

IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA25-742

Filed 19 August 2026

Avery County, No. 24CVS000075-050

TOWN OF BEECH MOUNTAIN, a
North Carolina Municipal Corporation, Plaintiff,

v.

MARK B. RIGSBEE and CAROL ANN WILLIAMS, Defendants.

Appeal by Plaintiff from order entered 6 February 2025 by Judge Joseph N.
Crosswhite in Avery County Superior Court. Heard in the Court of Appeals 21 April
2026.

*Poyner Spruill LLP, by N. Cosmo Zinkow, Andrew H. Erteschik, and Clare W.
Magee; Miller & Johnson, PLLC, by Nathan A. Miller; and Eggers, Eggers,
Eggers & Eggers, PLLC, by Stacy C. Eggers IV, for Plaintiff-Appellant.*

*The Odom Firm, PLLC, by Thomas L. Odom Jr., for Defendant-Cross-
Appellant.*

CARPENTER, Judge.

The Town of Beech Mountain (the “Town”) appeals and Mark B. Rigsbee (“Defendant”) cross-appeals from an order entered 6 February 2025.¹ In the order, the trial court denied the Town’s motion for declaratory judgment, granted Defendant’s motion for judgment on the pleadings, granted the Town’s motion for a protective order, and denied Defendant’s motion to compel. On appeal, the Town

¹ Defendant Williams passed away and was voluntarily dismissed on 9 August 2024.

argues that the trial court erred by concluding that a taking had occurred. On cross-appeal, Defendant, by way of petition for writ of certiorari (“PWC”), argues that the trial court erred by finding that the Town’s meeting minutes from closed sessions were protected by attorney-client privilege and thus not discoverable. After careful review, we reverse.

I. Factual & Procedural Background

This dispute arises from the Town’s handling of a project to improve public infrastructure in a skiing community with seasonal renters, limiting the habitability of and landowners’ access to their properties for a six-month period. On 1 April 2024, the Town filed a complaint seeking a declaration that no taking had occurred or, alternatively, a determination that the sum of \$1,000 it offered to residents, including Defendant, was just compensation for the taking. On 23 December 2024, Defendant requested documents related to the closed sessions of the Town Council and afterward filed a motion to compel. Defendant also filed a motion to dismiss the request for a declaratory judgment and a motion for judgment on the pleadings. On 22 January 2025, the trial court conducted a hearing on the motions. Evidence tended to show the following.

The Skiloft Community, a vacation destination for seasonal skiing, was developed before the establishment of the Town. Perched on an elevated slope, Skiloft properties are connected by a “single steep and winding road which dead ends . . . pos[ing] particular difficulties in maintenance and installation of infrastructure, due

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to the topography and density of the land.” The Town serviced the water and sewer systems, while private companies provided electricity, phone, and internet services. Because of its configuration, the Skiloft Community was facing “difficulty in snow removal, troubles in maintaining public utilities such as fire protection, crumbling asphalt, failing electrical service, and failing telephone and internet lines.”

In 2023, instead of a piecemeal, protracted repair process, the Town decided to make all necessary infrastructure repairs and improvements during a six-month period outside of ski season. The project included replacing aging water and sewer lines under the roadway, replacing aging electrical and communication lines under the roadway, improving storm water management within the roadway, and repaving two roads. The Town filed a memorandum of action stating its intent “to acquire by condemnation a temporary construction easement in over and through” Defendant’s property.

The Town also approached landowners in the Skiloft Community, offering them \$1,000 each as just compensation or risk being assessed for a portion of the project, which could cost up to \$90,000. Owners of all but three properties agreed with the Town’s plan and accepted the \$1,000 compensation in exchange for the owners waiving their potential takings claims. Defendant, believing that the offer was “threatening,” instead answered the Town’s declaratory judgment with a request for just compensation.

From April through September 2024, the Town repaired and upgraded local

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infrastructure. “Residents . . . could request transportation to their properties through the Beech Mountain Police Department.” There were also periods of time when the neighborhood lost access to running water, sewer, and electricity. The Town, however, never physically entered Defendant’s property.

The Town Council conducted closed session meetings with its attorney to discuss the project, including proposed offers of \$1,000 for each resident and potential exposure to liability. Defendant’s counsel requested production of the closed session meeting minutes, but the Town invoked attorney-client privilege. Defendant filed a motion to compel.

In its order entered 28 January 2025, the trial court found that:

23. . . . [T]here is no question that the [Town] acted within its statutory authority to conduct the infrastructural repairs needed for the Skiloft Community. However, the Defendants have correctly pointed out that the [Town] implemented a temporary taking against the properties owned by the Defendants.

. . .

25. . . . While using the Police Department’s services to access one’s property would be less convenient, this alone would not give rise to compensation being owed to the Defendants.

26. . . . While no tenants were renting from the Defendants[] at the time who could have provided written notification to the Defendants regarding lack of access to utilities, it is reasonable that the Defendants’ properties could not be rented during the [Town]’s infrastructural repairs because the properties did not have access to electrical, plumbing, sanitary, or other facilities and appliances as required by law.

. . .

33. Upon review of the closed session minutes provided to the Court by the [Town], this Court determines that releasing the closed session minutes in full or in part would violate the protected attorney-client privilege afforded the [Town.]

The trial court held that a temporary taking occurred and that Defendant should receive just compensation for “the lost rental value” of his property. It denied the Town’s motion for declaratory judgment, granted Defendant’s motion for judgment on the pleadings, denied Defendant’s motion to compel, and granted the Town’s motion for a protective order. The issue of damages remains pending at the trial court.

On 20 February 2025, the Town timely filed a notice of appeal. The parties filed a joint motion to stay pending appeal, which the trial court granted on 3 March 2025. On 3 March 2025, Defendant filed an untimely notice of cross-appeal. On 13 November 2025, the Town filed a motion to dismiss Defendant’s cross-appeal, asserting that it does not affect a substantial right. On 10 December 2025, Defendant filed a PWC.

II. Jurisdiction

As an initial matter, we must determine whether we have jurisdiction to review the Town’s appeal and Defendant’s cross-appeal. The trial court’s order is interlocutory because the issue of damages remains open. *See Veazey v. City of Durham*, 231 N.C. 357, 362, 57 S.E.2d 377, 381 (1950) (“An interlocutory order is one

made during the pendency of an action, which does not dispose of the case, but leaves it for further action by the trial court in order to settle and determine the entire controversy.”). The Town argues its appeal affects a substantial right because decisions regarding a taking must be immediately appealed. Defendant asserts that its cross appeal affects a substantial right because determinations as to attorney-client privilege are immediately appealable.

“In most instances, a party has ‘no right of immediate appeal from interlocutory orders and judgments.’ ” *Bartels v. Franklin Operations, LLC*, 288 N.C. App. 193, 195, 885 S.E.2d 357, 359 (2023) (quoting *Goldston v. Am. Motors Corp.*, 326 N.C. 723, 725, 392 S.E.2d 735, 736 (1990)). Contrary to the general rule, interlocutory orders are immediately appealable when they affect a substantial right. *Id.* at 195, 57 S.E.2d at 359 (citing *Smith v. Polsky*, 251 N.C. App. 589, 594–95, 796 S.E.2d 354, 358–59 (2017)). “A substantial right is a legal right affecting or involving a matter of substance as distinguished from matters of form; a right materially affecting those interests which a [party] is entitled to have preserved and protected by law: a material right.” *Pentecostal Pilgrims & Strangers Corp. v. Connor*, 202 N.C. App. 128, 132, 688 S.E.2d 81, 84 (2010) (internal quotation marks and citation omitted).

A. Town’s Appeal

Issues of condemnation “concerning title and area taken are ‘vital preliminary issues[.]’ ” *Dep’t of Transp. v. Rowe*, 351 N.C. 172, 176, 521 S.E.2d 707, 709 (1999) (quoting *N.C. State Highway Comm. v. Nuckles*, 271 N.C. 1, 14, 155 S.E.2d 772, 784

(1967)), that “affect a party’s substantial right and thus must be immediately appealed . . .,” *Dep’t of Transp. v. BB & R, LLC*, 242 N.C. App. 11, 14, 775 S.E.2d 8, 12 (2015) (citing *Rowe*, 351 N.C. at 176, 521 S.E.2d at 709). This is because “[i]t would be an act of futility and injurious to the interests of the [condemnor] to otherwise compel it to proceed through trial on the issue of damages if the trial court’s initial determination that a taking had occurred was in error.” *Concrete Mach. Co. v. City of Hickory*, 134 N.C. App. 91, 96, 517 S.E.2d 155, 158 (1999). Indeed, “an immediate appeal following a condemnation hearing [is] mandatory . . .” *Rowe*, 351 N.C. at 176, 521 S.E.2d at 710.

Here, the Town’s appeal affects a substantial right. *See Pentecostal*, 202 N.C. App. at 132, 699 S.E.2d at 84. Because the Town’s appeal concerns an alleged governmental taking, it would be futile for the trial court to proceed to the issue of damages without this Court first resolving whether a taking occurred. *See Concrete Mach. Co.*, 134 N.C. App. at 96, 517 S.E.2d at 158. Indeed, the Town must immediately appeal this issue. *See BB & R, LLC*, 242 N.C. App. at 14, 775 S.E.2d at 12. Accordingly, we review the Town’s appeal. *See id.* at 14, 775 S.E.2d at 12 (citation omitted).

B. Defendant’s Cross-Appeal

“An order compelling discovery is interlocutory in nature and is usually not immediately appealable because such orders generally do not affect a substantial right.” *Sessions v. Sloane*, 248 N.C. App. 370, 380, 789 S.E.2d 844, 853 (2016) (citing

Sharpe v. Worland, 351 N.C. 159, 163, 522 S.E.2d 577, 579 (1999)). Interlocutory orders denying a motion to compel, however, can affect a substantial right “(1) ‘if the information desired is highly material to a determination of the critical question to be resolved in the case,’ and (2) if ‘the desired discovery would not have delayed trial or have caused the opposing party any unreasonable annoyance, embarrassment, oppression or undue burden or expense.’” *James v. Bledsoe*, 198 N.C. App. 339, 345, 679 S.E.2d 494, 498 (2009) (quoting *Dworsky v. Travelers Ins. Co.*, 49 N.C. App. 446, 447–48, 271 S.E.2d 522, 523 (1980)).

When “a party asserts a statutory privilege which directly relates to the matter to be disclosed under an interlocutory discovery order, and the assertion of such privilege is not otherwise frivolous or insubstantial, the challenged order affects a substantial right” *Sharpe*, 351 N.C. at 166, 522 S.E.2d 577, 581. This rule, however, “gives no support to [a party’s] contention . . . that the trial court’s recognition of [*the adverse party’s*] assertion of a statutory privilege affects a substantial right of [*a party*].” *James*, 198 N.C. App. at 343, 679 S.E.2d at 497 (emphasis in original).

Here, Defendant’s cross-appeal does not affect a substantial right. *See Pentecostal*, 202 N.C. App. at 132, 699 S.E.2d at 84. Defendant is seeking to discover, not protect, the Town’s allegedly privileged information. *See James*, 198 N.C. App. at 343, 679 S.E.2d at 497. Moreover, the trial court decided to protect, not compel disclosure of, the closed session meeting minutes, *see Sharpe*, 351 N.C. at 163–65, 522

S.E.2d at 580–81, which means that the right will not be lost absent immediate appellate review, *see Sessions*, 248 N.C. App. at 380, 789 S.E.2d at 853. Our review of the closed session meeting minutes further supports our determination that Defendant’s cross-appeal does not affect a substantial right. *See Sharpe*, 351 N.C. at 163–65, 522 S.E.2d at 580–81. Defendant’s cross-appeal, therefore, is not immediately appealable. *See Sessions*, 248 N.C. App. at 380, 789 S.E.2d at 853.

Next, we turn to Defendant’s PWC. This Court in its discretion may issue a writ of certiorari to aid our jurisdiction. *See* N.C. Gen. Stat. § 7A-32(c) (2025). Issuing a writ of certiorari, however, is an extraordinary measure. *See Cryan v. Nat’l Council of YMCAs*, 384 N.C. 569, 572, 887 S.E.2d 848, 851 (2023) (citing *Button v. Level Four Orthotics & Prosthetics, Inc.*, 380 N.C. 459, 465, 869 S.E.2d 257 (2022)).

Accordingly, a petitioner must satisfy a two-factor test. *Id.* at 572, 887 S.E.2d at 851. “First, a writ of certiorari should issue only if the petitioner can show ‘merit or that error was probably committed below.’” *Id.* at 572, 887 S.E.2d at 851 (first quoting *State v. Ricks*, 378 N.C. 737, 741, 862 S.E.2d 835, 839 (2021); and then *State v. Grundler*, 251 N.C. 177, 189, 111 S.E.2d 1, 9 (1959)). “Second, a writ of certiorari should issue only if there are ‘extraordinary circumstances’ to justify it.” *Id.* at 572–73, 887 S.E.2d at 851 (quoting *Moore v. Moody*, 304 N.C. 719, 720, 285 S.E.2d 811, 812 (1982)). “There is no fixed list of ‘extraordinary circumstances’ that warrant certiorari review, but this factor generally requires a showing of substantial harm, considerable waste of judicial resources, or ‘wide-reaching issues of justice and liberty

at stake.’ ” *Id.* at 573, 887 S.E.2d at 851 (quoting *Doe v. City of Charlotte*, 273 N.C. App. 10, 23, 848 S.E.2d 1 (2020)).

Here, we decline to issue a writ of certiorari. *See* N.C. Gen. Stat. § 7A-32(c). Defendant has not met his burden in showing that the trial court probably erred because the closed session meeting minutes of the Town Council were privileged. *See Cryan*, 384 N.C. at 572, 887 S.E.2d at 851. Extraordinary circumstances are also absent here. *Id.* at 573, 887 S.E.2d at 851. For these reasons and in light of our resolution of the Town’s appeal, we decline to invoke Rule 2. *See State v. Hart*, 361 N.C. 309, 315–16, 644 S.E.2d 201, 205 (2007). Accordingly, we deny Defendant’s PWC and grant the Town’s motion to dismiss the cross-appeal.

III. Issue

The issue is whether the trial court erred by concluding that a compensable taking had occurred.

IV. Analysis

On appeal, the Town challenges the trial court’s conclusion that a taking occurred for two reasons: (1) the Town did not eliminate all access to Defendant’s property; and (2) temporarily cutting off water and sewer access was a reasonable exercise of the Town’s police powers, not a compensable taking. We agree.

A. Standard of Review

“[W]hen the trial court sits without a jury, the standard of review on appeal is whether there was competent evidence to support the trial court’s findings of fact and

whether the conclusions of law were proper in light of such facts.” *Anthony Marano Co. v. Jones*, 165 N.C. App. 266, 267–68, 598 S.E.2d 393, 395 (2004) (citing *Chem. Realty Corp. v. Home Fed. Sav. & Loan Ass’n*, 84 N.C. App. 27, 37, 351 S.E.2d 786, 793 (1987)). “Unchallenged findings of fact are . . . binding on appeal.” *In re Schiphof*, 192 N.C. App. 696, 700, 666 S.E.2d 497, 500 (2008) (citing *Keeter v. Town of Lake Lure*, 264 N.C. 252, 257, 141 S.E.2d 634, 638 (1965)).

“The trial court’s conclusions of law are reviewed de novo” *Stikeleather Realty & Invs. Co. v. Broadway*, 241 N.C. App. 152, 160, 772 S.E.2d 107, 113 (2015) (citation omitted). “‘Under a *de novo* review, the court considers the matter anew and freely substitutes its own judgment’ for that of the lower tribunal.” *State v. Williams*, 362 N.C. 628, 632–33, 669 S.E.2d 290, 294 (2008) (quoting *In re Greens of Pine Glen Ltd. P’ship*, 356 N.C. 642, 647, 576 S.E.2d 316, 319 (2003)).

B. Eminent Domain

“[T]he power of eminent domain[] is one of the prerogatives of a sovereign state. . . . Its exercise, however, is limited by the constitutional requirements of due process and payment of just compensation for property condemned.” *Dep’t of Transp. v. M.M. Fowler, Inc.*, 361 N.C. 1, 4, 637 S.E.2d 888, 889 (2006) (quoting *State v. Core Banks Club Props., Inc.*, 275 N.C. 328, 334, 167 S.E.2d 385, 388 (1969)). Indeed, “the fundamental right to just compensation [is] so grounded in natural law and justice that it is part of the fundamental law of this State[] and imposes upon a governmental agency taking private property for public use a correlative duty to make just

compensation” *Beroth Oil Co. v. N.C. Dep’t of Transp.*, 367 N.C. 333, 340–41, 757 S.E.2d 466, 472–73 (2014) (quoting *Long v. City of Charlotte*, 306 N.C. 187, 196, 293 S.E.2d 101, 107 (1982) (superseded on other grounds by statute)).

A taking is an

entering upon private property for more than a momentary period, and under warrant or color of legal authority, devoting it to a public use, or otherwise informally appropriating or injuriously affecting it in such a way as substantially to oust the owner and deprive him of all beneficial employment thereof.

Long, 306 N.C. at 199, 293 S.E.2d at 109 (quoting *Penn v. Coastal Corp.*, 231 N.C. 481, 484, 57 S.E.2d 817, 819 (1950)). “A ‘temporary’ taking, which ‘den[ies] a landowner all use of his property’ for a finite period, is ‘no[] different in kind from [a] permanent taking[]’” *City of Charlotte v. Combs*, 216 N.C. App. 258, 261, 719 S.E.2d 59, 62 (2011) (quoting *First Eng. Evangelical Lutheran Church of Glendale v. L.A. Cnty.*, 482 U.S. 304, 318, 107 S. Ct. 2378, 2388, 96 L. Ed. 2d 250, 266 (1987)).

“Determining if governmental action constitutes a taking depends upon ‘whether a particular act is an exercise of the police power [or] of the power of eminent domain.’” *Kirby v. N.C. Dep’t of Transp.*, 368 N.C. 847, 854, 786 S.E.2d 919, 924 (2016) (quoting *Barnes v. N.C. State Highway Comm’n*, 257 N.C. 507, 514, 126 S.E.2d 732, 737–38 (1962)). This analysis “requires ‘ad hoc, factual inquiries into the circumstances of each particular case[.]’” *Beroth Oil Co.*, 367 N.C. at 342, 757 S.E.2d

at 473 (quoting *Connolly v. Pension Benefit Guar. Corp.*, 475 U.S. 211, 224, 106 S. Ct. 1018, 1026, 89 L. Ed. 2d 166, 178–79 (1986)).

“Under the police power, the government regulates property to prevent injury to the public.” *Kirby*, 368 N.C. at 854, 786 S.E.2d at 924 (emphasis and citations omitted). This power “must be ‘enacted in good faith[] and ha[ve] appropriate and direct connection with that protection to life, health, and property which each [s]tate owes to her citizens.’” *Id.* at 854, 786 S.E.2d at 924 (quoting *City of Durham v. Eno Cotton Mills*, 141 N.C. 615, 642, 54 S.E. 453, 462 (1906)). A lawful exercise of police power is not a taking, *Responsible Citizens in Opposition to Flood Plain Ordinance v. City of Asheville*, 308 N.C. 255, 265, 302 S.E.2d 204, 211 (1983), but “[a]n exercise of police power outside these bounds may result in a taking[.]” *Kirby*, 368 N.C. at 854, 786 S.E.2d at 924 (citing *Responsible Citizens*, 308 N.C. at 263, 302 S.E.2d at 209).

“A taking effectuated by eminent domain does not require ‘an actual occupation of the land,’ but ‘need only be a substantial interference with elemental rights growing out of the ownership of the property.’” *Id.* at 855, 786 S.E.2d at 925 (quoting *Long*, 306 N.C. at 198–99, 293 S.E.2d at 109). A taking can occur through a construction easement that physically intrudes on another’s land, restricts access to the land, or limits a landowner’s use and enjoyment. *See Dep’t of Transp. v. Jay Butmataji, LLC*, 260 N.C. App. 516, 521, 818 S.E.2d 171, 176 (2018).

C. Nature of Intrusion

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“ ‘[A] ‘taking’ may more readily be found when the interference with property can be characterized as a physical invasion by government than when interference arises from some public program adjusting the benefits and burdens of economic life to promote the common good.’ ” *Stillings v. City of Winston-Salem*, 311 N.C. 689, 697, 319 S.E.2d 233, 239 (1984) (quoting *Penn Cent. Transp. Co. v. N.Y.C.*, 438 U.S. 104, 124, 98 S. Ct. 2646, 2659, 57 L. Ed. 2d 631, 648 (1978)). Thus, “[i]f in exercising its power to open or improve streets or to make drains or sewers [a municipality] . . . commit[s] a trespass or take[s] possession of private property without complying with the charter or statute, the [municipality] is liable” *Tate v. City of Greensborough*, 114 N.C. 392, 416, 19 S.E. 767, 774 (1894) (citation omitted). For example, a taking may occur if a city’s decision to elevate water levels in a lake encroaches on and submerges a landowner’s property. *See Wilkie v. City of Boiling Spring Lakes*, 370 N.C. 540, 540–42, 550, 552, 809 S.E.2d 853, 854–55, 860–62 (2018).

Here, the Town did not physically intrude on Defendant’s property. *See Stillings*, 311 N.C. at 697, 319 S.E.2d at 239. Indeed, the Town never encroached on Defendant’s land, *see Wilkie*, 370 N.C. at 542, 550–52, 809 S.E.2d at 854–55, 860–62, despite its memorandum of action that stated its construction easement would permit access “in over and through” Defendant’s property, *see Tate*, 114 N.C. at 416, 19 S.E. at 774; *Jay Butmataji, LLC*, 260 N.C. App. at 521, 818 S.E.2d at 176. Rather, by implementing a construction project along a public road, the Town only infringed on

Defendant's access, use and enjoyment of his property. *See Stillings*, 311 N.C. at 697, 319 S.E.2d at 239.

D. Access

"[T]he sovereign may restrict the right of entrance to reasonable and proper points." *Nuckles*, 271 N.C. at 21, 155 S.E.2d at 788 (quoting *State Highway Comm'n v. Raleigh Farmers Market, Inc.*, 263 N.C. 622, 625, 139 S.E.2d 904, 906 (1965)). "But . . . when all direct access has been eliminated, there has been *pro tanto* a taking; the availability and reasonableness of any other access go[] to the question of damages and not to the question of liability for the denial of access." *Dep't of Transp. v. Harkey*, 308 N.C. 148, 155, 301 S.E.2d 64, 69 (1983).

Here, the Town did not take Defendant's property by restricting his and his potential renters' access. *See Long*, 306 N.C. at 199, 293 S.E.2d at 109; *Nuckles*, 271 N.C. at 21, 155 S.E.2d at 788. Defendant could still reach his property, albeit less conveniently, by police escort. *See Nuckles*, 271 N.C. at 21, 155 S.E.2d at 788. Thus, the Town did not eliminate direct access, and its actions did not constitute a taking. *See Harkey*, 308 N.C. at 155, 301 S.E.2d at 69.

Moreover, the Town's decision to temporarily limit Defendant's access to his property promoted the health and safety of landowners and renters alike. *See Kirby*, 368 N.C. at 854, 786 S.E.2d at 924. In doing so, the Town protected the public from potential injury caused by fractured streets during construction and future injury caused by failing infrastructure. *See id.* at 854, 786 S.E.2d at 924. The project's

limitation on Defendant's access to his property, therefore, was a valid exercise of the Town's police power. *See Responsible Citizens*, 308 N.C. at 265, 302 S.E.2d at 211.

E. Use

"The term 'property' not only refers to 'the thing possessed,' but also includes 'every aspect of right and interest capable of being enjoyed as such upon which it is practicable to place a money value.'" *Beroth Oil Co.*, 367 N.C. at 341, 757 S.E.2d at 473 (quoting *Long*, 306 N.C. at 201, 293 S.E.2d at 110). But "not every damage to private property by the government is subject to compensation." *Stillings*, 311 N.C. at 698, 319 S.E.2d at 239. "[T]here must be a substantial interference with the use and enjoyment of the land, not merely incidental damage, before a taking results." *Long*, 306 N.C. at 200, 293 S.E.2d at 110 (citation omitted). As such, the interference must "reduce the market value of the property[.]" *Id.* at 200, 293 S.E.2d at 110.

Moreover, "[t]he establishment and maintenance of a sewer [and water] system by a [town] is ordinarily regarded as an exercise of its police power.'" *Covington v. City of Rockingham*, 266 N.C. 507, 512, 146 S.E.2d 420, 424 (1966) (quoting *Patterson v. City of Chattanooga*, 192 Tenn. 267, 275, 241 S.W.2d 291, 294 (1951)). Indeed, municipalities that provide water services have a duty to provide equal water services to consumers within city limits. *See Fulghum v. Town of Selma*, 238 N.C. 100, 105, 76 S.E.2d 368, 371 (1953). Yet, unreasonably failing to repair those systems may result in liability for towns. *See, e.g., Mosseller v. City of Asheville*, 267 N.C. 104, 107, 147 S.E.2d 558, 561 (1966) (noting that a municipality can be held

liable for negligently failing to repair or cut off a water line); *Lea Co. v. N.C. Bd. of Transp.*, 308 N.C. 603, 616–18, 304 S.E.2d 164, 174–75 (1983) (concluding that a governmental entity could be liable for failing to prevent a reasonably foreseeable flood).

Under this particular set of facts, where the Town elected to proactively conduct necessary water and sewer line repairs and infrastructure improvements during the offseason in a manner that mitigated the disruption to affected residents, it lawfully exercised its police power. *See, e.g., Long*, 306 N.C. at 200, 293 S.E.2d at 110 (The “social utility” of infrastructure projects, like airports, “must be balanced against the inconvenience, annoyance, and aggravation to those in their vicinity.”); *Responsible Citizens*, 308 N.C. at 265, 302 S.E.2d at 211 (governmental actions to prevent flooding that affect landowners can be a valid exercise of police power).

Here, the Town’s decision to temporarily interrupt water and sewer services did not constitute a compensable taking. *See Long*, 306 N.C. at 199, 293 S.E.2d at 109. The Town had a duty to maintain the water and sewer lines in good working order for the health and safety of its residents and visitors. *See Fulghum*, 238 N.C. at 105, 76 S.E.2d at 371; *Kirby*, 368 N.C. at 854, 786 S.E.2d at 924. In fact, it may have been liable for damages had it not done so. *See Lea Co.*, 308 N.C. at 616, 304 S.E.2d at 174.

Moreover, the Town minimized disruptions posed by necessary repairs of the water and sewer lines to the extent possible by conducting the project over a six-

month period during the off-season. *See Long*, 306 N.C. at 200, 293 S.E.2d at 110. This interference was minimal compared to the disruption that might have occurred had the Town instituted a piecemeal construction plan, which would have taken longer, impacting the skiing season and beyond. *See id.* at 200, 293 S.E.2d at 110. Thus, the Town's selection of the six-month project, notwithstanding its downsides, was a reasonable and lawful exercise of its police powers. *See Stillings*, 311 N.C. at 697, 319 S.E.2d at 239.

Indeed, the Town had good reason to conduct the repairs to the roads and utilities for the protection of the public, *see Kirby*, 368 N.C. at 854, 786 S.E.2d at 924, despite the temporary disruption to Defendant's use and enjoyment of his property, *see Long*, 306 N.C. at 200, 293 S.E.2d at 110. By doing so efficiently and during the off-season, the Town minimized its interference with Defendant's property rights to the extent possible. *See id.* at 200, 293 S.E.2d at 110; *Stillings*, 311 N.C. at 697, 319 S.E.2d at 239.

Under the specific facts of this case, *see Beroth Oil Co.*, 367 N.C. at 342, 757 S.E.2d at 473, we hold the Town properly exercised its police power, despite temporarily interfering with Defendant's use of his property, *see Responsible Citizens*, 308 N.C. at 265, 302 S.E.2d at 211. The trial court, therefore, erred in concluding that a compensable taking occurred. *See Long*, 306 N.C. at 199, 293 S.E.2d at 109.

V. Conclusion

In sum, we deny Defendant's PWC and dismiss his cross-appeal because it does

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not affect a substantial right. Because the Town's interlocutory appeal does affect a substantial right, we have jurisdiction to review it. After careful review, we conclude that the trial court erred in finding that a compensable taking occurred because the Town reasonably exercised its police powers by mitigating the disruption to property owners and residents of a seasonal resort community through its six-month implementation of a comprehensive infrastructure project during the off-season without fully depriving residents of access or the use and enjoyment of their properties. This short-term interference with access and use, which was mitigated to the extent possible, produced a long-term gain that did not interfere with peak season and was a reasonable and permissible exercise of the Town's police powers.

While access limitations and utility interruptions impacted the off-season rental value of Skiloft properties during the six-month project, alternatives would have taken longer and likely cost the taxpayers more. Accordingly, the Town lawfully exercised its police powers by proactively conducting necessary repairs and updates to its public infrastructure, preventing injury to the public and enhancing the use and enjoyment available to residents, guests, and renters alike. We therefore reverse and remand with instructions to enter judgment for the Town on a declaration that no compensable taking occurred.

REVERSED.

Judges WOOD and STADING concur.