

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 ORANGE

-----X
COUNTY OF ORANGE,

Petitioner,

-against -

MONROE BAKERTOWN ROAD REALTY,

Claimant/Respondent,

VILLAGE OF KIRYAS JOEL,

Intervenor.

-----X
LaCAVA, J.

The following papers numbered 1 to 17 were considered in connection with this motion by intervenor Village of Kiryas Joel (Village) for an Order striking claimant's appraisals, by petitioner/condemnor County of Orange (County) for the same relief, and by claimant Monroe Bakertown Road Realty, Inc., (claimant or Monroe) for an Order granting the same relief as to the County's appraisals:

<u>PAPERS</u>	<u>NUMBERED</u>
NOTICE OF MOTION/AFFIDAVIT/AFFIRMATION/EXHIBITS	1
NOTICE OF MOTION/AFFIDAVIT	2
EXHIBIT A	3
EXHIBITS B & C	4
EXHIBITS D-K	5

MEMORANDUM OF LAW	6
NOTICE OF MOTION/AFFIRMATION/EXHIBITS	7
MEMORANDUM OF LAW	8
MEMORANDUM OF LAW	9
BAUER AFFIDAVIT #1	10
BAUER AFFIDAVIT #2	11
MEMORANDUM OF LAW	12
EXHIBIT BOOKLET	13
MEMORANDUM OF LAW	14
REPLY AFFIRMATION	15
REPLY MEMORANDUM OF LAW	16
REPLY MEMORANDUM OF LAW	17

This is a condemnation action pursuant to EDPL Article 5, seeking to challenge the proposed compensation offered by the County for the taking from Monroe, dated February 28, 2006. Claimant filed a claim for compensation following the taking, and, subsequent to the taking, the parties consented to the intervention herein by the Village.

The parties now, prior to trial, seek to strike each other's appraisals. This Court has a long practice, except in the most egregious circumstances, of deferring decisions on motions to strike appraisals to the conclusion of testimony at trial. (See *Metro North Railroad v. Washed Aggregate*, Supreme Court, Dutchess County, LaCava, J., April 14, 2008 [Bench Decision]; *Central Hudson Electric and Gas v. Town of Newburgh*, Supreme Court, Orange County, LaCava, J., March 2, 2007; *c.f. Johnson v. Kelly*, 11 Misc. 3d 1081 [Supreme Court, Orange County, 2006] *aff'd* 45 A.D.3d 687 [2d Dept. 2007]; *SKM Enterprises v. Town of Monroe*, 2 Misc. 3d 1004[A], [Supreme Court, Orange County, 2004].) In particular, prior to hearing testimony from the experts retained by the parties, it is difficult for the Court to assess any proponent's compliance, or lack of same, with Rule of Court (22 NYCRR) 202.59 relating to the preparation of trial appraisals.

Based upon the foregoing, it is hereby

ORDERED, that the motions to strike appraisals are held in abeyance, to be renewed at the time of trial, and are in all other respects denied.

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

Dated: White Plains, New York
September 23, 2009

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

Matthew Nothnagle, Esq.
Senior Assistant County Attorney
Attorney for Petitioner
255-275 Main Street
Goshen, New York 10924

Gerald Orseck, Esq.
Attorney for Respondent
1924 State Route 52
PO Box 469
Liberty, New York 12754

Kevin J. Plunkett, Esq.
DelBello Donnellan Weingarten Wise & Wiederkehr, LLP
Attorneys for Intervenor
One North Lexington Avenue
White Plains, New York 10601