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Supreme Court, Appellate Division, Fourth Department,
New York.

Matter of MOLLY, INC., and Murbro Parking, Inc.,
Petitioners,
v.

COUNTY OF ONONDAGA, Respondent.

Dec. 31, 2003.

Background: Landowners brought original proceeding to challenge county's resolution to acquire parcel of land owned and operated as a parking lot by landowners, alleging that proposed taking unconstitutionally limited their right to just compensation.

Holdings: The Supreme Court, Appellate Division, held that:

(1) county resolution did not unconstitutionally limit landowners' right to just compensation;

(2) county's proposed taking of parcel was not in excess of what was necessary to effect its purported public purposes; and

(3) county's alleged failure to prepare supplemental environmental impact statement (EIS) with regard to proposed taking of land did not violate State Environmental Quality Review Act (SEQRA).

Determination confirmed; petition dismissed.

West Headnotes

[1] Eminent Domain [§ 55](#)

[148k55 Most Cited Cases](#)

County resolution proposing the taking of 2.4 acre parcel owned and operated as parking lot by landowners for \$2.1 million did not unconstitutionally limit landowners' right to just compensation; monetary figure in resolution would be read as an offer of payment that landowners were free to accept as payment in full or to reject the offer as payment in full and elect to accept the offer as an advance payment, thereby reserving the right to claim additional compensation. [McKinney's EDPL § 303](#).

[2] Eminent Domain [§ 58](#)

[148k58 Most Cited Cases](#)

County's proposed taking of 2.4 acre parcel owned and

operated as parking lot by landowners was not in excess of what was necessary to effect the purported public purposes; county determined that a suitable hotel developer would require the entire parcel, so as to have made required showing that taking was rationally related to a conceivable public purpose. [McKinney's EDPL § 303](#).

[3] Environmental Law [§ 597](#)

[149Ek597 Most Cited Cases](#)

County's alleged failure to prepare supplemental environmental impact statement (EIS) with regard to proposed taking of land for development of site into hotel did not violate State Environmental Quality Review Act (SEQRA); original project proposal considered in draft EIS and final EIS included hotel development, environmental conditions relating to the hotel development did not change since draft EIS was prepared, and engineering firm that reviewed environmental conditions advised county that conditions had not worsened and may have in fact improved since preparation of draft EIS. [McKinney's ECL § 8.0101 et seq.](#)

[4] Environmental Law [§ 597](#)

[149Ek597 Most Cited Cases](#)

Once an agency issues its final environmental impact statement (FEIS) for a given project, the regulations under the State Environmental Quality Review Act (SEQRA) provide that the lead agency may require a supplemental EIS, limited to the specific significant adverse environmental impacts not addressed or inadequately addressed in the EIS, that arise from a change in circumstances related to the project. [McKinney's ECL § 8.0101 et seq.](#)

**543 [Hiscock & Barclay, LLP, Buffalo](#) ([Mark R. McNamara](#) of counsel), and [De Francisco Law Firm, Syracuse](#), for Petitioners.

[Hancock & Estabrook, LLP, Syracuse](#) ([James S. Skloda](#) of counsel), for Respondent.

*1419 PRESENT: [PIGOTT, JR., P.J.](#), GREEN, PINE, [HURLBUTT](#), AND [KEHOE, JJ.](#)

*1418 MEMORANDUM:

[1] Petitioners commenced this original proceeding pursuant to [EDPL 207](#) to challenge the resolution of respondent to

acquire a 2.4-acre parcel owned by petitioner Molly, *1419 Inc. and operated as a parking lot by petitioner Murbro Parking, Inc. **544 Contrary to the contention of petitioners, the proposed taking does not unconstitutionally limit their right to just compensation. We agree with respondent that the \$2,100,000 figure in the resolution should be read as an offer of payment pursuant to [EDPL 303](#) and that petitioners "may accept the offer as payment in full * * * or reject the offer as payment in full and elect to accept the offer as an advance payment, thereby reserving the right to claim additional compensation" ([ERA Realty v. State of New York](#), 281 A.D.2d 388, 388, 721 N.Y.S.2d 273, *lv. denied* 98 N.Y.2d 603, 745 N.Y.S.2d 502, 772 N.E.2d 605).

[2] Also contrary to petitioners' contention, the proposed taking is not in excess of what is necessary to effect the purported public purposes. The record supports respondent's determination that a suitable hotel developer would require the entire parcel, and thus respondent "made the required showing that the taking ' ' is rationally related to a conceivable public purpose" ' ' ([Matter of Ranauro v. Town of Owasco](#), 289 A.D.2d 1089, 1090, 735 N.Y.S.2d 332, quoting [Matter of Jackson v. New York State Urban Dev. Corp.](#), 67 N.Y.2d 400, 425, 503 N.Y.S.2d 298, 494 N.E.2d 429).

[3][4] Finally, we reject the contention of petitioners that respondent's failure to prepare a supplemental environmental impact statement (EIS) violates article 8 of the Environmental Conservation Law (State Environmental Quality Review Act [SEQRA]). Once an agency issues its final environmental impact statement (FEIS) for a given project, "[t]he SEQRA regulations * * * provide [in relevant part] that the 'lead agency may require a supplemental EIS, limited to the specific significant adverse environmental impacts not addressed or inadequately addressed in the EIS that arise from * * * a change in circumstances related to the project' " ([Roosevelt Islanders for Responsible Southtown Dev. v. Roosevelt Is. Operating Corp.](#), 291 A.D.2d 40, 52, 735 N.Y.S.2d 83, *lv. denied* 97 N.Y.2d 613, 742 N.Y.S.2d 606, 769 N.E.2d 353). Because the original project proposal considered in the 1989 draft EIS and the FEIS included a hotel development, the determinative issue herein is whether

environmental conditions relating to the hotel development changed since 1989 such that a supplemental EIS was required. The record establishes that respondent hired an engineering firm to review the 1989 studies and advise it on the need for a supplemental EIS. That firm's report to respondent concluded that conditions have not become worse since 1989 and may in fact have improved. We therefore conclude that respondent did not violate SEQRA in determining that a supplemental EIS was not required.

*1418 It is hereby ORDERED that the determination be and the same hereby is unanimously confirmed without costs and the petition is dismissed.

2 A.D.3d 1418, 770 N.Y.S.2d 542, 2003 N.Y. Slip Op. 20208

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