

NJ Supreme Court Rules Shore Protection Trumps Scenic Views

By [Donald Scarinci](#)

Property owners along New Jersey's shoreline who receive protection from sand dune projects should say "thank you," according to the New Jersey Supreme Court.

In a case closely watched by seaside communities and their residents, the appeals court ruled that the benefits of dunes — namely storm protection — should be considered when determining compensation for partial takings related to dune construction. In so ruling, the state Supreme Court reversed a \$375,000 judgment in favor of oceanfront homeowners who claimed that newly constructed sand dunes diminished the value of their property.

As a practical result, the court's decision will make the recovery from Superstorm Sandy much more affordable for town and municipalities that must rebuild the shoreline. Under NJ eminent domain law, owners of partially condemned property are entitled to be compensated "not only for the value of the land taken but also for any diminution in the value of [the] remaining land which may be attributable to the taking." More specifically, 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.

In [Harvey Cedars v. Karan](#), the NJ Supreme Court considered the appropriate method for calculating "just compensation" when a portion of private property is taken for a public project that may both lessen in part and enhance in part the value of the remaining property. The dispute involves a \$22 million beach replenishment project aimed at minimizing storm damage to New Jersey's Long Beach Island. As part of the project, the borough of Harvey Cedars sought to obtain 82 easements from the oceanfront homeowners. Many of the residents balked at the Harvey Cedar's offer of \$300 each. When the borough moved to condemn 15 of the easements, several homeowners filed suit.

Harvey and Phyllis 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. The Appellate Division upheld a \$375,000 judgment in favor of the beachfront homeowners, after finding 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."

In its recent decision, the state's highest court disagreed. It held that using fair market value as the benchmark in calculating compensation is the best way to ensure that the award is just.

"A willing purchaser of beachfront property would obviously value the view and proximity to the ocean," Justice Barry Albin wrote. "But it is also likely that a rational purchaser would place a value on a protective barrier that shielded his property from partial or total destruction. Whatever weight might be given to that consideration, surely, it would be one part of the equation in determining fair market value."

The approach taken by the NJ Supreme Court mirrors legislation proposed to address [what to do with the dunes](#) in the wake of Superstorm Sandy. The proposed bills would amend the Eminent Domain Act of 1971 to provide that just compensation for a portion of beachfront property condemned for the purpose of acquiring an easement for dune construction must include consideration of the increase in value to the entire property due to the added safety and property protection provided by the project.

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