

Lumber company wins \$4.85M settlement from DOT

By: David Donovan January 17, 2014

When buildings age, they often lose a little bit of their value as the accumulated wear and tear makes them less attractive to prospective buyers. But one lumber and millwork company in Charleston argued that the advanced age of its plant actually made it more valuable because it had a grandfathered exception to a number of codes and regulations that would otherwise be costly to comply with.

As a result, attorneys for the company were able to negotiate a \$4.85 million settlement with the South Carolina Department of Transportation for 1.67 acres of land that the DOT condemned to build an access road that will connect the new port on the Charleston Naval Shipyard to Interstate 26.

The Southern Lumber and Millwork Co. has made high-end wood products on the same 6.5-acre site since the 1940s. The land claimed by the DOT doesn't actually run through its manufacturing plant, but came so close that it will block one of the access points where the company receives products and also take the space where the hopper—an area used for disposing of dust—is located. As such, the company will have to relocate its operation to a different location on the remaining site.

The DOT had initially estimated a just compensation of just over \$1 million, which was later modified to almost \$2.2 million. Appraisers for the landowners issued two reports, estimating just compensation at, and just over, \$6.2 million. Rick Bybee of Smith, Bundy, Bybee and Barnett, attorney for the landowners, called the settlement "a good resolution given those spreads," and said his clients were satisfied with it. The company is also seeking relocation claims under the Federal Relocation Assistance Act.

Both sides agreed that the land was a special-use property because of the absence of comparable sales of similar manufacturing sites. As such, the appraisers considered what the cost would be to the company to cure the loss incurred by the taking of the land.

Assessing that cost was tricky because of depreciation and the plant's exception from regulatory and building codes for fire, seismic flood, wind, occupational and other zoning requirements. The company's appraisers argued that this regulatory building status enhanced the property's value and affected the depreciation rate.

"The appraisers said, 'You're right it's an old building, but it's a useful building and it's producing income at a good rate, and it's grandfathered from a number of regulatory things,'" Bybee said. "The appraisers' point of view is that from the purchaser's perspective, instead of the depreciation factor being a negative, the fact that the building had been grandfathered really was a positive."

David G. Pagliarini represented the SCDOT and Wade H. Logan III acted as mediator. The DOT will take possession of the property in 2015.

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SETTLEMENT REPORT: EMINENT DOMAIN

Case name: *SC Department of Transportation v. Albrecht, Abrecht and Shuler*

Court: Charleston County Court of Common Pleas

Case number: 2012 CP 10 7208

Amount: \$4,850,000

Settlement date: October 22, 2013

Mediator: Wade H. Logan III

Attorneys for plaintiff: Richard D. Bybee and Brent McDonald (Mount Pleasant)

Attorney for defendant: David Pagliarini (Columbia)

Tagged with: NCDOT SOUTHERN LUMBER AND MILLWORK CO

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