

# NORTH CAROLINA LAWYERS WEEKLY

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## DOT pays \$960K\* for dead end on service road

### ■ PHILLIP BANTZ

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Lawyers for a property owner in Raleigh dusted off a provision buried in a mid-century statute and leveraged the find to negotiate a \$960,000 settlement\* in an eminent domain action — after the North Carolina Department of Transportation had initially offered \$181,500.

The Bannister family, which owns a 13-acre business park in Raleigh, faced losing an access road that connected the land to South Wilmington Street without receiving any compensation for the closure from the DOT, said an attorney for the family, Jason Campbell of the NC Eminent Domain Law Firm in Raleigh.

The DOT had offered to pay \$181,500 for condemning a strip of the family's land along Tryon Road, but argued that it did not have to pay for closing the service road. The dispute arose as the DOT widened Tryon Road and dead-ended the Bannisters' service road, which extends the length of their business park. The land is at the corner of Tryon Road and South Wilmington Street.

While the business park retained access to Tryon Road, which sees about 14,000 cars a day, the dead end that the DOT created on the Bannisters' service road for South Wilmington Street cut the land off from 54,000 vehicles that travel the street daily, according to Campbell and his co-counsel: Paul Stam and Caroline Nickel of the Stam Law Firm in Apex.

They said the DOT's actions deprived the Bannisters of the ability to develop the land as a grocery store or shopping center. As they built the Ban-

nisters' case against the DOT, they discovered that the agency had originally created the service road in question to provide alternate access to the property after closing the family's original driveways years ago.

They argued that the DOT had renegeed on its original deal with the Bannisters by sealing off one end of their service road and owed the family compensation. And they found a provision within the controlled-access statute, § 136-89.55, which is titled "Local service roads," that bolstered the Bannisters' position.

Essentially, the provision says "you can't close or degrade access to the service road without paying just compensation," Campbell said. "It's fairly deeply buried in this 1957 statute."

An attempt to speak with the DOT's attorney, John Oates Jr. of Raleigh, was unsuccessful.

The Bannisters attorneys reported that the DOT agreed to pay \$960,000 a week before a hearing in which a judge was going to be asked to decide whether the loss of a service road was compensable. The case was settled in August.

Now, Campbell says he's already working on another eminent domain case, this time in Fayetteville, involving the DOT's closure of a landowner's service road.

"I think this is something that needs to be more clearly known," he said of the service roads provision. "If this has happened to me in the past two years, how many other people has this happened to?"

### SETTLEMENT REPORT

#### EMINENT DOMAIN

**Amount:** \$960,000

**DOT's initial deposit for taking:** \$181,850

**Case name:** DOT v. Bannister Properties, LLC

**Court:** Wake County Superior Court

**Case number:** 14CVS5912

**Mediator:** Nick Fountain of Raleigh

**Date of settlement:** August 17

**Most helpful experts:** Don d'Ambrosio, a land appraiser in Raleigh; Donald Johnson, appraiser in Louisburg; and Stephen Greene, transportation engineer in Raleigh

**Attorney for plaintiff:** John Oates Jr. of Raleigh

**Attorneys for defendant:** Jason Campbell of the NC Eminent Domain Law Firm in Raleigh; Paul Stam and Caroline Nickel of the Stam Law Firm in Apex

\*Each case is unique and must be evaluated on its individual merits. Past results do not guarantee future outcomes.