

# TAKEN! Historic Eminent Domain Decision: NCDOT Must Pay When it Files a Transportation Corridor Protection Map

Written By **Ryal W. Tayloe** (rwt@wardandsmith.com) and **Jeremy M. Wilson** (jw@wardandsmith.com)

June 16, 2016



On June 10, 2016 the North Carolina Supreme Court affirmed the decision of the North Carolina Court of Appeals in the case of [Kirby v. North Carolina Department of Transportation](#).

The North Carolina Supreme Court unanimously determined that when the NCDOT records a corridor protection map and invokes the Map Act's restrictions on property, the NCDOT has effectively taken property rights, thereby exercising the government's power of eminent domain. In essence, the Court turned the NCDOT's argument that the Map Act's purpose was to control its future

acquisition costs against the agency's position. The Court concluded that because of the restrictions placed on affected property by the Map Act, which prevents any improvements or development within the protected corridor, **the recording of the corridor protection map constitutes a taking** of the private property rights of the owners. The owners therefore are entitled to just compensation. Just compensation is the difference in the value of the property immediately before the Transportation Corridor Protection Map is filed and the value of the property after the Transportation Corridor Protection Map is filed.

## North Carolina Eminent Domain Law

When a government agency takes private property for public use without providing just compensation to the owner, the owner may file a lawsuit for "inverse condemnation" under North Carolina law, whereby the owner can demand that just compensation be paid. A successful property owner can also recover attorneys' fees incurred in connection with the litigation as well as interest from the date of taking until payment by the condemner. Some of the corridor protection maps have been filed for years, and interest could therefore be a big component of the just compensation amount.

## The North Carolina "Map Act"

The North Carolina Map Act ("Map Act") authorizes the North Carolina Department of Transportation ("NCDOT") to file official roadway maps listing and mapping properties that are in the path of a proposed roadway in order to create a "protected corridor" for the roadway. The Map Act prohibits property owners in the protected corridor from obtaining building permits or subdividing their property. Until now, the NCDOT has refused to pay just compensation for the harms resulting from the restrictions owners have had to endure when their land is within a protected corridor.

Many property owners have argued that these corridor protection maps, and the related development restrictions, are an exercise of the NCDOT's eminent domain power entitling them to just compensation. The NCDOT has argued that these corridor protection maps are more like basic planning or zoning activities, and no compensation is owed. The law is now

settled in favor of property owners.

### **The Owners' Remedy**

The remedy for a property owner affected by a corridor protection map is to bring an inverse condemnation lawsuit against the NCDOT and/or any other participating condemning authority. The owner will be entitled to a jury trial on the issue of just compensation. North Carolina law also allows interest at 8% per year on the amount awarded from the time of the taking (that is, the time of the recording of the corridor protection map) and, in addition, allows the property owner to recover reasonable attorneys' fees.

Kirby is a historic eminent domain decision. Any property owner within a protected corridor is entitled to just compensation for the effects of the Map Act's restrictions. Such protected corridors are on file all across North Carolina. As always, those affected by such a corridor protection map, or facing any other eminent domain issues, should consult an attorney who is experienced in the area of eminent domain or land condemnation law concerning their legal rights.

--

© 2019 Ward and Smith, P.A. For further information regarding the issues described above, please contact Ryal W. Tayloe or Jeremy M. Wilson.

*This article is not intended to give, and should not be relied upon for, legal advice in any particular circumstance or fact situation. No action should be taken in reliance upon the information contained in this article without obtaining the advice of an attorney.*

*We are your established legal network with offices in Asheville, Greenville, New Bern, Raleigh, and Wilmington, NC.*