

City Atty's Box 5

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Filed 2-29-96
H & C



NORTH CAROLINA)
FORSYTH COUNTY)

PRESENTED FOR
REGISTRATION
AND REIN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
94 CVS 1587

'96 MAR -5 P2:03

CITY OF WINSTON-SALEM,

Plaintiff,

v.

SWAIM COURT HOMEOWNERS
ASSOCIATION,

Defendant.

CITY OF WINSTON-SALEM,

Third-Party Plaintiff,

v.

H & C UTILITIES, INC.,

Third-Party Defendant.

1610
10/10/96
CONSENT JUDGMENT

BK1890 P1536

THIS CAUSE, coming on to be heard before the undersigned Superior Court Judge, it having been stipulated by the parties and the Court finding as a fact the following:

1. This action was duly instituted on the 4th day of March, 1994, by the issuance of summons and the filing of a Complaint and Declaration of Taking and Notice of Deposit, along with the deposit of \$1,380.00, the sum estimated by the Plaintiff to be just compensation for the taking of the property of the Defendant.

2. Summons, together with a copy of the Complaint and Declaration of Taking and Notice of Deposit, were duly served upon the Defendant as it appears of record.

3. In its Answer to the Complaint, Defendant alleged inverse condemnation claims for the taking of its property in addition to the property described in the Complaint.

4. On January 25, 1996, the Court entered an order in this matter holding that additional property had been taken by the Plaintiff and that Defendant was entitled to compensation from Plaintiff for said taking. The additional property inversely taken by Plaintiff from Defendant is a permanent sanitary sewer easement for the purpose of constructing, reconstructing and maintaining a sanitary sewer line and appurtenances thereto and is coterminous with that "Thirty Foot Access and Utility Easement" as shown on the plat of Swaim Court Townhouses recorded in Plat Book 31, page 105, Forsyth County Registry, and is more particularly described in

Exhibit B attached hereto. H & C Utilities, Third Party Defendant, was granted Summary Judgment on the issue of its liability.

5. All persons having, or claiming to have, an interest in the condemned land are parties hereto and are duly before the Court.

6. The parties have now settled all matters in controversy between them, and as agreed by the parties, the sum of Nineteen Thousand Dollars (\$19,000.00) which sum includes any claim by the Defendants to interest, costs and attorney's fees, is the full and adequate value of, and represents just compensation for, the taking of the Defendant's property.

7. The deposit of \$1,380.00 made by the Plaintiff has not been heretofore disbursed to the Defendant.

ON THE FOREGOING STIPULATIONS, THE COURT CONCLUDES AS A MATTER OF LAW THE FOLLOWING:

1. The Plaintiff was entitled to acquire and did acquire on the 4th day of March, 1994, the property of the Defendant as described in Exhibit A attached hereto.

2. On the 10th day of February, 1994, the Plaintiff did acquire the property of the Defendant as described in Exhibit B attached hereto.

3. These proceedings as it appears from the pleadings are regular in every respect and no just cause has been shown against granting the prayer contained in the Complaint and Declaration of Taking.

4. Defendant is entitled to compensation for the taking of the property described in exhibit B attached hereto.

5. Except as expressly set forth in Paragraph 3 below, the Defendant is not entitled to any further relief from the Plaintiff as a result of the taking.

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED THAT:

1. The Plaintiff, City of Winston-Salem, on the 4th day of March, 1994, by the filing of a Complaint and Declaration of Taking and Notice of Deposit, has condemned and shall be permanently vested with the property, interest or estate, described in said Exhibit "A".

2. The Plaintiff, City of Winston-Salem, on the 10th day of February, 1994, has condemned and shall be permanently vested with the property, interest or estate, described in said Exhibit "B".

3. The Plaintiff shall pay into the Court the additional sum of Seventeen Thousand Six Hundred and Twenty Dollars (\$17,620.00),

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and the total deposit of Nineteen Thousand Dollars (19,000.00) shall be disbursed by the Clerk of Court to the Defendant.

4. A copy of this Judgment shall be certified under seal of the Court to the Register of Deeds of this County, and the Register of Deeds is ordered to record this Judgment among the land records of the County.

5. The Plaintiff and Defendant shall each bear their own costs of this action.

This the 28TH day of FEBRUARY, 1996.

ROBERT J. ROBERTS

Superior Court Judge

CONSENTED TO:

Lynda S. Abramovitz
Attorney for Plaintiff

Richard J. Keshian
Attorney for Defendant

Charles C. Green, Jr.
Charles C. Green, Jr.
Attorney for Plaintiff

Swain Court Homeowners Association

By: Ernest Wolf SECT.

swimcour.ord

EXHIBIT ADESCRIPTION OF PROPERTY AFFECTED

BEGINNING at an iron stake in the eastern right-of-way line of Ebert Street Extension, said iron stake also being in the southwestern corner of R. Durham's property, running thence along the southern line of R. Durham's property south 69° 58' 52" east 227.79 feet to an iron stake; running thence south 34° 58' 49" west 422.46 feet to an iron stake; thence south 23° 44' 49" west 255.57 feet to an iron stake; thence north 55° 12' 14" west 210 feet to an iron stake; thence north 10° 11' 40" west 84.59 feet to an iron stake in the aforementioned right-of-way of Ebert Street Extension; thence along said right-of-way line of Ebert Street Extension north 34° 57' 36" east 556.64 feet to a point and place of BEGINNING. Being a 3.3636 acre tract of land more or less on Ebert Street Extension just north of Swaim Road in Winston Township as surveyed by Danny L. Comer December 23, 1981. Save and except that property known as Lots 1-28 as designated on the Plat of Swaim Court Townhouses recorded in Plat Book 31, page 105, Forsyth County Registry. Also known informally as Tax Block 6154 Lot A Forsyth County Tax Maps.

INTEREST OR ESTATE TAKEN

The City of Winston-Salem will acquire temporary construction and permanent easements as more particularly described in the "Area Taken" for the Pope Road Outfall.

AREA TAKEN

Permanent Easement: 2799.86 square feet
Construction Easement: 1621.79 square feet

The following described being the centerline of a 20-foot permanent easement described as follows:

BEGINNING at a point on the northeast end of an existing 30-foot access and utility easement, said point being south 57 degrees 19 minutes 01 seconds East 104.53 feet from an iron stake, the Grantor's north property corner; thence North 30 degrees 12 minutes 28 seconds East 20.42 feet to a point, a proposed manhole; thence South 73 degrees 54 minutes 08 seconds East 120.58 feet to a point in the western property line of Tax Lot M, Block 6076, said point being South 30 degrees 15 minutes 19 seconds West 10.32 feet from an iron stake, the grantor's northeast property corner. Containing 2799.86 square feet.

Together with a 15-foot construction easement along the south side of the above-described 20-foot permanent easement for the Grantee, its agents or contractors to

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use for the construction of a sanitary sewer line.
Containing 1621.79 square feet.

The above-described easements are crossing Tax Lot A, Tax
Block 6154 of the Forsyth County Tax Records as now
constituted.

The above-described being as shown on Map 8077, dated
July 2, 1993, entitled "Pope Road Outfall" prepared by
the Engineering Division of the City of Winston-Salem and
on file in the Office of the Department of Public Works,
City Hall, Winston-Salem, North Carolina, to which
reference is hereby made.

EXHIBIT BDESCRIPTION OF PROPERTY AFFECTED

BEGINNING at an iron stake in the eastern right-of-way line of Ebert Street Extension, said iron stake also being in the southwestern corner of R. Durham's property, running thence along the southern line of R. Durham's property south 69° 58' 52" east 227.79 feet to an iron stake; running thence south 34° 58' 49" west 422.46 feet to an iron stake; thence south 23° 44' 49" west 255.57 feet to an iron stake; thence north 55° 12' 14" west 210 feet to an iron stake; thence north 10° 11' 40" west 84.59 feet to an iron stake in the aforementioned right-of-way of Ebert Street Extension; thence along said right-of-way line of Ebert Street Extension north 34° 57' 36" east 556.64 feet to a point and place of BEGINNING. Being a 3.3636 acre tract of land more or less on Ebert Street Extension just north of Swaim Road in Winston Township as surveyed by Danny L. Comer December 23, 1981. Save and except that property known as Lots 1-28 as designated on the Plat of Swaim Court Townhouses recorded in Plat Book 31, page 105, Forsyth County Registry. Also known informally as Tax Block 6154 Lot A Forsyth County Tax Maps.

INTEREST OR ESTATE TAKEN

The City of Winston-Salem acquired a permanent easement as more particularly described in the "Area Taken" for the Pope Road Outfall.

AREA TAKEN

The following described being a 30-foot permanent easement described as follows:

Being all of the "30' access and utility easement" as shown on the plat for the Swaim Court Townhouses recorded in Plat Book 31, page 105, Forsyth County Registry.

The above-described easements are crossing Tax Lot A, Tax Block 6154 of the Forsyth County Tax Records as now constituted.