

Article 4.

Just Compensation.

§ 40A-62. Application.

The principles set down in this Article shall govern the determination of compensation to be awarded to the owner by the condemnor for the taking of his property. (1981, c. 919, s. 1.)

§ 40A-63. In general.

The determination of the amount of compensation shall reflect the value of the property immediately prior to the filing of the petition under G.S. 40A-20 or the complaint under G.S. 40A-41 and except as provided in the following sections shall not reflect an increase or decrease due to the condemnation. The day of the filing of a petition or complaint shall be the date of valuation of the interest taken. (1981, c. 919, s. 1.)

§ 40A-64. Compensation for taking.

(a) Except as provided in subsection (b), the measure of compensation for a taking of property is its fair market value.

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

(c) If the owner is to be allowed to remove any timber, building or other permanent improvement, or fixtures from the property, the value thereof shall not be included in the compensation award, but the cost of removal shall be considered as an element to be compensated. (1981, c. 919, s. 1; 2001-487, s. 17.)

§ 40A-65. Effect of condemnation procedure on value.

(a) The value of the property taken, or of the entire tract if there is a partial taking, does not include an increase or decrease in value before the date of valuation that is caused by (i) the proposed improvement or project for which the property is taken; (ii) the reasonable likelihood that the property would be acquired for that improvement or project; or (iii) the condemnation proceeding in which the property is taken.

(b) If before completion the project is expanded or changed to require the taking of additional property, the fair market value of the additional property does not include a decrease in value before the date of valuation caused by any of the factors described in subsection (a), but does include an increase in value before the date on which it became reasonably likely that the expansion or change of the project would occur, if the increase is caused by any of the factors described in subsection (a).

(c) Notwithstanding subsections (a) and (b), a decrease in value before the date of valuation which is caused by physical deterioration of the property within the reasonable control of the property owner, and by his unjustified neglect, may be considered in determining value. (1981, c. 919, s. 1.)

§ 40A-66. Compensation to reflect project as planned.

(a) If there is a taking of less than the entire tract, the value of the remainder on the valuation date shall reflect increases or decreases in value caused by the proposed project including any work to be performed under an agreement between the parties.

(b) The value of the remainder, as of the date of valuation, shall reflect the time the damage or benefit caused by the proposed improvement or project will be actually realized. (1981, c. 919, s. 1.)

§ 40A-67. Entire tract.

For the purpose of determining compensation under this Article, all contiguous tracts of land that are in the same ownership and are being used as an integrated economic unit shall be treated as if the combined tracts constitute a single tract. (1981, c. 919, s. 1.)

§ 40A-68. Acquisition of property subject to lien.

Notwithstanding the provisions of an agreement, if any, relating to a lien encumbering the property:

- (1) If there is a partial taking, the lienholder may share in the amount of compensation awarded only to the extent determined by the commissioners or by the jury or by the judge to be necessary to prevent an impairment of his security, and the lien shall continue upon the part of the property not taken as security for the unpaid portion of the indebtedness until it is paid; and
- (2) Neither the condemnor nor owner is liable to the lienholder for any penalty for prepayment of the debt secured by the lien, and the amount awarded by the judgment to the lienholder shall not include any penalty therefor. (1981, c. 919, s. 1.)

§ 40A-69. Property subject to life tenancy.

If the property taken is subject to a life tenancy, the commissioners, the jury, or the judge may include in the judgment a requirement that:

- (1) The award be apportioned and distributed on the basis of the respective values of the interests of the life tenant and remainderman;
- (2) The compensation be used to purchase comparable property to be held subject to the life tenancy;
- (3) The compensation be held in trust and administered subject to the terms of the instrument that created the life tenancy; or
- (4) Any other equitable arrangement be carried out. (1981, c. 919, s. 1.)