Putting a Price Tag on an Ocean View: The Impact of Borough of Harvey Cedars v. Karan on Partial-Taking Valuations

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PUTTING A PRICE TAG ON AN OCEAN VIEW: THE IMPACT OF BOROUGH OF HARVEY CEDARS V. KARAN ON PARTIAL-TAKING VALUATIONS

I. Introduction

Each summer, millions of people flock to the one hundred twenty-seven miles of beach along the Atlantic coastline that comprise the Jersey Shore.¹ This influx of beachgoers generates over forty billion dollars in tourism revenue for the State of New Jersey.² One does not need to look much further than tourism revenue to see why the State has such an interest in protecting its prized coastline.³

Long Beach Island (LBI) is an eighteen-mile barrier island located in Ocean County, New Jersey.⁴ Like many similarly situated coastal communities, LBI is frequently battered by coastal storms that result in tremendous damage and require costly repairs.⁵ Combine storm damage with global warming and its consequential rising sea level, and LBI faces a wave of problems.⁶

Concern over rising sea level is not a new phenomenon.⁷ Since 1983, the United States Environmental Protection Agency has warned coastal communities of the risk of rising sea levels.⁸


5. See id. at 1 (discussing history of major storms affecting LBI).

6. For a discussion of sea level rise in LBI, see supra note 4, at 72.


8. See id. at 1304 (explaining national concern for rising sea levels due to global warming).

(501)
1996, the New Jersey Department of Environmental Protection (NJDEP) alongside the United States Army Corps of Engineers (Corps) commissioned the New Jersey Shore Protection Study to issue a feasibility report assessing the extent of beach erosion and proposing solutions to this coastal atrophy.\(^9\) The study determined sea level is rising at a rate of 0.04 to 0.20 inches per year.\(^10\) As a result, "[l]ong term erosion within the study area has narrowed beaches and dunes and left the area more vulnerable to storm damage."\(^11\) The NJDEP and the Corps concluded that sand dunes would provide the "least environmentally damaging structural method of reducing potential storm damages at a reasonable cost."\(^12\) The study called for over one hundred and fifty-six million dollars in proposed construction.\(^13\)

The aforementioned feasibility study gave way to the Long Beach Island Shore Protection Project (Project), which called for "periodic [beach] nourishment at 7 year intervals for a period of 50 years."\(^14\) To facilitate the Project, the Corps needed to obtain perpetual easements, which are nonpossessory acquired interests in the land of another, over those beachfront properties on which the construction would take place.\(^15\) The Corps delegated the "responsibility and cost of acquiring" the easements to the local municipalities of LBI.\(^16\) In September 2009, the Corps began construction; the project, however, encountered some resistance from several

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9. See Corps Feasibility Report, supra note 4, at 59-61 (detailing areas of concern and proposing construction of protective sand dune to combat rising sea levels). Among the areas of concern was damage from potential storm surges. Id. at 72. Therefore, "[a]n evaluation of extreme water levels in Barnegat Bay was also performed to determine potential flooding" due to storm surges. Id.

10. Id. at 72 (noting gradual increase in rising sea level). Among the "[m]ajor implications of a rise in sea level are increased shoreline erosion and coastal flooding." Id. at 74.

11. Id. at 105 (providing historical analysis of LBI beach erosion).

12. Id. at D (proposing sand dune construction and periodic beach nourishment to protect LBI properties from storm damage).

13. Id. at B (estimating project cost by factoring costs of initial construction, project monitoring, and periodic beach nourishment). In terms of covering the expense of the Project, "the periodic nourishment is cost shared 65% Federal and 35% non-Federal for the life of the project." Id.


15. See Nichols on Eminent Domain, Ch. 5, § 5.07 (Matthew Bender, 3d ed.) (defining easement); Corps Feasibility Report, supra note 4, at 3 (noting locations where easements must be obtained for dune construction).

LBI property owners unwilling to grant easements over their properties.\(^{17}\) Among the easement holdouts were Phyllis and Harvey Karan, whose beachfront home and its accompanying ocean view were at the center of the controversy in *Borough of Harvey Cedars v. Karan.*\(^{18}\) After the Karans rejected Harvey Cedars’ offer of three hundred thousand dollars, litigation ensued over amount of just compensation owed to the Karans for the partial-taking of their property.\(^{19}\)

Enter Hurricane Sandy.\(^{20}\) The Project was put to the test when Hurricane Sandy’s destructive path ravaged much of the East Coast.\(^{21}\) Following Hurricane Sandy, many proponents of the Project, including New Jersey Governor Chris Christie, reaffirmed the need to construct a buffer between the ocean and beachfront properties to ensure the safety and viability of these vulnerable beach communities.\(^{22}\) In fact, Governor Christie reiterated the importance of the sand dune construction and denounced easement holdouts’ actions as “selfish” and “detrimental to public safety and

\(^{17}\) Id. (furnishing timeline of initial construction and various phases of Project).

\(^{18}\) 70 A.3d 524, 526 (N.J. 2013) (providing factual background leading to case). The Borough of Harvey Cedars is a municipality located on LBI. Id. at 527.

\(^{19}\) Id. at 528 (noting original monetary offer by LBI municipality in exchange for easement).


\(^{22}\) See Elise Young, *Christie Signs Order to Speed N.J. Sand-Dune Construction*, BLOOMBERG.COM (Sept. 25, 2013, 2:56 PM), http://www.bloomberg.com/news/2013-09-25/christie-signs-order-to-quicken-dune-construction-at-beaches-1.html (crediting dune project with preventing further devastation from Hurricane Sandy). In support of his executive order, Governor Christie stated, “[w]e can no longer be held back from completing these critical projects by a small number of owners who are selfishly concerned about their view while putting large swaths of homes and businesses around them at risk.” Id.
the common good." Amidst this political pressure, the Supreme Court of New Jersey decided Karan in the municipality's favor, holding that the jury was to factor all non-speculative benefits into the just compensation award.

This Note will appraise the impact of the Supreme Court of New Jersey's decision in Karan. Part II of this Note will detail the underlying facts of Karan. Part III will provide a brief overview of the NJDEP and the Corps' Project, as well as discuss the relevant jurisprudence in partial-taking valuations. Part IV will describe the legal analysis used by the Supreme Court of New Jersey in reaching its decision in Karan. Part V will compare the Supreme Court of New Jersey's reasoning with that in prior New Jersey case law, as well as case law from other jurisdictions. Finally, Part VI will conclude with a discussion of the potential implications of the Karan decision on future partial-taking proceedings.

II. Facts

In 1963, Phyllis and Harvey Karan constructed their 11,868 square foot beachfront home in the Borough of Harvey Cedars, a

23. Eric Englund, Easement Holdouts Face Action by Governor, SANDPAPER.NET (Oct. 2, 2013), http://thesandpaper.villagesoup.com/p/easement-holdouts-face-action-by-governor/1062913 (detailing Governor Christie’s actions to overcome resistance to sand dune construction). Governor Christie affirmed “his commitment to coastal residents who feel they have been held hostage by beachfront homeowners who stubbornly held out signing easement agreements and prevented desperately needed dune replenishment projects from moving forward,” by signing an executive order to speed up sand dune construction. Id.

24. See Borough of Harvey Cedars v. Karan, 70 A.3d 524, 526-27 (N.J. 2013) (allowing jury to consider enhanced value of Karans’ property as result of dune construction). The Supreme Court of New Jersey stated, “[i]n a partial-takings case, homeowners are entitled to the fair market value of their loss, not to a windfall, not to a pay out that disregards the home’s enhanced value resulting from a public project.” Id. at 527.

25. For a narrative analysis of the court’s decision in Karan, see infra notes 132-177 and accompanying text. For a critical analysis of the holding, see infra notes 178-218 and accompanying text. For a discussion of the potential impact of Karan, see infra notes 219-237 and accompanying text.

26. For a discussion of the facts of Karan, see infra notes 31-53 and accompanying text.

27. For a discussion of relevant background material on the Shore Protection Project and the jurisprudential approaches to partial-takings, see infra notes 58-131 and accompanying text.

28. For a narrative analysis of the Supreme Court of New Jersey’s decision in Karan, see infra notes 132-177 and accompanying text.

29. For a critical analysis of the court’s holding in Karan, see infra notes 178-218 and accompanying text.

30. For a perusal of the potential impact of Karan on partial-takings, see infra notes 219-237 and accompanying text.
municipality located on LBI. In 2005, the NJDEP, along with the Corps, implemented a twenty-five million dollar "beach-restoration and storm project" on LBI. Pursuant to the Project, the Corps constructed sand dunes "to hold back storm-triggered waves capable of destroying or seriously damaging homes and businesses." More specifically, the Project called for the construction of a twenty-two foot high, thirty-foot wide sand dune in the shape of a trapezoid built on the seaward facing portion of the Karans' beachfront property. The new dunes would bolster the existing sixteen-foot high sand dunes. In order to construct the sand dunes, the municipalities of LBI first had to secure easements on all oceanfront properties.

The Borough of Harvey Cedars, accordingly, sought perpetual easements from eighty-two beachfront properties in the municipality. Of the eighty-two properties, sixty-six voluntarily gave consent to Harvey Cedars. The Karans were among the sixteen property owners who did not voluntarily consent. In response to those withholding consent, Harvey Cedars took measures to circumvent the need for consent. For example, in July of 2008, the Borough

32. Id. at 527 (explaining details and phases of beach-restoration and storm-protection project funded by federal and local governments to provide LBI residents protection from beach erosion and storm damage).
33. Id. (detailing project phase that entails dune construction).
34. Id. (delineating dimensions of sand dunes required for project). The dunes are "twenty-two feet high and thirty feet wide at the top." Id.
35. Id. (describing dimensions of old sand dunes to be replaced by new project); see Corps Feasibility Report, supra note 4, at 34 (describing how dune height was determined). Because "[d]une heights along the oceanfront of LBI average 19 ft. NAVD," the minimum proposed dune height was 20 feet. Corps Feasibility Report, supra note 4, at 34. The Corps also considered a 24-foot dune but "the additional sand quantities did not capture additional storm damage reduction benefits." Id. Therefore, it was determined that "[t]he height of +20 ft. and +22 ft. NAVD are the most appropriate to capture significant benefits within this study area." Id.
36. Karan, 70 A.3d at 527-28 (discussing procedure for obtaining permission to construct dunes on private properties). The Corps delegated "[t]he responsibility and cost of acquiring those easements [fell] to the municipalities on Long Beach Island." Id. at 527.
37. Id. (explaining Harvey Cedars' obligation to obtain easements from property owners).
38. Id. (noting number of easements needed and number of beachfront property owners that voluntarily consented).
39. Id. (explaining that Karans were part of group of property owners that did not voluntarily consent to easement).
40. Id. (describing adoption of ordinance to obtain easements rather than seek consent of beachfront property owners).
“adopted an ordinance authorizing it to acquire easements” through eminent domain.41

Subsequently, Harvey Cedars offered the Karans three hundred dollars in exchange for the requested perpetual easement on 3,381 square feet of their land.42 The Karans rejected the three hundred dollar offer, alleging that the state owed them greater compensation for the twenty-two foot dune that “obstruct[ed] their view of the beach.”43 In response, in November of 2008, Harvey Cedars commenced a successful eminent domain action to obtain “an easement over the Karans’ property.”44 In 2010, the Corps proceeded to construct the twenty-two foot sand dune.45

At the heart of the matter was the question of how just compensation should be calculated in a partial-taking.46 In answering this question, the Supreme Court of New Jersey addressed whether the sand dune project provided “general benefits,” that is, benefits shared “by the larger community,” or “special benefits,” which are “those that ‘directly increase[ ] the value of particular tracts.’”47

41. Karan, 70 A.3d at 528 (discussing eminent domain as method for municipality to obtain easements from beachfront property owners).
42. Id. (describing land taken via easement). The 3,381 square feet acquired via the easement, “covers more than one quarter of the Karans’ property.” Id.
43. Id. (proclaiming Karans’ rejection of three hundred dollar compensation for devaluation of their property). Harvey Karan “explained that before construction of the twenty-two-foot dune, while sitting on his deck, he could see his children and later his grandchildren play on the beach and surf, and the breakwater, and the ocean.” Id. at 531.
44. Id. at 528-29 (summarizing eminent domain action Harvey Cedars took against Karans). At trial, both Harvey Cedars and the Karans presented “real estate appraisers as expert witnesses.” Id. at 530. While both appraisers valued the Karan’s beachfront property at $1.9 million before the perpetual easement, the appraisers had “divergent valuations” as to the value of the Karans’ property after the taking. Id. The appraiser for Harvey Cedars stated that there was no change in value of the Karans’ property and therefore three hundred dollars was adequate compensation for the “taking of 3,381 square feet . . . [that] had a de minimis value.” Id. On the other hand, the Karans’ appraiser stated that the taking resulted in a twenty-five percent decrease in market value, “valu[ing] the loss of view at $500,000.” Id.
45. Id. at 530 (providing details of construction of new sand dune on Karans’ property).
46. See Karan, 70 A.3d at 534 (identifying issue before court in Karan). A partial-taking “occurs when the government takes or damages some, but not all, of a condemnee’s interest in a particular parcel.” Nichols on Eminent Domain, supra note 15, at § 14.01 (defining partial-taking). The jury originally awarded the Karans $375,000 as just compensation. Karan, 70 A.3d at 526.
47. Id. at 529 (quoting Sullivan v. N. Hudson Cnty. R. Co., 18 A. 689, 690 (N.J. 1889)) (internal quotation marks removed) (making general/special benefits analysis); cf. Richardson v. Big Indian Creek Watershed Conservancy Dist. of Gage & Jefferson Cntyys., 151 N.W.2d 283, 286 (Neb. 1967) (defining general benefits as those arising “from the fulfillment of the public object which justified the taking”).
The Karans alleged that the Project provided "general benefits," and consequently, these general benefits should not be factored into the compensation award for the perpetual easement.\(^{48}\) The Karans further argued it would be inequitable for them to "pay for the benefits of a public project when their [non-beach front] neighbors do not."\(^{49}\) Conversely, the Borough of Harvey Cedars asserted the sand-dune project "conferred a special benefit on the Karans' property," and, as such, the jury should consider this special benefit when determining just compensation.\(^{50}\)

The New Jersey Attorney General and the Jersey Shore Partnership advocated as amici curiae that the sand dune project provided "both general and special benefits," therefore, recommending the court "adopt a fair market value approach to ascertaining the amount of condemnation award."\(^{51}\) In other words, they asserted that any benefits — general or special — accruing specifically to the Karans should be offset from the compensation award.\(^{52}\) Ultimately, the Supreme Court of New Jersey reversed the appellate court's decision that excluded general benefits from the jury's consideration and held determining just compensation required the jury to consider all "non-speculative" benefits accrued to the Karans' property as a result of the sand dune construction.\(^{53}\)

III. BACKGROUND

When the NJEDP and Corps began to initiate the Project, they were met with substantial landowner resistance as they tried to at-

\(^{48}\) Karan, 70 A.3d at 534 (detailing Karans' argument that general benefits should not offset loss of property value). The Karans wanted the benefits of the Project classified as "general" because such a classification would entitle them to more compensation. Id.

\(^{49}\) Id. at 534, 542 (delineating Karans' argument that they should not pay twice: (1) in loss of beach view; and (2) in taxes).

\(^{50}\) Id. at 532 (advancing argument that as oceanfront owners, Karans receive greatest benefit from sand dune construction).

\(^{51}\) Id. at 533 (arguing valuation test should consider whether benefits enhance remaining property). The record included testimony by Randall Wise, a civil engineer for the Corps, stating that without the sand dune project there was a fifty-six percent chance that the Karans' beachfront property would suffer severe damage from a storm within the next thirty years. Id. at 529. Similarly, a "second-line home" had a thirty-seven percent chance of severe damage; a "third-line home" had a twenty-four percent risk. Id.

\(^{52}\) Id. at 533 (articulating argument by amici curiae for inclusion of all non-speculative benefits in determining just compensation).

\(^{53}\) Karan, 70 A.3d at 544 (stating court's holding); see Young, supra note 22 (noting Karans ultimately settled for one dollar). For a discussion of the impact of the Karan holding, see infra notes 220-227 and accompanying text.
tain easements from property owners. This section briefly discusses New Jersey landowners’ resistance to the Project. It then reviews New Jersey case law prior to the Karan decision distinguishing general and special benefits in partial takings valuations. The section further examines valuations in other jurisdictions.

A. Dune or Doom?: Long Beach Island Shore Protection Project and Landowner Resistance

In 1996 the NJDEP and Corps undertook a feasibility study to appraise the beach erosion occurring on LBI. Based on the findings, the NJDEP and the Corps “recommended a 22 foot high [sand] dune with a 125 foot long berm at an elevation of 8 feet above the water line,” along with periodic beach re-nourishment. Gaining approval and twenty-five million dollars in funding for the Project was only the first step in restoring and bolstering LBI’s beaches. To facilitate the construction, the Corps would have to obtain easements over all beachfront properties for the construction of the sand dunes.

The NJDEP informed LBI residents that the easements were required “for the construction and maintenance” of the Project only. The NJDEP further stated that the easements were “only

54. For a discussion of landowner resistance to the Project, see infra notes 58-66 and accompanying text.
55. For a discussion of Project’s resistance, see infra notes 58-66 and accompanying text.
56. For a discussion of pre-Karan case law, see infra notes 67-122 and accompanying text.
57. For a discussion of other jurisdictions’ valuation of property in partial takings, see infra notes 123-131 and accompanying text.
58. For a discussion of the purposes of the feasibility study, see Corps Feasibility Report, supra note 4, at A. For a discussion of New Jersey’s coastal environment, see Long Beach Island Shore Protection Project, supra note 1 and accompanying text. See also Titus, supra note 7 (examining concern of rising sea level and beach erosion beyond New Jersey).
60. Fact Sheet, supra note 14 (providing Project description, status, and timeline).
61. See Corps Feasibility Report, supra note 4, at 3 (noting burden on local municipalities to obtain easements). For the definition of an easement, see supra note 15 and accompanying text.
62. Fact Sheet, supra note 14 (addressing residents concerns that easements would lead to municipalities taking property for construction of public restrooms and boardwalk); see also Letter from Craig R. Homesley, Chief, Civil Projects Support Branch, to Mr. Dave Rosenblatt, Administrator and Honorable Joseph H. Mancini, Mayor of Long Beach Township (June 17, 2010), available at http://www.
required as long as the project itself is authorized.63 Despite this clarification, some LBI residents still opposed the Project.64 The strife intensified in the wake of Hurricane Sandy, which plagued LBI in October 2012.65 Determined to rebuild New Jersey’s coast in time for the beach season, Governor Christie commenced a campaign against the easement holdouts.66


The early common law approach to partial-taking valuations forbade the inclusion of benefits accruing to the property when calculating just compensation.67 Two New Jersey cases reflect this approach: State v. Miller68 and Carson v. Coleman.69 In Miller, the county condemned a portion of property from a landowner to con-
struct a public highway. In return for the partial-taking, the property owner was paid six hundred eighty-five dollars; the county contested the award as too large a sum. The Supreme Court of New Jersey affirmed the award, citing the common law principle that a landowner should not “be made to contribute more for the public and common benefit than his neighbor, whose lands are not occupied, but who is equally benefited by the improvement.”

The court in Carson similarly held that “compensation shall be made in money” for the partial-taking necessitated by the construction of a creek that cut through the owner’s property. In reaching its decision, the court rejected the defendants’ proposal that the benefits of the project accrue “to the complainant from the proposed improvement,” and therefore concluded the landowner was not owed any additional compensation. The court was wary of this approach for fear that it would invite the government to “substitute[ ] an imaginary benefit for that just compensation.”

Despite this common law approach, courts continued consider whether special benefits could be included to offset the just compensation awarded to property owners. One such case was Sullivan v. N. Hudson Cnty. R. Co. In Sullivan, the North Hudson County Railroad obtained an easement over a portion of private property to construct a raised railroad. The landowner challenged the jury’s verdict as misguided, arguing that any benefits to the landowner as a result of the construction should not reduce the just compensation award. Meanwhile, the railroad company maintained that, in determining the damages owed to the land-

70. Miller, 23 N.J.L. at 383 (explaining reason for partial-taking).
71. Id. at 384 (stating landowner’s just compensation award).
72. Id. at 385 (upholding common law valuation approach to computing just compensation).
73. Carson, 11 N.J. Eq. at 108 (holding landowner to be compensated in money for partial-taking).
74. Id. (expressing defendants’ argument that no compensation is owed to landowner because improvements from partial-taking are benefits to landowner).
75. Borough of Harvey Cedars v. Karan, 70 A.3d 524, 536 (N.J. 2013) (quoting Carson, 11 N.J. Eq. at 108) (emphasizing original) (explaining court’s fear that if landowners are not compensated in money, government will overemphasize benefits conferred to avoid paying just compensation owed to landowner whose property is taken).
76. For a discussion of the common law approach to partial-takings valuations, see supra notes 67-75 and accompanying text.
77. 51 N.J.L. 518 (N.J. 1889) (addressing whether jury may consider benefits as offsetting compensation owed to landowner in partial-taking).
78. Id. at 539 (explaining facts surrounding partial-taking at issue).
79. Id. at 540 (arguing even if benefits can offset just compensation owed to landowner, there were no special benefits to plaintiff as result of partial-taking).
owner for the partial-taking, the jury should consider the benefits accrued to the property and subtract these benefits from the total damages.\footnote{Id. (advocating for inclusion of benefits to be considered as offset to compensation owed to landowner in partial-taking).}

The court in \textit{Sullivan} advanced the inclusion of only special benefits in determining just compensation.\footnote{For a discussion of the holding and reasoning in \textit{Sullivan}, see \textit{infra} notes 81-85.} To address the issue of valuation, the \textit{Sullivan} court began by distinguishing between general and special benefits.\footnote{\textit{Sullivan}, 51 N.J.L. at 540 (defining and distinguishing terms general and special benefits).} General benefits are “those which affect the whole community or neighborhood” whereas, special benefits are “those which directly increase the value of the particular tract.”\footnote{Id. (defining term general benefits).} After articulating this distinction, the court then clarified that while the construction of the elevated railroad provided general transportation benefits to the community at large, the construction conferred no special benefits to the landowner.\footnote{Id. (reasoning that partial-taking for railroad construction conferred no special benefits to landowner).} Finally, the court “held that only special benefits, not general benefits, could be deducted from the landowner’s damages.”\footnote{Borough of Harvey Cedars \textit{v. Karan}, 70 A.3d 524, 536-37 (N.J. 2013) (discussing holding in \textit{Sullivan} that determined only special benefits could be considered in determining just compensation for partial-taking). A similar approach was followed by the appellate court in \textit{Karan}. \textit{See id.} at 526.} Interestingly, the trial judge raised a question that remains unsettled today and is central in \textit{Karan}: “If a man can sell his property for more after than before, how can he be injured?”\footnote{\textit{Sullivan}, 51 N.J.L. at 543 (posing question that becomes main issue in \textit{Karan}).}

Shortly after \textit{Sullivan}, the issue of computing just compensation again appeared before the Supreme Court of New Jersey in \textit{State \textit{v. Hudson Cnty. Board of Chosen Freeholders (Mangles)}}.\footnote{25 A. 322 (N.J. 1892) (Mangles) (addressing calculation of just compensation). Justice Dixon, the same judge who penned the \textit{Sullivan} opinion, wrote the opinion for \textit{Mangles}. \textit{See Karan}, 70 A.3d at 537 (comparing Justice Dixon’s diverging opinions). Some believe that “Justice Dixon intended \textit{Mangles} as a refinement of his discussion of special and general benefits in \textit{Sullivan}.” \textit{Id.} (noting refinement in discussion of general and special benefits from Justice Dixon’s earlier opinion).} \textit{Mangles} involved the partial-taking of several properties for the construction of a public highway.\footnote{Mangles, 25 A. at 323 (explaining facts surrounding partial-taking to construct public road).} Again, as in \textit{Sullivan}, the issue before the
court was the appropriate method of valuation. Specifically, should just compensation merely include the “value of the land taken or was [it] to include the damage done to the resident,” and, furthermore, should general or special benefits be factored into the equation?

The Mangles decision adopted a different approach in considering all calculable benefits. The Mangles court articulated that in determining just compensation, the fact finder must consider the “proximate effects of the taking,” including damage to the remaining land and benefits “immediately accruing” to the remainder. On the other hand, the Mangles opinion noted that while a landowner may benefit from a partial-taking, general benefits should not be considered because general benefits are “indefinite” and “so uncertain in character as to be incapable of present estimation . . . but any benefit . . . of reasonable computation, may enter into the award.” In short, the court held that the jury could consider non-speculative, definitive benefits as part of an award of just compensation.

In Bauman v. Ross, the United States Supreme Court adopted the Mangles ideology. Bauman concerned the constitutionality of an act endorsed for the purpose of constructing a public highway system in the District of Columbia. In finding the act constitutional, the Court noted that under the United States Constitution, one is “entitled to receive the value of what he has been deprived of, and no more.” In other words, “[t]o award [the landowner]

89. Id. (addressing divergence of case law on partial-takings valuation methods).
90. Id. (articulating issue in Mangles).
91. For a discussion of the holding and reasoning in Mangles, see infra notes 92-94.
92. Mangles, 25 A. at 323 (rejecting prosecutors’ claim that benefits accruing to landowner should not be deducted from just compensation award).
93. Id. at 323-24 (holding speculative, general benefits cannot be factored into just compensation calculation).
94. Id. at 324 (holding just compensation determined by considering value of land taken, damage to landowner, and benefit accruing to landowner from taking); see Borough of Harvey Cedars v. Karan, 70 A.3d 524, 37 (N.J. 2013) (comparing Mangles and Sullivan opinions).
95. 167 U.S. 548 (1897) (holding it is not unconstitutional to consider benefits accruing to landowner in determining just compensation).
96. Karan, 70 A.3d at 538 (noting both Bauman and Mangles found constitution does not expressly prohibit consideration of benefits when determining just compensation).
98. Id. at 574 (alluding to original purpose of just compensation).
less would be unjust to [the landowner]; to award him more would be unjust to the public." 99 Echoing Mangles, the Court expressed that the federal constitution does not expressly forbid the consideration of benefits in computing just compensation for a taking. 100 The Court ultimately resolved the valuation issue by holding "any special and direct benefits, capable of present estimate and reasonable computation" could be used in determining just compensation. 101

Another Supreme Court case, McCoy v. Union E. R. Co., 102 also embraced the reasoning in Mangles by holding that all non-speculative benefits accruing to the hotel owner could be considered. 103 In McCoy, a hotel owner argued that the construction of an elevated railroad in front of his hotel "obstructed the passage of light" to certain parts of the hotel. 104 The hotel owner conceded that since the completion of the construction, he had realized an increase in traffic to the area consequently resulting in the "continuous increase in the value of the premises." 105 After reiterating the principles in Bauman, the Court asserted that one does not "suffer[ ] deprivation of any fundamental right when a state . . . permits consideration of actual benefits" ensuing from public work projects. 106

Over time, the antiquated designations of special and general benefits became convoluted, as exemplified by three later cases: Ridgewood v. Streel Inv. Corp., 107 Commissioner of Transp. v. Interpace

99. Id. at 574 (averring essence of just compensation is not to grant windfall to landowner).
100. Id. at 584 (stating general benefits may be factored into just compensation calculation).
101. Id. (allowing inclusion of general benefits when determining just compensation for partial-taking).
102. 247 U.S. 354 (1918) (permitting state to consider general and special benefits accruing to landowner).
103. Id. at 366 (following reasoning in Mangles). The Court in McCoy stated, "The Constitution of the United States contains no express prohibition against considering benefits in estimating the just compensation to be paid for private property taken for the public use." Id. at 366-67 (quoting Bauman, 167 U.S. at 587).
104. Id. at 356 (providing background on partial-taking regarding construction and maintenance of elevated railroad).
105. Id. (noting benefits to hotel owner resulting from construction).
106. Id. at 366 (allowing consideration of general and special benefits conferred to landowner in setting just compensation).
First, in *Sreel*, a municipality exercised its eminent domain power to annex part of a retail property to construct a public parking lot. The court in *Sreel* did nothing to distinguish between general and special benefits, nor did it articulate whether the retail property owner received a general or special benefit. While *Sreel* cited *Mangles* for the principle that "general benefits may not be considered to reduce the damages which an individual property owner will sustain from the taking," the *Sreel* court then reverted back to the common law language in *Miller*.

Second, *Interpace* defined general benefits as "improvement[s] which a property owner may enjoy in the future in common with all other property owners in the area." Given this definition, the court then applied the holding in *Mangles*, excluding speculative future benefits from consideration. As such, the court held that general benefits should not be deducted from the just compensation award owed to the landowner.

Third, was *Herrontown*. In *Herrontown*, the state turnpike authority condemned land for the construction of a public highway. With respect to the issue of just compensation, the court cited *Interpace* in defining general benefits. With regard to spe-

110. *Sreel*, 145 A.2d at 308 (describing exercise of eminent domain power to construct public parking lot).
111. *Id.* at 312 (noting lack of distinction between general and special benefits); see *Karan*, 70 A.3d at 538-39 (discussing meager treatment of general and special benefits in *Sreel*).
112. *Sreel*, 145 A.2d at 312 (combining principles from *Mangles* and *Miller* to define general benefits).
113. *Karan*, 70 A.3d at 539 (emphasis added) (quoting *Interpace*, 327 A.2d at 229, on general benefits).
114. *Id.* (commenting on how *Interpace* applied principles from *Mangles* despite giving different meaning to term general benefits).
117. *Id.* at 893 (noting specifics of partial-taking to construct interstate highway).
118. *Id.* at 897 (citing *Interpace*, 327 A.2d at 229) (defining general benefits).
cial benefits, however, the court cited Sullivan.119 Although the turnpike authority presented testimony that “the overpass specifically benefited the subject property and its near neighbors,” the court nonetheless found that the benefits to the landowner were general benefits and should not be factored into the landowner’s compensation.120 Rather than focus on the definitiveness of the benefits as in Mangles, the court excluded the benefits because of their classification as “general” in that they benefited neighboring property owners.121 Thus, this departure from Mangles proliferated the confusion of the general and special benefit classification and valuation.122

C. A Sea of Options: Valuation in Other Jurisdictions

Outside of New Jersey, other jurisdictions have done away with the archaic general and special benefit distinctions.123 Six jurisdictions – California, Michigan, New Mexico, New York, North Carolina, and West Virginia – consider all benefits, what would otherwise in New Jersey be both “general” and “special” benefits, in determining just compensation.124

For example, California departed from the general and special benefit distinction in Los Angeles Cnty. Metro. Transp. Auth. v. Cont’l Dev. Corp. (Continental).125 The dispute in Continental centered on the partial-taking of a piece of land to build an elevated railroad.126 In reaching its decision, the Supreme Court of California looked to the purpose of just compensation.127 The court articulated the underlying notion of just compensation is to “distribute throughout the community the loss inflicted upon the individual by the making

119. Id. (citing Sullivan v. N. Hudson Cnty. R. Co., 51 N.J.L. 518, 525 (N.J. 1889)) (discussing special benefits).
120. Id. at 896 (classifying overpass as general benefit and thereby excluding any advantage to landowner as result of its construction).
121. Herrontown, 367 A.2d at 897 (relegating overpass construction as general benefit not considered in just compensation valuation).
122. See Borough of Harvey Cedars v. Karan, 70 A.3d 524, 539 (N.J. 2013) (discussing confusion spurred by Herrontown opinion).
123. See Nichols on Eminent Domain, supra note 15, at Ch. 8A, § 8A.03 (discussing partial-taking valuation rules in various jurisdictions).
124. See id. (noting minority jurisdictions).
126. Id. at 811-12 (dealing with issue of whether partial-taking conferred general or special benefit to landowner).
127. Id. at 822 (noting essence of just compensation is to make landowner whole).
of the public improvements." Just as the owner of the taken property should not have to bear the entire cost of the public project, neither should taxpayers. The court held that the fact finder should evaluate the relevant evidence related to the project that affects the market value of the property, so long as the evidence is not speculative or abstract. Under this holding, Continental adopted the minority approach believing that it would provide "greater clarity and certainty" to partial-taking valuations.

IV. NARRATIVE ANALYSIS

The issue before the Supreme Court of New Jersey in Karan was how to calculate just compensation for a partial-taking. In its opinion, the Supreme Court of New Jersey acknowledged the constitutional right to just compensation. The court then abandoned the general/special benefits approach in favor of a total takings analysis. After abandoning this test, the court applied the fair market value approach and remanded the case for the jury to consider all non-speculative benefits. Notably, the court dissected and scrutinized a long line of New Jersey partial-takings case law before ultimately reversing, vacating, and remanding the case.

A. A Shore Thing: Constitutional Right to Just Compensation

The Supreme Court of New Jersey began its review by looking to the origins of just compensation – the United States Constitu-

128. Id. at 822-23 (quoting Locklin v. City of Lafayette, 867 P.2d 724, 724 (Cal. 1994)) (internal citations omitted) (articulating policy reasons for just compensation).

129. Id. at 823 (recognizing principle behind just compensation).

130. Continental, 941 P.2d at 824 (adopting approach similar to Mangles that fact finder shall not consider speculative evidence in determining just compensation).

131. Id. at 824-25 (abandoning general/special benefit distinction in favor of minority approach to valuation).


133. For a discussion of the court's discussion of the constitutional right to just compensation, see infra notes 137-142 and accompanying text.

134. For a discussion of the court's reasoning for abandoning the general/special benefits test, see infra notes 143-164 and accompanying text.

135. For a discussion of the court's application of the fair market value approach, see infra notes 165-177 and accompanying text.

The Fifth Amendment to the United States Constitution confers a right to just compensation when the government takes private property for a public use. The New Jersey State Constitution mirrors the United States Constitution by granting the same fundamental right to just compensation. Furthermore, the Eminent Domain Act calls for compensation as well as “damages, if any, to any remaining property.” Thus, there was no question that the beach replenishment easement entitled the Karans to just compensation. The only issue was how much.

B. Waning Tide: New Jersey’s Old Approach to Partial-Taking Valuations

To determine the method for calculating just compensation owed to the Karans, the court delved into New Jersey’s vast partial-takings jurisprudence. As the court pointed out, the archaic designations of general and special benefits bred various inconsistencies. Ultimately, the court put an end to the confusion in allowing all non-speculative benefits to be considered in determining just compensation.

137. Karan, 70 A.3d at 534 (acknowledging United States Constitution as source of eminent domain power).

138. Id. (recognizing United States Constitution gives right to just compensation when government takes private property); see also U.S. CONST. amend. V (providing right to just compensation).

139. Karan, 70 A.3d at 534 (noting New Jersey state constitution confers same right to just compensation as United States Constitution).

140. Id. (citing Eminent Domain Act as another source of landowners’ right to just compensation in government takings).

141. Id. at 526 (noting nonissue as to Karans’ entitlement to just compensation). Sometimes when part of a landowner’s property is taken, the landowner “loses more than the land and the improvements within the area taken. The law recognizes that the ‘remainder’ property may lose some or all of its value.” Nichols on Eminent Domain, supra note 15, at Ch. 14A, § 14A.01. Some of the value lost “relate[s] to aesthetic or quiet enjoyment impacts such as blockage of light, view, and air, or noise, odors, and vibration” like the Karans assert in the present case. Id.

142. See Karan, 70 A.3d at 526 (detailing primary issue). Every state “has its own rules regarding setoff damages. The rules vary on whether benefits may setoff damages to the remainder or to the property taken and whether special or general benefits may be considered for setoff.” Nichols on Eminent Domain, supra note 15, at Ch. 8A, § 8A.03.

143. For a discussion of New Jersey’s partial-takings case law, see supra notes 58-122 and accompanying text.

144. Karan, 70 A.3d at 540 (noting confusion and misuse of terms general and special benefits by courts over time).

145. For further discussion of the court’s decision to abandon the general/special benefit distinction see infra notes 146-164 and accompanying text.
The Supreme Court of New Jersey noted, "[T]he terms general and special benefits do more to obscure than illuminate the basic principles governing the computation of just compensation in eminent domain cases." In fact, the term "general benefits" varied in meaning by case. For example, the Mangles court defined general benefits as "speculative or conjectural benefits." Meanwhile, the court called attention to the fact that other New Jersey courts, including the lower court in Karan, understood general benefits to mean "benefits shared in common with a landowner's neighbors or community." To put an end to the confusion, the Supreme Court of New Jersey reasoned partial-takings should be analyzed under the same framework as total takings. In abandoning the general/special benefit distinction, the court adopted a fair market value approach, noting that "[t]he historical reasons that gave rise to the development of the doctrine of general and special benefits no longer have resonance today." In reaching its decision, the Supreme Court of New Jersey analogized partial-takings to total takings where the government takes "an entire piece of property." In a total taking, "just compensation [is] measured by 'the fair market value of the property as of the date of the taking, determined by what a willing buyer and a willing seller would agree to, neither being under any compulsion to act.'" Courts have never awarded supplemental compensation for public benefits arising as a result of a total taking. Nevertheless, in the partial-takings context, the question of "whether a landowner's loss from the partial-taking could be offset

146. Karan, 70 A.3d at 540 (recognizing need to clarify meaning of terms general and special benefits).
147. Id. (acknowledging that term general benefits has been defined differently in cases like Mangles and Herrontown and expressing need for clarification).
148. Id. (citing definition of general benefits from Mangles).
149. Id. (noting different definition of general benefits relied on by lower court in Karan).
150. Id. at 543 (advocating fair market value approach to valuation as most equitable approach).
151. Karan, 70 A.3d at 542 (justifying departure from general/special benefits and New Jersey case law).
152. Id. at 535 (analogizing partial-takings to total takings).
154. Id. (noting landowners were not entitled to additional compensation for general benefits accrued to neighbors in entire taking).
by the benefits received from a public project" permeated New Jersey case law.\textsuperscript{155}

The Supreme Court of New Jersey noted that over time, partial-takings jurisprudence strayed from the straightforward fair market value approach in employing "the special/general benefits dichotomy."\textsuperscript{156} Consequently, the court analyzed the historical development of New Jersey partial-takings case law, dating back to the common law, in order to unravel the origin of the general/special benefit approach.\textsuperscript{157} The Supreme Court of New Jersey then explained that the terms general and special benefits have been defined differently, and courts have perhaps "obscured or confused those principles" over time.\textsuperscript{158} While some courts defined general benefits as "speculative or conjectural benefits," other courts used the term to mean "benefits shared in common with a landowner's neighbors or community."\textsuperscript{159}

In light of this confusion, the Supreme Court of New Jersey settled on the application of the fair market value approach to partial-takings.\textsuperscript{160} The fair market value approach requires "considerations that a willing buyer and a willing seller would weigh in coming to an agreement on the property's value at the time of the taking and after the taking."\textsuperscript{161} As applied to partial-takings, the fair market value approach includes consideration of all "benefits to the remainder [of the property] that are not speculative or conjectural and that are not projected into the indefinite future."\textsuperscript{162} The Supreme Court of New Jersey ultimately held that considering all "non-conjectural and quantifiable benefits" without the distracting distinction of general and special benefits was more in line with the

\textsuperscript{155} Id. at 536 (addressing long standing issue of whether fact finder may consider special benefits to landowner in partial-takings when determining just compensation).

\textsuperscript{156} Karan, 70 A.3d at 535 (discussing emergence of general/special benefit distinction).

\textsuperscript{157} For a discussion of New Jersey partial-takings jurisprudence, see supra notes 67-94 and 107-122 and accompanying text.

\textsuperscript{158} Karan, 70 A.3d at 538 (noting confusion of general and special benefit terms in New Jersey case law).

\textsuperscript{159} Id. at 540 (noting varying definitions of general benefits by New Jersey courts).

\textsuperscript{160} Id. (suggesting general and special benefit terms have outlived their use in New Jersey case law).

\textsuperscript{161} Id. (explaining how fair market value approach considers all non-speculative factors that buyers and sellers would consider in arm's length transaction).

\textsuperscript{162} Id. (providing that all non-speculative factors may be considered by fact finder in determining just compensation).
constitutional purpose of just compensation. That is, the court abandoned the general/special benefit distinctions and held landowners are entitled only to the value of their land, not a windfall.

C. The Tide Turns: The Adoption and Application of the Fair Market Value Approach

After adopting the fair market value approach, the Supreme Court of New Jersey then evaluated the benefits to be included in computing just compensation. The court stated, "A willing purchaser . . . would obviously value the view and proximity to the ocean." In addition, "a rational purchaser would place value on a protective barrier that shielded [the] property." Consequently, the court explained that the lower court erred in instructing the jury to ignore the general benefits that the sand dune project conferred to the Karans. Instead, all "reasonably calculable benefits - regardless of whether those benefits are enjoyed . . . by others in the community" are to be considered in determining the fair market value and just compensation.

Thus, the court dismissed the Karans' argument that the inclusion of general benefits would effectively cause them to "pay twice" for the easement. The Karans argued that they paid in the actual loss of their land and in their tax dollars, which contributed to the very project that decreased the value of their property. The court dismissed this alleged double payment argument by stating that "[t]he portion of the Karans' taxes that . . . support the project may be infinitesimal compared to the value added to their home by the dune protection.

163. Karan, 70 A.3d at 540 (suggestion fair market value is more equitable approach to valuation).
164. Id. (renouncing terms general and special benefits).
165. For a discussion of the factors that fact finder may consider, see infra note 166 and accompanying text.
166. Karan, 70 A.3d at 541 (noting proximity to ocean is factor willing purchaser would value and thus one that fact finder may consider in determining just compensation).
167. Id. (identifying sand dune protection as factor buyer would value in considering purchase and thus one for consideration by fact finder).
168. Id. at 541-42 (arguing exclusion of general benefits distorted jury's just compensation determination of $375,000).
169. Id. at 543 (discussing new fair market value approach to valuation).
170. Id. at 542 (discrediting Karans' argument that Karans are being forced to pay twice for partial-taking by asserting that Karans receive greatest benefit from sand dune construction).
171. Karan, 70 A.3d at 543 (detailing Karans' double payment argument).
172. Id. (noting Karans paying less than they would if they were forced to maintain own sand dunes). The Supreme Court of New Jersey argued that
A similar concern arose in Continental in which the court addressed whether the landowner whose property was taken should be forced to "contribute more than his proper share to the public undertaking."173 In response, the court in Continental stated, "perfect equality is impossible."174 Continental noted that if courts allowed the inclusion of general benefits in the valuation "one might say [the landowner] pays more than [his or her] proper share of the cost of this transit project."175 In comparison, if the landowner "is permitted both to recover severance damages and to retain the general enhancement in the value of its property, one could with equal validity say it thereby pays less than its proper share of the project cost."176 Like the court in Continental, which acknowledged the impossibility of a perfect solution, the Supreme Court of New Jersey reversed the appellate court's decision and remanded the case to allow the jury to consider all non-speculative benefits in determining just compensation.177

V. CRITICAL ANALYSIS

Departing from a long line of New Jersey case law, the Supreme Court of New Jersey abandoned the general/special benefit approach in favor of the fair market value approach for determining just compensation.178 With the Karan decision, New Jersey joined a minority of states applying the fair market value ap-

173. Continental, 941 P.2d 809, 823 (Cal. 1997) (dealing with argument that landowner should not have to pay more than neighboring landowners for partial-taking).

174. Id. (arguing fair market approach is most equitable in determining partial-takings valuations). If the property owner in Continental "is permitted both to recover severance damages and to retain the general enhancement in the value of its property, one could with equal validity say it thereby pays less than its proper share of the project." Id.

175. Id. (noting either landowner or government will always be disappointed with valuation).

176. Id. at 823 (providing that equitable valuation should not grant windfall to landowner).

177. Karan, 70 A.3d at 540-41 (holding fair market value approach should be used in partial-takings valuations). In abandoning the general/special benefit approach, the court noted, "[w]e need not pay slavish homage to labels that have outlived their usefulness." Id.

178. See id. (discussing impracticality of general and special benefit designations); see also Continental, 941 P.2d at 825 (adopting minority fair market value approach to partial-takings valuations).
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proach.179 The Karan decision emphasizes the inconsistency among states in the valuation of partial-takings.180

A. Shore to Please?

In Karan, the Supreme Court of New Jersey approached the case with an agenda: first, address and clarify the ambiguity surrounding New Jersey partial-takings case law, and second, determine a fair outcome.181 With respect to the first objective, the court achieved its goal by abandoning the general/special benefit distinction.182 Regarding the latter objective, perhaps fairness is in the eye of the easement holder.183

The Supreme Court of New Jersey acknowledged “[t]he task of distinguishing between special and general benefits – as defined by case law in New Jersey and other jurisdictions – is difficult,” but one has to wonder if the court’s abandonment of the general/special benefit distinctions had anything to do with the political pressures surrounding this issue.184 Governor Christie was not shy about expressing his feelings toward the easement holdouts, calling them both stubborn and selfish.185 This political pressure only increased in the wake of Hurricane Sandy.186 Governor Christie had been a strong proponent of the Project advocating for the proposition that “the economic benefit of the dune system outweighs property ow-

179. For a discussion of the Supreme Court of New Jersey’s adoption of the fair market valuation approach in Karan, see supra notes 165-179.

180. For a discussion of valuation approaches by jurisdiction, see Nichols on Eminent Domain, supra note 15, at Ch. 8A, §8A.03.

181. For a discussion of the ambiguity surrounding New Jersey partial-takings jurisprudence, see supra notes 146-149 and accompanying text.

182. Karan, 70 A.3d at 543 (determining fair market value method to be new approach to partial-takings valuations).

183. See Pearson, supra note 66 (noting government’s satisfaction with outcome of Karan). Governor Christie called Karan a “decisive victory.” Id.

184. Karan, 70 A.3d at 539 (noting difficulty in distinguishing benefits as general or special due to how convoluted meaning of terms became under New Jersey case law); see also Boyer, supra note 21 (expressing Governor Christie’s satisfaction with outcome of Karan).

185. See Englund, supra note 23 (expressing Governor Christie’s sentiments toward easement holdouts). Christie stated that the holdouts “selfish action[s] are] rightfully seen as detrimental to public safety and common good.” Id.

186. See O’Neill, supra note 21 (discussing reactions of Karans’ neighbors after Hurricane Sandy). One neighbor stated, “At this point in time we’re pretty grateful about it [the dune construction] considering the damage done by Sandy to the other towns that did not have the dune replenishments.” Id.; see also Young, supra note 22 (discussing executive order signed by Governor Christie to speed up sand dune construction in light of Hurricane Sandy).
ers' obligations." In fact, the Supreme Court of New Jersey even appeared to echo the sentiments of Governor Christie in its Karan opinion. For instance, the Supreme Court of New Jersey reiterated Christie's concern that "[j]ust compensation [should] not entitle a landowner to a windfall from a partial taking of property." In light of Karan, Governor Christie said, "I think this should be a clear message to the 1,400 or so folks who have not yet given easements along the 127 miles of New Jersey's coastline. You're not going to be paid a windfall for your easement."

With regard to fairness, the judge in Sullivan raised an interesting question: "If a man can sell his property for more after than before, how can he be injured? How can he be damaged, if the alleged source of harm enures [sic] directly to his pecuniary advantage?" The court in Karan ran with this rhetorical question and answered it "in light of Mangles, Bauman, and McCoy," by explaining, "a landowner does not suffer a loss if a public project increases the fair market value of the property." Against this background, however, the Karans stood to argue that their land taken by the government, along with their beloved beach view, had more than a one dollar price tag. Yet, the court quickly justified its new valuation approach by asserting that the benefits the Karans received "are much greater than to others," without equally noting that the loss to the Karans was also much greater than their neighbors who

187. Pearson, supra note 66 (highlighting Governor Christie's support of dune construction).
188. See Karan, 70 A.3d at 541 (expressing same belief as Governor Christie that landowners should not get windfall as result of partial-taking).
189. Compare Karan, 70 A.3d at 541 (asserting just compensation is not intended to provide windfall to landowners), with Pearson, supra note 66 (reiterating that beachfront property owners will not be paid windfall for easement). Governor Christie delivered a clear message to easement holdouts when he said "[i]f you were hoping to get some six-figure payment for the loss of your precious view then I think the Supreme Court put a stake in that." Pearson, supra note 66.
190. Boyer, supra note 21 (expressing Governor Christie's belief that easement holdouts want windfall).
191. Karan, 70 A.3d at 542 (internal quotation marks omitted) (quoting Sullivan v. N. Hudson Cnty. R. Co., 51 N.J.L. 518, 540 (N.J. 1889)).
192. Id. at 543 (reflecting belief that all non-speculative benefits should be factored into valuation for just compensation). For a discussion of the holding in Mangles, see supra notes 92-94 and accompanying text. For a discussion of the holding in Bauman, see supra notes 95-101 and accompanying text. For a discussion of the holding in McCoy, see supra notes 103-106 and accompanying text.
193. See O'Neill, supra note 21 (noting reason for Karans' opposition to sand dune construction). Phyllis Karan stated that "it was her dream to live in a home with . . . a view of the sky and the sea." Id.
made no similar sacrifice. Accordingly, the fair market value approach effectively discounted the value that the Karans placed on their beach view, a factor the Karans considered and treasured before purchasing their oceanfront home.

The essence of the just compensation clause "is primarily aimed at making a landowner whole for any governmental taking or damage to his or her property." To some, the outcome in Karan is the more equitable approach because the Karans are receiving the protection of the sand dunes without which their property would be at significant risk of future damage. Hurricane Sandy demonstrated that beach communities with sand dunes in place suffered less storm damage than those without dunes. In particular, "[t]he Karans’ house wasn’t damaged when Sandy came ashore in New Jersey on Oct. 29, leaving 2.7 million people in the state without power, crippling mass transit and severely damaging some coastal towns." Based on the evidence in support of sand dunes' value, the government has a strong argument in favor of the true worth of the sand dunes and the use of this value to offset the compensation owed to the Karans.

B. Deciding the Dune Dispute Differently

The Supreme Court of New Jersey asserted the appellate court gave insufficient weight to the decision in Mangles, or at least did not attempt to reconcile Mangles with Sullivan. Arguably, the Su-

194. Karan, 70 A.3d at 542 (discounting Karans' loss of their property and view).
195. For discussion of Karans' ocean view, see Karan, supra note 43 and accompanying text.
197. For a discussion of the likelihood of the Karans' home suffering future storm damage, see supra note 51.
198. See Boyer, supra note 21 (noting sand dune construction's effectiveness).
199. Pearson, supra note 66 (recognizing sand dune's protection afforded to Karans' beachfront house).
200. For discussion of likelihood of damage to beachfront homes, see supra note 51.
201. See Borough of Harvey Cedars v. Karan, 70 A.3d 524, 539 (N.J. 2013) (pointing out deficiencies in lower court's analysis). For a discussion of the holding in Mangles, see supra note 94 and accompanying text. For a discussion of the holding in Sullivan, see supra note 85 and accompanying text.
prime Court of New Jersey failed to do so as well.\textsuperscript{202} Effectively, the court harmonized the two cases by doing the opposite of the appellate court in adopting the view in \textit{Mangles over Sullivan}.

As such, the \textit{Karan} decision discounts the principles in \textit{Miller} and \textit{Carson}; that is, owners subject to a partial-taking should not have to pay more for a common benefit.\textsuperscript{204} Yet, with the meager award of one dollar, the Karans seem to be assuming more of the cost.\textsuperscript{205}

Alternatively, the Supreme Court of New Jersey could have decided \textit{Karan} within the confines of the general/special benefit approach, and in a much less disruptive fashion, by clarifying the muddled definitions.\textsuperscript{206} The court could have held general benefits may be included in the valuation of the partial-taking.\textsuperscript{207} As such, the litigation would have likely been resolved for an amount similar to the ultimate settlement.\textsuperscript{208}

Under this alternative approach, the jury would have considered the Karans' loss of their land and beach view.\textsuperscript{209} In addition, the jury would have assessed the special benefit conferred in the enhanced protection from storm damage.\textsuperscript{210} Moreover, the jury would have weighed the general benefits in storm protection afforded to the public at large.\textsuperscript{211} Ultimately, the general benefits

\begin{itemize}
\item \textsuperscript{202} For a discussion of the decision in \textit{Mangles}, see supra notes 87-90 and accompanying text. For a discussion of the decision in \textit{Sullivan}, see supra notes 77-86 and accompanying text.
\item \textsuperscript{203} \textit{See Karan}, 70 A.3d at 541 (comparing Continental to Mangles). The Supreme Court of New Jersey indicated that "[i]n many ways, Continental is a modern-day version of the decision in Mangles and is consistent with the approach we take today." \textit{Id}.
\item \textsuperscript{204} For a discussion of the holding in \textit{Miller}, see supra note 72 and accompanying text. For a discussion of the holding in \textit{Carson}, see supra note 74 and accompanying text.
\item \textsuperscript{205} \textit{See Young}, supra note 22 (mentioning ultimate one dollar settlement).
\item \textsuperscript{206} For the definitions of general and special benefits, see supra note 47 and accompanying text.
\item \textsuperscript{207} \textit{See Karan}, 70 A.3d at 543 (N.J. 2013) (noting jury should have been instructed to consider all non-speculative benefits in determining just compensation award).
\item \textsuperscript{208} \textit{Young}, supra note 22 (noting Karans ultimately settled for a nominal one dollar in just compensation).
\item \textsuperscript{209} \textit{See Continental}, 941 P.2d 809, 824 (Cal. 1997) (acknowledging view as property benefit affected by partial-taking). The court in \textit{Continental} acknowledged that the partial-taking affected the "views, light and noise levels of other properties in the neighborhood of Continental's, property as to some of which no compensation will be paid." \textit{Id}.
\item \textsuperscript{210} For the definition of the term special benefit, see supra note 47 and accompanying text.
\item \textsuperscript{211} \textit{See Karan}, 70 A.3d at 541 (explaining error of lower court in failing to take general benefits into consideration). The Supreme Court of New Jersey ex-
would have offset the special benefits, thereby leading the jury to arrive at a nominal sum of just compensation.\(^{212}\) Most notably, this line of reasoning would have left New Jersey case law intact.\(^{213}\)

C. A New Era of Partial-Taking Valuations

While the Supreme Court of New Jersey emphasized that the fair market value is the "best method" to achieve an equitable outcome, it seems to have made eminent domain proceedings nothing more than a mere formality required by law.\(^{214}\) With the consideration of all "reasonably calculable benefits," the government will always argue that the landowners are better off as a result of the partial-taking, and thus, similar nominal amounts will be awarded as "just" compensation—an outcome that the general/special benefit distinction sought to avoid.\(^{215}\) Beyond adopting the fair market value approach, the court absolved itself of the Karans' outcome by leaving the question of value up the jury.\(^{216}\) A jury, likely aware of the political pressures and perhaps even in favor of the dune construction, was left to determine the Karans' fate.\(^{217}\) While the court seemed very concerned with not awarding a windfall to landowners, it may have overlooked the possibility of awarding a windfall to the government.\(^{218}\)

\(^{212}\) See id. at 544 (illuminating how lower court should have approached valuation). The Supreme Court explained that, "the quantifiable decrease in the value of their property—loss of view—should have been set off by any quantifiable increase in its value—storm protection benefits." \(\text{Id.}\)

\(^{213}\) See id. at 542-43 (announcing departure from general/special benefit approach).

\(^{214}\) \(\text{Id.}\) at 543 (determining fair market value approach to be most equitable way to calculate just compensation).

\(^{215}\) \(\text{Id.}\) at 544 (defining all reasonably calculable benefits as those that are non-speculative); see also \(\text{Boyer, supra note 21}\) (noting government's agreement with court's holding in Karan). The mayor of Harvey Cedars was noted "he was pleased with the court's decision, and added that the value of dunes was especially clear after Sandy delivered a direct blow to the barrier island." \(\text{Boyer, supra note 21}\).

\(^{216}\) Karan, 70 A.3d at 542 (leaving actual value awarded to Karans to jury).

\(^{217}\) See \(\text{Boyer, supra note 21}\) (discussing Karans' neighbors opinions as to litigation).

\(^{218}\) See Continental, 941 P.2d 809, 837 (Cal. 1997) (discussing similar ambiguity in general/special benefit terms).
VI. IMPACT

Scholars have long recognized that "[p]roperty law evolves over time to adapt to changing needs and conditions."219 While the fairness of the Karan outcome is up for debate, there is no denying that the Supreme Court of New Jersey's decision in Karan has transformed the landscape of eminent domain law with respect to valuation in partial-takings.220 The adoption of the fair market value approach means huge savings for the State.221 In Karan alone, the State was poised to dish out three hundred and seventy-five thousand dollars for the partial-taking of the Karans' beachfront property.222 This amount was ultimately reduced to one dollar.223

If the State's goal in this litigation was to minimize the cost of public works projects, it appears to have succeeded.224 The previous model was becoming increasingly expensive for the State due to the big checks it was writing to landowners in addition to the costly litigation.225 The fair market value approach is favorable to the State because it has the potential to decrease landowners' just compensation awards significantly.226 This approach may also make it easier for local municipalities to obtain easements as property owners will be less inclined to hold out for big paydays.227 Thus, the Karan decision can be viewed as a win for the likes of Governor Christie and proponents of the shore replenishment project.228

While the intention was to prevent a windfall to landowners, this government-friendly opinion can lead to municipalities overestimating the public benefit, thereby considerably reducing

219. Arnold, supra note 3, at 238 (noting change in property law over time as necessary occurrence).
220. See Karan, 70 A.3d at 542-43 (N.J. 2013) (abandoning general/special benefit approach in favor of fair market value approach).
221. For a discussion of the potential cost savings for the State, see infra notes 224-227 and accompanying text.
222. Karan, 70 A.3d at 526 (noting Karans' initial jury award of $375,000 for just compensation).
223. See Young, supra note 22 (noting eventual settlement amount of one dollar).
224. See Pearson, supra note 66 (suggesting there will be no more big pay days for landowners in partial-takings cases).
225. See Karan, 70 A.3d at 526 (noting original $375,000 award to Karans).
226. For a discussion of how the market value approach may decrease eminent domain costs because landowners are entitled only to the value of their land, see supra notes 143-164 and accompanying text.
227. See Pearson, supra note 66 (reasoning that property owners will be more inclined to grant easements as owners now recognize reduced ability to obtain big payout through litigation).
228. See Pearson, supra note 66 (noting government's satisfaction with outcome of Karan).
payouts.\textsuperscript{229} If municipalities do overestimate the public benefit, the result would substantially detract from the core principle behind just compensation – making the landowner whole.\textsuperscript{230} Further, landowners would have increased skepticism toward eminent domain proceedings, especially those landowners owning beachfront property like the Karans.\textsuperscript{231} Ultimately, the Karan decision “diminish[es] the rights of coastal lowland owners, compared with the rights of noncoastal dryland owners.”\textsuperscript{232} 

As global warming continues to contribute to rising sea levels, other coastal communities will have to determine ways to protect citizens from storm damage.\textsuperscript{233} Though Karan is just a glimpse into one coastal community, similar sand dune construction projects are taking place all along the Jersey Shore.\textsuperscript{234} To date, the NJDEP “has estimated 1,000 homeowners along the entire coast have not signed easements.”\textsuperscript{235} It seems that more litigation may be in the forecast for the Jersey Shore as the need for beach replenishment is not dwindling.\textsuperscript{236} Beyond New Jersey, Karan may signify a shift in eminent domain law nationwide if other states take heed of the decision and recognize the advantageous cost savings available under the minority fair market value approach.\textsuperscript{237}

\textit{Bianca Iozzia}\textsuperscript{*}


\textsuperscript{230} For a discussion of the purpose behind just compensation, see \textit{supra} note 196 and accompanying text.

\textsuperscript{231} For a discussion of the potential decrease in public works costs for the State, see \textit{supra} notes 224-227 and \textit{supra} note 8, at 1856 (comparing costs and benefits of taking of coastal landowners as opposed to noncoastal landowners).

\textsuperscript{232} See \textit{generally} Corps Feasibility Report, \textit{supra} note 4 (noting environmental threats to coastal communities along Jersey Shore).

\textsuperscript{233} See Corps Feasibility Report, \textit{supra} note 4, at 2 (noting environmental threats to coastal communities along Jersey Shore).

\textsuperscript{234} See Englund, \textit{supra} note 23 (listing number of easement holdouts along entire New Jersey coast).

\textsuperscript{235} See \textit{id.} (noting number of easement holdouts remaining throughout Jersey Shore).

\textsuperscript{236} See Corps Feasibility Report, supra note 4, at 72-74 (discussing threat of storm damage and rising sea levels to Jersey Shore).

\textsuperscript{237} See Continental, 941 P.2d 809, 823 (Cal. 1997) (emphasizing that “taxpayers should not be required to pay more than reasonably necessary for public works projects”). The Continental court also noted that “[a] rule permitting setoff against severance damages of all reasonably certain and nonspeculative benefits minimizes the cost of public works.” \textit{Id.}

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