

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION, CIVIL PART  
HUDSON COUNTY, NEW JERSEY  
DOCKET NO. HUD-L-003569-19

CITY OF HOBOKEN,	)	
	)	
Plaintiff.	)	
	)	TRANSCRIPT
vs.	)	of
	)	ORDER TO
JEFFERSON STREET PARTNERS	)	SHOW CAUSE
II, LLC, ET. AL.,	)	
	)	
Defendant.	)	

Place: Hudson County Superior Court  
Administration Building  
595 Newark Avenue  
Jersey City, N.J. 07306

Date: November 6, 2019

BEFORE:

HONORABLE PETER F. BARISO, J.S.C.

TRANSCRIPT ORDERED BY:

Kevin J. Coakley, Esq. (Connell Foley, LLP)

APPEARANCES:

EDWARD J. BUZAK, ESQ. (Buzak Law Group)  
Attorney for the Plaintiff.

KEVIN COAKLEY, ESQ. (Connell Foley, LLP)  
Attorney for the Defendant.

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LISA S. BONSALL, ESQ. (McCarter & English)  
Attorney for PNC Bank

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1 THE COURT: Okay, Cat. This is docket number  
2 L-3569-19, City of Hoboken versus Jefferson Street  
3 Partners II, LLC, et. al. Return date for the order to  
4 show cause to point commissioners for a condemnation  
5 proceeding.

6 May I please have counsel's appearances and  
7 would you spell your last name for the record for us?

8 MR. BUZAK: Good afternoon, Your Honor. It's  
9 Edward J. Buzak, B, as in boy, U-Z-A-K of Buzak Law  
10 Group on behalf of the City of Hoboken.

11 THE COURT: Good afternoon.

12 MR. BUZAK: Good afternoon.

13 MR. COAKLEY: Good day, judge. Kevin  
14 Coakley, that's C-O-A-K-L-E-Y, law firm of Connell  
15 Foley, on behalf of Jefferson.

16 THE COURT: Good afternoon.

17 MR. RICHARDS: Good afternoon, Your Honor.  
18 Tendai Richards of the law firm of the Winne Banta on  
19 behalf of North Hudson Sewage Authority. Spelling  
20 T-E-N-D-A-I R-I-C-H-A-R-D-S. Thank you.

21 THE COURT: Good afternoon.

22 MS. BONSALE: Good afternoon, Your Honor.  
23 It's Lisa Bonsale from McCarter & English.  
24 B-O-N-S-A-L-L for PNC Bank. We have not appeared, Your  
25 Honor. Mr. Buzak was gracious enough to allow us time

1 to answer until after an order was entered. So --

2 THE COURT: Okay.

3 MS. BONSALE: -- it's basically all I intend  
4 to say today.

5 THE COURT: Oh, all right. Thank you.  
6 Okay. All right. So this matter comes before me by  
7 way of an order to show cause that was entered by the  
8 court regarding the action for condemnation and a  
9 motion to dismiss the verified complaint in order to  
10 show cause that was filed by the defendant, Jefferson  
11 Street Partners.

12 I have received the opposition brief -- well,  
13 I have received what I will call, I should say the  
14 brief supporting the motion to dismiss the verified  
15 complaint together with certifications provided by  
16 counsel and attachments to those certifications,  
17 particularly the certification of Ryan Benson, in  
18 support of the motion to dismiss the verified  
19 complaint.

20 And I have received in response the  
21 opposition to the motion to dismiss which was by way of  
22 a brief in opposition, a certification of Edward Buzak  
23 and a certification of Ravinder Bhalla.

24 And obviously I have previously reviewed the  
25 order to show cause verified complaint. That was filed

1 by plaintiff, City of Hoboken, in this matter which  
2 originally set forth a return date of October 25 which  
3 was carried to allow time for the motion to dismiss to  
4 be filed and opposition to be filed.

5 Are there any other documents that were filed  
6 with the court that I have not referenced? Oh, I'm  
7 sorry. There was also an answer filed by North Hudson  
8 Sewerage Authority.

9 MR. COAKLEY: Your Honor, I'm not sure if you  
10 mentioned the certifications of Mr. Ferrara, Mr. Lem -

11 THE COURT: Oh, no, I didn't.

12 MR. COAKLEY: Okay.

13 THE COURT: But they were part of the --  
14 yes, I apologize. They were -

15 MR. COAKLEY: Thank you.

16 THE COURT: -- part of the motion to  
17 dismiss. I didn't list all of the certifications on  
18 the motions to dismiss. In fairness, there were  
19 certifications from Mr. Ferrara, there were  
20 certifications from Mr. Phillips, certification from  
21 Mr. Brody and there was the certification of -- there  
22 was one other one that I have in here.

23 MR. COAKLEY: Mr. -- Mr. Lemcool (ph.).

24 THE COURT: Mr. Lem -- yes.

25 MR. COAKLEY: Yeah.

1 THE COURT: Okay. Counsel --

2 MR. BUZAK: No, Your Honor. I don't have  
3 anything else.

4 THE COURT: Okay.

5 MR. BUZAK: I think you've covered it.

6 THE COURT: All right. So I have reviewed  
7 all of the document that was provided. And there's  
8 some issues that the court has identified that are of  
9 concern to the court that I would like to address  
10 during this argument on the -- on the applications.

11 First question that I have because I didn't  
12 see that it was contradicted in -- in your opposition  
13 motion, Mr. Buzak. The parties have asserted, the  
14 defendants have asserted, that the appraisal relied  
15 upon by the City of Hoboken in support of the verified  
16 complaint in the order to show cause was inaccurate and  
17 that the plaintiffs conceded that it was inaccurate.  
18 Is it? Is Hoboken -- is that -- is that -- does  
19 Hoboken concede that that appraisal was inaccurate?

20 MR. BUZAK: Your Honor, I -- I think Hoboken  
21 conceded that one of the comparables that was utilized  
22 by Federal had an inaccurate value for acquisition  
23 purposes for one of the parcels. That was then  
24 subsequently addressed as the papers demonstrated by an  
25 appraisal that was done in 2019. And that comparable

1 was not utilized at all in arriving at that  
2 determination. Because that value in 2019 was lower  
3 than the value that was in the 2017 Federal appraisal,  
4 that appraisal was not brought before the counsel for  
5 approval because it was lower and -- and certainly if  
6 the property owner was not elect to accept the \$5.3  
7 million offer that was made, we didn't think that it  
8 would be likely they would accept the \$4.8 million  
9 offer that would have derived from that revised  
10 appraisal.

11 THE COURT: But then doesn't that mean that  
12 the appraisal that was utilized for this order to show  
13 cause was not accurate?

14 MR. BUZAK: Your Honor, I think that's --  
15 that's an issue that directly goes to value and is  
16 exactly what these commissioners are going to be  
17 determining.

18 The underlying issue here is what is the  
19 value of this property. As was demonstrated in the  
20 papers that have been filed there is a vast gap between  
21 what the city believes that the property is worth and  
22 what the property owner believes the property is worth,  
23 some \$18 million or \$16 million, depending upon whether  
24 you use the discounted value.

25 And, Your Honor, when one reviews the -- the

1 entirety of the eminent domain law and -- and the  
2 protocol that was set up there I submit to you that the  
3 process was intended, and I think this is certainly  
4 going to be no news to the court, but I would want to  
5 put it on the record, the process was intended to  
6 avoid just this, to avoid us coming, a governmental and  
7 then coming to the court seeking to acquire the  
8 property.

9 THE COURT: And do you -- do you think  
10 that's the road that Hoboken took?

11 MR. BUZAK: I think that is the road both  
12 parties too, Your Honor. And while each side perhaps  
13 characterized the negotiations that to place over that  
14 period of time beginning when the informal offer was  
15 made in 2016 to today the reality is that there were  
16 extensive discussions and activities as defendant  
17 freely admits. And the negotiations, Your Honor,  
18 sometimes don't follow the traditional path as we  
19 pointed out in our opposition brief. There's a  
20 monetary issue -- there's always a monetary issue, and  
21 at the end of the day that's where it comes out.

22 THE COURT: Well --

23 MR. BUZAK: At the end of the day someone's  
24 going to make that determination as to what the value  
25 of the property is. But that doesn't mean to say that

1 the negotiations are limited to that, and in fact, in  
2 this case it was the defendant who raised an alternate  
3 manner in which to discuss the acquisition of the  
4 property which the parties engaged in over that almost  
5 three-year period of time.

6 I'm sorry, Your Honor. I -- I didn't mean to  
7 interrupt you.

8 THE COURT: No, no. That's -- that's okay.  
9 You know, the -- just the concern is I -- I understand  
10 there's a vast gap in value and I understand that the  
11 commissioners generally are the ones who resolve the  
12 issue of value. But what -- what is concerning to the  
13 court there's a couple of issues. And -- and while  
14 there may be this extensive gap in value I'm perplexed  
15 that you relied on, that the city's relying on an  
16 appraisal that they concede is faulty.

17 MR. BUZAK: Well, Your Honor --

18 THE COURT: And -- and you could call it  
19 whatever you want. He used a wrong number and  
20 everybody concedes that. Yet the city used it for the  
21 order to show cause. How is that good faith?

22 MR. BUZAK: Your Honor, I think it's good  
23 faith because when that error was corrected --

24 THE COURT: When was it corrected?

25 MR. BUZAK: It was corrected in --

1 THE COURT: Don't -- cause let's talk about  
2 the second appraisal. Number 1, it was a drive by. Do  
3 I have any discretion at all to allow you to use that  
4 appraisal? It was a drive by. Do I have any  
5 discretion, Mr. Buzak, that the city can use that  
6 appraisal?

7 MR. BUZAK: I think, Your Honor, when it's  
8 the same appraiser who did the first appraisal we're in  
9 a different situation, that first appraisal there was  
10 an inspection of the property, there -- they -- they  
11 were on site. So to -- to --

12 THE COURT: So he doesn't have to give  
13 notice that I made a mistake in my first appraisal, I'm  
14 going to come back and do a second appraisal but I'm  
15 not going to tell you that I'm coming back. That's  
16 okay?

17 MR. BUZAK: I -- I think your -

18 THE COURT: And, more importantly, it  
19 doesn't strike someone of interest that suddenly two  
20 years later on a drive by inspection the value goes  
21 down when everybody concedes that property values are  
22 going up?

23 MR. BUZAK: Well, I think, Your Honor, when  
24 one looks at that appraisal the -- the basis for that  
25 was the change in the number of units that could be

1 placed on that site.

2 THE COURT: Yeah, but what changed on the  
3 property that led to that change?

4 MR. BUZAK: Nothing changed on the property,  
5 Your Honor. The change --

6 THE COURT: So then why would the appraisal  
7 suddenly change on the drive by?

8 MR. BUZAK: Because there was then a plan  
9 done by planners that was attached to that 2019  
10 appraisal that demonstrated that the yield on that  
11 property was not the 80 units that the defendant  
12 contended could be put on that property and upon which  
13 their December of 2017 appraisal was based after \$21.4  
14 to \$21.6 million. But instead when we undertook that  
15 study it turned out that 32 units could be built.  
16 That's the difference in -- in the value of why the  
17 second one was built.

18 THE COURT: How many units -- how many  
19 units did the same appraiser say could be built --  
20 built in 2017?

21 MR. BUZAK: 53.

22 THE COURT: So same appraiser who had all  
23 the information in '17 did a drive by in '19 and  
24 reduced the units.

25 MR. BUZAK: No, Your Honor.

1 THE COURT: What do you mean no, Your  
2 Honor?

3 MR. BUZAK: The -

4 THE COURT: He reduced them from 55 to 32.

5 MR. BUZAK: No, no, he -- your -- your  
6 conclusion is correct, Your Honor. But you said that  
7 he had all the information. The -- not 20 --

8 THE COURT: Had all the information about  
9 the property, he knew the property, presumably knew  
10 there were easements --

11 MR. BUZAK: That's correct.

12 THE COURT: -- and came to a conclusion  
13 that there were 55 units.

14 MR. BUZAK: The -- the calculation that was  
15 done in the 2017 appraisal, Your Honor, was a -- a  
16 gross calculation. And by that it was simply taking  
17 the size of the property, which is 35,000 square feet,  
18 dividing it by the R-3 zoning, which is 660 feet per  
19 unit, deriving 53 units. That was how both the  
20 original appraisal that Value Realty undertook was  
21 prepared and also the Federal appraisal at the \$5.3  
22 million.

23 When the defendants or when the property  
24 owners came back with their appraisal they didn't do  
25 that calculation. They actually obtained the services

1 of players, Mr. Phillips' certification indicates, and  
2 he came up with a plan that did not utilize a gross  
3 division as was done by the city in their appraisal but  
4 instead he came up with a plan that he contended would  
5 produce or yield 80 units on that site.

6 When we received that appraisal and saw that  
7 report that was the other item, Your Honor, that  
8 prompted the city to retain its own planner and say,  
9 okay, well, forget about utilizing simply a net  
10 mathematical calculation as we did in the first  
11 appraisal by Value Research and the second appraisal --  
12 first appraisal by Federal, but the second appraisal  
13 that the city had done, and instead look at the  
14 property itself, come up with a plan of development  
15 based upon the R-3 zoning without just a gross  
16 calculation but instead whether that can actually be  
17 placed on that site. The Vuernick (ph.) and Remington  
18 report, which was the planner's report from the city's  
19 end, was then utilized by Federal as the basis for that  
20 subsequent appraisal which came out to a number of less  
21 than the \$5.3 million that had been offered. The city  
22 would --

23 THE COURT: So -- let -- let me just  
24 understand this and maybe I'm being simplistic or just  
25 thick. It was the defendant's planner who said you

1 could put 80 units that led to the city investigating  
2 and reducing their original number from 55 to 32. Is  
3 that what you're telling me?

4 MR. BUZAK: That's -- that's correct, Your  
5 Honor. And it was done -- it was done because the 53  
6 unit number in both the Value Research appraisal, the  
7 early one at 3.975 and the Federal appraisal at 5.3 was  
8 not done with a planner's report. It was done by  
9 simply -- by simple division as -- as I've just  
10 noted.

11 When the property owner's appraisal didn't do  
12 simple division and say, okay, we're going to use the  
13 53 because that's the -- that's the mathematical number  
14 and that's produced. I don't think anybody's  
15 challenging the math part of it. They said no, we're  
16 going to come up with a plan to actually develop that  
17 property and here's the plan and it produces 80 units.  
18 The city's response to that was, all right, now you're  
19 looking at a -- you're not doing simple math as we did  
20 in the first appraisal and the second appraisal, you're  
21 actually coming up with a plan, so we need to retain a  
22 -- a planner to ascertain utilizing the standards, the  
23 same standards that I was talking about that resulted  
24 in the 53, but utilizing all the other bulk  
25 requirements that are necessary in order to make a

1 determination as to how many units can be built there.  
2 And that then resulted in the 32 units.

3 And, again, Your Honor, I think that this is  
4 a -- this is a demonstration of what was intended to  
5 occur outside of this courtroom. It was intended to --  
6 for the parties to speak to each other, to exchange  
7 material, to then modify positions that they have, and  
8 if that in the end does not result in an amicable  
9 acquisition, an agreement between the parties, then at  
10 that point, Your Honor, there's no other choice but to  
11 come in and ask the court to have third parties who are  
12 skilled in this art to make that determination based  
13 upon evidence that's presented.

14 And I dare say, Your Honor, that is what  
15 happened here. I certainly will admit to the court as  
16 no surprise that having a subsequent appraisal at a  
17 lower number is unusual. It's not something that  
18 typically happens --

19 THE COURT: Well, it's not --

20 MR. BUZAK: -- just as the court pointed out  
21 in a situation where property values are rising. So I  
22 don't --

23 THE COURT: Well --

24 MR. BUZAK: -- I don't --

25 THE COURT: It doesn't -- it -- it strikes

1 me not only as unusual, it strikes me that -- that  
2 because you had a planning for 80 units you suddenly  
3 now say, no, only 32 could fit there. I -- I'm -- it's  
4 to me a little mind boggling. I just, you know, that  
5 you would say 55, get a planner and then say, oh, no,  
6 it's only 32 even though it's just coincidental that  
7 the value goes up by your calculations 50,000 a unit  
8 but now the units come tumbling down so that the  
9 numbers are pretty close to each other.

10 MR. BUZAK: Well, I think --

11 THE COURT: It strikes the court as a  
12 little more than coincidental.

13 MR. BUZAK: Well, I -- Your Honor, I -- I --  
14 I understand --

15 THE COURT: But let's talk about something  
16 else.

17 MR. BUZAK: Yes, I understand the court's  
18 skepticism, but --

19 THE COURT: The court has skepticism. I'll  
20 make that very clear to everybody in the courtroom.

21 MR. BUZAK: I -- I understand that, Your  
22 Honor.

23 THE COURT: There's a lot of skepticism  
24 here. And let's talk about a big one. What was the  
25 purpose of carving .8 acres out in the zoning and

1 leaving it as industrial and everything else in this  
2 area is R-3? What was the purpose of that?

3 MR. BUZAK: Your Honor, the -- the --

4 THE COURT: Cause the only thing that I'm  
5 reading is the purpose is, hey, we want to buy that so  
6 we're not changing the zoning.

7 MR. BUZAK: No, your -- Your Honor, the --  
8 the zoning was not changed. The southwest  
9 redevelopment plan is -- is what the court is referring  
10 to which is -- which is over --

11 THE COURT: Right. Well, whatever it is.  
12 How did you carve out this .8 that you knew you wanted  
13 to buy and leave it industrial? What was the reason  
14 for that --

15 MR. BUZAK: Your Honor, it -- again --

16 THE COURT: -- other than cause you wanted  
17 to buy it?

18 MR. BUZAK: No, Your Honor. Because if we  
19 left it -- if our intention was to leave it as  
20 industrial in order to depress the value of the  
21 property, then I guess while I don't like to answer a  
22 question with a question -

23 THE COURT: Well, don't -- I'm asking you.

24 MR. BUZAK: -- why would the --

25 THE COURT: Give me a reason that I haven't

1 read in the papers. All I've read in the papers is we  
2 carved out .8 acres because we want to buy it. So tell  
3 me what the reason was that's not in any of the papers  
4 why this section of the person's property. You've cut  
5 out a little piece of his property. You said we're  
6 going to leave the rest of your property R-3 but this  
7 one -- I mean, I'm sorry, we're going to make the rest  
8 of your property R-3 but this piece that we want we're  
9 leaving I-2. Why?

10 MR. BUZAK: Because in the southwest  
11 redevelopment plan this property, this carved out area  
12 that you're referring to, Your Honor, this 35,000  
13 square feet, was always intended to be a park.

14 THE COURT: It was only intended to be a  
15 park if you bought it --

16 MR. BUZAK: That --

17 THE COURT: -- or condemned it.

18 MR. BUZAK: And that's -- and that's --

19 THE COURT: It was private property.

20 MR. BUZAK: And that's correct.

21 THE COURT: And you carved this person's  
22 property into two zones.

23 MR. BUZAK: No, we didn't -- Your Honor, I  
24 -- I -- I beg to differ only because the redevelopment  
25 plan -

1 THE COURT: Is part of his property R-3 and  
2 part of their property I-2?

3 MR. BUZAK: No. The property --

4 THE COURT: Their property --

5 MR. BUZAK: The property is I -- their  
6 property is I-2. There's a --

7 THE COURT: Was I-2.

8 MR. BUZAK: Is I-2.

9 THE COURT: No. Their property -- the  
10 other portion of their property is R-3, is it not?

11 MR. BUZAK: No, Your Honor. The southwest  
12 redevelopment plan was adopted and that is adopted as  
13 an overlay zone, not --

14 THE COURT: Yes. Call it what you want.  
15 Am I correct that the majority of their property is  
16 R-3?

17 MR. BUZAK: The -- the majority of their  
18 property can be built as I-2 as of right because that  
19 underlying zoning remains in effect and it could be  
20 built as --

21 THE COURT: Well, what am I looking at that  
22 says it's R-3?

23 MR. BUZAK: -- R -- and then it -- no, in --  
24 in --

25 THE COURT: Am I mistaken?

1 MR. BUZAK: No, Your Honor. In the  
2 southwest redevelopment plan, which is what as Your  
3 Honor has pointed out, carved out this area. The  
4 overlay zone which is the effect of the southwest  
5 redevelopment plan or of any redevelopment plan is to  
6 create overlay zoning to allow the underlying zoning to  
7 be utilized if the property owner wants to utilize it  
8 for those purposes and then also to have the right to  
9 utilize it as set forth in the redevelopment plan.

10 So the property owner has two choices. The  
11 zoning on this property on the balance of the property,  
12 is effectively two different -- two different types of  
13 zoning. And my point, Your Honor, is that the -- in  
14 the southwest redevelopment plan it is a -- it is a  
15 plan, it is a vision for the city, it is what becomes  
16 overlay zoning. And had our intention been to keep  
17 that property as -- as the court alluded to I-2 only,  
18 then why did we utilize in all of our appraisals not  
19 the I-2 zoning. We didn't look at the I-2 zoning at  
20 all and say we're going to value this property as I-2.  
21 We valued the property based upon the R-3 standards  
22 just for the very reason, Your Honor, that -- that  
23 you've raised here. It was not -- if that was the  
24 intention, we did a poor job of accomplishing the  
25 objective because our own appraisals utilize the

1 residential zoning as of right, not as of -- there was  
2 no discount made as was done with Mr. Brody's  
3 appraisal, the defendant's appraisal, because this was  
4 -- would have been permitted as of right under the  
5 southwest redevelopment plan.

6 The difference, Your Honor, between the 80  
7 units that the defendant came up with and the 32 units  
8 that the city came up with that the court looks at, and  
9 again, I understand -- I understand the sequencing, but  
10 the 80 units are not following the zoning. That is  
11 with variance -- with variances granted as they set  
12 forth in the plan, in -- in their plan, that would  
13 produce 90 units, I -- I'm sorry, 80 units.

14 In the city's planner's report we assumed no  
15 such variances and produced the 32. So that's the  
16 explanation, Your Honor, for the discrepancy between  
17 the two. The property owner, and again, Your Honor,  
18 I'm not -- I'm not surprised that the property owner  
19 looks at it and attempts to maximize the value of the  
20 property by increasing the number of units and taking  
21 the position that it is entitled to obtain variances or  
22 that it will be able to obtain variances and therefore  
23 here's -- here's what our number is. That's -- that's  
24 what the negotiation process is about. I'm not  
25 offended by that nor should they be offended by that,

1 and -- and candidly nor -- nor should anyone else.

2 But as a result of that, prompted by that  
3 actually, the city looked at it and said, all right, if  
4 -- if you're going to go down that road, we're going to  
5 look at not just the gross calculation, the  
6 mathematical division, instead we're going to look at  
7 what can actually be built there without any variances  
8 and that produced the 32 units which then produced the  
9 lower -- lower value appraisal which the city was --  
10 was constrained, I believe at least anyway, to not  
11 offer because it would have been futile in the first  
12 place. Property owner didn't accept 5.3, why would  
13 they accept 4.8.

14 So that's the reason, Your Honor, that we  
15 went in to this condemnation based upon the approved  
16 appraisal. And that -- that approved appraisal, Your  
17 Honor, is not something that the mayor approves or that  
18 the staff approves or that the administration approves.  
19 That's an appraisal that has to be approved by the  
20 city. And the statute limits us to submitting --  
21 submitting our condemnation action based upon an  
22 approved appraisal, not an approved from an individual  
23 or a group of individuals informally, but by formal  
24 action of the city counsel.

25 THE COURT: Was the city counsel informed

1 that the appraisal they approved was inaccurate?

2 MR. BUZAK: The city counsel as far as I  
3 know, Your Honor, was not, certainly not -- not by us.

4 THE COURT: So that -- that doesn't  
5 matter?

6 MR. BUZAK: Well, the point is, Your Honor,  
7 that's -- that was the appraisal that they approved.  
8 If there are deficiencies in that appraisal --

9 THE COURT: It's not --

10 MR. BUZAK: -- that was not --

11 THE COURT: It's not just a deficiency. It  
12 was inaccurate. There's a little bit more here,  
13 counsel, and the city counsel was never advised that  
14 he screwed up and had the wrong number for a  
15 comparable. Were they ever advised of that after they  
16 approved it?

17 MR. BUZAK: They were not, Your Honor. They  
18 were not advised -- they were not advised.

19 THE COURT: You think maybe that might have  
20 changed their mind?

21 MR. BUZAK: I don't -- I don't know, Your  
22 Honor.

23 THE COURT: All right. Let's go back to  
24 why I'm concerned about the zoning.

25 As you indicate in your paperwork and in

1 your brief you go through it about a mayor counsel  
2 form of government, right, that it's the mayor that  
3 does all negotiating and it's the mayor that  
4 essentially makes the recommendations and things of  
5 that nature, right?

6 MR. BUZAK: Yes, sir.

7 THE COURT: Well, your adversary's in their  
8 certification of Mr. Benson it -- in exhibit C bring  
9 out a mayor -- a -- a letter, an open layer -- letter,  
10 that was written by the former mayor, Mayor Zimmer,  
11 particularly with regard to southwest Hoboken. And she  
12 states it has been and currently is still zoned for  
13 non-residential industrial use which is typically  
14 appraised at a value less than similar property zoned  
15 for residential use. Have an idea why I'm upset  
16 about carving this out and leaving it as an industrial  
17 zone?

18 The former chief executive is on record  
19 stating that industrial use is typically appraised at a  
20 lesser value. Does that not raise a flag somewhere?

21 MR. BUZAK: I think, Your Honor, it would  
22 raise a flag if then the subsequent appraisal was based  
23 upon an industrial zoning. The sub --

24 THE COURT: Well, if it was based on an  
25 industrial zoning, perhaps they would have gotten a

1 better variance like you gave to the other Hoboken  
2 properties that your adversary brings out. It's like  
3 let's see which is better to use is the impression that  
4 the court's getting from this.

5 MR. BUZAK: Not at all, Your Honor. I --  
6 I think that the city by utilizing the residential R-3  
7 zoning enhance the value of the property, and I think  
8 that's the demonstrated by the defendant's appraisal  
9 itself. If the I-2 zoning was a superior zoning that  
10 would produce a -- a higher value and -- and if that  
11 were the highest and best use for the property, then  
12 their appraisal would have utilized it. Instead, it,  
13 too, utilized a residential zoning albeit not the  
14 zoning that was there, but other zoning that they  
15 created in order to create the 80 units instead of even  
16 the mathematical 53 units, which is just as I said,  
17 Your Honor, a mathematical calculation, not a planning  
18 calculation. But it went through the process of  
19 developing a plan and the city responded to that by  
20 coming up with its plan.

21 THE COURT: All right. You -- you talk  
22 about the other negotiations that went on and that they  
23 would satisfy the bona fide negotiations of the  
24 statute. But in looking at it and particularly the  
25 certification of the mayor and -- and your -- and the

1 arguments in your brief the alternate negotiations that  
2 I'll summarize as, and I'm not going to get into the  
3 one with the school, because I'm not sure what that  
4 meant or what it means, but I want to get to the one  
5 where the land owner offered -- those negotiations as  
6 I understand it centered around -- we would donate the  
7 .8 acres provided you allow us to develop a more dense  
8 unit, more -- more units. And as I'm reading the  
9 mayor's certification and your -- and your opposition  
10 is you seem to say the mayor made it very clear that  
11 192 was the number and that was it and he was never  
12 going to increase the units. Am I good so far?

13 MR. BUZAK: Yes, along as -- as that --

14 THE COURT: Okay.

15 MR. BUZAK: -- timing, Your Honor, when  
16 the mayor made that determination was without numbers  
17 as I recall in January of 2019 and with numbers in  
18 June.

19 THE COURT: Right. But my understanding  
20 was on their remaining property under R-3 they could do  
21 192 units. If the mayor's position was you're never  
22 going to get more than what you have now, where's the  
23 negotiation? You're asking them basically to give you  
24 his property but you're not giving him any more units.  
25 So where was the negotiation by the city along those

1 lines as -- as you called it alternative? What was  
2 the alternative that the city was offering? Cause I  
3 -- I missed it. Cause if I -- if I read it correctly  
4 the mayor's position was I'm not increasing the density  
5 for you on the property you have. So what was the --  
6 what was the negotiation? They asked for more units  
7 and they would give you .8 acres. The response was  
8 we're not giving you more units. So did the city  
9 expect he was going to give you -- give them the .8  
10 acres and keep exactly what he had?

11 MR. BUZAK: I --

12 THE COURT: Was he making a gift?

13 MR. BUZAK: -- have two -- two responses,  
14 Your Honor.

15 The first one I'm -- I'm not sure of, but I  
16 will -- I will articulate it, but I don't have -- I --  
17 I can't tell you that it's -- it's accurate. I thought  
18 that the 192 represented the effective transfer of  
19 density from that 35,000 square feet to the balance of  
20 the property at the R-3 density. I -- I don't know  
21 that for sure, Your Honor, so I don't want to mislead  
22 --

23 THE COURT: Okay.

24 MR. BUZAK: -- the court about that.

25 THE COURT: Yeah. I -- I'm not either. I

1 did not think it -- it was, but I didn't do all the  
2 calculations myself, but I didn't -- I didn't see that.  
3 I saw that the mayor's position was he was not  
4 increasing the density that would be allowed under the  
5 redevelopment plan.

6 MR. BUZAK: Well, Your Honor, I -- the --  
7 the papers demonstrate that there --

8 THE COURT: So I was just wondering -

9 MR. BUZAK: -- I -- I believe that -

10 THE COURT: -- what the city was offering  
11 them.

12 MR. BUZAK: Well, the papers indicate, if --  
13 if I recall correctly, that the accumulated property  
14 of academy in that area was about 3.5 acres. If -- if  
15 you could obtain 53 units on 35,000 square feet, which  
16 is about three-quarters of an acre or eight-tenth of  
17 an acre, actually, I'm sorry. It -- it shows on the --  
18 on this (indiscernible) eight-tenths of an acre. I  
19 think if you do the math, multiplying that out, 53  
20 times the 3.55, you come up with probably less than 192  
21 units.

22 THE COURT: All right. Well, I'll make it  
23 easy.

24 MR. BUZAK: So --

25 THE COURT: I'm relying on the mayor's

1 certification. So let me read it for the record.

2 The mayor says at the bottom of paragraph 6  
3 on page 2. I'm not going to go through all the  
4 preliminaries here. In fact, Mr. Lemcool and his team  
5 presented a proposal that bore no resemblance  
6 whatsoever to the southwest redevelopment plan and  
7 which sought to develop 430 units on defendant's  
8 remaining property when the southwest redevelopment  
9 plan permitted only a density of 192 units.

10 So that's where I'm getting it from, your  
11 client's certification.

12 MR. BUZAK: I understand, Your Honor. And  
13 -- and what I'm --

14 THE COURT: So not surprisingly the  
15 proposal was unacceptable to the administration.

16 So I'll go back to my question. If they  
17 weren't already entitled to do 192 units, what was the  
18 counter offer the city was making to their offer?

19 MR. BUZAK: I think that they -- I -- I  
20 think, Your Honor, as -- as I've just gone through,  
21 that the entitlement was based upon in the inclusion of  
22 the -- this property in the calculation to which the  
23 mayor was referring because the math --

24 THE COURT: Well, that's not what his  
25 certification says. His certification says on

1 defendant's remaining property when the southwest  
2 redevelopment plan permitted only 192. That's his  
3 words.

4 MR. BUZAK: Well, I --

5 THE COURT: I didn't make this up.

6 MR. BUZAK: I -- I understand, Your Honor.  
7 And perhaps it was not as artfully worded as -- as it  
8 should have been. But I think that, Your Honor, if you  
9 -- if you do the math, you'll see that the 192 has to  
10 include the transfer of units effectively. And I -- I  
11 call them transfer of units just to make the concept  
12 simpler, the transfer of units to the balance of the  
13 property.

14 THE COURT: So your position is the city's  
15 negotiation was we'll take your .8 acres and we'll give  
16 you some extra units to make up this 192. Is that  
17 what you're saying the negotiation was?

18 MR. BUZAK: I think that -- I think that was  
19 the negotiation, Your Honor. And I think that from --  
20 from Academy's point of view based upon what they  
21 presented that was less than half of the units that  
22 they had proposed in order to -- in -- in their  
23 proposal give this property to the city.

24 And, again, Your Honor, I think -- I think --  
25 I think those negotiations were helpful. I think those

1 negotiations, you know, were -- were generally in good  
2 faith. And when I say generally I don't mean that any  
3 one was acting in bad faith.

4 THE COURT: Seriously? Seriously? The  
5 mayor walked out. What kind of negotiation is that?

6 MR. BUZAK: Well, Your Honor, it -

7 THE COURT: And then why did he make and  
8 continue to give their presentation to his underlings?  
9 What was the purpose of that?

10 MR. BUZAK: The -- Your Honor --

11 THE COURT: He stormed out of the meeting

12 --

13 MR. BUZAK: Well, I -- stormed, Your Honor.  
14 Look, I was at the meeting.

15 THE COURT: He left the meeting.

16 MR. BUZAK: Okay.

17 THE COURT: But yet the people remained for  
18 them to continue to make their proposal. Why?

19 MR. BUZAK: Because I think, Your Honor, the  
20 -- the -- and, again, I don't know. I was not there.  
21 But it's -- it's not unusual to have the staff people  
22 remain, talk to them, see if there was anything else  
23 that they needed to say and then go back and talk to  
24 the mayor.

25 You know, Your Honor, these negotiations, you

1 know, it's -- it's like, you know, making sausage as  
2 they say. You may like to eat it but you really don't  
3 want to see how it's made. And I think that the  
4 negotiation process in any of these, this is not  
5 unique, is just that, so people -- people get up. We  
6 had -- in -- in the earlier negotiations with Mayor  
7 Zimmer I was at a meeting with Academy after that  
8 informal offer was made when just the opposite  
9 happened, they stormed out of the room. Actually,  
10 they didn't all storm out of the room. Some of them  
11 stormed out of the room. That -- that happens during  
12 negotiations. You know, I -- I don't like to see it  
13 happen --

14 THE COURT: While -- while it happens during  
15 negotiations -

16 MR. BUZAK: It's not necessarily produc --

17 THE COURT: -- Mr. Buzak, we're talking  
18 about a meeting that took place in June of 2019 after  
19 about almost three years.

20 MR. BUZAK: That --

21 THE COURT: This is not just the beginning  
22 where somebody walks out of a meeting.

23 MR. BUZAK: I -- I understand, Your Honor.  
24 And -- and you're right. You know, I mean that -- the  
25 time was the time. But I think that when the court has

1 to make the determination as to whether or not there  
2 were bona fide negotiations over this period of time  
3 and what the end result of this is going -- is  
4 intended to accomplish, I think that moving forward and  
5 having the commissioners make the determinations will  
6 result in a fair market value determined by  
7 disinterested parties, looking at evidence that's  
8 presented to them. And if that's unacceptable to the  
9 parties or either of the parties, then they have the  
10 right to go before a jury of their peers and present  
11 the case there and let the jury of their peers make  
12 that determination.

13 THE COURT: Well, I -- I agree with that,  
14 but -- but there's also one big criteria that has to  
15 occur first. And that is the condemning authority has  
16 a statutory obligation to make the best offer and  
17 provide all the information upon which that best offer  
18 is made. And that's the determination that is  
19 troubling the court here when I keep reading all these  
20 changes in appraisals and all these negotiations  
21 because as our courts have consistently held the state  
22 has the ever present obligation, not only to be but to  
23 appear to be trustworthy. And I have some doubts  
24 about the appearance in some of the things that  
25 happened in this case, cause these appraisals are just

1 very interesting to me.

2 MR. BUZAK: Your Honor --

3 THE COURT: And it's reminiscent of another  
4 case I had involving Hoboken with appraisals. The only  
5 difference is this has more ammunition because you  
6 changed the zoning but you left this one industrial  
7 when a mayor's on record saying industrial property is  
8 appraised at less money. How does that give the  
9 appearance of trustworthiness? You don't have to  
10 answer that.

11 Mr. Coakley, why weren't these negotiations  
12 sufficient, all these negotiations about donating a  
13 property, units, et cetera? Why -- why weren't they  
14 bona fide negotiations?

15 MR. COAKLEY: Let me just address three of  
16 the points that you raised before very -- very  
17 quickly.

18 THE COURT: Well, how about answering --

19 MR. COAKLEY: Number one --

20 THE COURT: -- mine first and then you  
21 could address --

22 MR. COAKLEY: All right.

23 THE COURT: -- those points. I'll let you  
24 address whatever you want.

25 MR. COAKLEY: Okay. Whatever. Why --

1 okay. Because those negotiations weren't sufficient  
2 because they -- these negotiations arose out of a  
3 disagreement as to price of the property. It was not a  
4 disagreement about the redevelopment plan, it was  
5 price. And so the entire construction of the -- of  
6 23-6 as raised by Mr. Buzak is utterly wrong because it  
7 was a price issue.

8 Secondly, a redevelopment plan negotiation  
9 can't possibly be a substitute for adherence to the  
10 statute.

11 So those -- those are the two principle  
12 arguments that I think Mr. Buzak has just blown --  
13 blown by. And, of course, as Your Honor I think hit at  
14 the beginning. There is no dispute that -- that at  
15 the meeting of March 21st Mr. Brody said to the Federal  
16 appraiser, he said, look, your comps are ancient  
17 already and the one comp is -- is seriously inaccurate.  
18 It was -- it was inaccurate to the extent of more than  
19 60 percent of its -- of its number.

20 So we had a -- a disagreement about the  
21 accuracy of their information. And they said, and this  
22 is not disagreed with, they said we're going to fix  
23 this appraisal up and we're going to call you back for  
24 another meeting and that never happened. And it's not  
25 disputed that it never happened. And over the next

1 year and a half this was discussions about  
2 redevelopment and -- and the school board and all these  
3 other things, but there was no discussion of fair  
4 market value and -- and the criteria of the statutes --  
5 statute that have to be adhered to.

6 And if you read 23 -- 23-6, what do you see?  
7 You see fair market value, you see appraisal, you see  
8 offer, you see accompanying the appraisal, you see all  
9 of these things, these mandatory requirements, to --  
10 that have to be shown in order to say that you've  
11 negotiated in good faith. And, you know, none of them  
12 were met because they had such an inaccurate  
13 appraisal.

14 So that's -- that's essentially why the  
15 negotiations were not effective.

16 Now, there's a case that -- that seems to  
17 pertain to this where a county is condemning somebody's  
18 property. This is the Whispering Woods case.

19 THE COURT: Yes.

20 MR. COAKLEY: And -- and the party says, oh,  
21 why don't you condemn some other property. And -- and  
22 they debate that and go back and forth on that and they  
23 never exchange an appraisal regarding the property to  
24 be condemned. And the court dismissed the complaint.  
25 And it seems right on point here where Mr. Buzak is

1 saying, well, that redevelopment discussion is enough  
2 to satisfy the statute. I mean it -- it clearly has  
3 nothing to do with the statute and it's not -- it's not  
4 enough.

5 And what's the outcome of this? The outcome  
6 is they're going forward with an appraisal that's  
7 grossly inaccurate. It's inaccurate as to one comp  
8 and it's got two comps, the other two, three comps  
9 total, that are six years old in a rising market.

10 Now, in the administration of eminent domain  
11 and land use as related to that how can we -- we just  
12 let that go as Mr. Buzak says, leave it up to the -- to  
13 the commissioners. We have a -- a -- two comps that  
14 are six years old. Then you have another appraisal by  
15 the same appraiser that's grossly different from the  
16 first appraisal. You're supposed to tell the  
17 commissioners to go resolve that. The value per unit  
18 went up 150,000, to 100 to 150,000. But the number of  
19 units then drops from 53 to 32. There was nothing  
20 changed that led to those -- the drop in the number of  
21 units. It was the same easement, it was the same bulk  
22 standards. It was just that they sent somebody out  
23 here and said figure out a way to drop the number of  
24 units, keep the price where it is. And that's what  
25 happened in this case.

1 Now, it said that in his brief that -- in Mr.  
2 Buzak's brief, that, you know, we kind of -- we kind of  
3 skipped over telling the court about the redevelopment  
4 discussions. Well, we had pages about the  
5 redevelopment discussions. You know, basically the --  
6 the mayor on the other hand skipped from December when  
7 he made the offer of 5.3 to -- to a June, a year and a  
8 half later, when he called off the -- the -- the  
9 process of redevelopment. I mean we explain that. But  
10 it certainly is not -- not a substance for adherence to  
11 the statute.

12 So, Your Honor, I -- I don't think there  
13 could be any real argument made that the pre-litigation  
14 statutory criteria which is geared to finding just --  
15 getting to just compensation. It's part of the just  
16 compensation Fifth Amendment process here. And clearly  
17 it wasn't carried out by the city and knowingly so.  
18 They decided to go ahead with this -- this 2017  
19 appraisal because it had been approved by counsel.  
20 They wanted to go ahead. They didn't want to go back  
21 to counsel and -- and tell them that they had made a  
22 mistake or they didn't want to go back to counsel to  
23 get a -- with another appraisal. So they just went  
24 ahead with -- with something that they knew was  
25 erroneous. And that -- that is, again, the -- the

1 opposite of -- of what this statute contemplates.

2 THE COURT: Okay. You wanted to make --  
3 you wanted to respond to three points you said?

4 MR. COAKLEY: I -- I think -- well, I think  
5 -- I -- I -- yes, I would. The first point was -- was  
6 there's noth -- it was nothing new in terms of bulk  
7 standards nor easements between the 53 and the 32.

8 Secondly, the redevelopment plan, everything  
9 had the R-3 overlay. All of the Jefferson property had  
10 the R-3 overlay, except this .8 acres.

11 And, you know, even in 2019 Mayor Bhalla when  
12 he wrote to the counsel, and this exhibit G to Mr.  
13 Buzak's certification, he says to counsel proudly as a  
14 reminder of block 10 the additional acre of land for a  
15 potential southwest parking expansion was not included  
16 in the southwest redevelopment plan. That's on page 2  
17 under southwest parking expansion. I mean not only  
18 did the -- the city officials do this for a reason but  
19 they touted this kind of blatant disregard for  
20 propriety. And -- and I don't think that's excused  
21 because the -- the appraiser, you know, sort of ignored  
22 it away by -- by looking at the development under -- as  
23 if it were zoned R-3. But when they did this, when  
24 they passed this plan, they have malice of forethought.  
25 They were -- they were thinking that this was going to

1 give them some edge up.

2 So, Your Honor, I think we -- we want to  
3 avoid the consequences of what happens here.

4 I just like to mention the Saint Mary's case.  
5 You know, it's an unpublished decision. It involved a  
6 temporary easement over a cemetery in a -- in a small  
7 town in -- in Camden County, not a -- and it was -- it  
8 dealt with a stale appraisal, not at an appraiser  
9 that's erroneous and not appraiser in the city of  
10 Hoboken which is the hottest real estate market in New  
11 Jersey, vastly different situation.

12 So, Your Honor, I think for those reasons we  
13 -- we'd ask the court to -- dismiss this complaint.  
14 Thank you.

15 THE COURT: Thank you. You want to respond  
16 at all, Mr. Buzak?

17 MR. BUZAK: Thank you, Your Honor.

18 May it please the court. Again, we have a  
19 number of characterizations made, you know, to enhance  
20 the position that the defendants are taking.

21 When you look at the explanation that I have  
22 provided to the court in terms of the manner in which  
23 these items have been sequencing and the fact that,  
24 yes, in the southwest redevelopment plan that area  
25 because -- because it is a redevelopment plan, that

1 area was designated as park area. That's exactly what  
2 this was supposed to be about. But the point is that  
3 when the city went to acquire it, as I said, they did a  
4 very poor job if their intention was to diminish the  
5 value of that property for the purposes of their  
6 subsequent acquisition, because had they done that they  
7 would have come out and undertaken an appraisal based  
8 upon a highest and best -- best use as permitted in the  
9 I-2 zone. They didn't do that.

10 So I think that that demonstrates that the  
11 city did not act in bad faith at all and in fact moved  
12 forward acting in good faith to come up with the value  
13 of that property based upon residential use as opposed  
14 to industrial use.

15 I contend again, Your Honor, that at the end  
16 of the day if there is not going to be alternate  
17 negotiations as set forth in the statute, and -- and  
18 we've pointed this out in our brief and I'd like to  
19 point it out again to the court, that the activation or  
20 the pre-requisite for the bringing of this order to  
21 show cause is that if the -- if the parties "by reason  
22 of disagreement concerning the compensation to be paid  
23 or for any other cause" you're unable to acquire the  
24 property, then you have to activate the formal process.  
25 That is what happened here in both regards. It was as

1 to value of the property because in the end that's what  
2 the commissioners are going to determine. They're not  
3 going to determine how the balance of the property  
4 develops. They're going to determine at the end of the  
5 day what this property is worth, what the fair market  
6 value is.

7 There was an attempt to approach this in an  
8 alternate way and it didn't work out. That happens.  
9 I -- that -- that's -- the fact that at the end the  
10 parties are unable to resolve the matter doesn't mean  
11 that people were proceeding in bad faith.

12 And, again, Your Honor, I point out that when  
13 the city did the 2019 appraisal they -- they came up  
14 with a lower number based upon the plan that had been  
15 prepared by a planner. This wasn't a back in the  
16 napkin plan that was done, you know, by the mayor, no  
17 offense to the mayor, or by, you know, the janitor.  
18 This was a plan that was done by a reputable planner  
19 who determined that if this property were developed  
20 utilizing those R-3 standards you would get 32 units on  
21 there.

22 One could argue, Your Honor, on the other  
23 side of the coin that the bad faith was expressed by  
24 the defendant's planner who said not that it's 53 units  
25 but I'm going to show you how you can get 80 units on

1 there. So now I can enhance this value of the property  
2 to \$24 million and we'll discount it by 10 percent and  
3 get it down to \$21 million. That's what I'm going to  
4 do for you as your planner. Why is that good faith?  
5 Why is that good faith when that's what they come back  
6 with and we're only looking at it from the city's point  
7 of view?

8 As the case law points out, Your Honor, it  
9 takes two to negotiate and both sides are attempting  
10 here to -- to do that. I'm not surprised at what  
11 happened here. It -- it -- it doesn't shock me,  
12 doesn't shock me that Mr. Phillips came up with 80  
13 units. It doesn't shock me that Mr. Brody came up with  
14 \$24 million. I'm -- I'm not surprise at that.

15 THE COURT: That -- that -- that's not a  
16 concern of the court's. What the -- what the property  
17 owner's appraisal is, that's irrelevant to -- to the  
18 determination that has to be made here. The onus is on  
19 the condemning authority, not the defendants. They  
20 don't have to do anything.

21 MR. BUZAK: I -- I understand, Your Honor.  
22 But they do have to --

23 THE COURT: So the point here is there was  
24 a 15-month delay in the revised appraisal. Counsel's  
25 position is you acknowledged your appraisal was faulty.

1 You said you were going to revisit it. It was never  
2 revisited. That's the argument. You never revisited  
3 the price. And the fact that you filed this proceeding  
4 based on what everyone knows is an inaccurate  
5 appraisal, how is that right?

6 MR. BUZAK: Because, Your Honor, what we did  
7 --

8 THE COURT: You can't low ball somebody and  
9 say we're going to see what the commissioner say.  
10 That's not how condemnation works. You don't get to do  
11 that. This is not negotiation in the real world. This  
12 is negotiation in a statutory world.

13 MR. BUZAK: Understood, Your Honor. I -- I  
14 -- I fully understand that and --

15 THE COURT: So it's not just negotiations.  
16 I find it somewhat interesting that you can reduce the  
17 number of units because a planner says something as  
18 opposed to what the appraiser is saying, that you were  
19 going to revisit --

20 MR. BUZAK: Well --

21 THE COURT: -- this. You acknowledged your  
22 appraisal was inaccurate.

23 So that to me the implication is it's going  
24 to be more than 5.3 million because it was wrong.  
25 Instead, we have an appraisal that you didn't even want

1 to use. And I'll leave that to you why you didn't want  
2 to use it. Because now you're saying, guess what, the  
3 market's better, these units are worth \$50,000 more but  
4 you're not getting 53, you could only get 32.

5 MR. BUZAK: Well, Your Honor, I think --

6 THE COURT: And you're using the wrong  
7 zone. The property's not even zoned for R-3. Why  
8 didn't you use a different zone? How about a different  
9 R if you were going to pick one? Why'd you pick R-3?  
10 Is that the lowest?

11 MR. BUZAK: That -- no, Your Honor. That --  
12 that's the -

13 THE COURT: Is that the lowest residential  
14 in terms of units?

15 MR. BUZAK: No, that's -- that's the overlay  
16 zoning --

17 THE COURT: No, I didn't ask you that. Is  
18 R-3 the lowest? This is not an R-3 zoned property.  
19 Your appraiser picked R-3. Is R-3 the lowest density  
20 residential zoning in Hoboken?

21 MR. BUZAK: I do not know that, Your Honor.  
22 I -- I apologize, but I don't know that.

23 THE COURT: Well, what is R-2 and R-1? Do  
24 they allow more units?

25 MR. BUZAK: I -- Your Honor, I -- I have to

1 admit, I don't know that.

2 THE COURT: Okay.

3 MR. BUZAK: And I don't want to misrepresent  
4 anything to the court --

5 THE COURT: All right.

6 MR. BUZAK: -- and speculate on what that  
7 is.

8 THE COURT: Okay.

9 MR. BUZAK: But that R-3 zoning, Your Honor,  
10 was based upon the southwest redevelopment plan that  
11 affected the overlay zoning for --

12 THE COURT: Yeah, but, see, you want it  
13 both ways.

14 MR. BUZAK: -- that underlying property.

15 THE COURT: This is what I love about  
16 Hoboken. You made it industrial but you're standing in  
17 front of me saying, yeah, but now we're going to make  
18 it R-3.

19 MR. BUZAK: Well, Your Honor, we didn't make  
20 it industrial.

21 THE COURT: You made it industrial.

22 MR. BUZAK: It had -- well, it had been --

23 THE COURT: You left it industrial.

24 MR. BUZAK: We left it industrial. And --

25 THE COURT: You carved it out.

1 MR. BUZAK: But -- but --

2 THE COURT: You can call it whatever you  
3 want.

4 MR. BUZAK: But for the --

5 THE COURT: It's conspicuously obvious to  
6 this court what you did with those .8 acres.

7 So now the question is is that conspicuous  
8 enough to say I'm going to dismiss your complaint  
9 because the whole thing doesn't pass the smell test.

10 MR. BUZAK: And, Your Honor --

11 THE COURT: So what I'm going to tell you  
12 to do before I write my opinion is to go back and talk  
13 to each other and tell Hoboken the concerns the court  
14 has and see if they truly want to negotiate or want to  
15 take a chance at my decision. That's about as open and  
16 candid as I can be, cause that's my strong suggestion  
17 to Hoboken. But they can disregard it as they've done  
18 in the past. And I'm fully prepared to write an  
19 opinion.

20 It doesn't pass the smell test, Mr. Buzak.  
21 That's about as crass and low I can be.

22 As I said, it's not just that you have to be  
23 trustworthy. You have to appear to be trustworthy.  
24 That's the court's directive. And I have trouble  
25 finding what occurred here to have the appearance of

1 trustworthiness.

2 So you have a choice. You can discuss it  
3 with each other. If you don't want to negotiate any  
4 further, you can tell me that and I'll write my  
5 opinion. Or I'll give you time to talk to each other  
6 one more time. You don't have to let me know now. Let  
7 me know Monday or tomorrow by an e-mail whether you  
8 want to continue negotiations or whether the court  
9 should write its opinion.

10 MR. BUZAK: I will confer with the city,  
11 Your Honor. And I appreciate --

12 THE COURT: And I think that counsel should  
13 be told directly that their appraisal is wrong and was  
14 inaccurate, and the court finds it very disturbing that  
15 that's the exact appraisal the city's relying on.

16 First time I've ever heard an entity come in  
17 here and say our appraisal's inaccurate but we're  
18 relying upon it for condemnation. That's not a  
19 decision for the commissioners to make.

20 And I apologize for raising my voice, but I'm  
21 getting tired of these condemnations from Hoboken like  
22 this. And you know what I'm talking about. We've been  
23 through this. In fact, you used Ponte in your brief.  
24 I don't like this.

25 Off the record.

COURT CLERK: All rise.  
(Off-the-Record)

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CERTIFICATION

I, KAREN A. ANTERO, the assigned transcriber, do hereby certify the foregoing transcript of proceedings in the Superior Court of New Jersey on November 6, 2019, digitally recorded, index number from 2:07:13 p.m. to 3:05:48 p.m., is prepared to the best of my ability and in full compliance with the current Transcript Format for Judicial Proceedings and is a true and accurate compressed transcript of the proceedings as recorded.

*Karen Antero*

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Karen A. Antero, AOC #106

November 13, 2019

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