

# Wetlands/Condemnation: New York Appellate Court Addresses Evidentiary Issue



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The New York Supreme Court (Appellate Division) (“Court”) addressed in a January 9th opinion an evidentiary issue associated with the condemnation by the State of New York of a parcel of real property. See *Kermanshahchi, et al. v. State of New York*, 2019 N.Y. Slip Op. 00103.

The evidentiary issue involved testimony of a landscape architect on behalf of the New York State Department of Transportation (“DOT”) in regards to the potential presence of wetlands on the subject property.

DOT appropriated title to a parcel of real property in Orange County, New York (“Property”). The property’s owners (“Claimants”) litigated the issue of condemnation damages in the Court of Claims. The Court of Claims allowed a landscape architect employed by DOT to testify regarding the creation of a map delineating possible wetlands on the property.

DOT’s expert appraiser is stated to have relied upon the map in determining the value of the appropriated parcel. The valuation of the property was based on the sale of properties that contained wetlands or had other “impediments.”

The Court of Claims rejected the Claimants’ appraised value. Their value was stated to be based on the highest and best use of the property as retail commercial (even though the property was zoned for only industrial use).

The Court of Claims awarded condemnation damages based on DOT’s appraisal.

Claimants appealed to the Court arguing that the Court of Claims erred in admitting the testimony of the landscape architect.

The Court holds that the Court of Claims did not err in rejecting the valuation of the Claimants’ expert.

The expert is stated to have based his valuation upon sales of properties that were in many ways dissimilar to the subject property. For example, the Court noted that he did not account for:

. . . the presence of possible wetlands on the subject property that could constrain the development of the property. . .

The Court does, however, reverse the Court of Claims decision holding that it improperly admitted expert testimony from DOT’s landscape architect. DOT is stated to have violated certain Special Rules of the Court of Claims that apply to appropriation claims. Specifically, DOT failed to provide the Court of Claims with a copy of the report prepared by the landscape architect as mandated by such rules. It notes:

The State's contention that the landscape architect did not testify as an expert is belied by the trial record, in which the landscape architect provided expert opinion testimony with respect to the existence of wetlands on the subject property, even though no official designation of such wetlands had been made by the Army Corps of engineers.

As a result, the Court of Claims should not have admitted the testimony of the landscape architect which provided the only basis for his reliance on the unofficial DOT-prepared map delineating possible wetlands on the property.

A copy of the opinion can be found [here](#).