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NEW HANOVER CO., C.S.C.

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07-23-2024
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NEW HANOVER COUNTY, NC
MORGHAN GETTY COLLINS
REGISTER OF DEEDS

NC FEE \$26.00

(ABOVE THIS LINE FOR CLERK OF COURT USE ONLY)

Prepared by and Return to: Martin T. McCracken, Special Deputy Attorney General
North Carolina Department of Justice, Transportation Division
1505 Mail Service Center, Raleigh, N.C. 27699-1505

STATE OF NORTH CAROLINA
COUNTY OF NEW HANOVER

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
23-CVS-1048 *JJOSR*

DEPARTMENT OF TRANSPORTATION,
Plaintiff

UNKNOWN HEIRS OF SHERRY J. NIVEN;
NEW HANOVER COUNTY, NORTH
CAROLINA; CITY OF WILMINGTON; and
STATE EMPLOYEES' CREDIT UNION,

Defendants

FINAL JUDGMENT PURSUANT TO N.C.
GEN. STAT. § 136-107 AS TO
DEFENDANT UNKNOWN HEIRS OF
SHERRY J. NIVEN; NEW HANOVER
COUNTY, NORTH CAROLINA; and
CITY OF WILMINGTON
(DEFAULT)

THIS CAUSE coming on to be heard and being heard before the undersigned Judge of the Superior Court, upon motion by the plaintiff for Final Judgment as to the Defendant, UNKNOWN HEIRS OF SHERRY J. NIVEN, NEW HANOVER COUNTY, NORTH CAROLINA, and CITY OF WILMINGTON, named herein, and it appearing to the Court from an examination of the record of this action:

That this action was duly instituted on the 27th day of March 2023, by the issuance of a Summons, by the filing of a Complaint and Declaration of Taking and Notice of Deposit, and by the deposit of **FOUR THOUSAND FOUR HUNDRED DOLLARS (\$4,400.00)**; representing the sum of money estimated by Plaintiff to be just compensation for the taking or appropriation as set forth in Plaintiff's Complaint and Declaration of Taking.

That said Summons, together with a copy of the said Complaint and Declaration of Taking and Notice of Deposit were served upon Defendant UNKNOWN HEIRS OF SHERRY

CERTIFIED TRUE COPY
Clerk of Superior Court New Hanover County
By *[Signature]*
Assistant Deputy Clerk of Superior Court
Date 07.23.24

J. NIVEN, by publication with the last day to answer or otherwise to respond to the complaint being June 17, 2024.

That Defendant **CITY OF WILMINGTON** was served by certified mail on or about April 5, 2023.

The Defendant, **NEW HANOVER COUNTY, NORTH CAROLINA** was served by personal service on or about April 6, 2023.

That, pursuant to N.C. Gen. Stat. §136-107, the failure of any person named in and served with a Complaint and Declaration of Taking to answer within twelve (12) months from the date of service constitutes an admission that the amount deposited is just compensation and is a waiver of any further proceeding to determine just compensation;

That more than twelve (12) months have elapsed from the date of the aforementioned service of process, during which twelve months no Answer was filed by Defendants **UNKNOWN HEIRS OF SHERRY J. NIVEN and CITY OF WILMINGTON** no request for an extension of time within which to file an Answer was made by said Defendants and said Defendants have otherwise made no appearance in the above-entitled action;

And it further appearing to the Court, and the Court concluding as a matter of law, that failure to answer within said twelve (12) months constitutes an admission by the above-referenced Defendants **UNKNOWN HEIRS OF SHERRY J. NIVEN and CITY OF WILMINGTON** that said amount deposited is just compensation and is a waiver by the Defendant of any further proceeding herein to determine just compensation as provided by N.C.G.S. § 136-107.

That by Order Appointing Guardian ad Litem entered July 11, 2023, Anthony O. Strickland was appointed Guardian ad Litem for the Defendant **UNKNOWN HEIRS OF SHERRY J. NIVEN**; that Mr. Strickland was served by certified mail on or about September 1 2023; that Mr. Strickland has made a diligent search any heirs of Sherry J. Niven, but despite that search, has not identified any heir of Sherry J. Nevin, known or unknown; that with entry of final judgment against the unknown heirs of Sherry J. Niven, said heirs have waived any claim to additional just compensation or further proceedings to determine just compensation and that Mr. Strickland should therefore be dismissed from this action.

That Defendant, **NEW HANOVER COUNTY, NORTH CAROLINA**, on May 22, 2024 filed a document entitled "SCHEDULING ORDER" in which it stated that it has no further interest, position or argument relevant to the herein condemnation and waived any right to physically appear or otherwise participate in these proceedings; that this document is a waiver of any claim to the deposit of estimated just compensation and to any claim for additional just compensation; that final judgment should therefore be entered against this Defendant.

That Defendant, State Employees Credit Union, filed a timely answer to this action and its rights are not affected by entry of this judgment.

That the Defendants are the only parties who have or claim to have an interest in the property described in the Complaint and Declaration of Taking, and the title to the property is not in dispute; that as of the date of the institution of this action, the property described in the Complaint and Declaration of Taking was subject only to such liens and encumbrances as were set forth in Exhibit "A" of the Complaint and Declaration of Taking; and that all parties who are necessary to the determination of this action are properly before the Court; and that the Defendant is under no legal disability.

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

1. That the Department of Transportation, the Plaintiff herein, was entitled to acquire and did acquire, free and clear of all encumbrances, on the 27th day of March, 2023, by the filing of a Complaint and Declaration of Taking and Notice of Deposit, together with the deposit of **FOUR THOUSAND FOUR HUNDRED DOLLARS (\$4,400.00)**; those certain interests or estates and areas, hereinafter more particularly described, in, over, upon, and across the property of the Defendants; and that said property of the Defendants is described as follows:

Being all of that tract of land more particularly described in that certain MEMORANDUM OF ACTION captioned "DEPARTMENT OF TRANSPORTATION, Plaintiff, v. UNKNOWN HEIRS OF SHERRY J. NIVEN; NEW HANOVER COUNTY, NORTH CAROLINA; CITY OF WILMINGTON; and STATE EMPLOYEES' CREDIT UNION, Defendants" recorded in the Office of the Register of Deeds for New Hanover County in Book RB 6628, Page 1488, reference to which MEMORANDUM OF ACTION is made for a more particular description of said property of the defendant.

2. That the interests or estates acquired in, over, upon, and across the hereinabove described property of the Defendants is described as follows:

INTERESTS OR ESTATES TAKEN:

Fee simple title to right of way, and a temporary construction easement to continue until the completion of the project, at which time said temporary construction easement will terminate and in addition a slope easement for providing lateral support to the highway, or land adjacent thereto, which easement will terminate at such time as the owner lower(s) or raise(s) the elevation of the land adjacent to said highway to the extent that such lateral support is no longer needed and, in addition, a The underlying fee owner(s) retain(s) the right to continue to use the slope easement area(s) and the temporary construction easement area(s) in any manner and for any purpose, including, but not limited to, access and parking, which is not inconsistent with the reasonable use and enjoyment of the easement(s) by the Department of Transportation, its successors and assigns.

3. That the areas acquired in, over, upon, and across the above-described property, including survey lines and station numbers, are delineated on that set of plans for Department of Transportation Project ID U-6202 (WBS 48662.2.1/Parcel 005) on file in the Right of Way

Branch of the Department of Transportation, Transportation Building, in Raleigh, North Carolina, and also on a copy of said project plans which are or will be recorded, pursuant to N.C. Gen. Stat. section 136-19.4, in the Office of the Register of Deeds of Ne3w Hanover County, to which plans reference is hereby made for greater certainty of the areas and interests acquired, and said areas and interests are described by metes and bounds as follows:

AREAS TAKEN:

NEW RIGHT OF WAY:

Beginning at Point "5" being South 00°19'25" West and perpendicular to -L-14+50.00 30.00 feet Rt., thence South 89°40'35" East 92.70 feet to point "2"; thence South 00°19'24" West 10.00 feet to point "7"; thence North 89°40'35" West 92.70 feet to point "6"; thence North 00°19'25" East 10.00 feet to point "5"; returning to the place of beginning.

TEMPORARY CONSTRUCTION EASEMENT:

Beginning at Point "6" being South 00°19'25" West and perpendicular to -L-14+50.00 40.00 feet Rt., thence South 89°40'35" East 49.41 feet to point "10"; thence South 85°58'52" East 0.59 feet to point "11"; thence South 89°26'54" East 26.33 feet to point "12"; thence South 88°31'51" East 8.54 feet to point "13"; thence South 89°30'31" East 7.84 feet to point "14"; thence South 00°19'24" West 11.66 feet to point "9"; thence North 89°40'35" West 92.70 feet to point "8"; thence North 00°19'25" East 12.00 feet to point "6"; returning to the place of beginning.

SLOPE EASEMENT:

Beginning at Point "10" being South 00°19'25" West and perpendicular to -L-14+99.41 40.00 feet Rt., thence South 89°40'35" East 43.29 feet to point "7"; thence South 00°19'24" West 0.34 feet to point "14"; thence North 89°30'31" West 7.84 feet to point "13"; thence North 88°31'51" West 8.54 feet to point "12"; thence North 89°26'54" West 26.33 feet to point "11"; thence North 85°58'52" West 0.59 feet to point "10"; returning to the place of beginning.

The underlying fee owner(s) retain(s) the right to continue to use the slope easement area(s) in any manner and for any purpose, including, but not limited to, access and parking, which is not inconsistent with the reasonable use and enjoyment of the easement(s) by the Department of Transportation, its successors, and assigns.

4. That the failure of the Defendants **UNKNOWN HEIRS OF SHERRY J. NIVEN and CITY OF WILMINGTON** to file an Answer within the twelve (12) months after said service of process is an admission by said non-answering Defendants that the sum deposited is just compensation and is a waiver by the Defendants of any further proceedings to determine just compensation; and that the amount deposited by the Plaintiff herein is the full, fair, and adequate value of and just compensation, as to said non-answering Defendant, pursuant to Article 9, Chapter 136, of the North Carolina General Statutes, for the taking of the above-

described interests and areas by the Department of Transportation; for any and all damages caused by the acquisition for the construction of Department of Transportation Project ID No. U-6202 (WBS 4866.2.2.1 /Parcel 005).

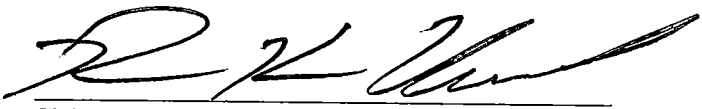
5. That **NEW HANOVER COUNTY, NORTH CAROLINA** has waived any claim to the deposit of estimated just compensation and to any claim for additional just compensation.

5. That Guardian ad Litem Anthony O. Strickland is hereby dismissed.

5. That the deposit of **FOUR THOUSAND FOUR HUNDRED DOLLARS (\$4,400.00)**, if not heretofore disbursed, be retained by the Clerk pending further order of the Court.

6. That a copy of this Judgment be certified by the Clerk of Superior Court of this county to the Register of Deeds, who shall record the same among the land records of said county.

This the 23 day of July, 2024.



SUPERIOR COURT JUDGE
R. Kent Harrell

MORGHAN GETTY
COLLINS
Register of Deeds

New Hanover County

Register of Deeds

320 CHESTNUT ST SUITE 102 • WILMINGTON, NORTH CAROLINA 28401
Telephone 910-798-4530 • Fax 910-798-7716



State of North Carolina, County of NEW HANOVER
Filed For Registration: 07/23/2024 10:03:15 AM
Book: RB 6718 Page: 1998-2003
6 PGS \$26.00
Real Property \$26.00
Recorder: KELLIE GILES
Document No: 2024017722

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