

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ROCKLAND

FILED AND
ENTERED
ON

ROCKLAND
COUNTY CLERK

-----X
In the Matter of the Application of

ROCKLAND COUNTY SEWER DISTRICT NO: 1
to acquire title to certain real property
necessary for the project known as the
WESTERN RAMAPO SEWER EXTENSION PROJECT

Relating to the following Tax Map Sections,
Blocks and Lots in the Town of Ramapo:
54.06-1-10; 854.06-1-10.1; 854.06-1-10.2;
854.06-1-10.3; 854.06-1-10.5; 54.07-1-3;
54.07-1-4; 854.07-1-4.1; 854.07-1-4.2;
854.07-1-4.3; 854.07-1-4.4; 854.07-1-4.5;
854.07-1-4.6

Index No: 7604/04

DECISION & ORDER

-----X
Split Rock Partnership,

Claimant,

-against-

Rockland County Sewer District No. 1.

Condemnor.

-----X

EMINENT DOMAIN : DISCOVERY PURSUANT TO C.P.L.R. § 408

In this most recent exploration of eminent domain proceedings¹, the
Petitioner/Condemnor, the Rockland County Sewer District No. 1

[" RCSD "] has made a Motion² pursuant to C.P.L.R. § 408 seeking an Order allowing RCSD to serve and requiring the Claimant, Split Rock Partnership [" Split Rock "], to answer, a " First Set Of Interrogatories " ³ [" the Interrogatories "], a " Request For Production of Documents " ⁴ [" the Document Request "] and a " Demand for Deposition " ⁵ [" the EBT Notice "] [" the three Discovery Devices "]. After a careful review of the excellent papers and Memorandum of Law submitted by RCSD⁶ and Split Rock⁷ the Court is now prepared to render its Decision.

Nature Of The Proceeding

Pursuant to this Court's Order of Acquisition dated February 4, 2006⁸ RCSD " acquired a total of approximately 66.84 acres of wooded and rocky hillside off Old Route 17 in the Village of Hillburn, New York (" the subject property ") from Claimant as part of the Western Ramapo Wastewater Treatment Plant Project...subject property is separated by a strip of land approximately 100 feet in width owned by Algonquin Gas Transmission Company (" Algonquin Gas Line ") as shown on RCSD's acquisition map⁹ " ¹⁰.

The North Parcel

" The parcel situated north of the Algonquin Gas Line (" North Parcel ") was reputedly owned by Claimant prior to RCSD's acquisition, except for the following parcel numbers: 854.6-1-10.1; 854.6-1-10.2; and 854.6-1-10.3 as shown on the Acquisition Map. These parcels were reputedly owned by an individual, Peter DeCarlo¹¹... (and) are generally located along the North Parcel's frontage on NY Route 17... (and) appear to control access to the North Parcel via Route 17 "¹².

The South Parcel

" The parcel lying south of the Algonquin Gas Line (" South Parcel ") was also primarily owned by Claimant, except for parcel number 854.7-1-4.6...(which)...was reputedly owned by Ramapo Equities Inc., Claimant's predecessor in title¹³...The location of the Ramapo Equities parcel falls within the boundary line of the South Parcel and, thus, it may interfere with the configuration of any proposed development on the South Parcel "¹⁴.

The 1991 State Of New York Acquisition

" In 1991 the State of New York (" State ") acquired a portion of the subject property's frontage along NY State Route 17 "¹⁵ for which the

Claimant was awarded only \$6,300 in direct damages, its claim for consequential damages of \$908,700 being denied [See Split Rock Partnership v. State of New York, 275 A.D. 2d 450, 713 N.Y.S. 2d 64 (2d Dept. 2000) (" The claimant is the owner of a 65-acre parcel of unimproved real property located in Rockland County and bordering Route 17. In connection with a highway improvement project, the State of New York appropriated .106 acres and eliminated access to the property from Route 17. The claimant, who had hoped to develop the property as a commercial office building, brought this claim against the State to recover damages associated with this appropriation. The claimant presented expert testimony that the property's highest and best use was as a commercial office building and that the claimant suffered consequential damages as a result of the denial of access to Route 17. The State presented testimony that the highest and best use of the property was recreational and that the claimant's damages were only \$2,000...Here, the claimant's appraiser testified, and the trial court found, that the property's highest and best use, both before and after the State's appropriation, was as a commercial office building. However, there is no evidence in the record that the State's appropriation reduced the potential development of the property. There was no testimony, for example, that the size of the office building would have to be reduced because of the lack of access thereto or that a new access road would not support the same amount of traffic as the old one...the

award of consequential damages was improper "), leave to appeal denied
95 N.Y. 2d 770 (2000)].

The September 14, 2000 Purchase

" As set forth in the Title Affidavit, as recently as September 14, 2000 a portion of the subject property was purchased by the Claimant. RCSD lacks information regarding the terms and condition of the sale "¹⁶.

The Purpose Of The Requested Discovery

RCSD asserts that the three Discovery Devices seek information
" both material and necessary to assist RCSD in preparing its trial-ready appraisal...and for preparing for trial "¹⁷.

Letters Of Intent & A Purchase Agreement

Evidently, the Claimant voluntarily provided RCSD with several documents which RCSD describes as " selective information regarding the value of the subject property "¹⁸ including (1) " a letter which enclosed a letter of intent purportedly made by Sterling Properties to purchase the subject property "¹⁹, (2) " Real Estate Purchase Agreement between The Wilder Companies, LTD and Claimant dated October 2004 "²⁰, (3) " letter of intent of Corporate Development Enterprises LLC dated April 3,

2003 "21, (4) " letter of intent of The Wilder Companies dated March 25, 2003 "22, (5) " letter of intent of K&K Developers, Inc. dated May 22, 2001 "23 and (6) " letter of intent of One-on-One Sports Radio Stations, Inc. dated April 3, 2000 "24.

Facts & Circumstances Underlying Letters Of Intent & Purchase Agreement

After receiving these documents RCSD served the three Discovery Devices seeking, in part, information regarding the offers of intent²⁵ and purchase agreement²⁶ which the Claimant " refused to furnish any material in response "27 to, thus " necessitating the instant motion "28.

Additional Information Sought

In addition to the foregoing, RCSD also seeks (1) the identity of the " general and limited partners of Claimant " [Interrogatory 1], (2) the " disclosure of any business or familial relationships Claimant had with any of the offerors who were purportedly once interested in purchasing the Subject Property "29 [Interrogatory 2], (3) the identity of " all persons...who supervised or controlled any aspect of any proposed development of the Property " [Interrogatory 9], (4) a description of " any change in access to the Property from June 19, 1991 [See Split Rock Partnership, supra] to the Vesting Date "

[Interrogatory 10³⁰], (5) the identity of " all other written offers, letters of intent and contracts for the purchase or sale of the Property which Claimant is aware of, including the name(s) of the prospective purchaser(s) " [Interrogatory 11], (6) " All prior appraisals or opinions of value of the Property, excluding those appraisals or opinions of value that were prepared solely in anticipation of (this proceeding) " [Document Request 2], (7) " All documents concerning any efforts or interest by anyone to develop the Property for any use..." [Document Request 4] and (8) the deposition testimony of Norbert Wall, William F. Dator, Thomas K. Williams and Peter Kirch [EBT Notice³¹].

Split Rock's Opposition

Split Rock opposes RCSD's application for discovery describing the three Discovery Devices as " a stunning example of needless and expensive litigation "³² and further noting " How can something that sounds so right be so wrong?...discovery (is) inappropriate in a condemnation claim³³...contra-indicted by the applicable statute "³⁴, " Discovery in a condemnation case is extremely limited "³⁵, discovery " in a condemnation case (allowed only with) a remarkable showing of necessity "³⁶, " The purpose of the Eminent Domain Procedure Law is to reduce litigation...(Which) is not reduced, nor is just compensation expeditiously paid if condemnor's are to engage in fishing ventures

which are calculated to garner more time than evidence "³⁷, " What the condemnor is attempting to do is to peak at (Split Rock's) appraisal before it exchanges its appraisal "³⁸, failure to submit affidavit from " its appraiser indicating why the information sought is necessary and material to prepare its appraisal "³⁹, " Clearly, discovery is not faced in any special proceeding. It is distinctly improper in a condemnation case "⁴⁰, " The discovery requests made by the condemnor constitute an impermissible attempt to review Claimant's appraisals before they are exchanged...It is the rebuttal (appraisal) which should provide the succor that the condemnor may need. It will have a full opportunity to refute the claimant's appraisal "⁴¹, " Discovery is totally improper in the factual context of this case "⁴² and " There will be no surprises at trial and the condemnor will have more than enough opportunity to prepare based on the exchanged appraisals and reports "⁴³ .

DISCUSSION

Discovery In Tax Certiorari & Eminent Domain Proceedings

Discovery of information pursuant to C.P.L.R. § 408 which is material and necessary in preparing for trial [e.g., preparing a trial ready appraisal⁴⁴] is appropriate in tax certiorari [See e.g., Matter

of Town of Wallkill v. New York State Board of Real Property Services, 274 A.D. 2d 856, 711 N.Y.S. 2d 228 (3d Dept. 2000)(" In order to arrive at a considered determination regarding requested disclosure, the court ' must balance the needs of the party seeking discovery against such opposing interests as expedition and confidentiality '...the party seeking disclosure must establish that the requested information is ' material and necessary ' "); Matter of Xerox Corporation v. Duminuco, 216 A.D. 2d 950, 629 N.Y.S. 2d 568 (4th Dept. 1995)(" disclosure request sought information that is no longer material and necessary to the litigation "); Matter of State of New York v. Town of Northhampton, 171 A.D. 2d 395, 576 N.Y.S. 2d 919 (3d Dept. 1991)(" the requested information cannot be considered ' ' material and necessary ' ' to respondent's defense, despite the liberal interpretation to be accorded those words "); Matter of General Electric Co. v. Macejka, 117 A.D. 2d 896, 498 N.Y.S. 2d 905 (3d Dept. 1986)(" for a court to direct disclosure, the information sought must be found to be material and necessary to the defense. ' The words, ' material and necessary ' are...to be interpreted liberally to require disclosure, upon request, of any facts bearing on the controversy which will assist preparation for trial by sharpening the issues...The test is one of usefulness and reason ' "); Miriam Osborn Memorial Home Association v. Assessor of the City of Rye, 4 Misc. 3d 1009 (West. Sup. 2004)(considerable pre-trial discovery over a period of five (5) years; " the purpose of C.P.L.R. § 3140 and N.Y. Court Rules §§ 678.1-678.3, the predecessor to 22 NYCRR §

202.59, was to open up and encourage discovery as an ' aid in the expeditious disposition of such proceedings ' "); Consolidated Edison Company of New York, Inc. v. State Board of Equalization and Assessment, 112 Misc. 2d 422, 446 N.Y.S. 2d 995 (1982)(challenging the derivation of equalization rate; " Whether the matters sought to be disclosed are material and necessary and, hence, discoverable, depends upon the nature of this proceeding...It is apparent from the foregoing that sales data in the possession of the SBEA...should be disclosed. Such data is relevant in that it could be used to prove inequality...Moreover, such disclosure would not be unduly burdensome ") and eminent domain proceedings [See e.g., Bay Islip Associates v. State of New York, 285 A.D. 2d 522, 727 N.Y.S. 2d 897 (2d Dept. 2001)(" The challenged interrogatories seek information which is appropriately provided in the appraisal to be filed by the claimant...and is otherwise readily available "); Matter of American Telephone and Telegraph Company, 85 A.D. 2d 816, 445 N.Y.S. 2d 624 (3d Dept. 1981)(" The only issue to be decided in the underlying proceeding is the valuation of the property awarded to petitioner through condemnation...Respondent seeks discovery of some 29 items...which it claims are needed to properly develop the valuation issue for trial...The object of the valuation process is to see that the condemnee receives just compensation. It appears that the information allowed...will be useful in accomplishing that objective...However, as usual, at trial, the ruling of the court will determine the admissibility of the evidence. We further note that

petitioner raises no complaint of hardship in producing the material in question "); White Plains Urban Renewal Agency v. 56 Grand Street Associates, 47 A.D. 2d 536, 363 N.Y.S. 2d 616 (2d Dept. 1975)

(" Pretrial disclosure may be allowed in a condemnation proceeding when warranted by the circumstances of the case and in the interest of justice...In our opinion, pretrial disclosure will facilitate the ultimate determination as to the fair and just compensation to be paid to the owner for the taking from it of the subject property. The material sought is both material and necessary...The information sought by the condemnor in this case is necessary to assist it in the preparation of a proper appraisal report "); Novickis v. State of New York, 44 A.D. 2d 508, 355 N.Y.S. 2d 667 (1974)(" Simply, the rule attempts to require full disclosure, to take the game aspect out of the case, to prevent surprises, to permit the court to determine just compensation based solely upon the facts unhindered by gamesmanship...it is not unreasonable to require the parties to prepare their proof sufficiently in advance of trial so that exchanges (of appraisals) may be made "); Matter of City of Rochester [Rochester Transit], 57 Misc. 2d 645, 293 N.Y.S. 2d 475 (1968)(" The motion for a protective order is denied and RTC is directed to promptly comply with the notices to produce for inspection ")].

Information Regarding Letters Of Intent & Purchase Agreement

Split Rock voluntarily provided letters of intent and a purchase agreement which it may rely upon in seeking to establish the value of the subject property [both direct and consequential damages]. RCSD's efforts to obtain more information regarding these documents [to prepare its trial ready appraisal] are appropriate and, hence, those discovery devices seeking such information [Interrogatories 2, 3, 4, 5, 6, 7, 8 ; Document Requests 1 & 3] will be allowed [See e.g., Hine v. The Manhattan Railway Co., 132 N.Y. 477, 30 N.E. 985 (1892) (" ' If evidence of offers is to be received it will be important to know whether the offer was made in good faith, by a man of good judgment, acquainted with the value of the article and of sufficient ability to pay; also whether the offer was cash, for credit, in exchange and whether made with reference to the market value of the article, or to supply a particular need or to gratify a fancy. Private offers can be multiplied to any extent for the purpose of a cause, and the bad faith in which they were made would be difficult to prove '); Matter of Acquisition of Real Property by Village of Marathon, 174 Misc. 2d 800, 666 N.Y.S. 2d 365 (1997) (" Generally, ' an offer of settlement or an offer of purchase is inadmissible to show market value '⁴⁵...An offer by a private party may be admissible where it is ' made in good faith, within a reasonable time and with the intention and ability to carry out the transaction if the offer is accepted '...In the instance the

testimony does not demonstrate that the offer was bona fide and that the named purchasers had the ability to carry out the arrangement. The offer to purchase claimant's property is not accepted as independent evidence of market value ")].

The Nature Of The Claimant

Those discovery requests [Interrogatory 1; Document Request 1] which seek to identify the nature and membership of the Claimant are approved.

Prior Appraisals

Prior appraisals of the value of the subject property [Document Request 2] [not otherwise prepared for litigation [See e.g., CMRC Corp. v. State of New York, 270 A.D. 2d 27, 704 N.Y.S. 2d 219 (1st Dept. 2000)(" The report, which was prepared in contemplation of the settlement of an eminent domain proceeding ' enjoy[s] the conditional immunity from disclosure which is conferred on material prepared for litigation by CPLR 3101 "); Swartout v. State of New York, 44 A.D. 2d 766, 354 N.Y.S. 2d 254 (4th Dept. 1974)(" Defendant's affidavit asserts that the report was ' prepared and used exclusively for the purpose of negotiation and settlement ' "); Orange And Rockland Utilities Inc. v. Assessor of the Town of Haverstraw, 5 Misc. 3d 1010,

798 N.Y.S. 2d 711 (2004)(discovery of non-party appraisals; " CPLR § 3140 and 22 N.Y.C.R.R. 202.59(g)(1) direct the parties in a tax assessment review proceeding to exchange all appraisal reports intended to be used as trial. It is well settled, however, that any unexchanged and unfiled appraisal reports prepared by a consulting expert qualify as material prepared in anticipation of litigation pursuant to CPLR 3101(d)(2) and are, generally, not discoverable "); See also: Condemnation Law And Procedures In New York, N.Y.S.B.A. (2005), Editor Jon Santemma; Rikon, The Use Of Prior Appraisals In Condemnation And Tax Certiorari Cases, § 14.3 (" The general rule is that appraisals intended to be utilized solely for litigation or for settlement of negotiations prior to trial are not admissible as evidence in chief. In accordance with another established rule, however, the prior appraisal may always be used for the limited purpose of impeaching the witness's testimony ")] prepared in connection with the aforementioned letters of intent and purchase agreement will be allowed.

Accessing The Property

The discovery requests [Interrogatory 10; Document Request 1] seeking information regarding " any change in access to the Property " are allowed [See e.g., Split Rock Partnership, supra; Matter of County of Rockland [Kohl Industrial Park Co.], 147 A.D. 2d 478, 537 N.Y.S. 2d 309 (2d Dept. 1989)(" The parcel had access on both Alice Drive and

Smith Road. On August 31, 1981 the county acquired 31.272 acres of the parcel which fronted Alice Drive, thereby eliminating access to the remaining property from that street... The claimant produced the expert testimony of a traffic engineer that, prior to the taking, Alice Drive, because of its physical characteristics, could support the traffic generated by an industrial park on the entire 61.43 acres. However, the expert testified further that Smith Road, because of its narrower width, slopes, sharp turns and adverse grades, could only support the traffic generated by an industrial park of 8.9 acres....the claimant contends that where the change in access diminishes the degree or intensity of development, even though the broad category of highest and best use remains the same, there are compensable consequential damages. We find the claimant's position persuasive...and we affirm the award of consequential damages "); Village of Irvington v. Sokolik, 2006 WL 2882587 (West. Sup. 2006)(" Access is an element of value [See e.g., Pollak v. State of New York, 50 A.D. 2d 201, 377 N.Y.S. 2d 259 (1975) (discussion of the impact upon consequential damages sustained by unappropriated lands; " We are not here concerned with the question of the suitability of that access, but with the more basic issue of whether claimants have any right of access whatsoever to Charlotte Street. We note that they have not been expressly granted any such right and that ' service road ' has not been dedicated as a public street or highway...the unappropriated lands have no value without legal access "); Peasley v. State of New York, 192 Misc. 2d 982, 424 N.Y.S. 2D 995 (Ct. Cl. 1980)(" The State contends that the access over its

property was permissive, and terminable at will. The claimant contends that they enjoyed a permanent easement over the road...The claimants' appraiser valued the property on the assumption that it had access by land. Since this essential premise has not been found by the court the claimants' appraiser's report and opinion must be rejected in its entirety "); The Appraisal of Real Estate⁴⁶ (" In most cases, adequate parking area and the location and condition of the streets, alleys, connector roads, freeways and highways are important to land use ")]....However, the lack of street frontage, restricted access and the necessity of obtaining variances reduces the value of the subject property which should be reflected in appropriate adjustments ")].

Remaining Discovery Requests

RCSD's remaining discovery requests [Interrogatories 9 and 11; Document Request 4] are disallowed without prejudice to renewal after the exchange of the parties' trial appraisals. As for the EBT Notices they are allowed but the scope of the depositions is limited to discovery of the nature of the Claimant, changing access to the subject property and information regarding the aforementioned letters of intent and purchase agreement⁴⁷.

The foregoing constitutes the Decision and Order of this Court.

Dated: October 20, 2006
White Plains, N.Y.

HON. THOMAS A. DICKERSON
JUSTICE SUPREME COURT

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ENDNOTES

1. See e.g., Matter of Port Chester, 5 Misc. 3d 1031 (West Sup. 2004) (advance payments and interest rates); Matter of

D'Onofrio v. Village of Port Chester, 8 Misc. 3d 1015 (West. Sup. 2005)(exclusion at trial of any evidence as to any diminution in the value of the property by reason of cleanup or remediation costs resulting from alleged environmental contamination); Matter of Rockland County Sewer District No. 1 (Boone v. Rockland County Sewer District No. 1), 9 Misc. 3d 1106 (Rockland Sup. 2005)(notes of issue and certificate of readiness vacated; the exchange of trial appraisals was prerequisite to filing and serving of a note of issue); AAA Electricians Inc. v. Village of Haverstraw, 9 Misc. 3d 1120 (Rockland Sup. 2005)(challenge to reduction in offered advance payment); Matter of Village of Portchester, 10 Misc. 3d 1057 (West. Sup. 2006)(claim of Luis Luncheonette abandoned and dismissed); Village of Irvington v. Sokolik, 2006 WL 2882587 (West. Sup. 2006)(post trial valuation decision of 6,793 square feet of vacant land).

2. Condemnor's Notice of Motion dated March 3, 2006 [" the Motion "]

3. Affirmation of Jonathan Penna dated March 3, 2006 [" Penna Aff. "] at Ex. A.

4. Penna Aff. at Ex. B.

5. Penna Aff. at Ex. C

6. Penn. Aff., Affidavit In Support Of Motion For Leave To Seek Discovery of Michael Saber sworn to March 2, 2006 [" Saber Aff. "]; Rockland County Sewer District No. 1's Memorandum Of Law In Support Of Its Motion For Leave To Seek Discovery Pursuant to CPLR § 408 dated March 3, 2006 [" RCSD Memo. "]; Rockland County Sewer District No. 1's Reply Memorandum of Law dated March 16, 2006 [" RCSD Reply Memo. "].

7. Affirmation In Opposition of Michael Rikon dated March 10, 2006 [" Rikon Aff. "]; Letter of Michael Rikon dated March 28, 2006 [" Rikon Ltr. " }.

8. Saber Aff. at Ex. 1.

9. Saber Aff. at Ex. 2.

10. Saber Aff. at paras. 3-4. See also Penna Aff. at para. 5 and Rikon Aff. at para. 3.

11. Saber Aff. at Ex. 3 (Affidavit Of Title And Release By Former Fee Owner Of Land sworn to March 2, 2005).

12. Saber Aff. at paras. 5-6.

13. Saber Aff. at Exs. 2 & 3.

14. Saber Aff. at paras. 7-8.

15. Saber Aff. at para. 9.

16. Saber Aff. at para. 10.

17. Penna Aff. at para. 4.

18. Penna Aff. at para. 6.

19. Penna Aff. at para. 7.

20. Penna Aff. at para. 9.

21. Id.

22. Id.

23. Id.

24. Id.

25. Interrogatories 4-8 seek the identity of " all persons at, or affiliated with " the author of the letters of intent including the Wilder Companies, Corporate Development Enterprises LLC. K & Developers, Inc., One-on-One Sport Radio Stations, Inc. and Sterling Properties Group, LLC. and Document Request 1 seeks " All documents which support the answers " to these Interrogatories and Document Request 3 seeks " All Documents concerning any sale or transfer, or proposed sale or transfer, of the Property to the Vesting Date...".

26. Interrogatory 3 seeks the identity of " all persons at, or affiliated with The Wilder Companies with whom Claimant had communications regarding the proposed Real Estate Purchase Agreement ".

27. Penna Aff. at para. 12.

28. Id.

29. Penna Aff. at para. 15.

30. Penna Aff. at para. 17 (" RCSD has no way of knowing whether Claimant made any subsequent arrangements with the State for alternative means of access to the Subject Property. Such arrangements may obviously impact the valuation process ").

31. Penna Aff. at para. 20 (" As the principals, the individuals likely possess intimate knowledge regarding prior efforts to market, sell and/or develop the Subject Property. Knowledge of such information is critical to determining the use for which the Subject Property would most likely have been put, absent the condemnation ").

32. Rikon Aff. at para. 2.

33. See also Rikon Ltr. (" discovery is improper in a condemnation proceeding "); Rikon Aff. at Ex. B (Goldstein & Rikon, Discovery in Condemnation Cases and " The Appraisal Rule ", New York Law Journal, April 26, 2005, p. 3.

34. Id. at para. 6.

35. Id. at para. 7.

36. Id. at para. 11.

37. Id. at para. 17.

38. Id. at para. 21.

39. Id. at para. 22.

40. Id. at para. 23.

41. Id. at para. 24.

42. Id. at para. 27.

43. Id. at para. 29.

44. Split Rock asserts in Rikon Ltr. that " discovery is improper in a condemnation proceeding " and cites as authority the March 16, 2006 Decisions of the Court in Urban Development Corp. v. 42nd Street Development, Index No: 401101/2003 (N.Y. Sup. 2006) (J. Schoenfeld). Urban does not support Split Rock's position. First, the discovery request in Urban came after " There (had) already been...an exchange of appraisal reports and an exchange of rebuttal reports ". Second, the discovery request in Urban was " denied without prejudice to renewal at trial...Further, if

during the course of trial, the Judge is of the opinion that other evidence is needed to fairly determine just compensation, a continuance can always be granted ". Third, the Urban Court implicitly approved of discovery regarding a " determin(ation) of just compensation " and " as to who is the proper claimant ".

45. See e.g., Matter of Spring Valley, 2006 NYSlipOp 51940 (Orange Sup. 2006)(" It is clear that when and if the Claimant seeks to introduce the Claim [containing the language " Amount Tendered As Advance Payment \$465,000.00 "] as a trial exhibit that the Village would be on solid ground objecting to its admission into evidence [See e.g., Brummer v. State of New York, 25 A.D. 2d 245, 269 N.Y.S. 2d 604 (4th Dept. 1966)(" This decision [to admit into evidence at trial an ' Agreement for Partial Payment ']...was contrary to the well-accepted general rule that an offer of settlement or an offer of purchase is inadmissible to show market value...The entire philosophy...could be frustrated and thwarted if partial-settlement offers were to be permitted in evidence and used as a basis for determination of value "); Cook v. State of New York, 105 Misc. 2d 1040, 430 N.Y.S. 2d 507 (Ct. Cl. 1980)(" The settled law that an advance payment agreement...(is) inadmissible is based on four major considerations...4. The statement of value in the advance payment agreements are offers for settlement purposes and excluded for public policy reasons as settlements are to be encouraged and such offers may of necessity include an increment of value attributable to the desire to prevent litigation...Offers made in the course of settlement negotiations are not competent evidence as to the value of a claim "); Manwaring v. State of New York, 72 Misc. 2d 486, 339 N.Y.S. 2d 891 (Ct. Cl. 1972)(" If the initial appraisal was prepared solely for litigation and/or negotiation and possible settlement of this claim, it is not admissible as evidence...we also consider the statutorily required 75%...partial payment to be an integral part of the negotiation and possible settlement procedure ")]

46. The Appraisal of Real Estate, Appraisal Institute, 12th Edition (2001) at p. 207.

47. RCSD Memo. at p. 9 (" Without the requested information and the opportunity to depose Claimant's principals...it will be impossible to determine the weight the letters of intent and purchase agreement should be afforded in valuing the Subject Property ").