NO. COA05-1477

NORTH CAROLINA COURT OF APPEALS

Filed: 18 July 2006

6214 SOUTH BOULEVARD HOLDINGS, LLC.,
a North Carolina Limited Liability
Company,

v. Mecklenburg County
No. 04 CVS 10310

CITY OF CHARLOTTE, a municipal
corporation.

Appeal by plaintiff from judgment entered 1 July 2005 by Judge Albert Diaz in Mecklenburg County Superior Court. Heard in the Court of Appeals 7 June 2006.

Andresen & Associates, by Kenneth P. Andresen, for plaintiff-appellant.

Assistant City Attorney Catherine C. Williamson, for defendant-appellee.

STEELMAN, Judge.

The City of Charlotte (defendant), along with the County and other towns of Mecklenburg, initiated planning for a light rail transit system before 1994. Planning, with input from the community, was ongoing, and included the 2025 Integrated Transit/Land-Use Plan produced in 1998. This 1998 plan included recommendation of a light rail transit system using existing rail right-of-way along South Boulevard (South Corridor Project). The

1998 plan also recommended Archdale Drive as a station location on the South Boulevard route. Voters approved a 1/2 cent sales tax to fund the South Corridor Project in November 1998.

In June of 2000, plaintiff purchased a long-term lease on real estate located at 6214 South Boulevard (the property). This property is found at the intersection of South Boulevard and Archdale Drive, and includes an existing railroad right-of-way encumbering the westernmost sixty-five feet. Plaintiff purchased its interest in the property with the intention of subleasing it. There was an existing sublease on a portion of the property at the time plaintiff acquired its lease.

Plaintiff attempted to sublease another portion of the property between March and August of 2002. Three entities expressed interest in subletting that portion of the property, but all withdrew interest upon learning that a portion of the property might be condemned for use by the proposed light rail project.

Plaintiff initiated this action on 10 June 2004, alleging that defendant had publicly announced its intention to develop the light rail project in January of 2002, and that this announcement constituted a taking of plaintiff's interest in the property. Defendant filed a condemnation complaint and declaration of taking for the property on 1 July 2004. This matter was heard 6 June 2005 on defendant's motion to decide issues other than damages pursuant to N.C. Gen. Stat. § 136-108 (2005). The trial court ordered: "There having been no taking of Plaintiff's property on or about

January of 2002, this case is DISMISSED with prejudice." From this order plaintiff appeals.

In plaintiff's sole argument on appeal, it contends that the trial court erred in concluding defendant's actions prior to 1 July 2004 did not constitute a taking of plaintiff's property interests. We disagree.

Plaintiff argues that defendant's activities in preparation of implementing its light rail plan constituted an inverse condemnation of its property rights. Plaintiff argues that defendant's actions deprived it of its ability to sub-let the property, which was the sole reason plaintiff obtained an interest in the property.

> An action in inverse condemnation must show (1) a taking (2) of private property (3) for a public use or purpose. Although an actual occupation of the land, dispossession of the landowner, or physical touching of the land is not necessary, a taking of private property requires "a substantial interference with elemental rights growing out of the ownership of the property." A plaintiff must show an actual interference with or disturbance of property rights resulting in injuries which are not merely consequential or incidental.

Adams Outdoor Advertising v. North Carolina Dep't of Transp., 112 N.C. App. 120, 122, 434 S.E.2d 666, 667 (1993) (citations omitted).

> Although the courts which have been called upon to consider the question posed by the present subject have not always expressed their views in terms of a broad legal principle, it would appear to be well settled, as a general rule of law, that mere plotting or planning in anticipation of a public improvement does not constitute a taking or damaging of the property affected.

> A number of reasons have been advanced by the courts in support of such rule, the ones most frequently assigned being that plotting or planning does not, in itself, amount to an invasion of property, or deprive the owner of the use and enjoyment thereof; that the projected improvement may be abandoned and the property never actually disturbed; that the threat or possibility of condemnation is one of the conditions upon which all property is held; and that the rule is in aid of the growth and expansion of municipalities.

37 A.L.R.3d 127, 2 (2004); *see also, Browning v. North Carolina State Highway Com.*, 263 N.C. 130, 135-36, 139 S.E.2d 227, 230-31 (1964); *Tucker v. Charter Medical Corp.*, 60 N.C. App. 665, 671, 299 S.E.2d 800, 804 (1983); *Barbour v. Little*, 37 N.C. App. 686, 691-92, 247 S.E.2d 252, 255 (1978).

In the instant case defendant conducted a thorough planning process, involving its citizens through a series of public hearings at an early stage, before making final decisions and instituting condemnation actions. This necessary planning and preparation, without more, does not constitute a taking under the law, even though it may have impacted plaintiff's interest in the property. *Id.; see also Adams Outdoor Advertising*, 112 N.C. App. 120, 434 S.E.2d 666 (affirming dismissal where injury to property rights was merely consequential or incidental). This argument is without merit.

AFFIRMED.

Judges McGEE and ELMORE concur.

Report per Rule 30(e).