

N.C.P.I.-Civil. 835.12A

EMINENT DOMAIN - JUST COMPENSATION - PARTIAL TAKING BY
DEPARTMENT OF TRANSPORTATION OR BY MUNICIPALITY FOR HIGHWAY
PURPOSES - ISSUE OF GENERAL OR SPECIAL BENEFIT.

GENERAL CIVIL VOLUME

MAY 2017

N.C. Gen. Stat. § 136-112

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*NOTE WELL: This instruction should be given if the
condemnor introduces evidence of general or special
benefit for the purposes of offset.¹*

The (*state number*) issue reads:

"What is the amount of offset, if any, to which the [plaintiff]
[defendant] is entitled because the remainder of the [plaintiff's]
[defendant's] property benefited from (*state project*)?"

On this issue the burden of proof is on the [plaintiff] [defendant].²
This means that the [plaintiff] [defendant] must prove, by the greater
weight of the evidence, the amount, if any, by which the remainder of the
[plaintiff's] [defendant's] property benefited from (*state project*).³

Benefits can be either general or special.⁴ General benefits are
those which arise from the fulfillment of the highway purposes which
justified the taking. They are those benefits arising to the vicinity which
result from the enjoyment of the highway project and from the increased
general prosperity resulting from such enjoyment.⁵ Special benefits are
increases in the value of the remaining land which are peculiar to the
owner's property and not shared in common with other landowners in the
vicinity. They arise from the relationship of the land in question to the
highway project, and may result from physical changes in the land, from
proximity to the new project, or in various other ways.⁶

You should consider the evidence presented as to general or special
benefit to the remainder of the [plaintiff's] [defendant's] property.
However, you should not consider remote, uncertain or speculative
benefits.⁷

I instruct you that your verdict on this issue must be based upon the evidence and the rules of law I have given you. You are not required to accept the amount suggested by the parties or their attorneys.

Finally, as to this issue on which the [plaintiff] [defendant] has the burden of proof, if you find, by the greater weight of the evidence, the amount of offset, if any, to which the [plaintiff] [defendant] is entitled because the remainder of the [plaintiff's] [defendant's] property benefited from (*state project*), then you will answer this issue by writing that amount in the blank space provided. However, if you fail to so find, then it would be your duty to answer this issue by writing "zero" in the blank space provided.

1 Failure to instruct on general or specific benefits can be reversible error. *Board of Transp. v. Rand*, 299 N.C. 476, 483, 263 S.E.2d 565, 570 (1980); see also *Charlotte v. Recreation Comm'n*, 278 N.C. 26, 31, 178 S.E.2d 601, 607 (1970); *Kirkman v. State Highway Comm'n*, 257 N.C. 428, 433, 126 S.E.2d 107, 111 (1962); *DeBruhl v. State Highway Comm'n*, 247 N.C. 671, 686, 102 S.E.2d 229, 240 (1958); *State Highway Comm'n v. Mode*, 2 N.C. App. 464, 472, 163 S.E.2d 429, 434 (1968).

2 On this issue, the burden of proof will always be on the condemnor, whether in the capacity of plaintiff or defendant. N.C. Gen. Stat. § 136-112(1); see also *Board of Transp. v. Rand*, 299 N.C. 476, 480, 263 S.E.2d 565, 568 (1980) holding that the burden of proving the existence and the amount of offset from general or special benefits is on the condemnor.

3 N.C. Gen. Stat. § 136-112(1) requires a jury in a highway condemnation case to consider both special and general benefits to the remainder where only a part of a tract is taken. The statute has been held constitutional. *Dept. of Transp. v. Rowe*, 353 N.C. 671, 677, 549 S.E.2d 203, 208 (2001), reversing 138 N.C. App. 329, 531 S.E.2d 836 (2000). Note that the measure of damages is different under Chapter 40A.

4 Under prior law, offset consideration was available for special benefits only; however, the distinction is immaterial under G.S. 136-112(1), which permits consideration for both special and general benefits. See *Board of Transp. v. Rand*, 299 N.C. at 479, 263 S.E.2d at 569.

Both general and special benefits may arise from a proposed use. Thus, if a new highway is constructed, the benefit to a particular lot by being protected from surface water, or by being left in a desirable size or shape, or by fronting upon a desirable street, is a special benefit. The increase in values for business use of property in the neighborhood on account of traffic on the highway and the increased facility of communication is a

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general benefit, not peculiar to a particular lot.

5 See *Dept. of Trans. v. Rowe*, 353 N.C. 671, 549 S.E.2d 203 (2001); *Kirkman v. State Highway Comm'n*, 257 N.C. 428, 433, 126 S.E.2d 107, 111 (1962); *Templeton v. State Highway Comm'n*, 254 N.C. 337, 118 S.E.2d 918 (1961).

6 *Id.*

7 *Kirkman*, 257 N.C. at 434, 126 S.E.2d at 112 ("Whether benefits are special or general, the courts are agreed on the proposition that remote, uncertain, contingent, imaginary, speculative, conjectural, chimerical, mythical or hypothetical benefits cannot, under any circumstances, be taken into consideration.") (citations omitted).