

# Legislation Would Limit Condemnation Awards for Beach Replenishment

by Patrick J. McNamara on March 19, 2013

Beach replenishment efforts are needed up and down the New Jersey shoreline in the wake of Superstorm Sandy. In an effort to help municipalities gain easements for these projects, proposed legislation aims to limit condemnation awards to the owners of oceanfront homes.

The bill, *S-2618/A-3896*, would amend the "Eminent Domain Act of 1971" to provide that just compensation for an easement over a portion of beachfront property condemned for the purpose of dune construction or beach replenishment must include consideration of the increase in value to the entire property due to the added safety and property protection provided by the dune or replenished beach. It would also specify that any additional rights of the public to access property held in the public trust arising as a result of the easement, or the dune construction or beach replenishment, would not be considered to cause a diminution in the value of the entire property.

The legislation was prompted by a New Jersey appellate court decision that upheld a \$375,000 judgment in favor of oceanfront homeowners who claimed that newly constructed sand dunes diminished the value of their property. Harvey and Phyllis Karan maintained that a 22-foot dune built on their property blocked their ocean view and decreased the value of their nearly \$2 million property by \$500,000. Harvey Cedars meanwhile contended that the couple should only be compensated \$300 because they received a "special benefit" from the dune, namely storm protection.

Under NJ eminent domain law, the value of special benefits may be subtracted from the compensation owed, while general benefits may not. General benefits arise from the fulfillment of the public object that justified the taking. Meanwhile, special benefits arise from the peculiar relation of the land in question to the public improvement.

Ultimately, the appellate court found that "the benefit conferred on defendants' property—added protection from damage due to storms—was the object of the dune project, was not different in kind from the benefit conferred on the island as a whole, and was only potentially different in degree from the benefit conferred on properties located further inland." Therefore, no offset was warranted.

The case, *Borough of Harvey Cedars v. Harvey Karan and Phyllis Karan*, is currently pending before the New Jersey Supreme Court, though no hearing date has been set. The legislation has been referred to the Assembly Environment and Solid Waste Committee and Senate Environment and Energy Committee. We will provide updates on both as they become available.

For more information about the proposed dune restoration legislation and how it may impact your NJ municipality, we encourage you to contact a member of Scarinci Hollenbeck's Public Law Group.