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|---|---|
| EDWARD W. and NANCY M. KLUMPP,<br><br>Plaintiffs-Appellants,<br><br>v.<br><br>BOROUGH OF AVALON,<br><br>Defendant-Respondent. | SUPREME COURT OF NEW JERSEY<br>Docket No. 64,722<br>CIVIL ACTION<br><br>**MOTION FOR LEAVE TO APPEAR AS AMICUS CURIAE PURSUANT TO *R.* 1:13-9** |

To: Mark Neary, Clerk
Supreme Court of New Jersey
Richard J. Hughes Justice Complex
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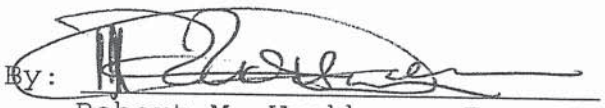
PLEASE TAKE NOTICE that the BUILDERS LEAGUE OF SOUTH JERSEY, INC. ("BLSJ") hereby moves pursuant to R. 1:13-9 for leave to appear as amicus curiae in this matter, to file the brief served herewith, and to participate in oral argument.

In support of this Motion, BLSJ will rely on the letter brief served and filed with this Motion.

FLASTER/GREENBERG PC
Attorneys for Amicus Curiae
Builders League of South Jersey, Inc.

By: 
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Dated: September 17, 2009

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PLEASE RESPOND TO CHERRY HILL

September 17, 2009

Mark Neary, Clerk
Supreme Court of New Jersey
Hughes Justice Complex
25 West Market Street
P.O. Box 970
Trenton, NJ 08625-0970

**Re: Klumpp v. Borough of Avalon**
**Dkt. No. 64,722**
**Letter Brief of Builders League of South Jersey, Inc. in Support of Motion to Appear as Amicus Curiae**

Dear Mr. Neary:

The Builders League of South Jersey, Inc. ("BLSJ") submits this letter brief in support of its Motion for Leave to Appear in the above matter as Amicus Curiae, to file a brief as amicus curiae, and to participate at oral argument.

## Statement of the Case

On July 31, 2009, the Superior Court, Appellate Division issued its per curiam decision in *Klumpp v. Borough of Avalon*, Dkt. No. A-2963-07T3 (July 31, 2009). In its unprecedented decision, the court agreed to strip Mr. and Mrs. Klumpp of title to land they had owned for almost fifty years, and to vest title

in the Borough of Avalon, without requiring the municipality to pay one cent for it. The court believed that the Borough had been "in possession" of the land since 1962, and that somehow such possession entitled Avalon to vested title in the land, even though Avalon had not complied with the Eminent Domain Act and had not paid just compensation to the Klumpps. (Pall)[1] The court incorrectly believed that "Inverse condemnation has occurred, and that the Borough is the true owner of the property," (*Id.*) notwithstanding the Klumpps' vested fee simple title interest. Holding that "principles of inverse condemnation control here," (*Id.*) the court accepted Avalon's argument that the municipality, by virtue of its alleged longstanding possession and nothing more, should now be vested with title to the land.

BLSJ submits that this case presents significant property rights issues under our federal and state constitutions. Specifically, the government may not deprive individuals of their property without due process of law, and may not take land without paying just compensation. In this case, the Appellate Court erroneously utilized the inverse condemnation cause of

[1] "Pa _____" refers to the Appendix to the Klumpps' Petition for Certification.

action, which is solely a landowner's remedy, in order to allow Avalon to ignore the provisions of the Eminent Domain Act, and to wrongly obtain the Klumpps' land for free.

## Argument

**Builders League of South Jersey's application for leave to appear amicus curiae satisfies the standards set forth in *R.* 1:13-9.**

BLSJ seeks leave to appear in this matter amicus curiae. *R.* 1:13-9 states, In pertinent part:

> An application for leave to appear as amicus curiae in any court shall be made by motion in the cause stating with specificity the identity of the applicant, the issue intended to be addressed, the nature of the public interest therein and the nature of the applicant's special interest, involvement or expertise in respect thereof. The court shall grant the motion if it is satisfied under all of the circumstances that the motion is timely, the applicant's participation will assist in the resolution of an issue of public importance, and no party to the litigation will be unduly prejudiced thereby.

Amicus curiae must accept the case before the court as presented by the parties and cannot raise issues that have not been raised by the parties themselves. *Tice v. Cramer*, 133 *N.J.* 347, 355 (1993). As set forth below, the BLSJ's application for leave to appear amicus curiae satisfies these criteria.

BLSJ is a trade association which was founded in 1940 for the purpose of promoting and protecting the interests of all associated with the building industry, including, but not limited to, builders, developers, and the general public. The membership of the BLSJ consists of approximately 94 builder members and 361 associate members (including subcontractors, suppliers, financial institutions, title companies, and other companies and professionals who provide goods and services to builders). The BLSJ actively works for its members and the public to address major issues and problems confronting the building industry in New Jersey; and in particular, in the seven county southern New Jersey area that it covers, i.e. Burlington, Camden, Gloucester, Salem, Cumberland, Cape May, and Atlantic Counties.

BLSJ is particularly vigilant on issues relating to the abuse, misapplication or misinterpretation of property rights and existing laws by municipalities, counties, the State, and other government agencies. As such, the BLSJ will review and acts upon complaints of its members, and when necessary, takes legal action to protect the interests of its membership, as well as the public interest. Through its officers and staff, the BLSJ

regularly testifies before the New Jersey Legislature and State administrative agencies concerning legislation and administrative consideration of statutes and regulations that affect this industry.

BLSJ has appeared before this Court on several occasions as a party or amicus curiae with respect to issues of interest to its members, particularly those that affect the ability of its membership responsibly to provide shelter in New Jersey. *See, e.g., Home Builders League v. Berlin Tp.*, 81 *N.J.* 127 (1979); In re Opinion No. 26 of Comm. On Unauthorized Practice of Law, 139 *N.J.* 323 (1995); *R.J.P. Builders, Inc. v. Woolwich Tp.*, 361 *N.J. Super.* 207 (App. Div.), certif. denied 178 *N.J.* 31 (2003); *N.J. Shore Builders Ass'n. v. Tp. of Jackson*, 199 *N.J.* 449 (2009); *Builders League of South Jersey v. Gloucester County Util. Auth.*, 368 *N.J. Super* 462 (App. Div. 2006), certif. denied 189 *NJ* 428 (2007); *Mt. Laurel Tp. v. MiPro Homes, LLC*, 188 *N.J.* 531 (2006), cert. denied 128 S. Ct. 46 (2007).

The *Klumpp* decision raises significant property rights issues which have importance for BLSJ, and for New Jersey residents In general. The Appellate Division's decision allowing a municipality to utilize inverse condemnation to take land

without paying compensation is far reaching, and is expected to have a significant and revolutionary impact upon property rights throughout New Jersey. The decision is directly contrary to the public policy of this State which requires that land only be taken through compliance with the Eminent Domain Act, and requires that just compensation be paid as mandated by the state and federal constitutions.

No party to this litigation will be unduly prejudiced by allowing BLSJ to appear amicus curiae. The motion is timely, as the Klumpp's petition for certification and Avalon's response has yet to be filed. BLSJ's amicus brief, which is being submitted simultaneously with this motion, addresses the legality of the Appellate Division's decision based upon prior case law and New Jersey public policy. In accordance with *Tice v. Cramer*, 133 *N.J.* at 355, BLSJ's submission will therefore be within the confines of the issues presented by the parties and will not raise any additional issues.

BLSJ seeks to appear in its capacity as a representative of its members, as well as all homebuilders and members of allied trades operating in the State of New Jersey, with respect to the impact that the *Klumpp* decision will have on its members and the

New Jersey land-owning public in general. This case involves a matter of significant public importance, the right of individuals to own land without undue interference by the government.

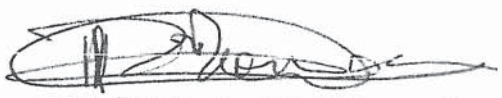
BLSJ contends that the Appellate Division's decision is in direct conflict with both prior New Jersey case law and New Jersey public policy. BLSJ asserts that its participation in this case will assist the court in the exploration and resolution of these issues, which will undoubtedly have a dramatic impact on the building industry and its ability to provide decent and affordable housing for the citizens of this State.

**Conclusion**

For the foregoing reasons, the Builders League of South Jersey's Motion to Appear as Amicus Curiae should be granted.

Respectfully submitted,

FLASTER/GREENBERG P.C.



Robert M. Washburn, Esq.
Of Counsel

RMW:nmo
Enclosure

cc: Michael Donohue, Esq. (w/enc.)
Richard M. Hluchan, Esq. (w/enc.)

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| EDWARD W. and NANCY M. KLUMPP,<br><br>Plaintiffs-Appellants,<br><br>v.<br><br>BOROUGH OF AVALON,<br><br>Defendant-Respondent. | SUPREME COURT OF NEW JERSEY<br>Docket No. 64,722<br>CIVIL ACTION<br><br>**PROOF OF SERVICE** |

1. Amy DeCaro, of full age, certifies as follows:

2. I am employed by the law firm of Flaster Greenberg, a New Jersey Professional Corporation, as a legal secretary.

3. On this date, I caused two copies each of Builders League of South Jersey, Inc.'s Motion for Leave to Appear as Amicus Curiae Pursuant to *R.* 1:13-9, letter brief in support of motion, and amicus curiae brief on the merits to be served on the following counsel, via UPS Overnight Delivery:

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PO Box 1501
Vineland, NJ 08362

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Hyland Levin, LLP Plaza
1000, Suite 400
Main Street
Voorhees, NJ 08043

4. I hereby certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Amy DeCaro

Amy DeCaro

Dated: September 17, 2009

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|---|---|
| EDWARD W. and NANCY M. KLUMPP,<br><br>Plaintiffs-Appellants,<br><br>v.<br><br>BOROUGH OF AVALON,<br><br>Defendant-Respondent. | SUPREME COURT OF NEW JERSEY<br>DOCKET NO. 64,722<br><br>ON PETITION FOR CERTIFICATION FROM FINAL DECISION OF THE SUPERIOR COURT, APPELLATE DIVISION<br><br>Sat Below:<br><br>Lisa, Sapp-Peterson and Alvarez, JJAD |

# BRIEF AMICUS CURIAE OF BUILDERS LEAGUE OF SOUTH JERSEY, INC. IN SUPPORT OF PETITIONERS

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On the Brief

## TABLE OF CONTENTS

## TABLE OF AUTHORITIES

Page(s)

### FEDERAL CASES



### STATE CASES



### STATE STATUTES



### CONSTITUTIONAL PROVISIONS

## OTHER AUTHORITIES

## QUESTIONS PRESENTED

Maya municipality, consistent with the federal and state constitutional proscriptions against taking property without due process of law and without paying just compensation, utilize inverse condemnation to avoid the eminent domain process and obtain title to land without paying for it?

Is the remedy of inverse condemnation, which was designed to provide just compensation to landowners when privately owned land is taken by the government, available only to landowners and not to municipalities?

Where an owner is vested with fee simple title to land, and a municipality has occupied the land but failed to satisfy the legal requirements to take the land by either eminent domain or adverse possession, is the owner entitled to a judgment of ejectment against the municipality?

## PRELIMINARY STATEMENT

The Builders League of South Jersey, Inc. (BLSJ) appears in this matter Amicus Curiae to urge the Supreme Court to grant the Petition for Certification filed by Edward W. and Nancy M. Klumpp, and to reverse the decision of the Superior Court, Appellate Division below.

The decision below is nothing short of bizarre, and has been described by a nationally known eminent domain attorney as "Kafkaesque." See http://inversecondemnation.com/inverse

condemnation/2009/09/can-government-use-inverse-condemnation-to-take-property.html (visited September 9, 2009). The Appellate Division decided that title to oceanfront land which has been owned by the Klumpps since 1960 must be transferred to the Borough of Avalon, based upon the Borough's claim that it has been in "possession" of the property since 1962. In so doing, the Court trampled upon the Klumpps' constitutional rights not to be deprived of property without due process of law (*U.S. Const.*, amend XIV; *N.J. Const.* Art. I, para. 1), and not to have their property taken without payment of just compensation (*U.S. Const.*, amend V; *N.J. Const.* Art. I, para. 20). The Appellate Division acted wrongfully based upon "principles of inverse condemnation." (Pa11)[1] The court incorrectly believed that a municipality may utilize the inverse condemnation cause of action in order to seize land without paying for it, and without complying with the Eminent Domain Act, *N.J.S.A.* 20:3-1, *et seq.* Inverse condemnation, however, is a landowner's remedy, utilized to compel the government to comply with the Eminent Domain Act, and to pay just compensation, when it physically seizes land or denies all reasonable beneficial use of land through regulation. There is no authority for the proposition that a municipality may utilize

[1] "Pa____" refers to the Appendix to the Klumpps' Petition for Certification.

inverse condemnation to take land without paying for it. If Avalon desires to take the Klumpps' land, it certainly may do so, but only by complying with the Eminent Domain Act.

## INTEREST OF THE AMICUS

BLSJ is a trade association which was founded In 1940 for the purpose of promoting and protecting the interests of all associated with the homebuilding industry, including, but not limited to, builders, developers, and the general public. The membership of BLSJ consists of approximately 94 builder members and 361 associate members, including subcontractors, suppliers, financial institutions, title companies, and other companies and professionals who provide goods and services to builders. BLSJ actively works for its members and the public to address major issues and problems confronting the building industry in New Jersey, particularly in the counties which comprise southern New Jersey, including Burlington, Camden, Gloucester, Salem, Cumberland, Cape May, and Atlantic Counties.

BLSJ is particularly vigilant on issues relating to the abuse, misapplication or misinterpretation of property rights and existing laws by municipalities, counties, the State, and other government agencies. As such, BLSJ reviews and acts upon complaints of its members, and when necessary, takes legal action to protect the interests of its membership, as well as the public interest.

BLSJ submits that the instant case presents a significant public policy issue which should be reviewed by this Court. Under the U.S. and New Jersey Constitutions, government may not deprive any person of their property without due process of law, nor may government take private property without paying just compensation. Fundamental constitutional rights are at stake here. As the United States Supreme Court recognized in *Dolan v. City of Tigard*, 512 *U.S.* 374 (1994), "We see no reasons why the Takings Clause of the Fifth Amendment, as much a part of the Bill of Rights as the First Amendment or Fourth Amendment, should be relegated to the status of a poor relation in these comparable circumstances." *Id.* at 392.

The Appellate Division's decision allowing a municipality to utilize inverse condemnation to take land without paying compensation is far-reaching, precedent setting, and is expected to have a significant and revolutionary impact upon property rights throughout New Jersey. It will certainly encourage other government entities to attempt to obtain private land for free, to the detriment of landowners. The decision is directly contrary to the public policy of this State which requires that land only be taken by the government through compliance with the Eminent Domain Act, and requires as a matter of constitutional imperative that just compensation be paid.

Accordingly, BLSJ respectfully submits this brief amicus curiae and urges the Supreme Court to grant the Klumpps' Petition for Certification, and to reverse the decision of the Appellate Division below.

## STATEMENT OF THE CASE

This is not an inverse condemnation case. Rather, the Klumpps filed suit against the Borough of Avalon seeking access to their property from 75th Street, which had been vacated by ordinance. The Klumpps alleged that they were entitled to "perpetual and indefeasible" private access from 75th Street to their property pursuant to *Highway Holding Co. v. Yara*, 22 *N.J.* 119, 128 (1956). (In a previous decision, the Appellate Division agreed.)

In response, the Borough of Avalon claimed for the first time on July 27, 2005 (in its cross-motion for summary judgment) that the Borough, not the Klumpps, actually owned the property. The Borough claimed that it physically seized the land in 1962, when Avalon rebuilt the beach and dunes after the northeast storm. Since the Borough owned the property, it was argued, the Klumpps have no need for access.

The problem with Avalon's physical taking argument is that there are no facts to support it. While Avalon may have temporarily trespassed onto the Klumpp property in connection with the beach/dune construction project, there is no evidence

that the Borough intended permanently physically to seize the Klumpp land, nor is there evidence that Avalon has continuously been in possession since 1962.

Indeed, Avalon consistently treated the Klumpps as the landowners over the past 47 years, according to these undisputed facts:

- There is no document evidencing Avalon's physical taking of the Klumpps' land.
- Avalon has placed no indicia of "possession" (i.e. structures, fences, etc.) on the property.
- Avalon's records have always listed the Klumpps as owners of the land, and Avalon sent the Klumpps real estate tax bills, which they paid, over the last 47 years.
- Avalon's Official Map lists the land as privately owned, as compared with the surrounding, publicly owned beach.
- In 1997, Avalon's municipal attorney denied (in writing) that Avalon had taken the land. In 2002, Avalon sent the Klumpps a "Dear Property Owner" letter advising them of a revaluation of "Your Property."

- A 2002 State Aid Agreement between Avalon and the Department of Environmental Protection for beach nourishment calls out the Klumpp land as a privately owned tract for which an easement is needed in order to enter onto the land to do the work. No such easement was ever obtained from the Klumpps.
- Records in the Cape May County Clerk's office indicate that the Klumpps have fee simple title to the land.
- In its original Answer in this litigation, Avalon "admitted" that the Klumpps own the land.

Notwithstanding these facts, the court below found that Avalon had possessed the land since 1962, and that as a result of such possession, "inverse condemnation has occurred, and . . the Borough is the true owner of the property" (Pa11), even though Avalon acted "without any semblance of due process or compliance with statutory requirements" (Pa12). The fact that the Klumpps have record fee simple title, and that Avalon treated the Klumpps as landowners for the past 47 years, mattered not to the Appellate Division, which declared that "The fact that Plaintiffs have legal title does not refute [the inverse condemnation] conclusion." *Id.* "Principles of inverse

condemnation control here," according to the court below. (Pa12).

## ARGUMENT

### Inverse Condemnation Is A Landowner's Remedy Which May Not Be Used By A Municipality To Take Land Without Complying With the Eminent Domain Act.

The Appellate Division's decision accurately states the law as follows:

> Both the federal and state constitutions prohibit the government from taking property without paying just compensation. *Littman v. Gimello*, 115 *N.J.* 154, 171, *cert. denied*, 493 *U.S.* 934, 110 *S. Ct.* 324, 107 *L. Ed.* 2d 314 (1989). In an inverse condemnation case, a **property owner** alleges that the government took the property without the payment of just compensation. *Pappas v. Bd. of Adjustment of Borough of Leonia*, 254 *N.J. Super.* 52, 56 9 App. Div.), *certif. denied*, 130 *N.J.* 9 (1992). A taking by inverse condemnation 'does not occur in compliance with statutorily imposed procedures. The essence of the cause of action is a de facto taking of private property under the power of eminent domain.' *Van Dissel v. Jersey Cent. Power & Light Co.*, 152 *N.J. Super.* 391, 404 (Law Div. 1977), aff'd, 181 *N.J. Super.* 516 (App. Div. 1981), *certif. denied*, 89 *N.J.* 409 (1982), *vacated on other grounds*, 465 *U.S.* 1001, 104 *S. Ct.* 989, 79 *L.Ed.* 2d 224 (1984). **Inverse condemnation thus provides a remedy designed to insure that the owner whose land was taken de facto receives just compensation.** *Ibid.* [Pa9-Pa10; emphasis added]

The court below thus understood that inverse condemnation provides a remedy to **landowners** whose land has been taken by the government either through physical seizure or through

regulations which deny all reasonable beneficial use. In the typical inverse condemnation action, once the court determines that the government has taken the land, the court will compel the government to initiate proceedings under the Eminent Domain Act. *See N.J.S.A.* 20:3-26(c) (landowner who believes municipality has taken land may sue to "compel condemnation.") Thus, an inverse condemnation action is simply the cause of action by which a landowner whose land has already been taken may compel the government to file an eminent domain action, pay just compensation, and obtain title to the land.

The United States Supreme Court established inverse condemnation as a *landowner* cause of action to secure the award of compensation when the government has taken property without paying for it. *First English Evangelical Lutheran Church v. County of Los Angeles,* 482 *U.S.* 304 (1987); see also *Sheerr v. Tp. of Evesham,* 184 *N.J. Super.* 11 (L. Div. 1982) (recognizing landowner suit seeking compensation for a regulatory taking of property). One court has defined inverse condemnation as follows:

> a cause of action against a governmental defendant to recover the value of property which has been taken in fact by the governmental defendant, even though no formal exercise of the power of eminent domain has been attempted by the taking agency.

*Thornburg v. Port of Portland,* 376 P.2d 100, 101 n.1 (Or. 1962).

Several leading land use law treatises reinforce that inverse condemnation is a cause of action available to landowners to recover just compensation when a government agency takes property but refuses to compensate the owner:

> On those occasions when a property owner claims that a government action or regulation has caused a taking and no suit has been filed by the government, the burden is on the property owner to bring an action in inverse condemnation.

Juergensmeyer & Roberts, *Land Use Planning and Development Regulation Law* §16.9 (Thompson, 2d Ed. 2007); see also *id.* at §10.2(B) ("When a government dams a river, flooding upstream property, or zones land for open space so that no economically viable use can be made of it, no offer of compensation precedes the act. An owner who thinks . . . that compensation ought to be paid has the burden to initiate suit against the government.")

Another leading land use treatise describes inverse condemnation as follows:

> Inverse condemnation is a remedy a landowner may bring to enforce the taking clause that is included in the federal and most state constitutions. The landowner's condemnation action is "inverse" or "reverse" because he claims a government entity has taken his property but has not paid him the compensation to which he is entitled. Inverse condemnation is an implied constitutional remedy and is self-executing under the federal and most state constitutions.

Mandelker, *Land Use Law* §8.20 (Lexus Nexus, 5th Ed. 2003).

It makes no sense to allow a municipality to utilize inverse condemnation, as the court below did here. The government may take land directly only by proceeding under the Eminent Domain Act, *N.J.S.A.* 20:3-1, *et seq.* In the present case, however, the Appellate Division has not required Avalon to file an eminent domain action; rather, it simply, and improperly, awarded Avalon title to the Klumpp property without any compliance with the Eminent Domain Act. The court below acknowledged that Avalon acted "without any semblance of due process or compliance with statutory requirements." (Pa12) Neither Avalon nor the court below cited any authority, case law or otherwise, which supports the Appellate Division's decision to strip the Klumpps of title and give it to Avalon under the guise of inverse condemnation.

BLSJ is concerned about the potential ramifications of the Appellate Division's decision. If Avalon may, 47 years after the 1962 storm, belatedly claim that it actually seized the property back then, has been in possession of it ever since, and is therefore entitled to vested title, what is there to stop other similarly situated government agencies from taking land for free in the same manner? For example, both the Pinelands Commission, under the Pinelands Protection Act, *N.J.S.A.* 13:18A-1, *et seq.*, and the Highlands Council, pursuant to the Highlands Water

Protection Act, *N.J.S.A.* 13:20-1, *et seq.*, have exercised their authority to severely restrict the use of land within their respective "preservation" areas. The Pinelands Commission did so in 1981, when it enacted its Comprehensive Management Plan, and the Highlands Council has just done so recently. Unless the Appellate Division's decision in *Klumpp* is reversed, what is there to stop the Pinelands Commission or the Highlands Council, years from now, from claiming that they had actually taken their respective 'preservation' area lands years ago, and are therefore entitled to vested title without paying any compensation?

In the present case, it is doubtful that Avalon has actually "possessed" the Klumpp property for the past 47 years. There are no structures, fences, or other indicia of possession on the property. And in any event, there is no authority for the proposition that 47 years of "possession" imbues Avalon with vested title. It must be remembered that pursuant to *N.J.S.A.* 2A:14-30, 60 years of adverse possession is required in the case of undeveloped woodlands or uncultivated tracts. Even assuming that Avalon has been in possession since 1962, that is only 47 years, well short of the required 60.

Avalon's claim to continuous "possession" is further undermined by *N.J.S.A.* 54:4-23, which requires municipalities to assess real property "to the person owning the same. . . ."

Avalon's assessment to the Klumpps for the past 47 years amounts to an admission that the Klumpps own the land. In addition, *N.J.S.A.* 2A:62-2 provides that when unimproved land is not in "the actual peaceable possession of the owner or person claiming ownership," then the person claiming ownership in fee under a deed who has paid taxes for five consecutive years is presumed to be in possession of the land. By this measure, the Klumpps, not Avalon, are in possession as a matter of law.

In the wake of the 1962 storm, the Legislature enacted special legislation to facilitate beach and dune restoration by municipalities. *N.J.S.A.* App.A:9-51.5 empowered municipalities to "designate the properties required" to be taken for such work. Resolution 62-102, adopted by Avalon for this purpose, failed to designate the Klumpp property, or any other. And even if it had, the decision in *Lorio v. City of Sea Isle City*, 88 *N.J. Super.* 506 (Law Div. 1965), which arose in the town next door to Avalon, made it clear that eminent domain proceedings must be initiated, and just compensation paid, to the owners of the "designated properties." Avalon, of course, has never instituted eminent domain to take the Klumpp land.

In sum, on the record below, it is clear that the Klumpps, not Avalon, are in possession of the land. The court below misunderstood the doctrine of inverse condemnation, and erred by awarding title to the land to Avalon based upon a mistaken

notion of "principles of inverse condemnation." Given the dangerous precedent to property owners' constitutional rights, the decision must be reversed.

## CONCLUSION

For the foregoing reasons, the Klumpps' Petition for Certification should be granted, and the decision of the Appellate Division should be reversed.

Respectfully submitted,

Flaster/Greenberg PC
Attorneys for Amicus Curiae
Builders League of South Jersey, Inc.

By: _____
Robert M. Washburn, Esq.
Of Counsel

Dated: September 17, 2009

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