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50 cents

## DOT to pay landowner millions

By Brandee Hayhurst  
Times-News

GRAHAM — A jury told the state Department of Transportation to compensate a landowner \$2.25 million for six acres needed for the Western Loop road project in west Burlington.

Though the jury did not give Kirkland Associates the \$3.1 million its attorneys had asked for, the verdict was far above the \$470,000 the state believed the property was

worth. Court officials also noted that they could not remember a jury awarding such a large amount in any civil trial.

"This might be the biggest verdict in Alamance County," said Superior Court Judge J.B. Allen Jr.

The Western Loop will run across the Kirkland property parallel to St. Mark's Church Road, then intersect with Huffman Mill Road by Alamance Regional Medical Center. The roadway project, which also includes straightening and widening Huffman

Mill Road, will take up about eight acres of the 63-acre property.

Construction workers have already begun grading for the project, which is slated for completion this year.

Kirkland Associates contested the \$400,800 the state offered them in May 2002. Attorneys for the company, George and Stephanie Autry, said the state appraised the land based on its current industrial use when the land is zoned for building offices. That led to much of the disparity between the appraisals presented by

each side. George Autry also told the jury that the DOT's project would drastically reduce the value of his client's lot by cutting it into two less appealing parcels with only one point of access. He said other buyers have paid more than \$100,000 per acre in the area.

Doug Corkhill, an attorney with the state attorney general's office, countered that talk about development was a "red herring" because the area is years from a building boom.

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### DOT: The compensation includes interest, bringing amount to \$2.5 million

"There's not many buyers for a 63-acre parcel of land," he told the jury.

Kirkland Associates unsuccessfully offered to settle with the state for \$1.6 million, a little more than halfway between the figure sought by each side. Once they went to trial, Autry appealed to the jury not to split the difference.

"The jury understood the unique character of this property being directly across the street from Alamance Regional Medical Center," Autry said after the verdict. "Obviously, we're very pleased."

The state is required to pay interest that brings total compensation to more than \$2.5 million.

Ronnie Kirkland did not

attend the trial and was out of town. Chandler Concrete and Triangle Grading and Paving are leasing the Kirkland property.

A spokeswoman at the attorney general's office could not be reached for comment.

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## LOCAL

# DOT ducks land value trial, settles

State offered \$165K, but raised amount to \$950K

BY JOHN STEVENSON

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Greatly upping the ante rather than letting a jury decide the case, the N.C. Department of Transportation agreed this week to pay an investment company \$950,000 for property needed for roadway widening at Hillendale Road and Interstate 85.

NCDOT originally offered to pay R&M Investments only \$165,000 for the tenth of an acre in the southeastern quadrant of the site. It raised the figure just before a jury was to be chosen in Durham County Superior Court. R&M promptly accepted.

It was the third time in two years that NCDOT got hit with a larger-than-anticipated land condemnation bill at the site.

In 2003, the state agency had offered to pay \$207,000 for property occupied by the former Pan-Pan diner. Jurors awarded more than \$1 million after deliberating for only 15 minutes.

The diner has since been razed to make way for highway

expansion.

And in November, another jury deliberated just 11 minutes before deciding the state should pay \$2.3 million for six-tenths of an acre it took from a Howard Johnson's hotel at the roadway construction site.

The jury award was more than seven times the \$291,000 that state officials initially offered to pay. However, NCDOT later upped its offer to \$375,000 and then \$560,000.

Raleigh lawyer George Autry represented the property owners in all three cases, including the one decided this week.

"I'm very reluctant to attach ill motives to the Department of Transportation," Autry told The Herald-Sun on Tuesday.

"But I think we can all agree that DOT missed the mark in these cases," he added. "I don't know why it happened. DOT has an awesome power to take land from folks. With awesome power comes awesome responsibility. With regard to this particular road interchange, they didn't meet their responsibility. Why? I don't know. There's a very troublesome trend in these three cases.

"The state might say it was trying to save the taxpayers money," said Autry. "But at this one particular intersection, they could have saved the taxpayers several million [dollars] if they had settled these cases fairly up front."

If the state had done so, there would have been no expensive and time-consuming litigation, according to Autry.

"There's no right side or wrong side to eminent domain," the lawyer said. "The city of Durham needs improvements at that intersection. But good government requires that you try to figure out a fair price for the property. They tried to get the land as cheaply as possible, and it backfired on them."

Autry said he and his clients had offered to settle the Howard Johnson's case out of court for \$1.4 million, or \$900,000 less than a Durham jury awarded.

"The state laughed at us," Autry said.

According to Autry, an 11,000-square-foot office building is on about an acre of land that was the subject of this week's case.

Autry said that, before the highway widening began, the building was fully occupied with five or six tenants. Now, it reportedly has only one renter.

In addition, the building must have 44 parking spaces to remain in compliance with zoning requirements, Autry added. But even though DOT took only about a tenth of an acre, it left the owners roughly 30 percent short on the parking requirement, he said.

The lawyer said such business losses are factored into the \$950,000 settlement sum.

# TRIANGLE BUSINESS JOURNAL

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## OUT OF BUSINESS

### TTA agrees to pay \$3.67M for less than two acres in downtown Raleigh

By Chris Baysden

**RALEIGH** — Larry Hester may be blind, but he can still see there's plenty in life more important than money.

Like chatting with old friends. Or walking hand in hand with his daughter to lunch. Or working with his brother in a business founded by their father.

So while the Triangle Transit Authority has agreed to pay Larry and his brother, Reece Hester, \$3.67 million for 1.31 acres of land in downtown Raleigh that was home to their business, Tire Supply Inc., there was a significant trade-off.

"You can't assign dollars and cents to it," says Larry Hester.

TTA wants to use the land, the bulls of which is at the corner of Lane and Harrington streets, to build a station for the region's troubled \$810 million rapid rail project. TTAs original offer for the two parcels — which includes a vacant 0.32-acre parcel located across from Harrington Street — clocked in at \$1.88 million.

While Larry and Reece probably couldn't stop TTA from taking the

land via condemnation, they challenged the amount TTA offered. The two sides reached the \$3.67 figure in mediation, preventing them from having to argue the case in a courtroom, a development that TTA General Manager John Claflin wouldn't have relished.

"It's a crapshoot then," Claflin says of having to go to court. "You're taking a chance." The settlement awaits the approval of the TTA board.

The Hesters' story has been perhaps the most compelling human element of the saga of the Triangle's rail project, which has become mired in doubts about whether it will ever be built. Despite such doubts, Claflin says simple momentum keeps the agency buying land.

He says TTA is continuing only with land acquisitions on which condemnation proceedings had begun. If the agency tried to stop a condemnation, he says, land owners

Larry Hester, foreground, and brother Reece say they miss working together at their downtown tire garage



# TTA: Claflin says agency has little choice but to move forward where condemnations have been started

could force TTA to buy the property anyway. "In our case, it was best to go forward with condemnation," he says.

The purchase of the Hesters' land gives TTA ownership or control of 92 percent of the land it needs for the rail project. The agency has spent 82 percent of its \$49.9 million land acquisition budget so far.

Frank Hester founded the tire business in 1967 and eventually turned it over to his two sons. The brothers served a downtown clientele from a strategic location with little competition but plenty of state government workers who liked being able to walk to the office after dropping off their cars.

Larry, an affable 57-year-old originally from Durham, developed an eye disease early in life that rendered him blind at age 35. He was able to continue working at the garage because he had become so familiar

with where everything was. Every morning, he and Reece, now 47, would get a chance to talk about family and the business over coffee as they opened the store.

Knowing that TTA was going to take the land, the brothers closed the business on Dec. 31, 2004. "We thought and prayed hard about it for a long time," Larry says of the decision to close the business. "It was one of the hardest things I've ever done.

"I had blood, sweat and tears in that place," he says.

Larry has retired, while Reece took a job as executive director of the North Carolina Tire Dealers Association. It's quite a change for both.

"One of the things I miss is my brother and being able to work with him," Reece says.

To resolve the dispute over how much

TTA would pay for the land, agency representatives met with the Hesters and their lawyers at Cranfill, Sumner & Hartzog on April 7. Each side presented arguments to a mediator, who then put the two parties in separate conference rooms.

Over the course of the day, the mediator went back and forth between the two sides trying to strike a deal. The process took about nine hours, as there were different estimates from different appraisers representing both sides. Finally, a deal was struck that delivered millions to the brothers, but it didn't come without strain.

"I'll tell you, it was a very emotional day," says George Autry, one of the lawyers representing the Hesters. "This place meant an awful lot to the Hesters."

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For more information concerning this article or land condemnation in general, contact George B. Autry, Jr., Stephanie H. Autry, or Brady W. Wells of Cranfill, Sumner & Hartzog's Land Condemnation Group at (919) 828-5100, or by contacting the Group's Case Manager at (919) 863-8814, or visit [www.landcondlaw.com](http://www.landcondlaw.com).

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# DURHAM

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COMING  
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Having their say

Duke students hear from  
Palestinian Solidarity  
Conference

## DOT takes whipping on land value

Jury gives \$2.3M  
to hotel owners  
instead of \$291K  
originally offered

BY JOHN STEVENSON

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After lawyers introduced what they called a "bombshell" piece of evidence, jurors took only 11 minutes Thursday to

decide the state must pay \$2.3 million for 0.6 of an acre it took for roadway widening at Hillandale Road and Interstate 85.

The jury award, on the fourth day of a trial in Durham County Superior Court, was more than seven times the \$291,000 the Department of Transportation initially offered for the property. The land is occupied by a Howard Johnson's hotel.

"We were shocked," said George Autry Jr., one of the

lawyers for Ken Patel, the Howard Johnson's franchise holder.

"Most juries can hardly pick a foreman that fast," Autry quipped.

According to Autry, the DOT went into the trial thinking its land condemnation would put the widened roadway within 5 feet of the Howard Johnson's office and swimming pool.

But a surveying stake was found in some bushes near the

hotel last week, Autry said. The stake indicated that the DOT actually had condemned a few feet of the hotel's foundation, he added.

The new survey information was sprung on the DOT during this week's trial.

"We knew we had a bombshell," Autry said. "We found out by surprise that we didn't own part of our building [any longer]. That made the hotel unsaleable. A willing buyer is not going to

purchase a hotel that doesn't own part of its foundation, no more than a homeowner is going to purchase a house with the kitchen in the attic."

After the new piece of evidence was unveiled, the DOT rested its case without presenting any evidence.

"I would venture this has never before happened in the history of DOT," Autry speculated.

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**"The amount DOT  
offered to pay  
just wasn't fair."**

George Autry Jr.  
attorney for Ken Patel,  
Howard Johnson's  
franchise owner

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**HOTEL**

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ed.

Although the DOT's initial offer for the condemned property was \$291,000, the state agency later upped the amount to \$375,000 and then \$560,000, according to Autry.

The lawyer said he and his client were willing to settle the case out of court for \$1,575,000.

Even if the DOT had not condemned part of the hotel's foundation, the structure likely would have been unsaleable, Autry added. Once the widened roadway came closer than 25 feet, the hotel would have been out of compliance with zoning requirements, he said.

"The amount DOT offered to pay just wasn't fair," the attorney contended.

Patel, the Howard Johnson's franchise holder for a decade, said he was happy with Thursday's verdict but unhappy with the construction situation in general.

"People can see us from the highway, but they can't get in here because of the construction," he said. "We're barely doing 30 [to] 35 percent occupancy. We're not even breaking even. It's been like this for the last two years. We can't even put the property on the market now. No buyer would want it."

Last year, the DOT went to trial over property occupied by the former Pan Pan diner, next door to the Howard Johnson's hotel. Autry represented the property owners in that case too.

The state agency had offered to pay \$207,000 for the land. Jurors awarded more than \$1 million after only 15 minutes of deliberations.

The diner has since been razed to make way for highway expansion.

One of the DOT's biggest local losses came nearly two years ago, when Irv Whitney hauled the agency into court rather than accept \$7,300 for a small portion of an acre needed to widen Cheek Road at Midland Terrace. Jurors decided that Whitney should receive \$98,219 — more than 13 times the DOT offer.

Autry also represented the owners of the Heart of Durham motel. The city recently agreed to pay about \$1.41 million for the property — almost twice the \$750,000 it offered after condemning the property — after a panel of three court-appointed real estate appraisers assessed the property's value.

The county Web site shows the property with a tax value of \$733,898, while the building is listed as having no value.