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## Takings Clause

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## TAKINGS CLAUSE

*N.Y. CONST. art I, § 7(a):*

*Private property shall not be taken for public use without just compensation.*

### COURT OF APPEALS

Saratoga Water Services, Inc. v. Saratoga County Water  
Authority<sup>1</sup>  
(decided February 22, 1994)

Petitioner, Saratoga Water Services, Inc., and two individual property owners, initiated a proceeding under the Eminent Domain Procedure Law [hereinafter EDPL] section 207<sup>2</sup> and claimed that Public Authorities Law section 1199-eee(5)<sup>3</sup> violated

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1. 83 N.Y.2d 205, 630 N.E.2d 648, 608 N.Y.S.2d 952 (1994).

2. N.Y. EM. DOM. PROC. LAW § 207 (McKinney 1979 & Supp. 1994). Section 207 provides in pertinent part: "Any person or persons jointly or severally, aggrieved by the condemnor's determination and findings made pursuant to this article, may seek judicial review thereof by the appellate division of the supreme court . . . ." *Id.*

3. N.Y. PUB. AUTH. LAW § 1199-eee(5) (McKinney 1994). Section 1199-eee(5) provides in pertinent part:

Except as otherwise limited by this title, the authority shall have the power:

To acquire . . . by condemnation pursuant to the eminent domain procedure law . . . any real or personal property or interest therein, within or without the district, as the authority may deem necessary, convenient or desirable to carry out the purpose of this title and to pay the costs thereof; . . . Provided, however, notwithstanding any provision of the eminent domain procedure law to the contrary, in any proceeding brought by the authority . . . and compensation shall be paid only upon (a) a decision by the supreme court that compensation for real property condemned shall be determined solely by the income capitalization method of valuation based on actual net income as allowed by the

the New York State Constitution<sup>4</sup> by “unconstitutionally divest[ing] the Judiciary of its power to determine just compensation.”<sup>5</sup> Petitioners further argued that the statute was unconstitutionally vague.<sup>6</sup> The court held the statute constitutional on two grounds. First, the statute did not work to divest the supreme court of its power to determine the method of compensation to be employed when private property was appropriated for public use.<sup>7</sup> Second, the court held the statute was not void for vagueness because the supreme court’s valuation of the property acquired under eminent domain occurs “as of the time of the taking.”<sup>8</sup>

Respondent, Saratoga County Water Authority, issued notices of a public hearing to be held in April 1992 for purposes of informing the public that it was considering acquiring a portion of petitioners’ property and assets through condemnation.<sup>9</sup> After the public hearing, respondent issued two “determination and findings” statements which proclaimed that acquisition of

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public service commission, and (b) such supreme court’s determination that the amount of such compensation shall be based on the income capitalization method, entry of a final judgment, the filing of the final decree and the conclusion of any appeal or the expiration of the time to file an appeal related to the condemnation proceeding. If any court shall utilize any method of compensation other than the income capitalization method, or if the proposed compensation is more than the rate base of the assets taken in condemnation, as utilized by the public service commission in setting rates and as certified by such commission, then the authority may withdraw the condemnation proceeding without prejudice or costs to any party . . . .

*Id.*

4. N.Y. CONST. art I, § 7(a). This section states: “Private property shall not be taken for public use without just compensation.” See N.Y. EM. DOM. PROC. LAW § 512 (McKinney 1979). Section 512 provides in pertinent part: “The court . . . shall determine the compensation due the condemnees for damages as the result of the acquisition.” *Id.*

5. *Saratoga*, 83 N.Y.2d at 209, 630 N.E.2d at 650, 608 N.Y.S.2d at 954.

6. *Id.*

7. *Id.* at 212, 630 N.E.2d at 652, 608 N.Y.S.2d at 956.

8. *Id.* at 214, 630 N.E.2d at 652, 608 N.Y.S.2d at 956.

9. *Id.* at 209, 630 N.E.2d at 650, 608 N.Y.S.2d at 954.

petitioners' property was necessary to operate a water system for the town of Malta.<sup>10</sup> The "determination and findings" statements also announced that acquisition of petitioners' property would aid in the development of a "[c]ounty-wide coordinated public water system."<sup>11</sup> Petitioners, Saratoga Water Services, Inc., a domestic corporation providing water "to approximately 1350 customers, . . . and two individual property owners," challenged respondent's findings in a proceeding instituted by them in the appellate division.<sup>12</sup>

In upholding the constitutionality of the statute, the court noted the inherent difficulty in valuing the property of the corporate petitioner, a public utility.<sup>13</sup> One difficulty, explained the court, is the absence of sales of public utilities.<sup>14</sup> Further, valuation problems arise because, in addition to the physical property, the condemnor also acquires a "going business enterprise."<sup>15</sup> Various valuation methods, such as market value,<sup>16</sup> replacement or reproduction less depreciation,<sup>17</sup> and income capitalization,<sup>18</sup> the court opined, were unsatisfactory in resolving this dilemma.<sup>19</sup>

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10. *Id.*

11. *Id.*

12. *Id.*

13. *Id.* at 210, 630 N.E.2d at 650, 608 N.Y.S.2d at 954.

14. *Id.* See *Onondaga County Water Auth. v New York Water Serv. Corp.*, 285 A.D. 655, 662, 139 N.Y.S.2d 755, 762 (4th Dep't 1955) ("The absence of sales of similar [utility] property is one difficulty.").

15. *Saratoga*, 83 N.Y.2d at 210, 630 N.E.2d at 650, 608 N.Y.S.2d at 954.

16. Market value "is calculated by reference to comparable sales between willing buyers and sellers . . ." *Id.* See *Onondaga County Water Auth.*, 285 A.D. at 662, 139 N.Y.S.2d at 763 (noting that the absence of a market for sale of public utilities renders market value approach unworkable).

17. The cost of reproduction method has been described as "the cost which will necessarily be incurred by a reasonably prudent and careful man using ordinary careful business methods in reproducing a plant of equal efficiency." 4A PHILIP NICHOLS, *THE LAW OF EMINENT DOMAIN* § 15.41[3] (3d ed. rev. 1993). See *Onondaga*, 285 A.D. at 662, 139 N.Y.S.2d at 763 (stating that the reproduction less depreciation method cannot be used as an exclusive measure of valuation because it accounts neither for intangible factors nor for "what might well be a great disparity between earnings of a utility and replacement of physical assets").

18. The income capitalization approach:

The court confirmed the respondent's determinations and findings, reasoning that Public Authorities Law section 1199-eee(5) served a dual purpose. It afforded a property owner protection by permitting the supreme court to utilize other methods besides income capitalization in computing just compensation.<sup>20</sup> Further, it allowed the condemnor "an avenue of escape" should a valuation of condemned property be unusually high.<sup>21</sup> Thus, the dual purpose, "while unusual," did not render the statute unconstitutional.<sup>22</sup>

Regarding the *Saratoga* petitioners' first contention that "PAL section 1199-eee(5) impermissibly mandates exclusive use of the income capitalization method . . . and that such a legislative command effectively usurps the power to determine just compensation designated to the Judiciary by the State Constitution,"<sup>23</sup> the court noted that legislative enactments are presumptively constitutional, and that one attacking a legislative

[S]eeks to determine how much a buyer would pay for the right to receive future cash flows. The evidence necessary in such an approach include [sic] the following: provable past earnings on a periodic basis, growth rate in use fees, projected cost increases, new users projected and governmental restrictions on regulations capping expansion of earnings.

5 NICHOLS, THE LAW OF EMINENT DOMAIN § 19.07[1] (3d ed. rev. 1993). See *Saratoga*, 83 N.Y.2d at 210, 630 N.E.2d at 650, 608 N.Y.S.2d at 954 (stating that the income capitalization approach "remains subject to criticism, principally because of the speculative nature of the valuation criteria used, and because earned income imperfectly reflects the actual value of a utility whose rates are subject to regulation") (citations omitted); *Onondaga*, 285 A.D. at 662, 139 N.Y.S.2d at 763 ("The value of the property . . . is determined by its productiveness, the profits which its use brings to the owner. . . . The value, therefore, is not determined by the mere cost of construction, but more by what the completed structure brings in the way of earning to its owner." (quoting *Monogahela Navigation Co. v. United States*, 148 U.S. 312, 328 (1893))).

19. *Saratoga*, 83 N.Y.2d at 210, 630 N.E.2d at 650, 608 N.Y.S.2d at 954.

20. *Id.* at 211, 630 N.E.2d at 651, 608 N.Y.S.2d at 955.

21. *Id.* at 212, 630 N.E.2d at 651, 608 N.Y.S.2d at 955.

22. *Id.* at 212, 630 N.E.2d at 652, 608 N.Y.S.2d at 956.

23. *Id.* at 210-11, 630 N.E.2d at 650-51, 608 N.Y.S.2d at 954-55. See N.Y. EM. DOM. PROC. LAW § 512 (McKinney 1979).

enactment must “bear the burden of demonstrating [unconstitutionality] beyond a reasonable doubt.”<sup>24</sup> The court construed the statute as merely implying a preference for the income capitalization method, and not as a legislative mandate.<sup>25</sup> This conclusion was compelled by the language employed in the last sentence of the statute, which allows the condemnor to withdraw from the condemnation proceeding if the court employed a valuation method other than that of income capitalization.<sup>26</sup> Finally, the court stated that the statute at issue was similar to the *Onondaga* statute which the court in that case held constitutional.<sup>27</sup>

The statute at issue in *Onondaga* was section 5-a of the Condemnation Law, and its amendments, which required the Public Service Commission to certify: “(1) the annual net

24. *Saratoga*, 83 N.Y.2d at 211, 630 N.E.2d at 651, 608 N.Y.S.2d at 955 (quoting *Alliance of Am. Insurers v. Chu*, 71 N.Y.2d 573, 585, 571 N.E.2d 672, 678, 569 N.Y.S.2d 364, 370 (1991)).

25. *Id.*

26. *Id.* at 212, 630 N.E.2d at 651, 608 N.Y.S.2d at 955 (citing N.Y. PUB. AUTH. LAW § 1199-eee(5) (McKinney 1994)). The *Saratoga* court also reviewed the legislative history of the statute in reaching its determination, and concluded that the legislative history supported its interpretation. *Id.* at 212, 630 N.E.2d at 651-52, 608 N.Y.S.2d at 955-56. However, the language used in both the Legislative Memorandum and the Governor’s Memorandum appear contrary to the court’s interpretation. The Legislative Memorandum provides in part: “This bill would *ensure* that the capitalization method be used by the court. . . . Should the condemnation court or any appellate court determine that the income capitalization method is not appropriate, the bill provides that *title to the company’s assets will not transfer and the condemnation proceeding will be withdrawn.*” 1986 N.Y. Laws 755, Legislative Memorandum, 2998 (emphasis added).

The governor’s memorandum is similar in tone:

[T]he condemnation court *will* utilize the income capitalization method in computing the amount of the condemnation award. . . . However, if the condemnation court determines that the income capitalization method is not appropriate, the bill provides that title to the company’s assets will not transfer and permits the [condemnor] to withdraw from the condemnation proceeding.

1986 N.Y. Laws 755, Governor’s Memorandum. 3195.

27. *Saratoga*, 83 N.Y.2d at 212, 630 N.E.2d at 652, 608 N.Y.S.2d at 956.

earnings which the utility system involved might reasonably be expected to continue to produce in the hands of the condemnee; and (2) the rate base and rate of return from which that estimate is derived.”<sup>28</sup> The commissioners of appraisal were required to wait until thirty days after the certificate was served before determining the compensation to be paid to the owners of the condemned property, and further were required to appraise the property with “due regard” to the information contained in the certificate.<sup>29</sup> If the appraisal was either not in accord with the certificate, or if the Public Service Commission determined that the amount of compensation to be so high as not to be in the public interest, the statute provided that the Public Service Commission could petition the court to abandon and discontinue the condemnation proceeding.<sup>30</sup>

The *Onondaga* court held that there were no problems with the constitutionality of the statute and its amendments.<sup>31</sup> Section 5-a did not mandate that “the commissioners of appraisal rigidly . . . adhere to the certification by the Public Service Commission.”<sup>32</sup> Nor did the statute assign duties to the Public Service Commission which usurped the powers of the court under the constitution.<sup>33</sup>

As to the void for vagueness claim, the *Saratoga* court held that even though title does not vest in the condemnor until the appeals process is exhausted, the supreme court was not “presently fixing the value of the property as of some undetermined future date.”<sup>34</sup> Ordinarily, in a condemnation proceeding, the condemnor’s compensation is fixed as of the

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28. *Onondaga*, 285 A.D. at 658-59, 139 N.Y.S.2d at 759-60.

29. *Id.* at 658, 139 N.Y.S.2d at 760.

30. *Id.* at 658-59, 139 N.Y.S.2d at 760.

31. *Id.* at 660, 139 N.Y.S.2d at 761.

32. *Id.*

33. *Id.* At issue in *Onondaga* was article I, § 7 of the New York Constitution.

34. *Saratoga*, 83 N.Y.2d at 213, 630 N.E.2d at 652, 608 N.Y.S.2d at 956.

moment title to the property vests in the condemnor.<sup>35</sup> However, the statute at issue modified the general rule by separating the “taking” from the condemnee, from the vesting of title in the condemnor.<sup>36</sup>

Under the EDPL, a condemnor is in possession of the property upon the filing of an acquisition map at the end of the acquisition proceeding.<sup>37</sup> The value of the property is fixed as of that date.<sup>38</sup> Title, however, does not vest in the condemnor until after the appeals process is concluded.<sup>39</sup> The later vesting permits the condemnor to withdraw from the condemnation proceeding if the income capitalization method is not employed without violating the well-settled rule that a condemnor cannot abandon property condemned after title vests.<sup>40</sup> Thus, since valuation at the moment of the condemnor is in possession of the property, the statute was held not to be unconstitutionally vague.<sup>41</sup>

As *Saratoga* demonstrates, valuation of public utilities presents complex problems in eminent domain proceedings. However, as this case points out, so long as a statute aids the court in ascertaining the correct worth of the property and does not abrogate any of the court’s constitutional powers, the statute will survive constitutional scrutiny.

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35. *Id.* at 213-14, 630 N.E.2d at 652, 608 N.Y.S.2d at 956. See *In re City of N.Y.*, 43 N.Y.2d 512, 518, 373 N.E.2d 984, 987, 402 N.Y.S.2d 804, 807 (1978) (“[A] condemnee is entitled to just compensation as of the instant its property is taken by the vesting of title in the condemnor. It is as of that time that the value is to be fixed . . .”).

36. *Saratoga*, 83 N.Y.2d. at 213, 630 N.E.2d at 652, 608 N.Y.S.2d at 956.

37. *Id.* at 213-14, 630 N.E.2d at 652, 608 N.Y.S.2d at 956.

38. *Id.* at 214, 630 N.E.2d at 652, 608 N.Y.S.2d at 956.

39. *Id.*

40. *Id.* See 6 NICHOLS, THE LAW OF EMINENT DOMAIN § 26.42[2] (3rd ed. rev. 1993) (“The right to vest title in the condemnor and the right to abandon and discontinue the proceeding after such vesting are mutually exclusive rights. The courts have uniformly held that condemnation proceedings cannot be discontinued after the condemnor has taken title.”) (citations omitted).

41. *Saratoga*, 83 N.Y.2d. at 214, 630 N.E.2d at 652, 608 N.Y.S.2d at 956.