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1 CASE NO. 19229

'89 SEP -6 AM 11:55

2 DEPT. NO. I

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4 BARBARA REED
CLERK
BY *[Signature]* DEPUTY

6 IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
7 IN AND FOR THE COUNTY OF DOUGLAS

8 THE BOARD OF COUNTY COMMISSIONERS,)
9 the duly elected governing body of)
10 DOUGLAS COUNTY, a political)
11 subdivision of the State of Nevada,)
12 Plaintiff,)

12 vs.)

ORDER GRANTING
SUMMARY JUDGMENT

13 MANFORD E. BEALS, GLEN MULLOWNEY,)
14 KATHERINE MULLOWNEY, THE STATE OF)
15 NEVADA, ex. rel. the Nevada State)
16 Treasurer for the State Distributive)
17 School Fund, and Does One through)
18 Ten, unknown persons claiming any)
19 right, title, lien, or interest)
20 whatsoever in the real property)
21 described within this Complaint,)
22 Defendants.)

19 This case involves an action by Plaintiff Douglas
20 County, (hereinafter "County"), to condemn a certain parcel of
21 real property situated in the Lake Tahoe portion of Douglas
22 County. Named Defendants in the County's complaint were Manford
23 E. Beals, (hereinafter "Beals"), Glen Mallowney, Katherine
24 Mallowney (hereinafter "Mallowneys"), and the State of Nevada,
25 ex. rel. the Nevada State Treasurer for the State Distributive
26 School Fund (hereinafter "State"). Answers were filed by
27 defendants Beals and the State. The matter was set for trial
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211097

BOOK 989 PAGE 2166

1 before a jury. Prior to the date set for trial, Beals filed a
2 Motion for Summary Judgment. The County responded to Beals'
3 motion by filing its own Motion for Summary Judgment.
4 Mullowneys and the State filed no formal written response to
5 either motion, but in open court orally joined in County's
6 motion.

7
8 At a hearing held just prior to the scheduled
9 commencement of the jury trial, all parties were present, County
10 being represented by Brent T. Kolvet, District Attorney for
11 Douglas County, State represented by Melanie Meehan-Crossley,
12 Mullowneys represented by Robert M. Henderson and Beals being
13 present in person, representing himself in Forma Pauperis. At
14 said hearing, the Court inquired of all parties if they intended
15 to file any further pleadings, motions or responses to the
16 motions for summary judgment. All parties responded they did
17 not and the Court then advised the parties that prior to the
18 date set for trial the Court would review the motions and advise
19 the parties if the Court found the motions dispositive of all
20 issues and if a trial was necessary. The Court, after reviewing
21 the Motions for Summary Judgment, notified all parties by
22 telephone that it was vacating the trial as the motions for
23 summary judgment were dispositive of all issues. The Court
24 further advised all parties that it would issue its formal
25 written order.
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211097

BOOK 989 PAGE 2167

1 DECISION

2 The motions filed on behalf of Beals and the County
3 present two issues for this Court to consider. The first issue
4 involves whether the use to which the property is to be applied
5 is a public use and whether the property is necessary to such
6 public use. NRS 37.040. Beals asks that summary judgment be
7 entered in his favor on this point because private parties have
8 already constructed some sort of road across the property,
9 somehow negating the public necessity for the condemnation. The
10 County, in its motion, argues that the Court's review of this
11 issue is limited. The thrust of the County's argument is that
12 the Board of Commissioners by passing Resolution No. 87-60 made
13 the necessary and appropriate decisions in this regard and the
14 Court can only consider whether the Board abused its
15 discretion. The Court finds the County's argument to be
16 persuasive. Schrader v. District Court, 58 Neb. 188, 73 P.2d
17 493 (1937); State v. Pinson, 66 Nev. 227, 207 P.2d 1105
18 (1949); Auoville v. Lincoln Power, 71 Nev. 320, 290 P.2d 970
19 (1955); Urban Renewal Agency v. Iacommetti, 79 Nev. 113, 379
20 P.2d 466 (1963). The Court therefore finds that the Board of
21 Commissioners did not abuse its discretion when it found that
22 Beals property was necessary for the purpose of constructing a
23 roadway to serve the Bedell Way area of Douglas County.

24 The Court now turns to the second issue raised by the
25 motions for Summary Judgment. The County seeks summary judgment
26 on the question of value. In support of its motion, the County
27 has attached the affidavit of Gilbert G. Wright, a qualified
28

1 real estate appraiser. The affidavit of Mr. Wright incorporated
2 by reference a letter of opinion of value. Mr. Wright's opinion
3 of value of the Beals' parcel was set as of August 13, 1987 at
4 \$10,500. Beals offered no responding affidavit contradicting
5 the County's expert. In fact, Beals in his Motion for Summary
6 Judgment argues that no County funds are required be paid to any
7 persons for the taking of the property. Pursuant to NRCP 56(e)
8 the Court, therefore, finds that there is no genuine issue for
9 trial on the question of value.

10 There being no genuine issue of fact, the Court does
11 hereby order that Plaintiff's Motion for Summary Judgment is
12 hereby granted in all respects and Defendant Manford E. Beals'
13 Motion for Summary Judgment is denied.

14 ORDER

15 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that
16 Plaintiff, Douglas County be awarded title to that certain real
17 property situated in the County of Douglas, State of Nevada,
18 more particularly described as follows:

19 All that portion of Malley Bedell
20 Way as shown on that certain Record
21 of Survey, Document No. 44707, more
particularly described as follows:

22 Beginning at the Northeast corner
23 of Lot 4, Block 2 of Cave Rock
24 Village Subdivision, recorded in
25 the Office of the County Recorder
26 on October 5, 1953, as Document No.
27 9223 and shown on the above
28 referenced Document No. 44707;
thence South 55 49' 52" West 52.18
feet; thence North 89 42' 11" West
115.09 feet to a point on the
Easterly line of U.S Highway 50 as
described in Deed recorded March
29, 1953, in Book B-1 of Deeds, at

1 Page 5; thence along the Easterly
2 line along a curve concave to the
3 Northwest with a radius of 1114.14
4 feet, a central angle of 1 08'55",
5 and an arc length of 32.33 feet;
6 thence South 89 42'11" East 90.11
7 feet; thence North 55 49' 52" East
8 38.31 feet; thence South 55 49'
9 52", West 34.17 feet to the True
10 Point of Beginning.

11 Containing 3,850 square feet ,more
12 or less.

13 Title to said property shall be vested in Douglas County in fee
14 simple absolute.

15 IT IS HEREBY FURTHER ORDERED that Douglas County pay to
16 the Clerk of the Court the sum of \$10,500 which sum shall be in
17 full payment of all damages sustained by Defendant Manford E.
18 Beals as a result of the taking by Douglas County.

19 IT IS FURTHER ORDERED that the sum deposited with the
20 Court Clerk be paid to the State Treasurer on behalf of the State
21 Distributive School Fund as partial satisfaction of that certain
22 judgment entered in Case No. 6973 filed in the Ninth Judicial
23 District Court of the State of Nevada in and for the County of
24 Douglas and which was recorded as document number 145042 in Book
25 Number 1186 at page 1282 with the Office of the Douglas County
26 Recorder. Beals has admitted in his Answer to Plaintiff's
27 Amended Complaint that said judgment constitutes a valid lien on
28 the subject property.

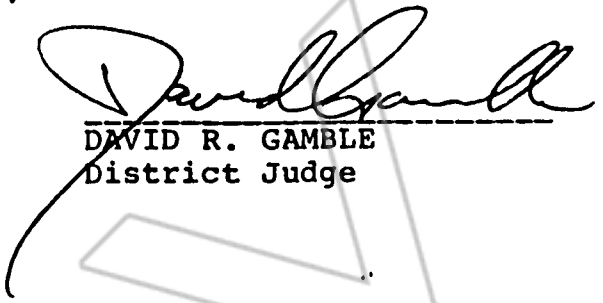
IT IS FURTHER ORDERED that the easement interest running
in favor of Defendants Glen and Katherine Mallowney is also
condemned and any such interest shall be extinguished. The
County, pursuant to an oral stipulation entered into in open
court, shall not be required to compensate Mallowneys for their

211097

BOOK 989 PAGE 2170

1 interest in said property. The Mallowneys as part of said
2 stipulation having agreed to donate any interest they have in
3 said property to Douglas County.

4 DATED this 6 day of ^{Sept}~~August~~, 1989.

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6 
7 DAVID R. GAMBLE
8 District Judge

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12 The document to which this certificate is attached is a
13 full, true and correct copy of the original on file and on
14 record in my office.

SEAL

15 DATE: September 14, 1989
16 B. Reed Clerk of the 9th Judicial District Court
17 of the State of Nevada, in and for the County of Douglas.

18 By: Sheppell Deputy

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25 REQUESTED BY
26 DOUGLAS COUNTY / DA
27 IN OFFICIAL RECORDS OF
28 DOUGLAS CO., NEVADA

'89 SEP 18 P3:27

SUZANNE BEAUDREAU
RECORDER

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PAID K10 DEPUTY

BOOK 989 PAGE 2171