



A Case Worth Watching

By John Grossman

May one municipality acquire, by condemnation, real property in another municipality over the objection of that other municipality? The Assignment Judge in Bergen County, New Jersey, is poised to decide that issue if the parties before him in *Borough of Cliffside Park v. Pedigree Holding Group*, Docket No. BER-L-008236-08, do not settle by June 1, 2009. If decided in favor of the condemning municipality, the case would expand upon existing New Jersey law. Cross-border takings have been approved, but only in cases in which the target municipality has provided its consent.

These are the facts, according to an article appearing in the April 27, 2009, edition of the *New Jersey Law Journal*. Cliffside Park has been leasing land and garage facilities in neighboring Fairview from Pedigree Holding Group for use as an interim public works facility servicing Cliffside Park. The two towns have been in negotiations concerning the construction of a new public works facility to be located separately in Fairview and to service both Fairview and Cliffside Park. While the negotiations concerning this new facility were ongoing, but presumably at a slower pace than Cliffside Park preferred, Cliffside Park moved to condemn the Pedigree Holding Group property. Both the property owner and Fairview have objected.

Cliffside Park maintains that it requires the Pedigree Holding Group property in Fairview because Cliffside Park lacks a suitable place for a permanent facility within its own borders. It argues that the public policy goal of regionalization of services requires condemnation, particularly given Cliffside Park's special circumstances and the history of cross-border cooperation between the two towns. The new joint public works facility under negotiation in Fairview is the result of a previously successful, cross-border condemnation claim by Cliffside Park over the objection of the property owner; in the previous case, Fairview supported the condemnation.

The statute enabling extra-territorial condemnation, N.J.S.A. 40A:12-4, has two parts. The first part provides that any county or municipality may acquire any property either within or without the county or municipality, but no public property may be acquired without the public entity's consent.¹ The second part provides that any county or municipality may acquire any outstanding interest in any property previously acquired by the county or municipality necessary or useful for the proper exercise of any power or duty conferred or imposed upon that county or municipality by law.²

Cliffside Park appears to move under the first part of the enabling statute. Since public property is not being sought by Cliffside Park, Fairview's consent to the taking is not statutorily required; however,

¹ Such property may include real property, capital improvement, personal property or any interest or estate whatsoever therein, including easements, water, water power or water rights.

² Such property interests may include any outstanding easement, right or interest in any real property, capital improvement or personal property previously acquired. This second part shall not be construed to repeal or supersede any law requiring the consent of any public entity for the acquisition of any such interest.

no case has been decided in favor of a cross-border condemnor over the objection of the target municipality. The property owner asserts that to read the law to allow Cliffside Park's condemnation would open the door for towns to put their unpopular uses, perhaps garbage dumps or jails, on properties in neighboring towns.

If the Court decides this issue in favor of Cliffside Park, the determining factors likely will be Cliffside Park's special needs, the history of cooperation between the towns concerning the potential construction of the new joint public works facility, and the public policy goal of regionalization of services. However, any such ruling might be limited to the special circumstances of this case.

According to the *New Jersey Law Journal* article, the towns are discussing a deal under pressure of the upcoming June 1 deadline. Property owners throughout New Jersey should watch for a decision in this case.

For more information about this topic, contact John Grossman at 609.572.2322 or jgrossman@foxrothschild.com.



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