BEFORE THE
GEORGIA PUBLIC SERVICE COMMISSION

Sandersville Railroad Company Hancock County, Georgia **In re: Sandersville Railroad Company's Petition for Approval to Acquire Real Estate by Condemnation**	Docket No.: 45045

OBJECTIONS TO AND MOTION TO STRIKE PRE-FILED DIRECT TESTIMONY OF R. ALLEN HAYWOOD

on behalf of the Property Owner Respondents

October 16, 2023

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"In administrative hearings, the rules of evidence as applied in the trial of nonjury civil actions shall be followed, subject to special statutory rules or agency rules as authorized by law." O.C.G.A § 24-1-2(4). Pursuant to the Georgia Code of Evidence, O.C.G.A §§ 24-1-1 *et seq.*, Property Owner Respondents[1] hereby object to and move to strike the Pre-Filed Direct Testimony of R. Allen Haywood set forth below, for the reasons stated:

Page Start	**Line Start**	**Page End**	**Line End**	**Objection**
3	16	4	2	Relevance, Lack of Foundation, Speculation
4	4	5	17	Relevance, Lack of Foundation, Speculation, Form
6	1	6	21	Relevance, Lack of Foundation, Speculation, Form
7	1	7	3	Relevance, Lack of Foundation, Speculation, Form
7	5	7	12	Relevance, Lack of Foundation, Speculation, Form

Mr. Haywood is the mayor of Sparta, Georgia, and serves as the Executive Director of the Sparta Hancock County Development Authority. Test. 2:3–8. Mr. Haywood's testimony "addresses the current state of Hancock County and Sparta, Georgia as well as their economic decline and population loss." Test. 3:17–18. Mr. Haywood also testifies regarding the alleged "positive impact [the Hanson Spur] will have on the local economy and [his] support for the spur," and "the positive effect that new and expanded industries along the spur, including the Heidelburg Materials quarry . . . will have on" Hancock County and Sparta, "especially through the provision of good-paying jobs for the community." Test. 3:18–4:2. Property Owner Respondents object to and move to strike Mr. Haywood's testimony based on form, relevance, lack of foundation, and speculation. Additionally, Property Owner Respondents object to and move to strike the entirety

[1] Robert Donald Garrett, Sr., and Sarah Veazey Garrett; William Blaine Smith and Helen Diane Smith; Marvin Smith, Jr., and Patricia Smith; Leo John Briggs and Georgia Ann Briggs; Joel Bradford Reed and Kathy Lynn Reed; Donna N. Garrett; Herus Ellison Garrett; Sally G. Wells; Verne Kennedy Hollis; and Thomas Ahmad Lee.

of Mr. Haywood's testimony on the grounds that Property Owner Respondents were not allowed to depose him before the November 27, 2023 hearing in this matter. *See* O.C.G.A. § 50-13-13(a)(6) (providing for "the taking of testimony by deposition").

Form

Lay witness opinion testimony is admissible only if it is based on something the witness perceived, helpful for determining a fact at issue, and "not based on scientific, technical, or specialized knowledge within the scope of" O.C.G.A. § 24-7-702. The questions "What is the current economic state of Hancock County?", Test. 4:4–5, "What are the economic and employment benefits of quarries?", Test. 6:1–2, "What is your opinion regarding the expansion of the Hanson Quarry?", Test. 7:1–2, and "What is your opinion regarding the proposed railroad spur?", Test. 7:5–6, are not questions eliciting facts based on personal knowledge, but instead elicits improper lay opinion testimony.

Relevance

Evidence is relevant where it has "any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." O.C.G.A. § 24-4-401. "Evidence which is not relevant shall not be admissible." O.C.G.A. § 24-4-402. Mr. Haywood's unsupported opinions about the decline of Hancock County and Sparta and the alleged benefits of the Hanson Spur are irrelevant to these proceedings because under Georgia law, eminent domain may not be used to obtain property for the purpose of economic development. *See* O.C.G.A. § 22-1-1(9)(B) ("The public benefit of economic development shall not constitute a public use."). Whether the Hanson Spur will lead to economic development in Sparta is not relevant because Sandersville Railroad cannot take people's property for economic development. Mr. Haywood's opinion that Sparta and Hancock

County are experiencing "economic doldrums," Test. 5:12, and his desire to redevelop Property Owner Respondents' land and is "happy" that Sandersville is helping him do it, Test. 5:14, are not "of consequence to the determination of" these proceedings. O.C.G.A. § 24-4-401.

Lack of Foundation

Additionally, "[a] witness may not testify to a matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of such matter." O.C.G.A. § 24-6-602. Lay witness opinion testimony is admissible only if it is based on something the witness perceived, helpful for determining a fact at issue, and "not based on scientific, technical, or specialized knowledge within the scope of" O.C.G.A. § 24-7-702.

Mr. Haywood offers no evidence for why he is personally qualified to opine about the alleged benefits of the Hanson Spur. Neither does Mr. Haywood offer evidence that he knows anything specific about "new and expanded industries along the spur," Test. 3:21, or "economic benefit" resulting from the Hanson Spur. Test. 7:3. Mr. Haywood is repeating what he has been told by representatives of Sandersville Railroad. He has not established that he is an expert[2] on the

[2] Indeed, nearly all of Mr. Haywood's testimony consists of improper lay witness testimony under O.C.G.A. § 24-7-701(a) because it is not based on his own perception, is not helpful to a clear understanding of a fact at issue, and is based on specialized, technical knowledge that is properly the subject of expert witness testimony. Had SRC wished to introduce expert testimony on these topics, it could have done so pursuant to O.C.G.A. § 24-7-702, which would have required SRC to provide the "facts or data" underlying this testimony and establish the "reliable principles and methods" used by the witness. O.C.G.A. § 24-7-702(b). Indeed, the purpose of the rule against lay witnesses providing specialized testimony was to eliminate the risk that parties would evade the reliability requirements for expert witnesses "through the simple expedient of proferring an expert in lay witness clothing." *United States v. Henderson*, 409 F.3d 1293, 1300 (11th Cir. 2005) (cleaned up) (discussing similar federal rule). In exactly the scenario the rule was designed to avoid, SRC sidesteps the reliability requirements for expert testimony by offering a lay witness who testifies to things he has not established he has seen, on several topics in which he has no expertise. As such, this testimony is inadmissible because it lacks foundation, and the Hearing Officer should strike it. *See Monroe v. Hyundai Motor Am., Inc.* 270 Ga. App. 477, 478, 606 S.E.2d 896, 896 (2004) (holding that, to have probative value, a lay opinion "must be based upon a foundation that the witness has some knowledge, experience or familiarity" on the topic on which the testimony

economics of railroads or rural communities in Georgia, and he is not qualified to testify about those matters, even if they were relevant to these proceedings (which they are not).

Speculation

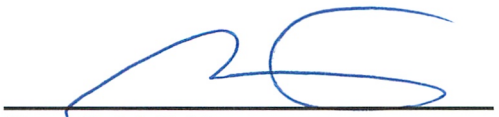
Finally, a "witness's testimony in the form of opinions or inferences shall be limited to those opinions or inferences which are [r]ationally based on the perception of the witness." O.C.G.A. § 24-7-701. Mr. Haywood's opinions about the alleged benefits of the Hanson Spur are pure speculation. He offers no evidence to support his assertions that the spur will "reduce the number of tractor trailers that traverse our roads daily . . . improve the safety of [Sparta] and reduce wear and tear of our roads and bridges reducing repair costs and [] benefit the local economy through the creation of new jobs and tax-paying industries." Test. 7:7–12. Mr. Haywood is repeating what he has been told by representatives of Sandersville Railroad. He has not established that he is an expert on the economics of railroads or rural communities in Georgia, and he is not qualified to testify about those matters, even if they were relevant to these proceedings (which they are not).

Property Owner Respondents respectfully request that the entirety of Mr. Haywood's testimony be stricken or, in the alternative, those portions described in the chart on page 2. If Mr. Haywood's testimony is not stricken, Property Owner Respondents respectfully request that the Hearing Officer give such testimony little weight. Property Owner Respondents reserve all other objections to Mr. Haywood's testimony pending the hearing and cross-examination.

Respectfully submitted, this 16th day of October, 2023.

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is offered (cleaned up)). At the very least, even if the Hearing Officer does not strike this testimony, she should give it little weight.



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CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of October, 2023, a copy of the foregoing *Objections to and Motion to Strike Pre-Filed Direct Testimony of R. Allen Haywood* has been served via electronic mail and U.S. First-Class Mail on the following pursuant to GA. COMP. R. & REGS. 515-16-16-.02; 515-2-1-.04(4)(b), (3):

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DATED this 16th day of October, 2023.

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