

# Is this any way to build a road?

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When Paula Smith and her husband put their house in Winston-Salem up for sale nine years ago, they had plenty of lookers, but no buyers. They couldn't figure out why, until they learned that the state planned to route the eastern loop of the Northern Beltway close to their neighbor's house.

The neighbor's property would just be for green space, they were told, so the Smiths figured they'd get a buyer eventually.

Two years later, when they tried to sell again, their real estate agent told them that the road had moved. Now it would run right through their house.

Even then, the Smiths took the news in stride, happy to know they had a certain buyer – the DOT. That was 2004, and DOT said it expected to begin taking properties by 2006.

Three years passed. Nobody was buying houses in the neighborhood, not with the Beltway running straight through, and the Smiths were otherwise bound to theirs by the eastern loop corridor map DOT had filed in 2007. They couldn't sell, couldn't improve, and couldn't expand.

Then along came Gov. Perdue with plans to expedite some road projects. Though it had been on the table for the past 20 years, the Northern Beltway fell to the bottom of the list.

Ten more years – that's what the Smiths are now looking at before the state will buy their property.

They are not alone. Some 2,400 properties are affected by the Beltway as currently mapped – 34 miles spanning from U.S. 158 north to U.S. 52 in western Forsyth County through to U.S. 311 in eastern Forsyth County.

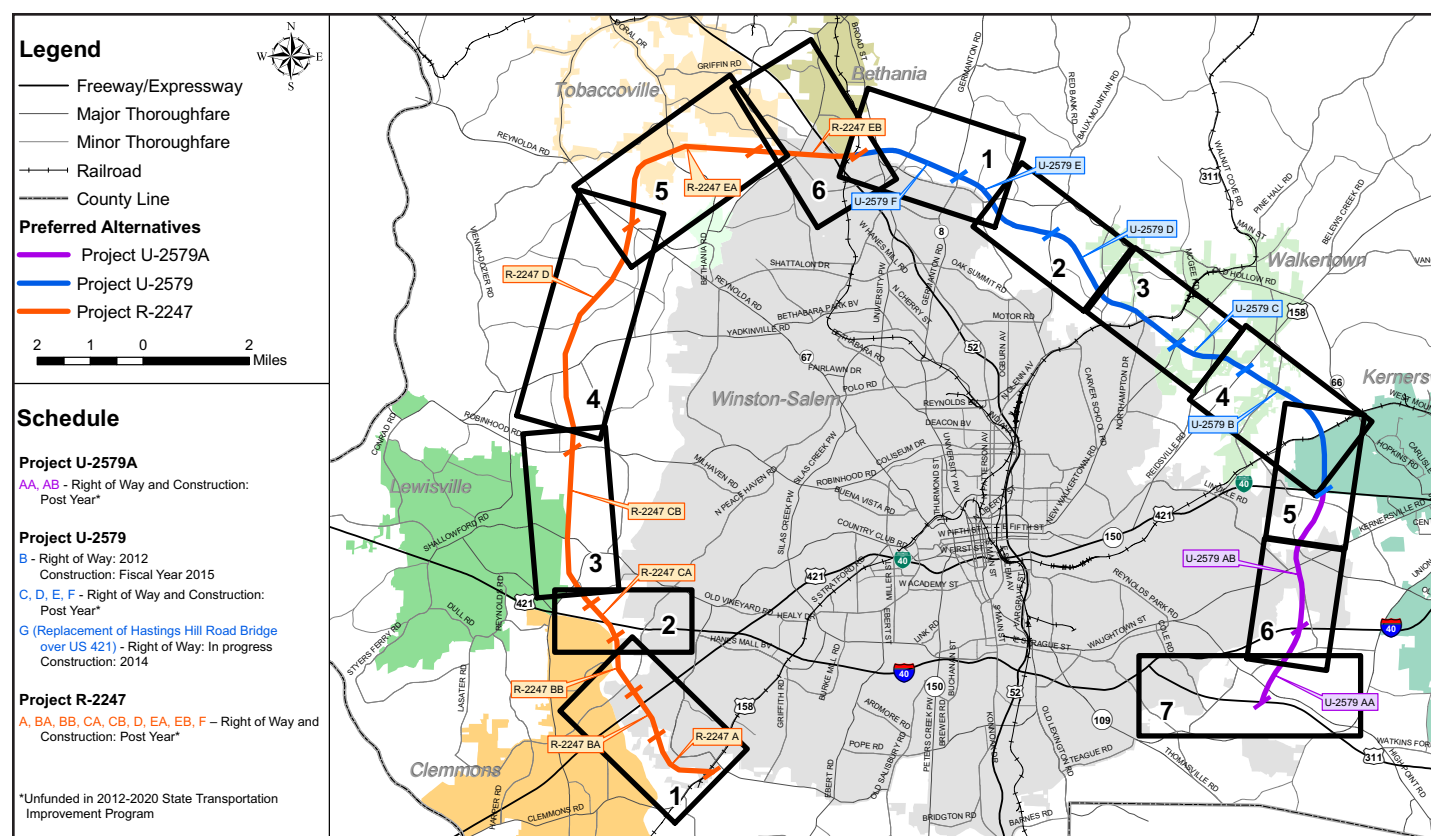
And some property owners along the Beltway's western loop have been stuck since 1997, when DOT filed the corridor map essentially freezing all identified land there from any further development or other disposition. No construction is in sight. According to DOT, litigation tied up the western corridor until 2010, delaying property acquisition and construction. And now there is no funding, except for a small section of the eastern loop, scheduled for construction in 2014-15.

## Buy a Road

North Carolina's Map Act permits the DOT to file a map with the local register of deeds identifying property where it anticipates putting a road and, with that, protect all property along the corridor from development or any other action that might improve the value of the property – in effect, holding down the purchase price until the DOT is ready to buy.

DOT admits as much. In a fact sheet distributed to affected property owners, DOT lists a number of frequently asked questions, among them, "How long can a property be in the 'protected corridor'?" The answer: "For as long as it takes North Carolina to get enough money to build the road."

It's that open-ended time frame that allows the DOT to act with impunity,



Winston-Salem Northern Beltway. NCDOT map

said Matthew Bryant, an attorney with the Hendrick Bryant Nerhood & Otis in Winston-Salem, who represents plaintiffs in class actions against the DOT pending in Forsyth and Wake counties.

It also makes the Map Act, which was enacted in 1987, unconstitutional, Bryant added. "You can't tie pieces of property up for the express purpose

of denuding them of any marketability or any use," he said. "Interestingly, the DOT has a 2004 study that tells them that they can't do what they're doing."

In that study, "Corridor Preservation Methods," prepared for the DOT by LandDesign Inc. in Charlotte, the authors advise that the Map Act should be used when "construction is imminent" and warn that aggressive use of the Act might give rise to constitutional challenges.

"In the 1990 case *Joint Ventures v. Florida DOT*, reasons cited for the program's unconstitutionality included the length time period of the moratorium on development, and the clear goal of suppressing land values for the purpose of reducing purchase prices several years in the future," they wrote.

"In my research, nobody has built a road like this, and done this to as many people, as North Carolina has in so many different counties," Bryant said. "They've known since 2004 that this is unconstitutional. They think this is 'planning.' But when they put legal restrictions on somebody's property, and they buy before and after the Map, they've turned it into an acquisition."

"The DOT has been building roads since 1915," Bryant added. "They were able to build roads without the use of the Map Act, or without running into constitutional problems. DOT should build a road the right way. Buy it."



Bryant

## Hardship as a remedy

In a class action filed in Forsyth County, *Berth Oil Co. v. NCDOT*, Bryant represents owners along the Beltway whose property has yet to be acquired by DOT. Bryant contends that the DOT's actions over the past 15 years – the arbitrary buying of some properties but not others, the inordinate delay, the restrictions imposed upon owners, the blighting of neighborhoods – amount to a taking for which owners are entitled to just compensation under the state and U.S. Constitutions. (A similar action, *Deans v. NCDOT*, relating to the Southern Wake Expressway is pending in Wake County).

In May 2011, Superior Court Judge Lindsay Davis denied class certification on the grounds that the taking allegations might not be common to a class. That decision is currently in the Court of Appeals with argument scheduled for February 8.

Greer Beatty, DOT spokeswoman, declined to comment on the litigation.

DOT has been buying select properties, said Bryant, by advance acquisition because of hardship or otherwise. DOT doesn't even know how many it's bought, Bryant said, but has admitted to at least 300. Many of those are now rental properties, from which DOT earned \$700,000 in 2010.

For a hardship, owners either have to be sick or in some sort of financial distress. That leaves owners like Paula Smith in the lurch. Since she is healthy and has a job, she wouldn't qualify.

"We're sitting here with a house that we would love to sell. My daughter is 24, my son is 18 and graduating from high school, we would love to get out of this house," Smith said. "My husband and I are both over 50 and going up and down stairs is going to become a chore. This is something that we'd like to get out from under, but we're stuck."

"You know what's embarrassing?" asked Bryant. "To be bought, some people are turning over their tax returns,

their dunning letters from collection agencies, their medical records to some staff person over at the right-of-way office. And to think that that's the appropriate way to make our citizens get their constitutional rights – that's offensive."

Acquisition because of hardship has been granted arbitrarily, according to Bryant. He points to the DOT's purchase of the Vienna Baptist Church for approximately \$1.6 million in August 2010. "You'd have to ask the DOT what hardship the church had," he said.

And hardship is hardly an acceptable solution, Bryant added, because owners have to accept the DOT price, or the DOT walks. "Asking the DOT to come buy you out on their terms is not a remedy," Bryant said. "Eminent domain or condemnation is the only remedy."

## There goes the neighborhood

Affected property owners live in limbo, waiting for the DOT to make a move.

"So here's what happens," Bryant said. "The neighborhood looks great. But then they learn that the DOT is coming in. People stop maintaining their house, they stop cutting their grass, and the neighborhood looks like crap. Crime goes up. And the DOT knows that."

In Paula Smith's neighborhood, some 20 to 25 homes have been affected. "DOT's already torn down some of the houses, and are using others as rental properties, which has brought the value of our property down," she said. "They've done nothing to improve the houses that they have bought."

"And we can't do anything that's going to add value to our own homes because DOT doesn't want to pay more than they thought they were going to pay 10 years ago," she added.

"You know, we have a home, which is supposed to be the American dream, yet we don't feel like we own it. We don't control it. We live in it, we pay this mortgage for it, we pay the taxes on it. But we don't have the right to do with it what we want."