

STATE OF ALABAMA

Plaintiff,

vs.

JAMES D. FOSTER, ET AL

Defendants.

Parcel No. 1-Tract No. 45-A

James D. Foster  
1818 Hummingbird Lane  
Birmingham, Alabama

Janie W. Foster  
1818 Hummingbird Lane  
Birmingham, Alabama

Dan Hartzog  
512 Hillyer Highroad ✓  
Anniston, Alabama

Mildred R. Hartzog  
512 Hillyer Highroad ✓  
Anniston, Alabama

William C. McDonald  
2201 Crest Drive ✓  
Birmingham, Alabama

Peggy Spain McDonald  
2201 Crest Drive  
Birmingham, Alabama

Parcel No. 2-Tract No. 49

Delores Whisenant-nee  
Hoenigsberg  
Rt. 19, Box 150 ✓  
Birmingham, Alabama

W. H. Whisenant  
Rt. 19, Box 150 ✓  
Birmingham, Alabama

IN THE PROBATE COURT  
OF SHELBY COUNTY,  
ALABAMA

CASE NO: 20-3

Parcel No. 3-Tract No. 50-B

Peggy Spain McDonald  
2201 Crest Road  
Birmingham, Alabama

William C. McDonald  
2201 Crest Drive  
Birmingham, Alabama  
AS TO ALL TRACTS

Fay Quick, Tax Collector  
Shelby County Courthouse  
Columbiana, Alabama

Tommy Snowden, Tax Assessor  
Shelby County Courthouse  
Columbiana, Alabama

PROJECT NO: I-65-2(37)

Tracts: 45-A, 49, 50-B

APPLICATION FOR ORDER OF CONDEMNATION

I certify this to be a true and  
correct copy *[Signature]*  
Probate Judge  
Shelby County

08/04/1993-03433  
03:25 PM CERTIFIED  
SHELBY COUNTY JUDGE OF PROBATE  
011 REC 31.30

TO THE HONORABLE CONRAD H. FOWLER JUDGE OF PROBATE COURT OF  
SHELBY COUNTY, ALABAMA

Now comes the State of Alabama, as Plaintiff, and files this, it's application in the Probate Court of Shelby County, Alabama, for an Order of Condemnation of the lands and properties hereinafter described for public roads and highway purposes, and, as a basis for the relief sought, shows unto the Honorable Court as follows:

1. Petitioner is authorized by the Constitution and the Laws of the State of Alabama, to institute and prosecute this proceeding in it's own name for the purposes herein stated: That the places of residence or post office addresses of the person or entities against whom this application is filed each reside at the address set opposite his or her name, and are of sound mind and who are residents of the State of Alabama. Petitioner avers that the lands set out and described herein are owned by the defendant set out underneath the description of the said lands, and avers that each of the individual defendants are over the age of 21 years, and under no legal disability, unless otherwise specifically recited. Petitioner further avers that the corporate defendant named, if any, are incorporated or qualified to do business in the State of Alabama, unless otherwise indicated.

2. That the State of Alabama is now engaged in the planning or construction of a certain public road or highway, said public road or highway to be known or designated as State of Alabama Highway Department Project No. I-65-2(37); that said public road or highway will be a highway, and that part of the property herein sought to be condemned is the respective property owners' rights and easements of access between the said public road or highway

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right of way and the said property owners' real property, if any, as is more specifically described and set out in Paragraph Three (3) below; including rights of access where applicable and where designated, is necessary to effect said public road or highway, and that said lands and properties will be used after the acquisition thereof to effect said public road or highway; that by reason of the foregoing, the acquisition of the lands and properties hereinafter described in Paragraph 3 below is in the public interest.

3. That the tract(s) of land necessary for use by Petitioner as a right of way for said public road or highway purposes, and which Petitioner seeks to condemn an easement or right of way in, over, upon, or across for said public road or highway purposes, together with other properties herein sought to be condemned which is necessary to effect said public road or highway as a road, or highway, are more particularly described or designated as the following separate paragraph(s), or "Parcel(s)", and that the names and residences of the owners and other parties who claim or who hold any right, title or interest in said "Parcel(s)" are stated, where known, immediately following each said "Parcel(s)", as follows, to-wit:

PARCEL NO. 1

SHELBY

TRACT NO. 45-A, REV. 2

Shelby

and as shown on the right-of-way map of Project No. 1-65-2(17) as recorded in the Office of the Judge of Probate of Shelby County, Alabama:

Commencing at the southwest corner of the SW $\frac{1}{4}$  of NW $\frac{1}{4}$ , Section 29, T-19-S, R-2-W; thence northerly along the west line of said SW $\frac{1}{4}$  of NW $\frac{1}{4}$ , the west property line, a distance of 710 feet, more or less, to a point that is 115 feet southeasterly of and at right angles to the centerline of Shelby County Road No. 17 and the point of beginning of the property herein to be conveyed; thence continuing northerly along said west property line, a distance of 92 feet, more or less, to the present southeast right-of-way line of said road; thence northeasterly along said present southeast right-of-way line, a distance of 1140 feet, more or less, to the east property line; thence southerly along said east property line, a distance of 211 feet, more or less, to a point on a line which extends from a point that is 200 feet southeasterly of and at right angles to the centerline of said road at Station 69+24.03 to a point that is 190 feet southeasterly of and at right angles to the centerline of said road at Station 63+60; thence southwesterly along said line, a distance of 75 feet, more or less, to said point that is 190 feet southeasterly of and at right angles to the centerline of said road at Station 63+60; thence northwesterly along a straight line, a distance of 75 feet, to a point that is 115 feet southeasterly of and at right angles to the centerline of said road at Station 63+60; thence southwesterly, parallel to the centerline of said road, a distance of 534.39 feet, more or less, to a point that is 115 feet southeasterly of and at right angles to the centerline of said road at Station 58+25.61; thence southwesterly along a curve to the right (concave northwesterly) having a radius of 5844.50 feet, parallel to the centerline of said road, a distance of 445 feet, more or less, to the point of beginning.

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Said strip of land lying in the NW<sup>1</sup> of SW<sup>1</sup>, Section 29,  
T-19-S, R-2-W and containing 2.14 acres, more or less.

This conveyance is made for the purpose of a controlled access facility and adjacent service road or roads and the grantor hereby releases and relinquishes to the grantee any and all abutter's rights appurtenant to grantor's remaining property in and to said controlled access facility, provided however, that there is hereby reserved the right of ingress to and egress from such remaining property to and from said service road or roads which will be accessible to the controlled access facility only at such points as may be established by public authority.

THE OWNERS OF PARCEL NO. 1 ARE AS FOLLOWS:

James D. Foster, Janie W. Foster, Dan Hartzog, Mildred R. Hartzog,  
William C. McDonald, Peggy Spain McDonald

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J. Z. Rutherford  
Tract No. 45-A, Rev. 2  
June 25, 1976

SHELBY

TRACT NO. 49, REV.

Shelby

and as shown on the right-of-way map of Project No. I-65-2(37) as recorded in the Office of the Judge of Probate of Shelby County, Alabama:

Commencing at the northwest corner of the NE $\frac{1}{4}$  of NE $\frac{1}{4}$ , Section 30, T-19-S, R-2-W; thence easterly along the north line of said NE $\frac{1}{4}$  of NE $\frac{1}{4}$ , a distance of 1296 feet, more or less, to a point that is 240 feet northwesterly of and at right angles to the centerline of Project No. I-65-2(37) and the point of beginning of the property herein to be conveyed; thence continuing easterly along the north line of said NE $\frac{1}{4}$  of NE $\frac{1}{4}$ , the north property line, a distance of 20 feet, more or less, to the east line of said NE $\frac{1}{4}$  of NE $\frac{1}{4}$ , the east property line; thence southerly along said east property line, a distance of 192 feet, more or less, to the south property line; thence westerly along said south property line, a distance of 79 feet, more or less, to a point that is 240 feet northwesterly of and at right angles to the centerline of said project; thence N 16° 00' 15" E, parallel to the centerline of said project, a distance of 200 feet, more or less, to the point of beginning.

Said strip of land lying in the NE $\frac{1}{4}$  of NE $\frac{1}{4}$ , Section 30, T-19-S, R-2-W and containing 0.22 acres, more or less.

As a part of the consideration hereinabove stated there is also bargained, sold, conveyed and relinquished to the grantee all existing, future, or potential common law or statutory rights of access between the right of way of the public way identified as Project No. 1-65-2(37), County of Shelby, and all of the grantor's remaining property consisting of all parcels contiguous one to another, whether acquired by separate conveyances or otherwise, all of which parcels either adjoin the property conveyed by this instrument or are connected thereto by other parcels owned by the grantor.

The above described area includes a present 10 foot wide easement granted to the Alabama Gas Company lying next to the east line of said NE $\frac{1}{4}$  of SE $\frac{1}{4}$  and extending from the south property line to the north line of said NE $\frac{1}{4}$  of SE $\frac{1}{4}$ .

THE OWNERS OF PARCEL NO. 2 ARE AS FOLLOWS:

Dolores Whisenant-nee Hoenigsberg, W. H. Whisenant

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W. H. Whisenant  
Tract No. 49, Rev.  
April 19, 1976

This conveyance is made for the purpose of a controlled access facility and adjacent service road or roads and the grantor hereby releases and relinquishes to the grantees any and all grantor's rights appurtenant to grantor's remaining property in and to said controlled access facility, provided however, that there is hereby reserved the right of ingress to and egress from such remaining property to and from said service road or roads which will be accessible to the controlled access facility only at such points as may be established by public authority.

THE OWNERS OF PARCEL NO. 3 ARE AS FOLLOWS:

Peggy Spain McDonald, William C. McDonald

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Peggy Spain McDonald  
Tract No. 33-3, Rev. 2  
June 25, 1976



4. That Petitioner further shows that diligent search has been made of the records in the Office of the Judge of Probate, Shelby County, Alabama, and diligent inquiry has been made to ascertain the names, ages, and places of residence of the owners of the lands and properties herein sought to be condemned and of any other parties who claim or who hold any right, title, or interest therein, and according to the Petitioner's information, knowledge, and belief, the said lands and properties are owned, claimed, and held by the parties as are named defendants in this proceeding and as set forth in Paragraph 3 above, and by no others. That all of said parties named as defendants are each over the age of 21 years and are each under no legal disability unless and except as stated specifically in said Paragraph 3; Petitioner further alleges that the lands and properties herein sought to be condemned will be devoted, when condemned, to the public road or highway purposes, as set forth herein.

5. Petitioner further shows that the said rights of way which are sought to be condemned over each of said separate tracts of land described or designated as Parcel No. 1, [through and including Parcel No. 3], is now located and staked out on the ground and is otherwise shown and described by a map or plat or survey made thereof by the State of Alabama Highway Department now on file in the office of the Judge of Probate, of Shelby County Alabama.

6. That Petitioner further shows that it has made bona fide efforts to agree with the owners and claimants of said lands and properties described or designated as Parcel No. 1, [through and including Parcel No. 3] of Paragraph 3 above, as to the damage and compensation to be allowed and paid for said lands and properties herein sought to be condemned, and Petitioner has failed to

come to any such agreement with said owners and claimants, the defendants in this proceeding, and that Petitioner has heretofore taken all steps necessary and all proceedings required by Law to initiate this proceeding.

THE PREMISES CONSIDERED, Petitioner prays that this Court will make and enter an order appointing a day for the hearing of this Petition and will cause issuance of notice to the defendants of the day set for the hearing of said Petition, and of the filing of said Petition, all as provided by Law, and that a guardian ad litem be appointed to represent and defend the interest of any defendant hereto who may be under legal disability, as required by Law, and that, upon final hearing of this Petition, this Court will order and decree that Petitioner is entitled to acquire the lands and properties herein sought to be condemned for the public purpose as set out herein, and will appoint Commissioners to ascertain and report the damages occasioned by such taking, and the compensation to be allowed the defendants for such taking, as provided by Law, and that upon payment into the Court of the compensation assessed by said Commissioners, a judgment or decree be rendered condemning for public road or highway purposes an easement or right of way in, over, upon, or across each of said separate tracts of land described or designated as Parcel No. 1 [through and including Parcel No. 3], of Paragraph 3 above, together with other properties therein specified, to effect said public road or highway, and that this Court will make and enter in this proceeding all such other and further orders and decrees as may be necessary or proper in the premises.

STATE OF ALABAMA

BY:

  
RALPH E. COLEMAN

Special Assistant Attorney General  
State of Alabama

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pg 27  
box

STATE OF ALABAMA  
SHELBY COUNTY

Before me, the undersigned authority in and for said County,  
in said State, personally appeared RALPH E. COLEMAN, who is known  
to me and who, being by me first duly sworn, deposes and says on  
oath that he is a Special Assistant Attorney General for the State  
of Alabama, and as such, is authorized to make this affidavit, that  
affiant has read the above Application for Orders of Condemnation  
and that affiant is informed and believes and upon such information  
and belief says that the averments contained therein are true.

RALPH E. COLEMAN

Sworn to and subscribed to before me, this the 25th day of

Sept., 1976.

Celia Mann  
NOTARY PUBLIC

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Inst # 1993-03433

02/04/1993-03433  
03:25 PM CERTIFIED  
SHELBY COUNTY JUDGE OF PROBATE  
011 REC 31.50