

Editorials

A Cautionary Condemnation

Condemnation cases are usually routine, with the public interest viewed as paramount. Still, there are procedural issues, including a requirement for bona fide negotiations to assure that the condemnee's views have been considered. As illustrated by a recent opinion — *State v. The General's Group LLC* and its companion *State v. F.T.A. Realty, L.P.* — failure to satisfy this requirement may result in dismissal and liability for attorney's fees.

In 1998, the New Jersey Department of Transportation began a project to convert the Little Ferry circle on Route 46 into a four-way intersection. Its public purpose was not contested and it should have been routine had the required bona fide negotiations taken place. Bona fide negotiations are a jurisdictional requirement before a condemnation case can go to the Board of Commissioners for final disposition.

Counsel for the property owners challenged the action at the first meeting, asserting that bona fide negotiations were not taking place. In the following two years, he continued to assert that the appraisal reports did not take into account any of his clients' objections or amendments.

When the state filed its condemnation complaint, the owners moved to dismiss and sought temporary restraints. They cited the state's alleged misrepresentations and missing pieces in the appraisal report, which they asserted precluded full and fair compensation, because bona fide negotiations had not taken place. At oral argument, the state urged the judge to decide quickly because federal funding for the project was at stake.

At issue for these commercial properties was: ingress and egress to the state highway and the consequences to their commercial interests; whether the taking of one parcel was an easement or a fee in a flood-prone area where runoff must be managed. On the purported easement parcel, the plans showed a structure was to be built together with a seven-foot wall and drainage pipes above ground across the property. Also of concern, a tenant would suffer a three-year loss of income to

its business during construction. The appraiser's report did not address these matters in calculating compensation.

Within days of oral argument, the court dismissed the complaint. In a 73-page decision, Judge Peter Doyne in Bergen County expounded on the law of condemnation, its constitutionality, the statutory interplay between the Office of Administrative Law and the Superior Court, and what constitutes the requirements for the exercise of the extraordinary power of eminent domain. He stated a principle basic to all of the preceding: there must be fair and bona fide negotiations, or the process fails judicial blessing.

The presumption under the case law that "the State will act diligently, responsibly and honorably" did not pass muster here. Strict compliance with the rules and statutes governing condemnation is required. After the trial, attempts to cure will be rejected for all but minor omissions.

The power of any condemning authority has statutory limitations. Property holders often lack resources to contest offered compensation. But when dismissal is granted, compensation for attorneys and consultants is mandatory. Here the award was \$130,999.

The moral is that to be empowered to take property, the sovereign must be fair, supply all information and satisfy bona fide negotiation. Failure to do so halts a project that is in the public interest, jeopardizes federal matching funds and shifts fees. We believe this opinion should be approved for publication.

**Schepisi
& McLaughlin**
P.A.
www.schepisi.com