

To commence the 30 day statutory time period for appeals as of right (CPLR 5513[a]), you are advised to serve a copy of this order, with notice of entry, upon all parties

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ROCKLAND

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In the Matter of the Application of the VILLAGE OF SPRING VALLEY, New York, relative to acquiring title in Fee simply to certain real property located along North Madison Avenue in the Central Business District of Such Village to effectuate the Village's Urban Renewal Plan.

**DECISION/
ORDER/JUDGMENT**

Relating to the following Tax Map Section, Block and Lot in the Town of Ramapo, Village of Spring Valley; 57.31-1-12, commonly known as 73-79 North Main Street, a/k/a 50 North Madison Avenue, Spring Valley, NY 10977,

Petitioners,

Index No:
4304/05

-against -

G & J REALTY,

Respondent.

-----X

G & J REALTY,

Claimant,

- against -

THE VILLAGE OF SPRING VALLEY,

Condemnor.

-----X

LaCAVA, J.

The non-jury trial of this Eminent Domain Procedure Law (EDPL) Article 5 proceeding, challenging the valuation by the Village of Spring Valley (Village or condemnor) of the real property taken in Eminent Domain from G & J Realty (G & J or claimant), took place on February 14, February 15, February 21, February 25, March 4, and March 18, 2008. In addition to the trial testimony and exhibits admitted into evidence, the following post-trial submissions, numbered 1 to 7, were considered in the determination of this matter:

<u>PAPERS</u>	<u>NUMBERED</u>
CLAIMANT'S POST-TRIAL MEMORANDUM OF LAW	1
POST TRIAL MEMORANDUM OF LAW	2
CLAIMANT'S POST-TRIAL REPLY BRIEF	3
POST-TRIAL REPLY MEMORANDUM OF LAW	4
BECKMANN APPRAISAL	5
FEDERAL APPRAISAL	6-7

The instant property is owned in fee by G & J, and known and designated on the Official Tax Map of the Village of Spring Valley as 57.31-1-12, commonly known as 73-79 North Main Street, Spring Valley, New York, and also known as 50 North Madison Avenue, Spring Valley, NY. The former premises has been described as a one story, mixed commercial retail/office property measuring approximately 6,770 square feet, situated on a .31 acre tax lot on the west side of North Main Street in the Village of Spring Valley. The latter, part of the same tax parcel, has been described as a one story, mixed commercial retail/office property fronting on the east side North Madison Avenue (directly adjacent to and west of the 73-79 North Main Street building), which measures approximately 2,580 square feet, and also contains a basement commercial storage space measuring approximately 1,500 square feet. The taking occurred as part of a larger urban renewal project within the Village (see *In the Matter of the Application of Spring Valley v. NBW*, Supreme Court, Westchester County, LaCava, J., January 22, 2008 [the NBW Claim or NBW]).

By Order and Judgment of this Court, entered August 23, 2005, (Dickerson, J.), the taking was effected.

Based on the credible evidence adduced at the trial of this matter, the arguments of counsel, and the post-trial submissions, the Court makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

G & J's corporate officer, Gary Nightingale, testified that

the premises was acquired by Claimant in 1986, and that the total capital improvements thereafter amounted to approximately \$50,000. After a blight study conducted on behalf of the Village, the premises and many other properties in the area surrounding it were identified as being subject to condemnation in 2002. For some time afterwards, G & J was able either to continue existing leases, or to rent the premises to tenants with written leases covering multiple years, generally with escalation clauses increasing the rents periodically.

Nightingale testified that the income generated from 73-79 North Main Street was \$80,200.00 in 2003 and \$80,450.00 in 2004. He was unable to state what the exact expenses for the subject property were, but did testify that the total expenses incurred for all of the properties owned by G & J for 2004 was \$12,955.00, of which, he estimated, 10% was attributable to the subject. He was able to identify an additional expense for insurance for 2004 which amounted to \$3,672.00. The taking of the subject premises by the Village occurred on August 23, 2005, which the parties agreed was the "Valuation Date".

Claimant's expert, William R. Beckman, has been employed as a real estate appraiser for 25 years, and for many of those years he has appeared before Courts in the Ninth Judicial District as an Expert Witness in the valuation of real property. Beckmann was also the Tax Assessor for the Village for 19 years. He has been qualified as a Member of the Appraisal Institute since 1990 and was a Counselor of Real Estate ("CRE") since 2000 as well as a member of the Royal Institute of Chartered Surveyors and a member of the IAO. Notably, the Court fully credited Beckman's testimony in the associated NBW claim.

The Court further credits Beckman's testimony regarding the subject premises. Beckman testified that the premises consisted of 6,770 square feet of retail and office space on Main Street, 2,580 square feet of retail and office space on Madison Avenue, for a total of 9,350 square feet for the subject premises. There was also additional basement storage space (approximately 1,500 square feet) in the Madison Avenue building. This was more than 250 feet greater than the measurement arrived-at by condemnor's expert.

Beckman testified that he examined the assessment records for the Village relating to the subject property, and determined that the premises had an assessed value in 2005 of \$86,100.00. The Equalization Rate, established by the State of New York, for the Village at that time was 9%, and therefore, the equalized value of the subject premises in 2005 was \$956,667.00.

In analyzing the highest and best use for the subject premises, Beckman concluded that said use was, in fact, the current use being employed for the property, namely a mixed retail/office commercial premises.

Mr. Beckman testified, that, in furtherance of his analysis pursuant to the Income Capitalization Method, he made use of an estimate of market rental income which could be derived from the operation of the subject premises in order to arrive at his conclusions¹. He gathered this information by both a personal inspection of the premises during business hours, a survey of the property's tenants, an evaluation of the actual rents in light of market conditions (though he, like Pomykacz, discounted actual rents as not at market rates), and by an examination of the income amounts he gathered from an analysis of eight retail or street-level retail/office comparable properties. In each instance he either acquired a copy of the 2005 leases or lease abstracts, and/or verified the rental income conditions with the owners of those premises. To these amounts he added the income generated by the subject from the basement storage area.

From this analysis, Beckmann arrived at a total gross potential income for 2005 of \$173,760.00. To this he applied a vacancy and collection loss estimate of 7.5%, based on the history of the premises and area, to generate an Effective Gross Income of \$160,728.00. Mr. Beckman then conducted an expense analysis of the subject property by gathering not only the actual expenses incurred in the operation of the subject premises, through tax return analysis, including expense figures for, among other things, management, insurance, repairs, miscellaneous expenses, and property taxes, but also by a market analysis, by examining the expense amounts reported by the same retail and office comparable properties, to estimate total expenses of \$71,420.00. Finally, Mr. Beckman was able to generate a Net Operating Income (NOI) figure from this analysis of \$89,308.00.

To this NOI amount, due to his conclusion that the subjective premises was not institutional grade, he applied a Capitalization Rate of 10% that he derived from the Korpacz Real Estate Investor's Survey, for non-institutional properties. Based on the Income Capitalization Method, he was thus able to arrive at a fair market value for the premises on August 23, 2005 of \$893,077.00, which he rounded to \$900,000.00.

¹Notably, utilization of the actual leases by both appraisers was greatly complicated by their being delivered very late in the appraisal process.

Finally, Beckman tested the accuracy of his income capitalization conclusions by analysis of five comparable properties in a Sales Comparison approach. Beckman utilized three sales in the Village, for \$250,000.00, \$620,000.00, and \$630,000.00, and two sales outside the Village, but still within the Town of Ramapo, one for \$375,000.00 and one for \$465,000.00. After making adjustments for, *inter alia*, the age of the sale; the location; the size of the lot; the size of the improvement on the property; and the condition, Beckman arrived at a market value estimate on August 23, 2005 of \$95.00 per square foot, or \$888,250.00, which he rounded to \$900,000.00.

The Court generally declines, in large respect, to similarly credit the testimony of the Village's expert, Mark Pomykacz. As set forth in detail in the NBW claim, Pomykacz conceded in his testimony that he had no retail appraisal experience in the Village before being assigned to appraise the 15 parcels along with the subject property that were the subject of the instant Eminent Domain proceeding, although he did have some residential and commercial appraisal experience in Northern New Jersey and Southern New York State, and had commercial real estate appraisal experience in New York City. Further, his current employment involves valuation of utility properties and other tax issues. While he has appraised several properties per year, in recent years, in Rockland County, none of those properties was of a similar size to the subject property. He also demonstrated a less-than-complete knowledge of the municipalities in Rockland County, and the conditions in those municipalities, particularly as they related to the subject and his comparables.

Pomykacz also performed, like Beckman, a highest and best use analysis, and agreed that the current utilization of the property was the highest and best use. He also employed, like Beckman, both the Sales Comparison and Income Capitalization Methods of valuing the subject property. For the Sales Comparison method, he analyzed seven comparable sales, and six properties (one property involving two separate sales), ranging in adjusted values from just over \$55.00 per square foot up to approximately \$80.00 per square foot. Pomykacz concluded that the average values ranged from approximately \$63.00 per square foot to approximately \$75.00 per square foot, leading him to a final valuation conclusion of \$62.00 per square foot, or \$564,000.00. In errata corrections and under cross-examination, Pomykacz conceded to a Sales Comparison value of just over 65.30 per square foot, or \$594,000.00.

For the Income Capitalization Method, Pomykacz analyzed actual data, but concluded that the actual income and expense figures were

unreliable. Thus, he conducted a market rent analysis of 16 comparable properties in the area of the subject premises as well, relying, however, at times on asking prices for un-rented properties, surveys, and data from other appraisers, rather than actual rents for rented properties. He also relied separately on a list of 17 market rent listings. He concluded that small sized unit on Main Street should rent for \$14 per square foot; the medium sized units there should rent for \$12.00 per square foot; while spaces of 2100 square feet such as the Madison Avenue space commonly rented for \$8.00 per square foot. Based on the same 9,092 square foot estimate², this led to a Potential Gross Income conclusion of \$114,244.00; Mr. Pomykacz allowed for a 10% vacancy and credit loss, or \$11,424.00, which led to an Effective Gross Income of \$102,820.00.

Pomykacz then performed only a market expense analysis. Including, among other things, insurance, operating expenses, management expenses, and tenant improvements, Pomykacz determined expenses for the property to be an extremely low \$2.18 per square foot, or \$82,964.00. (Notably, this was consistent with his very low expense estimate in NBW, compared to Beckman's ratio of 40% here, and 36% in NBW.) Here it must be noted too that Pomykacz declined to include taxes as an expense, despite claimant's having paid those taxes. This compelled him to weight the capitalization rate as in the assessors formula employed in tax certiorari cases. (It is not clear, however, why Pomykacz used market rates for other expenses but did not do so for taxes.) Pomykacz then, from this expenses estimate, arrived at an NOI figure of \$82,964.00.

Having arrived at an NOI, he then proceeded to capitalize the result by employing both a "Band of Investment" analysis and a market survey method, both of which led him to decide on the same capitalization rate as Beckman of 10%. To this he derived a weighted rate by adding the taxes (as set forth above), which weighted rate was 13.70%³. This led to a capitalized value of \$605,676.00, or \$606,000 rounded. Pomykacz then reconciled the two amounts derived from the two valuation methods, by weighting the sales comparison method in preference to the income capitalization method. He based this on his conclusion that properties such as

² Pomykacz conceded during cross-examination that he had inaccurately estimated the dimensions of the Main Street Unit, leading to an inaccurate estimate of the proper square footage of the subject property.

³ Pomykacz also admitted during cross-examination that he used the improper Equalization Rate in his calculations.

the subject property are commonly owner-occupied, purchased more for the owner's use than for income-generation, thus leading most potential investors to value price over the potential income from a property. However, he conceded that there was an absence of any such owner/operators in the subject premises, currently or in the past. From this analysis, he concluded that market value for the subject property was \$575,000.00, or \$63.00 per square foot⁴.

CONCLUSIONS OF LAW

The Court makes the following Conclusions of Law:

1. The right of an owner to just compensation for property taken from him by eminent domain is one guaranteed by the federal and state constitutions (Federal Constitution, Fourteenth Amendment; N.Y. Constitution, Art. 1, Subd 7.).

2. An Appraisal should be based on the highest and best use of the property even though the owner may not have been utilizing the property to its fullest potential when it was taken by the public authority. *Matter of Town of Islip*, 49 N.Y.2d 354, 360 (1980; *Keator v. State of New York*, 23 N.Y. 337, 339 (1968); *Chemical v. Town of E. Hampton*, 298 AD2d 419,420 (2nd Dept. 2002.)

3. Condemnation Blight

Claimants have alleged the effect of "Condemnation Blight" upon the subject property, which had the effect of reducing the value of the premises prior to the taking on the agreed-upon valuation date.

In *Buffalo v. J. W. Clement Co.*, 28 N.Y.2d 241, 257-8 (1971), the Court of Appeals stated

the aggrieved property owner has a remedy where it would suffer severely diminished compensation because of acts by the condemning authority decreasing the value of the property (*Niagara Frontier Bldg. Corp. v. State of New York*, 33 A D 2d 130 (4th Dept. 1969), *affd.* 28 NY2d 755, decided herewith). In such cases

⁴ Notably, Pomykacz admitted to an Errata Income value of \$620,000.00, and thus a total market value of \$610,000.00, during his direct testimony at trial, and further, during cross-examination, to an Income value of \$644,000, leading to a final market value conclusion of \$620,000.00

where true condemnation blight is present, the claimant may introduce evidence of value prior to the onslaught of the "affirmative value-depressing acts" (*City of Buffalo v. Irish Paper Co.*, 31 AD2d 470, 476 [4th Dept. 1969]) of the authority and compensation shall be based on the value of the property as it would have been at the time of the *de jure* taking, but for the debilitating threat of condemnation (see, also, *City of Detroit v. Cassese*, 376 Mich. 311, 317-318 [Supreme Court, Michigan, 1965]; *City of Cleveland v. Carcione*, 118 Ohio App. 525 [Ct of Appeals of Ohio, 8th District, Cuyahoga County, 1963]; 4 Nichols, Eminent Domain [3d ed.], §12.3151; Owen, Recovery for Enhancement and Blight in California, 20 Hastings L. J. [Univ. of Cal.] 622, 643-649 [Jan., 1969]). This, in turn, requires only that there be present some proof of affirmative acts causing a decrease in value and difficulty in arriving at a value using traditional methods (*City of Buffalo v. Irish Paper Co.*, 31 A D 2d 470 [4th Dept. 1969], *affd.* 26 N Y 2d 869 [1970]).

Consequently, as a first step, claimant must present evidence of affirmative acts by the condemning authority, which acts caused a decrease in the value of the property. Not just any acts will suffice, however; rather, as the Second Department stated in *Matter of Port Chester v. William D. Brody*, 2007 NY Slip Op 6700 (2nd Dept. September 11, 2007).

the claimant failed to set forth any affirmative conduct by the Village that unreasonably interfered with or further depressed the value of the subject properties sufficient to transform the already disadvantageous market conditions into "condemnation blight"

(See also *Samfred Belt Line Corp. v. State*, 43 A.D.2d 62, [3rd Dept. 1972].)

Based on the evidence which was presented, including the 2000-2001 Blight Study, there is little doubt that the area surrounding the subject premises suffered from deteriorated conditions. However, claimant failed to demonstrate any acts, much less unreasonable ones, undertaken by the Village, which diminished the

value of the property. Such actions might include an early designation of a particular property for the taking, and/or an unreasonable delay in effecting the taking, but neither took place in the instant matter, the subject property remaining unidentified as a taking target until 2002, followed just over three years later by the taking itself.

Further, and even had claimant established the existence of unreasonable acts by the Village, to demonstrate the existence of condemnation blight, it is also necessary for claimant to present evidence of the diminution in value of the subject property prior to those acts. It should be noted initially that the parties agreed on the valuation date, August 23, 2005. Neither in his appraisal, nor in his testimony, did Beckman point to a specific diminution in value to the subject. While Beckman offered testimony regarding a "stigma" present in the blight area in general and on the subject property in particular, in an attempt to compare the value of the subject with values in non-blighted areas, and thereby raise an inference of a negative effect of blight on the subject, the absence of any specific evidence of the conditions of the properties in the areas which contained the comparables, leaves the Court unable to recognize what effect, if any, blight had on the subject.

Thus, claimant simply presented no evidence at all of the specific value of the subject premises at any time or date earlier than the valuation date, either from the claimant himself, or from Beckman's appraisal, or in fact anywhere else. Nor did he raise an inference of diminished value to the subject by comparison with unaffected properties outside of the blight area. "As the defendant offered no evidence of value in 1968 based upon market data nor did the city offer any valid appraisal evidence, we lack competent evidence upon which an award could be fashioned." *Buffalo v. J. W. Clement Co.*, *supra*, 258. Absent evidence, including a specific opinion of the value of the property prior to the effect of the alleged condemnation blight, from which the Court could subtract the market value on the taking date and additionally award the difference, or a specific opinion of the actual effect of the blight on the subject in comparison with non-blighted properties, the Court is unable to find that condemnation blight had a particular effect on the premises.

4. Valuation by Income Capitalization Method

a. As an income-producing property, it is proper to rely on the Income Capitalization Method. However, where the property may also be purchased for operation by the owner, the sales comparison method is equally proper. (*Appraisal of Real Estate*, 12th Edition, 472-3, 419.) Regarding the subject property, unlike NBW which was

owner occupied at approximately 40% of the premises, the subject herein is not owner-occupied at all, although, as condemnor properly argues, such properties do attract investment purchase by parties intending to operated businesses thereon. Thus, it is appropriate to weight the Income Capitalization Method significantly over the Sales Comparison Method.

b. Square Footage

Claimant adequately demonstrated that the total area of the subject premises was 9,350 square feet, consisting of 6,770 square feet of retail/office space in the Main Street building, and 2,580 square feet of retail/office space in the Madison Avenue building.

c. Income

Beckman, utilizing leases from eight comparable retail commercial properties, as properly adjusted for factor variances, concluded that the range of rents for such premises was \$17.50 to \$23.38 per square foot, with \$18.00 per square foot as the appropriate market rent for the Main Street portion of the subject property, and \$15.00 per square foot as the appropriate market rent for the Madison Avenue portion of the subject property. (The Court notes that, on cross-examination, Pomykacz conceded \$15.00 per square foot unadjusted, and over \$17.00 per square foot adjusted, was an appropriate value even for the luncheonette space, while, as claimant argues, Pomykacz' actual value for the barber shop space, corrected for an excessive location adjustment, would be over \$20.00 per square foot).

Combined with the actual figure of \$1,100 per month for the basement storage space, Beckman concluded a total rent of \$173,600.00 for the subject. However, while the Court again (as in NBW) concludes that \$18.00 per square foot is an appropriate value for the Main Street building, the Court nevertheless concludes, from an analysis of the most nearly comparable of the retail leases utilized by both condemnor and claimant, that the appropriate market rent for the Madison Avenue portion of the premises is slightly lower than that set forth by claimant, namely \$12.00 per square foot, or a total of \$30,960.00 for the Madison Avenue building, yielding an appropriate market rent, and thus Potential Gross Income, of \$166,020.00.

In addition, while condemnor's appraiser used a 10% vacancy and collection loss figure, the Court concludes, based on analysis of the history of the subject property, that the 7.5% figure used by Beckman is more appropriate. Thus, \$13,032.00 is subtracted from the potential gross income, for an effective gross income of \$152,988.00.

Claimant, through Beckman's testimony, also adequately demonstrated, primarily through an analysis of market expenses, the proper expense figures for the subject premises. (As in NBW, the Village's appraiser inappropriately utilized an analysis of expenses which, among other things, utilized national guidelines poorly suited as comparison to the subject property, and further he excluded actual taxes from his calculation; as set forth above, these calculations yielded an extremely low rate of expenses of approximately \$2.00 per square foot, or \$19,856.00. Notably, Beckman like Pomykacz also declined to use the actual expenses, deeming them unreliable, but Beckman's market analysis yielded an expense ratio comparable to that concluded in NBW.) Using market expenses in its analysis as well, the Court too finds that the subject premises incurred \$7.63 per square foot in expenses, or \$71,420.00. This yields an NOI of \$81,568.00.

Both parties agree that the proper capitalization rate is 10%, although condemnor, as set forth above, improperly elected to utilize a tax weighted rate⁵. The Court concludes that the evidence adequately supports the use of the 10% rate; properly capitalized, then, the NOI of \$81,568.00. reflects a market value estimate, on the agreed-upon date of taking, of \$815,680.00, or \$815,000.00 rounded.

5. Valuation by Sales Comparison Method

Claimant, through Beckman's testimony, which analyzed five comparable sales, concluded a market value for the subject premises of \$900,000.00 as a check on his income capitalization value. Condemnor, to the contrary, using seven comparable properties, and arrived at a market value conclusion of \$594,000.00, which he weighted in preference to his income capitalization value.

Initially, the Court notes that two of claimant's properties were outside of the Village, although both were in Suffern, which is in the same town, Ramapo. Claimant is correct to argue that Suffern, like Spring Valley, is an area suffering from some degree of blight, and thus the use of Suffern comparables is not inappropriate. Both appraisers utilized as comparables 6 South Main Street, Spring Valley, and 2 South Main Street, Spring Valley, the former a large building similar in significant ways to the Main Street premises at issue herein, while the 2 South Main Street comparable is similar to the Madison Avenue portion of the subject.

⁵ The Court also notes that, had the Village's appraiser properly utilized the gross capitalization rate of 10%, rather than deriving a weighted capitalization rate by including the taxes, and applying this to his own NOI, his market value conclusion would have been \$829,000.00, not \$606,000.00.

While just outside of the Blight Area, these properties are sufficiently close and similar to the subject that Beckman properly did not adjust either for location relative to the subject. The two appraisers in any event derived similar values for the properties, and upon analysis the Court concludes that Beckman's values of \$85.22 per square foot and \$69.44 per square foot respectively are the more appropriate. Based on the square footage attributable to the Main and Madison buildings herein (namely 6,770 sf and 2,580 sf respectively), these values would yield an average value of \$80.86 per square foot for the entire property, or \$756,000.00.

Claimant's comparable #3 is another Main Street property in Spring Valley, and is also a close comparable to the subject. In his analysis, Beckman adjusted this comparable by -5% for condition, and -5% for amenities. The Court concludes that these adjustments understate the much newer construction of the comparable (built in 1988, compared to the early part of the 20th Century for the subject and the other comparables) and the presence of an off-street parking lot (the subject and comparables rely either primarily or completely on street parking.) Increasing each of these adjustments to -10% yields a value of 80.78 per square foot, or \$755,000.00 for this comparable property.

The Court thus concludes the proper market value, as produced by the Sales Comparison Method, for the subject property, is \$756,000.00.

6. Reconciliation of Value

As indicated previously, income-producing properties are generally valued by the Income Capitalization Method, although, where the property may also be purchased for operation by the owner, the sales comparison method is equally proper. Since the subject, while not currently or previously owner-occupied, is nevertheless the type of property for which owner-operation is common, the Court finds that it is appropriate to weight the Income Capitalization Method over the Sales Comparison Method in a ratio of 75% to 25%.

Application of that ratio to the values derived separately from the Income Capitalization Method and the Sales Comparison Method (\$815,000.00 and \$756,000.00, respectively) yields a reconciled value of \$800,250.00, or \$800,000.00 rounded.

7. Additional Indicia of Market Value

The Court notes that Pomykacz conceded at trial that the equalized value of the property, for tax assessment purposes, established by the Town of Ramapo Assessor as of January 1, 2005 was \$741,000.00, and that, as claimant properly argues, application

of Pomykacz's own market condition adjustment (9% annually) to that amount yields an equalized assessed value of almost \$800,000.00 for the taking date. Further, as noted above, while the Court did reject Pomykacz' valuation methodology, had he properly applied the base capitalization rate (10%) to his NOI conclusion of \$82,964.00, rather than improperly weighting the rate for the then-tax rate, his Income Capitalization Method value conclusion would in fact also have been in excess of \$800,000.00, namely \$829,640.00.

8. Summary of Value Conclusions

Income Capitalization Method

Income	SF	\$ SF	Rent
Retail (Main)	6770	\$ 18.00	\$ 121,860.00
Retail (Mad.)	2580	\$ 12.00	\$ 30,960.00
Basement	--		<u>\$ 13,200.00</u>
Potential Gross Income			\$ 166,020.00
Vacancy and Collection Loss (7.5%)			<u>\$ 13,032.00</u>
Effective Gross Income			\$ 152,988.00
Expenses			<u>\$ 71,420.00</u>
Net Operating Income (NOI)			\$ 81,568.00
Capitalization Rate (10%)			
Market Value			\$ 815,568.00
ROUNDED			\$ 815,000.00

Sales Comparison Method

9,350 square feet at 80.78 per square foot = \$ 756,094.00

ROUNDED **\$ 750,000.00**

Reconciliation

At 75 % Income (\$ 815,000.00),
25 % Sales (\$ 750,000.00) = \$ 800,250.00

ROUNDED MARKET VALUE CONCLUSION \$ 800,000.00

CONCLUSION

Upon the foregoing papers, and the trial held before the Court on February 14, February 15, February 21, February 25, March 4, and March 18, 2008, it is hereby

ORDERED, that the claim by claimant for compensation for a taking conducted by the Village herein, pursuant to EDPL Article 5, is hereby granted; and it is further

ORDERED, that petitioner Village shall pay as compensation to claimant G & J the amount of \$800,000.00, with interest thereon from the date of the taking, August 23, 2005, less any amounts previously paid, together with costs and allowances as provided by law.

The foregoing constitutes the Opinion, Decision, and Order of the Court.

Dated: White Plains, New York
May 18, 2008

HON. JOHN R. LA CAVA, J.S.C.

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