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EDITOR'S PICK

Georgia Supreme Court to review Marietta park land lawsuit

Megan Reed Jun 17, 2017



In this 2014 file photo, Ray Summerour stands in front of the property he owned before the city of Marietta condemned it for the expansion of Elizabeth Porter Park. Summerour filed suit over the condemnation of the property, which has not yet been razed, and now the Georgia Supreme Court will hear the case this week.

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Staff-file

A seven-year-old dispute between the city of Marietta and a landowner who has refused to sell his property to become park land has reached the Georgia Supreme Court.

The court will hear oral arguments Tuesday in the case involving a man suing the city of Marietta after the city condemned his property for the construction of Elizabeth Porter Park.

In 2009, Marietta voters approved a referendum for a \$25 million parks bond, which included funds for the expansion of the Elizabeth Porter Recreation Center. The old recreation center has since been demolished and will be replaced by Elizabeth Porter Park, which is set to open next summer.



The case focuses on whether the city followed Georgia code in its communication with the man about the appraisals it ordered to determine the value of his property.

At the time of the 2009 referendum, Ray Summerour owned Brenda's Grocery located on Allgood Road adjacent to the Elizabeth Porter Center's eastern border. The city of Marietta identified Summerour's shop as one of nine properties it needed to acquire for the expansion. Summerour and his attorney say the city did not follow proper procedure when acquiring the property.

In June 2010, the city's counsel sent Summerour a letter informing him that the city was interested in purchasing his property, and had hired someone to determine the value of the property. The appraiser they hired valued Summerour's property at \$85,000 and the city sent

Summerour a letter offering to buy his property for that price. Summerour did not respond, so in October, the city sent him another letter with the same offer, to which he also did not respond.

City and Summerour debate the offer

In 2013, Marietta sent Summerour another letter, this time stating that its current appraisal of the property was \$95,000 and that the store had an additional appraisal value of \$46,700. The city offered to purchase the property for \$141,700. In August, Summerour responded, saying that the offer was lower than he expected and asking for a summary of the appraisal. He said he would hire his own appraiser and had attended City Council meetings and learned that the city was considering using eminent domain to acquire his property.

The city and Summerour debated the offer back and forth for several months but never reached a settlement.

In May 2014, Summerour's attorney wrote the city of Marietta arguing the city had never supplied copies or summaries of its appraisals, as required by Georgia code. In response, the city provided Summerour with a summary of the appraiser's report, and in July, sent a full report from the year before and an offer to purchase the property for \$139,400. Summerour rejected that offer.

Marietta moves to acquire through condemnation

In January 2014, the city notified Summerour that it had decided to move forward to acquire the property through condemnation. In October of that year, the city filed a condemnation petition in Cobb County Superior Court. Following a hearing, the property was condemned and Summerour was awarded \$225,000.

Both parties appealed that decision, but it was upheld in Cobb Superior Court.

Summerour then appealed to the Georgia Court of Appeals, which ruled that initially, the city had violated Georgia code by failing to give Summerour a copy or summary of the appraisal.

The Court of Appeals threw out the trial court's ruling and sent the case back to the trial court.

The city has now appealed to the Georgia Supreme Court, which will determine whether the Court of Appeals ruled correctly.



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The high court will hear arguments on June 20 and will likely make a decision within six months.

Summerour's property has been condemned but his building has not yet been razed.

Arguments

Marietta's attorneys argue that the Court of Appeals was incorrect because the code offers guidelines, not mandates, about what must be done before condemning property. The provisions in the code are not compulsory, they argue, but are rather meant to encourage voluntary participation in the process.

City attorneys also say the Court of Appeals' ruling is inconsistent with the Open Records Act, which was updated in 2012 and exempts real estate appraisals from public disclosure until the property is acquired or the transaction is terminated. Marietta attorneys argue that it conflicts with the state Supreme Court's 1992 ruling in *Black v. Department of Transportation*, which states that Department of Transportation records cannot be the subject of an open records request until litigation is over. They are asking the state Supreme Court to throw out the Court of Appeals' ruling and affirm the decision of the trial court, allowing the case to proceed to trial over the value of the property.

Summerour's attorney, Donald Evans Jr., however, agrees with the Court of Appeals' ruling. He says the code was passed by the General Assembly in 2006 to prevent abuse of eminent domain, and the city knowingly refused to comply with the code for four years. Summerour's attorney says the Court of Appeals was right — he believes the provisions in the code are not guidelines but rules that must be followed.

He says statutes about eminent domain are construed in favor of private landowners and notes the statute's enactment as part of the "Landowner's Bill of Rights." He says the city only provided Summerour with information about the appraisal after he had already spent money on an attorney and an appraiser, but the code is intended to prevent landowners from having to pay these expenses.

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