

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority. Citation is disfavored, but may be permitted in accordance with the provisions of Rule 30(e)(3) of the North Carolina Rules of Appellate Procedure.

IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA26-138

Filed 21 October 2026

Wake County, No. 24CV012765-910

TOWN OF ROLESVILLE, A MUNICIPAL CORPORATION, Plaintiff,

v.

GRANITE ACRES MHC, LLC; and COUNTY OF WAKE, Defendants.

Appeal by defendant from judgment entered 19 May 2025 by Judge Justin N. Davis in Wake County Superior Court. Heard in the Court of Appeals 16 September 2026.

*Fox Rothschild LLP, by Kip D. Nelson, and Marc C. Tucker, for the plaintiff-appellee.*

*Sever-Storey, LLP by Shiloh Daum, for the defendant-appellant-Granite Acres MHC, LLC.*

PER CURIAM.

Granite Acres MHC, LLC (“Defendant”) appeals from order entered determining the condemnation constitutes a valid public use; does not violate Defendant’s constitutional rights; and, is not arbitrary and capricious. The order also

TOWN OF ROLESVILLE V. GRANITE ACRES MHC, LLC

*Opinion of the Court*

held title has vested in the Town of Rolesville (“Plaintiff”) and left the issue of payment of just compensation to be determined.

Defendant owns a mobile home park. Plaintiff’s Board of Commissioners unanimously agreed to commence an eminent domain action to condemn and acquire an easement for the construction of a pedestrian bridge for a public greenway on 16 November 2023. Plaintiff also sought a temporary construction easement on two portions of Defendant’s parcel.

Plaintiff filed this condemnation action on 26 April 2024. Defendant filed their motion to dismiss, defenses, and answer on 25 August 2024. Plaintiff filed for a determination of all issues other than damages on 5 May 2025.

Following a hearing on both Plaintiff and Defendant’s motions, the superior court entered an order determining the condemnation constitutes a valid public use; does not violate Defendant’s constitutional rights; and, is not arbitrary and capricious. The order also held Plaintiff had acquired vested title. Defendant filed their notice of appeal on 1 July 2025.

Plaintiff, as appellee, both ordered and paid for the expedited hearing transcript and then prepared a proposed record on appeal. Plaintiff’s counsel approached Defendant’s counsel on 1 August 2025 asking if he would be amenable to agree to the contents of the proposed record on appeal. Defendant failed to respond. Plaintiff served Defendant with the materials for the proposed record on appeal.

Defendant's counsel responded two days later and asserted he would follow up "early next week." Defendant's counsel never responded further.

Plaintiff and Defendant appeared before the trial court for an administrative hearing; Defendant informed the trial court it still intended to pursue the appeal. Plaintiff followed up on the status of the appeal and Defendant's counsel responded it would "be preparing the necessary filings for the record and to docket the appeal early this week." Defendant served a proposed record on appeal on 21 November 2025. Plaintiff responded the purported appeal had been abandoned due to the lengthy passage of time. Defendant never responded.

Plaintiff filed a motion to dismiss the appeal in the trial court for failure to prosecute on 19 December 2025. Defendant did not respond. The trial court scheduled a hearing on Plaintiff's motion on 12 February 2026. Defendant filed an unsettled record with this Court on 11 February 2026. Defendant filed a Motion to Dismiss Defendant's appeal for failure to timely perfect its appeal. Defendant then filed a "Motion for Suspension of Appellate Rules and To/Accept Out of Time the Docketed Record on Appeal" on 27 February 2026.

On 25 March 2026, Plaintiff's counsel emailed Defendant's counsel inquiring if he intended to file a brief. Defendant's counsel never responded to this email. Plaintiff filed a motion to dismiss the appeal on 27 March 2026. Defendant's counsel filed appellant's brief on 31 March 2026.

TOWN OF ROLESVILLE V. GRANITE ACRES MHC, LLC

*Opinion of the Court*

Rule 12 of our Rules of Appellate Procedure provide “The appellant must file the record on appeal no later than fifteen days after it has been settled by any of the procedures provided in Rule 11 or Rule 18.” N.C. R. App. P. 12. Rule 13 of our Rules of Appellate Procedure further provide in cases other than death penalty appeals thirty days to file a brief after the record on appeal has been filed. N.C. R. App. P. 13.

Defendant’s counsel filed a delayed and unsettled purported record, a late appellant’s brief, and has not filed a settled record with this Court. In the exercise of our discretion, we deny Defendant’s “Motion for Suspension of Appellate Rules and To/Accept Out of Time the Docketed Record on Appeal” and grant Plaintiff’s motions to dismiss the appeal.

DISMISSED.

Panel consisting of Chief Judge DILLON and Judges TYSON and ARROWOOD.

Report per Rule 30(e).