

Blocked driveway equals unlawful taking, judge rules

By: Sharon McCloskey February 27, 2012

Henry Frampton and his wife had things worked out just fine with properties they owned on Folly Road in Charleston. She owned the parcel where they lived, and he owned the one next door, which they used as a rental property.

Though that parcel was small, it was well-located, on a creek with a dock, and they had no trouble finding tenants — until the S.C. Department of Transportation began a bridge replacement project which involved putting a guardrail directly in front of the driveway on that lot.

Frampton had asked that the DOT shorten the guardrail to keep access open, but the DOT suggested that he use the driveway to his wife's property to reach his rental property instead.



Once construction began in 2008, and DOT began obstructing access with construction materials while installing silt fences and ripping out Frampton's curb and gutter, his tenants moved out. And, for 16 months after, Frampton couldn't rent the property.

With about three-fourths of the project completed, DOT agreed to shorten the guardrail so that access could once again be open. That was good news for Frampton, but he was still out his rental income for that period.

At trial, DOT was unable to establish the three unities — use, title and contiguity — needed to treat the two parcels as one and sustain its argument that Frampton had access through the residential lot, said Frampton's attorney, Richard Bybee of Mt. Pleasant.

Charleston County Court of Common Pleas Judge Thomas L. Hughston, Jr. found that there had been a temporary taking of Frampton's property rights by virtue of DOT's obstructing access to the lot.

And, after hearing testimony from appraiser Tommy Hartnett, a jury awarded Frampton \$36,500 in damages for his lost rental income.

VERDICT REPORT

Type of Action: Inverse condemnation
Injuries alleged: Temporary loss of use and enjoyment of access
Name of case: Henry W. Frampton III v. SCDOT
Court: Charleston County Court of Common Pleas
Case No.: C/A 2009 – CP-10-6185
Tried before: Judge (on taking), jury (on damages)
Name of Judge: Thomas Hughston
Special Damages: \$36,500
Verdict or Settlement: Verdict
Amount: \$36,500
Date of Verdict: Feb. 8, 2012
Highest offer: Nothing
Most helpful experts: Tommy Hartnett
Attorneys for Plaintiff: Richard D. Bybee and Brent McDonald, Mt. Pleasant
Attorneys for Defendant: Beacham Brooker, Columbia
Were liability and/or damages contested? Yes