

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF CHARLESTON)	CASE NO.: 2022-CP-0 - _____
)	
H. Martin Sprock, III,)	
)	SUMMONS
)	
Plaintiff,)	
)	
v.)	
)	
City of Charleston,)	
)	
Defendant.)	
)	

TO: THE DEFENDANT NAMED ABOVE:

YOU ARE HEREBY SUMMONED and required to answer the Complaint herein, a copy of which is herewith served upon you, and to serve a copy of your answer said Complaint upon the subscribers, at the address shown below, within thirty (30) days of the service hereof, exclusive of the day of such service.

YOU ARE HEREBY GIVEN NOTICE FURTHER that, if you fail to appear and defend and fail to answer the Complaint as required by this Summons within thirty (30) days after the service hereof, judgment by default will be rendered against you for the relief demanded in the Complaint.

s/John P. Linton, Jr.

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Charleston, South Carolina
February 14, 2022

STATE OF SOUTH CAROLINA)
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COUNTY OF CHARLESTON)
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H. Martin Sprock, III,)
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Plaintiff,)
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v.)
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City of Charleston,)
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_____)

IN THE COURT OF COMMON PLEAS

CASE NO.: 2022-CP-0_ - _____

COMPLAINT
(Non-Jury)
(Injunction)
(Declaratory Judgment)
(Estoppel)

TO: THE DEFENDANT NAMED ABOVE AND THEIR COUNSEL.

Plaintiff H. Martin Sprock, III (“Sprock” or “Plaintiff”), by and through his undersigned counsel, brings this action against Defendant City of Charleston (“City”) seeking declaratory judgment that the City has no right to condemn Plaintiff’s property for the purpose of benefiting certain private interests and enjoining the City from proceeding with its condemnation of Plaintiff’s property. As explained herein, the City has sought to condemn Plaintiff’s property under the pretext of claiming it intends to create a park. However, as explained herein, the real purpose is to advance the private interest of a small group of individuals that oppose Sprock’s desire to build on his property. The City’s claim that the condemnation is for public use is a pretext and the condemnation must be enjoined.

BACKGROUND, JURISDICTION AND VENUE

1. Plaintiff is the owner of the real property commonly referred to as 10 Concord Street and identified as TMS Number 458-12 02-031 (“the Property”) by virtue of a deed recorded at Book 0887, at Page 668, in the office of the Clerk of Court for Charleston County. The Property is located in Charleston County, South Carolina. The Property is one of the last remaining

undeveloped, waterfront lots located below Broad Street. Demand for undeveloped, waterfront lots in that area far exceeds supply.

2. The City is a South Carolina municipal corporation.

3. Plaintiff purchased the Property for \$1,480,000.00 on or about June 4, 2020, from Concord Street Investors, LLC¹.

4. Upon information and belief, prior to contracting to sell the Property to Plaintiff, Concord Street Investors, LLC confirmed the City was not interested in purchasing the Property.

5. At all relevant times hereto, and continuing to this day, the City zoned the Property DR-1F, which allows for one-family detached dwellings, one-family attached dwellings, and multi-family residential dwellings.

6. Before he acquired the Property on June 4, 2020, the City knew of Plaintiff's desire to build a residence there. Prior to that date, a reputable architect retained by Plaintiff informed the City in writing of "[Plaintiff's] wish to purchase 10 Concord Street for the purpose of building his house there" and asked the City "to confirm what the City would support being built there."

7. In response, the duly authorized representative of the City acting within the scope of his authority and responsibilities confirmed that the zoning allowed residential uses and it would support a residential use of the Property. Plaintiff purchased the Property relying on the City's representations of zoning and its support of residential use.

¹ While Plaintiff is filing this case seeking to preclude the condemnation of the Property, and the value is not an issue in this case, it is worth noting that property values in Charleston, particularly waterfront residential property values, have dramatically appreciated since June of 2020, as has the value of the Property.

8. Following the purchase, Plaintiff and his architect worked closely for more than 16 months with City staff to design a plan for the Property that fully complied with the applicable zoning ordinances.

9. While Plaintiff was in the process of working with the City to design a plan that fully complied with the City's zoning, a landowner across the street from the Property approached Plaintiff wanting to purchase the Property because that private landowner desired to keep his view across the Property, which is currently a parking lot.

10. After meeting with that landowner, Sprock informed him via text message on June 16, 2021, that he was not interested in selling the Property and explained he had invested a great deal of time and resources into designing a residential plan for the property.

11. The across the street landowner replied as follows:

Martin,

I would be prepared to discuss the documented costs to you up to now, but not in the future.

I thank you for continuing the correspondence between us, and I still want your unblemished ideas. *You might want to consider the amount of barriers that lie ahead of you and your wife.*

* * *

(double emphasis added).

12. The across the street landowner's text response, which warned Sprock of an undefined amount "barriers that lie ahead", was sent "with approval from the Mayor."

13. On June 16, 2021, the across the street landowner provided a copy of the text message exchange with the Plaintiff to the City, along with a notation that the across the street landowner's response had been sent with the Mayor's approval.

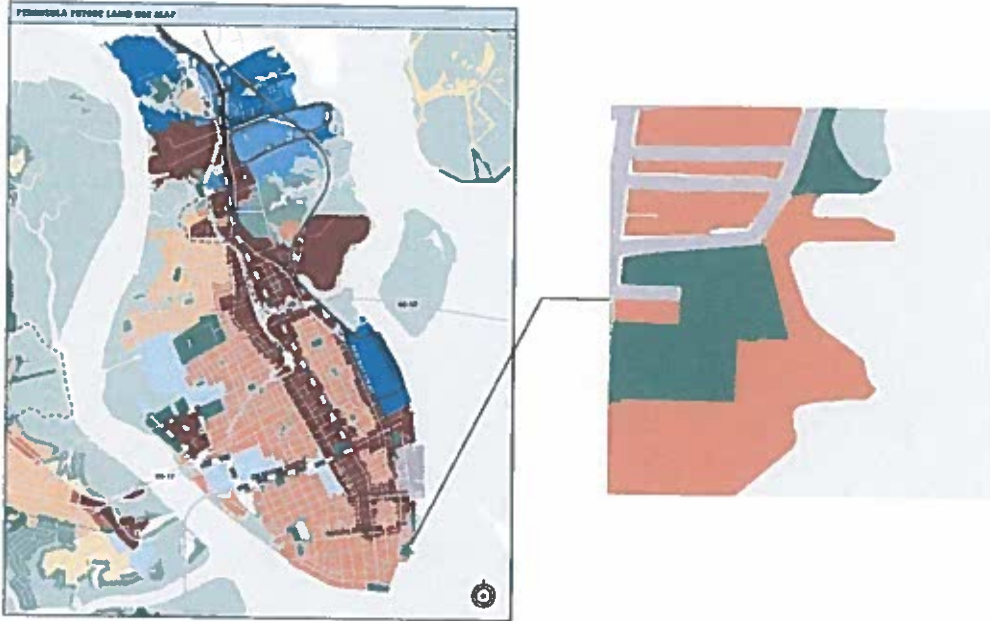
14. The City, through the Mayor, was having active conversations at that time with across the street landowner about ways to undermine and sabotage Sprock's development plans.

15. One of the City's plans was for the across the street landowner to fund the City acquiring the property. Specifically, on June 1, 2021, the Mayor stated in an e-mail that "I met with [the across the street landowner], who says confidentially that he would donate the money for the City to buy this property to prevent its development."

16. Meanwhile, Plaintiff continued working with the architect to design a plan that conformed to all applicable zoning ordinances. On or about October 19, 2021, the City's Zoning Administrator confirmed that the plans submitted for the Property conformed with all applicable zoning ordinances and gave the project staff approval.

17. On October 12, 2021, City Council had adopted a new 10-year comprehensive plan, called the Charleston City Plan, "[to] guide land use planning, policy and investment through 2030" and "serve[] as the [C]ity's roadmap toward a more resilient and equitable future"

18. The Peninsula Future Land Use Map contained within the Charleston City Plan, and adopted by City Council, is reproduced below. On the map, "suburban" areas, which include the Property, are shaded orange and "park" areas are shaded green. The Property, located within the cropped image of the map below, is designated orange (*i.e.*, suburban) on the Future Land Use Map.



19. As is clear from the future land use map and the applicable zoning, the City had no active plans for the Property to be converted to a park anytime in the future and City Council even adopted a future land use map which refutes the City's current position that it then had future plans for the Property to be a park.

20. As the City was legally unable to appeal the decision of its own Zoning Administrator, a small group, consisting mainly of nearby private landowners, submitted an appeal, dated November 22, 2021, following the City's zoning approval of Plaintiff's project.

21. City Council had a meeting the day after the appeal was filed. At that meeting, City Council, after an executive session, made a motion to authorize legal counsel to acquire the Property by any and all legal means available. The minutes for the November 23, 2021 meeting reflect the following transpired with regard to the City's action after executive session:

Councilmember Seekings said, "Yes. Mr. Mayor. I'd like to make a motion that we authorize our Legal Counsel to move forward to acquire 10 Concord Street by any and all legal means available."

Councilmember Brady said, "Second."

Mayor Tecklenburg said, "So, a motion to approve staff to acquire 10 Concord Street by any means available, correct?"

Councilmember Seekings said, "Legal means."

Mayor Tecklenburg said, "Right. Legal means. Any discussion?"

No one asked to speak.

On a motion of Councilmember Seekings, seconded by Councilmember Brady, City Council voted to authorize Legal Counsel to move forward with acquiring 10 Concord Street by any and all legal means available.

The vote was not unanimous. Councilmembers Shealy and Griffin voted nay.

Councilmember Appel recused himself from the vote.

Councilmember Appel said, "Mr. Mayor. I just want to note for the record that I'm recusing myself and not voting on this matter. Thank you."

Mayor Tecklenburg said, "Great. Thank you."

The Clerk said, "Just for the record, who were the nays?"

Mayor Tecklenburg said, "Councilmembers Griffin and Shealy."

The Clerk said, "Okay. Thank you."

22. Following the above meeting, the City has sought to condemn the fee simple interest in Property. Service of the unfiled Notice of Condemnation was effective on January 18, 2022. A copy of the unfiled Notice of Condemnation, dated January 12, 2022, is attached herewith and incorporated as Exhibit A.

23. Jurisdiction and venue are proper because the Property is located in Charleston County, South Carolina.

FOR A FIRST CAUSES OF ACTION

(Declaratory Judgment, Action for Injunctive Relief and request for stay of any action by the City to condemn the property)

24. Plaintiff realleges and reincorporates the preceding allegations as if fully restated herein.

25. Plaintiff brings this action challenging the City's right to take the Property pursuant to Section 28-2-470 of the South Carolina Code of Laws and has commenced the action within 30 days of service of the unfiled notice of condemnation.

26. Pursuant to Article I, § 13 of the South Carolina Constitution provides, in pertinent part, that "private property shall not be taken for private use without the consent of the owner, nor for public use without just compensation being first made therefor." The Fifth Amendment of the United States Constitution similarly provides that private property can only be taken for a public use.

27. Plaintiff has not consented to the taking of the Property for a private use and therefore any taking of the Property for a private use is illegal and unconstitutional and must be enjoined.

28. The City's eminent domain powers only allow the City to take property for a public use. The term "public use" is narrowly defined in the context of condemnation proceedings. South Carolina law takes a restrictive view of the power of eminent domain because it is in derogation of the right to acquire, possess, and defend private property.

29. Upon information and belief, the purpose of the City's proposed condemnation is to benefit a select group of individuals who own property near the Property and desire for it to be undeveloped because they do not want to have a view of someone else's residence and prefer the existing view towards the harbor that they now have. Using the power of eminent domain for the purpose of preventing the lawful development of property in accordance with the officially approved use for that property, in order to curry favor with a small group of people and carry out

the personal preferences of some members of Council, runs squarely into the constitutional right of an individual to own property and use it as he pleases in accordance with the zoning and Comprehensive Plan.

30. The across the street landowner, who wants to prevent the lawful residential use of the Property, is one of the key persons driving the Property's condemnation. As stated above, that individual has even offered to pick up the City's tab for the condemnation, if the City would use its power of eminent domain to advance that individual's personal, private interest by acquiring the Property.

31. The plan to use the City's power of eminent domain to advance the private interests of a neighboring landowner, or small group of neighboring landowners, by preventing Plaintiff's legal development plans for the Property goes back as far as June of 2021, when Plaintiff declined to sell to the across the street landowner seeking to acquire the Property for a private purpose. After Plaintiff declined the private request to sell the Property, at least one nearby landowner contacted the City and offered to fund an acquisition of the property if the City would acquire it. On June 1, 2021, the Mayor stated in an e-mail that "I met with [the across the street landowner], who says confidentially that he would donate the money for the City to buy this property to prevent its development."

32. The condemnation notice alleges the City is purporting to condemn the property to use it as a park. Plaintiff denies that allegation. Upon information and belief that is a pretext, and the real purpose is to provide a private benefit to a small group of landowners. The Property is not being acquired for public use. The use of the City's power of eminent domain in that manner is unconstitutional under the Constitution of South Carolina and Constitution of the United States

and is an unlawful action. The City is not allowed to take property under the pretext of a public use, when its actual purpose is to bestow a private benefit.

FOR A SECOND CAUSES OF ACTION
(Estoppel)

33. Plaintiff realleges and reincorporates the preceding allegations as if fully restated herein.

34. As alleged above, prior to Plaintiff's purchase of the Property, the City made assurances that it would support residential use of the Property.

35. At that time, Plaintiff had no knowledge the City would not actually support the residential use of the Property and would instead seek to preclude its residential use.

36. The City should have known, and did know, that Plaintiff was considering purchasing the Property and would act upon its assurances of support for residential use of the Property.

37. In reasonable reliance on the City's assurances, Plaintiff purchased the Property.

38. Because of the Plaintiff's reasonable reliance on the City's representations, the City should be estopped and enjoined from condemning the property.

FOR A THIRD CAUSES OF ACTION
(Declaratory Judgment-Violation of South Carolina Constitution)

39. Plaintiff realleges and reincorporates the preceding allegations as if fully restated herein.

40. Pursuant to Rule 57 of the South Carolina Rules of Civil Procedure and the Uniform Declaratory Judgment Act, South Carolina Code §§ 15-53-10 through 15-53-140, Plaintiff seeks an order declaring that the City's action in seeking to condemn the Property violates the prohibition

on the use of public funds for a private purpose found in Article X of the South Carolina Constitution.

41. Upon information and belief, while some private money has been promised to fund the City's condemnation of the Property, some public money is also being used to fund the taking and/or the expense associated with condemnation case.

42. The expenditure of public funds must be for a public purpose.

43. A public purpose has for its objective the promotion of the public health, safety, morals, general welfare, security, prosperity, and contentment of *all* the inhabitants or residents, or *at least a substantial part thereof*.

44. As explained in detail above, the purpose of the City's condemnation of the Property is for the private benefit of a select group of individuals and not for the promotion of the public health, safety, morals, general welfare, security, prosperity, and contentment of all the inhabitants or residents of the City, or at least a substantial part thereof.

45. Plaintiff seeks a declaration that City's use of public funds to accomplish a private goal of preventing the development of the Property is unconstitutional and an injunction prohibiting the City from condemning the Property for such purposes.

PRAYER FOR RELIEF

By virtue of the foregoing, Plaintiff is entitled to an injunction against the City enjoining and precluding the condemnation of the Property and a declaratory judgment that the City's proposed condemnation is unlawful and unconstitutional. Plaintiff is entitled to an award of attorneys' fees, costs, and litigation expenses incurred in bringing this action, pursuant to South Carolina Code § 28-2-510, South Carolina Code § 15-77-300, and South Carolina Code §15-53-100. Further, Plaintiff is entitled to a stay of all actions by the City to condemn the Property.

WHEREFORE, Plaintiff requests a bench trial and prays this Honorable Court inquire into the matters set forth herein and enter judgment in favor of Plaintiff against the City as requested above and awards Plaintiff attorneys' fees, costs, and litigation expenses incurred by him in bringing this action, as well as all other relief this Honorable Court deems just and proper.

Respectfully submitted,

s/John P. Linton, Jr.

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Charleston, South Carolina
February 14, 2022

EXHIBIT A

CITY OF CHARLESTON,

CONDEMNOR,

VS.

H. MARTIN SPROCK, III

LANDOWNER(S).

NOTICE OF CONDEMATATION

Pursuant to the South Carolina Eminent Domain Act, Section 28-2-10, et. seq., South Carolina Code of Laws (1976, as amended), you are hereby notified as follows:

1. The City of Charleston is the Condemnor herein which seeks to acquire the real property described herein for public purposes of expanding Waterfront Park.
2. H. Martin Sprock, III is the landowner of 10 Concord Street, TMS Number 458-12 02-031 by virtue of a deed recorded at Book 0887 Page 668.
3. The City of Charleston desires to condemn a fee simple interest, subject to any utility easements, in TMS 458-13-02-031, commonly referred to as 10 Concord Street with a Property Description as follows:

All that piece, parcel or tract of land being shown and designated as Parcel B approximately .157 acres more or less including a 534 sq. foot parcel of land as shown on a plat by Lawrence J. Kennerty, Jr. entitled "SUBDIVISION PLAT OF HARBOR PILOTS TRACT INTO PARCEL A AND PARCEL B CITY OF CHARLESTON, CHAS. CO, S.C." and recorded December 28, 2001 at Plat Book EF, Page 275, RMC Office for Charleston County South Carolina including the concrete and tabby seawall."

A copy of the area is shown in the attached Exhibit A.

4. The City of Charleston is vested with the power of eminent domain pursuant to South Carolina Code Section 5-7-50 and Sections 28-2-10 et. seq.
5. The property sought herein is to be acquired for public purposes, more particularly

for the expansion of Waterfront Park and title to the property will be held by the City of Charleston for the use and enjoyment of the property by all citizens and visitors.

6. This action is brought pursuant to Section 28-2-10 et seq. of the South Carolina Code of Laws,
7. City of Charleston has complied with the requirements set forth in Section 28-2-70(a), South Carolina Code of Laws, (1976, as amended), by having the subject property appraised and making the appraisal available to the Landowner(s) where required by law.
8. THE CONDEMNOR HAS DETERMINED JUST COMPENSATION FOR THE PROPERTY AND RIGHTS TO BE ACQUIRED HEREUNDER TO BE ONE MILLION SEVEN HUNDRED EIGHT FIVE THOUSAND DOLLARS (\$ 1,785,000).
9. 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(s) and Other Condemnee(s) notice that it has done so.
10. AN ACTION CHALLENGING THE CONDEMNOR'S RIGHT TO ACQUIRE THE PROPERTY AND RIGHTS DESCRIBED HEREIN MUST BE COMMENCED IN A SEPARATE PROCEEDING IN THE COURT OF COMMON PLEAS WITHIN THIRTY (30) DAYS OF SERVICE OF THIS CONDEMNATION NOTICE, OR THE LANDOWNER(S) WILL BE CONSIDERED TO HAVE WAIVED THE CHALLENGE.
11. THE CONDEMNOR HAS ELECTED NOT TO UTILIZE THE APPRAISAL PANEL

PROCEDURE. The Landowner(s) has the right to demand a trial by jury. The case may not be called for trial before sixty (60) days after the service of that notice, but it may thereafter be given priority for trial over other civil cases.

12. THE LANDOWNER(S) ARE ADVISED TO OBTAIN LEGAL COUNSEL AT ONCE, IF NOT ALREADY OBTAINED.

CLAWSON and STAUBES, LLC



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Charleston, South Carolina
January 12, 2022

