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STATE OF NORTH CAROLINA COUNTY OF WAKE	GENERAL COURT OF JUSTICE SUPERIOR COURT DIVISION CIVIL ACTION 20 CvS 6521
	2023 JAN -3 PM 4:18 WAKE CO., C.S.C. Scg
DEPARTMENT OF TRANSPORTATION, Plaintiff, v. GARY ROLLIN PRIOR, Defendant.	ORDER ON DEFENDANT'S MOTION PURSUANT TO N.C. GEN. STAT. § 136-108

This matter came before the Court to be heard by the presiding judge on Defendant's Motion for a determination of the nature and extent of the interest the North Carolina Department of Transportation (hereinafter "DOT") acquired in the Permanent Utility Easement ("PUE") taken by DOT pursuant to N.C. Gen. Stat. § 136-108. All Parties were represented by Counsel of record at the hearing. This Court, upon review of the record, the submitted affidavit, Court Plat, maps, Rule 30(b)(6) deposition, memoranda of law, oral argument, evidence, and law, rules as follows:

FINDINGS OF FACT

1. Gary Rollin Prior is the owner of property located at 1122 Jones Franklin Road, Raleigh, North Carolina, which is the subject of this action (hereinafter "Prior property)."
2. On June 8, 2020, DOT filed its Complaint, Declaration of Taking, and Notice of Deposit (collectively hereinafter "Complaint") related to the Prior property.
3. June 8 2020 is the date of the taking of the Prior property (hereinafter "condemnation").
4. The Declaration of Taking in the Complaint (Exhibit B) reads as follows:

[t]hat the said interest and area as described in said Exhibit 'B' are hereby appropriated and the said interest and area, together with the right to immediate possession thereof, are hereby vested in the plaintiff, Department of Transportation.
5. DOT acquired certain portions of the Prior property for right of way in fee simple and other

portions of the Prior property were encumbered through easements. Of the interests at issue, only one is the subject of the motion before the Court. That is a 7,046 square foot (0.162 acre) Permanent Utility Easement (“PUE”) that stretches along the Prior property’s entire 260 feet of frontage on Jones Franklin Road.

6. The PUE is further described as follows in Exhibit B to the DOT Complaint:

A permanent utility easement for all purposes for which the plaintiff is authorized by law to subject the same. Said utility easement in perpetuity is for the installation and maintenance of utilities, and for all purposes for which the Department of Transportation is authorized by law to subject same. The Department of Transportation and its agents or assigns shall have the right to construct and maintain in a proper manner in, upon and through said premises a utility line or lines with all necessary pipes, poles and appurtenances, together with the right at all times to enter said premises for the purpose of inspecting said utility lines and making all necessary repairs and alterations thereon; together with the right to cut away and keep clear of said utility lines, all trees and other obstructions that may in any way endanger or interfere with the proper maintenance and operation of the same with the right at all times of ingress, egress and regress. The Department of Transportation shall have the right to construct and maintain the cut and/or fill slopes in the above-described permanent utility easement area(s). The permanent utility easement shall be used by the Department of Transportation for additional working area during the above-described project. The underlying fee owner retains the right to continue to use the permanent utility easement area(s) in any manner and for any purpose, including, but not limited to, access and parking, which is not inconsistent with the reasonable use and enjoyment of the easements by the Department of Transportation, its successors and assigns. (emphasis added)

7. The PUE is broad and open-ended as to both time and scope.
8. DOT is responsible for the wording of the PUE in its Complaint related to the Prior property.
9. The PUE gives the DOT the right and power to use the easement, now and in perpetuity, and to place the following items above, below, or on the ground in the Prior property PUE

area condemned:

- a. power lines;
- b. power poles;
- c. underground conduits with copper;
- d. fiber optic lines;
- e. gas lines;
- f. water lines;
- g. sewer lines;
- h. telegraph lines;
- i. telephone lines;
- j. distributed antenna systems;
- k. small cell transmitter structures;
- l. broadband communication lines;
- m. oil pipelines;
- n. electric lines;
- o. gas piping;
- p. wireless facilities;
- q. sign boards;
- r. fences;
- s. sewer manholes;
- t. gas blow off sites;
- u. gas valve stations;
- v. pig launchers;

- w. SLK sites (an area of land containing multiple cabinets of telecommunication equipment); and,
 - x. such other items as may be approved in the future for placement on, under, or over the PUE by the Legislature pursuant to N.C. Gen Stat. §§ 136-18(2)(c), 18(10) and 19(e).
10. The permanent utility easement taken is so broad as to include all legally authorized uses in a manner that would completely eliminate Mr. Prior's free access to and use of the easement area.
11. The DOT took the Prior property PUE "in perpetuity". That is forever, and for eternity.
12. Before the condemnation, the Prior property had direct access to Jones Franklin Road. In addition, along its rear border, the Prior property had direct access to Vick Charles Drive; a short and narrow one lane, dead end, residential road.
13. The PUE taken gives the DOT and/or its assignees the right to place new utilities and other items in the PUE in the future without consulting Prior and without obtaining his consent.
14. The PUE taken by DOT extends for 260 feet across the entire frontage of the Prior property along Jones Franklin Road..
15. The PUE taken by DOT, when fully exercised, prevents Prior from using Jones Franklin Road to access the Prior property.
16. Prior's motion of October 28, 2022, requested that this Court determine the nature and extent of the permanent utility easement ("PUE") taken by DOT in the Complaint.
17. The active controversy between DOT and Prior concerns the nature and extent of the interest DOT has acquired in the PUE.

CONCLUSIONS OF LAW

1. This Court has jurisdiction over the parties and subject matter of this lawsuit.
2. This matter is properly before the Court pursuant to N.C. Gen. Stat. § 136-108.
3. Just compensation in condemnation cases is a fundamental right under both the United States and North Carolina Constitutions.
4. The compensation must be full, complete, and include everything which affects the value of the entirety of the affected parcel of land.
5. Property ownership encompasses every aspect of right and interest capable of being enjoyed and includes not only the thing possessed but the rights of the owner to the land – those rights include the right to possess, use, enjoy, and dispose of the land, and the corresponding right to exclude others from its use.
6. DOT is required to compensate landowners for all property rights taken by condemnation.
7. Compensation for private property taken for public use must be determined on the basis of the rights acquired by the condemnor at the time of taking, and not on the basis of the condemnor's subsequent exercise of its rights.
8. Prior is entitled to compensation not only for the value of the land and property rights taken, but also for the damages thereby caused to the remainder of the land.
9. The law presumes that the condemnor, here DOT, will exercise its rights, and use and enjoy the property taken, to the full extent.
10. Since the condemnor acquires the complete right to occupy and use the entire surface of the part of the land covered by the perpetual easement for all time to the exclusion of the landowner, the bare fee remaining in the landowner is, for all practical purposes, of no value, and the value of the perpetual easement acquired by the condemnor is virtually the same as the value of the land embraced by it.

11. North Carolina law requires just compensation to be determined as of the date the property is taken.
12. North Carolina General Statutes § 136-19(e), § 136-18(2)(c), and § 136-18(10) empower DOT to use the PUE, now and in perpetuity, to place any of the items listed in paragraph 9 of the Findings of Fact on the Prior property. In addition, DOT is further empowered to add any other items that the General Assembly may authorize in the future to the PUE, and that includes complete physical occupancy above and below ground.
13. The nature and extent of the easement rights taken by DOT in the PUE are determined by the actual language within the four corners of Exhibit B of the Complaint.
14. Any input by any utility company in the wording of the interest and estate taken as written in the Complaint is irrelevant to this proceeding.
15. Although DOT urges that this Court take a more liberal interpretation of the PUE, an interpretation that considers that the DOT does not, at the present, intend to further burden the PUE, the DOT's argument meets with neither the law nor the language of the PUE in the Complaint.
16. This Court must give full deference to the language in the Complaint, and not what the DOT would like for the words to have been.
17. As fully exercised, the PUE taken prevents Prior from accessing the Prior property via Jones Franklin Road.
18. For eternity, there is no restriction on where DOT or its assignees can put items in the PUE. DOT can put structures above and below ground throughout the PUE along the entirety of Jones Franklin Road.
19. DOT and/or its assignees have the right to deny access to, or use of, the PUE to Prior in

perpetuity.

20. DOT acquired the right to occupy and use the entire surface, sub-surface, and airspace above the Prior property covered by the PUE, in perpetuity, to the exclusion of Prior.
21. Any use that Prior may make of any part of the land embraced by the PUE is necessarily permissive in nature and cannot be considered in diminution of compensation because it may be terminated by the DOT at any time.
22. The law requires that DOT compensate Prior for the full nature and extent of the rights that it has acquired in the PUE, in perpetuity, and for the impact that the perpetual PUE across the front of the Prior property has on both the land subject to the easement and the remainder of the Prior property.
23. Whether or not DOT fully utilizes all the rights it has condemned over the Prior property in perpetuity is not at issue. Instead, the law requires that the Court determines the extent of the condemnation of the property as if DOT will fully utilize all the rights it has condemned over the Prior property in perpetuity.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

1. The nature and extent of the PUE easement rights taken by DOT via the Complaint filed on June 8, 2020, are so permanent, broad, and extensive that the DOT has the right to use, enjoy, and occupy the entirety of the easement area taken; including to the exclusion of Mr. Prior in perpetuity.
2. In determining just compensation for the property taken from Mr. Prior on June 8, 2020, this Court, the jury, and all parties shall presume that the DOT will fully and forever exercise all interests and rights it has taken from Mr. Prior by completely using, enjoying, and occupying the easement, on, above and below the ground, to the exclusion of the Mr.

Prior.

3. As a result of this taking on June 8, 2020, all of the items listed in paragraph 9 of the Findings of Fact, and any future items that become legally authorized, may be put into the PUE by the DOT or their assigns without any consultation with or consent of Mr. Prior.
4. Determining the nature and extent of the interest taken requires consideration of the fully exercised rights acquired by the language of the Complaint, and not what the DOT intends to do with the property.
5. In interpretation, review, or enforcement of this Order, if a Finding of Fact is misidentified herein as a Conclusion of Law or a Conclusion of Law is misidentified as a Finding of Fact, then said item shall be deemed to be that which it should be.

This the 22 day of December, 2022.



THE HONORABLE A. Graham Skibey
SUPERIOR COURT JUDGE PRESIDING