SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3605-21

STATE OF NEW JERSEY,
by the COMMISSIONER OF
TRANSPORTATION,

Plaintiff-Respondent,

v.

550B DUNCAN AVENUE, L.L.C.,
a New Jersey Limited Liability
Company,

Defendant-Appellant,

and

NIJA LEASING CORP., a New
Jersey Corporation, RETAIL
LEASING SERVICES, L.L.C.,
a New Jersey Limited Liability
Company, CENTER CITY
CONSOLIDATORS CORP.,
a New Jersey Corporation,
CENTER CITY COURIERS,
INC., a New Jersey Corporation,
RETAIL DISTRIBUTION AND
LOGISTICS, L.L.C., a New
Jersey Limited Liability Company,
JAY DEE FAST DELIVERY,

MALL DELIVERY SERVICE, INC., a New Jersey Corporation, STATE OF NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION, and CITY OF JERSEY CITY, in the County of Hudson, a Municipal Corporation of New Jersey,

Defendants.

Argued December 12, 2023 – Decided June 12, 2024

Before Judges Haas and Natali.

On appeal from the Superior Court of New Jersey, Law Division, Hudson County, Docket No. L-1183-20.

Ryan Andrew Benson argued the cause for appellant (Connell Foley LLP, attorneys; Kevin J. Coakley of counsel and on the briefs; Ryan Andrew Benson, on the briefs).

Rebecca J. Karol, Deputy Attorney General, argued the cause for respondent (Matthew J. Platkin, Attorney General, attorney; Donna S. Arons, Assistant Attorney General, of counsel; Rebecca J. Karol, on the brief).

PER CURIAM

In this condemnation action, 550B Duncan Avenue, LLC, (550B) challenges a series of Law Division orders related to a parcel of property in Jersey City. The first order, dated March 3, 2021, denied 550B's application to amend the declaration of taking. 550B also challenges the court's decisions on

two separate occasions, April 16, 2021 and August 6, 2021, denying its motions to reconsider the March 3rd order.[1] 550B also argues the court incorrectly granted the State's motions in limine which limited its proofs on the valuation issue at trial. Finally, 550B argues these errors cascaded into a June 23, 2022 final judgment which failed to justly compensate it for a portion of the condemned property, and also resulted in the State being absolved of its obligation, as mandated by N.J.S.A. 20:3-37, to acquire the resulting remnant of the condemned property which it describes as an "uneconomic remnant." Having considered the parties' arguments against the record, applicable standards of review, and the substantive law, we remand this matter for ancillary proceedings for the court to address the ownership, and if necessary, valuation, of the disputed property at issue.

[1] We acknowledge 550B did not specifically identify the two reconsideration orders in its notice of appeal. We nevertheless consider those orders properly before us for two independent reasons. First, 550B clearly placed the reconsideration orders before us in its case information sheet, in which it described in detail the parties' positions and the court's rulings with respect to those motions. See Synnex Corp. v. ADT Sec. Servs., 394 N.J. Super. 577, 588 (2007) (noting text of appellant's case information sheet indicated primary issue of appeal addressed by order not included in notice of appeal was nevertheless properly before the court). Second, 550B appeals from the court's final judgment, "which encompasses all interlocutory orders upon which the judgment is based." Ibid.

I.

In March 2020, the State of New Jersey, acting through the Commissioner of Transportation, filed a verified complaint in condemnation and thereafter a declaration of taking identifying, among other land, Parcel 16A, also known as Block 11707, Lot 4 in Jersey City. The State's April 2016 Takings Map, which it appended to the declaration of taking, depicted the condemned property and surrounding area. According to that map, Parcel 16A, consists of approximately 6,930 square feet of land, is somewhat triangular in shape and bordered by the Pulaski Skyway to the south, an adjacent landowner to the east, and the Hackensack River to the west. The border with the Hackensack River is delineated by the Mean High Water Line (MHWL),[2] which a State-contracted surveyor calculated in 2014.

Waterward of the MHWL is the State Tidelands Claim Line, and further waterward is the pierhead and bulkhead line. Note three on the Takings Map expressly states there is no "record of [a] riparian grant located, though deed

[2] "The high water mark is the point where the ocean ends and the dry sand begins at high tide. The mean high water mark is that point calculated based on the 'average of all the high tides over a period of 18.6 years.'" City of Long Branch v. Jui Yung Liu, 203 N.J. 464, 469 n.2 (2010) (quoting O'Neill v. State Highway Dep't., 50 N.J. 307, 323-24 (1967)).

claims ownership to pierhead & bulkhead line."[3] The declaration of taking included a detailed written description of the condemned land which stated, in precise measurements, that the proposed taking encompassed the land within Parcel 16A up to the MHWL of the Hackensack River.

Finding the State "duly exercised its power of eminent domain as to the property and rights described and depicted in the [v]erified [c]omplaint," the court entered an order for final judgment and appointed commissioners to "fix compensation to be paid for the for the rights and interests acquired." 550B did not oppose the court's order or object to the description of the condemned land.

The condemnation commissioners thereafter held a hearing in which 550B's appraiser, Jon P. Brody, MAI, CRE, testified and prepared an accompanying report. In his report, Brody opined just compensation for the condemned property and damages with respect to the remainder of the property totaled $2,199,000. This figure included a $346,500 valuation of Parcel 16A and also included a $360,000 valuation of the remnant of Lot 4, that is, the area between the MHWL of Parcel 16A and the Tidelands Claim Line, an area the

[3] "Riparian lands are lands lying along the banks of a stream or water body. . . A riparian grant, in turn, is the method by which the State conveys riparian lands to its citizens." Pannetta v. Equity One, Inc. 190 N.J. 307, 318 (2007) (internal citations omitted).

declaration of taking did not condemn. Brody later amended the latter valuation to $304,427 based on a new measurement of the remnant totaling 7,163 square feet. The State's appraiser, Mark Karavolos, opined just compensation for the taking to be $764,000, and did not include any valuation for the remnant of Lot 4. Subsequently, the commissioners issued a report determining just compensation for the taking, "including the damage, if any, resulting from the taking, to any remaining property," to be $1,651,000. The commissioners' report did not include any specific findings or statement of reasons.

The State appealed the commissioners' report to the Law Division and 550B moved to amend the declaration of taking to compel the State to condemn the entirety of Lot 4 as depicted on the Jersey City Tax Map and described in their deed pursuant to N.J.S.A. 20:3-37. Specifically, in addition to the land identified as Parcel 16A, 550B demanded the State also take the remnant of Lot 4, the area between the MHWL and the Tidelands Claim Line, which, according to 550B, belongs to 550B and will be an inaccessible uneconomic remnant due to the State's taking of Parcel 16A.

The first judge[4] heard oral argument and subsequently denied 550B's motion. In an accompanying written opinion, the judge found 550B's motion was "procedurally proper" because, "[a]t its core, 550B's motion alleges damages to the remainder of property purportedly owned by defendants." The judge, however, denied 550B's motion as "substantively unavailing."

As the judge explained, "[i]n an unbroken line of cases, New Jersey courts consistently have held that tidally flowed lands up to the MHWL are owned in fee simple by the State." The judge also noted the State "exercised the power of eminent domain to seize all realty up to the MHWL, and the State already owns all realty below the MHWL. There simply is no more realty to be parceled out." Because 550B did not possess a riparian grant, the court found 550B could not claim title to the land below the MHWL. The judge also stated, without further explanation, "[a]lthough defendants' claims may warrant additional review, this is not the proper action within which those claims are cognizable."

550B moved for reconsideration and argued the judge erred in considering the State's tidelands claim as anything more than a cloud on 550B's title to the land and that the State did not bring an action to quiet title to the property.

[4] Three different judges issued orders and opinions with respect to the orders before us. For ease of reference, we refer to the judges numerically, intending no disrespect.

Additionally, having now "inquired into [c]ondemnor's claim of erosion and the discrepancy between the State Tidelands Claim Line and the MHWL on Lot 4," 550B filed certifications and exhibits from, among others, George Cascino, P.E., P.P., in which he stated to have observed no "appreciable change" in the MHWL of the subject area between 1930 and 1977, about the time when the Tidelands Claim Line was drawn. Cascino thus opined the post-1977 shift in the MHWL was the result of avulsion caused by two events, the extinguishing of a landfill fire in 1985-86 and Superstorm Sandy in 2012.

A second judge ruled on 550B's motion for reconsideration and denied its application. In his oral decision, he noted, "[a] motion for reconsideration is a review of the evidence before the court on the initial motion," and, "[e]vidence of avulsion, while it may potentially exist[], was never brought to the court's attention and therefore the court does not believe that consideration is appropriate." The judge rejected 550B's argument it did not have ample time to investigate the change in the MHWL, as 550B neither requested an adjournment nor did it mention avulsion in the prior proceeding.

550B filed a motion for leave to appeal, which we denied, and thereafter filed a second motion for reconsideration relying on our decision in Lawson v. Dewar, 468 N.J. Super. 128 (App. Div. 2021). The second judge, the same who

denied 550B's first motion for reconsideration, again denied 550B's motion and stated, "the essential issue" under the standard outlined in Lawson is "whether grave damage or injustice will result from a court order that would mandate the review of the order under reconsideration." The judge found it was not in the interest of justice "to allow these defendants in the valuation stages of the condemnation action to attempt to expand the amount of property that it owns in order to increase valuation."

The judge reasoned the underlying decision "was clear, cogent and answered the question that [the first judge] framed properly and consistent with the established law." Further, the judge stated the initial judge's decision "was not arbitrary, capricious nor unreasonable and was certainly supported by both credible evidence and confirmed with the appropriate law."

Prior to trial, the State filed two motions in limine to bar 550B from presenting evidence pertaining to the ownership and value of the remnant of Lot 4. Specifically, the State sought to bar portions of the Cascino certification and report concerning the ownership of land beneath the MHWL and portions of the Brody appraisal report addressing the valuation of such land.

A third judge issued an oral decision granting the State's motions, but failed to issue a written order. In granting the State's motions, the judge stated

allowing such evidence "would run contrary to the court's prior rulings in connection[] with [550B]'s prior motions." The judge also found "the motions in limine to exclude evidence on issues that were precluded from this case based upon prior rulings of the court are appropriately brought at this juncture and do not violate the due process underpinnings relied upon by the court in [Cho v. Trinitas Regional, 443 N.J. Super 471, 472 (App. Div. 2015)]."

The judge found the due process concerns addressed in Cho were not implicated by the State's motions. The judge stated 550B had multiple opportunities to make its ownership argument with respect to the land below the MHWL, specifically, through motions "initiated on [550B]'s own accord and brought to the court's attention for decision by way of the defendants seeking a court order amending the declaration of taking, two subsequent motions for reconsideration and a motion for leave to file an interlocutory appeal before the Appellate Division."

Further, the judge found "the prior rulings of the court denying the application for [an] amended declaration of taking to encompass rights to property under the MHWL constitute the law of the case on that issue." The judge noted in deciding the motion to amend the declaration of taking, the initial judge "found that the condemnation of [L]ot 4 in effect was total taking," and,

on reconsideration, the second judge "found that it was not in the interest of justice to allow defendants to expand the record as to the amount of the property that it owns in order to increase valuation."

The judge also stated the issue of avulsion was "argued" and "denied" by the first judge when he denied 550B's motion to amend the declaration of taking and noted the issue was again addressed on reconsideration where the second judge found the first judge's underlying decision to be correct because "nowhere in the papers for the initial motion . . . was avulsion asserted nor even mentioned." As such, the judge found the law of the case doctrine applied "since the court previously found that the condemnation of [L]ot 4 in effect was a total taking," as the declaration of taking identified 550B's property up to the MHWL and the State is the owner of the property waterward of the MHWL. The judge stated for her "to again consider whether or not there was a shift due to avulsion would run contrary to the prior rulings of the court."

In light of those previous rulings, the judge determined evidence with respect to the issues of ownership and valuation of land waterward of the MHWL was not relevant under N.J.R.E. 401. The judge concluded the jury could only determine the just compensation of the property identified in the declaration of

taking, and because the court "twice refused" 550B's requests to amend the declaration of taking, the court granted the State's motions in limine.

At trial, the jury awarded 550B $1,025,689.14 as just compensation for the taking. Over 550B's objection, the order for final judgment did not reference either parties' property interest in the remnant of Lot 4 as the third judge stated she was "not adding any findings with regard to ownership or any other rulings outside of what has been consented to by the parties or reflects the jury's verdict to this order." Subsequently, two months after trial and the entry of final judgment, 550B requested the judge enter a written order memorializing her prior oral decision granting the State's motions in limine, but the judge declined to do so. This appeal followed.

II.

As noted, before us, 550B challenges the denial of its motion to amend the declaration of taking, the orders denying its reconsideration application, the order for final judgment to the extent it does not require the State to take the remnant of Lot 4 and justly compensate 550B, and the post-judgment order declining to enter orders granting the State's motions in limine.

With respect to the court's denial of 550B's motion to amend the declaration of taking, 550B argues the court's decision was "palpably incorrect"

because as the record owner of the land waterward of the MHWL, 550B had the right to compel the State to take the entirety of Lot 4. According to 550B, the State's taking of Parcel 16A was a partial taking and left 550B with an uneconomic remnant. As such, relying on State by Comm'r of Transp. v. William G. Rohrer, Inc., 80 N.J. 462, 465-67 (1979) and N.J.S.A. 20:3-37, 550B argues the State must take the remnant of Lot 4 and justly compensate 550B.

550B further asserts, relying on City of Long Branch, 203 N.J. at 475-79, avulsion rather erosion altered the MHWL, and 550B was therefore not divested of title to the land waterward of the current MHWL. 550B also cites O'Neill, 50 N.J. at 327-28, and contends the cause of any shift in the MHWL constitutes a factual dispute to be resolved at trial and the court's error in concluding the State owned the land waterward of the MHWL based on erosion denied 550B just compensation of that land. Additionally, 550B asserts the State's ownership of the land waterward of the MHWL is not "self-executing," and because the State did not quiet title to the land, 550B remains the owner.

Addressing the timeliness of its motion to amend the declaration of taking, 550B argues title dispute are cognizable at any time in an ancillary proceeding and states, according to N.J.S.A. 20:3-5, "[t]he court shall have jurisdiction . . . to determine title to all property affected by the action." 550B also relies on

State by Comm'r of Transp. v. S. Hackensack, 111 N.J. Super. 534 (App. Div. 1970) and Rule 4:73-2(b) which provide, "[i]f the title to the land or other property to be taken is in dispute, the dispute shall be tried either before or after the determination of damages as the court may direct." As such, 550B argues while the question of title was not one for the jury, the court erred in not determining title in an ancillary proceeding, or outside the presence of the jury.

We begin by setting forth the principles that guide our analysis. Our review of rulings of law and issues regarding the applicability, validity, or interpretation of laws, statutes, or rules is de novo. Indeed, "[a] trial court's interpretation of the law the legal consequences that flow from established facts are not entitled to any special deference." Rowe v. Bell & Gosset Co., 239 N.J. 531, 552 (2019) (quoting Manalapan Realty, L.P. v. Twp. Comm. of Manalapan, 140 N.J. 366, 378 (1995)).

We turn first to the condemnation issue and note such actions involve the issuance of two final judgments by the Superior Court. State ex rel. Comm'r of Transp. v. Shalom Money St., LLC, 432 N.J. Super. 1, 5 (App. Div. 2013). The first "declares that 'the condemnor is duly vested with and has duly exercised its authority to acquire the property being condemned,' N.J.S.A. 20:3-8, N.J.S.A. 20:3-2(j), and appoints 'three commissioners to determine the compensation to

be paid by reason of the exercise of such power,' N.J.S.A. 20:3-12(b)." Hous. Auth. of New Brunswick v. Suydam Investors, L.L.C., 177 N.J. 2, 16 (2003). The second "deals exclusively with the valuation of the condemned property." Ibid. (citing N.J.S.A. 20:3-12(g)-(h)).

The only issue before the commissioners, and the finder of fact in the event of an appeal, is the compensation amount to be paid by the condemnor for the taking, "plus any damages to the remaining property of the owner if the taking is only a part thereof." State by Comm'r of Transp. v. Orenstein, 124 N.J. Super. 295, 298 (App. Div. 1973) (quoting State v. New Jersey Zinc Co., 40 N.J. 560, 573 (1963)). If there are issues beyond valuation and damages, "be they a challenge to the State's right to exercise the power of eminent domain or a claim that the condemnor is in fact taking more property and rights than those described in the complaint," such issues "must be presented to and decided by the court before it enters judgment appointing condemnation commissioners." Ibid. As noted, however, Rule 4:73-2(b), provides, "[i]f the title to the land or other property to be taken is in dispute, the dispute shall be tried either before or after the determination of damages as the court may direct."

Relevant to 550B's argument, N.J.S.A. 20:3-37 states, "[i]f as a result of a partial taking of property, the property remaining consists of a parcel or parcels

of land having little or no economic value, the condemnor, in its own discretion or at the request of the condemnee, shall acquire the entire parcel." In Rohrer, the Supreme Court held the condemnee, when faced with a partial taking, had the option to either (1) convey the entire tract of land to the State and receive full compensation, or (2) convey the partial tract, receive full compensation, and retain title to the remnant. 80 N.J. at 467-68. Additionally, "[t]he court shall have jurisdiction of all matters in condemnation, and all matters incidental thereto and arising therefrom, including . . . to determine title to all property affected by the action." N.J.S.A. 20:3-5.

We next turn to the public trust doctrine and the principles governing property ownership along the shoreline. "Under the public trust doctrine, and long-standing common-law principles, the land seaward of the mean high water mark belongs to the people of this State." City of Long Branch, 203 N.J. at 469. With respect to the ownership of waterfront property, "the State of New Jersey 'owns in fee simple all lands that are flowed by the tide up to the high-water line or mark,'" id. at 475 (quoting O'Neill, 50 N.J. at 323), and the adjacent property owner holds title to the land upland of the high water mark. Ibid. (citing Borough of Wildwood Crest v. Masciarella, 51 N.J. 352, 357 (1968)). As such,

the MHWL generally divides private ownership of dry land and public ownership of tidally flowed lines. Id. at 476.

Courts recognize, however, shorelines are constantly in flux and distinguish between MHWL changes caused by accretion, erosion, and avulsion. Ibid. Accretion occurs when sand, sediment, or other deposits extend dry land seaward "gradually and imperceptibly--that is, so slowly that one could not see the change occurring, though over time the difference became apparent." Ibid. (quoting Stop the Beach Renourishment, Inc. v. Fla. Dep't of Envtl. Prot., 560 U.S. 702 (2010)). Erosion is the opposite of accretion, as it is "the gradual and imperceptible withdrawal of alluvion from the shoreline, thereby shortening the amount of dry land on the beach." Id. at 477.

With respect to property demarcation, "the owner of oceanfront property takes title to dry land added by accretion, but loses to the State title over land that becomes tidally flowed as a result of erosion." Ibid. Accordingly, when erosion or accretion causes a shift in the MHWL, "[the MHWL] remains the dividing point between the upland owner's property and the tidally flowed land held in trust for the people." Id. at 477. This is so because "[t]he proprietor of lands having a boundary on the sea is obliged to accept the alteration of his

boundary by the changes to which the shore is subject[,] . . . [losing] by the same means that may add to his territory." Ibid. (internal citations omitted).

Distinct from the processes of accretion and erosion, avulsion is "a sudden and perceptible loss or addition to land by the action of water or otherwise." Ibid. (quoting Garret v. State, 118 N.J. Super. 594, 600 (Ch. Div. 1972)). "Avulsion, therefore, is 'more rapid [and] easily perceived' than accretion and erosion, and comes about by 'sometimes violent shifts of land incident to floods, storms or channel breakthroughs.'" Id. at 477-78 (quoting Garrett, 118 N.J. Super. at 601).

Accordingly, when the MHWL shifts due to avulsion, the property line does not shift; rather, the prior MHWL remains the boundary between a waterfront property owner and the State. Id. at 478. As such, when avulsion causes water to cover what was previously dry land, and the MHWL is under water, the upland owner will hold title up to the MHWL, including the portion under water. Ibid.

When the title of land "depend[s] upon whether a change in riparian land has occurred by reason of erosion or avulsion, it will be presumed, in the absence of clear evidence to the contrary, that the change was by erosion rather than avulsion." 78 Am. Jur. 2d. Waters § 344 (2013). Additionally, in City of Long

Branch, a case involving ownership of a beachfront that had expanded 225 feet, the court noted "the burden of establishing whether the beach increased by accretion or avulsion rested with the [property owners]—who were in the best position to know when and how the shoreline to their property changed." 203 N.J. at 484.

III.

Against the aforementioned legal principles and after a conscientious review of the record, we are convinced that the matter should be remanded for further development with respect to the ownership and, if necessary, the value of the remnant of Lot 4. We reach this decision because, despite the proceedings before the commissioners and Law Division, including multiple reconsideration applications and a valuation trial, as best we can discern, no factfinding ever took place as to the disputed ownership interest of the remnant of Lot 4.[5]

We acknowledge the timing of defendant's motion to amend the declaration of taking was not ideal. For sure, the more efficient, and appropriate,

[5] As noted, the commissioners determined just compensation for the taking, "including the damage, if any, resulting from the taking, to any remaining property," to be $1,651,000. Neither party argued before the court, or us, that the commissioners' compensation determination included compensation for the remnant of Lot 4, notwithstanding the aforementioned phrase in the commissioners' report.

avenue to address the legal issue before us would have been for 550B, prior to entry of the May 22, 2020 order appointing commissioners, to have raised the disputed issue of ownership of the remnant of Lot 4, or to have timely presented the avulsion issue before the Law Division. And while we acknowledge the holding in Orenstein, 124 N.J. Super. at 298, that the only issue before the commissioners, or finder of fact in the event of an appeal, is the value of the taking and damages to the remaining property if the taking was partial, we do not understand that principle to serve as an immutable and preclusive bar to the just resolution of disputes such that the result requested by the State should abide, particularly in light of the unique procedural circumstances presented by this appeal. Those include a process in which, during the condemnation proceedings, 550B clearly raised the issue that unless considered by the commissioners, the taking would leave an uneconomic remnant, its prompt raising of the issue before the Law Division which the initial judge determined was "procedurally proper" as the application fundamentally "allege[d] damages to the remainder of property purportedly owned by defendants," and requests for reconsideration and further requests to value the remnant of Lot 4 during trial.

The effect of not addressing the issue resulted in 7,163 square feet of property, valued at in excess of $300,000 according to 550B, that the State

refuses to accept as part of its taking, as evidenced by its refusal to consent to a final judgment stating the land below the MHWL belonged to the State, and thus, at present, remains 550B's responsibility for the payment of taxes and associated liabilities. By failing to resolve this issue, we conclude the court, in denying the application to amend the taking, in refusing twice to reconsider 550B's application, and by precluding 550B from presenting proofs on the value at trial, committed legal error and abused its discretion.

Our decision is fully informed by the fact that although 550B did not move to amend the declaration of taking until after the commissioners' hearing, the issue of the remnant of the Lot 4 was raised prior to that motion. Indeed, at the commissioners' hearing defendant's appraiser testified to the value of, and damages to, the remnant of Lot 4 and identified the land as an uneconomic remnant. Additionally, 550B's counsel, invoking Rohrer, stated at the commissioners' hearing, "the property owner is willing to convey to the State the entirety of [L]ot 4. But seeks compensation for . . . the part of the value of Lot 4 that is being taken without compensation." The State's counsel, however, responded, "the State isn't going to compensate the property owner for property that the property owner does not own." As such, it is clear the State was on notice of defendant's intentions with respect to the remnant of Lot 4 prior to

defendant's motion and would not have been prejudiced by the court addressing the merits of the issue.

We also fully take the State's point, as previously noted, that after the appointment of commissioners in an eminent domain matter, the only issue for the commissioners or fact finder is valuation and damages, see Orenstein, 124 N.J. Super. at 298. But, as noted by the initial judge, 550B's motion to amend the declaration of taking did relate to valuation and damages and in the subsequent proceedings before the court, 550B requested the court address the issue of ownership of the remnant of Lot 4 in an ancillary proceeding. Moreover, as 550B points out, if a partial taking results in an uneconomic remnant, N.J.S.A. 20:3-37 enables a condemnee to compel the State to "acquire the entire parcel." Here, whether the State's taking is full or partial depends on the status of title to the remnant of Lot 4, an issue the court has jurisdiction to determine. See N.J.S.A. 20:3-5.

Accordingly, on remand, the court shall conduct ancillary proceedings to address all ownership issues related to the remnant of Lot 4 and permit the State an opportunity to address avulsion, or any related issue. We leave the scope of any pre-hearing discovery to the court's discretion. Obviously, if the State is successful on the issue, the matter is concluded. In the event the court concludes

550B owns the remnant of Lot 4, contrary to the State's contentions, appropriate proceedings shall commence to value that property. We take no position with respect to outcome of the remanded proceedings.

Finally, we do not reach this decision lightly and in doing so, expressly state our determination should in no way be interpreted as a criticism of the conscientious judges who presided over the matter.

Remanded for proceedings consistent with this opinion. We do not retain jurisdiction.