

ORIGINAL

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: HONORABLE JAIME A. RIOS
Justice

IA PART 8

In the Matter of the Application of the
CITY OF NEW YORK, relative to Acquiring
Title in Fee to All or Parts of

BEACH 46th Street from Far Rockaway Beach
Boulevard to Norton Avenue, Beach 47th
Street from Rockaway Beach Boulevard to
Beach Channel Drive, Beach 48th Street
from Rockaway Beach Boulevard to Norton
Avenue, Beach 49th Street from Rockaway
Beach Boulevard to Beach Channel Drive,
Norton Avenue from Beach 49th Street to
Beach 45th Street, Rockaway Beach Boulevard
from Beach 49th Street to Beach 46th Street

In the Borough of Queens, City and State
of New York.

X Index
Number: 10860/12

Motion
Date: June 19, 2013

Sequence
Number: 2

2013 DEC 11 AM 11:58

QUEENS COUNTY CLERK
FILED

X

The following papers numbered 1 to 10 read on this motion by
claimant TD Equities, Inc. and Y-M-G-Y Development Group, Inc.
pursuant to Eminent Domain Procedure Law (EDPL) § 303 for an order
compelling Condemnor City of New York to immediately issue advance
payment offers and make payments accordingly for Claimant's
properties located at Block 15838, Lot 27, Damage Parcels 119A,
Block 15838, Lot 34, Damage Parcel 86A, Block 15838, Lot 21, Damage
Parcel 123A, Block 15838, Lot 22, Damage Parcel 122A, Block 15838,
Lot 24, Damage Parcel 121A, Block 15841, Lot 19, Damage Parcel 204,
and Block 15841, Lot 50, Damage Parcel 203.¹

	<u>Papers Numbered</u>
Notice of Motion - Affidavits - Exhibits.....	1-4
Answering Affidavits - Exhibits.....	5-7
Reply Affidavits.....	8-10

Upon the foregoing papers it is ordered that this motion is
determined as follows:

¹ Claimants have withdrawn the part of their motion for advance
payments with respect to Parcels 119, 86, 123, 122, 121.


Title to the property that is the subject matter of this proceeding vested in the City of New York on August 17, 2012. This proceeding included more than 200 parcels, which were acquired to widen the streets in the Edgemere/Far Rockaway section of Queens, New York. Pursuant to EDPL § 303 the City sent advance payment for certain of the damaged parcels.

The City, however, did not sent advance payment offers for parcels 119A, 86A, 123A, 122A, 121A, 204 and 203. It is undisputed that these parcels are the bed of the street. The City contends that inasmuch as these parcels are the bed of the street, the land has no value. Since these parcels have no value, the City contends that it made an EDPL § 303 offer on all the parcels including the bed of the street parcels. The claimant contends that the bed of the street has value.

In a condemnation proceeding, the burden of proof remains upon the claimant, but the municipality has an independent obligation to pay just compensation and, in connection therewith, to present its own appraisal of the highest (see Chase Manhattan Bank v State of New York, 103 AD2d 211 [2d Dept 1984]). There is a constitutional mandate for the court to give just a fair compensation for property taken (Yaphank Dev. Co. v County of Suffolk, 203 AD2d 280 [2d Dept 1994]). In cases where the City contends the land has no value, to prevail the City must show that there is no factual question that the property is without value (see Matter of City of New York Grantwood Retention Basin-Cassino Contr. Corp., 33 Misc 3d 586 [Sup Ct, Richmond County 2011]). Here, while the City argues that the bed of the street parcels are valueless, the City has not presented any appraisal attesting to the fact that the bed of the street has no value. Additionally, there is no merit to the argument that the bed of the street is valueless as a matter of law. While the street might be encumbered with a public easement, that does not render the property valueless as a matter of law (see e.g., Story v New York El. R.R. Co., 90 NY 122 [1882]). The City has, thus, not established that the bed of the street parcels are valueless.

Accordingly, the motion is granted only to the extent that the City must provide an Advance Payment offer based on an actual appraisal for the subject bed of the street parcels.

Dated: November 25, 2013
Index No.: 10860/12-Seq. 2



J.S.C.

2013
DEC 11 AM 11:58
QUEENS COUNTY CLERK
FILED