



**IN THE CIRCUIT COURT OF SHELBY COUNTY, ALABAMA**

**CITY OF PELHAM, ALABAMA,**

**Plaintiff,**

**vs.**

**CASE NO. CV-2001-097**

**CSX TRANSPORTATION, INC.**

**Defendant.**

**CONSENT FINAL DECREE GRANTING CONDEMNATION**

This cause coming on to be heard this date, being the day appointed for hearing the Application for Order of Condemnation and the Amended Application for Order of Condemnation heretofore filed by the City of Pelham, Alabama, a municipal corporation and a political subdivision of the State of Alabama, Plaintiff, to condemn certain properties or interest therein, more particularly described or designated in said Application and Amended Application for the uses and purposes therein stated, and both parties being present in open court by and through their respective attorneys of record, the Court is advised by the Plaintiff and the Defendant that the parties have reached an agreement that this Court should enter this Consent Final Decree Granting Condemnation, and upon due consideration thereof, the Court is of the opinion that the Plaintiff is entitled to the relief prayed for in said Application, as amended, and the Court therefore renders its findings of fact and of law and finds and orders as follows:

**FINDINGS OF FACT AND LAW**

1. That the Plaintiff is a municipal corporation and a political subdivision of the State of Alabama under the laws of the State of Alabama whose principal address is in Shelby County, Alabama, at P.O. Drawer 1419, Pelham, Alabama 35124.
2. That the Plaintiff has full power and authority to acquire property and easements therein by condemnation or eminent domain proceedings pursuant to provisions of Section 11-80-1 of the *Code of Alabama* 1975, as last amended, and by general provisions of the laws of the State of Alabama.
3. That the Applicant, City of Pelham, Alabama, is vested under the laws of the State of Alabama, with power and capacity, among other things, to locate and construct, improve, and maintain public roads and highways in the City of Pelham, Alabama, and secure rights-of-ways for said purposes by condemnation proceedings; that said City of Pelham, Alabama is now engaged in locating, purchasing, and acquiring rights-of-way in said City for the purpose of constructing, maintaining, or improving a public road or highway through said City, as located and staked out by the City of Pelham, Alabama which said road or highway or portion thereof is more particularly described as follows:



The portion of property described on Exhibit "A" attached hereto and made part and parcel hereof as fully as if set out herein which is owned by CSX Transportation, Inc. or which is in the possession and/or control of said Defendant.

That in order to construct and improve said highway, it is necessary to condemn easements or rights-of-way therefor, consisting of the parcels of land, which will be hereinafter described and each of which is described herein according to map or plat of said highway so located and staked out by the aforesaid City of Pelham, Alabama as shown by the right-of-way map of said project on file and available to the public in the office of the City Engineer of the City of Pelham, Alabama and in the office of the Probate Judge of Shelby County, Alabama.

4. That in order to construct, maintain, and improve said public highway or road, it is necessary to condemn for a right-of-way for said public highway or road a parcel(s) of land on said project as located and staked out as aforesaid, which parcel(s) of land is(are) more particularly described as follows:

The portion of property described on Exhibit "A" attached hereto and made part and parcel hereof as fully as if set out herein which is owned by CSX Transportation, Inc. or which is in the possession and/or control of said Defendant.

This Application is made for a decree and order of condemnation by the Circuit Court of Shelby County, Alabama, of an easement for public road and related purposes and all the right, title, interest, and estate of said owners in and to same as above described and investing all such right, title, interest, and estate therein in the City of Pelham, Alabama, for an easement and right-of-way for the construction, maintenance, and improvements of said public road or highway, as aforesaid.

5. That said public road or highway will be constructed and/or improved by the City of Pelham, Alabama.

6. That there are named as Defendants herein all persons, firms or corporations, who, to the City of Pelham's knowledge, are owners of or have any claim or interest in the property sought to be taken, and the nature of each said Defendant's interest is as stated herein:

(a) That the Defendant, CSX Transportation, Inc. is a corporation whose address is 500 Water Street, 9<sup>th</sup> Floor, Jacksonville, Florida 32202.

7. That there is an actual necessity that the Plaintiff acquire the specific interest in said land which is sought by the Plaintiff in this cause and further that the use of said land or interest therein which is sought to be condemned hereby by the Plaintiff will not materially interfere with the public use to which such property is subjected or devoted by the Defendant.

8. That the City Council of the City of Pelham, Alabama did on November 15, 1999 adopt a Resolution finding and determining that the right-of-way and easement for highway and related purposes described herein and in said Application and Amended Application heretofore



filed in said cause should be obtained by the City of Pelham over and across the property described herein and that it was necessary to obtain the same in order to provide for and allow the safe and convenient passage to citizens of the City of Pelham and others using the public highways within the area as described in said Resolution and as described in this cause.

### **ORDER**

It is therefore, CONSIDERED, ORDERED, ADJUDGED, and DECREED by this Court as follows:

1. That the easements, property, lands, and interest therein sought to be condemned which is described in said Application and Amended Application heretofore filed in said cause by the Plaintiff, and all rights and interest therein described, be and the same are hereby condemned, granted, and awarded to Plaintiff, City of Pelham, Alabama, a municipal corporation, and with the rights and for the use and purposes set forth in said Application and Amended Application, and that all right, title, and interest prayed for in said Application and Amended Application is now condemned, granted and awarded to the City of Pelham in and by this Decree, and title thereto is hereby vested out of the Defendants, CSX Transportation, Inc., and invested in Plaintiff, City of Pelham, Alabama, a municipal corporation; and it is further ORDERED, ADJUDGED, and DECREED by this Court that Plaintiff be and it is hereby granted, as to the parties and land named and described in the Application and Amended Application, the relief, rights, interest, title, property, right of possession and privileges set out and described and prayed for in said Application and said Amended Application.

2. The Order of Condemnation heretofore entered in this cause by the Probate Court of Shelby County, Alabama on May 3, 2000, and the Order entered by the Probate Court of Shelby County, Alabama on November 17, 2000, in this cause are hereby reinstated, separately and severally, in all aspects not specifically inconsistent with the other remaining terms, provisions, and conditions of this Order.

3. The City of Pelham and CSX Transportation, Inc. will coordinate and cooperate with the Alabama Department of Transportation and will cooperate with each other on the design and installation of the crossing surface and the highway traffic control devices which would include, but not be limited to, automatic flashing lights and gates, and median barriers (hereinafter "traffic control devices"). The City of Pelham and CSX Transportation, Inc. recognize that there are traffic and safety issues to address both from the standpoint of railroad and automotive traffic at the crossing, and that the design of the crossing will include a median barrier which is designed to assist in preventing traffic from passing through the crossing while activated.

4. The Plaintiff and the Defendant will enter into the CSX Transportation, Inc. standard engineering agreement for the design and construction of the crossing surface and traffic control devices thereto and the plans therefor shall be subject to reasonable approval by the City of Pelham, by the Alabama Department of Transportation and by CSX Transportation, Inc.

5. The City of Pelham will pay all design, engineering and construction costs



associated with the crossing surface and the traffic control devices. Non-binding estimates of such costs will be submitted to the City of Pelham in advance for review, approval, and authorization by the City of Pelham. The City of Pelham will also pay all maintenance costs associated with the crossing surface, traffic control devices and all other items directly related to the crossing. CSX Transportation, Inc. will not pay any design, engineering, construction or maintenance costs associated with the crossing surface, traffic control devices or any other items related to the crossing.

6. The City of Pelham, Alabama, in lieu of damages herein and heretofore awarded, shall make a contribution to the CSX Transportation, Inc. Crossing Closure Fund.

7. So long as the City of Pelham maintains its current general liability insurance policy in effect and so long as CSX Transportation, Inc. can be maintained thereon as an additional insured at no additional cost to the City of Pelham, the City of Pelham agrees that CSX Transportation, Inc., a corporation, will be added as an additional insured to its general liability insurance policy subject to the policy limits, terms, and conditions. That any liability insurance coverage afforded or provided by said policy to CSX Transportation, Inc. shall be limited to policy provided liability insurance coverage as defined therein for injury to the person or property of third persons, firms, or corporations, not including CSX Transportation, Inc., its agents, servants, employees, or contractors, or their agents, servants, or employees, for injuries sustained or alleged to have been sustained by such persons, firms, or corporations as the direct and proximate cause of this particular crossing.

DONE this 29<sup>th</sup> day of July, 2002.



D. Al Crowson, Judge

Certified a true and correct copy  
Date: 11-25-03  
Mary H. Harris  
Mary H. Harris, Circuit Clerk  
Shelby County, Alabama *sac*