

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H

1

HOUSE BILL 1238

Short Title: Condemnation Law Modified.

(Public)

Sponsors: Representative Nesbitt.

Referred to: Judiciary I.

April 15, 1999

A BILL TO BE ENTITLED

AN ACT TO AMEND THE GENERAL STATUTES RELATING TO CONDEMNATION PROCEEDINGS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 40A-8 is amended by adding a new subsection to read:

"(d) In addition to the other costs allowed under this Chapter, in any action brought under Article 2 or Article 3 of this Chapter in which the judgment, including a consent judgment, awarded to the owner exceeds the amount of the commissioners' report under G.S. 40A-27 or the deposit under G.S. 40A-41 by at least seven hundred dollars (\$700.00) and at least twenty percent (20%), the court with jurisdiction over the action may, after making appropriate findings of fact, award each owner of the condemned property a sum that, in the opinion of the court based upon its findings of fact, will reimburse the owner for reasonable costs, disbursements, and expenses, including reasonable attorneys', appraisal, and engineering fees, in such amounts as the court shall in its discretion determine and allow."

Section 2. G.S. 136-119 reads as rewritten:

"§ 136-119. Costs and appeal.

(a) The Department of Transportation shall pay all court costs taxed by the court. Either party shall have a right of appeal to the Supreme Court for errors of law committed

1 in any proceedings provided for in this Article in the same manner as in any other civil
2 actions and it shall not be necessary that an appeal bond be posted.

3 The court having jurisdiction of the condemnation action instituted by the Department
4 of Transportation to acquire real property by condemnation shall award the owner of any
5 right, or title to, or interest in, such real property such sum as will in the opinion of the
6 court reimburse such owner for his reasonable cost, disbursements, and expenses,
7 including reasonable attorney fees, appraisal, and engineering fees, actually incurred
8 because of the condemnation proceedings, if (i) the final judgment is that the Department
9 of Transportation cannot acquire real property by condemnation; or (ii) the proceeding is
10 abandoned by the Department of Transportation.

11 The judge rendering a judgment for the plaintiff in a proceeding brought under G.S.
12 136-111 awarding compensation for the taking of property, shall determine and award or
13 allow to such plaintiff, as a part of such judgment, such sum as will in the opinion of the
14 judge reimburse such plaintiff for his reasonable cost, disbursements and expenses,
15 including reasonable attorney, appraisal, and engineering fees, actually incurred because
16 of such proceeding.

17 (b) In addition to the other costs allowed under this Article, in any action brought
18 under this Article in which the judgment, including a consent judgment, awarded to the
19 owner exceeds the amount of the deposit under G.S. 136-103 by at least seven hundred
20 dollars (\$700.00) and at least twenty percent (20%), the court with jurisdiction over the
21 action may, after making appropriate findings of fact, award each owner of the
22 condemned property a sum that, in the opinion of the court based upon its findings of
23 fact, will reimburse the owner for reasonable costs, disbursements, and expenses,
24 including reasonable attorneys', appraisal, and engineering fees, in such amounts as the
25 court shall in its discretion determine and allow."

26 Section 3. G.S. 40A-64 reads as rewritten:

27 **"§ 40A-64. Compensation for taking.**

28 (a) Except as provided in ~~subsection (b)~~, ~~subsections (b) and (d)~~, the measure of
29 compensation for a taking of property is its fair market value.

30 (b) If there is a taking of less than the entire tract, the measure of compensation is
31 the greater of either (i) the amount by which the fair market value of the entire tract
32 immediately before the taking exceeds the fair market value of the remainder
33 immediately after the taking; or (ii) the fair market value of the property taken.

34 If the condemnor takes or restricts reasonable access to the remaining property during
35 the construction of the project, or otherwise reasonably disrupts the use of the remaining
36 property during construction, those are separately compensable elements of damage.

37 (c) If the owner is to be allowed to remove any timber, building or other
38 permanent improvement of fixtures from the property, the value thereof shall not be
39 included in the compensation award, but the cost of removal shall be considered as an
40 element to be compensated.

41 (d) Damages suffered by a property owner due to a condemnor's announcement of
42 plans to condemn in advance of a condemnation are recoverable as a separately
43 compensable element of damages."

1 Section 4. G.S. 136-112 reads as rewritten:

2 **"§ 136-112. Measure of damages.**

3 (a) The following shall be the measure of damages to be followed by the
4 commissioners, jury or judge who determines the issue of damages:

- 5 (1) Where only a part of a tract is taken, the measure of damages for said
6 taking shall be ~~the difference between the fair market value of the entire~~
7 ~~tract immediately prior to said taking and the fair market value of the~~
8 ~~remainder immediately after said taking, with consideration being given~~
9 ~~to any special or general benefits resulting from the utilization of the~~
10 ~~part taken for highway purposes.~~ the greater of either (i) the amount by
11 which the fair market value of the entire tract immediately before the
12 taking exceeds the fair market value of the remainder immediately after
13 the taking; or (ii) the fair market value of the property taken.

14 If the condemnor takes or restricts reasonable access to the
15 remaining property during the construction of the project, or otherwise
16 reasonably disrupts the use of the remaining property during
17 construction, those are separately compensable elements of damage.

- 18 (2) Where the entire tract is taken the measure of damages for said taking
19 shall be the fair market value of the property at the time of taking.

20 (b) Damages suffered by a property owner due to a condemnor's announcement of
21 plans to condemn in advance of a condemnation are recoverable as a separately
22 compensable element of damages."

23 Section 5. Chapter 40A of the General Statutes is amended by adding a new
24 section to read:

25 **"§ 40A-64.1. Evidence of fair market value.**

26 (a) If the property taken is suitable for development as a subdivided commercial
27 property or a residential subdivision, as shown by competent expert evidence of a
28 qualified land planner, engineer, or architect, evidence of value of the amount that a
29 willing buyer would pay and a willing seller would accept, based on the reasonable price
30 of the subdivided property less the cost of development, including the cost of
31 infrastructure, developer's profit, and time over which the property could reasonably be
32 sold, is competent evidence in determining the fair market value of the property.

33 (b) The price paid by the condemnor for other comparable properties by settlement
34 of condemnation actions or in an arms-length transaction is competent evidence of value.
35 Evidence of judgments in condemnation actions for other comparable properties is not
36 competent evidence of value."

37 Section 6. Chapter 136 of the General Statutes is amended by adding a new
38 section to read:

39 **"§ 136-112.1. Evidence of fair market value.**

40 (a) If the property taken is suitable for development as a subdivided commercial
41 property or a residential subdivision, as shown by competent expert evidence of a
42 qualified land planner, engineer, or architect, evidence of value of the amount that a
43 willing buyer would pay and a willing seller accept, based on the reasonable price of the

1 subdivided property less the cost of development, including the cost of infrastructure,
2 developer's profit, and time over which the property could reasonably be sold, is
3 competent evidence in determining the fair market value of the property.

4 (b) The price paid by the condemnor for other comparable properties by settlement
5 of condemnation actions or in an arms-length transaction is competent evidence of value.
6 Evidence of judgments in condemnation actions for other comparable properties is not
7 competent evidence of value."

8 Section 7. G.S. 40A-41 reads as rewritten:

9 "**§ 40A-41. Institution of action and deposit.**

10 A public condemnor listed in G.S. 40A-3(b) or (c) shall institute a civil action to
11 condemn property by filing in the superior court of any county in which the land is
12 located a complaint containing a declaration of taking declaring that property therein is
13 thereby taken for the use of the condemnor.

14 The complaint shall contain or have attached thereto the following:

- 15 (1) A statement of the authority under which and the public use for which
16 the property is ~~taken;~~ taken.
- 17 (2) A description of the entire tract or tracts of land affected by the taking
18 sufficient for the identification ~~thereof;~~ thereof.
- 19 (3) A statement of the property taken and a description of the area taken
20 sufficient for the identification ~~thereof;~~ thereof.
- 21 (4) The names and addresses of those persons who the condemnor is
22 informed and believes may be or, claim to be, owners of the property so
23 far as the same can by reasonable diligence be ascertained, and if any
24 such persons are infants, incompetents, inebriates or under any other
25 disability, or their whereabouts or names unknown, it must be so ~~stated;~~
26 stated.
- 27 (5) A statement of the sum of money estimated by the condemnor to be just
28 compensation for the ~~taking; and~~ taking.
- 29 (6) A statement as to whether the owner will be permitted to remove all or a
30 specified portion of any timber, buildings, structures, permanent
31 improvements, or fixtures situated on or affixed to the property.
- 32 (7) A statement as to such liens or other encumbrances as the condemnor is
33 informed and believes are encumbrances upon the property and can by
34 reasonable diligence be ascertained.
- 35 (7a) A statement of the basis for the condemnor's estimate of just
36 compensation upon which the deposit of the sum of money estimated by
37 the condemnor to be just compensation for the taking is based. This
38 statement shall include the identity of the persons making the estimate,
39 the methods and data used to make the estimate, and copies of all
40 appraisals on which the estimate is based.
- 41 (8) A prayer that there be a determination of just compensation in
42 accordance with the provisions of this Article.

1 The filing of the complaint shall be accompanied by the deposit to the use of the owner of
2 the sum of money estimated by the condemnor to be just compensation for the taking.
3 Upon the filing of the complaint and the deposit of said sum, summons shall be issued to
4 each owner of the property. The summons, together with a copy of the complaint and
5 notice of the deposit shall be served upon the person named therein in the manner
6 provided for the service of process under the provisions of G.S. 1A-1, Rule 4. The
7 condemnor may amend the complaint and may increase the amount of its deposit with the
8 court at any time while the proceeding is pending, and the owner shall have the same
9 rights of withdrawal of this additional amount as set forth in G.S. 40A-44 of this
10 Chapter."

11 Section 8. G.S. 136-103 reads as rewritten:

12 **"§ 136-103. Institution of action and deposit.**

13 (a) In case condemnation shall become necessary the Department of
14 Transportation shall institute a civil action by filing in the superior court of any county in
15 which the land is located a complaint and a declaration of taking declaring that such land,
16 easement, or interest therein is thereby taken for the use of the Department of
17 Transportation.

18 (b) Said declaration shall contain or have attached thereto the following:

- 19 (1) A statement of the authority under which and the public use for which
20 said land is taken.
- 21 (2) A description of the entire tract or tracts affected by said taking
22 sufficient for the identification thereof.
- 23 (3) A statement of the estate or interest in said land taken for public use and
24 a description of the area taken sufficient for the identification thereof.
- 25 (4) The names and addresses of those persons who the Department of
26 Transportation is informed and believes may have or claim to have an
27 interest in said lands, so far as the same can be ascertained by reasonable diligence
28 ascertained and if any such persons are infants, non compos mentis,
29 under any other disability, or their whereabouts or names unknown, it
30 must be so stated.
- 31 (5) A statement of the sum of money estimated by said Department of
32 Transportation to be just compensation for said taking.

33 (c) Said complaint shall contain or have attached thereto the following:

- 34 (1) A statement of the authority under which and the public use for which
35 said land is taken.
- 36 (2) A description of the entire tract or tracts affected by said taking
37 sufficient for the identification thereof.
- 38 (3) A statement of the estate or interest in said land taken for public use and
39 a description of the area taken sufficient for the identification thereof.
- 40 (4) The names and addresses of those persons who the Department of
41 Transportation is informed and believes may have or claim to have an
42 interest in said lands, so far as the same can be ascertained by reasonable diligence
43 ascertained and if any such persons are infants, non compos mentis,

1 under any other disability, or their whereabouts or names unknown, it
2 must be so stated.

3 (5) A statement as to such liens or other encumbrances as the Department
4 of Transportation is informed and believes are encumbrances upon said
5 real estate and can by reasonable diligence be ascertained.

6 (5a) A statement of the basis for the condemnor's estimate of just
7 compensation upon which the deposit of the sum of money estimated by
8 the condemnor to be just compensation for the taking is based. This
9 statement shall include the identity of the persons making the estimate,
10 the methods and data used to make the estimate, and copies of all
11 appraisals on which the estimate is based.

12 (6) A prayer that there be a determination of just compensation in
13 accordance with the provisions of this Article.

14 (d) The filing of said complaint and said declaration of taking shall be
15 accompanied by the deposit of the sum of money estimated by said Department of
16 Transportation to be just compensation for said taking and upon the filing of said
17 complaint and said declaration of taking and deposit of said sum, summons shall be
18 issued and together with a copy of said complaint and said declaration of taking and
19 notice of the deposit be served upon the person named therein in the manner now
20 provided for the service of process in civil actions. The Department of Transportation
21 may amend the complaint and declaration of taking and may increase the amount of its
22 deposit with the court at any time while the proceeding is pending, and the owner shall
23 have the same rights of withdrawal of this additional amount as set forth in G.S. 136-105
24 of this Chapter."

25 Section 9. This act becomes effective October 1, 1999, and applies to actions
26 commenced on or after that date.