

TOWNSHIP OF READINGTON, a municipal corporation
corporation of the State of New Jersey,

Plaintiff,

v.

SOLBERG AVIATION CO., a New Jersey partnership;
JOHN HROMOHO, THOR SOLBERG, JR.; WATERS
McPHERSON McNEILL, P.A.; FOX, ROTHSCHILD,
O'BRIEN & FRANKEL, LLP; THOR SOLBERG
AVIATION; JOHN DOES NOS. 1 THROUGH 20; JOHN
DOE CORPORATION NOS. 1 THROUGH 20; NEW
JERSEY DEPARTMENT OF THE TREASURY, DIVISION
OF TAXATION, TOWNSHIP OF READINGTON,

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
HUNTERDON COUNTY

DOCKET NO. HNT-L-468-06

Civil Action

SOLBERG AVIATION COMPANY,

Defendant-Counterclaimant
and Third-Party Plaintiff,

and

THOR SOLBERG, JR., SUZANNE SOLBERG NAGLE and
LORRAINE SOLBERG,

Third-Party Plaintiffs,

v.

TOWNSHIP OF READINGTON,

Counterclaim Defendant,

and

GERALD J. SHAMEY, THOMAS AURIEMMA, JULIA
C. ALLEN, FRED C. GATTI, and BEATRICE MUIR,

Third-Party Defendants.

**BRIEF ON BEHALF OF DEFENDANT SOLBERG AVIATION COMPANY
IN SUPPORT OF THE MOTION FOR SUMMARY JUDGMENT**

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**BRIEF ON BEHALF OF DEFENDANTS SOLBERG
AVIATION COMPANY IN SUPPORT OF
THE MOTION FOR SUMMARY JUDGMENT**

[Emphasis Ours Unless Otherwise Noted]

PRELIMINARY STATEMENT

This brief is filed in support of the motion by defendant Solberg Aviation Company (“Solberg”) for summary judgment determining, as a matter of law based upon the extensive factual record developed through formal and informal discovery in this case, that the eminent domain proceeding instituted by plaintiff, Readington Township (“Readington) or (“Township”), in September, 2006, is not for a proper public purpose but rather is pretextual in nature in claiming to be for the preservation of open space when, in fact, the real and underlying purpose of the taking is to constrain and limit the development, modernization, and possible expansion of Solberg Airport and ultimately to cause its demise.

If the facts in support of Solberg’s contention were less clear at the time of the Court’s hearing approximately a year ago, they are indisputably transparent now. What they show, in depth, is a long-time, long-term, well-planned and craftily-engineered crusade by Readington to usurp for itself -- to the exclusion of those charged by law with regulating airport layout, size, and capacity, and legitimate needs and concerns of the flying public -- i.e., the state and federal regulators -- the near-term and long-term future of Solberg Airport in a manner which virtually assures its ultimate disappearance.

This crusade, from its erratic beginnings more than 20 years ago, sprung into concerted action in the late 1990s when the possibility of a somewhat larger airport seemed real, reached a crescendo in 1999-2001 when Readington organized its offensive strategy, subsided for a period of time in 2002-2004 while the New Jersey Department of Transportation and Solberg were endeavoring to reach an accommodation with Readington's reluctant acquiescence, and erupted again with full force and fury in 2005 and 2006.

At that time, Readington wheeled into place all of the heavy artillery at its command, ranging from a paid public relations orchestrator to a retinue of hired experts whose mission was simple but effective: convince the public that substantial expansion of Solberg Airport was on the immediate horizon and authorize steps to crush it -- by authorizing a \$22 million bond issue as the first step towards a public taking of all that the Solbergs had owned and nurtured over more than half a century.

Readington may point to various of the statements attributed to Committeepersons and others as irrelevant and immaterial campaign rhetoric, not necessarily indicative of the Township's true goals but simply expressions of a mechanism for generating public support for their pristine objectives, not to mention their own political survival. Solberg acknowledges a veritable ocean of campaign rhetoric over the years, but it is hardly as innocuous and irrelevant as Readington would aver. To the contrary, Readington's actions, in a variety of activities carried out by its representatives in their official capacities, are consistent with and in many ways even exceed the words of its public officials in both their governmental activities and their

political conduct. This case involves dozens, if not hundreds, of official statements and actions (or inactions, as in the case of the Air Safety Act), complemented by reams of campaign material, highlighting beyond any reasonable dispute the governmental goal of “stopping” the airport with eminent domain as the ultimate and readily available weapon.

Indeed, if there is a subject matter in this case where rhetoric triumphs over substance, it is found in Readington’s late-blooming, well-organized, but totally disingenuous excuse for taking away the Solbergs’ property in the name of “open space”. While the taking might well continue the existing open space at the airport site, it was not necessary to such preservation as Readington well knew. The airport was almost by definition the epitome of “open space”; Readington had miles of “open space” already under its control both by way of voluntary acquisition and farmland preservation; and the pivotal if not sole reason both in timing and in action for targeting the Solberg property as an “open space” candidate was to provide a justification for interfering with both the Solbergs’ usage of the airport and the regulatory control of the N.J.D.O.T. and the Federal Aviation Agency (FAA).

This case is no more about “open space” than “To Kill A Mockingbird” is about birds. This case is about the raw and improper exercise of power which, fortunately, our courts and other courts have often recognized and prevented. In this case, on the record now presented to this Court, the evidence should be compelling enough to warrant summary judgment in favor of Solberg Aviation Company.

PROCEDURAL HISTORY

Plaintiff Readington Township filed this eminent domain action on September 15, 2006. The Court issued an Order to Show Cause on September 22, 2006, initially returnable October 20, 2006, as to why the taking should not be finalized.

Solberg Aviation Company challenged the authority of the Township in answering papers and, after various additional filings, the matter came on for argument on November 3, 2006.

The Court reserved decision and, on November 14, 2006, issued its opinion denying summary relief to Readington. In the course of its opinion, the Court noted that while Readington asserted that its taking was for the purpose of preserving open space and other natural resources, there was a genuine issue as to “whether Readington’s true motivation is the preservation of open space, or if there is an ulterior motive for the proposed taking”. Recognizing that **“the decision to condemn shall not be enforced where there has been a showing of ‘improper motives, bad faith, or some other consideration amounting to a manifest abuse of the power of eminent domain’”**, the Court concluded that the evidence presented at that juncture by Solberg Aviation Company “is sufficient to create a prima facie showing that the purpose of this condemnation action is pretextual and/or will result in an inverse condemnation greatly reducing the value of defendant’s airport.”

The Court proceeded to allow discovery, appointed Discovery Masters, and the parties have since proceeded to conduct extensive factual discovery, including document requests; numerous depositions; exchange of expert reports and rebuttal expert

reports; and a number of expert depositions. In accordance with the latest Case Management Order of September 10, 2007, this motion follows.

STATEMENT OF FACTS

I. THE EARLY STAGES OF READINGTON'S 40-YEAR BATTLE AGAINST THE AIRPORT.

A. Introduction.

This condemnation suit represents the culmination of a campaign which had its beginnings over 40 years ago, in the course of which time Readington Township officials promised, among other things, to:

- “hold the line against expansion of Solberg Airport”. [Ex. 1 p. 12¹].
- “draw the line in the sand, and not only to stop [particular expansion plans], but to do something to ensure . . . that this will never become a jetport or the things that we fear in terms of heavier and larger aircraft coming in and out of Solberg.” [Ex. 2 p. 18:8-15].
- “do everything in our power to maintain the status quo of Solberg Airport” [Ex. 3 p. 3].
- *** “doing everything possible to prevent Solberg Airport from expanding.” [Ex. 4 p. 3].

Readington has for years been maneuvering to assure that Solberg Airport does not become a “jetport”, and has been threatening to condemn the property on which the airport operates to prevent Solberg from becoming a “jetport” for nearly 20 years.

¹ All factual citations herein refer to the Certification of Philip E. Mazur Dated October 26, 2007, submitted herewith.

Each and every time a modernization of the airport appeared even possible, much less probable, in any manner, officials worked frantically to constrain and regulate the airport property. Readington, through its elected officials, worked hand in hand with a private anti-airport group, BRAAC, in an effort to achieve their goals. Readington also began to develop, as an afterthought but clearly as a manufactured justification, the purported purpose of open space preservation. The “open space” purpose is a pretext, and is of relative recent vintage compared to the longstanding opposition to airport modernization and lengthening of the runway at Solberg Airport, the real -- the only -- true purpose behind the vast expenditure of time, effort, and public money in this anti-airport jihad.²

B. Fears In The 1960's That Solberg Would Become The Fourth “Jetport” In The Metropolitan Area.

On or about February 3, 1941, the Readington Township Committee awarded aviation pioneer and American patriot Thor Solberg Sr. permission to open and operate a “commercial airport” on the land at issue in this action on or about February 3, 1941. [Ex. 140]. Less than 25 years later, the airport was facing public opposition. Committeewoman Muir recounted that history during a February 2006 Township Committee meeting:

I went through all the records [from the 60's]. The Courier News and The Democrat, and anybody can do that.

² Indeed, as developed further in this brief, the true purpose behind Readington’s long term plans to take the property was virtually admitted by two Readington Committee members in 1996 at a BRAAC anti-airport meeting in which they stated that condemnation could be used as a means of preventing Solberg from increasing the runway length, thereby avoiding use of the airport by large numbers of jets. Despite the lip service paid to “open space”, even the recent 2006 elections of a number of the current Readington Township officials were won on an anti-jet platform, and more importantly, the bond referendum relating to the bond to fund the condemnation was sold to Readington residents via the use of a public relations firm, on the grounds of “jetport” fears.

It was called a jetport then. It was the same scenario as the plans, the our conditional approval plans [for modernization of the airport] that are on paper today. It was called a jetport. You are not calling it a jetport today, but it is the same thing. Tweak the runways just a little bit here, a little bit there, the length is the same.

[A] 5,600 foot runway . . . means larger jets over this community. There is no denying it.

[Ex. 5 at 118:21-119:22].

There is also no denying that certain efforts to “stop the jetport” were already in motion in April 1967 when it appeared that Solberg, due to its geographic and aeronautic suitability, was about to be designated the potential site of a fourth major metropolitan area airport. [Ex. 143]. Protests were held in Trenton and various petitions were circulated, and apparently some changes in Trenton resulted in a determination that a fourth airport was not needed at that time, and Readington officials were able to rest easy for the time being.

C. During The 1980’s Readington Refuses To Comply With The Mandates Of State Law And Conducts Lobbying Efforts To Avoid Having To Comply.

The “jetport” issue began to reemerge in the 1980’s, during which time Readington sought to avoid compliance with the obligations imposed upon it by the Airport Safety and Zoning Act of 1983 (“Air Safety Act”), N.J.S.A. 6:1-80, et seq. The Act, in the words of committeewoman Julia Allen:

“took the decision of expansion [of the airport] out of the hands of the elected officials of all levels of government and

put it in the hands of the state Department of Transportation and the Federal Aviation Administration.”³

[Ex. 6]. This was something that Readington was not prepared to countenance.

Faced with the actual loss of control that the Air Safety Act contemplated, Readington, as early as July 1986, petitioned the New Jersey Department of Transportation (“N.J.D.O.T.”) for an exemption from the requirements of the Act. That request was denied. [Exs. 7 and 8]. In October, 1986, N.J.D.O.T. advised Readington that it would be required to comply with the Air Safety Act and its regulations by the effective date of November 4, 1986. [Ex. 9]. Readington thereafter submitted a proposed ordinance to the N.J.D.O.T. [Ex. 10], but it is obvious from what happened thereafter that Readington had no intention of adopting it.

On or about January 5, 1987, N.J.D.O.T. advised Readington that the draft ordinance was acceptable and in compliance with the Act, but Readington then declined to adopt it, and indeed avoided adopting it for the next 20 years. [Ex. 11] In July, 1987, N.J.D.O.T. again advised Readington that compliance was overdue. [Ex. 12].

Rather than comply, Readington stonewalled until in or around July, 1989, when it retained a law firm to aid it in connection with the Act. That law firm, in turn, engaged a public relations firm (Public Strategies/Impact) to lobby on behalf of the Township to “amend or repeal” the Act in a fashion that would “provide that the municipality shall have the power to control airport development.” [Ex. 13 p. 2].

³ In that same document dating from 1996, Ms. Allen, who was a Readington official at the time, also states that those concerned with expansion should “Write to Branchburg, Readington Airport Action Committee (“BRAAC”)(P.O. Box 5251 North Branch 08876) with your suggestions or offers to help.” As discussed in further detail below, BRAAC is Readington’s private anti-airport group, with which the Township and its officials have worked for years as needed to inflame opposition to the airport and gain support for this condemnation action.

Various regulations pursuant to the Act were thereafter added by the State, and May, 1990 became the compliance date for the new requirements. [Ex. 14]. Readington objected to the changes during the period in which they were being considered, and, on October 18, 1989, again requested that it be exempted from the requirements of the Act. [Exs. 16 and 17]. That request was promptly denied by N.J.D.O.T. [Ex. 18]. Obviously on the instructions of the client, counsel for Readington continued to research in order to find a way for the Township to avoid the Act. [Ex. 19].

During a meeting with the Solbergs in August 1990, Committeeman Monaco stated that the Township objected to the manner in which the Act purportedly took control of the airport away from the Township. His reasoning was simplistic and arrogant: if the Act was removed from the books, “the airport will return to being a nonconforming use, which you’d have to come in to the Township for expansion Now you don’t have to.” [Ex. 20 p. 86:24-87:5]. Prior thereto, in April, 1990, N.J.D.O.T. had reminded Readington of the compliance date and offered assistance to Readington in meeting that deadline. [Ex. 21]. N.J.D.O.T. wrote on that matter again in October, 1990. [Ex. 22]. At around that same time, Readington also hired yet another professional, Connie Myers, to “lobby against” the Act. [Ex. 23].

Readington also proceeded on the litigation front in its effort to avoid the impact of the Act. It participated in support of the plaintiff in Patzau v. New Jersey Dept. of Transp., 271 N.J. Super. 294 (App. Div. 1994), in which the plaintiffs sought to have the Act and its regulations declared unconstitutional. The Superior Court and the Appellate Division held that the Act was constitutional and valid. The lawsuit was

pressed all the way up to the New Jersey Supreme Court, which denied certification, 138 N.J. 268 (1994).

Citing the resolution of that lawsuit, N.J.D.O.T. wrote to Readington in May, 1995, again pressing Readington to comply with the Act. [Ex. 24]. On June 7, 1995, Readington wrote to the Executive Director of N.J.D.O.T. informing him that Readington had engaged a surveyor to prepare the appropriate maps in connection with the ordinance and had created a draft ordinance, which it promised to introduce by October 1, 1995. [Ex. 144]. As with its previous promises, the circumstantial evidence demonstrates that this was just a continuation of a calculated holding pattern. Thus, Readington again declined to follow up and to adopt the ordinance which would have made airport operation a conforming use of the property.

During all of this time, Readington continued to explore avenues that would justify it in avoiding compliance with the Act. For example, it engaged attorneys to examine (among other things) whether the Act would expire or likely be repealed. Moreover, as discussed in more detail below, in or around October 1995, property within the airport safety zone as contemplated by the Act was selected as the site for a new school.

On April 12, 1996, N.J.D.O.T. wrote Readington, once again asking about the status of the ordinance. [Ex. 145]. Readington replied on April 18, 1996, stating that the work of the surveyor -- work that supposedly had been started 10 months earlier -- was "95% complete" and that a draft ordinance would be forthcoming. [Ex. 146]. In the April 12 letter, N.J.D.O.T. observed that Readington had "drafted an acceptable

ordinance but never adopted it.” Silence followed. The N.J.D.O.T. letters became an annual ritual. Another letter was sent in March, 1997 [Ex. 147]; and yet another in April, 1999 [Ex. 25].

The topic also arose in the intervening year -- 1998. At a public meeting on June 1, 1998, Readington Mayor Wall expressed concern and the Township Committee’s belief that Readington’s then current draft of its ordinance with respect to the Air Safety and Zoning Act “might not provide the protection that we think we need from runway expansion.” [Ex. 26 p. 4]. The issue he was referring to is whether or not the term “routine improvements” in the regulation, over which the Township would have no control, included runway expansion. [Ex. 27 p. 330:22-23].

On December 7, 1999, Neil Tully of N.J.D.O.T. wrote Readington official Julia Allen, inquiring yet again about the adoption of an Air Safety and Zoning Act ordinance by Readington Township. Mr. Tully noted that Ms. Allen was quoted in a then-recent news article as saying that N.J.D.O.T. and Readington “could not agree” on the details of a map. Mr. Tully advised that contrary to Ms. Allen’s assertion, N.J.D.O.T. had already “approved the map”. Mr. Tully again offered the N.J.D.O.T.’s assistance to Readington. [Ex. 148]. Silence followed.

In a Resolution dated July 18, 2000, the Township Committee continued to object to the Act (and certain amendments proposed to be included in the Act at that time), expressing its belief that the Act “vest[s] unfettered power and discretion in the Commissioner of Transportation.” [Ex. 28]. In that Resolution, Readington also complained that the Act took away its ability to control the airport by way of zoning: the

“Act was characterized as an airport safety issue but in reality removed zoning responsibilities from the host communities”. [Id. at p. 2]. The Township concluded that the Act failed to address issues such as “aircraft noise, the decline in property values, increased air pollution and the added risk to New Jersey”. [Id.]. Committeewoman Muir objected to the same Act and proposed amendments on July 18, 2000, stating that the Committee possessed a “determination to litigate Bill 2332, if it becomes law, to the highest court in the land”. [Ex. 29]. On August 8, 2000, the Township Administrator conveyed a BRAAC petition to Governor Whitman on official Township letterhead, stating that the “Township Committee supports the efforts of these petitioners to urge you to veto” the proposed amendments. [Ex. 30].

As it turns out and as discussed more fully below, Readington did not create an ordinance or revise its own Master Plan pursuant to the requirements of the Air Safety and Zoning Act until after it filed this condemnation action and its Declaration of Taking, which it claims has now allowed it to apply the ordinance to only approximately 100 acres of the 700 plus acre airport property.

D. The “Linden Deal”.

In 1989, it appeared that Linden Airport might close. However, because Linden had taken federal monies, as a condition to its closure it was required to find another airport that would agree to accommodate the planes that are based at and use the facility. [Ex. 31 p. 5]. Linden and Solberg had reached a tentative agreement for Solberg Airport to fulfill that role, and studies were performed as to the feasibility of that agreement. [Id.].

Readington proceeded to file suit against the FAA to prevent Linden from ceasing its operations, which would thwart the tentative deal, prevent improvements to the aeronautical infrastructure of the airport and prevent the potential increase in air traffic that might follow if users of Linden Airport decided to utilize Solberg. Readington also lobbied numerous public officials, indicating that the transfer “involves the coopting of our [the Township’s] authority by the automatic transfer of planes from Linden Airport to Solberg Airport.” [Ex. 32]. In those letters the Mayor of Readington stated that **officials of Readington were concerned with “retaining our authority” over the airport.** [Id.]. In numerous press statements between June 1990 and August 1990, the Mayor of Readington indicated that the Township may resort to condemnation of the airport property to prevent the Linden agreement from going forward. [Ex. 149].

The Linden deal was never completed because of a political change in the City of Linden.

E. The Creation Of The Solberg Airport Master Plan And Readington’s Efforts To Prevent The Improvements Contemplated Therein.

1. Early Threats to Condemn To Prevent Airport Modernization.

Beginning in or around 1990, the owners of Solberg Airport sought to develop an Airport Master Plan which would set forth the improvements to be made to the airport in order to serve the public needs for aeronautical infrastructure going forward. In an effort to cooperate with the Township and include Readington officials in the process, the Solbergs engaged in meetings in or around August 1990 with Township

officials Steve Mirota (then Mayor), Ron Monaco, and Township aviation consultant Richard Bisbald, as well as Township attorney William Savo.

During one of the meetings, the Township attorney specifically threatened to do precisely what Readington is now doing - condemn the airport to assure that it does not expand in order to accommodate jets or increase noise in the area:

SPEAKER [Thor Solberg]: what you're doing is putting my interest at risk.

MR. SPEAKER [Ron Monaco]: Not at all. Not at all.

MR. SPEAKER [Thor Solberg]: because you're taking away my livelihood.

MR. SPEAKER [Ron Monaco]: No, we're not.

MR. SPEAKER [Mirota]: Not necessarily.

MR. SPEAKER [Thor Solberg]: You know that's what -- **you want to take the land.**

MR. SPEAKER [Ron Monaco]: **We haven't done that yet.**

MR. SPEAKER [Thor Solberg]: **It's our land.**

MR. SPEAKER [William Savo]: **Let me tell you what our options are. We could go down there tomorrow, right? And [take] just enough to put the airport out of business.**

[Ex. 20 p. 41:24-42:17].

During that meeting, and another that took place at around the same time between the Solbergs and Readington officials, there was frequent mention by Readington officials of issues such as noise, "727's" (jet aircraft), "property values" and length of the runway. [Ex. 33 p. 5,6, 9; Ex. 20 39:9, 66:15, 53:20-54:3].

Committeewoman Theresa Martin conveyed the public concern “that the jets are going to come in”, although much of the public does not want “us to get involved in condemning or owning” the airport. [Ex. 33 p. 17].

A memorandum from Mike Stoddard, a consultant with N.J.D.O.T., to Jack Penn of N.J.D.O.T. dated June 17, 1995 describes the atmosphere at a Township Committee meeting held on that date. In the memo, Stoddard observes that a core group of anti-airport individuals wanted the airport property “condemned”. [Ex. 34]. Although Stoddard acknowledged that it appeared that most residents at the meeting did not oppose the airport in its current configuration, he also suggested that “work must be done to keep the Chicken Littles of the world safe and secure in their suburban havens, free from noise, air and ground traffic and reassured that their property values have not fallen.” [Id.]

Consideration of condemnation as a means to control the airport continued in the mid 1990’s. Indeed, on April 30, 1996, then-Readington Township Committeepersons Jim Wall and Ronald Monaco (misnamed as “Mr. Hoch” in the transcript), attended a meeting arranged by the anti-airport group, BRAAC; in addition to encouraging anti-expansion petitioning and other activities, they openly discussed condemnation as a means by which the Township could control the airport:

MR. SPEAKER [Bernard Schaffer of Branchburg Town Council]: . . . the question is what specific items may interact with this purpose of condemning the property. As a Branchburg resident, I can't answer that. Ron or Jim?

MR. HOCH [Monaco]: Ron Hoch [sic], from the Readington Township Committee. I know we, at times, have seemed

circumspect on answering that issue. And the reason is, we on the Township Committee are very concerned about doing everything according to the law, because **the last thing you want us to do is to do something which is not according to the rules and regs of the State of New Jersey, so that the airport can turn around, sue the township, and win. Okay? When you talk about things like eminent domain and condemnation, you have to do things by the book. And we're determined to do things by the book.**

The only thing you have to be concerned about is our resolve in this situation. And I think our past history shows the resolve that we have. That's the only reason why we sometimes might seem (indiscernible) about answering the question about eminent domain.

One thing I just wanted to say, just for one minute, because it always gets looked over. We repeat it again by the FAA in their letter, and that is that whether you worry about this is only a plan, there are no bulldozers there and there's nothing to worry about, go home and relax. And then what happens is when the bulldozers show up, they're coming -- the same people will come back and say now's the wrong time, where were you when the planning was going on? You should have been talking then. It just burns me up that they do this all of the time.

So this is the right time. We are doing the right thing, and we're doing it according to the rules and regulations that the State of New Jersey has set up so that we will prevail and win in the end.

MS. SPEAKER: But that still doesn't answer my question. Why should (indiscernible)

MR. HOCH [Monaco]: It's the due process of law. If you have a business, right -- then there are laws in the State of New Jersey that says we the Readington Township Committee we can't come in and condemn your property arbitrarily and capriciously. **We have to have reasons, you know, damages to the environment or the community or whatever the case may be. And we have to specify those. And to state it first -- for me to come up, for instance,**

tonight and say I'm going to take your property -- would be actually against the law for me to say that without knowing anything about what you own or what your property is or does.

So you have to have all of the facts. Otherwise you can rightfully come back to the Township Committee and say these people took my property arbitrarily and capriciously, and you will win.

[Ex. 35 p. 108:13-112:3].⁴

F. Readington Determines To Locate A New School On Property Within the Airport Safety Zone Against N.J.D.O.T. Advice

At around this same time, and in a further effort to reign in the airport, Readington officials determined to locate a new school on property located within the (not yet officially designated) airport safety zone. To the extent that the runway were to be moved or lengthened, the safety zone would expand or move accordingly. Schools could not be located within a safety zone. Therefore, the location of the school would thwart certain efforts to lengthen or move the runway, and also serve to drive up even more anti-airport sentiment.

The choice of location was made over the objection of N.J.D.O.T. officials. Neal C. Tully, Air Safety and Zoning Specialist with N.J.D.O.T., wrote to Readington on November 27, 1995, stating that "I don't believe it to be prudent to locate a new school building this close to the airport." Tully explained, "Aircraft on final approach to runway 13 will be approximately 500 feet above the proposed site and on takeoff, aircraft will be

⁴ In the video recording of this meeting, it appears that current committeepersons Allen, Shamey and Muir are also in attendance.

approximately 300 to 800 feet above the proposed site.” For those reasons, Readington should “investigate locating the school elsewhere.” [Ex. 36].

After Readington issued a notice to its citizens that implied that N.J.D.O.T. had endorsed the site choice, Emmett N. O’Hare, Deputy Director of the N.J.D.O.T. Division of Aeronautics advised that it had “received a copy” of that notice and that “[t]here appears to be a misunderstanding of the Division of Aeronautics position regarding the school location.” Specifically, “[y]our notice implies that you have our endorsement for the site.” [Ex. 37]. O’Hare referenced prior correspondence and stated that “[i]n neither letter, nor at any other time, did the Division endorse the site.” [Id.]. The Township had previously justified the site location by indicating that the new school would be “sited nearly two-thirds of a mile away from the end of the nearest runway”. [Ex. 38 p. 3]. O’Hare, referencing that proximity, advised “[s]hould the school be subjected to aircraft noise that interferes with school functions, normally beneficial noise abatement procedures would not be possible because of the school’s location.” [Ex. 37].

In another letter to Readington officials, Jack Penn, the Executive Director of N.J.D.O.T. again was compelled to clarify its position in the face of Readington’s repeated claims that N.J.D.O.T. had endorsed the site selected for the new school.

“There appears to be misunderstanding on the Division of Aeronautics position on this proposal for your statement
STATE DEPARTMENT OF TRANSPORTATION HAS
CONFIRMED THE PROPOSED NEW SCHOOL AND ALL
PLAYING FIELDS ARE LOCATED OUTSIDE THE
AIRPORT SAFETY ZONE implies our endorsement of this
site.

This is incorrect.

While you may view the technicality of having the structure outside the Airport Safety Zone as permissive, **we do not believe it is in the best interests of the children, the residents and the airport for a school to be built in such close proximity to an active runway when other sites are available.**

Until it is shown there are no other sites on which the school can be built, we will withhold our approval.

[Ex. 39].

Years later, in April, 2006, in an effort to gain advantage from the situation the Township itself created, Mayor Shamey used the school's proximity to the airport to generate support for Readington's desire to condemn the airport property. Specifically, Shamey, in addressing the Readington Board of Education, "spoke about the effects of the possible airport expansion on" the school and the "close proximity" of the runway to the school. [Ex. 40 p. 2]. Shamey presented aerial photos demonstrating that proximity, which served to show the "noise level[s]" that would likely result "should an airport expansion take place". In view of same, Shamey "suggested" that the Board of Education "adopt a resolution taking a stance on the airport". [Id.]. The Board did so, stating that it opposes an expansion due to a perceived threat to safety and noise, and therefore urged the Township Committee to take action to prevent Solberg Airport from "expand[ing] the size of its main and crosswind runways". [Id.].

That presentation by Shamey also prompted the Board of Education to send students home with a letter to their parents containing a copy of the Board resolution and

urging them to “learn as much as they can about the impending township bond ordinance referendum.” [Ex. 41].

**G. Various Official Activities Are Undertaken
To Oppose and Prevent Airport Modernization.**

Also during the mid-1990’s time period, Readington began issuing a series of Township Committee resolutions opposing the lengthening of the runway as proposed in the Solberg Master Plan submitted to the N.J.D.O.T. and the F.A.A. In general, the opposition rested upon the belief (stated expressly) that a longer runway means more “jets” and more noise. For example, Resolution 96-31, dated April 2, 1996, states that the Township is opposed to a “longer runway”, states that (at least according to the Township) the “runway length as it exists provides adequate safety for existing aircraft”, and adds that “any type of commercial expansion that would increase the use of turbine powered aircraft is also opposed”. [Ex. 42].

Resolution 97-18 dated February 18, 1997, similarly provides that there is a “lack of data to support” the “need for a longer runway”, that adjacent townships and other government entities apparently also “oppose runway expansion”, and that additional interested government entities are urged to pass a resolution “opposing the proposed expansion”. [Ex. 43].

On that same day, the Township Committee passed Resolution 97-17 condemning aircraft noise and stating that New Jersey counties and municipalities “suffer from extreme and unwanted levels of aircraft noise”. [Ex. 44]. That noise, according to

the resolution, “results in substantially lower property values for some New Jersey homeowners”. [Id.].

The following year, the Township Committee passed Resolution 98-23 indicating that while Readington does “not oppose the current use of Solberg Airport as a recreational facility”, for which the existing facility is “considered adequate”, it is opposed to the location of a commercial airport” in Readington. [Ex. 45]. For those reasons, it is “resolutely opposed to any expansion or compromise to lengthen the existing paved runway.” [Id.].

By March 1997, the Township had in its possession the proposed Master Plan that Solberg Airport had submitted to the FAA and N.J.D.O.T. [Ex. 46 p. 7]. During a Township Committee meeting at that time, there was a discussion of noise, traffic patterns, and anti-airport activities conducted by BRAAC. [Id.]. In April, 1997, counsel retained by the Township wrote the Deputy Director of Aeronautics of the N.J.D.O.T. a fifteen page single spaced letter detailing all of the purported deficiencies in that Master Plan proposal, including, as stated on the first page, the usage forecasts which were prepared to support the “lengthening of the runway”. [Ex. 47 p. 1].

In January, 1998, in an apparent effort to appease the public, **then-Mayor Wall stated that he “is committed to doing everything possible to prevent Solberg Airport from expanding.”** [Ex. 48 p. 3].

BRAAC’s activities became more prominent around this time, and Township officials began to increasingly associate themselves with the group. In a letter to the editor in support of current Committeewoman Muir’s November 1997 campaign, a

citizen of Readington asserted that Muir “is an active member of BRAAC, which leads the citizen opposition to the Solberg Airport expansion.”⁵ [Ex. 49]. During Mr. Shamey’s election campaign, he was also held out to be an active member of BRAAC. For example, in a “letter to the editor” signed by (among “40 others”) both Allen and Muir, it is stated that Shamey is “a founding member and legal advisor to Branchburg Readington Airport Action Coalition”. [Ex. 50]. Shamey has admitted that he has provided free legal services to BRAAC. [Ex. 51 p. 106:25-107:7].

During the time that the FAA and N.J.D.O.T. were reviewing the final draft of the Solberg Master Plan internally (from approximately mid-1997 to April 1999), the Township was relatively inactive, presumably awaiting the recommendation on the Master Plan and hoping its objections would be honored.

Readington was not totally quiescent, however. On or around January 20, 1998, the Township passed a Resolution stating that it is “resolutely opposed to any compromise on the length of the existing 3,000’ paved runway” and “totally opposed to any expansion of Solberg Airport.” [Ex. 52]. Following a discussion of noise and jets at the meeting, Committeeman Monaco stated that “Readington’s opposition has always been that they did not want Solberg to become a ‘jetport’”. [Id.]. Other resolutions as to runway length, discussed above, were also passed during this time period. On January 1, 1999, newly-appointed Mayor Allen, in her year-opening speech, promised to “continu[e] to hold the line against expansion of Solberg Airport”. [Ex. 53 p. 12]. In furtherance of

⁵ This, at a minimum, shows that Muir was perceived as a member of BRAAC and an anti-airport activist.

that effort, on that same day, the Township Attorney was engaged to provide services in relation to the Solberg Airport Master Plan. [Ex. 54].

H. Readington' Efforts To Control The Airport Increase Exponentially Following Conditional Approval Of The Master Plan And Airport Layout Plan By N.J.D.O.T.

The period of relative silence came to an abrupt end in or around April 1999 when Readington was informed that the Solberg Master Plan had been given conditional approval. [Ex. 55]. Readington at that time commenced a multi-front campaign of (i) lobbying against the proposed modernization, (ii) hiring lawyers to oppose it on their behalf, and (iii) retaining numerous experts to aid it in its efforts to take control of the airport (including by means of condemnation).

On April 20, 1999, then-Mayor Allen (still a Committeewoman today and at all times pertinent) asserted to N.J.D.O.T. that the “Master Plan submitted was inadequate, self-serving, and in many instances inaccurate and misleading.” [Ex. 55 p. 1]. Allen complained that the reviews and activities leading up to development of the Master Plan were a mere “choreographed procedure designed to force conclusions clearly not merited by the facts”. One thing overlooked, according to Allen, was the possible impact on “residential real estate values”. [Id. at 2]. She added that the proposed improvement set forth in the Master Plan “will result in airport infrastructure significant enough to readily support a regional jetport and freight facility” and allow Solberg to “compete with Morristown, Mercer County and Teterboro Airports.” [Id.] This, at least according to Allen, was not necessary because the “State is rich in airports” and therefore the “need for the proposed expansion has not been demonstrated.” [Id.]. Allen

continued, that a “large jetport . . . will contribute to increased noise and air pollution, [and] erode residential property values”. In closing, Allen vowed that the Committee, along with its neighbor Branchburg, will “do everything in our power to maintain the status quo of Solberg Airport.” [Id. at 3].

The Committee made good on that promise to do everything in its authority (and beyond) to see to it that the airport did not modernize. On May 3, 1999 Allen wrote to Senator William Schluter to express Readington’s opposition to the improvements called for in the Master Plan. [Ex. 56]. In particular, it was stated that “[b]oth Readington Township and Branchburg Township are opposed to any extension of the existing runway length”. [Id.]. The next day, the Township Committee passed a Resolution objecting to the Master Plan and the conditional approval on the basis of, among other things, “increased levels of aircraft noise”. [Ex. 57]. On May 17, 1999, Allen sent a form letter to Assemblyman Leonard Lance inviting him to a meeting of “concerned residents on the state of the proposed expansion of Solberg-Hunterdon Airport.” [Ex. 58]. Governor Whitman was invited to the same meeting. [Ex. 59].

Also on May 17, 1999, the Township engaged two additional law firms, Cutler & Stanfield and Zuckerman & Fisher, to help it prevent the implementation of the Solberg Airport Master Plan. [Ex. 60].

The Township also continued to support BRAAC in its efforts to prevent the airport from modernizing. For example, on May 3, 1999, citizen Diane Schulze was asked to read aloud a letter to the Committee at a Township Committee meeting. In her letter and subsequent presentation at the meeting, Schulze indicated that she has been

“actively involved in the opposition to the expansion of Solberg Airport since 1983 when the Airport Safety and Hazardous [Zoning] Act was first proposed”. Committeeperson Monaco stated that he “would like to thank Ms. Schulze and Susan Sohl, along with the Branchburg Readington Airport Action Coalition for their diligence since the beginning of this effort.” [Ex. 61 p. 6]. Also in 1999, around this same time, **John Kalinich, a founding member of BRAAC, was invited to a closed executive session of the Township Committee to make a presentation on the modernization of the airport** and what he believed would be the impact of the proposals contained in the Master Plan. [Ex. 62 p. 99:17-102:16].⁶

On May 26, 1999, Readington Township circulated a BRAAC petition and advised that it is to be placed on “the web page” (apparently, the Township website). [Ex. 63]. Among the reasons for opposing the Master Plan, according to the petition, are “air pollution, noise pollution, home value depreciation and [preventing] a jetport”. [Id.]. The reader is advised to attend the June 2, 1999 Township Committee meeting because it is “time to fight or listen to the jets” and to “defend your property values”. [Id.]

It was not until this time, in or around June 1999, that the property was first identified for possible acquisition by the Township in its planning documents. [Ex. 64].

That Township Committee meeting on June 2, 1999 was, for all practical purposes, an anti-airport rally led by the Committee itself. Committeewoman Muir stated that the “circumstances surrounding the proposed expansion lead me to believe that an

⁶ Mr. Kalinich was again invited to a closed executive session in 2001. [Id.].

incremental expansion is planned with a final goal of multiple jet traffic.” [Ex. 2 p. 16:8-11]. If this happens, residents will be “impacted by jet noise, by pollution and by diminishing real estate values and we cannot let that happen.” [Id. at 16:15-17].

At that same meeting, Committeeman Monaco argued that unless Readington gets control of the airport once and for all, the fight to prevent it from becoming a “jetport” will persist indefinitely:

And even though tomorrow Solberg won’t be a jetport, we will be here again if this is passed [referring to final approval of the Master Plan], we will be here again at another such meeting to talk about the next one of these things.

And it all boils down to the fact that we want to know what our future destiny is with this airport, and **I want to ensure that it is an airport, much as it is today, for recreational small aircraft and nothing else.**

And we called you out tonight knowing that we can’t do this continuously. I believe that it is time to draw the line in the sand, and **not only to stop this particular Master Plan and expansion, but to do something to ensure our mutual destiny that this will never become a jetport or the things that we fear in terms of heavier and larger aircraft coming in and out of Solberg.**

So I believe **we have to do whatever it takes right now legally to make sure that this never becomes a jetport**, not today, not tomorrow, not in the future either. And I pledge to do whatever I can and I know the committee of both towns [Readington and Branchburg] are of a like mind.

[Id. at 17:20-18:22].

In her remarks to open the year 2000, then-Mayor Muir promised to hold the line “against the expansion of Solberg Airport.” [Ex. 65 p. 2]. At the next Committee meeting, on January 18, 2000, the Committee passed a resolution condemning

aircraft noise and measures being taken by the state in relation to aircraft noise. [Ex. 66 p. 7].

I. N.J.D.O.T. Holds Study Advisory Committee Meetings To Determine Whether And What Should Be Considered In An Environmental Assessment Relating To The Master Plan Improvements.

In 2000 and 2001, Readington took a two pronged approach to fighting against airport expansion. It retained experts and counsel to help it oppose final approval of the Master Plan on purported environmental bases and **also took steps towards condemning the property**. The condemnation would certainly “ensure”, as Monaco had stated, “that this will never become a jetport”. Readington also continued to resist compliance with the Air Safety Act during this time, as discussed above in more detail, as well as certain amendments that were proposed to the Act in summer 2000.

Some time in 1999, probably around June or July, the well-known condemnation attorney John Buonocore, Esq., of the eminent domain firm McKirdy & Riskin was retained by Readington. Although the resolution retaining that firm has a “R99” designation, the resolution does not appear to have been published until around October 2000 [Ex. 67 p. 22], suggesting that the retention was less than transparent. The minutes from February 22, 2000 do reflect, however, that the Committee was engaging at that time in closed executive committee discussions regarding the retention of the McKirdy firm to provide “Services Pertaining to Acquisition of Land”.⁷ [Ex. 68 p. 3].

⁷ The minutes of the August 6, 2001 Township Committee meeting confirm that the McKirdy firm was retained in 1999. [Ex. 70].

As part of its obvious strategy to attempt to create a justification for the taking of the airport to prevent its possible expansion, Readington proceeded expeditiously to hire a number of experts to analyze the property, both in order to object to the Solberg Master Plan and to set forth the alleged benefits of municipal acquisition. The available records of retention of those experts are slim in most cases, and apparently some or nearly all of the experts were retained by the McKirdy firm. [See, e.g., Ex. 69]. In any event, it is clear that by Spring 2001 the Township had retained a number of experts to develop a “rationale” for condemning the property, including an acoustic expert, Ostergaard Acoustical Associates, and an environmental firm, Princeton Hydro, LLC. [Exs. 71 and 72].

On February 9, 2001, Mayor Monaco sent a 24 page letter to the N.J.D.O.T. Director of the Division of Aeronautics, detailing the issues on which Readington asserted the Solberg Master Plan had not undergone sufficient scrutiny. [Ex. 73]. Thereafter, Readington was invited by N.J.D.O.T. to participate in discussions to be held at Raritan Valley College relating to the planned environmental assessment and the issues that were to be addressed therein, and was further invited to appoint a member of BRAAC to attend those meetings. [Ex. 74].

Much later on, in 2006, Committeeman Shamey described those earlier meetings as “non participatory” and a “cruel joke” because, among other things, “real estate values” were not addressed to his satisfaction:

What those meetings were, it was not a give-and-take session, it was simply reporting back to us what the findings were. Again, **it was non-participatory**, it was just that here is what

we have, the process as I stated publicly before, and I stated it directly to the State hired consultants, **the process was insulting, at best.** The treatment of real estate values, for example, in one of the reports they issued, and again they were 80 to 90 percent complete, the only thing left was a final report and a finding, and we all had no doubt that there was going to be a finding of [no] significant impact. But just as an example of how ridiculous this was and how insulting this was, in my view, **the treatment as to the proposed impact on the expansion of real estate values was a scant paragraph on the bottom of one page** that talked about how a few realtors had been consulted and then felt maybe, except for a certain few areas, generally speaking, it really shouldn't have any impact on real estate values. That was it. **So the process was a cruel joke.**

[Ex. 77 p. 40:14-41:13].

Shamey continued, stating “that process took place, and I participated in it, but when I use the word "participate", I use it loosely and facetiously. That is because when the process gets to that point, and we have been there, we, the local governing body, we, the community of Readington Township, we cease being participants and we are then spectators.” According to Shamey, the outcome was preordained: “This was a self-fulfilling prophesy, there was no doubt in anyone's mind what the outcome of those proceedings was going to be.” [Id. at 39:5-15].

J. Fearing That the Solberg Master Plan Was On The Verge of Becoming Reality, Readington Enacts An Ordinance In October 2001 to Condemn The Property; The State Agrees To Purchase The Airport, And Readington Thereafter Seeks Assurances From The State As To Runway Length.

Dissatisfied with the allocation of authority dictated by state and federal law in relation to the Solberg Master Plan, and in an effort to usurp the F.A.A.'s and

N.J.D.O.T.'s authority, Readington stepped in and enacted an ordinance in October 2001 authorizing it to condemn the Solberg Aviation property. [Ex. 75 p. 6; Ex. 76 p. 15-16; Ex. 77 p. 39:16-20]. Readington did not wait for the Environmental Assessment to be issued by N.J.D.O.T.'s experts, Clough Harbour, although a draft assessment was later released in 2002, which found that the modifications to the airport addressed therein would not result in any significant environmental impact -- meaning that no further assessment was necessary. [Ex. 78].

Thereafter in April 2002, N.J.D.O.T. reached a preliminary agreement with Solberg to purchase the airport, with the price to be determined through subsequent negotiations. [Ex. 79].

Initially, the potential sale to N.J.D.O.T. provoked considerable alarm in Readington, fearful that loss of the ability to control the process would be devastating. Allen wrote to the State on May 7, 2002, indicating that Readington is "concerned about the recent announcement made by N.J. Department of Transportation that the DOT has entered into an agreement to purchase" the airport. [Ex. 80]. According to Allen, the announcement came "out of the blue" at "**a time when the Township was several years into a process of acquisition of the property itself**". [Id.]. Demonstrating its true intent in trying to take the property, Readington asked that N.J.D.O.T. "rul[e] out any lengthening of the existing 3,700 foot runway." [Ex. 81]. Following a meeting between Allen, Committeeman Gatti, and N.J.D.O.T., Gatti wrote to N.J.D.O.T. on November 18, 2002, thanking the Commissioner for taking the time to meet with them, and more

importantly, for indicating that he is “in favor of maintaining the airport in its current configuration and are opposed to extending the runway length.” [Ex. 82].

During this time period, Princeton Public Affairs Group, a public relations firm, performed lobbying services on behalf of the Township in connection with certain pending legislation in Trenton that would limit runway expansion or modification under certain circumstances. [Ex. 83]. Not surprisingly, the proposed legislation would have prohibited extension of a runway where “[t]here is an educational facility located within 3,500 feet of the airport”, [Ex. 83 at Read 5983] -- meaning that the location of the school that Readington selected against N.J.D.O.T. advice, which was “two-thirds of a mile away from the end of the nearest runway” [Ex. 84](almost exactly the same distance stated in the legislation) -- would have served to restrict Solberg from lengthening the runway. The “Statement” accompanying the bill, consistent with the long time position of Readington officials, provided that “expanding or extending runways can permit larger jets to take off and land on those runways, which in turn, lead to an increase in air traffic” and “[e]xcess aircraft noise”. [Ex. 83 at Read 5983]. The legislation was not enacted.

K. The Transaction With N.J.D.O.T. Falls Through, and Condemnation By Readington Re-Surfaces

Following approximately 2-1/2 years of negotiations, the sale to the State of New Jersey fell through.

With the runway length assurance received from N.J.D.O.T. rendered potentially worthless, Readington immediately recommenced its efforts to take the property. In February 2005, Readington re-entered into an agreement with the McKirdy

Riskin firm to represent the Township in connection with the “potential acquisition/condemnation of lands designated by the Township”. [Ex. 85]. By July 2005, with new eminent domain counsel having replaced McKirdy & Riskin, it had obtained a preliminary valuation estimate for the property. [Ex. 86]. Notes produced by Committeeman Auriemma dating from August 2005 indicate in no uncertain terms the goal of the Committee in its renewed eminent domain attempt: “if Thor [Solberg] won’t guarantee no jets, then how can the committee”? [Ex. 87 p. 2]. In those same notes, along with and on the same page as a mention of “noise” and a statement that a “4000 ft runway . . . [is adequate] for most corporate jets”, the notes contain the term “Eminent Domain”. [Id. at p. 3].

That would, apparently, give Readington the perpetual guarantee of runway length that the Committee was seeking and which Monaco had argued for (and promised) nearly a decade earlier. A bond ordinance for \$22 million, the same sum that Solberg had earlier refused to accept from N.J.D.O.T. for the property, was proposed by resolution on or about July 18, 2005. In a letter to Readington citizens of August 5, 2005, Mayor Gatti explained that “Solberg Airport has been the subject of much controversy and concern in Readington Township, dating back to the late 1960’s, when the airport was proposed to become the site of the fourth jetport for the New York metropolitan area.” [Ex. 88]. “The controversy and concerns continue to the present.” [Id.]. Gatti explained that the “advantage” of acquisition of the airport by the township would be “municipal ownership and control of the airport”. [Id.].

In August 2005, Committee members were engaging in a strategy and division of labor in “how we should approach the public” to get them behind the bond ordinance, which was widely perceived as the first step in a condemnation scenario. [Ex. 89]. For example, in an e-mail in August 2005 from Auriemma to Allen and Gatti, Auriemma provided a strategy as to what “information should be in Frank’s presentation, while the other can be used by BRAAC”. [Id.]. The e-mail concludes with a point-by-point list of ideas to present to the public “as you would a 5 year old”, with at least one of those points designated to be disseminated by BRAAC. [Id.]. Also in August 2005, Auriemma exchanged an e-mail with Michael Simon, an alleged aviation expert and Readington resident, to discuss the potential to limit noise at the airport, stating that “[w]e can create legal restrictions (need a GOOD aviation attorney) to restrict the type of aircraft and hours of operation at the airport.” [Id. at 90].

In spite of the Committee’s anti-airport PR offensive, the \$22 million bond ordinance was withdrawn on or about August 22, 2005 due to popular opposition and for related political reasons. [Ex. 91 p. 3:2-3].

**L. The Committee Engages In “Negotiations”
With The Solbergs And Prepares For Condemnation**

The Township Committee thereafter entered into what it described as “negotiations” with the Solbergs to reach an agreement either to acquire development rights to the airport and fee title to the surrounding acreage, or to acquire fee title to the entire airport property. It also utilized this time period, from approximately September

2005 to mid-2006, to generate public support for its planned future condemnation attempt.

According to Mayor Shamey, the negotiations reached an impasse:

And the reason that the negotiations came to an impasse is that it appears that Solberg Aviation **remains committed to lengthening the runways, widening the runways, increasing the thickness of the runways with a view towards attracting a corporate jet business environment and facility.**

[Ex. 91 p. 11:13-20].

In January 2006, the Township Committee organized a meeting at which a number of experts retained by the Township gave presentations containing their opinion on the airport and its growth. [See id.]. The meeting was said to be an opportunity for the Township to present its consultants to the public. [Id. at 4:14-16]. **As stated by Committeeman Auriemma at the meeting, the purpose was really to “discuss the right sized airport for [the] township”.** [Id. at 138:8-12]. Apparently aware that it would eventually be required to demonstrate its authority to take (and guided by its professionals, including a “communications” or public relations expert), Readington stepped up its emphasis upon “open space” at this meeting as a stated purpose in seeking to acquire the property.

The Township, however, was well aware that it needed to aggressively foment public support so that the ordinance for a proposed bond issue (which was to be introduced on February 6, 2006) would be successful. Therefore, it also presented a purported aviation expert, who gave a fear-mongering presentation on jet airplanes and

runway length. It also presented an acoustics expert to “speak to the impacts from the various proposals” for airport expansion. [Id. at 17:6-8].

The slideshow presentation given by that aviation expert, Richard Golaszewski from GRA, Inc., speaks volumes to the Township’s true intent in seeking to acquire the airport. For example, the slideshow states that a “Runway length greater than 4,000 feet can safely accommodate certain business jet aircraft”. [Ex. 92]. That same slide states that in “1990 Main runway increased 1800 to 3000 ft”, in “1999 FAA and N.J.D.O.T. conditionally approved Airport Layout Plan with 4,890 foot runway” and in “2005 Airport owners reiterated goal of 5,600 foot runway”. [Id.]. The next slide contains ominous photos of a number of jets that allegedly “Can Operate on 4,800’ Runway”. [Ex. 93]. The slide following contains photos of even larger jets that are labeled as “Examples of Aircraft That Can Operate on 5,600’ Runway”. [Ex. 94].

The slideshow continues, stating “**Pursuit of solution - Why now? Opportunities for a solution could soon be lost**” because the “**FAA and the N.J.D.O.T. could move to give full approval to the Airport Layout Plan**”, meaning **the improvements set forth in the Master Plan**. [Ex. 95]. That approval, according to Golaszewski, “paves the way for creation of a Jetport”. [Id.].

The slideshow also contains a section on authority to regulate airports, including the division of authority between the FAA, the state, and local municipalities. [Ex. 96]. Golaszewski warns that “Municipal control of airports can be limited by FAA and State regulations”, and if “FAA grant funds have been received by the airport, then there can be no discrimination among types of aircraft using licensed runways”. [Ex. 97].

Golaszewski again reminds the residents that a “runway length of 4,000 feet can safely accommodate certain business jet aircraft”. [Id.]. “**After that, the horse is out of the barn -- the jets are out of the hangar -- and municipal options are extremely limited**”. [Id.].

Readington also engaged a public relations firm, CN Communications International, Inc. (“CN”), in or around December 2005/January 2006 to gain support for the bond referendum to fund the acquisition of the airport. [Ex. 98]. A memorandum from CN dated January 13, 2006 provides that the public relations services will be rendered **with the goal of “rous[ing] public outrage**”, on the basis that “Residents do not want increased air and noise pollution or jets flying over their homes.” [Ex. 99 p. 3]. Indeed, the strategy memorandum states that “This is the main issue.” [Id. (emphasis in original)].

In view of that “**main issue**”, CN concludes in its strategy memorandum that “[w]e need to get out the facts on a potential expansion of Solberg Airport that can lead to the development of a small jetport in the community, one comparable to Morristown Airport”. [Id. at p. 4 (emphasis in original)].

CN, in addition to working on the presentation for the January 2006 meeting, also created documents to disseminate to residents, including a flyer posted on the town website, which purported to explain the “Pre-emption of Local Control” over airports by federal and state regulations. [Ex. 100]. Mr. Cicatiello of CN was also involved in the creation and dissemination (both on the Township website and elsewhere) of a document purporting to contain excerpts from the Solberg Master Plan. [Ex. 101].

That document also contains alleged quotes from Thor Solberg as to Solberg's intent to expand the airport to handle corporate jets. [Id. at p. 2]. At least one whole page of that document is devoted to runway length and the increase in length contemplated under the Solberg Master Plan. [Id. at p. 3].

Another document dated January 27, 2006, also created in part by CN and issued by Shamey, purports to list and compare the Township's and Solberg's position on the airport, with the focus stated in terms of runway length. [Ex. 102]. The document purports to explain to Township residents the "Significance of Runway Length". [Id. at p. 2]. The issue, the document states, is the type of aircraft that can be served. [Id.]. If the runway length is increased, there will be an "increasing use of small to medium sized jets". [Id.]. That, in turn, will result in a "greater number of descents taking place over neighborhoods near the airport" and "Jets and small prop planes will fly very close to residential housing" and adjacent schools and parks (including the school whose site was chosen against N.J.D.O.T. advice). [Id.]. Another section of that document is devoted to a discussion of noise. [Id. at p. 3]. For all of those reasons, the "Township remains firmly committed to keeping the main runway at its currently approved maximum length of 3735 feet." [Id. at p. 4].

On February 6, 2006, the Committee passed a Resolution authorizing an appraisal of the airport property and introduced a \$22 million bond ordinance for the purpose of acquiring the property. [Ex. 103]. The bond ordinance was approved on February 21, 2006. [Ex. 104]. In a letter to the residents by Shamey, it was reiterated

that “we will not accept any compromise that would expand the runway to more than its current licensed length”. [Id.].

According to Cicatiello, “to say that the public meeting” of February 6, 2006 “was successful would be an understatement”. [Ex. 105]. However, the advocacy engaged in by the Township Committee could not cease because “there will be a big push by Thor over the next 20 days”. [Id.]. Cicatiello followed up with another strategy memorandum dated March 6, 2006. [Ex. 106]. In that memorandum Cicatiello reiterated that the Committee must be consistent on its position that the “Township will not compromise on the length of the runway”. [Id.].

As part of the well-organized effort to persuade the residents, Committee members submitted a number of “editorials” to area newspapers. An “editorial” written by Auriemma in support of the bond ordinance authorizing Readington Township to undertake the \$22 million in debt was published in the March 31, 2006 Courier News, stating that “[v]oting to oppose the \$22 million bond ordinance is a vote for a jetport in Readington”. [Ex. 107]. Another “editorial” written by Shamey, appeared in the February 19, 2006 Courier News, stating that “**an expanded Solberg Airport will unacceptably and irrevocably impair the quality of life of our residents.**” [Ex. 108]. Yet another “editorial” dated January 25, 2006 from the Hunterdon Review written by Allen, stated that “**full development of the airport to its maximum potential**” would result in a “**jetport similar in size to Morristown**”. [Ex. 109].

M. A Referendum Is Compelled On The Bond Ordinance.

On March 29, 2006, the Township announced that the \$22 bond ordinance passed by the Committee had to be put to a referendum on the basis of a voter petition filed with the Township Administrator. [Ex. 110]. Therefore, a special election was scheduled. [Id.].

An April 17, 2006 press release by the Township invited residents to attend one of five meetings for information relating to the vote on the bond referendum. At each of those meetings, the Township presented information similar to that which it presented on January 17, 2006. [Ex. 111].

For example, at the May 9, 2006 meeting, Shamey spoke about how, **if the airport remains under state control, the “local entity [is] quickly preempted from imposing any restrictions relative to noise or operations” of the airport.** [Ex. 112 p. 10:20-22]. Shamey also spoke about how the **Airport Safety Act served to “override local zoning decisions”.** [Id. at 11:5-6]. And of course, Shamey discussed runway length. [Id. at 19:10-12; 20:13-14; 17:1-12].

As described in more detail above, Shamey spoke with the school board to gain its support for the bond ordinance in April 2006. Among other things, that presentation demonstrated what a proposed modification of the airport might involve in relation to the school property. [Ex. 113 p. 2]. Obviously at Shamey’s implied if not express direction, the school board thereafter sent a letter home to the parents urging them to become aware of the issues involved. [Ex. 41].

Cicatiello, the Township's PR consultant who attempts to maintain with a straight face that his role was merely that of "educating" the public, circulated a memorandum to his client -- Readington -- on April 26, 2006 setting forth a "Two Week Strategy" prior to the vote on the ordinance. [Ex. 114]. In that memorandum, Cicatiello set up a "Truth Squad", pursuant to which residents were enlisted to pose "well-informed" questions to the Solbergs at public meetings in order to discredit Mr. Solberg. [Id. at p. 2]. Cicatiello stated that "[w]e will make sure that there are a series of questions at each meeting that will bring out the contradictions in their statements." [Id.]. A question list, which apparently was distributed to "Truth Squad" members, was produced in discovery by Mr. Cicatiello, and the questions therein are clearly tailored with the goal of discrediting the Solbergs, with one question even insinuating that Thor Solberg cannot care about the future of Readington because he maintains a residence elsewhere. [Ex. 115]. A series of direct mailings were also scheduled to be sent. [Ex. 114 at p. 3]. Finally, **the Committee was advised to avoid mentioning the issue of eminent domain.** [Id. at p. 1].

One of the mailings to be sent to residents was an FAQ (Frequently Asked Questions) on the bond ordinance. [Ex. 116]. The first sentence of that document discusses how the conditional approval of the Solberg Master Plan allegedly gave Solberg Airport the approval to "expand into a regional airport suitable for business jet traffic." [Id. at p. 1]. On the following page, the document indicates that the Township does not have control over airport modification and that the "Airport's owners have taken several steps in recent years that could make a jetport possible in Readington" with the

same class designation as “Teterboro and Morristown Airports”. [Id. at p. 2]. In another FAQ circulated just before the polls opened, it is stated that Solberg has “accomplished most of the steps necessary to expand its runways and grow into a jetport”. [Ex. 117]. In addition to further discussion of jets and a “jetport”, the reader is advised that “background on the legal constraints on municipalities’ control of airports is available at the Municipal Building and both Township libraries”. [Id. at p. 2].

The bond ordinance vote passed by a slim margin. Auriemma described the result as a “clear message” that voters “do not want a jetport in Readington”. [Ex. 118 at Read 4631].

With funding in place, the Township Committee moved quickly to initiate the eminent domain mechanism. An ordinance was introduced on June 28, 2006 authorizing the acquisition of the airport property. While that introduction was said by Shamey to merely be a “first step in the resumption of bona fide negotiations” [Ex. 119], there were no negotiations and the ordinance passed on second reading just two weeks later, on July 11, 2006. [Ex. 151 p. 16]. This eminent domain lawsuit was filed on September 15, 2006.

N. Readington Officials Campaigned On A “Stop The Jetport” Platform In (Among Other Years) 2005 And 2006 With The Help Of BRAAC.

Although the evidence discussed above, standing alone, demonstrates Readington’s true intent in bringing this eminent domain action, Committee members’ campaign platforms and extensive and repeated public statements underscore that intent.

For example, a campaign mailing relating to the political campaign of Allen in 2005 touts how she purportedly “fought to stop the Airport’s planned expansion” and how she was allegedly “negotiating to keep corporate jet traffic out of Readington by keeping the airport as is.” [Ex. 120]. Another campaign mailing relating to the political campaign of Allen urges the recipient to “STOP AIRPORT EXPANSION” and proclaims “NO JETS”. That document further states that “Airport expansion [is] sure to destroy Readington’s environment and quality of life”. The second page of the document contains an illustration of an ominous jet airplane silhouette over a map of Readington Township and warns that “Solberg Airport’s expansion will bring CORPORATE JET TRAFFIC to our skies”. [Id.].

A campaign mailing promoting the 2006 political campaigns of Auriemma and Muir warns that “The Fight to Stop Solberg Airport Expansion is Far from Over!”, and that “Solberg supporters” will disseminate “misleading information” and make “erroneous claims” in order to get their “supporters elected to Township Committee so they can expand their airport”. Auriemma and Muir are proclaimed to be the “Right Vote for Readington” because they will “[s]top airport expansion” and “[k]eep jets out of Readington”. [Ex. 121].

John Kalinich, a founding member of BRAAC, worked with Allen, Muir and Auriemma to create materials for their political campaigns. Indeed, Kalinich helped to create the postcard for Muir and Auriemma which states that the “fight to STOP airport expansion is NOT Over”. [Ex. 62 p. 91:18-94:3]. Kalinich also registered and aided in creating Muir and Auriemma’s campaign website. [Id.; Ex. 125].

In his work for the Allen and Gatti campaigns Kalinich set up at least one website and created campaign flyers in coordination with Richard Allen, Ms. Allen's husband. [Ex. 62 p. 122:24-127:16; 113:8-11; Ex. 126]. Interestingly, Richard Allen is the first donor listed on both BRAAC PAC R-1 forms produced by Kalinich. [Exs. 122 and 124].

O. Readington Finally Submits An Ordinance Under The Air Safety Zoning Act, Which Is Drafted In A Way That Presumes The Right To Take The Property Described In The Declaration Of Taking.

Following the filing of its Declaration of Taking (which was stayed by this Court), on June 6, 2007 Readington enacted an "Ordinance Supplementing And Amending Volume II Chapter 148 Entitled 'Land Development' Of The Code Of The Township Of Readington, 2000", designated Ordinance #18-2007 (the "Ordinance"). [Ex. 127]. While the Ordinance purports to bring Readington into compliance with the Air Safety and Zoning Act, it in fact does not do so, and instead comprises a further extension of Readington's long-term efforts to constrain the use and operation of the airport, and reduce the current and future size and scope of the airport property, and the operations thereon in such a manner as in all probability (as discussed below) to prevent the airport from operating economically.

N.J.A.C. 16:62-2.1(e) expressly requires that "[t]hose municipalities which may currently classify an airport as non-conforming land use within the context of their ordinances or master plans of development, shall amend those ordinances or plans to eliminate that non-conforming status." Readington had engaged in the above-described

20 year long effort to avoid compliance. Readington continues to refuse to properly zone those 700 acres to allow airport uses. The "Airport" in the Ordinance is defined under section A(3) as the 102.33 acre area "described in the March 3, 2005 map prepared by H. Clay McEldowney" -- the same map attached to Readington's Complaint in the Condemnation Action as Exhibit B.

That is the portion of the Airport property owned by Solberg Aviation for which Readington seeks to take only development and easement rights. The remaining approximately 600 acres upon which Solberg Airport operates that is currently owned by Solberg Aviation -- the portion that Readington seeks to take in fee simple -- are not properly zoned for airport use under the Ordinance, despite the fact that those 600 acres are currently part of Solberg Airport, as licensed by the N.J.D.O.T. and as depicted in the Airport Layout Plan signed by the Federal Aviation Administration on October 22, 1998 and the New Jersey Department of Transportation on March 25, 1999, which acreage is not currently in Readington's possession pursuant to the Court's Order. [Ex. 128].

II. SOLBERG AIRPORT IS VITAL TO THE FUTURE OF THE NATIONAL AVIATION SYSTEM, AND THE CONDEMNATION NOT ONLY WILL PREVENT SOLBERG FROM FULFILLING ITS ROLE, BUT ALSO THREATENS THE ECONOMIC VIABILITY OF THE AIRPORT.

**A. Solberg Airport And Other General Aviation Airports
Fulfill An Important Role In The Aviation System.**

The property that Readington seeks to condemn is already being used to benefit the public.

A report by the New Jersey General Aviation Study Commission (the “Aviation Study Report”) published in October 1998 addresses in detail the benefits brought by airports such as Solberg. [Ex. 129]. That Commission was appointed in 1993 by the New Jersey Legislature pursuant to P.L. 1993, c.336, to identify and address issues concerning the role of general aviation in New Jersey’s transportation system. [Id. at 1.].

The appointment expressly provides that:

It shall be the duty of the commission to study the role of general aviation in the State’s transportation system. Of particular importance in this study shall be the role of general aviation airports as reliever airports in the State’s airport system, the closure of general aviation airports and ways to reverse that trend . . . and the relation between municipalities in this State and the general aviation airports located in or adjacent to those municipalities.

[Id. at the second, unnumbered page of the Report (designated at the top as p. “1825”)].

The conclusions contained in the Aviation Study Report were the result of the review and evaluation of over 10,000 pages of documentary evidence, seven surveys and 100 meetings. [Id. at 8.]

The Aviation Study Report outlines how New Jersey has lost “half of its aviation infrastructure” since World War II, and concludes that its remaining “48 general aviation airports are in peril”. [Id.] It notes that there are currently only “six airports in New Jersey that reasonably can be expected to support modern business aircraft” and “[e]ach airport closing has significant economic, tourism, and open-space preservation implications for the State”. [Id.]

Beyond its detailed discussion of the economic benefits brought by general aviation airports, which are discussed in detail below, the Aviation Study Report expressly recognizes that the presence of an airport actually ensures the continued existence of open space: “Many of New Jersey’s general aviation airports help preserve and protect the open space, woodlands and wetlands they encompass”. [Id.] This further supports the inescapable conclusion that Readington officials are using “open space” as a pretext in their efforts to control and ultimately decimate the airport. That purported public purpose is already being served by use of the property as an airport, and nowhere does the Aviation Study Report even suggest that modernization degrades the open space utility of an airport.

The Aviation Study Report further indicates that the continued existence of New Jersey’s general aviation airports are threatened. Many of New Jersey’s remaining general aviation airports are “outdated” and are “deteriorating after decades of State neglect.” [Id.]. The threat to New Jersey’s remaining general aviation airports stems, in part, from the fact that the host community is usually “unaware of its airport’s economic contribution”. [Id. at 2.] That, in turn, forces the owners of those airports to operate in a “hostile municipal regulatory environment”, which makes it “increasingly difficult to assure safe operation”. That hostile local climate is often accompanied by “unreasonable fears” of airport improvements and “intentional dissemination of misinformation” in opposition thereof. [Id. at 4.] Indeed the Aviation Study Report makes express reference to host communities’ frequent “refusal” to “allow these businesses to evolve” as a primary factor in the loss of New Jersey’s general aviation airports. [Id. at 9.] That

refusal often destroys the economic viability of the airport. In fact, the Aviation Study Report concludes that the “quality of th[e] relationship” between an airport and its host community is one of the most “important factors in determining the longevity of privately owned airports”. [Id. at 10.]

The Aviation Study Report opines that, as of the time of its creation, general aviation airports bring a total economic benefit to the state in the amount of \$1.7 billion. [Id. at 2.]. Because of the substantial benefits brought by New Jersey’s general aviation airports, the Aviation Study Report concludes that New Jersey should strive to update its general aviation airports to “accommodate every aircraft in the business fleet in all weather conditions”, which ordinarily includes a lengthening of an airport’s runways to accommodate modern aircraft. [Id. at 6.]

The Aviation Study Report outlines in detail how business aviation, the use of private aircraft by businesses, has developed into a norm and that therefore corporate location decisions are increasingly driven by the availability of adequate local aircraft facilities. [Id. at 14-18.] That increased use of business aviation results, in part, from the fact that New Jersey suffers from “a lot of highway congestion”. [Id. at 22.]. Therefore, the threat to New Jersey’s general aviation airports is a threat to the economy itself. “[A] declining aviation support system could lead to businesses deciding to relocate to states that provide a more stable aviation system and infrastructure”. [Id. at 19.] The Commission observed that New Jersey’s sister states are aware of this fact and “are vigorously developing their airport systems to attract major companies from New Jersey to relocate within their own borders.” [Id. at 19.]

The benefits of general aviation airports go far beyond tangible economic benefits, and the Aviation Study Report concludes that “a community that has a general aviation airport benefits far more from it than does the actual airport owner”. [Id. at 23.] Although most citizens are unaware of those benefits, “the public would certainly notice their absence”. [Id. at 24.]. The Report proceeds to describe how general aviation airports help to preserve open space, increase tourism, foster aviation education, enable more efficient law enforcement, emergency, rescue services, and medical transport, and allow for recreational aviation. [Id. at 24-27.]

Turning to the threats facing those airports, the Aviation Study Report draws a contrast between those benefits and the poor return on investment received by airport owners, and notes that most remaining private owners remain in business because of their affinity for aviation. Factors resulting in insufficient income to airport owners include high property taxes, significant costs of regulatory compliance, and, relevant here, the “inordinate expense and resistance of municipalities when attempting to expand or improve an airport”. Those obstacles explain why, as of 1998, “not a single new airport has been established in New Jersey in the last 20 years” and instead “many airports have closed”. [Id. at 30.]

The Aviation Study Report outlines how those obstacles encountered by airport owners threaten any reasonable profitability, and thereby threaten the continued existence of New Jersey’s privately owned airports. As an initial matter, it “is a simple fact of aerodynamics that the modern aircraft needs a longer runway to become airborne safely”. [Id. at 34.] In the “1940’s an airport owner could operate a reasonable business

catering to the needs of small aircraft, the business aircraft of the day”, and could do so with a 2,000 to 3,000 foot runway. [Id.] Today, modern business aircraft are larger and a “viable private airport business today must be able to attract and accommodate the needs of that larger aircraft, for which 2,000 to 3,000 foot runways are wholly inadequate”. Other facilities at the airport must also be sufficient to “cater to the needs of modern business travelers”. [Id.]

Against that background, setting forth an airport’s needs in order to achieve reasonable economic viability, “many host municipalities will not allow the private airport owners to change their business” and, as here, local political “[c]ampaigns are run, and elections are won, based on a policy of ‘no growth’ for the airport.” Those local political campaigns are designed to “inspire irrational fears” among local residents that “a runway extension, designed to invite business aircraft, will suddenly transform their small country airport into a primary international airport.” Therefore, an airport owner seeking to make an airport economically viable through modernization is often forced into “wasteful and protracted litigation” which “makes the costs prohibitive to do business as a modern airport and to make safety improvements.” [Id. at 35.]

The Aviation Study Report includes a case study on Solberg Airport’s relationship with Readington Township to demonstrate the manner in which a local municipality often tries to inhibit the viability of a general aviation airport, and notes, as of 1998, that Readington Township continues to refuse to adopt the mandatory land use regulations under the Airport Safety Zoning Act [Id. at p. 38], a refusal that continued until recently. Excerpts of an interview with Readington Township’s then-Township

Administrator are included as an example of an “adherence to disinformation fostered by the municipality” that is trying to prevent modernization. The Township Administrator’s responses to the Commission’s questions demonstrate to the Commission that Readington Township officials have endeavored to foster anti-airport sentiment by placing Readington Township residents in fear of a jetport. [Id. at 66-73.] At the conclusion of those interview excerpts, Commissioner McNamara chastised the Township Administrator: “I personally feel that you are not communicating with me, that you are trying to give a politically correct answer. By politically correct, I mean politically correct within the context of the government of Readington Township. That kind of discourse will lead to nothing.” [Id. at 73.]

Thereafter, the Commission interviewed Readington Township’s then-current Mayor. The Mayor bragged that she fought against improvement of Solberg Airport “30 years ago”. “I was one of the leaders in founding the Jetport Association which eventually beat that back”. [Id. at 75.] The then-Mayor discussed how Readington Township residents are “just getting more and more angry, and they’re frantic thinking that there could be 5,670 foot runway -- absolutely frantic.” [Id. at 77.]

The Aviation Study Report concludes that the statements of Readington officials provided in the interviews demonstrate how popular opposition to airport improvements results from a lack of understanding, and that “**general aviation airports do not have the potential of becoming major transport airports simply because they upgrade to accommodate business jets.**” [Id. at 79.]. The Aviation Study Report also concludes that the “very thing [that] gives airplanes and airports value . . . that they are

part of a national transportation network”, requires “uniform treatment”, free from local control and local misinformation. [Id. at p. 86.] Moreover, “[b]egrudging airports the proper length for their runways compromises aeronautical and public safety . . . and the airport’s economic viability.” [Id. at 112.]

For all of those reasons, the Aviation Study Report concludes that “New Jersey cannot afford to lose any of its existing general aviation airports”, and where possible, each should be modernized to include at least one “runway of 4,700 feet in length” [Id. at 115]. It further concludes that the elimination of municipal interference, and improvements to general aviation airport facilities will “serve the needs of [the airports’] communities and the economy of the state” [Id. at 130], and that it will also eliminate the further loss of New Jersey’s general aviation airports by “establish[ing] the economic viability” of those airports.

Consistent with the above, Arlene Feldman, a former Senior Executive with the F.A.A., states that Solberg, because of its “convenient location”, including its proximity to major thoroughfares and “substantial acreage, is a unique and irreplaceable part of the State’s general aviation system.” [Ex. 130 p. 1, 5]. She indicates that a 2004 study commissioned by the state and conducted by Wilbur Smith Associates Team concluded that a total of 72,000 jobs exist by virtue of the state’s general aviation system. [Id. at p. 2]. The economic benefits derived from the state’s general aviation airports exceeds \$4.6 billion. [Id.] Those airports also connect New Jersey businesses to regional and worldwide markets. [Id.].

New Jersey's need for modernized general aviation facilities has obviously only increased since the time that that Report was published.

Solberg Airport, and the ability of Solberg Airport to modernize to maintain economic viability, is also important to the nation's air transport system. The National Air Transport Association ("NATA") has determined that Solberg Airport is "vital to the future growth of aviation in our nation". [Ex. 131]. In the report attached to that letter NATA describes how the nation's general aviation airports are increasingly threatened by local opposition. The report also describes the importance of the nation's general aviation airports in view of the ever-increasing congestion at ordinary air carrier airports, such as Newark International. Another report issued by NATA examines the beneficial effects of general aviation airports on the economics of the United States and the local communities that are served by those airports. The report concludes that "[w]ith businesses accounting for most general aviation aircraft traffic . . . it is clear that providing adequate facilities for them is key to the nation's economy." [Ex. 132].

B. The Condemnation, Which Leaves The Airport With Only Approximately 100 Acres Of Land, Will Prevent The Airport From Being Economically Viable And From Fulfilling Its Role In The State And National Aviation System.

1. The Airport Serves An Important Public Purpose.

Teterboro and Morristown Airports relieve congestion at Newark Airport, but all three airports are now at capacity and are physically constrained from expanding to increase capacity. Solberg Airport is the only airport in Northern New Jersey with sufficient property to relieve congestion at Teterboro and Morristown by providing

facilities to meet the needs of business turbine aircraft. [Ex. 133]. In the State Aviation System Plan Update (2003 Draft), Solberg is the only airport identified in Northern New Jersey as being capable of expanding to handle increased demand and relieve congestion. [Id. at p. 4]. That Plan Update expressly provides that “maintaining and/or acquiring a sufficient land envelope around system airports to support future development needs [precisely what Readington seeks to take] is important to the success of the overall plan.” [Id. at p. 4].

Indeed, the relief that Solberg is uniquely situated to provide is already desperately needed because Northern New Jersey is plagued by the most congested and delayed airspace in the world. [Id.]. Relieving Morristown and Teterboro is the role that was envisioned for Solberg Airport in the Master Plan approved by N.J.D.O.T. and F.A.A. [Id. at p. 1-2]. For that reason, the Plan Update suggests that Solberg Airport be reclassified as a Priority General Service Airport and developed accordingly in order to accommodate anticipated demand and relieve congestion in Northern New Jersey. [Id. at p. 4].

The taking proposed by Readington would, if allowed to succeed, eliminate any possibility for Solberg to fulfill the role established for it by the Master Plan or effect the improvements presented in the F.A.A. approved Airport Layout Plan. [Id. at p. 2, 4]. The F.A.A. establishes numerous guidelines with respect to safety areas and clearance at the ends of and adjacent to the runway, including the maintenance of a Runway Safety Area, Obstacle Free Area and Runway Protection Zone. [Id.]. The taking leaves Solberg with insufficient property to establish and maintain those areas as needed for its current

licensed runway, and for that reason, would even limit Solberg's ability to conduct current operations. [Id.]. The taking as proposed would also eliminate any possibility for Solberg Airport to develop its facilities pursuant to the N.J.D.O.T. and F.A.A. approved Airport Layout Plan and Master Plan. [Id. at p. 4].

James K. Coyne, president of NATA, further opines that "decreasing the amount of acreage at the Solberg Hunterdon Airport would preclude growth necessary to meet the public need, limit the airport's ability to impact the local economy positively, and potentially impair the national air transportation system." [Ex. 134 p. 2]. Coyne states that that decreased ability to serve the needs of the aviation public is rendered even more troublesome in view of the fact that airports around the country are closing at an alarming rate. [Id.]. Moreover, Solberg Airport plays an important role as a designated reliever for Newark, Teterboro and Morristown Airports. [Id. at p. 3]. Indeed, the Federal Aviation Administration (FAA), in a letter dated August 17, 2000, has recognized Solberg Airport's importance as a "reliever airport" to Newark International. In that role, Solberg Airport accommodates "small general aviation aircraft which would otherwise be crowding, and further delaying commercial operations at Newark Airport." [Ex. 135]. Moreover, § 49 U.S.C. 47101, setting forth United States Aviation "Policies", expressly states that "[i]t is the policy of the United States . . . **to give special emphasis to developing reliever airports**". For all of those reasons, the loss of Solberg Airport would have "regional significance". [Ex. 134].

2. The Taking Will Prevent Solberg From Becoming Economically Viable And Eventually Choke The Airport Out Of Business.

The taking also eliminates any possibility of Solberg Airport being economically viable, and therefore, will eventually constrain the airport out of business. Solberg Airport is surrounded by a generally affluent population of businesses and individuals. [Ex. 136 p. 2]. In fact, Hunterdon County ranks as the 13th highest county in terms of per capita income, and third among U.S. counties in terms of median household income. [Ex. 137 p. 1]. Somerset County ranks 7th in the highest income counties in the United States. [Ex. 137 p. 1]. That affluence supports a demand for modern high performance aircraft, which requires modernized facilities with sufficient runway length. [Ex. 137 p. 1]. With Teterboro and Morristown physically constrained from expanding, the land mass of Solberg gives it the unique potential to accommodate the future growth, particularly in the business turbine market, that Teterboro and Morristown cannot expand to accommodate. [Ex. 136 p. 2-3]. Expansion to serve that market would allow Solberg to offer significant sources of revenue, including fuel sales, hangar and tie-down rentals, aircraft parts and maintenance sales, aircraft flight instruction and rental and aircraft sales and charters. [Id. at 4].

If the taking succeeds, Solberg Airport would be left unable to serve the business turbine market, and therefore would be largely unable to capitalize on those sources of revenue to any significant degree. [Id. p. 4]. Rather, it would be confined to servicing aircraft owners with the types of aircraft (primarily small piston aircraft) that do

not generate significant revenue. [Id. p. 4]. Those aircraft use very little fuel and therefore fuel sale revenues would be relatively nominal. [Id.]. Those aircraft also do not require substantial storage area, and the owners of such craft are generally unwilling and/or unable to pay significant hangar or other storage fees. [Id. at 5]. Similarly, the demand for parts and maintenance for those craft by their owners is low, and the income from those services and goods is equally marginal. [Id.]. If Solberg is limited to serving the piston market, revenues from flight instruction, rentals and charters would also be very low. [Id.].

Even if Solberg were otherwise left with sufficient land post-taking to modernize to accommodate business turbine aircraft, the remaining airside land that Readington proposes to leave it would be insufficient to allow storage of those aircraft. [Ex. 137 p. 2]. In addition, the property that Solberg would be left with is insufficient to install a precision approach, which is necessary to assure that the airport may be used by turbine craft, irrespective of weather conditions. [Ex. 137 p. 2].

The physical constraints that would result from the taking proposed by Readington, in sum, would prevent Solberg Airport from benefiting from its greatest attribute -- its size and commensurate ability to accommodate business turbine aircraft. [Id.]. The airport cannot operate at a loss or at a nominal profit indefinitely, and therefore, the taking will constrain the airport out of business over time. Even Readington's expert on airport economics, Richard S. Golaszewski, admits that Solberg Airport in its current form "at best, breaks even" and "won't be able to function on a long-term basis in this manner." [Ex. 138 p. 11,14].

ARGUMENT

POINT I

THE ATTEMPTED TAKING IS DRIVEN BY THE TOWNSHIP'S OBSESSION WITH CONTROLLING THE AIRPORT, AND IN PARTICULAR, THE LENGTH OF THE RUNWAY, WHICH IS NOT A VALID PUBLIC PURPOSE, AND THEREFORE SUMMARY JUDGMENT SHOULD BE ENTERED IN FAVOR OF DEFENDANT.

A. Introduction

In Brill v. The Guardian Life Ins. Co. of America, 142 N.J. 520, 529 (1995)

our Supreme Court confirmed that R. 4:46-2 “dictates that a court should deny a summary judgment motion only where the party opposing the motion has come forward with evidence that creates a genuine issue as to any material fact challenged.” Under this formulation, the court emphasized that “a non-moving party cannot defeat a motion for summary judgment merely by pointing to any fact in dispute.” Id. The Brill court, in dictating this summary judgment criteria, sought to “encourage trial courts not to refrain from granting summary judgment when the proper circumstances present themselves”. Id. at 540-41.

Here, the evidence, consisting primarily of documents whose authenticity and contents are not disputable, demonstrates that this condemnation is being used as yet another arrow in the Township’s quiver in its fight to prevent Solberg from becoming a “jetport”. The history demonstrates conclusively that: (1) the Township has employed every means at its disposal to prevent or mitigate the perceived loss of or lack of control over the operations of the airport; (2) Township officials have vowed to do everything possible to prevent Solberg from becoming a “jetport”; (3) Township officials believe

that runway length is the key to whether or not jets will make use of the airport; and (4) with its other efforts to control the airport rendered unsuccessful by the conditional approval of the Master Plan and the potential final approval of the Master Plan following an environmental assessment, condemnation -- which was first discussed by Township officials as a means of control over 17 years ago -- became the Township's perceived trump card.

Based upon all of the foregoing, this Court should conclude that Readington's taking is not for a permissible public purpose but rather a pretext for controlling and decimating the airport and should accordingly enter summary judgment in favor of Solberg.

B. Readington's Asserted "Open Space" Purpose Is A Pretext, And Readington Is Primarily Motivated By Its Determination To Keep "Jets" Out Of Readington.

The Township's efforts to circumvent the lack of authority over the Airport does not end with their decades-long refusal to comply with New Jersey law. This condemnation action is another aspect of the ongoing campaign to control the Airport, with the apparent goal of constraining it to a point where its operation is dramatically unprofitable or, at the least, with reckless indifference as to the economic consequences. The Township cannot misuse eminent domain to usurp the powers that reside in the State and Federal authorities under numerous statutes and regulations.

The authority of a government entity to condemn property is limited by the Fifth Amendment of the United States Constitution, which provides in relevant part that "nor shall private property be taken for public use, without just compensation." That

provision limits government entities' authority to condemn to those instances where the condemnation serves a "public purpose". Kelo v. City of New London, 125 S. Ct. 2655, 2661 (2005) (equating "public use" with "public purpose").

Therefore, the New Jersey Eminent Domain Act extends the authority to condemn only to those instances where the condemnor seeks to condemn property for a legitimate and accepted "public purpose". N.J.S.A. 20:3-1. A condemnor has no authority to condemn property where the asserted "public purpose" is a pretext and where the true purpose of the condemnation is illegitimate and beyond the condemnation authority granted under the Act.

Overwhelming authority both in New Jersey and nationwide mandates that "where the real purpose of the condemnation is other than the stated public purpose, the condemnation may be set aside." Casino Reinvestment Dev. Auth. v. Banin, 320 N.J.Super. 342, 346 (Law Div. 1998); see Avalonbay Communities, Inc. v. Town of Orange, 775 A.2d 284, 299 (Conn. 2001) (project plan for industrial park was really "pretext in trying to thwart affordable housing"); Earth Management, Inc. v. Heard County, 248 Ga. 442, 448 (Ga. 1981) ("the inescapable conclusion is that although a public park is a legitimate public use . . . we can only conclude that Heard County instituted the condemnation proceeding for the obvious purpose of preventing the land from being used as a hazardous waste facility."); Pheasant Ridge Associates Ltd. Partnership v. Burlington, 506 NE2d 1152, 1157 (Mass. 1987) ("The public purposes for which the site purportedly was to be taken [for, among other things, recreation] were not purposes for which the town intended in good faith to take and use the property", but

rather, the purpose was to avoid low income housing project); Redevelopment Authority of Erie v. Owners or Parties in Interest, 1 Pa. Commw. 378, 394 (Pa. Commw. Ct. 1971) (finding that “Authority's real reason for condemning the property was to provide a new home for [private entity] and not to remove a substandard building” and that “[s]uch action is constitutionally impermissible.”); Miami v. Wolfe, 150 So. 2d 489, 490 (Fla.App.Ct. 1963) (condemnation attempt rejected where true purpose was not road extension, but rather, was to obtain profitable property interest).

Therefore, in making an authority determination, a trial court must examine the “underlying purpose” of the condemning authority to ascertain whether the taking is for a legitimate public purpose. Twp. of W. Orange v. 769 Assocs., 172 N.J. 564, 577 (2002) (quoting Wilmington Parking Auth. v. Land with Improv., 521 A.2d 227, 231 (Del. 1986)).

Even where there is some legitimate public purpose implicated, the evidence must show that the legitimate purpose is the “primary” purpose, and that permissible purpose cannot be “overwhelmed” by an illegitimate ulterior motive. Casino Redevelopment Auth., 320 N.J.Super. at 346-58; Wilmington Parking Auth., 521 A.2d at 232 (court must determine the “primary purpose”). The inquiry may require an analysis of the “evidence concerning the views of persons intimately involved with the initiation” of the condemnation. Id. at 232. The evidence considered should include those persons’ “actions and statements” and “general attitude and motives”. Avalonbay Communities, 775 A.2d at 299. The inquiry as to “whether the public purpose is paramount” may also

turn on, among the other indicia of motive, “an assessment of the consequences and effects” that would follow. Casino Redevelopment Auth., 320 N.J.Super. at 346.

Those authorities demonstrate that the concept of a “public purpose” is far from limitless, and an otherwise improper motive cannot be rendered permissible simply because an effort is made to disguise the motive in the garb of a permissible purpose. Those cases further demonstrate that **it is not enough for a condemning authority to show that some public benefit will flow from the pretextual purpose (as Readington will certainly try to show here).**

The court’s opinion in Borough of Essex Fells v. The Kessler Institute, 289 N.J.Super. 329 (Law Div. 1995), is factually and legally on point as to all relevant aspects of the case at bar, and is instructive in demonstrating those limits. Like here, in Essex Fells the evidence showed that the condemnor was opposed to the use of the property proposed by the condemnee, Kessler. Local opposition mounted against Kessler and its proposal to operate a rehabilitation facility on the property. Several rallies were held by a private citizen’s group to express opposition to that proposed use. Id. at 333-334.

Following that swell of opposition, Essex Fells explored measures to prevent Kessler from opening the facility and ultimately attempted to misuse its condemnation authority for that purpose. The borough officials justified the condemnation by asserting that the property was needed for the “public purpose” of “open space or park area.” Id. At 340. In support of that justification, the condemnor made reference to its borough master plan, which reflected an interest in acquiring vacant land. Id. The borough also apparently asserted an argument relating to the

environmental benefits of open space, because the property to be condemned included a “critical environmental area”. Id.

The Essex Fells court, examining the record before it, determined that the “open space” justification was a pretext and that the condemnor’s true purpose was to prevent Kessler from opening its facility. The court found that, like here, Essex Fells officials had expressed their concern regarding the use which might be made of the property in various public meetings. Id. at 339-40. In certain instances, the officials stated directly that they did not want Kessler to open a facility on the property. Id.

Turning to the public purpose of “open space” asserted by the borough, the court examined the borough’s need for open space. Of course, neither the parties nor the court in that matter denied that “open space” generally serves the public interest. However, the court observed that the National Recreation and Park Association suggests that a municipality maintain 6.25 to 10.5 acres of park land per 1,000 persons. Id. at 341. The condemnor already had approximately 64 acres of park land per 1,000 residents. Id. Against the background of opposition to the Kessler facility, the court found that the borough had “failed to present any credible ascertainable public need” for additional park land. Id.

Because the “power of eminent domain cannot be justified when used in response to public opinion against a proposed land use”, the court held that Essex Fells brought the action in bad faith and exceeded its authority by its attempt to condemn the property. Id. at 342.

The same approach was utilized by the Appellate Division in Allamuchy v. Progressive Properties, Inc., A-987-02T3 (App.Div. July 16, 2004); cert. den. 182 N.J. 149 (2004).⁸ In that case, the condemnee proposed to build multi-family housing on certain property located in Allamuchy Township. Id. at 7-9. The condemnor township opposed that use of the property, and sought to condemn the property as part of its pre-existing “aggressive campaign to acquire open space” in order to “create a greenbelt or greenway which would offer a more scenic view of the municipality from Interstate 80.” Id. at 9. The trial court rejected that justification as pretense, the Appellate Division affirmed, and our Supreme Court subsequently denied certification.

“[T]he Township’s claim of a public need for more park space in a large, sparsely populated community that was eighty percent undeveloped was pretextual”. Id. at 13. The condemnation action was brought, “in actuality, [in] an effort to stop unwanted multi-family housing development in response to the opposition from residents” of the township. Id. That conclusion was supported by the evidence, which showed popular opposition to the proposed multi-family housing use, along with the fact that the township clearly already had “sufficient open space.” Id. at 13-15.

Obvious from these authorities is the principle that it is of no consequence that an actual legitimate public purpose will eventually be served by the use of the property. As observed by the Supreme Court of Georgia, although “a public park for recreational purposes is a public purpose”, and there was “no evidence that the land condemned will be used for any purpose other than that for a public park”, the fact

⁸ A copy of the opinion in Allamuchy v. Progressive Properties, Inc. is attached hereto as Exhibit A.

remains that the “real reason for its being taken was to thwart the application of another use” that the county sought to avoid (in that case, a waste facility). Earth Management, 248 Ga. at 447. That real, illegitimate motivation -- (evidenced by among other things similar to the instant case) vows by officials to “do anything within their power to block the hazardous waste facility”, the passage of three ordinances attempting to move the location of the facility, and the holding of a referendum seeking the same result -- led to the inescapable conclusion that the condemnation “amount[ed] to bad faith” and was brought for an illegitimate purpose. Id. at 447-48; also see Pheasant Ridge, 506 N.E.2d at 1158 (asserted purposes “were selected as a device in the erroneous belief that, as generally lawful public purposes, they would make the taking proper.”).

As in Essex Fells, Allamuchy and the other authorities, Readington has consistently expressed its opposition and concerns with respect to the airport for many, many years, and has seriously explored and pursued eminent domain as a control mechanism for almost a decade. That opposition was expressed in countless circumstances, including

- Committee meetings, public and executive session,
- editorials written by Town officials,
- meetings with the Solbergs,
- one or more BRAAC anti-airport meetings,
- materials circulated in 2006 by CN Communications in support of the bond referendum to fund the taking,
- at least one presentation to the Board of Education,

- at least one letter to parents sent home by the Board of Education,
- meetings surrounding the environmental assessment of the Master Plan,
- lobbying efforts, in Township Committee resolutions,
- campaign materials of the individual officials,
- overt and express threats to condemn to prevent a jetport, and
- Retention of eminent domain counsel at critical junctures.

While defendant will not burden this Court with a retelling of all of those instances, it is noteworthy that all of those instances occurred against a background during which Readington was avoiding its obligations to comply with the Air Safety and Zoning Act for fear of losing control over airport operations, and in defiance of repeated demands by the State for compliance.

Readington officials have repeatedly vowed to do everything within their power to assure that there is not a jetport in Readington, and have done even more, by exceeding their power and bringing this condemnation action. Readington cannot gloss over that twenty-plus year history by resort to the relatively newly-minted purpose of open space. The fact that it intends to use the condemned property as open space does not change the analysis.

Readington's opposition to airport modernization and the Solberg Master Plan also took place against a background in which Readington is awash in preserved open space. As of March 2007, according to Readington, **7,922 acres of land within the 22,715 acre Township -- over one third of the acreage within the Township -- have**

been preserved. [Ex. 139]. That includes 4,438 acres of preserved farmland and 3484 acres of open space owned by the Township, county and state. [Id.]⁹

In addition, the zoning restrictions that have applied to the Solberg parcel for some time, even prior to this condemnation suit and prior to Readington's purported compliance with the Air Safety Act, would have required that significant acreage effectively be set aside for open space preservation in the event that the land were to be developed. [Ex. 123]. Of the Solberg property totaling 726 acres, approximately 600 acres were zoned AR-Agricultural Residential and the remaining approximately 100 acres were zoned RR-Rural Residential. [Id. at p. 5]. These zones allowed farms and, while they did permit one-family housing in the AR zone, lots are required to be at least 6 acres, and if more than 30 acres of the available land is to be developed, **70% of that acreage must be set aside for open space.** [Id. at 5¹⁰]. The RR zoning requires 3 acre minimum lots and a 50% set aside for open space. [Id.]. Therefore, irrespective of future development on the parcel, Readington's zoning scheme assured that open space would have been preserved in the event of development. This taking is not needed to preserve open space.

Readington's surplus of open space, combined with the history of this matter and Readington's officially declared intentions to do everything possible to prevent Solberg from becoming a "jetport", confirms the inevitable conclusion that Readington's asserted purpose of "open space" is a pretext, and that the primary if not

⁹ For purposes of this motion, defendant adopts the open space totals asserted by plaintiff. Defendant, in the event of a trial, reserves the right to assert that Readington has even more preserved acreage.

¹⁰ Also see Readington Township Ordinance 30-2006.

sole motivation on the part of Readington is to control the airport and prevent it from accommodating any significant modern traffic, primarily by controlling runway length.

Even the Township's own Master Plan furthers the conclusion that "open space" is a pretextual reason. The Readington Master Plan showed that the existence of the airport, by the very nature of its operations serves to preserve open space. Far from indicating any threat to open space posed by the airport, the Township's 1998 Amendment to its Master Plan states that the "existence of the airport stabilizes over 700 acres of open space" and "thus serves as a greenbelt". [Ex. 141].

No reasonable finder of fact could conclude that Readington's primary motivation in trying to condemn the property is to "preserve open space." Readington's admitted motive to control the operations of the airport clearly overwhelm any supposed open space agenda. Summary judgment should therefore be entered in favor of Solberg.

C. Readington Cannot Misuse Condemnation To Override State Law And Exercise DeFacto Zoning Control Over The Airport.

1. The Town Does Not Have Zoning Or Other Authority Over The Airport.

Condemnation cannot be used as a means by which to control the use of property. Rather, the use of property must be governed by zoning authority. As set forth above, Readington sought to avoid the loss of zoning power that follows from the Air Safety and Zoning Act for many years, and more specifically, refused to adopt the ordinance mandated by the Act when it could not do so in a way that allowed it to retain

control over the length of the runway. Unable to prevail in that effort, Readington is now trying to use condemnation to compensate for that loss of local control.

The authority to regulate the Airport resides virtually exclusively in the State and Federal Authorities. The Federal government has authority over aviation that is generally confined to use of airspace, and related issues such as noise. See Gustafsen v. City of Lake Angelus, 76 F.3d 778 (6th Cir.), cert. den. 519 U.S. 823 (1996). Although notice must be provided to the Administrator of the Federal Aviation Administration when an airport plans to undertake an alteration, 14 C.F.R. 157.3, the ensuing determination with regard to the “safety of persons and property on the ground” is ordinarily “only advisory”, 14 C.F.R. 157.7.

The vast bulk of authority to regulate airports resides with the State. Specifically, the Commissioner of Transportation is delegated broad authority to regulate aeronautics, and has the power to issue “rules, regulations and orders” relating to airports, N.J.S.A. 6:1-29. The State has authority with respect to the issuance of licenses approving an “alteration to” an “existing aeronautical facility”; in that license application process, the applicant must “show conformance with existing zoning and land use ordinances” or a denial of the application by the local planning authority. N.J.A.C. 16:54-2.1. The application is to be processed pursuant to the standards set forth in N.J.A.C. 16:54-2.5. Under that regulation, the Division of Aeronautics is required to determine whether “issuance of such license would be consistent to public health, safety and welfare, and the development of aeronautics in the State.” The Division is to

consider, among other things, “aviation development, surrounding land uses, local land use ordinances . . . and any other factors deemed relevant by the Department.”

The local authorities have no direct final authority whatsoever. The state agency’s determination is reviewable only for an abuse of discretion, and to meet that standard, the state agency it need only give “some consideration” to local interests. Tanis v. Twp. of Hampton, 306 N.J. Super. 588, 600 (App. Div. 1997).

As also explained above, a municipality is and has for more than 20 years been required by regulation under the Airport Safety and Zoning Act to enact an ordinance and amend its master plan (as the case may require) to provide that airport operation is a permissible use of the land upon which the airport is located. See N.J.A.C. 16:62-2.1(e) (“[t]hose municipalities which may currently classify an airport as non-conforming land use within the context of their ordinances or master plans of development, shall amend those ordinances or plans to eliminate that non-conforming status.”). State regulations also require that a host municipality pass an ordinance and amend its master plan to incorporate certain specified standards with respect to property adjacent to an airport. See N.J.A.C. 16:62-5.1 (“each municipality shall implement . . . ordinances which implement the [] standards for land use around airports” described in that provision).

The Township did not enact such an ordinance until 2007, following two decades during which N.J.D.O.T. demanded that the Township comply. Using its filing of a Declaration of Taking in this matter as a de facto determination as to the size of the airport, the newly-enacted ordinance purports to allow airport use only on the 100 acres

upon which the Township is seeking to take the development rights. The Township apparently presumes that it will succeed in the condemnation, and therefore, it will not be required, as it was during those two decades, to zone all of the 700+ acres identified in the approved Airport Layout Plan and Master Plan as part of the airport property upon which airport use must be permitted.

**2. The Township Is Attempting To Condemn
The Property In An Effort To Acquire
Zoning Authority Over The Airport.**

The Township has, for all practical purposes, misused its condemnation power to try to get the zoning control over the airport that it believes it was deprived of by the Air Safety and Zoning Act. In Township of Monroe v. Noonan, A-1443-99T1 (March 9, 2001)¹¹, the court held that condemnation cannot be used as a way of exercising authority over the use of property.

In that case, the Appellate Division reversed the court below and remanded the matter for dismissal where the evidence showed that the Township's purported public purpose of "open space" was found to be a pretext and the actual motive of the municipality was to prevent the property from being used by commercial businesses. Prior to the condemnation attempt, the subject property was undeveloped, and the Township had received numerous applications for commercial development. Id. at 3. Those applications set off a "political situation", and nearby residents "expressed [their] preference" for "a park rather than commercial development." Id. Thereafter, the

¹¹ A copy of the opinion in Township of Monroe v. Noonan, A-1443-99T1 (March 9, 2001) is attached hereto as Exhibit B.

township engineer developed a concept plan for using the site for open space and a natural conservatory. Id. at 4.

After Monroe filed its condemnation action, the trial court determined that the Township had the authority to condemn the property and appointed valuation commissioners.

The Appellate Division reversed, finding that “[b]ad faith exists when there is a valid purpose for taking the property, but the condemning authority is motivated by reasons beyond the power conferred by law.” Id. at 7. The Court concluded that the “record supports” a finding that the “stated purpose for acquiring the site for open space and park use is a pretext for the improper purpose of precluding appellants from commercial development of the site.” Id. Addressing a sequence of events not unlike the instant case, where each perceived instance of development progress of the airport (most notably, the creation and subsequent conditional approval of the Solberg Master Plan) triggered opposition and steps toward condemnation, the Court found that the “Township had no interest in acquiring this site for open space until after community opposition to development became manifest during the pending of the use variance application.” Id. at 8.

Equally applicable here, the Noonan court found that “[p]ublic sentiment” is “not a proper factor in condemnation” because the “only justification for condemning a person’s real property is to fulfill a public purpose or need.” Id. The “condemnation cannot be used as a pretext to discourage or prevent a particular use of property” -- “in

short, condemnation . . . is not a means to achieve zoning (the regulation of use of the property.)” Id.

The Supreme Court of Connecticut is in accord. See Avalonbay Communities, Inc. v. Town of Orange, 775 A.2d 284, 299 (Conn. 2001) (project plan contemplating acquisition of property enjoined where it was really a “way to regain control of property that some statutes, such as the affordable housing statute, allegedly take[s] away from municipalities”).

Readington’s primary concern in avoiding its obligations under the Air Safety and Zoning Act was that it had to relinquish zoning control over runway length, a subject matter with which it is obsessed and which it believes is determinative of whether or not Solberg would become a “jetport”. [Allen 120 p. 4 (the current draft of ordinance “might not provide the protection that we think we need from runway expansion”), Allen Dep. 330:22-23(“routine improvements”, over which the Township would have no control, may include runway expansion under the Act)].

As in Noonan, Readington cannot use this condemnation to take back the zoning power that it is required to relinquish under state law. For that additional reason, summary judgment should be entered in favor of Solberg on Readington’s condemnation complaint.

**D. Readington Cannot Misuse Condemnation
In An Attempt to Usurp The F.A.A.'S Authority
Over Aircraft Operations And Aircraft Noise**

Just as Readington is trying to usurp the State's authority, it is also attempting to wrest from the F.A.A. its authority over aircraft operation and noise via this condemnation suit. The Federal Aviation Act, 49 U. S. C. §1301 et seq., grants sole authority over aviation to the Federal Government. The Senate report accompanying the act stated:

Aviation is unique among transportation industries in its relation to the federal government - it is the only one whose operations are conducted almost wholly within federal jurisdiction, and are subject to little or no regulation by States or local authorities. Thus, the federal government bears virtually complete responsibility for the promotion and supervision of this industry in the public interest.

[S. Rep. No. 1811, at 5 (1958); 1958 U.S.C.C.A.N. 3742]. Consistent with that intent, the Act, as amended in 1994, provides that "the Administrator of the [FAA] may ... acquire, establish, improve, operate and maintain air navigation facilities." 49 U.S.C. 44502(a)(1).

The United States Supreme Court in City of Burbank v. Lockheed Air Terminal, Inc., 411 U.S. 624 (1973), addressed the limits on local control of airports that necessarily follow from the authority reserved for the Federal Government and the F.A.A. In that case, the Supreme Court considered the constitutionality of a noise ordinance passed by the city, which prohibited flights between 11 at night and 7 in the morning. Id. at 625. Examining the purpose of the Federal Aviation Act, the court held

that, although local authorities ordinarily exercise police power over noise, they could not exercise that authority to control aircraft operations. The court found that the Administrator of the FAA has broad authority to regulate the use of the navigable airspace in order to enhance safety and efficiency. Id. at 627. The Court refused to "diffuse[] the powers given by Congress to the FAA", which are placed there to serve the interests of aviation. Id. at 640.

The Court warned that a contrary result would cause "fractionalized control" of the pattern of takeoffs and landings, and restrict the authority reserved for the F.A.A. Id. at 639.

In Burbank Airport Authority v. City of Los Angeles, 979F.2d 1338 (9th Cir. 1992), the Court of Appeals applied those principles and invalidated a local ordinance that purported to require prior approval by the city for any and all development projects planned to be conducted at Burbank Airport, including the "construction or reconstruction of runways or taxiways".

The problem with this Ordinance is that it conditions the construction and reconstruction of taxiways and runways on the prior approval of the City. This the City may not do. The proper placement of taxiways and runways is critical to the safety of takeoffs and landings and essential to the efficient management of the surrounding airspace. **The regulation of runways and taxiways is thus a direct interference with the movements and operations of aircraft, and is therefore preempted by federal law. Stated simply, a non-proprietor municipality may not exercise its police power to prohibit, delay, or otherwise condition the construction of runways and taxiways at a non-city-owned airport.**

Id. at 1341. Accordingly, the ordinance was held to be "invalid on its face." Id.

In United States v. City of Berkeley, 735 F.Supp. 937 (E.D.Mo. 1990), the city purported to require a special use permit under its building code for the construction of a radar system on an airport property. The city had engaged in numerous other efforts to prevent construction, including participating in an Environmental Assessment, in which it was concluded that there was no significant impact to the environment posed by the project. Id. at 938-39. Thereafter, after construction began, the city posted a stop work order based upon the failure to obtain a special permit. Id. at 939.

The court found that the city could not order that construction be halted. “Federal regulation of airspace management, air navigation facilities and air safety is pervasive.” Id. at 940. Because of the “comprehensive federal regulation of air navigation facilities and air safety”, the court concluded that “local regulation of the construction of air navigation facilities is preempted.” Id.

Other courts are in accord. See Village of Bensenville v. City of Chicago, 306 N.E.2d 562, 565 (Ill. App. Ct. 1973) (state law may not be used to regulate airport expansion)¹²; N.E. Phoenix Homeowners Ass'n v. Scottsdale Mun. Airport, 636 P.2d 1269 (Ariz. Ct. App. 1981) (local control of expansion of runway is preempted); Citizens for Jobs and the Econ. v. County of Orange, 115 Cal. Rptr. 2d 90 (Cal. Ct. App. 2002) (voiding local referendum initiative requiring that voters of county approve airport expansion); St. Lucie County v. Town of St. Lucie Vill., 603 So. 2d 1289 (Fla. Dist. Ct.

¹² Our Appellate Division cited the 1973 Burbank and Bensenville cases with approval in Hanover v. Morristown, 135 N.J.Super. 529 (App. Div. 1975).

App.), rev. den. 613 So.2d 12 (Fla. 1992)(denying injunction to delay airport expansion because effort to control airport operations is preempted).

Readington's attempt to condemn the airport property is part of a master effort having the goal of controlling aircraft operations at (and above) the airport property. The condemnation proposed by Readington furthers that aim by preventing the extension of the runway to accommodate turbine aircraft and rendering it impossible to implement the improvements set forth in the Master Plan and Airport Layout Plan. The F.A.A. alone maintains authority over aircraft operations and noise, and Readington cannot misuse condemnation as a means to take that authority for itself.

E. The Current Use Of The Property As An Airport Provides Benefits To The State And The Nation, And Therefore, Current Use Of The Property Already Serves A Public Purpose.

New Jersey courts also consider the current use of the property in ascertaining whether the condemnor properly seeks to condemn the property for a public purpose. Where the current use of the property by the condemnor already provides a public benefit, courts are more likely to conclude that the condemnor's public purpose is pretext and that the condemnation is not authorized.

The Essex Fells court, in holding that the proposed condemnor lacked authority, noted that "Kessler [the use of the property that Essex Fells sought to prevent] is a not for profit, rehabilitation facility which provides treatment and services to persons with physical disabilities." Essex Fells, 289 N.J.Super. at 332. In addition, the "New Jersey Department of Health had issued a Certificate of Need to Kessler for its" proposed facility, thereby recognizing the public need for the facility. Id. at 333. Those interests

served by the condemnee's proposed use of the property were a factor in the court's holding that the Borough could not condemn the property because, given the public interests served by that proposed use, condemnation was unnecessary to serve the public interest.

The Appellate Division in Mount Laurel Township v. Mipro Homes, LLC, 379 N.J. Super. 358, 377 (App. Div. 2005); aff'd, 188 N.J. 531 (2006)(per curiam); certif. den. 2007 U.S. LEXIS 10911 (Oct. 1, 2007), acknowledged and adopted that reasoning from Essex Feels and distinguished the facts before it on that basis. In Mipro Homes, the Appellate Division, while concluding that the condemnation sought by the Township was within its authority, observed that if, as in Essex Fells, the township had tried to condemn the property under circumstances where the owner planned an assisted living facility, a different result "might have been warranted". "[S]ingle family homes that will be affordable only to upper-income families would not serve a comparable public interest." Id. Our Supreme Court subsequently endorsed those principles in a brief per curiam opinion affirming the "thoughtful and well-written opinion of the Appellate Division". Also see Earth Management, 248 Ga. at 447 (with respect to property which was condemned to prevent use as a waste facility, finding that "[t]here is no law, statutory, constitutional or otherwise, which clothes a governing authority with the right to utilize the power of eminent domain in order to restrict a legitimate activity in which the state has an interest.").

The evidence in this matter demonstrates that Solberg Airport, as it exists today, and more importantly, as it is contemplated to be improved, serves important

economic and non-economic interests, and therefore, the public interest is already advanced by the current use of the property. Indeed, § 49 U.S.C. 47101, states in no uncertain terms that “[i]t is the policy of the United States . . . **to give special emphasis to developing reliever airports**”. That policy rests on sound principles. The economic benefits derived from the state’s general aviation airports such as Solberg exceed \$4.6 billion. [Ex. 130 p. 2]. Moreover, those airports connect New Jersey with markets around the world and facilitate the conduct of business in New Jersey. [See generally Ex. 129].

The current public benefits already bestowed by Solberg further negate allowing Readington’s pretextual condemnation to proceed because the taking proposed by Readington would eliminate any possibility for Solberg to fulfill the role established for it in the Master Plan or effect the improvements presented in the F.A.A. approved Airport Layout Plan. [Ex. 133 p. 2, 4]. The lost public benefits would be exacerbated by the fact that Solberg Airport is the only airport in Northern New Jersey with sufficient property to relieve congestion at Teterboro and Morristown by providing facilities to meet the needs of business turbine aircraft. [Ex. 133 p. 1].

The public benefits served by the airport reinforce the position that summary judgment should be entered in favor of Solberg, especially since the condemnation will preclude the airport from operating in an economically viable manner.

F. The Condemnation Proposed By Readington Will Constrain The Airport Out Of Business.

Readington's expert on airport economics, Richard S. Golaszewski of GRA, has opined that Solberg Airport in its current form "at best, breaks even" and "won't be able to function on a long-term basis in this manner." [Ex. 138 11,14]. That is because, **in its current configuration**, the airport is "not capable of handling most corporate or commercial aircraft". [Ex. 138 p. 3]. The taking proposed by Readington, which physically constrains the airport from accommodating the profitable business aviation market, assures that Solberg will remain in its current form and therefore, will be choked out of business over time. That result is directly contrary to the policy set forth in 49 U.S.C. 47101(a)(12) which dictates that "airports should be as self-sustaining as possible".

Absent the taking, Solberg would retain the full acreage of the airport property, which will allow it to service modern business aviation. The airport is located among an affluent population of businesses and individuals, with Hunterdon County ranking as the 13th highest county in the nation in terms of per capita income, and third among U.S. counties in terms of median household income. [Ex. 137 p. 1]. Somerset County ranks 7th in the highest income counties in the United States. [Id.].

The affluent population in the vicinity of the airport generally utilizes modern high performance aircraft, which requires modernized facilities with sufficient runway length. [Id.]. Teterboro and Morristown are physically constrained from

expanding, giving Solberg the unique potential to accommodate future growth, particularly in the business turbine market, that Teterboro and Morristown are unable to accommodate. [Ex. 136 at p. 2-3]. The services demanded by that market provide Solberg with significant potential sources of revenue, including fuel sales, hangar and tie-down rentals, aircraft parts and maintenance sales, aircraft flight instruction and rental and aircraft sales and charters. [Id. at p. 4].

The condemnation, in which Readington proposes to take 624 acres of the 726 acre airport plus development rights to the remaining acreage leaving Solberg with only about 100 acres, would leave Solberg with insufficient acreage to exploit those revenues. [Id. at p. 4]. Instead, Solberg would be confined to servicing aircraft owners with the types of aircraft (primarily small piston planes) that do not generate significant revenue. [Id.]. Those aircraft use very little fuel, the owners are generally unwilling and/or unable to pay significant hangar or other storage fees, the demand for parts and maintenance by those owners is low, and the income from those services and goods is equally insignificant. [Id.]. If Solberg is limited to serving the piston market, revenues from flight instruction, rentals and charters would also be very low. [Id. at p. 4-5].

Even if the taking did not so constrain the runway, the remaining airside land that Readington proposes to leave for the airport would be insufficient to allow storage of and other facilities for those aircraft. [Ex. 137 at p. 2]. Moreover, Solberg would be left with insufficient land to install a precision instrument approach, which is necessary to assure that the airport may be used by turbine craft, irrespective of weather conditions. [Ex. 137 at p. 2].

Readington's proposed expert on aviation and economics, Golaszewski, concurs that Solberg cannot handle business aviation craft currently because those craft require "navigation and landing aids, longer paved runways . . . [and] hangars to store aircraft." [Ex. 138 p. 6]. Golaszewski also agrees, citing the F.A.A., that the forecast provides for "almost no growth for general aviation". [Id. at p. 6-7]. Golaszewski also states that the airport is not generating any significant income for its owners: "the airport has not made money on an operating basis over this period [of 1997-2004]". [Id. at p. 9].

In sum, the physical constraints that would result from the taking proposed by Readington would prevent Solberg Airport from benefiting from its greatest attribute: its size and commensurate ability to accommodate the business turbine aircraft utilized by the affluent population in the area of the airport. [Id.].

Readington should not be allowed, via the proposed taking, to prevent the airport from becoming independently economically viable, thereby choking the airport out of business and preventing it from serving the public, the national aviation system, and the health, welfare and economy of the region as well as the nation.

CONCLUSION

For the foregoing reasons, to be further elucidated at oral argument, defendant Solberg Aviation Company respectfully requests that summary judgment be entered in its favor.

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Respectfully submitted,

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