STATE OF RHODE ISLAND

WASHINGTON, SC. **SUPERIOR COURT**

(FILED: August 2, 2023)

HARRIET KNIFFER, TRUSTEE FOR THE HARRIET CHAPPELL MORE FOUNDATION; JACQUELINE ABBERTON; ROBERT RUTTER AND PATRICIA RUTTER, TRUSTEES FOR THE RUTTER FAMILY REVOCABLE LIVING TRUST; and FRANCES W. KELLY, TRUSTEE FOR THE FRANCES W. KELLY TRUST	:	
Plaintiffs,	:	
v.	:	**C.A. No. WC-2016-0121**
RHODE ISLAND AIRPORT CORPORATION, STATE OF RHODE ISLAND DEPARTMENT OF TRANSPORTATION	:	
Defendants.	:	
	:	*Consolidated with*
HARRIET KNIFFER, Trustee of the HARRIET CHAPPELL MOORE FOUNDATION; JACQUELINE ABBERTON; ROBERT RUTTER and PATRICIA RUTTER, Trustees of the RUTTER FAMILY REVOCABLE LIVING TRUST; FRANCES W. KELLY TRUST; and A. MICHAEL SLOSBERG REVOCABLE TRUST AGREEMENT	:	
Petitioners,	:	
v.	:	**C.A. No. WC-2016-0119**
RHODE ISLAND AIRPORT CORPORATION and RHODE ISLAND DEPARTMENT OF TRANSPORTATION	:	
Respondents.	:	

DECISION

TAFT-CARTER, J. Plaintiffs/Petitioners—Harriet Kniffer, Trustee for the Harriet Chappell Moore Foundation, Jacqueline Abberton, Robert Rutter and Patricia Rutter, Trustees for the Rutter

Family Revocable Living Trust; Linda A. Parilla and Carolyn Watts,[1] Co-Trustees for the Frances W. Kelly Trust, and A. Michael Slosberg and Karen L. Slosberg, Trustees of the A. Michael Slosberg Revocable Trust Agreement—and Defendants—Rhode Island Airport Corporation and the State of Rhode Island Department of Transportation—petitioned this Court to interpret the application of Section 8 of the Rhode Island Home and Business Protection Act of 2008, G.L. 1956 § 42-64.12-8. Jurisdiction is pursuant to G.L. 1956 §§ 8-2-14, 9-30-1, and 37-6-18 and Rule 7(b) of the Superior Court Rules of Civil Procedure.

I

Facts and Travel

This matter proceeded to a jury trial on the issue of just compensation beginning on May 22, 2023. *See* Joint Scheduling Order 1, June 13, 2023. On May 26, 2023, the jury awarded the following as just compensation: (1) $74,000 to Frances W. Kelly, Trustee of the Frances W. Kelly Trust; (2) $41,000 to Harriet Kniffer, as Trustee of the Harriet Chappell Moore Foundation; (3) $108,000 to Robert and Patricia Rutter, as Trustees of the Rutter Family Revocable Living Trust; (4) $81,000 to Jacqueline Abberton; and (5) $28,000 to A. Michael and Karen L. Slosberg, Trustees of the A. Michael Slosberg Revocable Trust Agreement. (Verdict Sheet ¶¶ 1-5, May 26, 2023.) Following the jury determination, the Parties entered into a scheduling order. (Joint Scheduling Order 2.)

On June 16, 2023, Plaintiffs[2] and Defendants filed their respective briefs. *See* Docket, WC-2016-0121. On June 30, 2023, the Defendants filed their Reply Brief with respect to the Purpose

[1] The original plaintiff, Frances W. Kelly passed away on March 3, 2021, and this Court granted the Plaintiffs' Motion to Substitute Linda A. Parilla and Carolyn K. Watts as Plaintiffs on March 27, 2023. *See* Order 1, Mar. 27, 2023 (Taft-Carter, J.).

[2] The Plaintiffs are identical to the Petitioners, with the exception of A. Michael Slosberg and Karen L. Slosberg, Trustees of the A. Michael Slosberg Revocable Trust Agreement, who did not

of the Taking of the Avigation Easements Pursuant to the Rhode Island Home and Business Protection Act of 2008 and Plaintiffs filed their Reply Brief. *See* Docket, WC-2016-0119. Accordingly, the parties' joint petition is now before this Court for a decision.

II

Standard of Review

The interpretation of a statute is a pure question of law. *In re A & R Marine Corp.*, 199 A.3d 533, 537 (R.I. 2019). The Court's primary goal is to "'give effect to the General Assembly's intent.'" *Id.* at 539 (quoting *DeMarco v. Travelers Insurance Co.*, 26 A.3d 585, 616 (R.I. 2011)). The best evidence of legislative intent can be found in the statute's plain language. *See Martone v. Johnston School Committee*, 824 A.2d 426, 431 (R.I. 2003). Therefore, "when the language of a statute is clear and unambiguous, this Court must interpret the statute literally and must give the words of the statute their plain and ordinary meanings." *Accent Store Design, Inc. v. Marathon House, Inc.*, 674 A.2d 1223, 1226 (R.I. 1996). However, when a statute "is ambiguous and susceptible to more than one interpretation . . . this Court ha[s] the responsibility to 'glean the intent and purpose of the Legislature from a consideration of the entire statute, keeping in mind [the] nature, object, language, and arrangement of the provision to be construed.'" *City of East Providence v. International Association of Firefighters Local 850*, 982 A.2d 1281, 1288 (R.I. 2009) (quoting *Algiere v. Fox*, 122 R.I. 55, 58, 404 A.2d 72, 74 (1979)). In such a case, the Court "appl[ies] the meaning most consistent with the intended policies and purposes of the Legislature." *Roe v. Gelineau*, 794 A.2d 476, 484 (R.I. 2002).

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join the Complaint seeking application of the Rhode Island Business Protection Act of 2008 (the Act). *Cf.* Pet. for Assessment of Damages ¶¶ 1-5, *with* Compl. ¶¶ 1-4, *and* Am. Compl. ¶¶ 1-4.

III

Analysis

Plaintiffs seek the application of the Rhode Island Home and Business Protection Act of 2008. (Pls.' Bench Br. Regarding Rhode Island Home and Business Protection Act of 2008 (Pls.' Br.) 3, 7.) The act provides that the owners of property taken for economic development purposes be compensated for a minimum of 150 percent of the fair market value of real property. Section 42-64.12-8(a). Plaintiffs contend that for a variety of reasons this compensation provision applies and that they are entitled to the enhanced compensation. *See* Pls.' Br. 8-12; Pls.' Reply Br. 8-11. The parties requested that this Court answer the following question of law:

> "Whether the exercise of eminent domain for one or more Permissible uses under Rhode Island General Laws § 42-64.12-6, as Plaintiffs concede the Avigation Easements were, may be found also to be a Restricted use pursuant to Rhode Island General Laws § 42-64.12-7 that requires the payment of 150% of just compensation pursuant to § 42-64.12-8." (Joint Scheduling Order ¶ 1.)

The Rhode Island Home and Business Protection Act of 2008 (the Act), codified in §§ 42-64.12-1 to 42-64.12-11, was enacted in response to the United States Supreme Court's decision in *Kelo v. City of New London*, 545 U.S. 469 (2005), which "affirmed the use of eminent domain powers for economic development purposes, and encouraged states to define and limit the exercise of eminent domain for economic development purposes." Section 42-64.12-2(e). The purpose of the Act is to "set forth permissible uses of eminent domain power and to define, limit and restrict the use of eminent domain for economic development purposes." Section 42-64.12-3. Accordingly, § 42-64.12-6 of the Act (Section Six), titled "Permissible uses of eminent domain powers," provides that:

> "All entities delegated eminent domain powers under the laws of this state may exercise such powers consistent with other restrictions

> and limitations established by law, rule, regulation, or ordinance, to acquire property for the following purposes:
>
> "(a) Providing for public ownership and use;
>
> "(b) Providing for transportation infrastructure including, but not limited to, roads, highways, bridges, and associated ramps;
>
> "(c) Providing for public utilities, including telecommunications, and for common carriers;
>
> "(d) Eliminating an identifiable public harm and/or correcting conditions adversely affecting public health, safety, morals, or welfare, including, but not limited to, the elimination and prevention of blighted and substandard areas, as defined by chapter 45-31, and correcting conditions of environmental contamination that pose a significant risk to the public health, correcting and repairing facilities, and correcting conditions from damages that result from a declared disaster;
>
> "(e) Providing good and marketable title that is free and clear of liens and encumbrances when property is to be acquired or is to be conveyed for any of the purposes set forth in subsections (a) – (d) of this section." Section 42-64.12-6.

In contrast, § 42-64.12-7 of the Act (Section Seven), titled "Restricted use of eminent domain powers," provides that, "[n]o entity subject to the provisions of the chapter shall exercise eminent powers to acquire any property for economic development purposes unless it has explicit authority to do so and unless it conforms to the provisions of this section." Section 42-64.12-7. Economic development is defined under the Act as "the mobilization of intellectual, human, capital, physical and natural resources to generate marketable goods and services for purposes including, but not limited to, creating jobs, economic and employment opportunities, tax base, and wealth." Section 42-64.12-5(a). Section Seven sets forth a procedure for entities acquiring property for economic development purposes. Section 42-64.12-7. Specifically, the Act requires entities taking property for economic development purposes to create a plan for the proposed

development, give notice to the property owners, and obtain the approval of the city council, the town council, or the general assembly.[3] *See id.*

Additionally, § 42-64.12-8 of the Act (Section Eight), provides enhanced compensation to property owners whose property is taken for economic development purposes. *See* § 42-64.12-8. The act provides the following for property owners whose property is taken in such circumstances:

> "(a) A minimum of one hundred fifty percent (150%) of the fair market value of the real property.
> "(b) Expenses incidental to transfer of ownership to the acquiring entity . . . ."

[3] Section Seven provides that:

> "(a) **Plan**. The entity shall have a plan for the proposed development, which shall be approved by the governing body of the entity prior to the initiation of any eminent domain proceeding, which plan shall set forth the purposes of the development, the intended benefits to the community, the necessary infrastructure improvements, the presence and correction of any substandard conditions and/or environmental hazards, and the parcels which will be acquired in order to effectuate the plan. In addition, the plan shall include provisions and/or analyses which can support a rational-basis determination that potential takings by eminent domain inure a preponderance of benefits, to the public with only incidental, benefits to a private party or parties. The plan shall only be adopted after public notice of not less than fourteen (14) days, a public hearing and a period for public comment of not less than thirty (30) days . . . .
> "(b) **Notice**. The entity shall give the owner(s) of property which may be acquired by eminent domain advanced notice of the potential taking and shall provide the opportunity to sell the property for a negotiated, mutually agreed upon price.
> "(c) Except for taking of temporary easements and partial takings subject to the provisions of § 42-64.12-10, no local government entity shall implement any eminent domain proceeding for economic development purposes unless the acquisition of the property by eminent domain has been approved by the city or town council, and no state government entity shall implement any eminent domain proceeding for economic development purposes unless the acquisition of the property by eminent domain has been approved by an act of the general assembly." Section 42-64.12-7.

> "(c) Relocation expenses, including, but not limited to, actual, reasonable and necessary moving and reestablishment expenses." *Id.*

Plaintiffs argue that the procedural restrictions set forth in Section Seven apply to the exercise of eminent domain under Section Six in circumstances in which property is taken for public use. *See* Pls.' Br. 4-6. Specifically, Plaintiffs contend that the term "public use" as used in Section Six encompasses the term "economic development" because the *Kelo* Court found that taking property for public use included "economic development." *Id.* at 4 (citing *Kelo,* 545 U.S. at 483-84). Plaintiffs further contend that because the exercise of eminent domain power under Section Six must be "'*consistent with other restrictions and limitations established by law . . .* ,'" the purposes set forth in Section Six are subject to further limitation, including the limitations outlined in Section Seven. *Id.* at 6 (quoting § 42-64.12-6). Accordingly, Plaintiffs argue that the appropriate takings analysis is to "first determine whether said taking was for a permissible use [under Section Six], and then determine whether the taking was for purposes of facilitating the 'mobilization of intellectual, human, capital, physical and natural resources to generate marketable goods and services [under Section Seven] . . . ." *Id.* at 6.

Plaintiffs also maintain that the Act anticipates that a taking may be for multiple purposes because Section Seven requires an entity taking for economic development purposes to develop a plan which articulates the "*purposes*" of the development, the "benefits to the community," "infrastructure improvements," and "correction of any substandard conditions." *See id.* at 6-7 (quoting § 42-64.12-7(a)) (emphasis added). Plaintiffs argue that because these plan requirements overlap with the permissible purposes enumerated in Section Six, the Act anticipates that a taking may be for multiple purposes and directs that when "one of those purposes is economic development, the entire project is a [*sic*] treated as though it is for purposes of a 'restricted use'

subject to Section Seven." *Id.* Lastly, Plaintiffs argue that if the Court finds that a taking for the purpose of eliminating a blighted area cannot also be a taking for "economic development," it would contradict the General Assembly's intent to address *Kelo*-like takings. *See id.* at 8-10.

In response, Defendants argue that pursuant to the statute's unambiguous language, the "permissible" uses of eminent domain are those that are allowed, while the use of eminent domain for economic development purposes is subject to restriction. (Bench Br. of Defs. on the Purpose of the Taking Pursuant to Rhode Island Home and Business Protection Act of 2008 (Defs.' Br.) 6.) Defendants recognize that the Section Six permissible purposes must be exercised "consistent with other restrictions and limitations established by law," but they contend that "other restrictions" refers to the statutory schemes setting the procedure for eminent domain rather than the restrictions established in Section Seven. (Defs.' Br. 8-9.) Defendants next argue that Plaintiffs' interpretation would lead to an absurd result because *any* taking could be subject to Section Seven and Eight restrictions if the taking in some way contributed to economic activity. *Id.* at 9-10. Lastly, Defendants urge the Court to interpret the statute consistent with the General Assembly's intent to address *Kelo*-like takings and not to impact the traditional uses of eminent domain. *Id.* at 11.

The Court will first address Plaintiffs' argument that the restrictions articulated in Sections Seven and Eight apply to a taking for a permissible purpose under Section Six. (Pls.' Br. 4-6.) The terms of the Act are clear and unambiguous. Section Six provides that entities "may exercise [eminent domain] powers consistent with other restrictions and limitations established by law . . . to acquire property for . . ." the enumerated permissible purposes. *See* § 42-64.12-6. Given the use of the permissive term "may," Section Six permits entities to exercise their eminent domain power for the purposes set forth in Section Six. *See Downey v. Carcieri*, 996 A.2d 1144, 1151 (R.I.

2010) (noting the ordinary use of the term "may" is permissive). While it is clear that such an exercise of eminent domain power must be consistent with other applicable legal restrictions, the Act is void of language to indicate that the Sections Seven or Eight restrictions apply to the use of eminent domain under Section Six.

Furthermore, Sections Seven and Eight only apply when a taking is for economic development purposes. *See* §§ 42-64.12-7, 42-64.12-8. For example, Section Seven provides that "[n]o entity . . . shall exercise eminent powers to acquire any property for *economic development purposes* unless it has explicit authority to do so and unless it conforms to the provisions of this section." Section 42-64.12-7 (emphasis added). Similarly, Section Eight provides that "[o]wners of property taken for *economic development purposes* shall be compensated for . . . one hundred fifty percent (150%) of the fair market value . . . , [e]xpenses incidental to transfer of ownership . . . , [and] [r]elocation expenses." Section 42-64.12-8 (emphasis added). There are no compelling reasons for this Court to read Sections Seven and Eight as limitations upon Section Six when the Legislature did not express that Sections Seven and Eight should operate in such a manner. *See Woods v. Safeway System, Inc.*, 102 R.I. 493, 495, 232 A.2d 121, 122 (1967). If the General Assembly intended Section Seven to operate as a restriction upon the purposes permitted by Section Six, then it would have listed "economic development" as a permissible use under Section Six and drafted Sections Seven and Eight as provisos or exceptions to Section Six. *Cf. Newport and New Road, LLC v. Hazard*, 296 A.3d 92, 95 (R.I. 2023). Clearly, there is no language in Sections Seven or Eight to indicate that they restrict the exercise of eminent domain power under Section Six. *Cf. id.* (finding that when a section begins with the phrase "provided that," it directly relates to, and acts as, a proviso to the preceding sections).

Furthermore, notwithstanding Plaintiffs' argument to the contrary, the exercise of eminent domain for public use under Section Six does not encompass the exercise of eminent domain for "economic development" pursuant to Sections Seven and Eight. *Cf.* § 42-64.12-6, *with* § 42-64.12-7, *and* § 42-64.12-8. The Act defines "public ownership and use" as "the right of a public body to possess, use, and/or enjoy property in order to conduct a governmental function or to provide for a public activity." Section 42-64.12-5(e). This definition is narrower than the "public purpose" definition of "public use" that the *Kelo* Court applied when it found that "public use" encompassed "economic development." *See Kelo,* 545 U.S. at 482-83. Moreover, "economic development" is defined as "the mobilization of intellectual, human, capital, physical and natural resources to generate marketable goods and services . . . ." Section 42-64.12-5(a). Therefore, "economic development" is not encompassed by "public ownership and use" because the mobilization of resources to generate marketable goods is distinct from acquiring property to possess or use for conducting a governmental function or providing a public activity. *Cf.* § 42-64.12-5(a), *with* § 42-64.12-5(e).

As such, pursuant to the Act's plain and unambiguous meaning, an entity may exercise its eminent powers for a purpose set forth in Section Six, subject only to the applicable restrictions and limitations established by law, which do *not* include the restrictions articulated in Sections Seven and Eight. *See* §§ 42-64.12-6, 42-64.12-7. Additionally, pursuant to the clear and unambiguous language, Sections Seven and Eight only apply when a taking is accomplished for "economic development purposes." *See* §§ 42-64.12-7, 42-64.12-8.

Plaintiffs next argue that Sections Seven and Eight apply when an entity acquires property for multiple purposes and one of those purposes is economic development. *See* Pls.' Br. 6-7. Contrary to Plaintiffs' argument, the plain language of the Act does not address whether Sections

Seven and Eight apply in such circumstances.[4] A statute may be rendered ambiguous on its face or based on its application to a particular set of facts. *See Gott v. Norberg*, 417 A.2d 1352, 1361 (R.I. 1980). Here, Sections Seven and Eight clearly apply when a taking is accomplished for economic development purposes. *See* §§ 42-64.12-7, 42-64.12-8. However, it is unclear whether Sections Seven and Eight apply when a taking is accomplished for multiple purposes, or whether Sections Seven and Eight only apply when a taking is accomplished *solely* for economic development purposes. *See* §§ 42-64.12-7, 42-64.12-8. Given the two reasonable interpretations as to how the Act applies in these circumstances, the Act is ambiguous. *See Gott*, 417 A.2d at 1361. Therefore, the Court will "apply the meaning most consistent with the intended policies and purposes of the Legislature." *See Gelineau*, 794 A.2d at 484.

The Act's declared purpose is to "set forth permissible uses of eminent domain power and to define, limit and restrict the use of eminent domain for economic development purposes." Section 42-64.12-3. This purpose must also be understood in the context of the General Assembly's findings. *See International Association of Firefighters Local 850*, 982 A.2d at 1288.

[4] The Court is not persuaded by Plaintiffs' argument that the Act anticipates and directs that Sections Seven and Eight apply when a taking is for multiple purposes and one of those purposes is economic development. *See* Pls.' Bench Br. Regarding Rhode Island Home and Business Protection Act of 2008 (Pls.' Br.) 7. Although Section Seven requires the economic development plan to set "forth the *purposes* of the development," the use of the plural "purposes" does not indicate that a taking for economic development may also be for a permissible purpose. *See* § 42-64.12-5(a). Instead, it reflects the definition of "economic development," which indicates that there are multiple economic development purposes. *Id.*

Additionally, the requirement that the entity's plan set forth "the intended benefits to the community, the necessary infrastructure improvements, [and] the presence and correction of any substandard conditions and/or environmental hazards," does not show that eminent domain may be exercised for economic development purposes and permissible purposes because "[d]ifferent words used in the same . . . statute are assigned different meanings whenever possible." *See* 2A Norman J. Singer & J.D. Shambie Singer, *Sutherland Statutory Construction* § 46:6 (7th ed. 2022). Accordingly, the General Assembly's use of different words to describe the plan requirements in Section Seven and the permissible purposes in Section Six shows that the permissible purposes and the plan requirements refer to different things. *See id.*

In passing the Act, the General Assembly found and declared that eminent domain is "an inherent and historic attribute of the sovereign power of government . . . [and that] [t]he functions of government have changed . . . and continue to evolve in manners which affect . . . the use of eminent domain powers delegated by the general assembly . . . ." Section 42-64.12-2. Further, the General Assembly recognized that taking property for economic development purposes was "[a]mong the broad and more recently evolved powers of government . . . [and that the *Kelo* Court] both affirmed the use of eminent domain powers for economic development purposes, and encouraged states to define and limit the exercise of eminent domain for economic development purposes." *Id.* Accordingly, reading the General Assembly's findings with its declared purpose, its intent was to set forth the historically recognized and permitted purposes for which eminent domain may be exercised, but to define, limit, and restrict the "broad and more recently evolved power of government . . . pertaining to economic development purposes." *See* §§ 42-64.12-2, 42-64.12-3. Conversely, the General Assembly did not intend to limit the use of eminent domain for permissible purposes. *See id.*

Interpreting the Act as imposing Sections Seven and Eight restrictions on takings accomplished for a permissible purpose *as well as* economic development purposes would contravene the General Assembly's intent. *See* § 42-64.12-7. As long as a challenger could successfully demonstrate that a taking accomplished for a permissible purpose had an additional purpose of expanding the economy, then the taking would be subject to the procedural requirements of Section Seven and the enhanced damages of Section Eight. *See* §§ 42-64.12-7, 42-64.12-8. Such a result is contrary to the stated purpose of the Act to restrict takings for economic development purposes, rather than takings for the permissible purposes. *See* §§ 42-64.12-2, 42-64.12-3.

Moreover, such an interpretation would lead to an absurd result because the Act requires an entity who is taking land for economic development purposes to develop a plan, give notice, and obtain legislative approval *before* it can implement eminent domain proceedings. *See* § 42-64.12-7. As a result, entities would be encouraged to follow the Section Seven and Eight requirements even when they were not taking for economic development purposes in order to avoid the risk of the taking being subsequently invalidated for failure to follow the procedural requirements of Section Seven. *See id.*

Finally, contrary to Plaintiffs' argument, finding that Sections Seven and Eight apply when a taking is accomplished solely for economic development purposes will not contradict the General Assembly's intention to address *Kelo*-like takings. *See Kelo*, 545 U.S. at 483-84. The *Kelo* takings were not accomplished for the purpose of removing a blighted area but rather pursuant to a "state statute that specifically authorize[d] the use of eminent domain to promote economic development." *See id.* Further, removing and preventing a blighted and substandard area has long been recognized as a permissible public use under the Rhode Island Constitution. *See* R.I. Const. art. VI, § 18. Accordingly, accepting Defendants' interpretation of the Act will not contradict the General Assembly's intention to set forth the permitted, historical uses of eminent domain and restrict the newly established use of eminent domain for economic development purposes.

The Court concludes that Sections Seven and Eight of the Act apply only when an entity exercises its eminent powers to acquire property *solely* for economic development purposes. Accordingly, the exercise of eminent domain for one or more permissible use under Section Six may not also be for a restricted use under Section Seven that would require compensation of a minimum of 150 percent of the fair market value of the real property pursuant to Section Eight.

Lastly, this Court will address the parties' remaining arguments regarding the purpose of the Avigation Easements and whether judgment may enter without further evidence. Plaintiffs argue that Defendants' stated reason for the taking is pretextual because there will be no enhancement to the safety of the Westerly Airport by taking the Avigation Easements. (Pls.' Reply Br. 8-9.) They thus urge the Court to conduct an analysis—parallel to the United States Supreme Court's analysis for ascertaining whether a taking is for a public purpose—to determine whether the taking's purported permissible purpose is pretext for economic development purposes. *Id.* at 7.

In response, Defendants argue that the Act clearly does not apply in the instant case because the taking was for safety purposes. (Defs.' Br. 13-14.) Defendants contend that the "effects of the takings are not what guides the applicability of the Act[,]" and regardless of any economic benefits conferred upon the community via the expansion of the Westerly Airport, the easements were still not taken for an economic purpose. (Reply Br. of Defs. 8-10.) Accordingly, Defendants ask the Court to find that because the subject easements were taken for permissible purposes, as conceded by Plaintiffs, no further evidence is needed to determine whether the subject easements were taken for economic development purposes, and that judgment in the amount of just compensation may enter in favor of all of the Plaintiffs, except for the Rutters. *Id.* at 11; Defs.' Br. 4-5.

First, the parties' arguments regarding the purpose of the taking at-issue and the test that should be used to determine the purpose of the taking are not squarely before this Court. *See* Joint Scheduling Order ¶ 1. The parties stipulated that the Court would be asked to answer a specific question of law. *See id.* Therefore, those additional issues are not properly before this Court for a decision.

Second, although Plaintiffs conceded that the Avigation Easements were taken for one or more permissible purpose under Section Six, they do not appear to have conceded that the taking was *truly* for a permissible purpose because they argue that the purported purpose of the taking was pretextual. *See* Pls.' Reply Br. 8-10. Pretext is "a purpose or motive alleged or an appearance assumed in order to cloak the real intention or state of affairs." Pretext, *Webster's Third New International Dictionary*, at 1797 (1971). Accordingly, the Court's ruling—that the exercise of eminent domain for one or more permissible use under Section Six *cannot* also be a restricted use under Sections Seven or Eight as a matter of law—does not resolve the remaining factual issue regarding whether the purported permissible purpose of safety was pretext for "economic development."

IV

Conclusion

For the foregoing reasons, the Court concludes that the exercise of eminent domain for one or more permissible use under § 42-64.12-6 may not also be for a restricted use pursuant to § 42-64.12-7. Therefore, the owners of property taken pursuant to § 42-64.12-6 are not entitled to the enhanced compensation afforded in § 42-64.12-8.

RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE:	**Kniffer, et al. v. R.I. Airport Corporation, et al.**
	Consolidated with
	Kniffer, et al. v. R.I. Airport Corporation, et al.
CASE NOS:	**WC-2016-0121 *consolidated with* WC-2016-0119**
COURT:	**Washington County Superior Court**
DATE DECISION FILED:	**August 2, 2023**
JUSTICE/MAGISTRATE:	**Taft-Carter, J.**
ATTORNEYS:	
For Plaintiff:	**Gregory P. Massad, Esq.**
For Defendant:	**Todd D. White, Esq.** **Gregory S. Schultz, Esq.**