main volume] certiorari granted, certiorari granted, reversed 373 S.C. 96, 644 S.E.2d 681, rehearing denied.

Eminent domain law permits landowners to challenge attempted governmental taking by instituting nonjury trial to prevent such action. Sea Cabin on the Ocean IV Homeowners Ass’n v. City of North Myrtle Beach, 1993, 828 F.Supp. 1241.

Trial court did not abuse its discretion by lifting stay on actions by town and owners of wastewater treatment facilities challenging joint municipal water and sewer commission’s right to condemn the facilities, though stay was issued due to pending administrative action before Department of Health and Environmental Control (DHEC) regarding amendment to federal Clean Water Act plan affecting the facilities, and DHEC case was still pending; even if DHEC case were resolved in favor of owners and town, joint commission’s condemnation action would proceed because some of asserted public purposes for the condemnation had nothing to do with Clean Water Act, and court properly considered the need to avoid unnecessarily delaying the condemnation action. Civil Action No.: #2001‑CP‑32‑0711 Carolina Water Service, Inc. v. Lexington County Joint Mun. Water and Sewer Com’n (S.C.App. 2006) 367 S.C. 141, 625 S.E.2d 227, certiorari granted, certiorari granted, reversed 373 S.C. 96, 644 S.E.2d 681, rehearing denied. Action 69(7)

In an eminent domain action, the trial court erred in permitting the property owners’ expert witness to testify that because a street adjoining the property was to be opened and extended, the owners’ property value would be increased, since the funds for the street had not yet been appropriated, and thus the testimony was speculative. City of North Charleston v. Gilliam (S.C.App. 1992) 311 S.C. 252, 428 S.E.2d 720, rehearing denied, certiorari denied.

2. Inverse condemnation actions

In an action for inverse condemnation, the property owner is the moving party claiming an act of the sovereign has damaged his property to the extent of an actual taking, entitling him to compensation. WRB Ltd. Partnership v. County of Lexington (S.C. 2006) 369 S.C. 30, 630 S.E.2d 479. Eminent Domain 266

Whether the plaintiff has established a claim for inverse condemnation is a matter for the court to determine. WRB Ltd. Partnership v. County of Lexington (S.C. 2006) 369 S.C. 30, 630 S.E.2d 479. Eminent Domain 307(2)

To prevail on its inverse condemnation claim, landowner, who alleged that methane gas from county’s adjacent landfill contaminated landowner’s property, had to prove an affirmative, aggressive, and positive act by the county that caused the alleged damage to landowner’s property, and county’s action in undertaking a permanent public project in capping the landfill constituted an affirmative, aggressive, and positive act. WRB Ltd. Partnership v. County of Lexington (S.C. 2006) 369 S.C. 30, 630 S.E.2d 479. Eminent Domain 2.3

In an inverse condemnation case, the trial judge will determine whether a claim has been established; the issue of compensation may then be submitted to a jury at either party’s request. Cobb v. South Carolina Dept. of Transp. (S.C. 2005) 365 S.C. 360, 618 S.E.2d 299. Eminent Domain 307(2)

The statutory right to a jury trial on compensation in eminent domain case applies in inverse condemnation actions in light of the historical treatment of an inverse condemnation action as equivalent to an eminent domain case. Cobb v. South Carolina Dept. of Transp. (S.C. 2005) 365 S.C. 360, 618 S.E.2d 299. Jury 19(11)

Circuit court order that landowners were entitled to jury trial in compensation phase of inverse condemnation case was not immediately appealable by Department of Transportation (DOT); it was not deprived of a mode of trial to which it was entitled as a matter of right. Cobb v. South Carolina Dept. of Transp. (S.C. 2005) 365 S.C. 360, 618 S.E.2d 299. Eminent Domain 315

3. Jury trial

Landowners seeking a court determination of the amount of compensation due for the condemnation of their property waived their right to a jury trial where they signed a consent order referring their cases to a master under Rule 53, SCRCP, the master subsequently recused himself from the cases, the landowners requested the cases be placed on the jury trial roster, but the judge referred their cases to a special referee; although entitled to a trial by jury, the landowners’ failure to demand a jury trial prior to signing the consent order waived their right. Richland County v. Lowman (S.C.App. 1992) 307 S.C. 422, 415 S.E.2d 433.

A jury trial to determine the amount of compensation may only be obtained “in and by a return” to the notice provided for in former Section 28‑5‑110, and by one who has an interest in or lien upon property at the time. South Carolina State Ports Authority v. Kaiser (S.C. 1970) 254 S.C. 600, 176 S.E.2d 532.

**SECTION 28‑2‑320.** Proceedings on appeal.

 The appellant must be the movant on appeal from the determination of the appraisal panel, shall have the burden of proof, and shall have the right to open and close, except that notwithstanding which party is appellant, the condemnor shall first offer one witness to describe the property being taken and the purpose thereof. In the event both the landowner and the condemnor appeal from the determination of the appraisal panel, the landowner is deemed to be the appellant.

HISTORY: 1987 Act No. 173, Section 1.

Library References

Eminent Domain 238(6).

Westlaw Topic No. 148.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Eminent Domain Section 31, Purpose of Condemnation.

United States Supreme Court Annotations

Due process requirements as to notice in condemnation proceedings. 1 L Ed 2d 1635.

Water rights, rights of littoral owners, eminent domain, future accretions, see Stop the Beach Renourishment, Inc. v. Florida Dept. of Environmental Protection, U.S.Fla.2010, 130 S.Ct. 2592, 560 U.S. 702, 177 L.Ed.2d 184.

NOTES OF DECISIONS

In general 1

1. In general

In a highway condemnation de novo trial, the trial judge did not err in allowing the Department of Highways and Public Transportation to open and close in jury argument where the Department was the party appealing from an award of the Board of Condemnation. Rice v. South Carolina Dept. of Highways and Public Transp. (S.C. 1982) 277 S.C. 495, 289 S.E.2d 645. Eminent Domain 239

**SECTION 28‑2‑330.** Rules of evidence.

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

HISTORY: 1987 Act No. 173, Section 1.

Library References

Eminent Domain 196, 199, 238(6).

Westlaw Topic No. 148.

**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;

 (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.

HISTORY: 1987 Act No. 173, Section 1.

Library References

Eminent Domain 199, 220, 232.

Westlaw Topic No. 148.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Eminent Domain Section 25, Proof Based on Similar Sales.

S.C. Jur. Eminent Domain Section 26, Expert and Opinion Evidence.

S.C. Jur. Eminent Domain Section 27, Property Owner’s Opinion of Value.

S.C. Jur. Eminent Domain Section 29, Evidence of Socially Irresponsible Use of Property.

S.C. Jur. Eminent Domain Section 30, Inspection of the Property.

LAW REVIEW AND JOURNAL COMMENTARIES

Annual Survey of South Carolina Law: Property‑Eminent Domain. 30 S.C. L. Rev. 154.

Annual survey of South Carolina law: Property law. 46 S.C. L. Rev. 191 (Autumn 1994).

NOTES OF DECISIONS

In general 1

Admissibility of evidence 5

Expert testimony 2

Inverse condemnation 4

Removal of personal property 3

1. In general

In an action to establish the fair market value of condemned property, the issue of whether comparable properties were sold under compulsion is a question of fact for the jury where the expert’s opinion as to the value of the condemned property is based on those comparable properties. City of North Charleston v. Claxton (S.C.App. 1993) 315 S.C. 56, 431 S.E.2d 610, rehearing denied, certiorari denied.

Prior condemnation proceedings, such as the award of the Board of Condemnation, are inadmissible in a jury trial de novo. South Carolina State Highway Dept. v. Carodale Associates (S.C. 1977) 268 S.C. 556, 235 S.E.2d 127.

Permitting view by jury, see Johnson v. South Carolina State Highway Dept. (S.C. 1960) 236 S.C. 424, 114 S.E.2d 591.

Evidence that Federal Government was furnishing money in connection with project was inadmissible in condemnation proceeding by State Highway Department to acquire land for interstate highway. Johnson v. South Carolina State Highway Dept. (S.C. 1960) 236 S.C. 424, 114 S.E.2d 591.

2. Expert testimony

Trial court had discretion in condemnation action to permit condemnee to call as expert witness an appraiser who was originally hired, but not called as trial witness, by condemnor, and whose testimony as to access damages resulting from condemnation would support condemnee’s position. South Carolina Dept. of Highways and Public Transp. v. E.S.I. Investments (S.C. 1998) 332 S.C. 490, 505 S.E.2d 593. Evidence 535.5

In establishing the fair market value of condemned property, it is permissible to use expert testimony based on comparable sales in the area ‑ i.e., the price paid for property in the vicinity within a reasonable time of the condemnation hearing. City of North Charleston v. Claxton (S.C.App. 1993) 315 S.C. 56, 431 S.E.2d 610, rehearing denied, certiorari denied.

In establishing the fair market value of condemned property, if an expert is qualified, the sufficiency of the foundation for his opinion on value is ordinarily a question of weight for the jury, not a basis for excluding evidence. City of North Charleston v. Claxton (S.C.App. 1993) 315 S.C. 56, 431 S.E.2d 610, rehearing denied, certiorari denied. Evidence 571(7)

3. Removal of personal property

The trial court properly refused to allow testimony by the landowner concerning costs for the removal of mobile homes from his condemned property; the removal costs of personal property cannot be considered as an element of damage since it is not a taking of property. City of North Charleston v. Claxton (S.C.App. 1993) 315 S.C. 56, 431 S.E.2d 610, rehearing denied, certiorari denied.

4. Inverse condemnation

Trial court abused its discretion in refusing to reopen case for additional evidence of damages to property caused by changes made to road project not reflected in deed or project plans on landowners inverse condemnation issue; at reconsideration hearing to proffer evidence trial court found it had failed to establish at trial, trial court openly struggled with issue of damages and seriously considered allowing testimony, and evidence of what was contemplated at each stage of road project was so complex and inverse condemnation calculations were contingent on outcome of another theory of case. Brenco v. South Carolina Dept. of Transp. (S.C.App. 2005) 363 S.C. 136, 609 S.E.2d 531, rehearing denied, certiorari granted, reversed 377 S.C. 124, 659 S.E.2d 167. Eminent Domain 307(1)

5. Admissibility of evidence

Compensation is not limited to the value of the property as used by the owner at the time of condemnation. Normandy Corp. v. South Carolina Dept. of Transp. (S.C.App. 2009) 386 S.C. 393, 688 S.E.2d 136, rehearing denied, certiorari denied. Eminent Domain 134

The owner of property subject to condemnation is entitled to the value of the property under its most advantageous or profitable use, including any use reasonably anticipated in the near future. Normandy Corp. v. South Carolina Dept. of Transp. (S.C.App. 2009) 386 S.C. 393, 688 S.E.2d 136, rehearing denied, certiorari denied. Eminent Domain 134

The potential of property may be considered as an element affecting value for purposes of condemnation, so long as the potential is reasonably probable. Normandy Corp. v. South Carolina Dept. of Transp. (S.C.App. 2009) 386 S.C. 393, 688 S.E.2d 136, rehearing denied, certiorari denied. Eminent Domain 134

An expired and unexercised option contract was inadmissible to prove the value of property at a condemnation proceeding; the expired and unexercised option contract was essentially an unaccepted offer. South Carolina Dept. of Transp. v. Hood (S.C.App. 2009) 381 S.C. 318, 672 S.E.2d 595. Evidence 113(16)

**SECTION 28‑2‑350.** Increase in value of property by reason of public works project not to be considered.

 The award of compensation may not be increased by reason of any increases in the value of the property resulting from the placement of a public works project on it.

HISTORY: 1987 Act No. 173, Section 1.

Library References

Eminent Domain 144, 204.

Westlaw Topic No. 148.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Eminent Domain Section 19, Basic Measure of Recovery.

LAW REVIEW AND JOURNAL COMMENTARIES

Annual survey of South Carolina law: Property law. 46 S.C. L. Rev. 191 (Autumn 1994).

NOTES OF DECISIONS

In general 1

1. In general

A compensation award for the condemnation of property cannot be increased as a result of an increase in value resulting from the placement of a public works project on the condemned property. City of North Charleston v. Claxton (S.C.App. 1993) 315 S.C. 56, 431 S.E.2d 610, rehearing denied, certiorari denied.

In determining whether a landowner in a condemnation proceeding was the prevailing party, and thus entitled to attorneys fees pursuant to Section 28‑2‑510(B)(2), the trial court properly compared the landowner’s valuation of the property to city’s valuation of the land without the increase in value resulting from the placement of the public works project where, throughout trial, the city maintained that by statute, the fact finder could not consider the influence of a public works project in determining value. City of North Charleston v. Claxton (S.C.App. 1993) 315 S.C. 56, 431 S.E.2d 610, rehearing denied, certiorari denied.

**SECTION 28‑2‑360.** Benefits of public works project to landowner to be considered.

 In any condemnation action, benefits to be derived from the proposed project including the value of any property or rights relinquished or reverting to the landowner as a part or result thereof, must be taken into consideration in determining the amount of compensation and due allowance made for them.

HISTORY: 1987 Act No. 173, Section 1.

CROSS REFERENCES

Just compensation as including value of benefits of public works project to landowner, see Section 28‑2‑370.

Library References

Eminent Domain 144, 204.

Westlaw Topic No. 148.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Damages Section 55, Eminent Domain.

S.C. Jur. Eminent Domain Section 19, Basic Measure of Recovery.

NOTES OF DECISIONS

In general 1

1. In general

Where three parcels were indisputably united in ownership, physical proximity, and use, benefit to two remaining parcels were to be deducted from compensation awarded for parcel taken for highway use. South Carolina State Highway Dept. v. Terrain, Inc. (S.C. 1976) 267 S.C. 186, 227 S.E.2d 184.

In a landowner’s action against municipality for a taking of his land, benefits to the landowner may be applied in reduction of damages not only against the residue of his land, but also against the value of the land actually taken. Smith v. City of Greenville (S.C. 1956) 229 S.C. 252, 92 S.E.2d 639. Eminent Domain 302

In landowner’s action against the municipality for a taking of his land, benefits to the landowner are an ingredient of his measure of damages, and need not be specially pleaded, but may be shown under the municipality’s general denial. Smith v. City of Greenville (S.C. 1956) 229 S.C. 252, 92 S.E.2d 639. Eminent Domain 293(2); Eminent Domain 293(4)

A statute does not contemplate the taking of private property without compensation, in that it provides that, in estimating damages to property not appropriated for a street, increased value due to contemplated improvement may be set off against the damage. Bailey v. Town of Clinton (S.C. 1911) 88 S.C. 118, 70 S.E. 446. Eminent Domain 145(4)

**SECTION 28‑2‑370.** Just compensation to include only value of property taken, damage to remaining land, and benefits to landowner.

 In determining just compensation, only the value of the property to be taken, any diminution in the value of the landowner’s remaining property, and any benefits as provided in Section 28‑2‑360 may be considered.

HISTORY: 1987 Act No. 173, Section 1.

Library References

Eminent Domain 131, 141(1), 145(1).

Westlaw Topic No. 148.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Damages Section 55, Eminent Domain.

S.C. Jur. Eminent Domain Section 19, Basic Measure of Recovery.

S.C. Jur. Eminent Domain Section 20, Fair Market Value.

S.C. Jur. Eminent Domain Section 27, Property Owner’s Opinion of Value.

LAW REVIEW AND JOURNAL COMMENTARIES

Annual Survey of South Carolina Law: Property‑Eminent Domain. 30 S.C. L. Rev. 154.

Annual survey of South Carolina law: Property law. 46 S.C. L. Rev. 191 (Autumn 1994).

The Fair Market Value Method of Property Valuation in Eminent Domain: “Just Compensation” or Just Barely Compensating? 58 S.C. L. Rev. 489 (Spring 2007).

NOTES OF DECISIONS

In general 1

Actual value 2

Effect on remaining tract 4

Expert testimony as to value of land 3

Future improvements or use 8

Instructions 11

Inverse condemnation action 10

Loss of business 9

Related expenses 7

Right of access 6

Special verdict 12

Traffic flow and noise 5

1. In general

The date at which the taking occurs fixes the point at which damages should be assessed, because it is the value of the property taken as of that date which furnishes the measure of compensation and damages. South Carolina State Highway Dept. v Miller (1960) 237 SC 386, 117 SE2d 561. Board of Com’rs v Richardson (1922) 122 SC 58, 114 SE 632. Howell v State Highway Dept. (1932) 167 SC 217, 166 SE 129.

The doctrine of prior public use does not clothe the court with power to weigh the communal benefit of the proposed use against the present use of property sought to be condemned; it is, rather, a rule of law limited to controversies between two entities each possessing a delegated, general power of eminent domain. Georgia Dept. of Transp. v. Jasper County (S.C. 2003) 355 S.C. 631, 586 S.E.2d 853. Eminent Domain 47(1)

2. Actual value

Compensation for taking of land with timber cannot be calculated by adding the value of the land to the fair market value of the timber. Burroughs & Chapin Co., Inc. v. South Carolina Dept. of Transp. (S.C.App. 2002) 352 S.C. 535, 574 S.E.2d 751, rehearing denied. Eminent Domain 132

Damages in condemnation proceedings should be allowed in respect of fixtures which have become a part of the realty, but compensation cannot be recovered in such a proceeding for damages resulting to personal property not annexed (at least constructively) to the freehold. South Carolina State Highway Dept. v. Smith (S.C. 1970) 253 S.C. 639, 172 S.E.2d 827.

Actual value of land taken is fair value of property between one who wants to purchase and one who wants to sell. South Carolina State Highway Dept. v. Bolt (S.C. 1963) 242 S.C. 411, 131 S.E.2d 264.

3. Expert testimony as to value of land

Expert testimony on the value of timber on property was admissible in condemnation proceeding, to establish a component of compensation. Burroughs & Chapin Co., Inc. v. South Carolina Dept. of Transp. (S.C.App. 2002) 352 S.C. 535, 574 S.E.2d 751, rehearing denied. Evidence 524

Where master and judge disagreed on fair market rental value of property subject to leasehold, in action between lessor and lessee to divide proceeds from condemnation by highway department, Supreme Court found preponderance of evidence favored master’s lower valuation; the experience and training of expert witnesses, their familiarity with property, similarity of comparables used by witnesses, and low contract rental for property, all being factors which sustained lower rental value found by master. Hamilton v. Martin (S.C. 1978) 270 S.C. 223, 241 S.E.2d 569. Eminent Domain 158; Evidence 571(7); Evidence 572

Trial judge did not err in refusing to grant motion for judgment notwithstanding the verdict, or for new trial nisi, where jury verdict as to value was well within range of the two extremes established by the testimony, and was actually closer to amount suggested by power company’s own appraisers than to amount suggested by the landowner and his appraiser. Duke Power Co. v. Opperman (S.C. 1976) 266 S.C. 99, 221 S.E.2d 782.

Licensed real estate broker with 8 years experience in real estate appraisal work was definitely qualified to testify as to damages resulting from acquisition, and if he could give no rational basis for his testimony it was matter for the jury to consider; it cannot be said that his testimony should have been stricken. Duke Power Co. v. Opperman (S.C. 1976) 266 S.C. 99, 221 S.E.2d 782. Evidence 543(3); Evidence 571(7)

A 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 or damages thereto, even though the owner be not an expert. South Carolina State Highway Dept. v. Wilson (S.C. 1970) 254 S.C. 360, 175 S.E.2d 391. Evidence 474(18)

The extent and source of a witness’s knowledge or information as to allegedly comparable sales, used as a partial basis of opinion of market value, would, as a general rule, affect merely the weight of the opinion evidence being offered rather than its competency or admissibility. South Carolina State Highway Dept. v. Wilson (S.C. 1970) 254 S.C. 360, 175 S.E.2d 391. Evidence 555.6(10)

4. Effect on remaining tract

While the unit rule precludes the jury from valuing condemned property as separate units, the value of those units may enhance the fair market value of the property as a whole. Burroughs & Chapin Co., Inc. v. South Carolina Dept. of Transp. (S.C.App. 2002) 352 S.C. 535, 574 S.E.2d 751, rehearing denied. Eminent Domain 131

Proper measure of compensable damages is the value of the land at the date of the taking plus any resulting injury to the remaining property offset by any benefits to the remaining land as a result of the project. South Carolina State Highway Dept. v. Carodale Associates (S.C. 1977) 268 S.C. 556, 235 S.E.2d 127. Eminent Domain 222(5)

The landowner is entitled to full compensation for the taking of his land and all its consequences. South Carolina State Highway Dept. v. Wilson (S.C. 1970) 254 S.C. 360, 175 S.E.2d 391.

The entire parcel is considered as a whole, and the inquiry is, how much has the particular public improvement decreased the fair market value of the property, taking into consideration the use for which the land was taken and all the reasonably probable effects of its devotion to that use. South Carolina State Highway Dept. v. Wilson (S.C. 1970) 254 S.C. 360, 175 S.E.2d 391.

The value of a homesite may be impaired by the construction in proximity thereto of a highway at such an elevation as to obstruct view and favorable breezes. South Carolina State Highway Dept. v. Touchberry (S.C. 1966) 248 S.C. 1, 148 S.E.2d 747.

The trial judge fell into error by instructing the jury that they might award compensation for specified elements of damages, without also instructing them that such compensation must be limited to the decreased market value of the property resulting therefrom. South Carolina State Highway Dept. v. Touchberry (S.C. 1966) 248 S.C. 1, 148 S.E.2d 747.

Landowner entitled to compensation upon basis of most advantageous and profitable use of land, and all uses to which it may be applied or for which it is adapted which affect its market value, and not merely its condition at the time and use to which it was then applied. South Carolina State Highway Dept. v. Bolt (S.C. 1963) 242 S.C. 411, 131 S.E.2d 264. Eminent Domain 134

Where part of land taken and damages claimed by reason of close proximity of highway to buildings on remainder of property not taken, such damages measured by extent to which value of remaining property depreciated by reason of proximity of public improvement to existing buildings. South Carolina State Highway Dept. v. Bolt (S.C. 1963) 242 S.C. 411, 131 S.E.2d 264. Eminent Domain 138

5. Traffic flow and noise

Any damage caused by relocation of main highway fronting condemnee’s property, so as to reduce traffic flow past highway and frontage on highway, without loss of an access route, is not compensable. South Carolina State Highway Dept. v. Carodale Associates (S.C. 1977) 268 S.C. 556, 235 S.E.2d 127.

Increased traffic noise resulting from the construction of the highway near the condemnee’s residence constituted special damage. South Carolina State Highway Dept. v. Touchberry (S.C. 1966) 248 S.C. 1, 148 S.E.2d 747.

6. Right of access

An abutting property owner has a right of access over a street adjacent to his property, as an appurtenance thereto. An obstruction that materially injures or deprives the abutting property owner of ingress or egress to and from his property is a “taking” of the property for which recovery may be had. The fact that other means of access to the property are available affects merely the amount of damages, and not the right of recovery. South Carolina State Highway Dept. v. Wilson (S.C. 1970) 254 S.C. 360, 175 S.E.2d 391.

An element of special damage which may be considered is the necessity of using a circuitous route to gain access to remaining lands severed by a controlled‑access highway. South Carolina State Highway Dept. v. Touchberry (S.C. 1966) 248 S.C. 1, 148 S.E.2d 747.

Owner of property abutting controlled‑access highway not entitled as matter of right to direct access to new highway and denial of direct access could not within itself be considered ground for allowance of special damages, but severance of owner’s land into two tracts and depriving him of former access to unrestricted highway are elements properly considered in determining just compensation as they affect market value of remaining lands, and controlled‑access character of highway relevant consideration on issue of special damages. South Carolina State Highway Dept. v. Bolt (S.C. 1963) 242 S.C. 411, 131 S.E.2d 264.

7. Related expenses

The removal costs of a stock of merchandise, or other personal property, and the breakages or other injury to such property caused by such removal, from a leasehold or fee in land, where there is an entire taking of the whole of the condemnee’s estate under the sovereign power of eminent domain, cannot be considered as an element of damage, since such loss is not a taking of property. South Carolina State Highway Dept. v. Smith (S.C. 1970) 253 S.C. 639, 172 S.E.2d 827.

Where a landowner had a part of his land condemned for a road right of way and he sought damages for the moving of his house to another portion of his land, it was held that evidence of damages from such removal was inadmissible since the house was not on any part of the land condemned and was moved at owner’s request. State Highway Dept. v. Amick’s Estate (S.C. 1942) 199 S.C. 112, 18 S.E.2d 663.

8. Future improvements or use

Evidence as to improvements which might be made in the future is too speculative and remote, and should be excluded. South Carolina State Highway Dept. v. Westboro Weaving Co. (S.C. 1964) 244 S.C. 516, 137 S.E.2d 776.

Evidence is not admissible for the purpose of showing special damage sustained by the landowner as the result of the frustration of its plans for development. South Carolina State Highway Dept. v. Westboro Weaving Co. (S.C. 1964) 244 S.C. 516, 137 S.E.2d 776.

The site had been acquired as insurance against the day, if ever, when the landowner would be required to pretreat its waste, and this use was too remote and speculative to be considered in awarding compensation. South Carolina State Highway Dept. v. Westboro Weaving Co. (S.C. 1964) 244 S.C. 516, 137 S.E.2d 776.

In estimating the value of 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. South Carolina State Highway Dept. v. Westboro Weaving Co. (S.C. 1964) 244 S.C. 516, 137 S.E.2d 776. Eminent Domain 134

9. Loss of business

Injury to or loss of business resulting from taking not considered an element of damage in absence of statute expressly allowing such damages. South Carolina State Highway Dept. v. Bolt (S.C. 1963) 242 S.C. 411, 131 S.E.2d 264. Eminent Domain 107

It is proper to take into consideration existence of going business as indicative of highest economic use to which land may be put. South Carolina State Highway Dept. v. Bolt (S.C. 1963) 242 S.C. 411, 131 S.E.2d 264.

10. Inverse condemnation action

Inverse condemnation action for damages rather than condemnation proceeding is proper type of proceeding in which to seek redress for trespass and/or damages proximately caused by negligence of independent road construction contractor. South Carolina State Highway Dept. v. Moody (S.C. 1976) 267 S.C. 130, 226 S.E.2d 423. Eminent Domain 192

If agents and servants of the Highway Department went upon a portion of land not covered by condemnation proceedings, without the authority of the landowners, they were trespassers, and whatever damage they did can be recovered by an action at common law for damages for trespass. State Highway Dept. v. Amick’s Estate (S.C. 1942) 199 S.C. 112, 18 S.E.2d 663.

11. Instructions

Instruction that “property owner cannot be allowed to make a profit at public expense” held erroneous. Johnson v. South Carolina State Highway Dept. (S.C. 1960) 236 S.C. 424, 114 S.E.2d 591.

12. Special verdict

Trial court’s submission of special verdict form, which asked questions regarding what was value of just compensation for land actually taken by South Carolina Department of Transportation (SCDOT), whether there were special damages as to remaining property, and what was amount of special damages, did not constitute reversible error in landowner’s proceeding to determine value of condemned property; form was not unduly suggestive or misleading as to appraisal method to be used and did not prejudice SCDOT, and any perceived defect in form was cured by trial court’s jury instructions as to the law and use of the form. South Carolina Dept. of Transp. v. First Carolina Corp. of S.C. (S.C. 2007) 372 S.C. 295, 641 S.E.2d 903. Eminent Domain 223; Eminent Domain 262(5)

Trial court’s submission of special verdict form, which asked questions regarding what was value of just compensation for land actually taken by South Carolina Department of Transportation (SCDOT), whether there were special damages as to remaining property, and what was amount of special damages, did not constitute reversible error in landowner’s proceeding to determine value of condemned property; form was not unduly suggestive or misleading as to appraisal method to be used and did not prejudice SCDOT, and any perceived defect in form was cured by trial court’s jury instructions as to the law and use of the form. South Carolina Dept. of Transp. v. First Carolina Corp. of S.C. (S.C. 2007) 372 S.C. 295, 641 S.E.2d 903. Eminent Domain 223; Eminent Domain 262(5)

ARTICLE 4

Miscellaneous

**SECTION 28‑2‑410.** Interest on and investment of monies deposited with clerk of court.

 All monies deposited pursuant to this act must be held at interest by the clerk of court after thirty days of receipt. The clerk shall invest the monies for the benefit of the parties as their interests are determined.

HISTORY: 1987 Act No. 173, Section 1.

Library References

Eminent Domain 188.

Westlaw Topic No. 148.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Eminent Domain Section 21, Interest.

S.C. Jur. Lis Pendens Section 16, Condemnation.

LAW REVIEW AND JOURNAL COMMENTARIES

Annual Survey of South Carolina Law: Property‑Eminent Domain. 30 S.C. L. Rev. 154.

Annual Survey of South Carolina Law: Property‑Eminent Domain. 31 S.C. L. Rev. 119.

Annual Survey of South Carolina Law: Property‑Eminent Domain‑Determination of a Public Use. 32 S.C. L. Rev. 203.

Attorney General’s Opinions

Under former law, where clerk of court receives deposits of money from litigants, and deposits such monies in his individual name or as clerk of court, the interest becomes a part of the principal amount and does not at any time become the property of the clerk. 1964‑65 Op. Atty Gen, No. 1802, p 46.

**SECTION 28‑2‑420.** Interest on amount found to be just compensation; return of excess funds deposited with clerk of court.

 (A) A condemnor shall pay interest at the rate of eight percent a year upon sums found to be just compensation by the appraisal panel or judgment of a court to the condemnee. This interest shall accrue from the date of filing of the Condemnation Notice through the date of verdict or judgment by the court. Interest accruing on funds on deposit with the clerk of court must be offset against the interest computed pursuant to this section. Interest shall not accrue during the twenty‑day period commencing upon the date of verdict or order of judgment. If the judgment is not paid within the twenty‑day period, interest at the rate provided by law for interest on judgments must be added to the judgment. Thereafter, the entire judgment shall earn interest at the rate provided by law for interest on judgments.

 (B) In the event the court determines that just compensation is due the landowner in an amount less than the funds held by the clerk of court, the clerk of court shall refund to the condemnor the balance of the excess deposit with accrued interest.

HISTORY: 1987 Act No. 173, Section 1.

CROSS REFERENCES

Requirement that condemnor pay interest as provided in this section, see Section 28‑2‑110.

Library References

Eminent Domain 148, 188.

Westlaw Topic No. 148.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Damages Section 55, Eminent Domain.

S.C. Jur. Eminent Domain Section 21, Interest.

NOTES OF DECISIONS

In general 1

Inverse condemnation actions 2

1. In general

Rule allowing judgment debtor to avoid further accrual of post‑judgment interest pending resolution of appeal by depositing judgment with court conflicted with provision of state Eminent Domain Procedure Act that required post‑judgment interest to be added to any judgment that was not paid within 20‑day period, and thus Act would prevail over rule. South Carolina Dept. of Transp. v. First Carolina Corp. of South Carolina (S.C. 2006) 369 S.C. 150, 631 S.E.2d 533. Eminent Domain 247(4)

In condemnation action, trial court’s order ruling that landowner was entitled to interest on additional 50% of funds deposited with clerk of court by condemning authority was not a final, appealable judgment and was thus not the law of the case when no appeal was taken; court noted that it did not have the relevant dates needed to calculate actual amount of interest due, and court left the matter to the parties to determine but gave them the option to bring the matter back before court if they could not agree. South Carolina Dept. of Transp. v. Faulkenberry (S.C.App. 1999) 337 S.C. 140, 522 S.E.2d 822. Courts 99(6); Eminent Domain 253(1)

Where the market value of the property is not paid contemporaneously with the taking, the owner is entitled to interest for the delay in payment from the date of the taking until the date of the payment. South Carolina Dept. of Transp. v. Faulkenberry (S.C.App. 1999) 337 S.C. 140, 522 S.E.2d 822. Eminent Domain 148

In condemnation action, interest stopped accruing on award after landowner obtained access to 100% of funds that had been deposited by condemning authority with clerk of court. South Carolina Dept. of Transp. v. Faulkenberry (S.C.App. 1999) 337 S.C. 140, 522 S.E.2d 822. Eminent Domain 148

A party who unsuccessfully appealed from the lower court’s holding that title to land condemned by a county was held by two other persons, and not by him, was not liable for interest on a judgment awarded for the taking, which the county had paid into court, since the obligation to pay interest on the judgment was that of the county, as the judgment debtor, and, moreover, payment of the judgment into court stopped the running of judgment interest. Horry County v. Woodward (S.C.App. 1986) 291 S.C. 1, 351 S.E.2d 877.

2. Inverse condemnation actions

Awarding of interest in inverse condemnation action is not controlled by South Carolina Eminent Domain Procedures Act, but rather, is an issue to be charged to jury for its determination as a measure of damages; unlike a condemnation action where interest is set by statute, the right to prejudgment interest in inverse condemnation actions stems from just compensation clauses of the United States and state constitutions. Vick v. South Carolina Dept. of Transp. (S.C.App. 2001) 347 S.C. 470, 556 S.E.2d 693, rehearing denied. Eminent Domain 148; Eminent Domain 221

**SECTION 28‑2‑430.** Appointment of guardian ad litem.

 If an infant, person in military service, or other person under a legal disability has not appeared in the proceedings by his duly authorized legal representative, the court shall appoint an attorney as guardian ad litem to represent those persons’ interests.

HISTORY: 1987 Act No. 173, Section 1.

Library References

Armed Services 34.5(3).

Infants 78(1).

Mental Health 485.

Westlaw Topic Nos. 211, 257A, 34.

C.J.S. Armed Services Sections 1, 178, 180.

C.J.S. Infants Sections 321 to 323, 325 to 330.

C.J.S. Mental Health Sections 264 to 274.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Eminent Domain Section 44, Interests of Landowners and Condemnees in the Action.

**SECTION 28‑2‑440.** Date of valuation; risk of loss.

 In all condemnation actions, the date of valuation is the date of the filing of the Condemnation Notice. The risk of loss by reason of damage to or destruction of the property subject to condemnation must be borne by the condemnee until the date of possession by, or the date of vesting of title in, the condemnor, whichever is earlier.

HISTORY: 1987 Act No. 173, Section 1.

Library References

Eminent Domain 124.

Westlaw Topic No. 148.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Damages Section 55, Eminent Domain.

S.C. Jur. Eminent Domain Section 19, Basic Measure of Recovery.

S.C. Jur. Eminent Domain Section 43, Taking of Possession by Condemnor.

NOTES OF DECISIONS

In general 1

1. In general

The date at which the taking occurs fixes the point at which damages should be assessed, because it is the value of the property taken as of that date which furnishes the measure of compensation and damages. South Carolina State Highway Dept. v Miller (1960) 237 SC 386, 117 SE2d 561. Board of Com’rs v Richardson (1922) 122 SC 58, 114 SE 632. Howell v State Highway Dept. (1932) 167 SC 217, 166 SE 129.

Trial court’s decision as to jurisdictional wetlands determination for property that was subject to condemnation did not infringe upon Army Corps of Engineers’ jurisdiction to determine whether land consists of jurisdictional wetlands, where trial court’s decision was made for the limited purpose of resolving issues that bore on the value of the condemned property as of the condemnation date. Normandy Corp. v. South Carolina Dept. of Transp. (S.C.App. 2009) 386 S.C. 393, 688 S.E.2d 136, rehearing denied, certiorari denied. Eminent Domain 240

Trial court’s determination as to existence of jurisdictional wetlands on property that was subject to condemnation was not precluded by a prior judicial determination with respect to delineation by Army Corps of Engineers; Eminent Domain Procedure Act stated that the date of valuation was the date of the filing of condemnation notice, and property had changed since prior judicial determination, record did not demonstrate that Corps’ conclusions were with regard to amount of jurisdictional wetlands, Department of Transportation did not raise issue of preclusive effect of prior judicial determination and trial court did not rule on the issue, and it was questionable whether regulations cited by Department were in effect at time of prior judicial determination. Normandy Corp. v. South Carolina Dept. of Transp. (S.C.App. 2009) 386 S.C. 393, 688 S.E.2d 136, rehearing denied, certiorari denied. Eminent Domain 124; Environmental Law 142

Proper measure of compensable damages is the value of the land at the date of the taking plus any resulting injury to the remaining property offset by any benefits to the remaining land as a result of the project. South Carolina State Highway Dept. v. Carodale Associates (S.C. 1977) 268 S.C. 556, 235 S.E.2d 127. Eminent Domain 222(5)

**SECTION 28‑2‑450.** Extent of municipality’s right of condemnation.

 The right of condemnation by a municipality is not limited to the county in which the municipality is located.

HISTORY: 1987 Act No. 173, Section 1.

Library References

Eminent Domain 9, 58.

Westlaw Topic No. 148.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Eminent Domain Section 16, Municipalities.

**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.

HISTORY: 1987 Act No. 173, Section 1.

Library References

Eminent Domain 245.

Westlaw Topic No. 148.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Eminent Domain Section 21, Interest.

S.C. Jur. Eminent Domain Section 42, Distribution of the Proceeds.

S.C. Jur. Eminent Domain Section 44, Interests of Landowners and Condemnees in the Action.

Attorney General’s Opinions

In a condemnation action where the amount of the award of the condemnation board is deposited with the clerk of court pursuant to the provisions of former Section 57‑5‑5302), which provisions were similar to present Section 28‑2‑460, any interest which may be earned on such award by deposit in an interest‑bearing account in a bank or savings and loan association would become the property of the condemnees. 1970‑71 Op. Atty Gen, No. 3181, p 152.

Where a clerk of court receives deposits of money from litigants, and deposits such monies in his individual name or as clerk of court, the interest becomes a part of the principal amount and does not at any time become the property of the clerk. 1964‑65 Op. Atty Gen, No. 1802, p 46.

NOTES OF DECISIONS

In general 1

1. In general

Cases decided under former Section 28‑1‑20, which contained similar provisions as present Section 28‑2‑460, see Greenwood v Psomas (1967) 249 SC 519, 155 SE2d 310. Fischer v Bennett (1943) 202 SC 534, 25 SE2d 746. South Carolina State Highway Dept. v Hammond (1961) 120 SE2d 21.

**SECTION 28‑2‑470.** Proceedings to challenge condemnor’s right to condemn.

 An action challenging a condemnor’s right to condemn must be commenced in separate proceedings filed in the court of common pleas in the county in which the property or a portion thereof is located. The action must be commenced within thirty days after service of the Condemnation Notice upon the landowner. All proceedings under the Condemnation Notice are automatically stayed until the disposition of the action, if any, unless the landowner and the condemnor consent otherwise. No issues involving the condemnor’s right to condemn may be heard in the trial upon the issue of just compensation.

HISTORY: 1987 Act No. 173, Section 1.

Library References

Eminent Domain 196, 198.

Westlaw Topic No. 148.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Eminent Domain Section 39, Challenging the Right to Condemn.

S.C. Jur. Eminent Domain Section 41, Jury Trial.

S.C. Jur. Injunctions Section 42, Injunctions Against Condemnation Actions.

Forms

South Carolina Litigation Forms and Analysis Section 3:54 , Eminent Domain.

South Carolina Litigation Forms and Analysis Section 3:55 , Eminent Domain‑Challenging Authority to Condemn.

LAW REVIEW AND JOURNAL COMMENTARIES

Annual Survey of South Carolina Law: Property‑Eminent Domain. 31 S.C. L. Rev. 119.

Annual Survey of South Carolina Law: Property‑Eminent Domain‑Determination of a Public Use. 32 S.C. L. Rev. 203.

United States Supreme Court Annotations

Water rights, rights of littoral owners, eminent domain, future accretions, see Stop the Beach Renourishment, Inc. v. Florida Dept. of Environmental Protection, U.S.Fla.2010, 130 S.Ct. 2592, 560 U.S. 702, 177 L.Ed.2d 184.

When is taking of property for “public use” so as to be permissible under Federal Constitution if just compensation is provided—Supreme Court cases. 81 L Ed 2d 931.

NOTES OF DECISIONS

In general 1

1. In general

An statutory action challenging a condemnation is considered one in equity because it essentially seeks to enjoin the condemnation; accordingly, on review the Supreme Court takes its own view of the preponderance of the evidence. Georgia Dept. of Transp. v. Jasper County (S.C. 2003) 355 S.C. 631, 586 S.E.2d 853. Eminent Domain 266; Eminent Domain 315

The South Carolina Public Service Authority (SCPSA) was properly estopped from condemning a portion of a golf course for the construction of a high voltage electric transmission line where, prior to its purchase of the land, the developers of the course arranged with SCPSA to bury all existing power lines over the pre‑existing easement, but SCPSA failed to inform the developers that a much larger transmission line was planned. Southern Development Land and Golf Co., Ltd. v. South Carolina Public Service Authority (S.C. 1993) 311 S.C. 29, 426 S.E.2d 748.

A public service authority was not estopped from condemning a proposed route across land being developed as a golf course where the authority’s executive vice‑president, who did not have direct authority over the placement of his company’s electric transmission lines, spoke to the developer regarding existing lines, but did not discuss future plans and made no affirmative representations about the line which was to go across the property; the vice‑president’s silence was not a representation where it was not shown that he had knowledge of the line at the time of the conversation. Southern Development Land and Golf Co., Ltd. v. South Carolina Public Service Authority (S.C.App. 1991) 305 S.C. 507, 409 S.E.2d 428, certiorari granted in part, affirmed in part, reversed in part 311 S.C. 29, 426 S.E.2d 748.

**SECTION 28‑2‑480.** Condemnees’ right to portion of funds on deposit with clerk of court after condemnor has taken possession.

 Upon written application, in form satisfactory to the clerk of court, by all named condemnees at any time after which the condemnor has taken possession, when the right to take is not contested, the clerk of court shall pay to them the amount applied for up to fifty percent of the funds deposited with the clerk of court by the condemnor in that action.

HISTORY: 1987 Act No. 173, Section 1.

CROSS REFERENCES

Inadmissibility into evidence of amount deposited, or withdrawn, under this section, see Section 28‑2‑500.

Waiver of objections and defenses to condemnation of property, except as to claim to greater compensation, upon withdrawal of funds pursuant to this section, see Section 28‑2‑490.

Library References

Eminent Domain 188.

Westlaw Topic No. 148.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Eminent Domain Section 44, Interests of Landowners and Condemnees in the Action.

NOTES OF DECISIONS

In general 1

1. In general

“Draw down” refers to the condemnees’ right to a portion of funds on deposit with clerk of court after the condemnor has taken possession. South Carolina Dept. of Transp. v. First Carolina Corp. of South Carolina (S.C. 2006) 369 S.C. 150, 631 S.E.2d 533. Eminent Domain 188

**SECTION 28‑2‑490.** Waiver of objections and defenses to taking upon withdrawing portion of funds on deposit with clerk of court.

 Each condemnee who withdraws money under Section 28‑2‑480 waives all objections and defenses to the action and to the taking of his property, except for any claim to greater compensation.

HISTORY: 1987 Act No. 173, Section 1.

Library References

Eminent Domain 188.

Westlaw Topic No. 148.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Eminent Domain Section 38, Joining the Issues.

NOTES OF DECISIONS

In general 1

1. In general

The statutory provision, that one accepting condemnation award abandons appeal, cannot be invoked if award was accepted under misapprehension of its terms and an honest effort is made to refund award. Cook v. State Highway Dept. (S.C. 1931) 162 S.C. 242, 160 S.E. 591. Eminent Domain 254

**SECTION 28‑2‑500.** Amount deposited with or withdrawn from clerk of court not relevant evidence.

 The amount deposited, or withdrawn under Section 28‑2‑480, is not admissible in evidence and may not be referred to at the trial.

HISTORY: 1987 Act No. 173, Section 1.

Library References

Eminent Domain 202(1).

Westlaw Topic No. 148.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Eminent Domain Section 32, Funds Deposited or Drawn Down Not Admissible.

**SECTION 28‑2‑510.** Award of costs and litigation expenses; procedures; prevailing landowner defined.

 (A) If, in the action challenging the condemnor’s right to take, the court determines that the condemnor has no right to take all or part of any landowner’s property, the landowner’s reasonable costs and litigation expenses incurred therein must be awarded to the landowner. If the court determines the right to take issue was not raised and litigated in good faith by the landowner, the court must award the condemnor the reasonable costs and litigation expenses incurred therein.

 (B)(1) A landowner who prevails in the trial of 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 therefor within fifteen days after the entry of the judgment. The application shall show that the landowner has prevailed, state the amount sought, and include an itemized statement from an attorney or expert witness representing or appearing at trial in behalf of the landowner stating the fee charged, the basis therefor, the actual time expended, and all actual expenses for which recovery is sought. If requested by any party or on its own motion, the court shall hear the parties with respect to the matters raised by the application and shall determine the amount of litigation expenses to be awarded, which must be set forth in a written order to be filed with the clerk of court which becomes part of the judgment. The court, in its discretion, may reduce the amount to be awarded pursuant to this section, or deny an award, to the extent that the landowner, during the course of the action, engaged in conduct which unduly and unreasonably protracted the final resolution of the action or to the extent the court finds that the position of the condemnor was substantially justified or that special circumstances make an award unjust.

 (2) For the purpose 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.

 (C) If the condemnor abandons or withdraws the condemnation action in the manner authorized by this chapter, the condemnee is entitled to reasonable attorney fees, litigation expenses, and costs as determined by the court.

HISTORY: 1987 Act No. 173, Section 1; 1990 Act No. 575, Section 2.

Library References

Eminent Domain 265.

Westlaw Topic No. 148.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Attorney Fees Section 58, Eminent Domain.

S.C. Jur. Attorney Fees Section 70, Pleading.

S.C. Jur. Costs Section 46, Condemnation Actions.

S.C. Jur. Damages Section 55, Eminent Domain.

S.C. Jur. Eminent Domain Section 1, Scope Note.

S.C. Jur. Eminent Domain Section 19, Basic Measure of Recovery.

S.C. Jur. Eminent Domain Section 22, Attorney Fees and Litigation Expenses.

S.C. Jur. Eminent Domain Section 37, Scope and Applicability.

Forms

South Carolina Litigation Forms and Analysis Section 3:54 , Eminent Domain.

South Carolina Litigation Forms and Analysis Section 39:8 , Attorney’s Fees.

South Carolina Litigation Forms and Analysis Section 39:12 , Application for and Affidavit of Attorney’s Fees‑Eminent Domain‑Condemnee Prevails on Issue of Compensation.

South Carolina Litigation Forms and Analysis Section 39:13 , Application for and Affidavit of Attorney’s Fees‑Condemnee Prevails in Challenging Condemnor’s Right to Take.

NOTES OF DECISIONS

In general 1

Attorney fees, generally 3.5

Construction with other laws 1.5

Contingent fees 4

Determination of prevailing party 2

Hourly rate 4.1

Judicial discretion 5

Witness and appraisal fees 3

1. In general

Issue of whether property owner waived right to attorney fees for failure to follow provisions of Eminent Domain Procedure Act and whether fees awarded to landowner in inverse condemnation action were excessive was raised for first time on appeal, and thus, was not preserved for appeal. Vick v. South Carolina Dept. of Transp. (S.C.App. 2001) 347 S.C. 470, 556 S.E.2d 693, rehearing denied. Eminent Domain 315

Former Section 28‑3‑70 [Code 1962 Section 25‑57] did not authorize as a proper item of cost the purchase of a stenographic transcript of proceedings before the board of referees. South Carolina Public Service Authority v. Spearwant Liquidating Co. (S.C. 1942) 201 S.C. 207, 22 S.E.2d 252.

The purpose of former Section 28‑1‑30 [Code 1962 Section 25‑3] was to recompense the landowner for the expenses incurred when the condemnor, in the exercise of his option, refuses to accept the property at the price fixed by the award. This right does not accrue to the landowner until the condemnor has exercised his option. Ex parte Savannah River Elec. Co. (S.C. 1933) 169 S.C. 198, 168 S.E. 554.

1.5. Construction with other laws

Fee‑shifting provision of Eminent Domain Procedure Act, and not the general state action statute, governed determination of reasonable litigation expenses prevailing landowner could recover in eminent domain action. South Carolina Dept. of Transp. v. Revels (S.C. 2014) 411 S.C. 1, 766 S.E.2d 700. Eminent Domain 265(3)

The more specific statute that expressly addressed a landowner’s ability to receive attorney’s fees and costs as a result of prevailing in an inverse condemnation case, rather than the general statute that addressed the award of attorney fees to a prevailing landowner in a condemnation action, applied to property owner who brought inverse condemnation claim against the Department of Transportation; by applying the prevailing party language of the condemnation statute to an inverse condemnation case would have placed a heavier burden on property owner, a result not intended by the legislature. Frampton v. South Carolina Dept. of Transp. (S.C.App. 2013) 406 S.C. 377, 752 S.E.2d 269, rehearing denied. Eminent Domain 316

2. Determination of prevailing party

Landowner did not attest at trial that value placed on her condemned property was $15,000 to $20,000 per acre, although she had stated that in deposition, but unequivocally and expressly testified that value she was utilizing at trial was $8,000 per acre, and thus her total valuation of $58,912 was closer to $38,000 jury award than was $6,821 valuation offered by Department of Transportation (DOT), for purposes of determining whether landowner was entitled to attorney’s fees; DOT offered landowner’s deposition in attempt to discredit landowner’s testimony, but landowner did not offer deposition testimony as reasonable value for compensation, and in fact stated at trial that value she had testified to in her deposition was not accurate and was result of her emotions. South Carolina Dept. of Transp. v. Thompson (S.C.App. 2003) 357 S.C. 101, 590 S.E.2d 511, rehearing denied. Eminent Domain 265(1)

For purposes of awarding attorney fees, the determination of the prevailing party is based on a comparison of the verdict and the highest valuation of the property given by each party. City of North Charleston v. Claxton (S.C.App. 1993) 315 S.C. 56, 431 S.E.2d 610, rehearing denied, certiorari denied.

A landowner was the prevailing party, and thus entitled to attorneys fees pursuant to former Section 28‑2‑510(B)(2), where the landowner asserted that the value of the land was $90,000, the city asserted that the highest value of the land without the increase in value resulting from the placement of the public works project was $54,000, and the jury verdict was $79,500, because the landowner’s valuation was closer to the jury verdict. City of North Charleston v. Claxton (S.C.App. 1993) 315 S.C. 56, 431 S.E.2d 610, rehearing denied, certiorari denied.

3. Witness and appraisal fees

Expenditures by the landowner for services rendered in obtaining witnesses and in inspecting and appraising the property are reasonable expenditures which come within the broad term, “expenses,” as used in this section [Code 1962 Section 25‑60]. South Carolina Public Service Authority v. Weeks (S.C. 1942) 201 S.C. 199, 22 S.E.2d 249.

3.5. Attorney fees, generally

Property owner was entitled to award of attorney fees after school district abandoned its condemnation action, even though owner and his attorney had a contingent fee arrangement, under which attorney would recover a percentage of any inverse condemnation award that owner recovered, and owner did not recover any inverse condemnation award; overruling South Carolina Public Service Authority v. Weeks, 201 S.C. 199, 22 S.E.2d 249. Kiriakides v. School Dist. of Greenville County (S.C. 2009) 382 S.C. 8, 675 S.E.2d 439. Eminent Domain 316

School district’s service of a condemnation notice on property owner commenced its condemnation action, and thus, under statute allowing fees in the event a condemnor abandons a condemnation action, district could be liable for attorney fees after it abandoned its condemnation efforts, even though district never filed the notice. Kiriakides v. School Dist. of Greenville County (S.C. 2009) 382 S.C. 8, 675 S.E.2d 439. Eminent Domain 246(4)

4. Contingent fees

Circuit court failed to conduct proper statutory analysis under fee‑shifting provision of Eminent Domain Procedure Act governing reasonable litigation expenses, and therefore, its award of percentage‑of‑the‑recovery as fees, without requiring an itemized statement from prevailing landowner’s counsel identifying his fee charged and actual number of hours expended, was improper. South Carolina Dept. of Transp. v. Revels (S.C. 2014) 411 S.C. 1, 766 S.E.2d 700. Eminent Domain 265(3)

Fee‑shifting provision of Eminent Domain Procedure Act precluded prevailing landowner from recovering attorneys’ fees based solely on a contingency fee agreement without regards for the statute; however, even though the contingency fee agreement could not be the sole element, nor the controlling factor, in calculation of reasonable litigation expenses, it was still a significant component as it could be used to explain the basis for the fee charged by the landowner’s counsel. South Carolina Dept. of Transp. v. Revels (S.C. 2014) 411 S.C. 1, 766 S.E.2d 700. Eminent Domain 265(3)

Circuit court was not required to first make a determination regarding reasonableness of contingency fee agreement in condemnation action, before determining that attorney fees should be based on hourly rate rather than on contingency fee agreement, and that attorney of property owners was entitled to compensation at rate of $300 per hour for total of $16,290. South Carolina Dept. of Transp. v. Revels (S.C. 2014) 411 S.C. 1, 766 S.E.2d 700. Eminent Domain 265(3)

Where the attorneys for the landowner are to receive as compensation a fee contingent upon the amount recovered, and the condemnor abandons the proceedings, the result is that the attorneys are not entitled to any compensation. South Carolina Public Service Authority v. Weeks (S.C. 1942) 201 S.C. 199, 22 S.E.2d 249.

4.1. Hourly rate

Award of attorney fees to property owners, who prevailed in condemnation action and were awarded $125,000, would be calculated based upon hourly rate, rather than on contingency fee agreement between owners and their attorney; it was improper to award percentage‑of‑the‑recovery as fees since provision of Eminent Domain Procedure Act governing litigation expenses shifted source of prevailing party’s attorney fees to state as losing party, and required presentation of itemized statement from attorney detailing his fee, hours, and expenses. South Carolina Dept. of Transp. v. Revels (S.C.App. 2012) 399 S.C. 423, 731 S.E.2d 897, rehearing denied, certiorari granted in part, affirmed in part, reversed in part 411 S.C. 1, 766 S.E.2d 700. Eminent Domain 265(3)

Circuit court was not required to first make a determination regarding reasonableness of contingency fee agreement in condemnation action, before determining that attorney fees should be based on hourly rate rather than on contingency fee agreement, and that attorney of property owners was entitled to compensation at rate of $300 per hour for total of $16,290. South Carolina Dept. of Transp. v. Revels (S.C.App. 2012) 399 S.C. 423, 731 S.E.2d 897, rehearing denied, certiorari granted in part, affirmed in part, reversed in part 411 S.C. 1, 766 S.E.2d 700. Eminent Domain 265(3)

5. Judicial discretion

Trial court was authorized to make a ruling as to the amount of jurisdictional wetlands existing on parcel that was subject to a condemnation proceeding so that just compensation owed to landowner could ultimately be determined; Eminent Domain Procedure Act gave a circuit court the power to hear a condemnation action, and the amount of jurisdictional wetland existing on the parcel had a significant impact on the value of the parcel and was relevant and material to fixing just compensation. Normandy Corp. v. South Carolina Dept. of Transp. (S.C.App. 2009) 386 S.C. 393, 688 S.E.2d 136, rehearing denied, certiorari denied. Eminent Domain 240

Section 28‑2‑510(B)(1) gives the trial judge discretion to determine reasonable attorneys fees. City of North Charleston v. Claxton (S.C.App. 1993) 315 S.C. 56, 431 S.E.2d 610, rehearing denied, certiorari denied.

The trial court did not abuse its discretion in awarding $17,654.15 of the $30,078.15 requested for attorneys’ fees where the trial court found that much of the work outlined in the attorneys’ fee statement reflected an unreasonable duplication of effort, and the trial court made specific findings of fact. City of North Charleston v. Claxton (S.C.App. 1993) 315 S.C. 56, 431 S.E.2d 610, rehearing denied, certiorari denied.