

§ 136-109. Appointment of commissioners.

(a) Upon request of the owner in the answer, or upon motion filed by either the Department of Transportation or the owner within 60 days after the filing of answer, the clerk shall appoint, after the determination of other issues as provided by G.S. 136-108 of this Chapter, three competent, disinterested freeholders residing in the county to go upon the property and under oath appraise the damage to the land sustained by reason of the taking and report same to the court within a time certain. If no request or motion is made for the appointment of commissioners within the time permitted, the cause shall be transferred to the civil issue docket for trial as to the issue of just compensation.

(b) Such commissioners, if appointed, shall have the power to make such inspection of the property, hold such hearings, swear such witnesses, and take such evidence as they may, in their discretion, deem necessary, and shall file into court a report of their determination of the damages sustained.

(c) Said report of commissioners shall in substance be in written form as follows:

TO THE SUPERIOR COURT OF _____ COUNTY

We, _____, _____ and _____ Commissioners appointed by the Court to assess the damages that have been and will be sustained by _____, the owner of certain land lying in _____ County, North Carolina, which has been taken by the Department of Transportation for highway purposes, do hereby certify that we convened, and, having first been duly sworn, visited the premises, and took such evidence as was presented to us, and after taking into full consideration the quality and quantity of the land and all other facts which reasonably affect its fair market value at the time of the taking, we have determined the fair market value of the part of the land taken to be the sum of \$ _____ and the damage to the remainder of the land of the owner by reason of the taking to be the sum of \$ _____ (if applicable).

We have determined the general and special benefits resulting to said owner from the construction of the highway to be the sum of \$ _____ (if applicable).

GIVEN under our hands, this the _____ day of _____, _____

_____ (SEAL)

_____ (SEAL)

_____ (SEAL)

(d) A copy of the report shall at the time of filing be mailed to each of the parties. Within 30 days after the filing of the report, either the Department of Transportation or the owner, may except thereto and demand a trial de novo by a jury as to the issue of damages. Whereupon the action shall be placed on the civil issue docket of the superior court for trial de novo by a jury as to the issue of damages, provided, that upon agreement of both parties trial by jury may be waived and the issue determined by the judge. The report of commissioners shall not be competent as evidence upon the trial of the issue of damages in the superior court, nor shall evidence of the deposit by the Department of Transportation into the court be competent upon the trial of the issue of damages. If no exception to the report of commissioners is filed within the time prescribed final judgment shall be entered by the judge upon a determination and finding by him that the report of commissioners, plus interest computed in accordance with G.S. 136-113 of this Chapter, awards to the property owners just compensation. In the event that the judge is of the opinion and, in his discretion, determines that such award does not provide just compensation he shall set aside said award and order the case placed on the civil issue docket for determination of the issue of damages by a jury. (1959, c. 1025, s. 2; 1961, c. 1084, s. 5; 1963, c. 1156, s. 6; 1973, c. 108, s. 85; c. 507, s. 5; 1977, c. 464, s. 7.1; 1999-456, s. 59.)