SENATE, No. 1115

STATE OF NEW JERSEY

219th LEGISLATURE

INTRODUCED JANUARY 30, 2020

Sponsored by:
Senator JOSEPH F. VITALE
District 19 (Middlesex)

SYNOPSIS

Requires "just compensation" for condemnation of single-family residence to be based on cost of comparable relocation properties within 20 mile radius.

CURRENT VERSION OF TEXT

As introduced.

AN ACT concerning just compensation for certain residential condemnations and amending P.L.1971, c.361.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

1. Section 6 of P.L.1971, c.361 (C.20:3-6) is amended to read as follows:

6. Whenever any condemnor shall have determined to acquire property pursuant to law, including public property already devoted to public purpose, but cannot acquire title thereto or possession thereof by agreement with a prospective condemnee, whether by reason of disagreement concerning the compensation to be paid or for any other cause, the condemnation of such property and the compensation to be paid therefor, and to whom payable, and all matters incidental thereto and arising therefrom shall be governed, ascertained and paid by and in the manner provided by this act; provided, however, that no action to condemn shall be instituted unless the condemnor is unable to acquire such title or possession through bona fide negotiations with the prospective condemnee, which negotiations shall include an offer in writing by the condemnor to the prospective condemnee holding the title of record to the property being condemned, setting forth the property and interest therein to be acquired, the compensation offered to be paid and a reasonable disclosure of the manner in which the amount of such offered compensation has been calculated, and such other matters as may be required by the rules. Prior to such offer the taking agency shall appraise said property and the owner shall be given an opportunity to accompany the appraiser during inspection of the property. Such offer shall be served by certified mail. In no event shall such offer be less than the taking agency's approved appraisal of the fair market value of such property. <u>In the case of a single-family residential property, the taking agency's approved appraisal of the fair market value of the property shall be increased in order to reflect the average purchase price of comparable relocation properties.</u> A rejection of said offer or failure to accept the same within the period fixed in written offer, which shall in no case be less than 14 days from the mailing of the offer, shall be conclusive proof of the inability of the condemnor to acquire the property or possession thereof through negotiations. When the holder of the title is unknown, resides out of the State, or for other good cause, the court may dispense with the necessity of such negotiations. Neither the offer nor the refusal thereof shall be evidential in the determination of compensation.

<u>For the purposes of this section, "comparable relocation properties" means single-family residential dwellings located within</u>

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined <u>thus</u> is new matter.

a 20 mile radius of the property being condemned. Comparable relocation properties shall be characterized by similar lot and house size, similar improvements, similar natural, governmental, cultural, and commercial amenities,and shall be located within school districts having the same or higher Department of Education district factor group designation.

(cf: P.L.1971, c.361, s.6)

2. Section 12 of P.L.1971, c.361 (C.20:3-12) is amended to read as follows:

12. (a) Waiver of appointment of commissioners. By stipulation filed in the cause, the condemnor and all condemnees may waive the appointment of commissioners and in such event, the action shall proceed to trial before the court.

(b) Appointment and qualification of commissioners. Upon determination that the condemnor is authorized to and has duly exercised its power of eminent domain, the court shall appoint 3 commissioners to determine the compensation to be paid by reason of the exercise of such power. Such commissioners shall be residents of the county in which any part of the property being condemned is located or, in the case of the commissioner who must be an attorney, be actively engaged in the practice of law in the county. One of such commissioners shall be an attorney, admitted to practice in this State for at least 10 years, who shall preside at all hearings and rule on all questions of evidence and procedure, subject to a review by a majority of the commissioners. The commissioners shall take and subscribe an oath faithfully and impartially to perform their duties, and to make a true award to the best of their skills and understanding, which oath shall be filed with their award. Should a commissioner die, become disqualified, unable, neglect or refuse to act, the remaining 2 commissioners shall perform the duties of office with the same authority as if all commissioners were acting. The court may fill any vacancy in office, and for cause, may vacate any appointment and appoint a successor in office.

(c) Hearings--subpoena. Upon notice of at least 10 days, the commissioners shall hold hearings at which the parties and their witnesses may be heard, under oath, administered by any commissioner. The conduct of the hearings shall be governed by the rules of evidence except that testimony as to comparable sales shall be considered an exception to the hearsay rule. The compulsory attendance of witnesses and production of records thereat may be compelled by the commissioners. At the request of any party, and at his expense, a stenographic record of the hearing shall be maintained. A majority of commissioners shall be in attendance at all hearings.

(d) Limited discovery. At least 15 days prior to the hearing the parties shall exchange a list of comparable sales and, in the case of a single-family residence, a list of comparable relocation properties as defined in section 6 of P.L.1971, c.361 (C.20:3-6), intended to be introduced by them setting forth as to each comparable sale or comparable relocation property the following information: name of seller and purchaser; location of property by block, lot and municipality; date of sale; the consideration; and book and page of recording. No party shall be permitted to offer testimony of any comparable sale or comparable relocation property not set forth in said list unless consented to by all other parties. There shall be no discovery on the issue of the authority to condemn except by leave of court.

(e) Proof. At the hearing, the condemnor shall proceed first to offer proof of the nature and extent of the taking, and its opinion of the compensation payable by reason thereof.

(f) Inspection of property. Commissioners may inspect the property being condemned, and shall so inspect when requested by any party, and in addition, when requested by any party, the commissioners shall inspect two of the comparable sales or, with respect to the condemnation of a single-family residence, comparable relocation properties, testified to by said party. Such inspection may be in the absence of the parties, unless attendance at inspection is requested by the parties, or any of them. This right of inspection shall exist notwithstanding that the structures on the property may have been demolished and the site altered.

(g) Award of commissioners. Within 4 months next following their appointment, or within any extended period in accordance with the rules, the commissioners, or a majority of them, shall make and file in form and content fixed by the rules, an award fixing and determining the compensation to be paid by the condemnor. The requirements respecting the time of filing of such award shall be directory and not mandatory, and a failure to make and file the same within the time specified, shall not invalidate the award or oust the commissioners of jurisdiction to complete their duties. Upon its own motion, or on application of any party, made within 60 days after the filing of the award, the court may authorize the commissioners to amend, supplement, modify, or correct their award.

(h) Judgment. Any award as to which no appeal is taken in accordance with the rules, shall become final as of course, and shall constitute a final judgment. If not paid within 60 days after final judgment, execution may issue as in other actions at law.

(i) Commissioners' fees and expenses. The court, upon application of any party, including the commissioners, shall fix reasonable fees, costs and expenses of the commissioners, clerks

and other persons performing any of their duties, all of which shall be paid by the condemnor.
(cf: P.L.1971, c.361, s.12)

3. Section 13 of P.L.1971, c.361 (C.20:3-13) is amended to read as follows:

13. (a) Parties Any party who has appeared at the hearings of the commissioners, either personally or through an attorney, may appeal from the award of the commissioners. Such appeal shall be taken within the period and in the manner provided by the rules. The necessary parties to the appeal shall be only such parties who have appeared at the commissioners' hearings. Other parties may be admitted by the court pursuant to the rules.

(b) Hearing on appeal The hearing on appeal shall be a trial de novo, as in other actions at law, without a jury, unless a jury be demanded. The award of the commissioners shall not be admitted in evidence.

(c) Limited discovery A valuation expert who has not testified at the hearing before the commissioners shall not be permitted to testify at the trial de novo, unless, within 15 days before trial the party offering such testimony gives notice to the other parties to the appeal of the name and address of such expert and his opinion of the amount of compensation and information relative to comparable sales <u>and, in the case of a single-family residence, relative to comparable relocation properties as defined in section 6 of P.L.1971, c.361 (C.20:3-6),</u> as required by the rules. The information required by the rules shall be supplied as to all additional comparable sales <u>and, in the case of a single-family residence, all additional comparable relocation properties as defined in section 6 of P.L.1971, c.361 (C.20:3-6),</u> not previously testified to before commissioners.

(d) Payment of amount of judgment on appeal; right to possession; lien; other remedies The amount of the judgment on the appeal, or so much thereof as shall not have been paid, shall be paid to the parties entitled thereto or paid into court.

If possession shall not have been taken theretofore, the condemnor, upon payment as aforesaid, may notwithstanding any further appeal or other proceedings, take possession of the lands or other property for the purposes for which the same was authorized to be taken.
(cf: P.L.1971, c.361, s.13)

4. This act shall take effect immediately.

STATEMENT

This bill is intended to provide financial justice to owners of single-family residences who receive inadequate compensation

when their properties are condemned. The New Jersey Constitution requires condemnors to pay "just compensation" when a private property is taken for a public use. Just compensation is generally based on an appraisal of the fair market value of a property. Usually, the fair market value of a property being condemned is not sufficient for the family, whose lives are being totally disrupted, to purchase a similar property in the same general area. This bill addresses this unfair situation by requiring that the compensation paid be based on the cost of comparable relocation properties within a 20 mile radius of the property being condemned. Comparable relocation properties would be properties of a similar lot and house size, with similar improvements, similar natural, governmental, cultural, and commercial amenities, and located within a school district having the same or a higher Department of Education district factor group designation. Allowing households that are disrupted by condemnation proceedings to relocate within the same area or a similar area without additional financial burdens is the most "just" way of compensating these owners for the public taking of their homes.