NAVIGATING EMINENT DOMAIN IN NJ

2025 Seminar Material

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New Jersey Institute for
Continuing Legal Education

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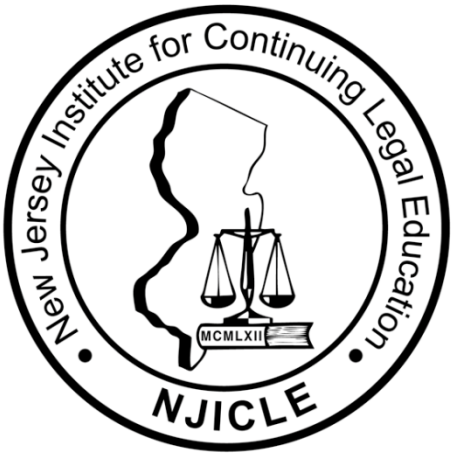

NAVIGATING EMINENT DOMAIN IN NEW JERSEY

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ENVIRONMENTAL RESERVATION/COST RECOVERY

- Condemnor may insert in Complaint full reservation of rights with respect to contamination, solid waste, known or unknown;
- Future cost recovery actions by a condemnor or related party Will NOT be barred by and doctrines of preclusion; e.g. *Res Judicata*, Collateral Estoppel, or Entire Controversy Doctrine.
- Eminent Domain Act does not mandate a condemnor to conduct a full environmental assessment, but only requires to disclose what is known at the time.

ENVIRONMENTAL/REMEDIATION & VALUATION

- Environmental Costs cannot be Deducted from Fair Market Value; Property is to be valued as if "Remediated". *Housing Authority of the City of New Brunswick v. Suydam,* 177 N.J. 2 (2003).
- Estimated Cost of Remediation May be Withheld by the Court and Remain on Deposit Pending Filing of a Separate Cost Recovery since it is a "Transactional Cost'. *New Jersey Transit Corporation v. Cat in The* Hat, L.L.C., 177 N.J. 29 (2003).
- Trial Court Hearing may be Held to Determine Appropriate Amount to Withhold on Deposit.
- Stigma by reason of the Remediated State of the Property can be Considered; recommended to have market support thereof.



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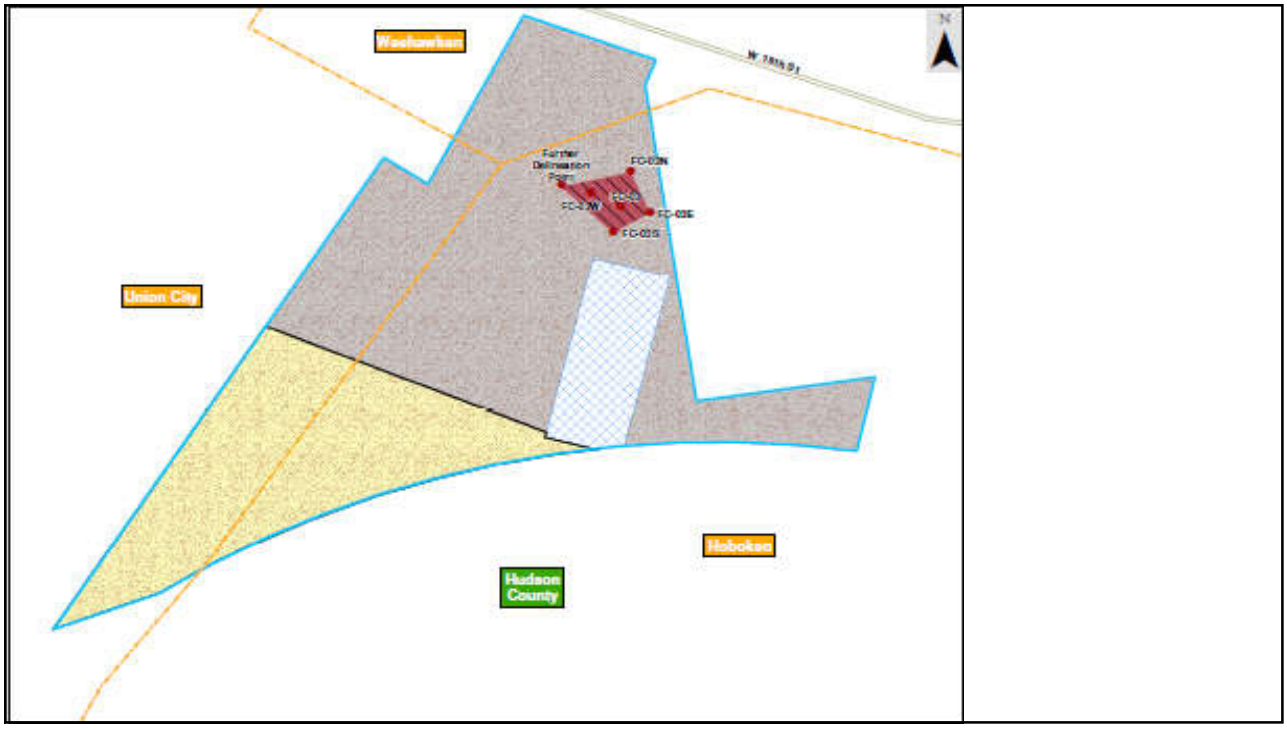
Weehawken
Union City
Hoboken
Hudson County
Further Delineation Point
FC-02N
FC-02
FC-02W
FC-02E
FC-02S
N

Remedial Action Item	Remedial Action	Quantity	Unit Cost ($)	$
Section 5.1 – Environmental Investigation Costs				
Previous PAECE/SI Costs	Previous PAECE Reporting and Site Investigation Costs	Actual	$14,169	$14,169
RI Costs	Costs to perform RI and prepare RIR	Actual	$46,429	$46,429
Sub-Total 5.1				**$60,598**
Section 5.2 – Environmental Remediation Costs				
Section 5.2.1 – Costs for Hazardous Materials Disposal				
Miscellaneous Drum Characterization and Disposal	Removal of drums left on site, including contents	Actual	$3,000	$3,000
Section 5.2.2 – Costs for Tank Removals and Related Soil Remediation				
UST Removal	Costs to register and remove UST, including Closure Report	Lump Sum	$14,337	$14,337
AST Spill Cleanup	Costs spent to date to remediate spill that occurred during removal of the AST	Actual	$4,143	$4,143
AST Spill Closure	Additional costs will be incurred to close out this AOC and open spill number, including reporting to NJDEP	Lump Sum	$1,500	$1,500
Public Notification	NJDEP-required for RI if there is evidence of a leak; also, AST cleanup and PCB Remediation will be considered RI phase for the property	Lump Sum	$3,135	$3,135
Receptor Evaluation	NJDEP-required for RI if there is evidence of a leak; also, AST cleanup and PCB Remediation will be considered RI phase for the property	Lump Sum	$4,045	$4,045

Section 5.3 – Deed Notice				
Deed Notice	Preparation and Recording of the Deed Notice	Lump Sum	$13,000	$13,000
Deed Notice Certification (Remedial Action Protectiveness/Biennial Certification Form)	Long Term Monitoring and Biennial Certifications of Deed Notice Over 30 Years	15 Certifications	$2,500	$37,500
Soil Remedial Action Permit - Annual Fee	$100 for soil annual-limited restricted use with deed notice	30 Years	$100	$3,000
Sub-Total 5.3				**$53,500**
Section 5.4 Classification Exception Area (CEA)				
Classification Exception Area	Preparation of CEA Document, installation of six monitoring wells, and two rounds of sampling	Lump Sum	$39,000	$39,000
CEA Quarterly Monitoring and Annual Reporting	Quarterly sampling for 10 years and Annual Reporting	Lump Sum	$270,000	$270,000
CEA Certification (Remedial Action Protectiveness/Biennial Certification Form)	Long Term Monitoring and Biennial Certification of CEA (30 years)	15 Certifications	$2,500	$37,500
Groundwater Remedial Action Permit - Annual Fee	$250 for groundwater annual-limited restricted use	30 Years	$250	$7,500
Sub-Total 5.4				**$354,000**

ENVIRONMENTAL/REMEDIATION & VALUATION

- *Paulsboro v. Essex Chemical*, 427 N.J. Super. 173 (App. Div. 2012)(Suydam valuation methodology does not apply where condemnee has completed a remediation in compliance with NJDEP standards)
- *N.J. Transit Corp. v. Franco*, 447 N.J. Super. 361 (App. Div. 2016) (escrow for environmental cleanup of a condemned property should be based on the remediation needed to achieve the highest and best use of the property used to calculate the condemnation award, rather than the condemnor's intended or actual use)
- *NL Industries, Inc. v. NJDEP*, 397 N.J. Super. 127 (App. Div. 2007)(DEP was not authorized to remove company that was performing environmental remediation of property in the absence of an oversight document)


PALISADES STEEP SLOPES
WEST 19TH STREET
WEST 18TH STREET
WEEHAWKEN
HOBOKEN
2 STORY INDUSTRIAL BUILDINGS
NEW JERSEY TRANSIT LIGHT RAIL
NORTH HUDSON COUNTY SEWAGE COMMISSION TREATMENT PLANT
Subject Property
Feet
0
100
200
NORTH

EFFECT OF REMEDIATION ON VALUATION OF A PROPERTY

- Effect upon Highest and Best Use:
  - In order to develop property to H & B Use, further remediation may have to be conducted; this may in turn present additional extraordinary costs over and above those which may be incurred compared to a property not needing additional or no further remediation.
  - Cost of further Remediation may not be cost effective and thereby limit H & B Use of property.
  - Stigma may have impact upon marketability of property or otherwise impact H & B Use of Property.

Relocation Purpose

- Uniformity
- Equality
- Provide benefits variety of events, including non-condemnation events
- All qualified occupants are entitled to relocation assistance, including tenants, owners, relatives, family members and other qualified occupants.
- Require relocation plan (WRAP) prior to acquisitions and relocations.

Statutes & Regulations

- N.J.S.A. 20:4-1 (Relocation Assistance Act)
  - The regulations promulgated pursuant to N.J.S.A. 20:4-1, et seq., are found at N.J.A.C. 5:11-1.1, et seq.
- N.J.S.A. 52:31B-1, et seq. (Relocation Assistance Law of 1967)
  - The regulations promulgated under N.J.S.A. 27:7-72, et seq., are found at N.J.A.C. 16:6-1.1, et seq.
- N.J.S.A. 27:7-72, et seq. (Uniform Transportation Replacement Housing & Relocation Act).
- 42 U.S.C.A. §4601, et seq. (Uniform Relocation Assistance and Real Property Acquisition Polices Act of 1970).

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Relocation Assistance

- Condemnors must assist the relocatee in finding a new location or dwelling before any attempt at displacement or eviction of the displaced person may occur. N.J.S.A. 20:4-7; N.J.S.A. 27:7-78; N.J.A.C. 16:6-1.3(a); N.J.A.C. 5:11-2.1 and 2.2.
- Workable Relocation Assistance Plan ("WRAP")
  - Determine the needs of displacees;
  - Assist displacees in obtaining replacement housing and business locations;
  - Secure the coordination of relocation activities with other displacing agencies;
  - Assist in minimizing hardships to displacees;
  - Determine the extent of the need of each displacee for relocation assistance;
  - Assure the availability of decent, safe, and sanitary housing;
  - Determine the source, amount and availability of funds necessary to complete relocation; and
  - Provide any other information deemed necessary to insure the regulatory provisions are carried out.

Residential Relocation Payments

- N.J.A.C. 5:11-3.2: Either the actual reasonable moving expenses incurred or a fixed payment based on the number of rooms in the unit, not to exceed $300.00, and a $200.00 dislocation allowance.
- Moving expenses shall not be considered unreasonable due to distance if the distance is 50 miles or less. For good cause, a move of more than 50 miles may be deemed reasonable by the displacing agency. See also, N.JS.A. 20-4-4.
- N.J.A.C. 16:6-2.1: Any displaced owner/occupant or tenant of a dwelling who qualifies is entitled to payment of his or her actual moving and related expenses, as the agency determines to be reasonable and necessary, including expenses for:
  - Packing, crating, unpacking and uncrating of the personal property;
  - Disconnecting, dismantling, removing, reassembling and reinstalling relocated household appliances, and other personal property;
  - Storage of the personal property for a period not to exceed 12 months, unless the agency determines that a longer period is necessary;
  - Insurance for the replacement value of the property in connection with the move and necessary storage;
  - The replacement value of property lost, stolen or damaged in the process of moving (not due to the fault or negligence of the displaced person, his or her agent, or employee); where insurance covering such loss, theft or damages is not reasonably available; and
  - Other moving related expenses that are not listed as ineligible under N.J.A.C. 16:6-2.5, as the agency determines to be reasonable and necessary.
  - Rental Assistance Payments and down payment assistance. N.J.A.C. 5:11-3.5(a); N.J.A.C. 16:6-2.8; N.J.A.C. 5:11-3.6; N.J.A.C. 16:6-2.8(c)
  - Replacement housing differential payment N.J.A.C. 5:11-3.7 (not to exceed $15,000); N.J.A.C. 16:6-2.7 (not to exceed $22,500)

Business Relocation Payments

- Self move agreement versus Actual and Reasonable Moving Expense
- Payment of actual moving expenses limited to:
- Actual reasonable and necessary cost:
  - Moving personal property up to 50 miles, unless the distance is enlarged by the displacing agency, for cause.
  - Inspection and license fees required by statute or local ordinance to permit the operation of the business at the new location.
  - Reconnecting utility service to machinery and equipment, including, without limitation, the cost incurred in adapting or converting relocation machinery or equipment to use a different type of power supply, to the extent that these services were required in the former location. Expenses incurred in providing utility service from the right-of-way to the building or improvements are excluded.
  - For physical changes in or to an existing building to which a business relocates in order to accommodate the machinery and equipment relocated. The amount incurred shall not exceed the fair market value of the machinery and equipment requiring the physical change. In the event the cost does exceed the fair market value of the machinery and equipment, the displacing agency shall then be responsible to pay only the fair market value.
- The owner of a displaced business may elect to replace with a comparable item any item of personal property, including, without limitation, outdoor advertising displays or signs, utilized in its operation which is not to be moved. In such a case, the amount of the moving expense payment shall be the lesser of:
  - the actual cost of the substitute equipment delivered and installed at the new location less any proceeds form the disposition of the old equipment or, if a bona fide sale cannot be made, less the market value of the old equipment as determined by an independent appraisal; and
  - The estimated cost of relocating the old equipment, as determined by the displacing agency.

Business Relocation Payments (cont'd)

- Self Move:
  - Must provide notice to the agency
  - Submit three estimates.
  - The amount of the moving cost payment shall be the lesser of the bid chosen or the estimate obtained by the displacing agency.
- Loss of tangible personal property:
  - A displaced business that elects not to move all or a part of the personal property may receive a payment for actual direct loss of the personal property not moved. Must have prior agency approval
  - The payment for loss of tangible personal property shall be calculated as follows:
    - In the event the items is sold the payment shall be the fair market value less the net sales amount (sales price less cost of sale);
    - In the event the item is not sold the payment shall be the fair market value. The item shall then be the property of the displacing agency.

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Business Relocation Payments (cont.)

- Professional services necessary for:
  - Planning the move of the personal property;
  - Moving the personal property; and
  - Installing the relocated personal property at the replacement location.
  - Re-lettering signs and replacing stationery on hand at the time of displacement that are made obsolete as a result of the move;
  - The reasonable cost incurred in attempting to sell an item that is not to be relocated;
  - Searching for a replacement location
  - Time spent searching
- Fees paid to a real estate agent or broker to locate a replacement site, exclusive of any fees or commissions related to the purchase of such site

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Appeals

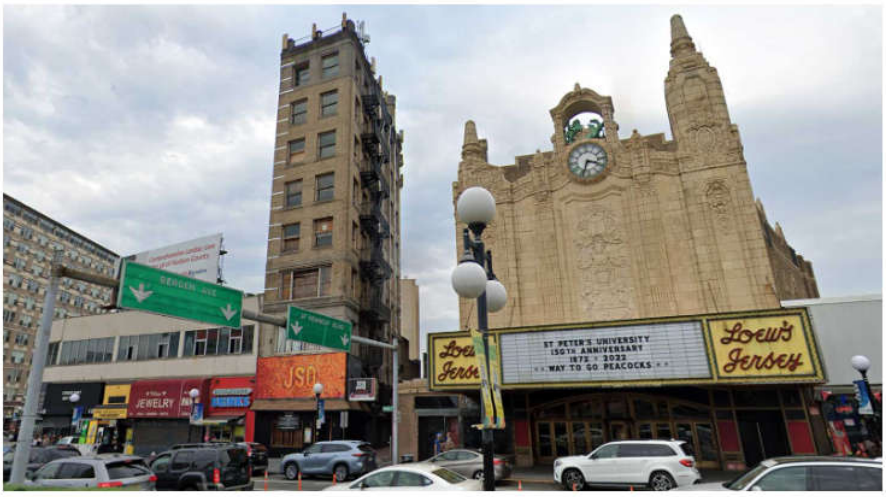
- Deadlines
  - Regulations
  - Court rules
  - Tort Claim statute of limitations
- Appropriate Forum
  - State or Federal Agency
  - Agency review, Administrative review, Courts

Case Law

- Foreign Auto Preparation Service (FAPS) vs. New Jersey Economic Development Authority, 201 N.J. Super. 422 (App. Div. 1995) (holding the displacement must be the cause of the expense for which reimbursement is sought, not the failure to rent comparable property.)
- Blazer Corp. vs. NJ Sports & Exposition Authority, 195 N.J. Super. 542 (Law Div. 1984), aff'd 199 N.J. Super. 107 (App. Div. 1985) (finding date of eviction important for statute of limitations to file claim).
- In Re Berwick Ice, Inc., 231 N.J. Super. 391 (App. Div. 1989) (holding appeals for relocation claims must be filed and determined by appropriate state or federal agency)
- Paterson Redevelopment Agency vs. Schulman, 78 N.J. 378 (1979), cert. denied, 444 US 900, 100 S.Ct. 210, 62 L.Ed. 2d 136 (1979) (holding that that since the relocation statutes did not provide for interest on payments, no interest was required to be paid with respect to relocation assistance payments)
- Jersey City School District vs. Marathon Enterprises, OAL Docket No. CAF 09962-00 and CAF 01465-04, aff'd Appellate Division docket No: A-6188-03T5 (App. Div. 2007) (finding approximately two million of claimed relocation expenses were reasonable and necessary in order to relocate the machinery and equipment, and to meet the stringent USDA requirements for meat processing facilities.)

Jersey City Officially Files Legal Action to Seize 50 Journal Square

By **Chris Fry** - May 6, 2024



On May 2, Jersey City officially filed a legal action in Hudson County Superior Court looking to condemn 50 Journal Square. Image via Google Maps.

Navigating Eminent Domain in New Jersey

New Jersey Institute for Continuing Legal Education

August 19, 2025

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Course Outline

- Power of Eminent Domain
- Just Compensation
- Legal Resources
- Prelitigation Issues
- Litigation
- Valuation and Appraisal
- Non-Compensability
- Environmental Issues
- Relocation
- Question and Answer

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The Power of Eminent Domain

- Early case law – inherent power of government
- Constitutional and Legislative Grant and Limitations of Authority
- Enabling Legislation – Municipal, County, Special Agency, State and Federal Governments
- Public Use Requirement
- Requirement for Just Compensation

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Public Use / Purpose / Benefit

- Traditional public projects
  - Public buildings
  - Road widenings and bridges
  - Utility easements
- Public purpose and benefits – *Midkiff* and *Kelo*
- Redevelopment Projects

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Just Compensation

- "...nor shall private property be taken for public use without just compensation."
- *U.S. Const.* Amend. V

- "Private property shall not be taken for public use without just compensation. Individuals or private corporations shall not be authorized to take property for public use without just compensation first made to the owners."
- *N.J.S.A. Const.* Art. 1, Sec. 20

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Just Compensation

- Compensation for the property taken
- Reduction in value (damages) to any remaining property
  - Need to do deep dive on potential harm and future use
- Interest
- Indemnity for loss
- Attorneys' fees and costs not generally recoverable by condemnee
  - Exception – case dismissed.

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Legal Resources

- Eminent Domain Act – N.J.S.A.20:3-1 *et seq.*
- Rule 4:73 (Condemnation)
- Relocation Assistance Act – N.J.S.A. 20:4-1 *et seq.*, N.J.S.A. 27:7-72, *et seq.* and regulations – N.J.A.C. 5:11-1; N.J.A.C. 16:6-1.1 *et seq.*
- Local Redevelopment and Housing Law – N.J.S.A. 40A:12A:-1, *et seq.*
- Federal Sources (Fifth Amendment, Federal Highway Act, Natural Gas Act, etc.)
- Nichols, NJ Eminent Domain Handbook

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Legal Resources (cont'd)

NICHOLS
ON
EMINENT DOMAIN

REVISED THIRD EDITION

VOLUME 8A

CONDEMNATION PROCEDURES
AND TECHNIQUES

by
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MATTHEW BENDER

CHAPTER 41

EMINENT DOMAIN

John H. Buonocore, Jr., Esq.*

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2626. Exercise of Power.
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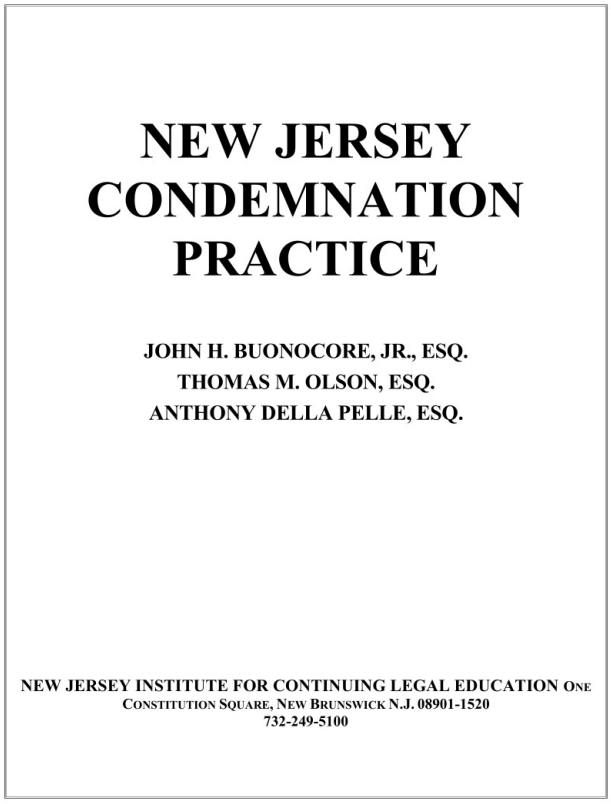
Legal Resources (cont'd)



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Legal Resources (cont'd)

- *The Appraisal of Real Estate,* 15th Ed. Appraisal Institute
- Eaton, *Real Estate Valuation in Litigation,* 2d Ed., Appraisal Institute
- Uniform Standards of Appraisal Practice (USPAP)

Eminent Domain Act of 1971

- N.J.S.A. 20:3-1 *et seq*.
- Uniform procedure applicable to ***all*** proceedings in which the power to condemn is being exercised, except acquisitions by PANYNJ which proceed pursuant to N.J.S.A. 32:1-77, *et seq.*
- Applies to "inverse" actions
- Strict requirements.
  - Consequences for not following them
  - Eminent Domain process starts before the filing of a complaint

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Four-Step Process

- Attempt at amicable resolution through *bona fide* negotiations
  - Valuations + Explanation of how arrived at valuation
- Final judgment on authority for and due exercise of power by condemnor
  - Can be consent if only valuation is disputed
- Commissioners' Hearing
- Jury Trial on appeal from Commissioners' Report on the issue of just compensation

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Negotiation Considerations for Condemnors

- To you it is business. To the property owner it is a significant impact on their life.
  - Family history
  - Future Plans
- Important to identify concerns and work to allay them
  - Minimize disruption
  - Take less than original plan
- Animosity causes issues/Delay
  - Challenge to right to take
  - Action in lieu of prerogative writs
  - Good faith arguments

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Approach

- Make property owners stakeholders
  - Understand project/necessity
- Be responsive
  - Give real, concrete answers
  - Engineering
  - Timing
- Try and address concerns
  - Impact on property
  - Safety
  - Loss of something on property
  - Money

Single Issue –Value – Controversy

- Fact finder is concerned with just compensation only – Court adjudicates all other issues (*e.g.*, title, proceeds allocation)
- One award representing the value of all interests in the property ("unit rule")
- Award must take into account all damages, both present and prospective – no further proceedings or relief
- Permanent v. Temporary

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What Constitutes "Property"

- Real vs. Personal Property
- As to real estate, "functional unit" test for "fixture" issues
- Interplay between functional unit and moving expenses as relocation benefit
  - *N.J.S.A.* 20:3-2(d)
  - *State v. Gallant,* 42 N.J. 583 (1964)

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Date of Value

Pursuant to *N.J.S.A.* 20:3-30, the *earliest* of the following events:

- Date possession is taken by the condemnor
- Complaint date
- Date on which condemnor substantially affects use and enjoyment of property
- Declaration of "blight" or "in need of redevelopment" determination, but see *N.J.S.A.* 20:3-38

  * See *Kirby Forest Industries v. U.S.,* 467 U.S. 1 (1984)

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Interest

- Interest on compensation for the property taken is required by statute *N.J.S.A.* 20:3-31-32, and by the constitution when compensation is not paid at the time of taking. *State v. Seaway, Inc.*, 46 N.J. 376 (1966). *State v. Nordstrom*, 54 N.J. 50(1969).
- Interest is awarded by the court, not the jury. *JCRA v. Clean-O-Mat Corp.*, 289 N.J. Super. 381(App. Div. 1996).
- The rate or rate(s) of interest set by the court are intended to indemnify the condemnee for the loss of the use of compensation from the date of the complaint to the date of payment. *Tp. of Wayne v. Cassatly*, 137 N.J. Super. 464 (App. Div. 1975); *CRDA v. Hauck*, 317 N.J. Super. 584(App. Div. 1999), aff'd 162 N.J. 576(2000).
- See also, *State v. St. Mary's Church*, 464 N.J. Super. 579 (App. Div. 2020), analyzing N.J.S.A. 27:7-22 in light of provisions of Eminent Domain Act.

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Prelitigation Matters

- Prelitigation Entry and Inspection/Evaluation
  - Consideration of Alternatives
- Title Searches
- Parcel Surveys
  - Partial Takings
  - Easements
- Appraisal
- Environmental Inspections
- Right of Entry
  - Compare *N.J.S.A.* 20:3-16 with *Cedar Point Nursery v. Hassid*, 594 U.S. __, 141 S.Ct. 2063 (2021)

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Bona Fide Negotiations

- Notice of appraisal inspection
- Written offer by certified mail
- Offer not less than approved appraisal
- Description of property to be acquired
- Disclosure of all appraisals obtained
- Minimum 14 days for reply to offer
  - No response is a “no”
- Must address issues raised by owner

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Litigation – Phase 1

- Complaint
- Order to Show Cause
- Declaration of Taking
- Order Permitting Deposit
- Notices
- Answer
- Judgment Appointing Commissioners

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Complaint

Must include:

- a statement showing the amount of compensation offered by the condemnor;
- a reasonable disclosure of the manner in which the amount has been calculated.

"Reasonable disclosure" by the condemnor includes furnishing the condemnee with:

- the map
- a description of land to be acquired
- the identity of the improvements to be acquired, if any
- a statement of the full fair market value
- a description of the appraisal valuation method or methods relied upon

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Complaint (cont'd)

- a breakdown of the appraised value allocated to the land to be acquired, and improvements to be acquired, if any;

Data concerning comparable sales or leases relied upon in determining the amount of compensation offered which shall include:

- names of seller and purchaser or landlord and tenant,
- the location of the property by block, lot, street, street number, and municipality,
- date of sale or date and duration of lease
- the consideration for the sale or amount of rent
- the book and page number of the recording of the deed of the comparable sale
- any unusual factors concerning the property known to the condemnor which may affect value.

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Parties

- Join *all* parties with an interest in the property, e.g.:
  - Tenants, holders of easements, occupants
  - Mortgagees and other lien holders
  - Municipality (for taxes)
- Only those parties who are joined have their interest foreclosed by the proceedings.
- Easements are to be condemned separately as a "DE" parcel together with the property which it serves; the area of the easement should be designated on the servient parcel as "SE" and the appraisal should adjust accordingly.

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Order to Show Cause

- Action is brought in a summary manner pursuant to *R.*4:67.
- May be presented to the court *ex parte*.
- No summons, but language is consistent.
- Served within the state at least 10 days before the return date.

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Declaration of Taking

- Basically, a “deed” from the condemnor to itself
- Fixes the property and rights acquired based on legal description
- Recorded in County Clerk/Register’s office
- “Quick take” vs. “slow take”

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Order for Deposit

- Provides for deposit of estimated compensation (usually the amount of the offer per the appraisal)
- May be obtained *ex parte*

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Notices

- Proof of Service of Deposit and Filing/Recording of Declaration of Taking
- Notice of making of deposit into court to owner
- Proof of service of such notice must be filed in the action prior to taking possession

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Abandonment of Action

- Provided no declaration of taking has been filed, the action may be unilaterally abandoned by the condemnor
  - at any time before, or within 30 days after, the filing of the award of commissioners;
  - or in the event of an appeal from the award, at any time before, or within 30 days after, the entry of judgment;
  - or in the event that a hearing before commissioners is waived, at any time before, or within 30 days after, judgment has been entered in the action. [*N.J.S.A.* 20:3-35]
- Otherwise, condemnee must consent to abandonment
- Entitlement to fees costs and expenses. *N.J.S.A.*20:3-26(b)
  - *West Orange v. 769 Associates, LLC,* 397 N.J. Super. 244 (App. Div. 2007)
  - *PennEast Pipeline Co., LLC v. New Jersey, et. al.,* 141 S. Ct. 2244 (2021)

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Parameters Of Taking To Be Resolved At Return Of OTSC

Condemnees are obligated to bring before the Court any Objections to the Maps, Descriptions or the Parameters of the Taking as well as what Constitutes the Remainder or the Nature and extent of Property Rights existing in the before condition prior to Appointment of Commissioners; Such issues are not to be raised before the finder of fact; e.g. Commissioners or subsequently by the jury: *State by Commissioner of Transp v. Orenstein*, 124 N.J. Super. 295 (App. Div. 1973), *certif. den.* 63 N.J.588 (1973).

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Answer

- Must raise all defenses to the right to take and manner of exercise of the power of eminent domain.
- Failure to deny the authority of the condemnor to condemn in the manner provided for by the rules constitutes a waiver of the defense.
- All issues other than those related to value and damages must be determined by the court prior to the appointment of commissioners.

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Answer (cont'd)

- Must demand a jury trial if one is desired.
- Must be served and filed in accordance with the Rules or pursuant to Order to Show Cause
- Non-contesting appearance may be filed in lieu of answer; valuation issues preserved. *N.J.S.A.* 20:3-12(c).

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Denial of Right to Condemn

- When the authority to condemn is denied, all further steps in the action are stayed until the issue of the right to take has been finally determined.

- Does “finally determined" mean exhaustion of the appellate process if appellate review is sought?
  - *N.J.S.A.* 20:3-11
  - *Bridgewater Tp. v. Yarnell*, 64 N.J. 211 (1974)
  - *County of Sussex v. Merrill Lynch,* 351 N.J. Super. 1 (App. Div. 2002)

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Denial of Right to Condemn

- Right to condemn proceeds to summary hearing before the court.
- When is an evidentiary hearing appropriate or required?
  - *Glassboro v. Grossman, 457 N.J. Super. 416 (App. Div. 2019*)(Challenge under Local Redevelopment and Housing Law)
  - *CRDA v. Birnbaum*, 4548 N.J. Super. 173(App. Div. 2019) (necessity)
- There is no discovery on the issue of the right to condemn except by leave of court. *N.J.S.A.* 20:3-12(d).

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Return Date of Order to Show Cause – The Right to Take

- Condemnor's Procedural and Substantive Compliance with Eminent Domain Act
- Hearing may be required
  - * *R.* 4:67-5; *R.* 4:73-1
  - *Bergen County v. Hackensack*, 39 N.J. 377 (1963)
  - *Glassboro v. Grossman, 458 N.J. Super. 416 (App. Div. 2019)*

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Judgment Appointing Commissioners

- Final Judgment as to Right to Take and Due Exercise of Power
- Appoints 3 Commissioners
- Jurisdiction now with Commissioners
- Appealable as of right
- Stay of further proceedings upon appeal?

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Deposits into Court

- The amount of the initial deposit may not be less than the amount of the prelitigation offer *N.J.S.A.* 20:3-18 which itself may not be less than the amount of the condemnor's approved appraisal.

- Deposits into Superior Court are by administered by the Clerk of Superior Court, Trust Fund Unit, which holds the funds in an interest-bearing account.

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Withdrawals from Court

- By motion and petition
- Request for dismissal of other defendants
- Processing withdrawal from Trust Funds Unit
- Condemnor's ability to preserve portion of deposit for site remediation
- Consideration of possession issues

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In Limine Motions

- Cho v. Trinitas Reg. Med. Ctr., 443 N.J. Super. 461 (App. Div. 2015)
  - In Limine versus dispositive motions
- R. 4:25-8
  - True In Limine Motions identified with PTI exchange 7 days before trial
  - Dispositive motions filed liked Summary Judgment
- Designed to require substantial issues be resolved in advance of trial
  - Leave more discrete evidentiary issues for resolution immediately pre-trial or during trial

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In Limine Motions (cont'd)

- What is "dispositive" versus conventional evidentiary issue?
  - May depend on Appraiser's valuation methodologies
- Where file motion?
  - Presiding Judge versus Trial Judge
- Carteret v. Blanco – Unreported App Div 2025
  - Project influence issue and motion timing
  - R. 4:25-8(c) – failure to submit under Rule shall not preclude party from seeking to object during trial

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Litigation – Valuation Proceedings

- Valuation (Appraisal)
- Commissioner's Hearing Procedure
- Jury or Bench Trial – *de novo*

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Elements of "Fair Market Value" (Just Compensation)

- Willing buyer & seller
- Neither being under a compulsion to act
- Being fully informed of all facts and circumstances about the acquired property (even if not known on date of value)

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Highest and Best Use

- Conclusion of the property's Highest and Best Use is critical, and determines the appraisal methodology utilized and the selection of market data (comparables) for analysis.
- Owner is not limited to value for the use to which property is currently being put. Owner is entitled to value for highest and best use.
- Case Law:
  - State v. Caoili, 135 N.J. 252 (1994)
  - State v. Gorga, 26 N.J. 113 (1958)

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Highest and Best Use Case Law

- ***State v. Gorga,*** 26 N.J. 113 (1958)(reasonable probability)
- ***Port of New York Auth. v. Howell***, 59 N.J. Super. 343 (Law Div. 1960), *aff'd*, 68 N.J. Super. 539 (App. Div. 1961), *certif. den.* 36 N.J. 144 (1961) (Property must be valued at its highest and best use)
- ***State v. Caoili,*** 135 N.J. 252 (1994)(Highest and best use may be different from current use)
- ***County of Monmouth v. Hilton***, 334 N.J. Super. 582 (App. Div. 2000)(probability of assemblage)
- ***Borough of Saddle River v. 66 East Allendale****, LLC, 216 N.J. 115 (2013)(Rule 104 hearing/gatekeeping)*
- ***Tp. of Manalpan v. Gentile****, 242 N.J. 295 (2020)(Rule 104 hearing/gatekeeping)*

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Highest and Best Use

Highest and Best Use must be:

- Physically possible
- Legally permissible
- Financially feasible
- Maximally productive

Dependent on:

- Zoning
- Lot size, configuration, topography
- Neighborhood, surrounding uses
- Market demand
- Environmental contamination issues?

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Approaches to Fair Market Value

Three Methods of Valuation:

- Cost Approach
- Sales Comparison Approach
- Income Capitalization Approach

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Cost Approach

This approach is based on the economic principle of substitution, which holds that the value of a property tends to be no higher than the cost of producing a substitute property having equal utility. This approach includes all hard and soft costs, and considers the three categories of potential depreciation:

- *Physical depreciation*
- *Functional depreciation*
- *External obsolescence*

Case Law

- ***State v. So. Hackensack***, 65 N.J. 377 (1974) (methodology recognized)
- ***Jersey City Redev. Agency v. Clean-o-Mat Corp.***, 289 N.J. Super. 381 (App. Div. 1996), *certif. den.*, 147 N.J. 262 (1996)

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Cost Approach Cont'd

Methodology

Land value *(Sales Comparison Approach)*

+ Estimated replacement/reproduction cost of improvements including direct (hard) and indirect (soft) costs *(sources: published cost manuals, local contractors, professional cost estimators)*
+ Entrepreneurial profit/incentive
- Estimated depreciation *(physical/functional/external)*
+ Contributory value of any site improvements
= Indicated Market Value via the Cost Approach

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Cost Approach

Applications in Eminent Domain

- Cost to cure deficiency caused by taking (if a remedy exists).
- Cost to correct non-conformity caused by taking (when non-conformity can be corrected).
- Used for unique or special purpose properties where market is limited or non-existent, both before and after taking.
- Used to value new or nearly new construction.
- Valid basis to determine value of historic structure.

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Sales Comparison Approach

This approach also relies on the principle of substitution, which holds that when a property is replaceable in the market, its value tends to be set at the cost of acquiring an equally desirable substitute property.

Case law

- *State v. Vacation Land*, 92 N.J. Super. 471 (App. Div. 1966)
- *State v. So. Hackensack*, 65 N.J. 377 (1974)

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Sales Comparison Approach

Methodology

- Essentially a systematic procedure for comparative shopping – What are similar properties selling for?
- Research the market for comparable sales.
- Determine the appropriate/relevant unit of comparison (price per acre, price per sq. ft., price per unit, etc.)
- Make adjustments to each comparable sale to equate it to the subject property.
- Reconcile the various value indications from the analysis of the comparable sales into a single indication of market value from the Sales Comparison Approach.

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Sales Comparison Approach

Applications in Eminent Domain

- Used when sufficient recent comparable sales data exists to determine market value.
- Used to quantify/measure loss of property utility caused by taking (damages) :
  - Parking
  - Exterior circulation/loading
  - Interior circulation
  - Increased vacancy
- Used to quantify/measure impact of non-conformity on property value (when non-conformity cannot be corrected).

Income Capitalization Approach

This approach relies on the principle of anticipation. All income capitalization methods, techniques and procedures attempt to estimate the present worth of anticipated future benefits.

The future benefits are quantified as dollars in the form of an anticipated income stream (rent).

Case law

- *City of Trenton v. Lenzner*, 16 N.J. 465 (1954), *cert. denied*, 348 U.S. 972, 75 S. Ct. 534, 99 L. Ed. 2d 757 (1955)

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Income Capitalization Approach

Methodology

- What are similar properties renting for? (Procedure is similar to the Sales Comparison Approach)
- Research the market for comparable leases.
- Determine the appropriate/relevant unit of comparison (typically price per sq. ft.).
- Make adjustments to each comparable lease to equate it to the subject property.
- Reconcile the various rental value indications from the analysis of the comparable leases into a single indication of market rent.

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Income Capitalization Approach

Methodology

Potential Gross Income

Less: Vacancy & Collection Loss

Effective Gross Income

Less Expenses:
Fixed
Variable

Net Operating Income (NOI)

NOI capitalized into an indication of market value from the Income Capitalization Approach.

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Income Capitalization Approach

Applications in Eminent Domain

- Rent attributed to temporary taking/easement for period of use.
- Used to quantify/measure loss of property utility caused by taking – capitalized income/rent loss:
  - Parking
  - Exterior circulation/loading
  - Interior circulation
  - Increased vacancy
- Quantify/measure impact of non-conformity on property value (when non-conformity cannot be corrected) – capitalized income/rent loss.

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Unique or Special Purpose Properties

Characteristics

- Physical features specific to its particular use
- Limited or no market
- No feasible economic alternative use

Case law

- *State v. Burnett*, 24 N.J. 280 (1957)
- *New Jersey Highway Auth. v. Ackerson*, 73 N.J. Super. 183 (App. Div. 1962) (Explaining *State v. Burnett*)

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Unique or Special Purpose Properties

- Churches
- Schools
- Hospitals
- Nursing Homes
- Museums
- Theaters
- Stadiums
- Golf Courses
- Cemeteries
- Public Utilities
- Landfills
- Reservoirs
- Casinos
- Specialized Industrial Uses

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Partial Takings

- A partial taking can result in any number of impacts to the remaining property.
- By definition, a partial physical taking reduces the size of the parcel.
- The taking may divide the property into two or more non-contiguous parcels or impact all or portions of existing improvements.
- Physical takings may consume available parking areas, limit the ability of vehicles to maneuver upon the remainder, interfere with highway ingress and egress, impair visibility or view, render the property non-conforming to controlling ordinances or otherwise affect the use of the remainder, even so far as to preclude continuation of the existing use resulting in a different highest and best use.
- Takings of legal interests, *e.g.*, easements, may restrict the owner's right to occupy or use areas encumbered by the easement.

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Partial Takings – Practice Tip

- Partial takings, like baseball, can be a game of inches.
- A picture is still worth a thousand words.
- When reading partial taking cases, it is helpful to *diagram the property and the taking* to visualize and better understand the problem confronting the court and counsel and the hypothetical parties negotiating the market value of the property.
- By "getting into the weeds" of a reported partial taking case, the attorney will be in a far better position to inform the court why a reported opinion is true precedent – or simply inapposite – to the case at hand.

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Partial Takings – Compensation

Compensation for damages to any remaining property is required by the Eminent Domain Act.

N.J.S.A. 20:3-29 provides:

- The condemnee shall be entitled to compensation for the property, and damages, if any, to any remaining property, together with such additional compensation as provided for herein, or as may be fixed according to law.

All the factors that might influence a buyer and seller in arriving at the value of the remainder are appropriate considerations in evaluating compensation for a partial taking.

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Partial Takings – Wide Inquiry

- In the case of a partial taking the inquiry is even broader than when the entire property is condemned.
- It is necessary to assign a value not only to the property taken, but also to the property that is left.
- Because there is property remaining after the taking that must be valued, an examination of all of the characteristics of such remaining property after the time of the taking, as opposed solely to facts in existence at or immediately before condemnation, is inescapable.
- Therefore, in the case of a partial taking, the market value of property remaining after a taking should be ascertained by a wide factual inquiry into all material facts and circumstances – both past and prospective – that would influence a buyer or seller interested in consummating a sale of the property.
- *State, by Comm'r of Transp. v. Silver*, 92 N.J. 507, 515 (1983)

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Partial Takings – Some Rules

- Damages to the remainder must relate to the condemnor's use of the part taken – not to its use of other property.
- The condemnor is assumed to utilize all the rights it acquires. "Promissory representations" of intended limits of use are not permitted.
- Non-compensable damages must be "factored out" of the evaluation.
- "Costs to cure" damages may not exceed the damages if left uncured.

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Partial Takings – Uneconomic Remnant

A partial taking is sometimes so damaging to the utility of the remaining property that it is fairer to the owner and less expensive to the condemnor to simply acquire the entire parcel in the first place.

The Eminent Domain Act provides that in cases where the remainder is a remnant with little or no economic value, the condemnor, in its own discretion or at the request of the condemnee, shall acquire the entire parcel.

- *N.J.S.A.* 20:3-37 provides:
  - 20:3-37 Uneconomic remnants. If as a result of a partial taking of property, the property remaining consists of a parcel or parcels of land having little or no economic value, the condemnor, in its own discretion or at the request of the condemnee, shall acquire the entire parcel.

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Legal Measurements of Just Compensation

- Federal Rule
  - Market value of the property before the taking less market value after the taking.
  - Commonly used
  - Most effective when damages are obvious and greatly exceed the value of the part taken
  - Case:
    - *United States v. 91.90 Acres of Land*, 586 F.2d 79, 86 (8th Cir. 1978)
- State Rule
  - Market value of the taking plus damages to the remainder
  - Isolates the market value of the part taken separately from the damages to the remainder
  - Not frequently used but effective when damages are minimal
  - Cases:
    - *State by Comm'r of Transp. v. Silver*, 92 N.J. 507 (1983)
    - *Village of South Orange v. Alden Corp.*, 71 N.J. 363 (1976)

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Considerations in Determining Damages

Land Value:	Typically calculated using the Sales Comparison method.
Improvements:	Buildings, paving, parking spaces, signs, landscaping, etc.
Fixtures and Equipment:	Not compensable if they can be relocated.
Leases:	Generally, the property is valued at current market terms.
Cost to Cure:	If a remedy exists, a cost to cure analysis is performed.
Multiple Owners:	The property is valued in its fee simple estate. Multiple owners must allocate just compensation amongst themselves.
Non-conformities:	If the taking results in a no-conformity, owners are entitled to compensation for correcting the non-conforming condition and/or its impact on property value.
Future Development:	Will a taking eliminate or reduce the site's future development potential?
Highest and Best Use:	Does the taking alter the property's highest and best use?

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Partial Takings – "Compensability"

- Compensable
  - Parking reductions
  - Loss of property utility
  - Landscaping
  - Loading efficiency
  - Impacts to interior circulation
  - Reductions in rent expectations
  - Increased vacancy
  - Non-conformities created
- Non-Compensable
  - Business loss unrelated to the value of the real estate
  - Damages due to altered access that is deemed reasonable
  - Visibility provided the obstruction is not located on the part taken
  - Damages that do not result in an economic impact
  - Speculative losses

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What is the "Remainder"?

- Where the taking is part of a single parcel – no issue.
- Where the taking impacts a non-contiguous parcel, the owner must show that the remaining parcel and the taken parcel enjoyed a "Unity of Use" ("Functional Unity") and a "Unity of Title."
  - *Housing Authority, City of Newark v. Norfolk Realty Co.,* 71 N.J. 314 (1976)

Example: Taking of a parcel used for parking or operations located across a public street from a factory or other use dependent upon the taken parcel in order to function.

Example: "Prospective functional unity" *State, by Comm'r of Transp. v. Bakers Basin Realty Co.*, 138 N.J. Super. 33, 42-43 (App. Div. 1975), *aff'd*, 74 N.J. 103 (1977)

Note: A "unity of title" can be established even if the titles are not exactly identical.
Union County Imp. Auth. v. Artaki, LLC, 392 N.J. Super. 141 (App. Div. 2007)

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Partial Takings – Calculating Damages

"Before and After" Method

Value Before the Taking:		$2,000,000
Value of Remainder After Taking:		
$1,500,000		
Difference (Just Compensation):		$ 500,000

"Per Se" Method

Value of land taken		$ 100,000
		PLUS
Value of remainder before taking	$1,900,000	
MINUS		
Value of Remainder after taking	$1,500,000	
		$ 400,000
		$ 500,000

Village of South Orange v. Alden Corp., 71 N.J. 363, 367 (1976)

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Partial Takings – Calculating Damages Cont'd

- **Caution**:
  - *Borough of Harvey Cedars v. Karan*, 214 N.J. 384, 417-418 (2013):
  - "Notwithstanding *Alden's* laying out two alternative methods of computing "just compensation," courts generally should follow the "before and after" rule, unless the "severance damage rule" provides a more practical approach.

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Calculating Damages – Methods

A persuasive appraisal must demonstrate the manner and mechanics employed in estimating damages and benefits, if any, to the remaining property, not only to provide the "whys and wherefores" of the appraiser's opinion, but to assure that only compensable items of damage and non-speculative and reasonably calculable benefits are included within the estimate. Some frequently employed appraisal techniques include:

- **Sales or Market Data Approach**: By adjustments to comparable sales for the damage factor at issue or by changing the basic unit of comparison to illustrate the effect of the taking upon the developability of the remainder.
- **Cost or Reproduction Cost Less Depreciation Approach**: By an increase in depreciation estimates for physical, function or external obsolescence caused by the taking.
- **Income approach**: By a reduction in gross income, an increase in expenses (*e.g.*, vacancy and collection loss) or an increase in capitalization rates for additional risk related to damage factor.

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Calculating Damages – Income Example

A shopping center containing 100,000-sf with 400 parking spaces rents at $25.00/sf Net. The DOT intends to acquire a 10,000-sf strip of land that will eliminate 50 parking spaces, thus creating a parking deficiency. As a result, the market rent will drop to $20.00/sf Net. The fee value of the land is $50.00/sf. Just Compensation is calculated as follows:

Before: 100,000-sf @ $25.00/sf Capitalized at 10% = $25,000,000

After: 100,000-sf @ $20.00/sf Capitalized at 10% = $20,000,000

Difference: $ **5,000,000**

Included in the just compensation is the value of the land taken, $500,000

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Damages Mitigation – Cost to Cure

- A condemnee has a duty to mitigate damages
- Evidence of the cost of restoring the remaining property can be no greater than the decrease in market value if left uncured
- The costs must be reasonable, certain and non-speculative

State of New Jersey v. Sun Oil, 160 N.J.Super. 513 (Law Div. 1978)

State of New Jersey by Commissioner of Transportation v. Weiswasser, 149 N.J. 320 (1997)

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Partial Takings – Offsetting "Benefits"

- *Borough of Harvey Cedars v. Karan*, 214 N.J. 384, 417–418 (2013)
- Benefits to remaining property resulting from the condemnor's project that both a willing buyer and willing seller would agree enhance the value of remaining property should be considered in determining just compensation, whether those benefits are categorized as special or general.
- Speculative or conjectural benefits conferred on a property owner whose land is partially taken by a public project should not offset a condemnation award.
- Reasonably calculable benefits that increase the value of property at the time of the taking should be discounted from the condemnation award.
- Benefits which enhance the value of property must be relevant, quantifiable, capable of reasonable calculation at the time of the taking, and may not be speculative, conjectural, or projected into the indefinite future.

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Damages Do's and Don'ts

- Do:
  - Follow Logical steps in estimating the before and after values of property
  - Consider all rights being acquired by the condemnor
  - Develop market support for all estimates of damage
  - Use damage estimates to better estimate the market value of the remaining property
  - Follow rules of compensability established by the courts
  - Get supported legal instructions for any damage item of questionable compensability
  - Use common sense

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Damages Do's and Don'ts

- Don't:
  - Assume damages.
  - Go on a crusade to find damages.
  - Use confusing terminology, e.g., consequential damages, severance damages.
  - Consider damage estimates as separate elements of damage to be added together.
  - Use cost to cure measure of damage if the cost to cure exceeds the diminution in market value that would result if the cure were not implemented.
  - Try to disguise non compensable damages as something else.
  - Try to separate elements of damage that are inseparable.

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Commissioners' Hearing

- Non-binding arbitration
- Provide reports 15 days in advance
- Obtain Award, File Appeal
- No appearance = no right to appeal
  - * *Borough of Keyport v. Maropakis*, 332 N.J. Super. 210 (App. Div. 2000)

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Appeal from Award of Commissioners

- File within 20 days of service of award
- May be relaxed up to 30 days for good cause
- Non-relaxable thereafter
- Party may not rely on appeal filed by adversary – Adversary may withdraw
  - * *City of Long Branch v. Spanos,* A-2936-04T1, 2006 W.L. 1627977 (App. Div. 2006)

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Litigation – Trial "De Novo"

- Condemnor proceeds first
- No burden of proof
- Condemnation trial is an "evidential construction of a hypothetical sale" wide discretion in admission and rejection of evidence
- Jury view of condemned property. *R.* 4:73-7

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Appeal to Appellate Division

- Usual appellate rules apply

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Successful Handling of Condemnation Case Requires:

- Appreciation of Constitutional Magnitude of Issues
- Careful Attention to *Procedural* Details
- Careful Attention to *Substantive* Details
- Appraisal familiarity

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Environmental Reservation/Cost Recovery

- Condemnor may insert in Complaint full reservation of rights with respect to contamination, solid waste, known or unknown;
- Future cost recovery actions by a condemnor or related party Will NOT be barred by and doctrines of preclusion; e.g. *Res Judicata*, Collateral Estoppel, or Entire Controversy Doctrine.
- Eminent Domain Act does not mandate a condemnor to conduct a full environmental assessment, but only requires to disclose what is known at the time.

Environmental/Remediation & Valuation

- Environmental Costs cannot be Deducted from Fair Market Value; Property is to be valued as if "Remediated". *Housing Authority of the City of New Brunswick v. Suydam,* 177 N.J. 2 (2003).
- Estimated Cost of Remediation May be Withheld by the Court and Remain on Deposit Pending Filing of a Separate Cost Recovery since it is a "Transactional Cost'. *New Jersey Transit Corporation v. Cat in The* Hat, L.L.C., 177 N.J. 29 (2003).
- Trial Court Hearing may be Held to Determine Appropriate Amount to Withhold on Deposit.
- Stigma by reason of the Remediated State of the Property can be Considered; recommended to have market support thereof.

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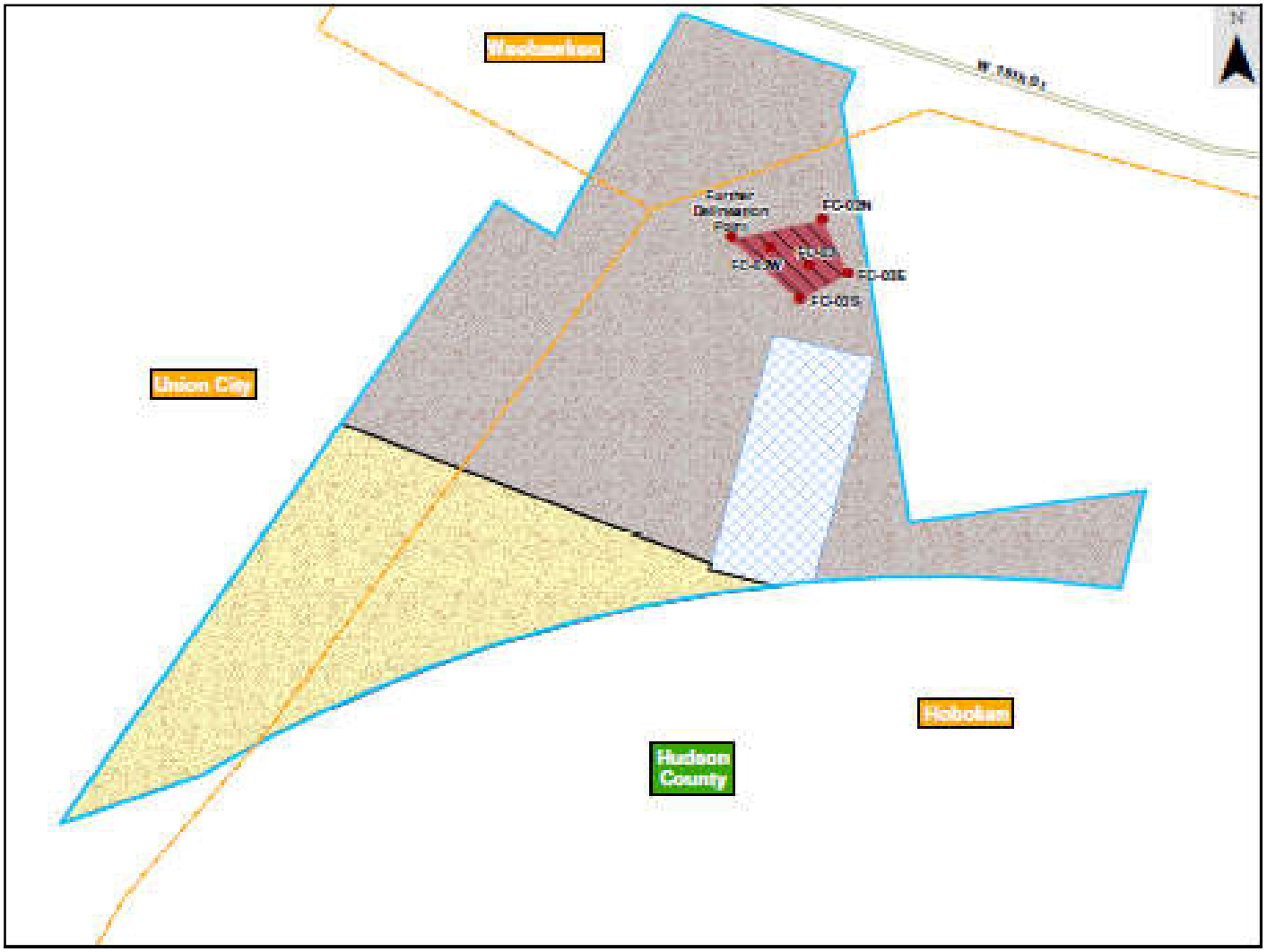
Weehawken
Union City
Hoboken
Hudson County
Former Delineation Point
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FC-03W
FC-03E
FC-03S

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Remedial Action Item	Remedial Action	Quantity	Unit Cost ($)	$
Section 5.1 – Environmental Investigation Costs				
Previous PAECE/SI Costs	Previous PAECE Reporting and Site Investigation Costs	Actual	$14,169	$14,169
RI Costs	Costs to perform RI and prepare RIR	Actual	$46,429	$46,429
Sub-Total 5.1				**$60,598**
Section 5.2 – Environmental Remediation Costs				
Section 5.2.1 – Costs for Hazardous Materials Disposal				
Miscellaneous Drum Characterization and Disposal	Removal of drums left on site, including contents	Actual	$3,000	$3,000
Section 5.2.2 – Costs for Tank Removals and Related Soil Remediation				
UST Removal	Costs to register and remove UST, including Closure Report	Lump Sum	$14,337	$14,337
AST Spill Cleanup	Costs spent to date to remediate spill that occurred during removal of the AST	Actual	$4,143	$4,143
AST Spill Closure	Additional costs will be incurred to close out this AOC and open spill number, including reporting to NJDEP	Lump Sum	$1,500	$1,500
Public Notification	NJDEP-required for RI if there is evidence of a leak; also, AST cleanup and PCB Remediation will be considered RI phase for the property	Lump Sum	$3,135	$3,135
Receptor Evaluation	NJDEP-required for RI if there is evidence of a leak; also, AST cleanup and PCB Remediation will be considered RI phase for the property	Lump Sum	$4,045	$4,045

Section 5.3 – Deed Notice				
Deed Notice	Preparation and Recording of the Deed Notice	Lump Sum	$13,000	$13,000
Deed Notice Certification (Remedial Action Protectiveness/Biennial Certification Form)	Long Term Monitoring and Biennial Certifications of Deed Notice Over 30 Years	15 Certifications	$2,500	$37,500
Soil Remedial Action Permit - Annual Fee	$100 for soil annual-limited restricted use with deed notice	30 Years	$100	$3,000
Sub-Total 5.3				**$53,500**

Section 5.4 Classification Exception Area (CEA)				
Classification Exception Area	Preparation of CEA Document, installation of six monitoring wells, and two rounds of sampling	Lump Sum	$39,000	$39,000
CEA Quarterly Monitoring and Annual Reporting	Quarterly sampling for 10 years and Annual Reporting	Lump Sum	$270,000	$270,000
CEA Certification (Remedial Action Protectiveness/Biennial Certification Form)	Long Term Monitoring and Biennial Certification of CEA (30 years)	15 Certifications	$2,500	$37,500
Groundwater Remedial Action Permit - Annual Fee	$250 for groundwater annual-limited restricted use	30 Years	$250	$7,500
Sub-Total 5.4				**$354,000**

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Environmental/Remediation & Valuation

- *Paulsboro v. Essex Chemical*, 427 N.J. Super. 173 (App. Div. 2012)(Suydam valuation methodology does not apply where condemnee has completed a remediation in compliance with NJDEP standards)
- *N.J. Transit Corp. v. Franco*, 447 N.J. Super. 361 (App. Div. 2016) (escrow for environmental cleanup of a condemned property should be based on the remediation needed to achieve the highest and best use of the property used to calculate the condemnation award, rather than the condemnor's intended or actual use)
- *NL Industries, Inc. v. NJDEP*, 397 N.J. Super. 127 (App. Div. 2007)(DEP was not authorized to remove company that was performing environmental remediation of property in the absence of an oversight document)

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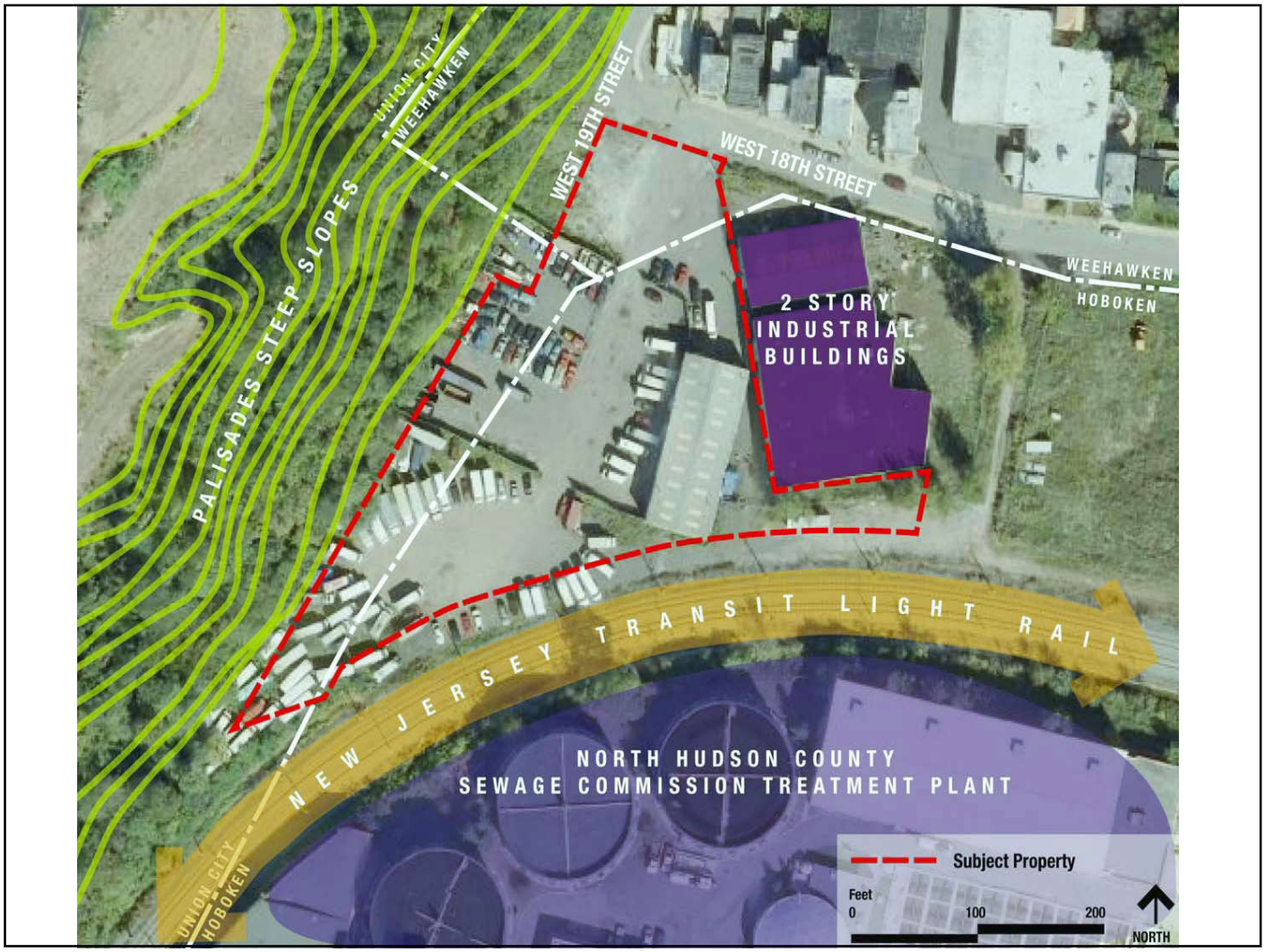
PALISADES STEEP SLOPES
UNION CITY
WEEHAWKEN
WEST 19TH STREET
WEST 18TH STREET
WEEHAWKEN
HOBOKEN
2 STORY
INDUSTRIAL
BUILDINGS
NEW JERSEY TRANSIT LIGHT RAIL
NORTH HUDSON COUNTY
SEWAGE COMMISSION TREATMENT PLANT
UNION CITY
HOBOKEN
Subject Property
Feet
0
100
200
NORTH

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Effect Of Remediation On Valuation Of A Property

- Effect upon Highest and Best Use:
  - In order to develop property to H & B Use, further remediation may have to be conducted; this may in turn present additional extraordinary costs over and above those which may be incurred compared to a property not needing additional or no further remediation.
  - Cost of further Remediation may not be cost effective and thereby limit H & B Use of property.
  - Stigma may have impact upon marketability of property or otherwise impact H & B Use of Property.

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Relocation Purpose

- Uniformity
- Equality
- Provide benefits variety of events, including non-condemnation events
- All qualified occupants are entitled to relocation assistance, including tenants, owners, relatives, family members and other qualified occupants.
- Require relocation plan (WRAP) prior to acquisitions and relocations.

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Statutes & Regulations

- *N.J.S.A.* 20:4-1 (Relocation Assistance Act)
  - The regulations promulgated pursuant to *N.J.S.A.* 20:4-1, et seq., are found at N.J.A.C. 5:11-1.1, et seq.
- *N.J.S.A.* 52:31B-1, et seq. (Relocation Assistance Law of 1967)
  - The regulations promulgated under N.J.S.A. 27:7-72, et seq., are found at N.J.A.C. 16:6-1.1, et seq.
- *N.J.S.A.* 27:7-72, et seq. (Uniform Transportation Replacement Housing & Relocation Act).
- 42 U.S.C.A. §4601, et seq. (Uniform Relocation Assistance and Real Property Acquisition Polices Act of 1970).

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Relocation Assistance

- Condemnors must assist the relocatee in finding a new location or dwelling before any attempt at displacement or eviction of the displaced person may occur. *N.J.S.A.* 20:4-7; *N.J.S.A.* 27:7-78; N.J.A.C. 16:6-1.3(a); N.J.A.C. 5:11-2.1 and 2.2.

- Workable Relocation Assistance Plan ("WRAP")
  - Determine the needs of displacees;
  - Assist displacees in obtaining replacement housing and business locations;
  - Secure the coordination of relocation activities with other displacing agencies;
  - Assist in minimizing hardships to displacees;
  - Determine the extent of the need of each displacee for relocation assistance;
  - Assure the availability of decent, safe, and sanitary housing;
  - Determine the source, amount and availability of funds necessary to complete relocation; and
  - Provide any other information deemed necessary to insure the regulatory provisions are carried out.

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Residential Relocation Payments

- N.J.A.C. 5:11-3.2: Either the actual reasonable moving expenses incurred or a fixed payment based on the number of rooms in the unit, not to exceed $300.00, and a $200.00 dislocation allowance.

- Moving expenses shall not be considered unreasonable due to distance if the distance is 50 miles or less. For good cause, a move of more than 50 miles may be deemed reasonable by the displacing agency. See also, *N.J.S.A.* 20-4-4.

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Residential Relocation Payments Cont'd

- N.J.A.C. 16:6-2.1: Any displaced owner/occupant or tenant of a dwelling who qualifies is entitled to payment of his or her actual moving and related expenses, as the agency determines to be reasonable and necessary, including expenses for:
  - Packing, crating, unpacking and uncrating of the personal property;
  - Disconnecting, dismantling, removing, reassembling and reinstalling relocated household appliances, and other personal property;
  - Storage of the personal property for a period not to exceed 12 months, unless the agency determines that a longer period is necessary;
  - Insurance for the replacement value of the property in connection with the move and necessary storage;
  - The replacement value of property lost, stolen or damaged in the process of moving (not due to the fault or negligence of the displaced person, his or her agent, or employee); where insurance covering such loss, theft or damages is not reasonably available; and
  - Other moving related expenses that are not listed as ineligible under N.J.A.C. 16:6-2.5, as the agency determines to be reasonable and necessary.
  - Rental Assistance Payments and down payment assistance. N.J.A.C. 5:11-3.5(a); N.J.A.C. 16:6-2.8; N.J.A.C. 5:11-3.6; N.J.A.C. 16:6-2.8(c)
  - Replacement housing differential payment N.J.A.C. 5:11-3.7 (not to exceed $15,000); N.J.A.C. 16:6-2.7 (not to exceed $22,500)

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Business Relocation Payments

- Self move agreement versus Actual and Reasonable Moving Expense
- Payment of actual moving expenses limited to:
- Actual reasonable and necessary cost:
  - Moving personal property up to 50 miles, unless the distance is enlarged by the displacing agency, for cause.
  - Inspection and license fees required by statute or local ordinance to permit the operation of the business at the new location.
  - Reconnecting utility service to machinery and equipment, including, without limitation, the cost incurred in adapting or converting relocation machinery or equipment to use a different type of power supply, to the extent that these services were required in the former location. Expenses incurred in providing utility service from the right-of-way to the building or improvements are excluded.
  - For physical changes in or to an existing building to which a business relocates in order to accommodate the machinery and equipment relocated. The amount incurred shall not exceed the fair market value of the machinery and equipment requiring the physical change. In the event the cost does exceed the fair market value of the machinery and equipment, the displacing agency shall then be responsible to pay only the fair market value.

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Business Relocation Payments Cont'd

- The owner of a displaced business may elect to replace with a comparable item any item of personal property, including, without limitation, outdoor advertising displays or signs, utilized in its operation which is not to be moved. In such a case, the amount of the moving expense payment shall be the lesser of:
  - the actual cost of the substitute equipment delivered and installed at the new location less any proceeds form the disposition of the old equipment or, if a bona fide sale cannot be made, less the market value of the old equipment as determined by an independent appraisal; and
  - The estimated cost of relocating the old equipment, as determined by the displacing agency.
- Self Move:
  - Must provide notice to the agency
  - Submit three estimates.
  - The amount of the moving cost payment shall be the lesser of the bid chosen or the estimate obtained by the displacing agency.

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Business Relocation Payments (cont'd)

- Loss of tangible personal property:
  - A displaced business that elects not to move all or a part of the personal property may receive a payment for actual direct loss of the personal property not moved. Must have prior agency approval
  - The payment for loss of tangible personal property shall be calculated as follows:
    - In the event the items is sold the payment shall be the fair market value less the net sales amount (sales price less cost of sale);
    - In the event the item is not sold the payment shall be the fair market value. The item shall then be the property of the displacing agency.

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Business Relocation Payments (cont.)

- Professional services necessary for:
  - Planning the move of the personal property;
  - Moving the personal property; and
  - Installing the relocated personal property at the replacement location.
  - Re-lettering signs and replacing stationery on hand at the time of displacement that are made obsolete as a result of the move;
  - The reasonable cost incurred in attempting to sell an item that is not to be relocated;
  - Searching for a replacement location
  - Time spent searching
- Fees paid to a real estate agent or broker to locate a replacement site, exclusive of any fees or commissions related to the purchase of such site

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Appeals

- Deadlines
  - Regulations
  - Court rules
  - Tort Claim statute of limitations

- Appropriate Forum
  - State or Federal Agency
  - Agency review, Administrative review, Courts

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Case Law

- *Foreign Auto Preparation Service (FAPS) vs. New Jersey Economic Development Authority*, 201 N.J. Super. 422 (App. Div. 1995) (holding The displacement must be the cause of the expense for which reimbursement is sought, not the failure to rent comparable property.)
- *Blazer Corp. vs. NJ Sports & Exposition Authority*, 195 N.J. Super. 542 (Law Div. 1984), aff'd 199 N.J. Super. 107 (App. Div. 1985) (finding date of eviction important for statute of limitations to file claim).
- *In Re Berwick Ice, Inc.*, 231 N.J. Super. 391 (App. Div. 1989) (holding appeals for relocation claims must be filed and determined by appropriate state or federal agency)
- *Paterson Redevelopment Agency vs. Schulman*, 78 N.J. 378 (1979), cert. denied, 444 US 900, 100 S.Ct. 210, 62 L.Ed. 2d 136 (1979) (holding that that since the relocation statutes did not provide for interest on payments, no interest was required to be paid with respect to relocation assistance payments)
- *Jersey City School District vs. Marathon Enterprises*, OAL Docket No. CAF 09962-00 and CAF 01465-04, aff'd Appellate Division docket No: A-6188-03T5 (App. Div. 2007) (finding approximately two million of claimed relocation expenses were reasonable and necessary in order to relocate the machinery and equipment, and to meet the stringent USDA requirements for meat processing facilities.)

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Jersey City Officially Files Legal Action to Seize 50 Journal Square

By **Chris Fry** - May 6, 2024



On May 2, Jersey City officially filed a legal action in Hudson County Superior Court looking to condemn 50 Journal Square. Image via Google Maps.

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About the Panelists…

Michael J. Ash, CRE®, Certified as a Certified Civil Trial Attorney by the Supreme Court of New Jersey, is a Partner in Carlin, Ward, Ash & Heiart, LLC in Florham Park, New Jersey. His practice focuses on real estate litigation and trial advocacy in eminent domain matters and tax appeals. He collaborates with experts in several disciplines including real estate appraisers, engineers, planners and environmental consultants, and handles all aspects of condemnation valuation jury trials, commissioner hearings and tax appeals.

Awarded the CRE® designation by the Counselors of Real Estate®, Mr. Ash is admitted to practice in New Jersey and New York, and before the United States District Court for the District of New Jersey and the Southern District of New York. He is Chair of the Planning Board of the Town of Westfield and a Trustee of the New Jersey Festival Orchestra, as well as a member of multiple *ad hoc* committees for Congregation Temple Emanu-El. The recipient of several honors, he has been involved with *Parking Authority of the City of Camden v. Rubin* and other condemnation and tax appeal cases.

Mr. Ash received his B.A. from Rutgers University and his J.D. from New England School of Law.

Anthony F. DellaPelle, CRE®, Certified as a Civil Trial Attorney by the Supreme Court of New Jersey, is a Shareholder in McKirdy, Riskin, Olson & DellaPelle, P.C. in Morris Plains, New Jersey, where he has represented property owners in eminent domain, redevelopment and real estate tax appeal matters for more than 35 years. Holding the Counselor of Real Estate (CRE®) designation, he has served as special counsel to municipal agencies and boards in condemnation cases and real estate tax appeals, and in planning and zoning matters. He has also been appointed by the Superior Court of New Jersey as a receiver in real estate valuation matters and has been involved in several reported decisions.

Admitted to practice in New Jersey and New York, and before the United States District Court for the District of New Jersey and the Southern and Eastern Districts of New York, Mr. DellaPelle has been Co-Chair of the Inverse Condemnation Subcommittee of the American Bar Association Section of Litigation's Condemnation, Zoning and Land Use Committee, and Chair of the Morris County Bar Association Condemnation Committee. He is the sole New Jersey representative for Owners Counsel of America, a national association of leading eminent domain lawyers, and is also Global Chair of the Board of Directors of the Counselors of Real Estate®, an international organization of real estate professionals. Past Chair of the Board of Trustees of the Great Swamp Watershed Association, he has also been a member of the New Jersey State Bar Association, the New Jersey State Builders' Association's Redevelopment Committee, the Community Builders' and Remodelers' Association and the Urban Land Institute.

Mr. DellaPelle has been a member of the faculty of the New Jersey Association of Realtors' Graduate Realtor Institute. He is the author of several articles, lectures regularly on real estate valuation and property rights issues, and is the recipient of several honors.

Mr. Della Pelle received his B.A. from Franklin & Marshall College and his J.D. from Seton Hall University School of Law.

Timothy P. Duggan is the Chair of Stark & Stark's Condemnation, Redevelopment, and Eminent Domain Group. He represents clients whose highway access and property rights have been revoked or taken by the New Jersey Department of Transportation, County Agencies, and utility companies, and has experience in handling all aspects of eminent domain, including relocation assistance, modification of highway access, and litigating the amount of just compensation. He represents property owners in urban redevelopment projects and pipeline cases and has experience in both state and federal courts.

Tim is also Chair of Stark & Stark's Bankruptcy & Creditors' Rights Group. He represents national and community banks, agricultural lenders, franchisors, equipment leasing companies, shopping centers, and trade creditors in commercial litigation and bankruptcy cases, with a focus on Chapter 12 and complex Chapter 11 cases. Tim has substantial experience in creditor-rights litigation, including foreclosures, receiverships, equipment repossession and writs of replevin, assignments for the benefit of creditors, and negotiating corporate loan restructuring. His litigation experience covers most aspects of bankruptcy litigation, with a focus on defending preference and fraudulent transfer actions.

He is on the Board of the Hunterdon County Meals on Wheels, Vice President of the Friendly Sons & Daughters of St. Patrick of Mercer County, Treasurer of the South Hunterdon Lady Eagles Basketball Booster Club, coach and team manager of the Lambertville 7th and 8th-grade girls' basketball team, and past teacher of religious education at St. John's Church in Lambertville.

Timothy received his J.D., from Seton Hall University School of Law, M.B.A., from Seton Hall University, and B.A., in Chemistry, from University of Delaware.

James Graziano, Esq. is Co-Chair of Archer's Condemnation and Eminent Domain Practice. He focuses on aspects of complex litigation in areas that include condemnation law, natural gas utility law, redevelopment law, environmental law, class actions, mass torts, regulatory investigations, contract disputes, commercial litigation, and employment law.

He has represented property owners related to several complex valuation issues, obtaining significant increase in compensation over the original offers. Jim has also represented multiple pipeline companies in condemnation proceedings pursuant to the Natural Gas Act. In addition, Jim has represented multiple municipalities in acquiring property via eminent domain for public projects. He has also represented governmental authorities in condemnation proceedings pursuant to the New Jersey Urban Redevelopment Act and the Abandoned Properties Rehabilitation Act involving numerous properties for large-scale urban redevelopment project.

Clients enjoy working with Jim. In all his cases, Jim believes that clear and prompt communication and making the client an engaged part of the team is the key to success. He works hard to ensure that his clients feel heard and their needs are properly met. Working with Jim, a client will never wonder what is going on with their case. He knows the importance of sharing his knowledge and experience in a way that ensures his clients are comfortable and informed at every stage.

James received his JD from Rutgers University School of Law, and BA from Duke University.

Kevin P. McManimon concentrates his practice in the areas of eminent domain (also known as condemnation), redevelopment, land use and public finance law, primarily representing governmental entities and for-profit developers in all aspects of eminent domain matters and

redevelopment projects. Kevin serves as general counsel, redevelopment counsel and/or bond counsel to redevelopment entities, including municipalities, county improvement authorities and redevelopment agencies throughout the State of New Jersey. Kevin also serves or has served as general counsel and/or bond counsel to various public bodies, such as redevelopment agencies, parking authorities, county improvement authorities, municipal utilities authorities and free public libraries.

Kevin advises governmental entities and for-profit developers during all stages of the redevelopment process, including the investigation and designation of redevelopment areas, the preparation and adoption of redevelopment plans, and the negotiation and implementation of redevelopment agreements. He also provides high-level advice to public sector and private clients regarding financial agreements governing payments in lieu of taxes and other complex project finance related matters, including securing financial assistance through State-administered incentive programs. Kevin represents clients in the negotiation of various other types of agreements relating to the development and conveyance of land, including purchase and sale agreements, leases, parking agreements and use and occupancy agreements.

Kevin has appeared before panels of condemnation commissioners, and the Law Division and Appellate Division of the New Jersey Superior Court. He has also served as lecturer on the laws governing eminent domain, redevelopment and tax exemption on behalf of the New Jersey Institute for Continuing Legal Education, Plan Smart NJ, Monmouth University's Kislak Real Estate Institute and The American Planning Association New Jersey Chapter, and he is a faculty member at the Rutgers Center for Government Services.

Prior to joining McManimon, Scotland & Baumann, Kevin was an associate at Mason, Griffin & Pierson, P.C. in Princeton and, before that, he was an Assistant Prosecutor in the Mercer County Prosecutor’s Office. Kevin began his legal career as a law clerk for the Honorable David J. Schroth, J.S.C. and the Honorable Alan J. Pogarsky, J.S.C., of the Superior Court of New Jersey in Mercer County. He then served as law clerk to the Honorable John J. Hughes, U.S.M.J., in the United States District Court, District of New Jersey.

Kevin received J.D. from Ralph R. Papito School of Law at Roger Williams University, and his B.S. from Villanova University.