MUNICIPAL LAW NOTES

NC LEAGUE OF MUNICIPALITIES
Good government. Great hometowns.

April 2016 Volume XXXV, No. 10

Eminent Domain; Light Rail System; Bridge; Visibility; Just Compensation

City of Charlotte v. Univ. Fin. Props., LLC, ___ N.C. App. ___ (No. COA15-473, Mecklenburg– 4/5/16)

- ***Holding***– In condemnation action, involving a portion of property owned by University Financial Properties, LLC, in connection with the expansion of City's light rail system, trial court erred in its determination that the construction of an elevated bridge in connection with the light rail extension project "is part of the taking of University Financial's property in this action."

The Court addressed the issue of damages due to loss of visibility. "Here, the trial court concluded that the determination of the fair market value of the remainder of University Financial's property required consideration of the loss of visibility to that property resulting from the Bridge's construction. However, this ruling ignores the fact that (1) University Financial's loss of visibility argument is akin to a property owner's assertion of the right to compensation for a reduction in the flow of traffic past his property — an argument our appellate courts have repeatedly rejected; and (2) the loss of visibility from the Bridge does not 'flow directly from the use to which the land taken is put,' *id.* [Bd. of Transp. v. Bryant, 59 N.C. App. 256, 261-62, 296 S.E.2d 814, 817-18 (1982)], given that the land taken from University Financial is being utilized for road-widening purposes and not as the location of the Bridge.

. . . .

We are unable to discern a meaningful distinction between (1) the assertion that a landowner is entitled to compensation because its property has diminished in value due to the *reduction in traffic* caused by a municipality's actions; and (2) University Financial's contention here that it is entitled to compensation for the decreased value of its property based on the *reduced visibility to passing traffic* caused by the City's construction of the elevated light rail bridge. Consequently, we hold that the loss in visibility of University Financial's property to passing traffic is not 'part of the taking' and that the trial court's order holding otherwise must be reversed." (Emphasis in original.)

The Court found Carolina Power & Light Co. v. Creasman, 262 N.C. 390, 137 S.E.2d 497 (1964), instructive. "The same is true here. The property taken from University Financial is being used to widen North Tryon Street. The Bridge that will reduce the visibility of University Financial's remaining property to passing traffic is to be located over the existing roadway (not on the land taken from University Financial) and is likely to similarly reduce the visibility of other neighboring lots on North Tryon Street. As such, University Financial is not entitled to compensation from the City's use of land that is 'not part of the lands taken from [University Financial]' and 'may not be considered as suffering legal damage over and above that suffered by [its] neighbors whose lands were not taken.' *Id.* [at 402-03, 137 S.E.2d 506] (citation and quotation marks omitted). Therefore, for this reason as well, the trial court erred in ruling that University Financial is entitled to present evidence concerning 'all damages resulting from the impact of the construction of the BLE [LYNX Blue Line Extension] Project, including construction of the Bridge, on its remaining property' during the trial on just compensation."

- ***Synopsis***− Appeal by plaintiff-City from December 2014 orders. Reversed and remanded. Opinion by Judge Davis, with Judge Stephens and Judge Stroud concurring.

Public Enterprises; Sanitary Sewer Services; Outside of Corporate Limits

United States Cold Storage v. Town of Warsaw, ___ N.C. App. ___ (No. COA15-341, Duplin− 4/5/16)

- ***Holding***− In plaintiff-corporation's appeal from declaratory judgment allowing the Town to terminate sanitary sewer services to its facility located outside the corporate limits, Court of Appeals affirms in a 2-1 decision.

- ***Key Excerpt***− The majority stated, "We hold that the trial court correctly declared the rights of the parties. Specifically, we hold that the Town of Warsaw has the legal right to discontinue sewerage service to the USCS facility, *provided that* the Town is not unfairly discriminating between USCS and other non-residents similarly situated who currently receive sewerage service. Further, we hold that the Town of Warsaw has the legal right to condition continued service to USCS's facility on the voluntary annexation of the facility into the Town's corporate limits, again provided that the Town is not unfairly discriminating between USCS and other non-residents similarly situated who currently receive sewerage service." (Emphasis in original.)

"There may be some sympathy in USCS's contention that the Town is cutting off service to coerce USCS to seek voluntary annexation and that the effect of the trial court's order is that USCS will incur great expense, either in the form of the payment of annual property taxes to the Town or in the form of costs incurred to arrange for an alternate source of sewerage service to its facility. However, the town contends that it has been deprived of its ability to collect property taxes from a property owner who is enjoying Town services and that property taxes are a major source of the Town's total revenue. Wherever the sympathies may lie, however, we reach our holding by following the direction of our Supreme Court declared in Fulghum v. Selma, a factually similar case from the middle of the last century. In Fulghum, a property owner sued a municipality to enjoin the municipality from cutting off his water service, contending that the municipality had enacted an ordinance to coerce him to sell to the municipality certain water pipes he had built to supply water to non-residents. Fulghum v. Selma, 238 N.C. 100, 76 S.E.2d 368 (1953). The Court admitted that 'there may be more than a modicum of truth in the assertion [regarding the municipality's] coercive purpose [in enacting the ordinance.]' *Id.* However, the Court recognized

the function of the courts: 'Be that as it may, we must remember that *hard cases are the quicksands of the law* and confine ourselves to our appointed task of declaring the legal rights of the parties.' *Id.* at 103, 76 S.E.2d at 370 (emphasis added)." The Court noted that USCS made an argument that it had a vested property right in continued service and that, therefore, the Town's actions were in violation of USCS's due process rights. Rejecting this argument, the Court stated that "there could have been no reasonable expectation on the part of USCS to have the right to sewerage service from the Town in perpetuity."

In concluding its opinion, the majority stated, "The Town has no right to compel USCS to annex into its corporate limits under the current statutory scheme. However, USCS's right to oppose annexation does not create a right of USCS to continue receiving sewerage service from the Town in perpetuity. The Town has no contractual obligation to do so, nor does the Town have the obligation of a public service corporation to provide such service to USCS."

- ***Synopsis***− Appeal by plaintiff USCS from October 2014 order. Affirmed in a 2-1 decision. Opinion by Judge Dillon, with Judge Stroud concurring. Judge Hunter, Jr. dissenting.

Nota Bene (N.B.)
Other Recent Decisions of Note

Torts; Law Enforcement; Assault and Battery; False Imprisonment; False Arrest: Malicious Prosecution; Directed Verdict Mejia v. Bowman, ___ N.C. App. ___ (No. COA15-777, Guilford− 4/5/16) (***unpublished***) (In plaintiff's appeal from trial court's Order and Judgment granting defendant Officer Bowman's motion for directed verdict against plaintiff's claims for assault and battery, false imprisonment and false arrest, and malicious prosecution, Court of Appeals holds that trial court erred in concluding that, when taken in light most favorable to plaintiff, the evidence in the record was insufficient as a matter of law to support a verdict in her favor. Case arose from arrest of plaintiff outside her home for the misdemeanor offense of disorderly conduct following a dispute with her neighborhood homeowners association. "[W]e hold that the trial court erred in granting [defendant] Bowman's motion for directed verdict. To be clear: the decision we reach herein should in no way be interpreted as a condemnation of or finding of malice against Officer Bowman, or as any indication that we find [plaintiff] Mejia's testimony credible. We reach our decision based solely on our case law and the Rules of Civil Procedure, which make clear that, in this procedural posture, such determinations are strictly the province of the jury." (Appeal by plaintiff from March 2015 order and judgment. Reversed. Opinion by Judge Stephens, with Judge Hunter, Jr., and Judge Inman concurring.))

Torts; North Carolina Industrial Commission; Exclusive Jurisdiction; Constitutional Claims Wesley v. Winston-Salem/Forsyth Cnty. Bd. of Educ., ___ N.C. App. ___ (No. COA15-648, Forsyth− 4/19/16) (***unpublished***) (Where plaintiff filed a constitutional claim in superior court in an apparent effort to defeat the exclusive jurisdiction of the Industrial Commission and where the complaint on its face was insufficient to state a cognizable constitutional claim, Court of Appeals reverses trial court's denial of defendant's motion to dismiss the complaint and all causes of action that were exclusively within the jurisdiction of the Industrial Commission. (Appeal by defendant from February 2015 and April 2015 orders. Reversed in part and remanded. Opinion by Judge Bryant, with Judge Geer and Judge McCullough concurring.))