

TOWNSHIP OF JACKSON

Plaintiff-Petitioner,

vs.

GETZEL BEE, LLC and
STATE OF NEW JERSEY

Defendant-Appellant.

SUPREME COURT OF NEW JERSEY

DOCKET NO.: 090404

App. Div. Docket No.: A-000590-23
A-000594-23

SAT BELOW:

Hon. Jack Sabatino, P.J.A.D.
Hon. Katie Gummer, P.J.A.D.
Hon. Maritza Berdote Byrne, J.A.D.

ON APPEAL FROM:

Superior Court of New Jersey
Law Division, Ocean County

Docket No.: OCN-L-001384-23

CIVIL ACTION

PETITION FOR CERTIFICATION OF PLAINTIFF-PETITIONERS

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TABLE OF CONTENTS

| | <u>Page</u> |
|---|-------------|
| TABLE OF CONTENTS | i |
| TABLE OF AUTHORITIES | ii |
| PRELIMINARY STATEMENT | 1 |
| STATEMENT OF THE CASE | 3 |
| LEGAL ARGUMENT | 3 |
| <u>LEGAL POINT I</u> | 3 |
| THE APPELLATE DIVISION IMPROPERLY FOUND THAT THE TOWNSHIP DID NOT HAVE THE AUTHORITY TO CONDEMN THE SUBJECT PROPERTIES AND FAILED TO APPLY THE HOLDINGS OF THE UNITED STATES SUPREME COURT. | |
| <u>LEGAL POINT II</u> | 12 |
| THE TOWNSHIP NO LONGER OWNS OR CONTROLS THE PROPERTIES IN QUESTION AND THE APPELLATE DIVISION FAILED TO OUTLINE A REMEDY. | |
| <u>LEGAL POINT III</u> | 12 |
| THE APPELLATE DIVISION IMPROPERLY FOUND THAT THE TOWNSHIP FAILED TO TURN "SQUARE CORNERS" IN ITS NEGOTIATIONS WITH THE RESPONDENTS. | |
| CONCLUSION | 13 |

TABLE OF AUTHORITIES

| <u>CASES</u> | <u>PAGE</u> |
|---|--------------------|
| <i>City of Atlantic City v. Cynwyd Investments</i> , 148 N.J. 55 (1997) | 4, 5 |
| <i>Essex County v. Hindenlang</i> , 35 N.J. Super. 479 (App. Div. 1955) | 7 |
| <i>Hawaii Housing Authority v. Midkiff</i> , 467 U.S. 229 (1984) | 2, 9 |
| <i>in Kelo v. City of New London</i> Kelo v. City of New London, 545 U.S. 469 (2005) | 2, 9 |
| <i>Mt. Laurel Twp. v. MiPro Homes LLC</i> , 379 N.J. Super. 358 (App. Div. 2005) | 5 |
| <i>State Highway Com'r., State v. Davis</i> , 87 N.J. Super. 377 (App. Div. 1965) | 8 |
| <i>State Highway Commissioner v. Buck</i> , 94 N.J. Super. 84 (App. Div. 1967) | 8 |
| <i>State v. Totowa Lumber and Supply Co.</i> , 96 N.J. Super. 84 (App. Div. 1967) | 6, 8, 9 |

STATUTES

| | |
|--------------------------------------|------|
| <u>N.J.S.A. 20:3-1 et seq.</u> | 4, 5 |
| <u>N.J.S.A. 20:3-2</u> | 9 |
| <u>N.J.S.A. 20:3-6</u> | 9 |

PRELIMINARY STATEMENT

This matter is one of first impression before this Court on a governing body's authority to condemn land to utilize as part of a land exchange to preserve open space within the municipality.

This Petition for Certification arises from a condemnation action within the Township of Jackson. The Township Council condemned two parcels, as part of a land exchange agreement, by which the Township exchanged lands, including the condemned lands at issue here, with a third-party. The lands acquired by the Township in the land exchange are to be preserved for open space in a desirable section of the Township for such a public purpose.

As will be addressed herein, the court below failed to properly apply the precedent outlined by the United States Supreme Court in two landmark condemnation cases. Further, the Appellate Court failed to review the matter as it applied to the Township's entire plan for the properties at issue. Respectfully, the court below failed to consider the entirety of the Township's articulated plan when exercising its right to eminent domain.

Respectfully, the court below ignored the holdings of the United States Supreme Court in Kelo v. City of New London, 545 U.S. 469 (2005) and Hawaii Housing Authority v. Midkiff, 467 U.S. 229, 244 (1984). The Appellate Division failed to review the condemnation action as a whole, and failed to give proper

deference to the Township's legislative body in determining that the condemnation best served the Township to preserve open space.

This Honorable Court has never addressed whether a state entity (here, the Township of Jackson) has the authority to condemn land for the purpose of carrying out a land exchange, when such land exchange would clearly promote a valid public purpose as it contemplated by the State's eminent domain jurisprudence. The idea that the condemnation is part of a larger plan by the municipality to preserve open space aligns with the Supreme Court's interpretation of the government's right of condemnation.

Further, the court below has determined that the condemnation was improper, but failed to acknowledge that the condemned properties no longer belong to the Township of Jackson. The Respondents have not named the third-party owner of these properties, and the Township no longer has any authority over the properties subject to this litigation. The Appellate Division denied the Respondent's application to stay any proceeding regarding the Township's land exchange, and the Respondent never filed an action in Superior Court naming the party who now holds title to the property. The Township can offer no remedy, other than the just compensation to Respondents.

STATEMENT OF THE CASE

The Township of Jackson sought to condemn two pieces of property belonging to Respondent. The Township adopted Ordinance No. 26-23, authorizing the condemnation. Pa061-063. The Ordinance made clear that the condemned properties would be used by the Township as part of a land exchange, in order for the Township to exchange the land for land elsewhere in the Township, which would be utilized to preserve open space in a desirable location. Respondents challenged the Township's condemnation. The trial court found in favor of the Township, and this appeal followed.

LEGAL ARGUMENT

POINT I.

THE APPELLATE DIVISION IMPROPERLY FOUND THAT THE TOWNSHIP DID NOT HAVE THE AUTHORITY TO CONDEMN THE SUBJECT PROPERTIES AND FAILED TO APPLY THE HOLDINGS OF THE UNITED STATES SUPREME COURT.

Under New Jersey law, the exercise of eminent domain is permitted only for a "public use." The Township of Jackson's actions fall squarely within the ambit of this requirement, aiming to serve the community's need for open space, environmental preservation, and recreational areas (N.J.S.A. 20:3-1 et seq.). The broad discretion afforded to municipalities in determining what constitutes a public purpose is well-established. See City of Atlantic City v. Cynwyd Investments, 148 N.J. 55, 68 (1997).

The cornerstone of eminent domain law in New Jersey is the requirement that property may only be taken for a "public use." This standard is not a narrow or restrictive one; rather, it encompasses a broad range of purposes deemed to benefit the public. The New Jersey Supreme Court has consistently upheld the principle that determinations of what constitutes a public use should be given considerable deference when made by local municipalities, recognizing their unique position to understand the needs and aspirations of their communities. City of Atlantic City v. Cynwyd Investments, 148 N.J. 55, 68 (1997). This legal framework allows for a wide interpretation of public use, including but not limited to, public health, safety, and welfare improvements, environmental preservation, and the creation of recreational spaces.

Furthermore, the New Jersey statutes and case law explicitly support the use of eminent domain for acquiring lands to preserve open space, which directly contributes to the public's environmental and recreational well-being. See N.J.S.A. 20:3-1 et seq. The Appellate Division has further elaborated on this point by recognizing that the preservation of open space serves multiple public purposes, including providing aesthetic beauty, recreational opportunities, and environmental benefits, all of which enhance the quality of life for New Jersey's residents Mt. Laurel Twp. v. MiPro Homes LLC, 379 N.J. Super. 358 (App. Div. 2005).

Given the broad definition of “public use,” it is not essential that the entire community or even any considerable portion of the community directly enjoy or participate in the condemned property for the taking to constitute a “public use.” State v. Totowa Lumber and Supply Co., 96 N.J. Super. 84, 120 (App. Div. 1967) (“The number of people who will participate in or benefit from the use for which the property is condemned is not determinant of whether the use is or is not a public one.” (quoting County of Essex v. Hindenlang , 35 N.J. Super. 479,491). Further, the fact that a private party may benefit from the taking does not render the taking private and not for “public use.” See County of Ocean v. Stockhold, 129 N.J. Super. 286, 289 (App. Div. 1974); State v. Buck, 94 N.J. Super. 84, 88 (App. Div 1967) (holding that although private interests may be served by condemnation, the overarching question is whether the purpose of taking is in the public interest.)

Again, this Court is tasked with determining whether a municipality may condemn property in order to use the condemned property as an exchange for land with a private owner; where such exchanged land will be used for a valid public purpose. Respondents do not dispute the fact that condemnation for open space is a valid public purpose under the law. The only question is whether the Township had the authority to condemn the Respondent’s land to be exchanged for the acquisition of other land to be used for a valid public purpose.

The Court below stated that the Township “failed to demonstrate the statutorily-required public use of the condemned land and the trial court erred in determining the Township had validly exercised its eminent-domain authority to condemn the properties.” (Pa005). The question is not whether the acquired land itself would be used for a valid public purpose, but whether the condemnation is for a valid public purpose. Respectfully, the Appellate Division applied a requirement to condemnation that is not required or recognized by our statutes and the applicable case law.

Courts have addressed the requirements of a municipality exercising its right to eminent domain and the requirement of the taking being a “public use.” As Judge Goldman stated in Essex County v. Hindenlang, 35 N.J. Super. 479 (App. Div. 1955), appeal dismissed, 24 N.J. 517 (1957):

Courts dealing with problems of eminent domain have generally been reluctant to define the phrase ‘public use.’ ***[T]hey have recognized that the phrase ‘is incapable of a precise and comprehensive definition of universal application.’ ***Judicial attempts to describe the subjects to which the expression ‘public use’ would apply have proceeded on two different theories. One theory of ‘public use’ limits its application to ‘use by public’—public service or employment.***Courts that take the broader and more liberal view in sustaining public rights at the expense of property rights hold that ‘public use’ is synonymous with ‘public benefit,’ ‘public advantage,’ or ‘public utility.’

[Essex County v. Hindenlang, 35 N.J. Super. 479 (App. Div. 1955), appeal dismissed, 24 N.J. 517 (1957).]

In State v. Totowa Lumber & Supply Co., the Appellate Division, in referencing the above, reiterated that New Jersey courts have adopted the liberal view as to the meaning of public use. State v. Totowa Lumber and Supply Co., 96 N.J. Super. 84, 120 (App. Div. 1967). See also State Highway Com'r., State v. Davis, 87 N.J. Super. 377 (App. Div. 1965) cert. denied, 46 N.J. 135 (1965); State Highway Commissioner v. Buck, 94 N.J. Super. 84 (App. Div. 1967).

In Davis, the complaining landowner was one of several private property owners subject to the taking of land for the construction of an access road to several whose properties would be deemed landlocked by the taking for highways. It became apparent during litigation that one of the properties subject to the taking would be subdivided for further development and the proposed access road would be joined with another road to provide a thoroughfare which would benefit a number of people. The Court said, "Thus, it cannot be reasonably concluded here that the State merely took the property of one man for the private use of another." State Highway Com'r., State v. Davis, 87 N.J. Super. 377, 379 (App. Div. 1965) cert. denied, 46 N.J. 135 (1965).

In State v. Totoawa Lumber & Supply Co., the Appellate Division held that the State acted properly in condemning the Plaintiff's property, even though the condemned land was to be used to provide an access road that would benefit one party, and not the general public. In so deciding, the Court stated that the

condemnation permitted “the maximum utilization” of the remaining land, and that the exercise of the State Highway Commissioner’s judgment to best serve the public interest did not represent any abuse of discretion. State v. Totowa Lumber and Supply Co., 96 N.J. Super. 84, 123 (App. Div. 1967).

Here, in determining that the Township lacked a proper public purpose as required under N.J.S.A. 20:3-2 and N.J.S.A. 20:3-6, the court below heavily relied on the case of Kelo v. City of New London, 545 U.S. 469 (2005). Respectfully, the Appellate Division applied only one clause from the Kelo case. In applying the entirety of the Supreme Court’s holding in Kelo, as well as the Supreme Court’s holding in Hawaii Housing Authority v. Midkiff, 467 U.S. 229, 244 (1984), it is clear that Jackson Township acted properly in condemning the subject properties and exchanging said lands.

In Hawaii Housing Authority v. Midkiff, the United States Supreme Court considered whether a state statute which permitted the State to take fee title from lessors and transfer the same property to lessees, in order to reduce the concentration of land ownership, was a valid use of the state’s eminent domain power. In Midkiff, the Court reaffirmed its deferential approach to legislative judgments in the field of eminent domain. In Midkiff, the Court concluded that the State’s purpose of eliminating the “social and economic evils of land oligopoly” qualified as a valid public use. Id. at 241-242. The holding in Midkiff is at complete odds with the

Appellate Division's holding here, that a municipality must provide a "clearly-articulated public use for the condemned property." The Appellate Division's holding that the specific, condemned property must be the actual "public use" contemplated is contrary to the holding in Midkiff.

In Midkiff, the properties in question which were taken were not taken for a "public use" other than to transfer said properties to a private party. The land that is actually "taken" does not need to be "used" for a public use. In Midkiff, the "public use" was not an actual "use" at all, but was instead an articulated plan to benefit the public as a whole. Respectfully, the Appellate Division's decision has created a new standard, and such standard is contradictory to the holdings of the United States Supreme Court.

The Supreme Court of the United States further expanded this theory in the matter of Kelo v. City of New London. In Kelo, the Court referenced its decision in Midkiff, stating:

Our opinion also rejected the contention that the mere fact that the State immediately transferred the properties to private individuals upon condemnation somehow diminished the public character of the taking. "[I]t is only the taking's purpose, and not its mechanics," we explained, that matters in determining public use.

[Kelo v. City of New London, 545 U.S. 469, 482 (2005) (citing Haw. House. Auth. V. Midkiff, 467 U.S. 229, 244 (1984).]

In Kelo, the Supreme Court found that a city's proposed disposition of some real property under a development plan that was "projected to create in excess of

1,000 jobs, to increase tax and other revenues, and to revitalize an economically distressed city, including its downtown and waterfront areas” qualified as a “public use” within the meaning of the 5th Amendment, so that the city, through its development agent, properly could use the power of eminent domain to acquire, for purposes of the development project, privately owned parcels of this property from owners who were unwilling to sell. The court found that, even though the parcels were not alleged to be in blighted or in poor condition, this development plan served a public purpose. Specifically, the Court found that the city had carefully formulated a plan that it believed would provide appreciable benefits to the community and given the comprehensive character of the plan, the thorough deliberation that had preceded the plan’s adoption, and the limited scope of the United States Supreme Court’s review, it was appropriate for the court to resolve the challenges of the individual private owners in light of the entire plan.

Respectfully, the reasoning of the Appellate Division below is in direct conflict with the holdings of the above-referenced cases. The Appellate Division found that the Township failed to articulate the public use of the condemned land, and therefore, the condemnation was improper. The cases above clearly hold that the proposed condemned land does not, itself, need to be used by the “taking agency” for public use. Instead, the entire plan shall be reviewed to determine whether the taking was, in fact, for a valid public purpose.

Here, the properties in question were part of a larger land exchange contract with a developer. Those lands which the municipality gained as a result of the land exchange contract are to be used for open space. As is outlined in the Ordinance authorizing the acquisition of the subject properties, the subject parcels were to become part of a land exchange contract in order to preserve open space in “a desirable location of the Township.” Pa061. The actions taken by the Township clearly align with the holdings of Midkiff and Kelo.

New Jersey Courts have relied on the United States Supreme Court decisions to hold that so long as a public purpose is clearly associated with the condemnation, the legislative body is left with discretion to determine the scope and breathe of such condemnation. In Borough of Glassboro v Grossman, the Appellate Division, relying on Kelo and Berman, stated:

“It is not for the courts to oversee the choice of the boundary line nor to sit in review of the size of a particular project area.” [Kelo, supra, 545 U.S.] at 489 (quoting Berman v. Parker, 348 U.S. 26, 35 [. . .] (1954)). “Once the question of the public purpose has been decided, the amount and character of land to be taken for the project and the need for a particular tract to complete the integrated plan rests in the discretion of the legislative branch.” Ibid. (quoting Berman, 348 U.S. at 35).

[Borough of Glassboro v. Grossman, 457 N.J. Super. 416 (App. Div. 2019).]

Here, the question of public purpose has been clearly decided. The “public purpose” associated with this condemnation was the use of the condemned land, as

exchange for lands located elsewhere in the municipality, which are to be used as open space. As was outlined in Grossman, the public purpose of preservation of open space has clearly been articulated by the Township. Respectfully, it is the legislative body (here, the Township's governing body) who is left with the discretion to carry out the integrated plan. In this case, the plan was the exchange of lands after the condemnation, in order to provide for open space in a desirable area in the Township.

POINT II.

THE TOWNSHIP NO LONGER OWNS OR CONTROLS THE PROPERTIES IN QUESTION AND THE APPELLATE DIVISION FAILED TO OUTLINE A REMEDY.

As the Appellate Division noted in its decision, the trial court upheld the initial land exchange agreement in a separate action and no appeal was ever filed. Further, the Respondents filed a Motion to Stay the land exchange but that motion was denied. As such, the condemned properties in question have been exchanged, and the Township of Jackson exercises no control over said properties. The Appellate Division failed to outline an appropriate remedy. The Respondents did not name the third-party owners of those properties in this matter. As such, the remedy in this matter remains unknown as there has been a failure to name an indispensable party.

POINT III.

THE APPELLATE DIVISION IMPROPERLY FOUND THAT THE TOWNSHIP FAILED TO TURN "SQUARE CORNERS" IN ITS NEGOTIATIONS WITH THE RESPONDENTS.

The Appellate Division found that the Township did not “turn square corners” in this condemnation proceeding. The Appellate Division relied on an Ordinance of the Township that was repealed and replaced. The only ordinance that should be of issue, and the only ordinance in effect, clearly outlined the Township’s intent to utilize the condemned lots for a land exchange which would, in turn, preserve open space in a desirable location within the Township. Pa061-063.

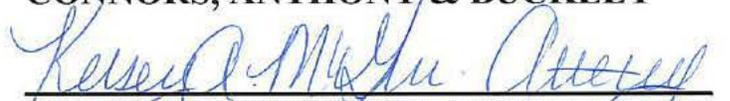
The Appellate Division claimed that the Township advised that the condemned properties would be utilized for open space. This is factually incorrect. The Township advised the property owners that the Township was in the process of acquiring substantial acreage for open space purposes. Pa035. The Township never advised the Respondents that the properties to be condemned were to be preserved for open space.

The Township’s final ordinance authorizing the condemnation clearly outlined that the properties would be part of a land exchange, and such exchange would preserve open space. The Township never acted in secret or attempted to “hide” the intent of the condemnation nor the land exchange.

CONCLUSION

For the foregoing reasons, the Township of Jackson respectfully requests that this Honorable Court grant its Petition for Certification.

Respectfully submitted,
**DASTI, McGUCKIN, McNICHOLS,
CONNORS, ANTHONY & BUCKLEY**


KELSEY A. MCGUCKIN-ANTHONY, ESQ.

Dated: 3/25/25

CERTIFICATION

I certify that this Petition filed on behalf of Jackson Township, represents a substantial question and is filed in good faith, and not for purposes of delay. This Certification is provided pursuant to the requirements set forth in Rule 2:12-7(a).

Respectfully Submitted,

**DASTI, McGUCKIN, McNICHOLS,
CONNORS, ANTHONY & BUCKLEY**


KELSEY A. MCGUCKIN-ANTHONY, ESQ.

Dated: 3/25/25