



Brewer allows condemnation

By Jimmy Simms

— The city of Cullman has been granted the right to condemn three tracts of property belonging to a Good Hope family for a proposed sewer improvement project, but the easements will cost the city nearly \$20,000 more than it originally offered.

Cullman County Probate Judge Betty Brewer Friday signed the final order of condemnation for three tracts belonging to Ben and Margaret Hoenig.

The city had offered the Hoenigs \$29,250 for the three tracts, which are located adjacent to Alabama Highway 69 and County Road 222, but the family refused the offers.

The city then sought condemnation of the property through the probate judge's office, which after months of review, upheld the city's right to condemn.

In addition to granting the condemnation, Brewer ordered that the Hoenigs be compensated in the amount of \$48,750 based on the recommendation of a three-member commission appointed to determine the fair market value of the property.

"I know probably neither side is happy with my decision, but I believe it is fair," Brewer said Friday.

Ben Hoenig, contacted at his used appliance and repair business on Alabama Highway 69, had no comment about the ruling, but city attorney Roy Williams said he was glad it was over.

"I understand the Hoenigs' position of not wanting to give up any interest in the property, but state law is there for a purpose and that purpose is for the benefit of the whole community and not just an individual," Williams said. "The city of Cullman uses condemnation very sparingly and only for those purposes allowable under state law.

"Ninety percent of the time, whenever a city or town makes an offer to purchase an easement the owner conveys the property willingly. That didn't happen in this case and the Hoenigs exercised their rights under the law, and we completely understand their doing that and we respect that and always have," Williams said.

"The judge has now made her ruling and that ruling is in the city's favor. The amount of the compensation has changed and that is certainly within the rights of the probate judge to do so. I'm just glad it's finally over."

More than two years ago, the city reportedly approached the Hoenigs, whose property actually lies within the township of Good Hope, about the possibility of running a sewer line across their property to connect the Alabama Highway 69 and Mann Road pump stations.

Arguing one municipality has no right to use eminent domain to condemn land in another town's jurisdiction, the Hoenig's rejected the city's offer for the right of way across their property, which resulted in the City Council authorizing condemnation proceedings last year.

Both parties presented their arguments before Brewer in a closed hearing in May.

Cullman Mayor Don Green commented at the time that it was not the intent of the city to hurt the Hoenigs or their property.

"The easement we're seeking runs parallel to a creek that splits the property. It's property that cannot be developed or built on because there's not a lot you can do with a creek bed," Green said. "They disagreed and we understand that. We're not trying to do anything unfair. We have two pump stations, one at Highway 69 and the other in the vicinity of Wal-Mart that can be eliminated if we're able to install this gravity flow line.

Taking those stations off line would save the city approximately \$40,000 annually in maintenance costs, not to mention the estimated \$250,000 to \$300,000 it would cost to rehabilitate the pump station at Highway 69." There was no indication Friday on when the city plans to begin its sewer improvements.

Copyright © 1999-2006 cnhi, inc.

