

**IN THE DISTRICT COURT OF WAGONER COUNTY
STATE OF OKLAHOMA**

**CITY OF BROKEN ARROW,
OKLAHOMA, a Municipal Corporation,**

Plaintiff,

vs.

**ABATEMENT SYSTEMS, INC.; BOARD OF
COUNTY COMMISSIONERS OF WAGONER
COUNTY; AND DANA PATTEN, COUNTY
TREASURER OF WAGONER COUNTY,
OKLAHOMA; STATE OF OKLAHOMA ex rel
DEPARTMENT OF TRANSPORTATION,**

Defendant,

Case No. CV-18-4

Judge: Shepherd

JOURNAL ENTRY OF JUDGMENT

COMES NOW before me, the undersigned Judge of District Court on this ____ day of June, 2019, this matter for hearing on the Parties Joint Application for Journal Entry of Judgment. The City of Broken Arrow appears by and through its attorney of record, Trevor A. Dennis. The Defendant Abatement Systems, Inc. appears by and through its attorney of record, Lewis N. Carter. The Defendant Dana Patten, Wagoner County Treasurer appears not. The Defendant Board of Commissioners, Wagoner County appears not. Both Defendants Dana Patten, Wagoner County Treasurer and Board of Commissioners, Wagoner County were served by certified mail on March 6, 2018 of the Notice and Condemnation Proceeding of the Court Appointed Commissioners Report filed in the case on March 5, 2018. Both Defendants have failed to respond to this action or request a trial within 60 days of the filing of the Commissioners Report on this matter. The Defendant State of Oklahoma, Ex rel. Department of Transportation was dismissed without prejudice on March 29, 2018.

The Plaintiff, City of Broken Arrow, and Defendant, Abatement System, Inc. have reached a mutually agreeable settlement in this matter. The City of Broken Arrow agrees to reduce the acquisition of property from approximately 4.54 acres to 0.13 acres, reflected in the legal description attached as Exhibit "A". The City of Broken Arrow also agrees to construct the road expansion for this project in accordance with the Engineering Plans attached as Exhibit "B". In exchange, Abatement System, Inc. agrees to release any claims to the \$383,622.00 Commissioners Award tendered by the City of Broken Arrow on April 30th, 2018 and enter into this Journal Entry of Judgment.

The Court is fully advised of and this Court approves as follows:

1. The filing of this condemnation action and the Appointment of the Commissioners, the Oaths of Commissioners and the Commissioners' subsequent Report are regular in all respects.
2. On January 2nd, 2018, Broken Arrow City Council determined and declared the public necessity of taking, appropriating, condemning and acquiring fee simple and permanent right of way in and upon the following described real property in Wagoner County, Oklahoma, to wit:

A tract of land being a part of the Northwest Quarter (NW/4) of the Southwest Quarter (SW/4) of Section 7, Township 18 North, Range 15 East of the Indian Base and Meridian, Wagoner County, State of Oklahoma, more particularly described as follows:

Beginning at point where the north line of said NW/4 of the SW/4 intersects the Westerly right-of-way of Old State Highway 51; thence South 88°51'59" West along the north line of said NW/4 of the SW/4, a distance of 134.50 feet; thence South 01°20'29" East along a line parallel with the west line of said NW/4 of the SW/4, a distance of 297.22 feet; thence South 43°31'28" East, a distance of 529.23 feet; thence North 46°19'26" East, a distance of 300.00 feet to a point on the westerly line of said right-of way of old highway 51; thence North 43°37'06" West along said westerly right-of-way of old highway 51, a distance of 658.00 feet to the POINT OF BEGINNING, containing 197,787 square feet or 4.54 acres, more or less. Basis of bearing is an assumed bearing of South 88°51'59" West along the North line of the NW/4 of the SW/4 of Section 7, T-18-N, R-15-E, Wagoner County, Oklahoma.

3. On January 9th, 2018, the City of Broken Arrow, Oklahoma, a Municipal Corporation, filed a Petition for Condemnation to acquire fee simple and permanent right of way of the above described property.
4. On March 5th, 2018, the three Commissioners lawfully appointed by this Court submitted their Report of Commissioners assessing the damage of said owners by reason of appropriation of the above described land at the sum of \$383,622.00.
5. On March 26th, 2018, Plaintiff City of Broken Arrow and Defendant Abatement Systems, Inc. filed demands for jury trials in this matter.
6. On April 30th, 2018, the City of Broken Arrow tendered the Commissioners Award to the Court Clerk for the District Court of Wagoner County in the amount of \$383,622.00.
7. On June 17th, 2019, City Council for the City of Broken Arrow determined and declared the public necessity of taking, appropriating, condemning and acquiring fee simple title and permanent right of way from Abatement Systems, Inc. of the following described revised real property in Wagoner County, Oklahoma, to wit:

FEE SIMPLE AND PERMANENT RIGHT OF WAY PARCEL 16.0

A tract of land being a part of Northwest Quarter (NW/4) of the Southwest Quarter (SW/4) of Section 7, Township 18 North, range 15 East of the Indian Base of Meridian, Wagoner County, State of Oklahoma, more particularly described as follows:

Beginning at point where the north line of said NW/4 of the SW/4 intersects the Westerly right-of-way of Old State Highway 51; thence South 88°51'59" West along the north line of said NW/4 of the SW/4, a distance of 134.50 feet; thence South 01°20'29" East along a line parallel with the west line of said NW/4 of the SW/4, a distance of 38.13 feet; thence North 88°51'59" East, a distance of 169.28 feet to a point on the westerly line of said right-of-way of old highway 51; thence North 43°37'06" West along said westerly right-of-way of old highway 51, a distance of 51.70 feet to the POINT OF BEGINNING, containing 5,792 square feet or 0.13 acres, more or less.

Basis of bearing is an assumed bearing of South 88°51'59" West along the North line of NW/4 of the SW/4 of Section 7, T-18-N, R-15-E, Wagoner County, Oklahoma.

8. The revised acquisition of Parcel 16.0 is for approximately 5,792 square feet or 0.13 acres.
9. The taking of the property described in the revised Exhibit "A" is necessary for the purposes of the Plaintiff and the said property was heretofore owned in fee simple by the Defendant Abatement Systems, Inc. The property described below is hereby taken and condemned under the power of eminent domain and the City of Broken Arrow is declared to be the owner of fee simple and permanent right of way of the following tract of land:

FEE SIMPLE AND PERMANENT RIGHT OF WAY PARCEL 16.0

A tract of land being a part of Northwest Quarter (NW/4) of the Southwest Quarter (SW/4) of Section 7, Township 18 North, range 15 East of the Indian Base of Meridian, Wagoner County, State of Oklahoma, more particularly described as follows:

Beginning at point where the north line of said NW/4 of the SW/4 intersects the Westerly right-of-way of Old State Highway 51; thence South 88°51'59" West along the north line of said NW/4 of the SW/4, a distance of 134.50 feet; thence South 01°20'29" East along a line parallel with the west line of said NW/4 of the SW/4, a distance of 38.13 feet; thence North 88°51'59" East, a distance of 169.28 feet to a point on the westerly line of said right-of-way of old highway 51; thence North 43°37'06" West along said westerly right-of-way of old highway 51, a distance of 51.70 feet to the POINT OF BEGINNING, containing 5,792 square feet or 0.13 acres, more or less.

Basis of bearing is an assumed bearing of South 88°51'59" West along the North line of NW/4 of the SW/4 of Section 7, T-18-N, R-15-E, Wagoner County, Oklahoma.

10. The City of Broken Arrow, Oklahoma is entitled to recover the tender of payment in the amount of \$383,622.00 paid on April 30th, 2018.
11. The City of Broken Arrow, Oklahoma has no right, title or interest in the portion of the property described in Paragraph 2 above, except for its interest in the portion thereof taken and condemned as described in Paragraph 9 above.
12. The Defendants Board of County Commissioners, Wagoner County and Dana Patten, County Treasurer of Wagoner County appear not, have failed to respond to this action, have not requested a trial on any of the issue or contested to the amount of the Commissioners award and

more than sixty days have passed in accordance with Oklahoma Statutes, The Plaintiff is entitled to judgment on the Pleadings pursuant to 66 O.S. § 55.

13. Service of process has been perfected as provided by law on all of the Defendants having compensable interest in the property and on all Defendants having lien and/or mortgage claims with claims of title against the property.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Plaintiff is the owner of the simple and permanent right of way of the following described lands:

FEE SIMPLE AND PERMANENT RIGHT OF WAY PARCEL 16.0

A tract of land being a part of Northwest Quarter (NW/4) of the Southwest Quarter (SW/4 of Section 7, Township 18 North, range 15 East of the Indian Base of Meridian, Wagoner County, State of Oklahoma, more particularly described as follows:

Beginning at point where the north line of said NW/4 of the SW/4 intersects the Westerly right-of-way of Old State Highway 51; thence South 88°51'59" West along the north line of said NW/4 of the SW/4, a distance of 134.50 feet; thence South 01°20'29" East along a line parallel with the west line of said NW/4 of the SW/4, a distance of 38.13 feet; thence North 88°51'59" East, a distance of 169.28 feet to a point on the westerly line of said right-of-way of old highway 51; thence North 43°37'06" West along said westerly right-of-way of old highway 51, a distance of 51.70 feet to the POINT OF BEGINNING, containing 5,792 square feet or 0.13 acres, more or less.

Basis of bearing is an assumed bearing of South 88°51'59" West along the North line of NW/4 of the SW/4 of Section 7, T-18-N, R-15-E, Wagoner County, Oklahoma.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that effective April 30th, 2018, Defendant Abatement Systems, Inc. and all persons claiming by, through or under the original owners of the subject properties, have no further right, title or interest in and to said land inconsistent with the Plaintiff's ownership and are hereby adjoined from ever asserting claim to said land adverse to the right of the Plaintiff herein, specifically:

FEE SIMPLE AND PERMANENT RIGHT OF WAY PARCEL 16.0

A tract of land being a part of Northwest Quarter (NW/4) of the Southwest Quarter (SW/4) of Section 7, Township 18 North, range 15 East of the Indian Base of Meridian, Wagoner County, State of Oklahoma, more particularly described as follows:

Beginning at point where the north line of said NW/4 of the SW/4 intersects the Westerly right-of-way of Old State Highway 51; thence South 88°51'59" West along the north line of said NW/4 of the SW/4, a distance of 134.50 feet; thence South 01°20'29" East along a line parallel with the west line of said NW/4 of the SW/4, a distance of 38.13 feet; thence North 88°51'59" East, a distance of 169.28 feet to a point on the westerly line of said right-of-way of old highway 51; thence North 43°37'06" West along said westerly right-of-way of old highway 51, a distance of 51.70 feet to the POINT OF BEGINNING, containing 5,792 square feet or 0.13 acres, more or less.

Basis of bearing is an assumed bearing of South 88°51'59" West along the North line of NW/4 of the SW/4 of Section 7, T-18-N, R-15-E, Wagoner County, Oklahoma.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the sum of \$383,622.00 previously deposited with the Court Clerk of this Court shall be remitted back to the City of Broken Arrow, Municipal Corporation.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the City of Broken Arrow, Oklahoma shall construct the road widening project on the acquired property in accordance with the Engineering Drawings attached as Exhibit "B".

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the City of Broken Arrow, Oklahoma has no right, title or interest in the property described in Paragraph 2 above other than the part thereof expressly taken and condemned by the Journal Entry.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that each Party shall bear their own cost in attorney's fees.

JUDGE OF THE DISTRICT COURT

Approved as to form and content:

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