At an IAS Term, Part 89 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at Civic Center, Brooklyn, New York, on the 28th day of July 2025.

P R E S E N T:

HON. WAYNE SAITTA, Justice.

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THE CITY OF NEW YORK,

Plaintiff,

-against-

Index No. 517650/2016
MS: 3

In The Matter of The Application of The City Of New York To Acquire Title In Fee Simple Absolute To Property Known As Block 7074 p/o Lots 4, 23 and 105 - in connection with the Coney Island Plan - Stage 1,

Defendants

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The following papers read on this motion:

	NYSCEF Doc Nos
Notice of Motion/Order to Show Cause/ Petition/Affidavits (Affirmations) and Exhibits	76-136
Cross-motions Affidavits (Affirmations) and Exhibits	
Answering Affidavit (Affirmation)	143-145
Reply Affidavit (Affirmation)	147-150
Supplemental Affidavit (Affirmation)	

Wantanabe Realty Corp., the Claimant in this eminent domain proceeding, moves for an award of attorney's fees, expert's fees, and expenses pursuant to Section 701 of the Eminent Domain Procedure Law (EDPL). Section 701 provides that the court may award costs, disbursements and expenses, including reasonable attorney fees, where an award is substantially in excess of the amount of a condemnor's proof, and where such an award is necessary to achieve just and adequate compensation.

The CITY does not dispute that Claimant's recovery of $13,721,000 in this proceeding was substantially in excess of the advance payment of $7,550,000, allowing Claimant to recover necessary fees expenses expended in pursuit of that award.

The CITY does argue that most of the fees incurred were not necessary to achieve just and adequate compensation and that any fees awarded should not include a percentage of the statutory interest on the award. The CITY also argues that Claimant should not be entitled to an award of attorney's fees for the time spent on making this motion for fees, or for an award of interest on the fees awarded.

The award of fees in a condemnation case is not mandatory but is left to the discretion of the trial court (*Hakes v State of New York*, 81 NY2d 392 [1993]; *Matter of New York State Urban Dev. Corp.,* 183 Misc2d 900, [Sup Ct NY Co, 2000].)

Section 701 "assures that a condemnee receives a fair recovery by providing an opportunity for condemnees whose property has been substantially undervalued to recover the costs of litigation establishing the inadequacy of the condemnor's offer" (*Hakes,* at 397).

Where, as in this case, the Court awarded Claimant an amount substantially higher than the Condemnor's advance payment, but substantially less than the amount sought by Claimant, the Court must determine what part of Claimant's efforts contributed to the increased award.

Necessary Attorney's Fees

A claimant is entitled to additional compensation for those portions of the attorney's fees, and other professionals' work that was a basis for the higher award, but

not entitled to be compensated for efforts that advanced speculative or inflated valuations that were not accepted by the court. (Id.)

Where the proof offered by a claimant has had no effect on the final award, then it cannot be found to have been necessary to achieve just and adequate compensation and the Court will not award an additional allowance as to those efforts (*First Bank & Trust Co. of Corning v State of New York*, 184 AD2d 1034, [4th Dept 1992].)

Here, the determination was complicated by the fact that Claimant was charged an hourly fee rather than a percentage of the amount obtained over the advance payment.

Claimant's attorneys charged and collected $2,709,561.50 in attorney's fees, exclusive of time spent on this motion for fees. Claimant's attorneys further state that they have excluded from this application $725,502.86 of those fees incurred which were incurred for issues on which it did not prevail, such as the project influence rule, the City infrastructure work, a proposed temporary taking claim, as well as work not related to valuation such as title clearance and the estate issue. Claimants provided detailed time records of the time of each attorney, paralegal and expert which attributed what hours were spent on the issues on which they did not prevail.

Claimant is now seeking an award for only $1,985,000, exclusive of time spent on this motion.

The difficulty presented by such an hourly fee arrangement is that it is often not possible to determine what part of an attorney's efforts were spent on a theory of valuation that was rejected by the Court and what time was spent on efforts that resulted in the increased award (*Meyers v State of New York*, 166 Misc2d 586 [Ct of Claims, 1995]).

Claimant's attorneys provided a voluminous and excruciatingly detailed account of the hours spent on the matter. Their documentation adequately substantiated the

hours they spent on the case. However, the detailed nature of the time records obscures the fact that it is not possible to assign the hundreds of hours spent to particular issues with any precision.

The CITY argues that Claimant's calculations result in a deduction of less than 25% of the hours charged which undercounts of the time spent on issues on which it did not prevail. The CITY argues that the determination of what portion of the fees were necessary to achieving the award should be determined by the percentage of the Claimant's demand that was awarded. The CITY states that the Claimant sought $20,150,000 in damages over the City's advance payment of $7,550,000 at trial and recovered $6,171,000, or approximately 30.6% of the amount sought, and therefore only 30.6% of the attorney's fees charged should be considered necessary.

This approach was rejected as to attorney's fees by the Second Department in *Matter of Village of Haverstraw,* 180 AD3d 791 [2d Dept 2020], in favor of a contingency fee based on the increase obtained over the advance payment.

Using a contingency fee arrangement, where the attorney's fees are a percentage of the increase in the award over the advance payment, is particularly well-suited to determining which fees were necessary in cases where there is a substantial increase in the award, but not all of the attorney's work contributed to that increase, because contingency fees are "perforce proportionate to their success" (*Matter of Village of Haverstraw,* 180 AD3d 791 [2d Dept 2020]; *Matter of City of New York (New Creek Bluebelt, Phase 4 – Paolella)*, 49 Misc 3d 1217(A), [Sup Ct, Richmond County 2015]).

A contingency fee more accurately reflects that portion of the attorney's efforts that resulted in an increased award, than an attempt to ascertain which particular hours were devoted to tasks that were a basis for a court's determination.

Despite the fact that Claimant's attorneys were retained on an hourly fee basis, a court is not bound by a claimant's retainer agreement with counsel but rather is obligated to assess reasonable fees *(Matter of City of New York v Jamaica Arms Hotel, Inc.,* 44 AD3d 1040 [2d Dept, 2007]; *Matter of City of New York Eastside Corporation,* 52 AD3d 387 [1st Dept, 2008]). The Court can determine what attorney's fees charged were necessary by measuring them against a percentage of increase of the award.

The CITY's argument that it would not be appropriate to compare Claimant's requested attorney's fees to usual contingency fee retainers in eminent domain cases, because attorneys in contingency fee cases run a risk of losing and receiving no compensation, is misplaced. The award of attorney's fees pursuant to EDPL 701 is an award to the Claimant, not the attorneys.

Here the amount requested, $1,985,000, equals 32.2% of $6,171,000 the amount awarded over the advance payment or 22.3% of $8,918,024.88 of the amount of the increased award plus the statutory interest.

The Second Department has held that awards of attorney's fees may include a portion based upon an award of prejudgment interest (*Village of Haverstraw v Ray River Co Inc,* 233 AD3d 789 [2d Dept 2024]; *Matter of Oakwood Beach Bluebelt, Stage 1 [City of New York—Yeshivas Ch'San Sofer, Inc.],* 219 AD3d 1335 at 1337 [2d Dept 2023]; *Matter of Village of Haverstraw,* 180 AD3d 791 [2d Dept 2020].)

In an earlier case, the Appellate Division Second Department gave an award in of attorney's fees pursuant to EDPL §701 which excluded attorney's fees on the statutory interest (*Mtr of City of Long Beach v Sun NLF Ltd.,* 172 AD3d 1061 [2d Dept 2019]). That Court, however, did not hold that attorney's fees on statutory interest was prohibited as a matter of law but stated, "we, like the Supreme Court, have exercised discretion in

calculating the fee award solely on the principal recovered without regard to the interest portion of the award" (*Id*. at 1063).

Interest on the condemnation award is a mandatory component of just compensation, to account for the fact that in New York a condemnor may take a property years before fully paying for it.

In the circumstances of this case, where it took seven years from the date the CITY took Claimant's property for Claimant to be fully paid for its property, including fees on the statutory interest, it is necessary for the Claimant to receive just and adequate compensation.

The case involved significant and difficult issues relating to a partial taking and zoning in the Special Coney Island District, including what lots make up the larger parcel, whether the project influence rule required that the property be valued based on the zoning in place at the time of taking or the zoning in effect before the adoption of the City's plan in 2009, and whether compensation for the part of the property taken by the City should be offset by any increase in value of the remainder of the property after the taking.

In determining the amount of attorney's fees to be awarded, the Court is not bound by the specific manner in which attorney's fees are calculated under a retainer, but may evaluate the necessity and reasonableness of the attorney's fees requested in comparison to what the customary contingency fee arrangement would result in (*Application of New York Convention Center Dev. Corp*., 234 AD2d 167 [1st Dept 1996)]; *Hoffman v Town of Malta*, 189 AD2d 968 [3rd Dept, 1993]; *Matter of New York State Urban Development Corp*., 183 Misc 2d 900 [Sup Ct NY County, 2000]*)*.

The structure of the retainer as a percentage of the amount awarded over the advance payment ensures that the award of fees will be for only those efforts that

contributed to the increase but leaves the question of whether the specific percentage of the increased award provided for in the retainer results in a reasonable fee.

Contingency fees of between 25% and 33 1/3% of the difference between the final award and the advance payment have been held to be reasonable (*Mtr of City of Long Beach v Sun NLF Ltd.,* 172 AD3d 1061 [2d Dept 2019]; *Application of New York Convention Center Dev. Corp.,* 234 AD2d 167 [1st Dept, 1996]; *Matter of City of New York (New Creek Bluebelt, Phase 4 – Paolella)* 49 Misc 3d 1217(A) [Sup Ct, Richmond County 2015]; *Meyers v State of New York,* 166 Misc 2d 586 [Ct Cl 1995]; *Carbone v State of New York,* 13 Misc 3d 1246(A) [Ct Cl 2006]).

The CITY argues that Claimant should be awarded only $292,410.41 in attorneys' fees, which is less than 5% of the increased award excluding the statutory interest on the award. This amount is clearly inadequate to fairly compensate Claimant for the fees it necessarily incurred in achieve full compensation for their property taken.

Here, Claimant requests $1,985,000 in attorney's fees, after deducting $725,502.86 in fees it says were incurred for issues on which it did not prevail. This amount is less than 25% of the increase of amount of the award including interest.

Since the reductions resulted in requested fees that are less than 25% of the increased amount of the award, including interest on the award, the reductions were adequate to limit the request to fees that were necessary to obtain the increased award, and the requested $1,985,000 in fees is reasonable.

Fees on Fees

Claimant also seeks attorney's fees for the time spent making and litigating this motion for fees, colloquially referred to as fees on fees. However, current New York case

law does not allow for fees on fees absent a specific contractual provision or statute that makes it "unmistakably clear" that the statute intended to allow for fees on fees. (*Aron Law PLLC v New York City Fire Department* 2025 NY Slip Op 03806 [2d Dept 2025]; *Hawthorne Funding LLC v Karish Kapital LLC,* 236 AD3d 998 [2d Dept 2025]; *IG Second Generation Partners, LP v Kaygreen Realty Co.*, 114 AD3d 641, [2d Dept 2014]; *Matter of Lillian (Steven .--Gary G),* 208 A.D.3d 871 [2d Dept 2022].)

Claimant cites to an earlier Second Department case from 1983, *Rahmey v Blum*, 95 AD2d 294 (2d Dept 1983), which allowed for fees on fees. However, the award of fees in that case was based on the federal statute, 42 USCA §1988, authorizing fees in proceedings in vindication of federal civil rights. Further, to the extent the holding in *Rahmey,* allowing fees on fees had application beyond 42 USCA §1988, it was implicitly overruled in by the more recent Second Department cases cited above.

Disbursements

Claimant also seeks reimbursement for various costs and expenses incurred by its attorneys. As a preliminary matter, Claimant is not entitled to recovers costs incurred in its motion for fees, thus those expenses attributable to this 701 motion will be disallowed.

Claimant originally sought costs of $40,123.56 related to the main case but deducted from this amount disbursements related to issues on which it did not prevail and deducted another $10,346.03 for categories of disbursements disallowed in previous eminent domain decisions.

Claimant is seeking reimbursement for expenses in the amount of $11,026.50 for document preparation, outside photocopying, meals, telecommunication/conference calls, miscellaneous and off-site storage. Except for meals, these expenses are properly

compensable. The Court will reduce the $11,026.50 in requested expenses by the $518.96 attributed to meals, for a total of $10,507.54 in expenses.

In addition to the above expenses, Claimant sought reimbursement for $18,751.03 in Westlaw and Lexis charges not related to this motion and then reduced that amount to $13,031.97 to account for the research done for issues on which it did not prevail.

However, computer research is merely a substitute for an attorney's time that is compensable under an application for attorney's fees and is not a separately taxable cost (*In re City of New York [Newtown Creek],* 30 Misc 3d 816 [Sup Ct, Kings County 2010]; *In re Village of Port Chester*, 30 Misc 3d 1210(A) [Sup Ct, Westchester County 2011]; *Cox v. Microsoft Corp.*, 26 Misc 3d 1220(A), [Sup Ct, NY County 2007] ; *Meyers v State*, 166 Misc 2d 586 [Ct Cl 1995]).

The Court is not bound by the fact that the Claimant's retainer with its attorneys provided that they would be charged separately for electronic research services.

The Court will award Claimant $10,507.54 for disbursements and expenses.

Expert Fees

Claimant seeks reimbursement of fees paid to three experts: Richard Bass, AICP, PP, of Akerman LLP, their zoning expert, Daniel Sciannameo, of Albert Valuation their appraiser, and Stanley Levine, their title expert. Since experts work results in written reports and transcribed testimony it is possible to more accurately determine what part of their efforts were on issues that did not contribute to the increased award.

Bass

Claimant seeks $130,546 for fees paid to Ackerman LLP for work performed by Bass. This amount includes a deduction of $19,917.50 taken to account for his work in relation to the project influence rule. The CITY argues that the Court should disallow an award for Bass' fees because his work was not necessary for Claimant to achieve the final award.

Bass's fee can be broken down into three components, his initial report, his rebuttal report and trial preparation, and attendance.

Akerman charged $25,000 for Bass' initial report, which analyzed which lots constituted the larger before parcel, an analysis of the zoning that applied to before and after parcels, as well as the bulk and use regulations that governed the parcel. The initial report did not contain an analysis of the project influence rule.

The first part of Bass' initial report laid out which lots constituted the larger parcel, a necessary part of a partial taking analysis. Bass stated that the larger parcel consisted of lots 4, 23, 105, 6, 89. The CITY had originally argued that only three of the five lots constituted the larger parcel. By the time of trial, the CITY had accepted Bass' determination of what constituted the larger parcel, which was also adopted by the Court.

Bass analyzed the zoning at the time of the taking for both the before and after parcels. Bass used the zoning in effect at the time of vesting to calculate the allowable developable floor area. The Court held that the larger parcel before the taking had to be valued based on the pre-2009 zoning pursuant to the project influence rule.

However, Bass properly applied the zoning at the time of vesting to determine the developable floor area of the remainder parcel.

The fact that the CITY applied the same zoning to the remainder parcel as Bass did does not mean that his analysis on that issue was not necessary. The initial appraisals and supporting expert reports in an eminent domain case are exchanged simultaneously. Thus, Claimant cannot know in advance what the condemnor's analysis will be and must hire experts to provide evidence to support their claims.

The only part of Bass' initial report that was based on a position rejected by the Court was applying the zoning existing at the time of vesting to determine the developable area of the larger parcel before taking. As this was a relatively minor part of the initial report, the $25,000 fee for its production should not be reduced.

In contrast, Bass' rebuttal report dealt almost entirely with the argument that, had there been no rezoning of the area in 2009, there was a strong likelihood that by the time of the taking the CITY would have granted an application to upzone the property. The rebuttal report discussed the history of the Coney Island Plan and what it characterized as private-sector development in the area for in the years before the taking.

The Court rejected this argument finding that almost all of the developments cited by Bass were CITY sponsored or subsidized, and the one private rezoning was well outside of the area. While the Court found that had a private developer sought a rezoning one would probably have been granted, the Court also found that Claimant failed to demonstrate that private developers were seeking rezonings to develop property in the area. Therefore, the rebuttal failed to show that absent the rezoning by the CITY, that at the time of vesting a prospective buyer would have paid a premium for the probability of rezoning the subject property.

The rebuttal report also contested the CITY's position that the portions of Lots 4, 23, and 105 that were condemned retained their pre-project FAR of 2.0 at the time of

vesting. This was a change in the CITY's original position that the 2009 project rezoning had increased the FAR on those portions of said lots. However, as the Court determined that the condemned portions of the parcels were to be evaluated under the pre-2009 zoning, this issue had no impact on the final award.

The rebuttal report also contained 8 grids of zoning calculations under various scenarios of allowable zoning. Each grid set forth the square footage of lots taken, the before-taking parcel and after-taking parcel. The grids also calculated the developable floor area of the lots under various scenarios. Most of the grids were based on scenarios rejected by the Court.

Under these circumstances, the Court will not grant an award for fees related to the rebuttal report.

While Claimant's have taken a 50% deduction to Bass' fees for trial testimony and trial preparation to account for time spent on the project influence rule, the supporting documentation indicates that the majority of Bass' trial preparation and testimony focused on the theory that, absent the 2009 rezoning a potential developer would have obtained a rezoning. That theory was not accepted by the Court

Therefore, the Court finds that only Bass' initial report contributed to the increased award and will award Claimant $25,000 for the fees for Bass' his initial report.

Sciannameo

Claimant seeks an award of $137,312.50 for fees paid for its appraiser Daniel Sciannameo MAI, President of Albert Valuation Group New York, Inc. The work consisted of an initial appraisal, a trial appraisal, a rebuttal appraisal, trial testimony, and trial preparation. Sciannameo charged $30,000 for the initial appraiser, $46,312.50 for work

related to the rebuttal report, and $61,000 for trial preparation and testimony. Claimant argues that none of his work dealt with the project influence rule, and he should be awarded his entire fee.

The CITY argues that Sciannameo's fees should be discounted because parts of his analysis were rejected by the Court and because he selected the same comparable sales as the CITY, save one.

This latter rationale is flawed. The fact that the appraisers chose five of the same properties was most probably due to the fact, as testified to at trial, that area of Coney Island is very unique and there are not a lot of comparable sales to analyze.

Further, the fact that both appraisers chose the same five sales does not mean that Sciannameo's analysis of those sales were not necessary to Claimant obtaining his award. It was not a situation where the CITY provided Claimant these comparable sales and Sciannameo simply adopted them. In eminent domain proceedings, appraisals are exchanged simultaneously, and it was necessary for Claimant to retain an appraiser who independently selected comparable sales for valuation. The Court relied on five of the six sales selected by Sciannameo is determining the award. The fact that the CITY's appraiser also found these sales comparable does not render Sciannameo's work unnecessary.

Also, the two appraisers offered significantly different values per square foot of developable area for each comparable sale. The Court adopted neither of the two appraisers' final average adjusted value.

While Sciannameo's final values of the comparable sales were rejected because they were based on the 2009 zoning, many of the adjustments he made to each sale were adopted by the Court.

His rebuttal report dealt with several issues: the deduction of special benefits from the value of the part taken, what constituted the larger parcel, deductions for encumbrances on the property, the project influence rule, the CITY's use of the pre-2009 zoning for post-2009 sales.

The bulk of the rebuttal report largely dealt with two issues. First, proposing a set of alternate comparable sales that took place prior to the 2009 rezoning to value the larger parcel before taking. Second, whether the CITY's before-and-after analysis in fact deducted special benefits to the remainder parcel from the value of the land taken.

Sciannameo argued that the CITY's appraiser's valuation was unreliable because it applied the more restrictive pre-2009 zoning to post-2009 sales. He contended that if the pre-2009 zoning was going to be used, the CITY should have used pre-2009 comparable sales. He stated that a better method would have been to use pre-2009 sales and adjust them for changes in market conditions between the sale dates and the date of vesting, because there is more empirical evidence of changes in market conditions over time.

Although the Court found the method logical, it rejected it because it resulted in adjusted values for the pre-project zoning sales were on average almost double the average value of Claimant's comparable sales under the higher project rezoning.

The other significant part of the rebuttal report was Sciannameo's analysis of the CITY's comparison of the value of the larger parcel before taking and the value of the remainder parcel after taking. The measure of damages in a partial taking is the difference in value between the larger parcel before taking and the remainder parcel after taking (*Diocese of Buffalo v State of New York,* 24 NY2d 320 [1969]; *Chester Industrial Park Assoc v State*, 103 AD3d 827 [2d Dept 2013]; *Village of Dobbs Ferry v Stanley Avenue Properties*, 95 AD3d 1027 [2d Dept 2012]).

This measure of damages includes both direct value of the property taken and indirect damages to the remainder of the parcel caused by the taking.

New York law allows benefits to the remainder parcel caused by the project to be offset against any indirect damages to the remainder parcel but not against the direct damages, that is the value of the property taken.

The general rule that the measure of damages in a partial taking is the difference between the value of the property before and after the taking does not apply where it would have the effect of using any benefits to the remaining land as a result of the condemnation to offset the damages caused by the State's actual taking (*Chiesa v State*, 36 NY2d 21 [1974]; *Matter of City of New York [Consolidated Gas Co.]*, 190 NY 350 [1907]; *Lerner Pavlik Realty v State*, 98 AD3d 567 [2d Dept 2012]; *Done Holding Co. v State,* 144 AD2d 528, [2d Dept 1988]).

In this case, the CITY's appraiser offset the value of the property taken by applying an increase in the value of the remainder parcel due to the rezoning that was part of the project.

This issue was complicated by the fact that the CITY's original appraisal did not set forth the measure of direct damages. In his rebuttal report, Sciannameo pointed out that this omission obscured the fact that the CITY's appraiser had actually deducted increases in value to the remainder from the direct damages.

In his rebuttal, the CITY appraiser calculated direct damages by multiplying his average adjusted comparable value per developable square foot by what he termed the "Effective Zoning Floor Area (ZFA)". However, he arrived at the "Effective ZFA" by subtracting the developable square feet of the remainder parcel from the developable square feet of the before-taking parcel. Thus, he based he based the direct damages on the

loss of 72,339 developable square feet, rather than the 110,692 developable square feet actually taken by the CITY.

Sciannameo pointed out that this methodology improperly reduced the direct damages by subtracting the claimed benefit to the remainder parcel in violation of the rule in *Chiesa v State*, 36 NY2d 21 [1974].

Sciannameo's work on the *Chiesa* issue had an outsized impact on the award. Had the Court adopted the CITY's appraiser's "Effective ZFA" analysis, the award would have been $8,967,142.40 rather than the $13,721,132 ultimately awarded.

Balancing the portions of Sciannameo's work that dealt with valuing the properties before taking based on the post-2009 zoning, and the proposed valuation based on pre-2009 comparable sales, both of which were rejected by the Court, against his efforts on the *Chiesa* issue, which were necessary to obtaining the increased award, and other adjustments to the comparable sales that were accepted by the Court, the Court finds that an award of $96,118.75, representing 70% of his fees, is appropriate.

Levine

Claimant seeks an award for $3,750 for fees paid to its title expert Stanley Levine. Levine issued a title report and an affidavit that dealt with two issues: establishing claimants title to the property, and whether the property was encumbered by easements on Van Bergens Walk, the Bowery, and Keningston Walk.

In this case, whether the property was encumbered by easement on Van Bergens Walk, the Bowery, and Kensington Walk was a contested matter. The CITY's appraiser took a 5% downward adjustment to account for what he claimed were easements on portions of Van Bergens Walk, the Bowery and Kensington Walk on the subject property.

To establish this, Levine researched the chain of title to the property back to a deed from the Town of Gravesend (prior to its incorporation into the City of Brooklyn) to a private owner to show that the original grant did not include public easements. The title went far beyond what is typically necessary for a Claimant to establish title.

Levine's report demonstrated that the Claimant held title to both the Bowery and Kensington Walk and that the Bowery was a mapped but unopened street not titled to the CITY, and that Kensington Walk was an unmapped street. Neither Kensington Walk nor the portion of the Bowery on the subject property was actually opened as a street or public way.

Based on Levine's report and affidavit, Bass testified that the area of the Bowery and Kensington Walk would be counted towards the property's allowable floor area ratio, and that an owner would be able to obtain a de-mapping of the streets from the CITY.

The Court, on that basis, adopted Claimant's appraiser's opinion that the CITY's appraiser's 5% downward adjustment for the alleged encumbrances was not warranted.

Therefore, Levine's report and affidavit were necessary and did contribute to obtaining the award.

Interest on Fees

Lastly, Claimant seeks interest on the fees awarded, citing both EDPL 701 and CPLR 5001(a). EDPL §514 requires interest on the compensation award from the time of vesting until the award is made available, and EDPL §701 provides for the award of necessary and reasonable costs and fees. However, EDPL §701 makes no provision for interest on the award of costs and fees.

New York caselaw has long declined to award interest on fees in eminent domain cases (*Long Is. Pine Barrens Water Corp. v State of New York*, 144 Misc2d 665, at 670 [Ct Cl 1989]; *Lehn Co. v State of New York*, 2013 NY Slip Op 33962(U) [Ct Cl 2013]; *In re New York City Transit Auth. [Route 131-B (Remodified)],* 150 Misc 2d 917 [Sup Ct, Queens County 1991]; *Tanglewood Commons, LLC v State of New York,* 2014 NY Slip Op 33603(U) [Ct Cl 2014]).

Thus, the Court declines to award interest on the fees and costs it awards here.

WHEREFORE, it is hereby ORDERED that Plaintiff's motion is granted to the extent of awarding Plaintiff $1,985,000 in attorney's fees, $25,000 for the fees of its zoning expert Richard Bass, $96,118.75 for the fees of its appraiser Daniel Sciannameo, $3,750 for the fees of its title expert Stanley Levine, and $10,507.54 for disbursements and expenses, for a total award of $2,120,376.20.

Settle judgment on notice.

E N T E R:

JSC