

Proposed Legislation in New Jersey Seeks to Limit Compensation for Beachfront Properties Taken for Dune Construction and Beach Replenishment

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As New Jersey continues its post-Sandy recovery and formulates a protective strategic plan for the future, new legislation has been introduced to address the valuation of property condemned for dune construction or beach replenishments.

S-2618/A-3896 would limit the amount of just compensation payable to beachfront property owners for easements taken for the construction of protective sand dunes or other beach improvements along the state's coastline. The bill provides that just compensation for such easements "must include consideration of the increase in value to the entire property due to the added safety and property protection provided by the dune or replenished beach." The bill further provides that "any additional rights of the public to access property held in the public trust arising as a result of the easement, or the dune construction or beach replenishment, shall not be considered to cause a diminution in the value of the entire property."

In *Borough of Harvey Cedars v. Harvey Karan*, 425 N.J. Super. 155 (App. Div. 2012), certif. granted, 210 N.J. 478 (2012), the Appellate Division agreed with the trial court that the construction of dunes in the easement taken from the beachfront property owner did not confer a "special benefit" on the subject property, but instead conferred only a "general benefit", which the condemnee enjoys in common with other property owners and that therefore just compensation due the condemnee for the easement taken could not be offset by the benefit of the dunes. The *Karan* case is now before the New Jersey Supreme Court.

In *Karan*, the Appellate Division in a footnote commented that *Ridgewood v. Sreel Investment Corp.*, 28 N.J. 121 (1958) "suggests that absent a statute specifically authorizing offsets for special benefits, such offsets are impermissible in a condemnation case. However, no party to this appeal has raised the issue of statutory authority and we do not address it. We also need not address the issue of whether the Legislature has the constitutional authority to authorize offsets for general benefits in condemnation cases such as this one."

The proposed legislation, if passed, would provide the specific statutory authorization for the special benefit referred to in *Sreel*. However, the issue of whether the statute violates the constitutional mandate of just compensation when private property is taken for a public use will still remain. We will continue to monitor related developments and will keep you apprised accordingly.