

Harvey Cedars v. Karan: NJ Supreme Court Reverses Lower Court Rulings in Longstanding Oceanfront Property Dispute

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In a significant decision affecting public dune barrier projects along New Jersey's beaches, the New Jersey Supreme Court has ruled that the determination of "just compensation" for the partial taking of a permanent dune easement on private property must consider the quantifiable increase in property value from the storm protection benefits of the dunes project as an off-set to any diminution in the value of the remaining property from loss of ocean view. The July 8, 2013 decision in *Borough of Harvey Cedars v. Karan* is the latest chapter in a well publicized legal battle between the Long Beach Island municipality and the owners of a beachfront private residence. The dispute has taken on added significance in light of the destructive impact of Superstorm Sandy on New Jersey's coastline and efforts to replenish and protect the state's beaches from future storm-related damage.

At trial, the Ocean County Superior Court had ruled that the property owner was entitled to damages from the loss of ocean view, but that the storm protection provided to the property by the dune project was a general benefit (one that applied to other neighboring property owners and the local community at large) as opposed to a special benefit (one that applied solely to the Karan property) - and that therefore any storm protection provided by the dune was inadmissible in the determination of just compensation. The municipality's estimate of just compensation was \$300, and the property owner's estimate was \$500,000. The jury awarded \$375,000. The Appellate Division subsequently upheld this ruling.

This week, though, the tides turned when the Supreme Court disagreed and reversed the lower court decisions, discarding the often misunderstood and misapplied terminology of special benefits and general benefits and instead refocusing the benchmark of just compensation on the concept of fair market value.

The Court determined that in addition to considering loss of ocean view, a rational buyer would likely place a value on the protection the dune barrier provides to the property from storm damage. Concerned that the property owner would receive a financial windfall if the dune barrier benefits were not factored in, the Court determined that as a quantifiable project benefit, the dune barrier must be considered, regardless of whether others in the community enjoy the same benefit to a lesser or greater degree.

The Court stated: "We now conclude that when a public project requires the partial taking of property, 'just compensation' to the owner must be based on a consideration of all relevant, reasonably calculable, and non-conjectural factors that either decrease or increase the value of the remaining property."

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The Supreme Court has remanded the matter for retrial consistent with its opinion, essentially bringing the dispute back to square one and redefining the standards by which just compensation will be calculated. As municipalities and property owners continue the process of recovering from Sandy, the potential implications of this latest ruling cannot be overstated.