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**CC:** Mashburn Kinsley [kinsley.e.mashburn@nccourts.org]

**Subject:** Town of Matthews v. Lester Wright and Virginia Wright

Dear Counsel,

I have now completed my review of the materials each of you submitted in connection with the hearing in the above case. Based on those materials and the arguments presented in court, I have concluded that the proposed taking in this case, for particular reasons based upon the specific facts of this case, is not for a public purpose.

This conclusion is based, among other things, on the following factors:

1. The Town of Matthews is a municipal corporation with powers of eminent domain that empower it to take private property through condemnation proceedings if such condemnation is for "the public use or benefit."
2. The determination of whether the condemnor's intended use of this land is for "the public use or benefit" is a question of law for the court.
3. Even when that proposed taking is for a "public use or benefit," the power of condemnation may not be exercised in an arbitrary and capricious manner.
4. When the proposed taking of property is "for the opening, widening, extending or improving roads, streets, alleys and sidewalks..." such purpose normally would be sufficient to state a public use or benefit. Nonetheless, a case involving taking of private property cannot be considered in a vacuum and without regard to its factual history. Further, the statute authorizing taking of private property must be strictly construed and, in a case in which the landowner disputes that the taking is for a public purpose, ambiguities should be resolved in favor of the owner whose property is being taken.
5. The factual history of this case includes previous action by the Plaintiff on multiple occasions (on at least 3/25/1985, 2/5/2004 and 10/9/2004, as well as in subsequent litigation) whereby it has asserted that the property

in question had been declared a public road. This assertion was judicially determined to be incorrect.

6. The resolution adopted by Plaintiff's Board of Commissioners on April 8, 2013 describes the action as being "for the opening, widening, extending, or improving roads, streets, alleys and sidewalks and being more particularly described as Home Place,"
7. Through depositions testimony in this proceeding, the Plaintiff's Town Manager testified, among other things, that Plaintiff has no plans to open, widen, extend or improve any roads along Home Place.
8. Given this factual context, I conclude that the action of the Plaintiff's Board of Commissioners on April 8, 2013 is simply an attempt to accomplish, through other means, what was originally intended by its actions on 3/25/1985, 2/5/2004 and 10/9/2004, rather than constituting a taking of property for some recently realized new need for a public purpose or benefit.
9. In reaching this conclusion, I am fully aware that there is not a particularly high threshold for the Plaintiff's stating of its basis for contending that the taking is for a public purpose. However, I am convinced that the eminent domain statute and the Constitutions of North Carolina and the United States require more than the Plaintiff simply reiterating its previous position, without any plans whatsoever for construction, improvements or alterations to the property being taken.
10. This conclusion is reached notwithstanding the fact that I have considered, but rejected the following arguments presented by counsel for the landowners:
  - a. That the Order entered by Judge Beal prohibits or precludes this or any other action for the taking of this property by eminent domain;
  - b. That this proposed taking should be found not to be for a public purpose or benefit, simply because it is predominantly to benefit private, well-connected individuals;
  - c. Further, I have not considered, for purposes of this determination, arguments concerning alleged irregularities in the determination of the assessment of value, nor that the amount offered was "woefully inadequate."
11. Rather, this determination is made based upon what appears to be an arbitrary and capricious exercise by the Plaintiff of its powers of eminent domain.

I request that Mr. Juran prepare an Order that reflects this ruling. The order should include a detailed chronology of the factual and procedural background of this case.

Thank you for your presentations on behalf of your clients in this matter. I look forward to seeing each of you again in the future, though perhaps not on this case.