

**NC Supreme Court Finds Substantial
Interference with Property Rights Under the
Map Act**

By Dave Melin*

In June, the North Carolina Supreme Court issued an opinion ruling in favor of property owners who challenged a state law that allows the North Carolina Department of Transportation to freeze development and improvements on land that may be used as a future highway. The Court held that the law amounted to a “taking” and that property owners must be compensated for the restrictions placed on their land.

The case involved a challenge to the Roadway Corridor Official Map Act, a state law passed in 1987 that allows NCDOT to file a highway corridor map with a county’s register of deeds and place certain restrictions on property located within the corridor. For example, the Map Act bars property owners from improving, developing, or subdividing their property. However, the Act does reduce *ad valorem* taxes to 50% of the appraised value for improved property and 20% of the appraised value for unimproved property. The restrictions on the property can remain indefinitely, and the Act does not require NCDOT to build the highway once it files the corridor map.

Property owners filed the lawsuit to challenge NCDOT’s use of the Map Act to place restrictions on property potentially needed to build a beltway around Winston-Salem. NCDOT recorded the highway transportation corridor maps in 1997 and 2008, and owners whose property was included in the corridor challenged NCDOT’s action in 2011, arguing that the action was a taking and that they were not compensated for the taking. The trial court found against the property owners and dismissed

their claims. However, the Court of Appeals reversed the trial court’s decision, noting that the Map Act imposed restrictions on the owners’ ability to improve, develop, and dispose of their property. The Court of Appeals remanded the case to the trial court to determine the amount of compensation due to the homeowners from NCDOT.

NCDOT appealed, but the Supreme Court upheld the appellate court’s ruling. The Court first discussed the purpose of the Map Act, which is to protect current property values for future highway projects and save the state money by guarding against potential increases in property values between the time the project is planned to the time the property is bought to build the project. The Court noted that NCDOT’s actions constituted the exercise of eminent domain because, in part, the Act contemplates future condemnation of properties within the corridor. The open-ended nature of the Act also allows the government to restrict property rights for a project that may never be built.

Even though NCDOT is not actually occupying the land, the department is still taking the land without compensation because it is substantially interfering with property owners’ rights. In order for the property owners to prevail, the Court noted that they need to show substantial interference with their property rights as well as a decrease in fair market value of their property. Under the Map Act, NCDOT took the owners’ fundamental property rights, the Court found, and it remanded the case to the trial court for a determination the lost value of the properties involved in the lawsuit. The Court instructed the trial court to take into account the value of the land before the corridor map was recorded, the value of the land after it was recorded, and the amount of reduced taxes, among other factors.

In conclusion, the Map Act provides government with a mechanism to place restrictions on property, however, under the state Supreme

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Court's recent ruling, the government must compensate property owners for those restrictions. Most importantly, the Court ruled that the restrictions placed on property by the Map Act constitute substantial interference with owners' property rights and that compensation for the taking must be determined by the trial court on an individual, property-by-property basis.

Postscript: Less than a month after the state Supreme Court's decision and on the last day of its legislative session, the General Assembly inserted into a transportation bill a provision that reduced the statutory interest rate applied between the date of the taking until the date of judgment from 8% to the prime rate. The General Assembly ratified the bill, HB 959, on July 1, and Gov. McCrory signed it on July 11, making the new state law apply to any takings after July 11. The prime rate as of July 26 is 3.5%.

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