

NORTH CAROLINA GENERAL ASSEMBLY
1979 SESSION

CHAPTER 503
SENATE BILL 484

AN ACT RELATING TO CONDEMNATION POWERS OF THE TOWNS OF
FUQUAY-VARINA, AND KNIGHTDALE.

The General Assembly of North Carolina enacts:

Section 1. Any town has the power of eminent domain and may acquire by purchase, gift, or condemnation, any land, right of access, right-of-way, water right, privilege, easement, and any other interest in or relating to land, water, or improvements, either within or without the Town limits, for any lawful public use or purpose. In the exercise of the power of eminent domain, the town is vested with all power and authority now or hereafter granted by the laws of North Carolina applicable to the town and the town may follow the procedures now or hereafter prescribed by those laws.

Sec. 2. As an alternative to the procedures specified in Section 1 of this act, the town may exercise the power of eminent domain for any of the purposes enumerated in Section 1, subject to the following procedures and conditions:

(a) Institution of suit. The town may institute a civil action to condemn the land or interest in land by filing in the Superior Court of Wake County a complaint and a declaration of taking and by depositing with the clerk of the court the sum specified in subsection (b) of this section. Upon filing of the complaint and declaration of taking and the deposit of the required sum, summons shall be issued and served in the manner provided for service for process in civil actions, with a copy of the complaint and declaration of taking and notice of the amount of the deposit, upon the person or persons named in the complaint.

(b) Content of complaint and declaration of taking. The complaint and declaration of taking shall each include:

- (1) a statement of the authority under which, and the public use for which, the property is taken;
- (2) a description sufficient to identify the entire tract or tracts affected by the taking.
- (3) a statement of the estate or interest in land taken for the public use, and a description sufficient to identify the area taken; and
- (4) the names and addresses of those persons who the Town is informed and believes may have or claim to have an interest in the lands, so far as this information can by reasonable diligence be obtained. If any of these persons are infants, non compos mentis, or under any other

disability, or if their names or whereabouts are unknown, the complaint and declaration of taking shall so state.

The complaint shall also list any liens or other encumbrances which the Town, in the exercise of reasonable diligence, is informed and believes exist against the land; and the complaint shall include a prayer that there be a determination of just compensation in accordance with this section.

The declaration of taking shall also state the amount of money which the Town estimates to be just compensation for the taking.

The Town may amend the complaint and declaration of taking, and may increase the amount of the deposit at any time while the proceedings are pending, and the owner shall have the same rights of withdrawal of any additional amount as he had in the original deposit.

(c) Answer; reply. Not later than 30 days after service of summons, complaint, and declaration of taking, any person named in the complaint may file an answer. The answer shall contain admissions or denials of the allegations of the complaint as are appropriate, the names and addresses of the persons filing the answer, together with a statement as to their respective interests in the property taken, and any affirmative defenses or matters that are pertinent to the action. The answer may (i) pray only for a determination of just compensation, in which case title to the property shall vest in the Town when all persons named in the complaint have answered, or the 30 days time for answering has expired, or (ii) deny the right of the Town to take the property for the use of purpose stated in the complaint, and pray for a determination of just compensation if the issue of right to take is resolved in favor of the town, in which case title to the property shall vest in the Town only upon judgment entered in the Superior Court upholding the Town's right to take.

Affirmative allegations in the answer shall be deemed denied by the Town, but the Town may file a reply within 30 days from receipt of a copy of the answer.

(d) After the filing of the answer, and reply if any, the judge upon motion and 10 days' notice by any party shall, either in or out of term, hear and determine all issues raised by the pleadings, other than the issue of just compensation. Only the issue of just compensation shall be determined by a jury if either party request a jury in accordance with the rules of civil procedure.

(e) Upon vesting of title to the property in the Town, the Town shall have right of immediate possession, and the court shall proceed to determine the issue of just compensation and to disburse the sum deposited by the Town, following as nearly as practicable the procedures set out in Article 9 of G.S. Chapter 136, adapted by substituting the town in place of the Department of Transportation."

Sec. 3. The provisions of this act shall not apply with regard to properties owned by public service corporations as defined in G.S. 160A-243(c) unless the exercise of such power of eminent domain is either consented to by the owner of the property to be acquired by the town, or otherwise, first adjudicated after notice and a hearing that such acquisition will not prevent or unreasonably impair the continued devotion to the public use of such properties and the operation by such public service corporation.

Sec. 4. This act applies only to the Towns of Fuquay-Varina, and Knightdale.

Sec. 5. This act is effective upon ratification.

In the General Assembly read three times and ratified, this the 1st day of May, 1979.