

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	Civil Action No.: 2024-CP-10-02989
COUNTY OF CHARLESTON)	
)	
KT Properties, LLC,)	
)	
Plaintiff,)	CONSENT MOTION TO AMEND
)	COMPLAINT
vs.)	
)	
Town of James Island, South Carolina,)	
)	
Defendant.)	
_____)	

Pursuant to Rule 15(a) of the South Carolina Rules of Civil Procedure, Plaintiff KT Properties, LLC (“KT Properties”) with the consent of Defendant Town of James Island, South Carolina (the “Town”) moves for leave to file its Second Amended Complaint in this matter to include additional allegations and causes of action against the Town. In support of this motion, KT Properties submits the following:

1. Under Rule 15(a), a party may amend its pleading by leave of court or by written consent of the adverse party, and leave shall be freely given when justice so requires and does not prejudice the other party. Rule 15 “strongly favors amendments and the court is encouraged to freely grant leave to amend.” *Parker v. Spartanburg Sanitary Sewer Dist.*, 362 S.C. 276, 286, 607 S.E.2d 711, 716 (Ct. App. 2005). “The prejudice Rule 15 envisions is a lack of notice that the new issue is going to be tried, and a lack of opportunity to refute it. The party opposing the amendment has the burden of establishing prejudice.” *Id.*

2. This action was initiated by KT Properties on June 12, 2024 to challenge the Town’s condemnation of real property owned by KT Properties located in the Town of James Island, Charleston County, which is identified by Tax Map Number 425-12-00-298 (the “Property”).

3. KT Properties amended its Complaint on July 19, 2024 to correct the caption and clarify its status as the landowner of the Property after its purchase of the Property from James Island Public Service District.

4. KT Properties' proposed Second Amended Complaint, attached as Exhibit A, seeks to amend its previously filed Amended Complaint by asserting an additional cause of action to challenge the condemnation pursuant to the Fifth Amendment of the U.S. Constitution and an additional cause of action to challenge the condemnation pursuant to Article 1, Section 13 of the South Carolina Constitution.

5. The granting of leave to make this amendment will not prejudice the Town because the parties have not yet engaged in written discovery and no depositions have been taken. As a result, the Town will have ample opportunity to refute KT Properties' additional claims and its underlying allegations prior to trial.

6. Pursuant to Rule 11, SCRCPP, KT Properties' counsel affirms that prior to the filing of this motion, I have communicated with the Town's counsel and attempted in good faith to resolve the matter contained in this motion. The Town's counsel has represented that they consent to this motion.

7. Therefore, for the foregoing reasons, KT Properties requests that the Court grant KT Properties leave to amend its Amended Complaint and file its Second Amended Complaint.

Dated: May 30, 2025

(signatures on following page)

WE SO MOVE:

s/ E. Brandon Gaskins

E. Brandon Gaskins (SC Bar No. 73274)
Moore & Van Allen PLLC
78 Wentworth Street
P.O. Box 22828
Charleston, SC 29413-2828
Telephone: (843) 579-7000
brandongaskins@mvalaw.com

Attorney for Plaintiff KT Properties, LLC

WE SO CONSENT:

s/ Brian L. Quisenberry

Brian L. Quisenberry (SC Bar No. 73637)
Zachary M. Kern (SC Bar No. 103731)
Clement Rivers, LLP
25 Calhoun Street, Suite 400
P.O. Box 993
Charleston, SC 29402
Telephone: (843) 724-6641
bquisenberry@yctrlaw.com
zkern@yctrlaw.com

AND

David G. Pagliarini (SC Bar No. 8850)
Pagliarini Law Firm, LLC
145 River Landing Drive, Suite 101 B
Charleston, SC 29492
Telephone: (843) 971-8646
david@lawplf.com

*Attorneys for Defendant
Town of James Island, South Carolina*

EXHIBIT A

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	Civil Action No.: 2024-CP-10-02989
COUNTY OF CHARLESTON)	
)	
KT Properties, LLC,)	
)	
Plaintiff,)	SECOND AMENDED COMPLAINT
)	(Jury Trial Demanded)
vs.)	
)	
Town of James Island, South Carolina,)	
)	
Defendant.)	
_____)	

Plaintiff KT Properties, LLC, complaining of Defendant Town of James Island, South Carolina, alleges as follows:

THE PARTIES

1. Plaintiff KT Properties, LLC (“KT Properties”) is a limited liability company organized under the laws of the State of South Carolina.
2. Defendant Town of James Island, South Carolina (the “Town” or “Defendant”) is a municipal corporation organized and existing under the laws of the State of South Carolina with corporate limits in Charleston County, South Carolina.

VENUE AND JURISDICTION

3. Venue in this Court is proper pursuant to S.C. Code Ann. § 28-2-470.
4. This civil action concerns a challenge to a condemnation action initiated by the Town against James Island Public Service District (“JIPSD”) as the Landowner, and KT Properties as other condemnee. This Court has subject matter jurisdiction concerning such matters pursuant to S.C. Code Ann. § 28-2-470.

5. The acts giving rise to this civil action were taken by the Town in Charleston County, South Carolina, and this Court has personal jurisdiction over the Town, which is a municipality with corporate limits in Charleston County.

FACTS

6. JIPSD owned certain real property located in the Town of James Island, Charleston County, South Carolina, TMS No.: 425-12-00-298 (the “Subject Property”). The property contains approximately 1.267 acres (55,263.82 square feet). The legal description of the property stated in the Condemnation Notice is:

All that certain piece, parcel or tract of land, situate, lying and being in the Town of James Island, Charleston County, South Carolina, shown and designated as “LOT A, 55263.82 SQ FT, 1.2687 AC.” on a plat entitled “A Survey and Subdivision of a 6.519 AC. Parcel of Land Into Lots A and B Located on James Island, Charleston County, S.C.” prepared by Robert L. Frank – Surveyor, RLS No. 4177, dated June 2, 1998, recorded in the RMC Office for Charleston County in Plat Book DB, Page 633 on September 28, 1998, said lot having such size, shape, dimensions, buttings and boundings as will by reference to said plat more fully appear.

SUBJECT to all restrictions and easements of record, including that certain easement in favor of South Carolina Electric and Gas Company and Southern Bell Telephone and Telegraph Company dated April 18, 1962, recorded in the ROD office for Charleston County on April 19, 1962 in Book L-76, page 41; Easement in favor of South Carolina Electric and Gas Company dated January 8, 1987, recorded in the ROD Office for Charleston County on January 22, 1987, in Book N-161, Page 557; and all matters shown on the above referenced plat.

BEING the same property conveyed to Landowner by deed from Harold L. Bisbee, Court appointed Receiver for the Town of James Island, dated January 6, 1998, and recorded January 27, 1998 in Deed Book K 296 Page 212 in the records of the ROD Office for Charleston County.

TMS No.: 425-12-00-298

7. The Subject Property is currently within the Town’s Community Commercial (CC) zoning district. According to the Town’s zoning code, the purpose and intent of this district is to

“implement[] the commercial policies of the Comprehensive Plan.” Town Code of Ordinances § 153.076(A).

8. Pursuant to S.C. Code Ann. § 6-29-510, the Town has adopted a comprehensive plan, which addresses, among other things, natural resources and future land use elements. The Town’s current comprehensive plan was adopted in 2015 and updated in 2021.

9. In the Town’s comprehensive plan, the Subject Property has been designated for the future land use category of Community Commercial. According to the comprehensive plan, “the Community Commercial Future Land Use Category is intended to allow diverse retail and service uses that serve the residential population of the Island, and that do not negatively impact the surrounding community.”

10. The comprehensive plan also includes a future land use category of “Institutional/Special Purpose,” which is intended to allow, among things, recreation and other uses that comprise the Town’s sense of community. The Town did not designate the Subject Property for the Institutional/Special Purpose future land use designation in the comprehensive plan.

11. The Town’s comprehensive plan also includes a section that addresses Community Facilities, including Parks and Recreation Services. The Town did not designate the Subject Property as a site for a future public park in the comprehensive plan.

12. Upon information and belief, the Town has not authorized the expenditure of any funds in its current or previous budgets to either acquire the Subject Property for use as a public park or to procure services to design or build a public park on the Subject Property.

13. Upon information and belief, at the time of the condemnation notice, the Town had no designs, drawings, plans, or other documents showing that the Subject Property will be improved as a public park.

14. In 2021, JIPSD listed the Subject Property, along with an adjacent parcel (collectively, the “Combined Property”), for sale through a commercial real estate broker on the open market. As a result of such listing, the Town had an opportunity to purchase the Subject Property for use as a public park or to conserve it as greenspace, but the Town did not submit an offer.

15. After listing the Combined Property for sale in 2021, JIPSD entered into an agreement to sell the Combined Property for \$2,450,000. However, the purchase and sale of the Combined Property did not close, and the agreement was terminated.

16. In 2022, JIPSD again listed the Combined Property for sale through a commercial real estate broker on the open market. As a result of such listing, the Town had an opportunity to purchase the Subject Property for use as a public park or to conserve it as greenspace, but the Town, again, did not submit an offer.

17. After listing the Combined Property for sale in 2022, JIPSD entered into an agreement to sell the Combined Property for \$2,100,000. However, the purchase and sale of the Combined Property under the 2022 agreement did not close, and the agreement was terminated.

18. After that sale fell through, JIPSD again listed the Combined Property for sale through a commercial real estate broker on the open market. As a result of such listing, the Town had an opportunity to purchase the Subject Property for use as a public park or to conserve it as greenspace, but the Town, again, did not submit an offer.

19. After listing the Combined Property for a third time, JIPSD entered into a purchase and sale agreement to sell the Combined Property to KT Properties for \$1,899,000 (the “PSA”).

20. KT Properties entered into the PSA with the intent of developing the Combined Property as a mixed-use residential/commercial project. Under the PSA, KT Properties was permitted to pursue the planned development (PD) zoning needed to develop the property as it intended.

21. Although KT Properties received support from Town planning staff and a unanimous recommendation of approval for the proposed PD zoning from the Town’s Planning Commission, the Town’s council denied KT Properties’ rezoning application on October 19, 2023 in response to a well-organized opposition campaign from nearby residents.

22. After the rezoning application was denied, KT Properties modified its development plans for the Subject Property and the adjacent parcel. The modified development plans consisted of developing the properties for uses permitted under their respective zoning classifications. As to the Subject Property, KT Properties began pursuing development plans and approval to develop the property as a self-storage facility, which is a permitted use in the CC zoning district.

23. Soon after KT Properties changed its development plans, opponents of the development of the Subject Property, who were political supporters and allies of and had influence with the Town’s mayor and Council members, embarked on an aggressive campaign to interfere with KT Properties’ contractual rights to purchase the Subject Property and legal rights to develop the Subject Property as allowed under the Town’s zoning ordinance and land use regulations.

24. Because the Town could not stop KT Properties from purchasing the Subject Property under the PSA or reject its development approvals under applicable law, the Town instead chose to stop KT Properties’ prospective purchase and development by authorizing the use of its

eminent domain powers to condemn and acquire the Subject Property. Although the Town's ostensible purpose for condemning the Subject Property is to acquire it for a public park and greenspace, that reason is merely pretext for its actual reason of interfering with KT Properties' development rights in an effort to mollify their political allies, reward them for their support, and maintain their support in the future.

25. On or about May 21, 2024, the Town served on the then Landowner, JIPSD, the Town's Condemnation Notice and Tender of Payment (the "Condemnation Notice"), dated May 17, 2024, informing JIPSD that, after the expiration of thirty days, it intended to condemn the Subject Property. The Condemnation Notice issued by the Town and subsequently filed by the Town in case number 2024-CP-10-03122 is attached to this Amended Complaint as Exhibit A.

26. The Condemnation Notice names KT Properties as the "Other Condemnee" in the condemnation based on the PSA with JIPSD. After service of the Condemnation Notice, KT Properties purchased the Subject Property on or about June 28, 2024 and is now, therefore, the Landowner.

27. The Town claims that it seeks to acquire the Subject Property pursuant to its powers of eminent domain for the purported public purpose of creating and constructing a public park and open space in the Town of James Island.

28. Upon information and belief, the Town's reasons for selecting the Subject Property are pretextual. Its selection of the Subject Property, rather than other acres of other available property to create and construct a public park and open space, indicates the Town has been influenced by opponents of KT Properties' development of this property who have influence with Town Council.

29. The Town issued the Condemnation Notice in bad faith to interfere with the closing of the sale of the Subject Property under the PSA and to prevent commercial development on the Subject Property.

FOR A FIRST CAUSE OF ACTION
(CHALLENGE TO CONDEMNATION PURSUANT TO
S.C. CODE ANN. § 28-2-470)

30. KT Properties realleges and incorporates its previous allegations set forth above as if set forth fully herein.

31. Under S.C. Code Ann. § 28-2-470, an action to challenge a condemnor's condemnation may be brought in the Court of Common Pleas in the county in which property subject to a condemnation notice is located. Such action must be commenced within thirty days of service of the condemnation notice.

32. This action is timely brought pursuant to S.C. Code Ann. § 28-2-470 to challenge the Town's condemnation of the Subject Property.

33. Under South Carolina law, a governmental entity's exercise of eminent domain must be for a public use. Such public use must be for a fixed, definite, and enforceable right of use and not merely for the public benefit.

34. Furthermore, South Carolina law prohibits governmental entities from exercising their condemnation powers in bad faith or fraudulently.

35. The Town's exercise of its eminent domain authority to condemn the Subject Property is in bad faith and fraudulent and is not for a public use. Although the Town purports to condemn the Subject Property for use as a public park, it has never identified the Subject Property as a location for a public park, authorized the expenditure of funds to acquire and build a public park on the Subject Property, or planned a public park on the Subject Property. Despite having

ample opportunity to purchase the Subject Property for a public park in the past, it did not initiate its condemnation until KT Properties' purchase and commercial development of the Subject Property became imminent. Upon information and belief, the Town has no plans for the Subject Property other than to stop it from being developed and to maintain it in its present state for the private benefit of the nearby residents who oppose the commercial development of the property.

36. Therefore, the Town's condemnation of the Subject Property is unlawful and should be enjoined.

FOR A SECOND CAUSE OF ACTION
(CHALLENGE TO CONDEMNATION PURSUANT TO
FIFTH AMENDMENT OF THE U.S. CONSTITUTION)

37. KT Properties realleges and incorporates its previous allegations set forth above as if set forth fully herein.

38. The Fifth Amendment's Takings Clause provides that "private property [shall not] be taken for public use, without just compensation."

39. A taking is not for a legitimate "public use" when the government's stated purpose is a mere pretext for some other, illegitimate purpose.

40. One such illegitimate purpose is to stop property owners from putting their property to uses that are entirely lawful and consistent with existing regulations.

41. When the circumstances surrounding a condemnation raise a strong inference that the government is acting for an improper purpose, searching judicial scrutiny is required.

42. The Town had never previously considered the Subject Property for park. It made no effort to acquire or develop the land when JIPSD owned the Subject Property for over a decade. Nor did the Town make any effort to acquire the land when JIPSD put it up for sale on three different occasions, including when KT Properties purchased the Subject Property.

43. None of the Town's long-term planning documents discussed turning the Subject Property into a park.

44. What's more, KT Properties' original plan for the Subject Property, which the Town rejected, included a park on a portion of the Subject Property.

45. In sum, the Town has no intention of building a park. Rather, the Town's proposed park is nothing but a pretext to stop KT Properties from lawfully developing and opening a lawful business on its own land. As such, the proposed taking does not satisfy the public use requirement of the Fifth Amendment.

46. Therefore, the Town's condemnation of the Subject Property is unlawful and should be enjoined.

FOR A THIRD CAUSE OF ACTION
(CHALLENGE TO CONDEMNATION PURSUANT TO
ARTICLE 1, SECTION 13 OF THE SOUTH CAROLINA CONSTITUTION)

47. KT Properties realleges and incorporates its previous allegations set forth above as if set forth fully herein.

48. Under the South Carolina Constitution, Article 1, Section 13 limits when and how the government can take private property.

49. Section 13 provides that "private property shall not be taken for . . . public use without just compensation being first made for the property."

50. Section 13 continues: "Private property must not be condemned by eminent domain for any purpose or benefit including, but not limited to, the purpose or benefit of economic development, unless the condemnation is for public use."

51. The South Carolina Supreme Court has "embraced federal takings jurisprudence as providing the rubric under which we analyze whether an interference with someone's property

interests amounts to a constitutional taking.” *Applied Bldg. Scis., Inc. v. S.C. Dep’t of Com., Div. of Pub. Railways*, 442 S.C. 421, 428 (2024).

52. Like the Federal Takings Clause, a taking is not for a legitimate “public use” under the South Carolina Constitution when the government’s stated purpose for the taking is a mere pretext for some other, illegitimate purpose.

53. Further, under South Carolina’s Constitution, a “public use” must be a fixed, definite, and enforceable right of use. In contrast, when condemned property is gated with no general right of public access, the proposed taking fails to meet South Carolina’s restrictive definition of “public use.”

54. The Town’s exercise of its eminent domain authority to condemn the Subject Property is in bad faith and fraudulent and is not for a public use. Although the Town purports to condemn the Subject Property for use as a public park, it has never identified the Subject Property as a location for a public park, authorized the expenditure of funds to acquire and build a public park on the Subject Property, or planned a public park on the Subject Property. Despite having ample opportunity to purchase the Subject Property for a public park in the past, it did not initiate its condemnation until KT Properties’ purchase and commercial development of the Subject Property became imminent. Upon information and belief, the Town has no plans for the Subject Property other than to stop it from being developed and to maintain it in its present state for the private benefit of the nearby residents who oppose the commercial development of the property. Indeed, on information and belief, the Town plans to keep the Subject Property gated and restricted to public access, which is how the Subject Property has been kept for years.

55. Therefore, the Town’s condemnation of the Subject Property is unlawful and should be enjoined.

PRAYER FOR RELIEF

WHEREFORE, KT Properties requests the following relief:

- A. An order of the Court terminating the condemnation proceeding under the Condemnation Notice;
 - B. A judgment declaring that the Town's exercise of eminent domain to acquire the Subject Property is invalid and unlawful;
 - C. A judgment declaring that the Town's exercise of eminent domain to acquire the Subject Property violates Article 1, Section 13 of the South Carolina Constitution;
 - D. A judgment declaring that the Town's exercise of eminent domain to acquire the Subject Property violates the Fifth Amendment of the United States Constitution;
 - E. An order permanently enjoining the condemnation of the Subject Property;
 - F. An award of statutory attorneys' fees and costs pursuant to S.C. Code § 28-2-510;
- and
- G. An award of such further relief that the Court deems just.

Respectfully submitted,

s/ E. Brandon Gaskins

E. Brandon Gaskins (SC Bar No. 73274)
Moore & Van Allen PLLC
78 Wentworth Street
P.O. Box 22828
Charleston, SC 29413-2828
Telephone: (843) 579-7000
Facsimile: (843) 579-7099
brandongaskins@mvalaw.com

Attorney for Plaintiff KT Properties, LLC

_____, 2025
Charleston, South Carolina