IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

THE STATE OF DELAWARE, UPON THE RELATION OF THE SECRETARY OF THE DEPARTMENT OF TRANSPORTATION Plaintiff, v. RONALD C. TEAGUE and MILDRED TEAGUE, 0.0498 ACRES of land, more or less, as a Permanent Taking and 0.023 ACRES of Land, more or less, as a Temporary Construction Easement; situate in New Castle Hundred; New Castle County, Delaware; WILMINGTON TRUST COMPANY, PREFERRED FINANCIAL FEDERAL CREDIT UNION; and UNKNOWN OTHERS, Defendants	)	C.A. No. 08C-09-065 JAP

Submitted: April 17, 2009
Decided: April 21, 2009

On Reargument

This case proves the adage that "no good deed goes unpunished." In this condemnation case DelDOT had to choose between two valuation methods. It chose the one which, according to the unrebutted evidence, yielded the higher offer to the property owners. Now those owners make this choice the focal point of their motion for reargument.

The purpose of a motion for reargument made pursuant to Superior Court Civil Rule 59(e) is to provide the trial court with an opportunity to reconsider a matter and to correct any alleged legal or factual errors prior to an appeal.[1] A motion for reargument is not a device for raising new arguments, stringing out the length of time to make an argument, or rehashing the arguments already decided by the court.[2] The only issue on a motion for reargument is "whether the court overlooked something that would have changed the outcome of the underlying decision."[3]

The central issue in the Teagues' motion for reargument is DelDOT's decision to use the strip valuation method rather than the before and after method to determine the amount of its offer to the Teagues. This Court accepted DelDOT's use of the strip method under the circumstances of this case because of the unrebutted evidence that this method resulted in a higher offer to the Teagues than the before-and-after would have yielded.

The Teagues argument is largely a rehash of their previous contentions and therefore does not require this Court to repeat its earlier holding. One of the Teagues' assertions, however, warrants some comment. In their motion for reargument they dispute this Court's conclusion that the unrebutted evidence shows that the strip valuation

[1] *Bowen v. E.I. duPont de Nemours and Co., Inc.*, 879 A.2d 920 (Del. 2005).
[2] *Hennegan v. Cardiology Consultants, P.A.*, 2008 WL 4152678 (Del. Super. Sept. 9, 2008)
[3] *McElroy v. Shell Petroleum, Inc.*, 1992 WL 397468 (Del. Supr. Nov. 24, 1992).

method is more favorable to them. They contend that "Mr. Teague expressly rebutted this through testimony that his property was seriously harmed -- *i.e.* eliminating access."[4] They are presumably referring to Mr. Teague's testimony that construction of the median barrier on Route 7 will have an adverse impact on his auto parts business. Their argument fails for either of two reasons. First, the construction of the median barrier, although part of the Route 7 project, is distinct from the taking of the portion of the Teagues' property. Second, even assuming that construction of the median barrier requires compensation to the Teagues for the loss of business, the Teagues failed to offer any evidence of the amount of that loss which the Court could use to determine the reasonableness of DelDOT's offer.

As noted in the Court's opinion, it is important to keep in mind the current stage of the proceedings. The Court is not now required to determine the final compensation due the Teagues. Rather the issue currently before the Court is whether DelDOT made an offer "which it reasonably believed is just compensation."[5] Although precedent in this State seemingly counsels application of the before and after valuation method in partial taking cases, DelDOT's choice of the more generous method (in this instance anyway) satisfies its obligation to make a good faith offer of compensation.

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[4] This assertion is factually inaccurate. There was no testimony at all that the modifications to Route 7 will "eliminate" access to the Teagues' to the property. It was agreed by all the witnesses, including Mr. Teague, that there will still be access to the property from southbound Route 7

[5] 29 *Del.C.* §9505 (3).

For the foregoing reasons, the motion for reargument is **DENIED**.

John A. Parkins, Jr.

oc: Prothonotary
cc: Michael W. Arrington, Esquire, Wilmington, Delaware – Attorney for Plaintiffs
Richard L. Abbott, Esquire, Hockessin, Delaware – Attorney for Defendants