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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA25-744

Filed 19 August 2026

Avery County, No. 24CVS000078-050

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

v.

IAN GOLDSTEIN and COLLEEN GOLDSTEIN, 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; and Miller & Johnson, PLLC, by Nathan A. Miller for Plaintiff-Appellant.

The Odom Firm, PLLC, by Thomas L. Odom Jr., for Defendants-Cross-Appellants.

CARPENTER, Judge.

The Town of Beech Mountain (the “Town”) appeals, and Ian and Colleen Goldstein (collectively, “Defendants”) cross-appeal from an order entered 6 February 2025. In the order, the trial court denied the Town’s motion for declaratory judgment, granted Defendants’ motion for judgment on the pleadings, granted the Town’s

motion for a protective order, and denied Defendants’ motion to compel. On appeal, the Town argues that the trial court erred by concluding that a taking had occurred. On cross-appeal, Defendants, by way of petition for writ of certiorari (“PWC”), argue 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 Defendants, was just compensation for the taking. On 23 December 2024, Defendants requested documents related to the closed sessions of the Town Council and afterward filed a motion to compel. Defendants 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 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” Defendants’ 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. Defendants, 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 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 Defendants’ 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. Defendants requested production of the closed session meeting minutes, but the Town invoked attorney-client privilege. Defendants 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 Defendants should receive just compensation for “the lost rental value” of his property. It denied the Town’s motion for declaratory judgment, granted Defendants’ motion for judgment on the pleadings, denied Defendants’ 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, Defendants filed an untimely notice of cross-appeal. On 13 November 2025, the Town filed a motion to dismiss Defendants’ cross-appeal, asserting that it does not affect a substantial right. On 10 December 2025, Defendants filed a PWC.

II. Analysis

For the reasons set forth in *Town of Beech Mountain v. Rigsbee*, No. 25-742, ___ N.C. App. ___, ___ S.E.2d ___ (2026), filed contemporaneously with this opinion, we deny Defendants’ PWC and dismiss their cross-appeal, and we conclude that the

TOWN OF BEECH MOUNTAIN V. GOLDSTEIN

Opinion of the Court

trial court erred in finding that a compensable taking occurred. Under this particular set of facts, the Town lawfully 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. *See id.* 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.

Report per Rule 30(e).