

# **REQUEST FOR BOARD ACTION**

## **HENDERSON COUNTY**

### **BOARD OF COMMISSIONERS**

**MEETING DATE:** 7 September 2010

**SUBJECT:** Settlement of Henderson County Hospital suit brought by  
NC Department of Transportation

**ATTACHMENT(S):** Proposed Consent Judgment

#### **SUMMARY OF REQUEST:**

Consistent with the Board's previous direction, a settlement has been reached with the North Carolina Department of Transportation in its suit against the County and Henderson County Hospital Corporation regarding the condemnation of certain land for the widening of Sixth Avenue within the City of Hendersonville. Under this settlement, the Hospital Corporation would receive the sum of \$146,025.00, which is an increase of \$84,550.00 over the \$61,475.00 initially offered and deposited by the Department of Transportation.

County staff will be present and prepared if requested to give further information on this matter.

#### **BOARD ACTION REQUESTED:**

Approval of the Consent Judgment.

If the Board is so inclined, the following motion is suggested:

***I move that the Board approve the settlement with the North Carolina Department of Transportation, and authorize the Chairman and staff to execute the Consent Judgment reflecting the same.***

That the defendants are the only parties who claim to have an interest in the property described in the Complaint and Declaration of Taking (hereinafter referred to as the "subject property"), and the title to the subject property is not in dispute; that as of the date of the initiation of this action the subject property was subject only to such liens and encumbrances as are set forth in Exhibit "A" of the Complaint, Declaration of Taking and Notice of Deposit, and that all parties who are necessary to the determination of this action are properly before the Court and under no legal disability.

That now, the said defendants and the plaintiff have reached an agreement during mediation whereby the plaintiff has agreed to pay and the defendants have agreed to accept the additional sum of SIXTY ONE THOUSAND FOUR HUNDRED SEVENTY FIVE (\$61,475.00) DOLLARS which includes any claim for interest and all costs, as full and just compensation for the appropriation of the interests and areas as set forth in the Complaint, Declaration of Taking and Notice of Deposit, and as are hereinafter more particularly described; for any and all damages caused to the subject property by the construction of Department of Transportation Project ID # U-4428, WBS # 35025.3.1, Henderson County; and for the past and future use of said area for all purposes to which the Department of Transportation, its successors and assigns, are authorized by law to subject the same.

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

1. That the Department of Transportation, plaintiff herein was entitled to acquire and did acquire on the 24th day of March 2008, by the filing of a Complaint, Declaration of Taking and Notice of Deposit, and by the deposit of ONE HUNDRED FORTY SIX THOUSAND TWENTY FIVE (\$146,025.00) DOLLARS, those certain interests or estates and areas, hereinafter more particularly described in, over, upon and across the subject property, and that said subject property is described as follows:

Being all of those tracts of land more particularly described in that certain Memorandum of Action captioned, "Department of Transportation, Plaintiff, v. County of Henderson; and Henderson County Hospital Corporation" recorded in the Office of the Register of Deeds for Henderson County, Book 1355, Pages 54-55, reference to which Memorandum of Action is made for a more particular description of said subject property of the defendants.

2. That the interests or estate acquired in, over, upon and across the hereinabove described subject property are:

INTEREST OR ESTATE TAKEN:

Fee simple title to right of way, and a slope easement for providing lateral support to the highway, or land adjacent thereto, which slope easement area will revert to the owners at such time as said owners lower or raise the elevation of the land adjacent to said highway to the extent that such lateral support is no longer needed and, in addition, a temporary construction easement to continue until the completion of the project, at which time said temporary construction easement area will revert to the owners.

3. That the areas acquired in, over, upon and across the hereinabove described subject property are accurately shown upon a plat entitled, "State of North Carolina Department of Transportation v. County of Henderson, et al, 2008 CvS 0443," Project ID # U-4428, Parcel # 036, WBS # 35025.3.1, filed by the plaintiff in this action on the 14<sup>th</sup> day of October, 2009 and are described by metes and bounds as follows:

NEW RIGHT OF WAY:

BEGINNING at Point "1" being N 00° 35' 58" E 13.54 ft. from -L- 142+55.13, thence N 00° 35' 58" E 16.92 ft. to point "2"; thence N 80° 38' 43" E 123.48 ft. to point "3"; thence along a curve turning to the right, having a radius of 563.0000 ft. and having a chord with a bearing of N 84° 10' 00" E and a chord distance of 69.16 ft., an arc distance of 69.21 ft. along said curve to point "4", thence along a curve turning to the left, having a radius of 40.0000 ft. and having a chord with a bearing of N 46° 08' 57" E and a chord distance of 53.05 ft., an arc distance of 58.00 ft. along said curve to point "5", thence N 04° 36' 27" E 19.34 ft. to point "6"; thence S 85° 23' 33" E 10.03 ft. to point "7"; thence S 04° 36' 52" W 59.55 ft. to point "8"; thence along a curve turning to the right, having a radius of 10.0000 ft. and having a chord with a bearing of S 47° 40' 20" W and a chord distance of 13.66 ft., an arc distance of 15.03 ft. along said curve to point "9", thence along a curve turning to the left, having a radius of 408.5000 ft. and having a chord with a bearing of S 85° 42' 22" W and a chord distance of 71.61 ft., an arc distance of 71.70 ft. along said curve to point "10", thence S 80° 40' 41" W 156.40 ft. to point "1"; returning to place of BEGINNING containing 4585 sq. ft., 0.105 ac., more or less.

SLOPE EASEMENT #1:

BEGINNING at Point "2" being N 00° 35' 58" E 30.46 ft. from -L- 142+55.13, thence N 00° 35' 58" E 2.79 ft. to point "11"; thence N 83° 32' 30" E 4.90 ft. to point "12"; thence N 80° 17' 30" E 84.22 ft. to point "13"; thence N 79° 41' 25" E 51.04 ft. to point "14"; thence along a curve turning to the right, having a radius of 560.1667 ft. and having a chord with a bearing of N 82° 44' 13" E and a chord distance of 40.89 ft., an arc distance of 40.90 ft. along said curve to point "15", thence S 86° 39' 45" E 12.45 ft. to point "16"; thence N 88° 07' 51" E 7.48 ft. to point "17"; thence N 83° 17' 00" E 9.15 ft. to point "18"; thence N 58° 45' 39" E 6.83 ft. to point "19"; thence N 50° 04' 15" E 7.07 ft. to point "20"; thence along a curve turning to the right, having a radius of 40.0000 ft. and having a chord with a bearing of S 64° 38' 11" W and a chord distance of 31.32 ft., an arc distance of 32.18 ft. along said curve to point "4", thence along a curve turning to the left, having a radius of 563.0000 ft. and having a chord with a bearing of S 84° 10' 00" W and a chord distance of 69.16 ft., an arc distance of 69.21 ft. along said curve to point "3", thence S 80° 38' 43" W 123.48 ft. to point "2"; returning to place of BEGINNING containing 727 sq. ft., 0.017 ac., more or less.

SLOPE EASEMENT #2:

BEGINNING at Point "21" being N 85° 23' 38" W 32.35 ft. from -Y6- 11+57.45, thence N 28° 26' 55" E 8.30 ft. to point "22"; thence N 20° 10' 14" E 5.00 ft. to point "23"; thence S 85° 49' 17" E 1.20 ft. to point "24"; thence along a curve turning to the right, having a radius of 40.0000 ft. and having a chord with a bearing of S 30° 00' 44" W and a chord distance of 13.75 ft., an arc distance of 13.81 ft. along said curve to point "21", returning to place of BEGINNING containing 10 sq. ft., 0.001 ac., more or less.

TEMPORARY CONSTRUCTION EASEMENT:

BEGINNING at Point "11" being N 00° 35' 58" E 33.25 ft. from -L- 142+55.13, thence N 00° 35' 58" E 5.33 ft. to point "25"; thence N 80° 45' 09" E 139.34 ft. to point "26"; thence N 82° 16' 37" E 82.00 ft. to point

"27"; thence N 24° 12' 02" E 24.47 ft. to point "5"; thence along a curve turning to the right, having a radius of 40.0000 ft. and having a chord with a bearing of S 12° 21' 54" W and a chord distance of 10.79 ft., an arc distance of 10.83 ft. along said curve to point "24", thence N 85° 49' 17" W 1.20 ft. to point "23"; thence S 20° 10' 14" W 5.00 ft. to point "22"; thence S 28° 26' 55" W 8.30 ft. to point "21"; thence along a curve turning to the right, having a radius of 40.0000 ft. and having a chord with a bearing of S 40° 44' 47" W and a chord distance of 1.17 ft., an arc distance of 1.17 ft. along said curve to point "20", thence S 50° 04' 15" W 7.07 ft. to point "19"; thence S 58° 45' 39" W 6.83 ft. to point "18"; thence S 83° 17' 00" W 9.15 ft. to point "17"; thence S 88° 07' 51" W 7.48 ft. to point "16"; thence N 86° 39' 45" W 12.45 ft. to point "15"; thence along a curve turning to the left, having a radius of 560.1667 ft. and having a chord with a bearing of S 82° 44' 13" W and a chord distance of 40.89 ft., an arc distance of 40.90 ft. along said curve to point "14", thence S 79° 41' 25" W 51.04 ft. to point "13"; thence S 80° 17' 30" W 84.22 ft. to point "12"; thence S 83° 32' 30" W 4.90 ft. to point "11"; returning to place of BEGINNING containing 1107 sq. ft., 0.025 ac., more or less.

4. That the original sum deposited by the plaintiff herein of ONE HUNDRED FORTY SIX THOUSAND TWENTY FIVE (\$146,025.00) DOLLARS has heretofore been disbursed to the defendants by Order of the Court filed herein on the 16<sup>th</sup> day of September 2008.

5. That the Department of Transportation, plaintiff herein, pay into Court the additional sum of SIXTY ONE THOUSAND FOUR HUNDRED SEVENTY FIVE (\$61,475.00) DOLLARS, and that said sum, be disbursed by the Clerk, to the defendants as their interests may appear.

6. That the said sum of TWO HUNDRED SEVEN THOUSAND FIVE HUNDRED (\$207,500.00) DOLLARS, said sum being the total amount of the original deposit, plus said additional amount, and including any claim for interest and all costs, is the full, fair, and adequate value of, and represents just compensation for the taking of the hereinabove described interests and areas by the Department of Transportation; for any and all damages caused to the subject property by the construction of Department of Transportation Project ID # U-4428, WBS # 35025.3.1, Henderson County; and for the past and future use of said areas by the Department of Transportation, its successors and assigns, for all purposes for which the said Department of Transportation is authorized by law to subject the same.

This the \_\_\_\_ day of \_\_\_\_\_, 2010.

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JUDGE OF SUPERIOR COURT

ADDITIONAL SIGNATURES ON THE FOLLOWING PAGE

APPROVED AND CONSENTED TO:

ROY COOPER  
Attorney General

\_\_\_\_\_  
David P. Brenskelle  
Special Deputy Attorney General

\_\_\_\_\_  
By: \_\_\_\_\_  
Henderson County Hospital Corporation

\_\_\_\_\_  
Thomas O. Lawton III  
Assistant Attorney General

\_\_\_\_\_  
By: \_\_\_\_\_  
County of Henderson

\_\_\_\_\_  
Sharon B. Alexander, Attorney  
Henderson County Hospital Corporation

\_\_\_\_\_  
Charles Russell Burrell, Attorney  
County of Henderson

STATE OF NORTH CAROLINA

COUNTY OF HENDERSON

I, \_\_\_\_\_, Clerk of the Superior Court of Henderson County, North Carolina, do hereby certify that the foregoing is a true, accurate and correct copy of the Judgment entered in this case entitled, "DOT v. County of Henderson; and Henderson County Hospital Corporation, as taken from and compared to the original on file in my office.

Witness my hand and the official seal, this the \_\_\_\_ day of \_\_\_\_\_, 2010.

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Clerk of Superior Court of Henderson County  
Hendersonville, North Carolina