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| <b>Matter of Fascia v Town of Stillwater</b>                                                                                                                                                                                   |
| 2017 NY Slip Op 33114(U)                                                                                                                                                                                                       |
| February 23, 2017                                                                                                                                                                                                              |
| Supreme Court, Saratoga County                                                                                                                                                                                                 |
| Docket Number: 20161356                                                                                                                                                                                                        |
| Judge: Thomas D. Nolan                                                                                                                                                                                                         |
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ORIGINAL

STATE OF NEW YORK  
SUPREME COURT

COUNTY OF SARATOGA

In the Matter of the Application of  
MELINDA A. FASCIA, Trustee of the MEHAN FAMILY REVOCABLE TRUST and  
JOHN DOE, Representing All Unknown Persons or Entities With a Potential Interest in the  
Property Known as 173 George Thompson Road, Stillwater, New York (SBL 242.-2-27),

Claimant,

-against-

TOWN OF STILLWATER,

Defendant.

**DECISION AND ORDER**

**RJI No. 45-1-2016-0732**

**Index No. 20161356**

STATE OF NEW YORK  
SUPREME COURT

COUNTY OF SARATOGA

In the Matter of the Application of  
VINCENT P. BARBER and LAURA J. BARBER and JOHN DOE, Representing All Unknown  
Persons or Entities With a Potential Interest in the Property Known as 149 George Thompson  
Road, Stillwater, New York (SBL 242.-2-23 and 242.-2-24),

Claimant,

-against-

TOWN OF STILLWATER,

Defendant.

**RJI No. 45-1-2016-0733**

**Index No. 20161355**

**PRESENT: HON. THOMAS D. NOLAN, JR.**  
**Supreme Court Justice**

**APPEARANCES: E. STEWART JONES HACKER MURPHY, LLP**  
Attorneys for Claimants in Both Actions  
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Troy, New York 12181

**CUTLER, TRAINOR & CUTLER, LLP**  
Attorneys for Defendant in Both Actions  
2 Hemphill Place, Suite 153  
Malta, New York 12020

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SARATOGA COUNTY  
CLERK'S OFFICE  
BALLSTON SPA, NY

FILED

There are identical motions and cross motions pending in these two related actions in which the claimants, Fascia and Barber, seek damages based upon the permanent appropriation of portions of their real property by the defendant Town of Stillwater (Town). The actions are not otherwise joined or consolidated, but in the interest of judicial economy, a joint decision is issued

To facilitate construction of a water transmission line and related facilities, the Town has taken easements - temporary and permanent - by condemnation over claimants' properties under the Eminent Domain Procedure Law. Claimant Fascia was offered \$2,531.00 while claimants Barber were offered \$455.00 and \$492.00 for the easements.

In these proceedings, Fascia filed a verified claim seeking damages of \$300,000.00 and Barber seeks \$350,000.00. Issue has been joined. The Town served in each proceeding a demand for a bill of particulars which, inter alia, seeks amplification of the amount and nature of the damages claimed as well as information related to the claimants' expert witnesses qualifications and findings. A total of 30 separate items are included in the Town's demands. Claimants responded by stating in effect that "all details related to damages, values, appraisals and experts shall be disclosed in the exchange of appraisals as required for these proceedings. Once that occurs, responses to each related demand should be considered to be particularized, updated and specified by the reports".<sup>1</sup> In short, claimants urge that the Town's demands for particulars are premature and inappropriate and that much of the information sought by the Town will be included in their appraisals. Following an unanswered letter from the Town's counsel to

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<sup>1</sup>EDPL 508 specifies that written appraisal reports are to be filed by the claimant and the condemnor, and 22 NYCRR § 202.61 and § 202.59 outline the specific procedure to be followed in the filing and exchange of these reports.

the claimants' attorney specifying deficiencies in their responses and demanding full compliance, the Town moved in each action for an order striking the claims with prejudice and awarding attorneys' fees and costs. The Town contends that it requires the sought after specifics to determine the legitimacy of the claims and to ascertain whether the Town has earmarked and budgeted sufficient funds to proceed with and complete the water project and to defend against these proceedings and to pay the awards it anticipates will be made by the court. Claimants oppose and cross-move for an order striking the demands as overbroad and improper. Again, they urge that most, if not all, of the details that the Town now seeks in its demands will be included in the appraisals which they will submit in due course. The Town opposes the cross motion and claims that claimants' opposition to its motions was untimely interposed.

Following the Town's filing of its motions, a conference was held on November 14, 2016 and the motions, over the Town's objection, were adjourned to November 25, 2016. The parties' discovery issues were not resolved at the conference, and the court directed that claimants file answering papers by November 25, 2016. Claimant's cross motions and opposition were filed on November 23, 2016 and thus are timely.

A bill of particulars may be demanded in appropriations proceedings; yet the particulars available to the condemnor are limited and do not require that a claimant disclose opinion evidence that experts generally provide. Vicidomini v State of New York, 21 AD2d 837 (3<sup>rd</sup> Dept 1964); Genco v State of New York, 178 Misc 444 (Ct of Claims 1942) [Claimant required to provide a bill of particulars to specify damages claimed for the reduced value of the appropriated parcel and for the consequential damages to the remainder of the land].

The court has reviewed the Town's demands and finds, in large part, the Town seeks

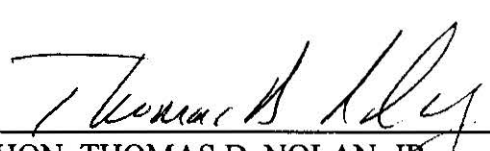
opinion evidence of the value of the properties and other details, such as the qualifications of claimants' experts, which generally are included in appraisals. The court grants claimants' cross motion in each action to the extent that it vacates all but demands 7, 8, and 10 and grants the Town's motion in each action to the extent that claimants shall answer demands 7, 8, and 10 within twenty (20) days of this decision and order. The Town's motions are otherwise denied, all without costs.

On the court's own motion and consistent with 22 NYCRR § 202.61 (a) (1) and unless otherwise agreed, the appraisal reports of claimants and the Town shall be filed with the Clerk of the Supreme Court no later than May 1, 2017.

This constitutes the decision and order of the court. The original decision and order is returned to counsel for claimants. All original motion papers are delivered to the Supreme Court Clerk/County Clerk for filing. Counsel for claimants is not relieved from the applicable provisions of CPLR 2220 relating to filing, entry, and notice of entry of the decision and order.

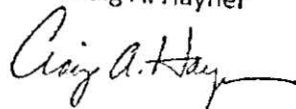
So Ordered.

DATED: February 23, 2017  
Saratoga Springs, New York

  
HON. THOMAS D. NOLAN, JR.  
Supreme Court Justice

ENTERED

Craig A. Hayner

  
Saratoga County Clerk

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CLERK'S OFFICE  
BALLESTON SPA, NY

ENTERED