

## NC App: No Public Use Or Benefit When Town, Fueled By Improper Motive, Condemned Private Street To Make It Public



In *Town of Matthews v. Wright*, No. COA14-943 (Apr. 21, 2015), the North Carolina Court of Appeals invalidated a taking, the stated purpose of which was to make a portion of a private road into a public street.

A taking to open a private road to the public? That sure does sound like a public use or purpose, no? And had the court of appeals stopped there and not delved deeper, and had the case not had the history which it did, the result might have been different.

The facts which led the court to that conclusion are worth reading for yourself, but here's the summary: the homes of the Wrights and five neighbors are located on a dead-end street, Home Place, which connects to the public street system at Revedery Lane. Home Place was originally a private street, but the Town believed there was an implied dedication, and treated Home Place like a public street. It even paved it. The Zoning Board of Adjustment concluded that it was public. Litigation ensued. Lots of litigation. This entailed several trips to the court of appeals.

After that court concluded there was no implied dedication, in 2006 the Town adopted a resolution adding Home Place to the register of public streets "*nunc pro tunc*" (that's a fancy way of saying "retroactively" to all you non-lawyers) to 1985. More litigation. More trips to the court of appeals. Pretty much the same result as the first time: no implied dedication by the Wrights.

Not to be deterred, the Town threw down what it thought was its trump card: it brought its power of eminent domain to bear to take the Wrights' portion of the private road, and make it public. The Wrights, after all, "*might eventually block*" the road (see slip op. at 7, emphasis original). After some amusing insider machinations (see slip op. at 7-9), the Town condemned the Wrights' interest in the road, just comp set at \$1,500. It took only the Wrights' interest, and not those of their four neighbors.

This, of course, was not the end of the fight. The Wrights argued that the taking was invalid, and not accomplished for a public use or purpose. The trial judge agreed. Usually, a taking to make a private street public would be fine, but here, the Town was simply trying to accomplish what its earlier thwarted actions could not.

The court of appeals affirmed, holding that under the Fifth Amendment and the North Carolina Constitution's due process clause (remember, N.C. has no express "takings clause" in its constitution), the Wrights met their burden of proof that the taking was not for a public use or benefit. There would be a right of public use of the road, but the public benefit wasn't there (the test is conjunctive, and there must be both use and benefit). The court concluded that the Town's stated purpose (to keep the Wrights from maybe blocking the road in the future) didn't wash because the Wrights had never blocked the road. Slip op. at 14 ("The predicate to "opening" Home Place is that it must have previously been "closed" in some way."). Plus, the Town wasn't condemning the other

four homeowners' private rights in Home Place, which would remain private, and "[i]t defies reason that the Town would need to condemn only the Wrights' portion of Home Place in order to 'open' the street." Slip op. at 15.

The fact that the Town left the other four owners unmolested meant that its other purported public benefits (allowing neighbors to access their land, utility access, and the fire department's access to water) were also illusory. Slip op. at 15 ("Rather, condemnation of the Wrights' portion of Home Place would only allow for those public benefits on the Wrights' portion of Home Place, which is at a dead end and landlocked by other individuals' portions of Home Place.").

The court was also influenced by the case's long history, and the Town's serial failed efforts to make the road public:

The sequence of events leading up to the condemnation bolsters our conclusion that no public use or benefit is served by the condemnation. The evidence shows that the Town was motivated by considerations irrelevant to the public benefit. The evidence shows that Mayor Taylor and some of the Commissioners considered personal conflicts between the Town and the Wrights in making the decision to condemn—rather than considering the public use or benefit of the condemnation.

Slip op. at 16.

Has the Town finally received the Wrights' message?

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