

TOWNSHIP OF JACKSON

PLAINTIFF-PETITIONER,

vs.

GETZEL BEE, LLC and
STATE OF NEW JERSEY

DEFENDANT-APPELLANT.

TOWNSHIP OF JACKSON

PLAINTIFF-PETITIONER,

vs.

BELLEVUE JACKSON, 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

PLAINTIFF-PETITIONERS REPLY BRIEF

**DASTI, McGUCKIN, McNICHOLS,
CONNORS, ANTHONY & BUCKLEY**
620 West Lacey Road
Forked River, New Jersey 08731
609-971-1010 Fax 609-971-7093

Of Counsel:
JERRY J. DASTI, ESQ.
E-Mail: jdasti@dmmlawfirm.com

On The Brief:
KELSEY A. McGUCKIN-ANTHONY, ESQ.
E-Mail: kmanthony@dmmlawfirm.com

JERRY J. DASTI, ESQ.
E-Mail: jdasti@dmmlawfirm.com

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PRELIMINARY STATEMENT

The Township of Jackson submits that its Petition for Certification clearly represents a question of general public importance which has not been previously settled by this Court. While Respondents continuously try to argue that the Township failed to articulate its reason for condemnation, however, the Township of Jackson clearly articulated that the condemnation was for the purpose of a valid public use; i.e. the preservation of open space within the municipality.

The decision below is in direct conflict with the decisions reached by the United States Supreme Court in Kelo v. City of New London, 545 U.S. 469, 482 (2005) and Hawaii Housing Authority v. Midkiff, 467 U.S. 244 (1984)). Respectfully, without clarification from this Court, municipalities are without guidance as to how to properly exercise their inherit right to eminent domain, especially when the purpose is to preserve open space. The United States Supreme Court has made clear that it is the entire purpose of the condemnation which is to be reviewed by the courts, whereas the Appellate Division below chose to look solely at the specific parcels, rather than the entire plan taken by the municipality to advance a legitimate public purpose.

Respondent also attempts to challenge an agreement for the exchange of lands entered into by the Township of Jackson and a third-party; which third party is not a part of this case. That land exchange agreement was challenged and upheld. See

White Road HOA, LLC vs. Township of Jackson et al (Da70)¹. Respectfully, Respondent's attempt to relitigate that issue is inappropriate before this Court. Further, Respondent's attempt to cite to the Local Lands and Buildings Law, when such law was never raised, challenged, nor briefed by either party before the Appellate Division, is improper before this Court.

As was outlined in detail in Petitioner's brief in support of this Petition for Certification, the Township of Jackson acted appropriately, "turned all square corners", met all requirements for condemnation under New Jersey law and exercised eminent domain for a valid public purpose.

LEGAL ARGUMENT

POINT I.

THE TOWNSHIP WAS FULLY WITHIN ITS RIGHTS TO EXERCISE EMINENT DOMAIN PROCEEDINGS IN ORDER TO ACQUIRE PROPERTY FOR A PUBLIC PURPOSE, MAINLY OPEN SPACE FOR THE BENEFIT OF THE TOWNSHIP RESIDENTS.

The Courts in this state have never determined whether a municipality may use its power of eminent domain to exchange publicly owned land, when such exchanged land will be utilized for a valid public purpose.

Respondent argues that the Township failed to articulate a specific use for the exchanged/condemned properties. That is not correct. Yet, there is no statutory or

¹ We will refer to the Appendix provided by Defendant/Appellant, Bellevue Jackson, LLC to the Superior Court of New Jersey, Appellate Division.

other legal requirement that such use for the particular land be articulated. The laws of the state require that the condemnation be utilized for a valid public purpose. See Essex County v. Hindenlang, 35 N.J. Super. 479 (App. Div. 1955), appeal dismissed, 24 N.J. 517 (1957). The United States Supreme Court has made clear that “[i]t is only the taking’s purpose, and not its mechanics” that matter in determining the public use. Kelo v. City of New London, 545 U.S. 469, 482 (2005) (citing Hawaii Housing Authority v. Midkiff, 467 U.S. 244 (1984)).

Further, in Borough of Glassboro v. Grossman, the Appellate Division discussed the importance of considering the entirety of the condemnation plan, rather than to review particular areas of the condemnation plan. Borough of Glassboro v. Grossman, 457 N.J. Super. 416 (App. Div. 2019).

The public purpose in this matter was clearly defined. The condemned land was to be exchanged, and the lands exchanged to the municipality as a result of the land exchange agreement would be utilized for open space (Da19, Da3). Again, there is no attempt made by Respondent to challenge the fact that open space is a valid public purpose and has been readily accepted as a valid purpose for condemnation by our courts.

There has been put forth no case law, statutory language or even dicta that requires the actual land being condemned be the land used for a public use. Nor has there been any authority put forth by Respondent or the Appellate Division that

requires that condemning agency to provide specific details as to how the condemned land would be utilized, outside the well-established requirement that the condemnation be for a valid public purpose. Yet, the Respondent and the Appellate Division have applied this standard, despite having no precedential authority to do so. Such a requirement does not presently exist, and therefore, the Township of Jackson acted appropriately in exercising its power of eminent domain.

POINT II.

ANY RELIANCE ON THE NEW JERSEY LOCAL LANDS AND BUILDINGS LAW IS NOT APPROPRIATE BEFORE THIS COURT.

The Appellate Division cited to the Local Land and Buildings Law, specifically N.J.S.A. 40A:12-16, to claim that the Township did not have the authority to enter into the land exchange agreement with a third-party. First and foremost, a challenge to the land exchange was never brought in this case. These Respondents never challenged the land exchange agreement, the parties never briefed nor argued the matter in the context of N.J.S.A. 40A:12-16 and it was and remains inappropriate for the Respondent to rely on or discuss such statute. Further, the other party to the land exchange agreement is not a party to this case. Any claims regarding the land exchange agreement would have to have included the other party subject to the land exchange agreement. The Respondent never brought a claim against the third-party and the third-party is an indispensable party to a challenge to the land exchange agreement.

Even if the Court were to review the validity of the land exchange agreement between the Township of Jackson and the third-party, it would find that such agreement was proper. Respondent argues that N.J.S.A. 40A:12-16 prohibits the municipality to exchange lands it does not own. N.J.S.A. 40A:12-16 outlines the requirements a municipality must follow in exchanging land. The statute states, in pertinent part:

The governing body of any county,, by resolution, or any municipality, by ordinance may exchange any lands or rights or interest therein owned by the county or municipality [. . .].

[N.J.S.A. 40A:12-16.]

Here, Respondent argues that the Township of Jackson could not enter into a contract for the exchange of land because land subject to the agreement included the properties which were to be condemned by the municipality, and at the time of the execution of the land exchange agreement, the Township did not hold title so the condemned land. Respondent ignores the fact that at the time the Ordinances were adopted, the Township was the contract purchaser of the subject properties in as much as the Declaration of Taking for the property had previously been duly filed and recorded with the Ocean County Clerk's Office (Da53). While the Township held title to most of the specific properties outlined in the land exchange agreement, the condemned lands subject to this matter were not yet owned by the Township. The Township entering into an agreement to exchange lands it does not yet own is

not violative of the statute. While the land exchange agreement was entered into prior to the municipality having owned the condemned properties, no land was exchanged prior to the Township having title to such land. Of course, the Township could not exchange land it did not own. There is no language in the statute that prohibits the Township from entering into an agreement for the exchange of land prior to it taking title to same. Of course, if the trial court had found that the Township was not entitled to condemn the properties in question, the Township would not have had the ability to complete the land exchange agreement. The trial court did, however, determine that the Township had the authority to condemn the land. It was only after the condemnation was complete that the Township exchanged such lands. Nothing in the statute prohibits the Township from entering into an agreement to exchange land prior to the Township holding title to said land. Again, the actual exchange of title did not occur until after the Township had title to the condemned properties.

POINT III.

THE CURRENT OWNER OF THE PROPERTIES IN QUESTION IS NOT A PARTY TO THIS LITIGATION AND THE TOWNSHIP HAS NO AUTHORITY OVER THE LANDS WHICH WERE CONDEMNED.

Even if it were determined that the Township did not properly exercise its power of eminent domain (though the Township adamantly argues that it did), there is no action that the Township can take at this point. The Township does not own

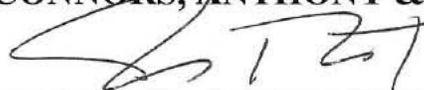
the land. It has been exchanged and title is now held by a third party which is not a party in this case. The Township has absolutely no rights with respect to the land and the current owner of the land is not a party in this case. There is no remedy, other than fair market value (which the Respondents' never challenged) to make the Respondent whole.

CONCLUSION

For the foregoing reasons, the Township of Jackson acted within its authority by condemning the property. Respectfully, it is imperative that this Court grant certification in this case in order to address the holding of the Appellate Division below and its conflict with the holdings of the United States Supreme Court.

Respectfully Submitted,

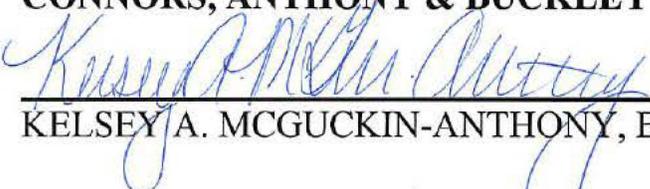
**DASTI, McGUCKIN, McNICHOLS,
CONNORS, ANTHONY & BUCKLEY**



JERRY J. DASTI, ESQ.

DATED: *April 14, 2025*

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



KELSEY A. MCGUCKIN-ANTHONY, ESQ.

DATED: *April 14, 2025*