

To commence the 30 day statutory time period for appeals as of right (CPLR 5513[a]), you are advised to serve a copy of this order, with notice of entry, upon all parties

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER

-----X

In the Matter of the Application of  
THE VILLAGE OF PORT CHESTER TO ACQUIRE  
TITLE TO CERTAIN REAL PROPERTY LOCATED IN  
THE VILLAGE OF PORT CHESTER, WESTCHESTER  
COUNTY, STATE OF NEW YORK AND DESIGNATED  
ON THE TAX MAPS OF THE VILLAGE OF  
PORT CHESTER AS SECTION 2, BLOCK 66,  
LOTS 7,8,9a,10,11,12,13,14,15,16,17,18a  
AND 18B

**DECISION/  
ORDER/JUDGMENT**

-----X

G&T RESTAURANT CORP. D/B/A CONEYZ,

Claimant,

Index No:  
3564/00

-against -

THE VILLAGE OF PORT CHESTER,

Condemnor.

-----X

**LaCAVA, J.**

The trial of this Eminent Domain Procedure Law (EDPL) Article 5 proceeding, challenging the valuation by the Village of Port Chester (Village or condemnor) of the trade fixtures taken by the Village in Eminent Domain from G & T Restaurant Corp. (G & T or claimant), as part of a fee taking from Leton, Inc. (Leton), took place before this Court on August 7, August 8, and August 9, 2006 (Dickerson, J.), and February 21, February 23, March 1, March 2, March 5, March 20, and March 30, 2007 (LaCava, J., by stipulation of the parties). The Court has additionally considered the following post-trial submissions numbered 1 to 13 in connection with this matter:

PAPERS  
POST-TRIAL MEMORANDUM OF LAW

NUMBERED  
1

POST-TRIAL APPENDIX/EXHIBITS	2
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The instant property was owned in fee by Leton, and known and designated on the Official Tax Map of the Village of Port Chester as Section 2, Block 66, Lot , commonly known as 1-9 North Main Street, Port Chester, New York. The property has been described as a one-story commercial property measuring approximately 2,730 square feet, situated on a .20 acre tax lot on North Main Street in the Village of Port Chester. A fast-food restaurant doing business as Coneyz was operated at the premise by G & T.

By Order and Judgment of this Court, entered August 1, 2000, (Dickerson, J.), the taking was effected.

Based upon the credible evidence and the arguments and submissions of the parties, the Court makes the following Findings of Fact and Conclusions of Law:

#### **FINDINGS OF FACT**

The Court credits the trial testimony of Leton's corporate vice president, and G & T's president, Anton Tomaj, that the premises was acquired by Leton on June 10, 1996, for a purchase price of \$400,000. The premises, previously a Twin Donut shop, was acquired by Leton for the purpose of establishing a fast-food restaurant, under the name Pete's Coney Island, and later, Coneyz.

The Court further finds that, due to the nature of the premises after Twin Donut's departure, Leton performed a complete gut restoration of the property. The Court declines to accept Tomaj's testimony at trial, as argued by counsel for G & T, that G & T's performed most or all of the renovations to the premises. However. Tomaj used the plural "we" on direct examination to describe the persons and/or business entities having performed the work, but on cross-examination he conceded that he had previously testified, as the vice president of Leton during the fee trial, that G & T did not exist during the time of the restoration, but

commenced operation sometime later. He also agreed at the instant trial that he was not sure whether G & T even existed as a corporate entity at the time of the renovations.

In addition, Tomaj conceded that Leton commenced the renovations prior to taking fee title to the premises on June 10, 1996. In a lease executed on August 18, 1995, Leton agreed that

All improvements and alterations and repairs made to the demised premises herein shall be made by the tenant at tenant's own cost and expense and shall become part of the demised premises and property of the Landlord (Rogowsky *et al.*- *Condemnor's Exhibit A*)

Tomaj testified at the fee trial that work indeed commenced in 1995, and that the restaurant commenced operations in August 1996.

The Court further finds that, at the trial, claimants entirely failed to set forth the time when the work creating the fixtures for which they seek compensation took place, whether during the leasehold (August 1995 to June 1996), upon Leton taking fee possession (June 1996 to August 1996), or upon the commencement of operations by the new entity, claimant (approximately August 1996). Nor did claimant even present its corporate filing papers to substantiate the date upon which it was formed. The Court thus concludes that Leton and not G & T performed much of the restorative work to the premises.

The Court also finds that, while G & T apparently leased the subject premises from Leton beginning sometime after Leton took possession of the premises, that lease was never reduced to a writing. In addition, G & T was not a party to the 1995 lease between the Rogowskys and Leton, hence they were not bound by the terms thereof, particularly those terms under which repairs and renovations became the property of the landlord.

The Court additionally finds that, in preparation for the instant trial, appraiser Joseph (Jay) Rusciano performed an appraisal of the contents of the subject premises for the Village. Jay Rusciano's appraisal is divided into a section containing items conceded by the Village to be compensable as trade fixtures (if owned and/or installed by claimants), and items deemed, by their nature to be non-compensable. In the former category are included a variety of items with a list of current replacement costs (CRCs) for each, to which Jay Rusciano applied, in each case, a depreciation factor of 25%. This left, for each item, a current sound value (CSV). Regarding the latter category, namely those

items deemed non-compensable, while urging their non-compensability, Jay Rusciano also set forth CRCs and CSVs for each item as well.

The Court also finds that, in preparation for the instant trial, appraiser Anthony Rusciano performed an appraisal of the contents of the subject premises for the claimant. Anthony Rusciano's appraisal is a single numbered list of all of the items contained within and about the premises, all urged as trade fixtures. Each item contains a CRC for each, to which Anthony Rusciano applied a depreciation factor ranging from 0 to 20%, depending on the item, and their resulting CSVs. Claimants also supplied a chart listing the non-depreciated values, along with the values as asserted by the Village, whether as non-compensable or, where appropriate, where compensability is conceded.

### CONCLUSIONS OF LAW

1. The right of an owner to just compensation for property taken from him by eminent domain is one guaranteed by the federal and state constitutions (Federal Constitution, Fourteenth Amendment; N.Y. Constitution, Art. 1, Subd 7.).

2. Upon the exercise of its eminent domain powers by a municipality, the owner of trade fixtures present in the premises--whether or not he is the fee owner of the premises--is entitled to fair compensation for the value of the goods which he may, under the terms of any leasehold, remove from the premises, but which items he does not remove. *Marraro v. State*, 12 N.Y.2d 285 (1963).

3. In *Marraro*, 12 N.Y.2d, 292-3, the Court examined the test for compensability of items alleged to be trade fixtures. To be a trade fixture, an item must be annexed to the premises; it must be particularly adapted to the work conducted on the premises; and there must be evidence that the installation was considered to be permanent. (See the associated matter *Port Chester v. Megamat*, 42 A.D.3d 465 (2<sup>nd</sup> Dept. 2007)--hereinafter *Megamat* (AD); see also *Rose v. State*, 24 N.Y.2d 80 [1969]; *In re City of New York [Kaiser Woodcraft]*, 39 A.D.3d 131, 134 [1<sup>st</sup> Dept. 2007--"such installations as electric wiring and plumbing connections are ordinarily an integral part of the real estate, and therefore not separately compensable, except to the extent installed solely to service fixtures that were specially installed for the occupant's particular purpose".) Also compensable are items which would suffer a significant diminution in value if they were removed from the premises. (*In re City of New York [Merrimaker]*, 51 A.D.2d 147 [2<sup>nd</sup> Dept. 1976].) However, a lessee is entitled to recover the value of fixtures placed by him on a condemned premises only when

he is entitled to remove them at the expiration of the lease. (*Conklin v. State*, 38 N.Y.2d 726 [1975].) In addition, items of personalty which are removable or in any event not annexed to the premises are not trade fixtures and thus non-compensable.

4. This Court held in an associated matter, *Megamat v. Village of Port Chester* (Supreme Court, Westchester County, Rosato, J., entered November 16, 2005) [hereinafter *Megamat (T)*], that the following items were non-compensable because following installation they had merged with the subject property there: two new bathrooms; new flooring; lighting; drop ceilings; partitions; side door; front entrance (including a facade and brick pavement); and HVAC unit. The Court also held, *inter alia*, that 10 TV sets were compensable as trade fixtures. On appeal in *Megamat (AD)*, while the trial court decision was reversed as to the size of the award, on the issue of compensability *Megamat (T)* was only reversed insofar as it found TV sets to be trade fixtures and thus compensable.

5. This Court also held in the associated *Greatest Estate Services of America v. Village of Port Chester* (Supreme Court, Westchester County, Rosato, J., entered March 9, 2006) [hereinafter *GESA*], that the following specific types of fixtures merge with the realty when installed, and thus become non-compensable: siding; storefronts; concrete slabs; skylights; flooring; doors; electrical system; heating system; curbing; paving; floor supports; sprinklers; natural gas service; and water service. In addition, and although urged by the Village to find that G & T is not the proper claimant for those fixture improvements made to the premises by Leton, as they were done by Leton and not G & T, claimant properly points out that this Court has previously held that a successor in interest may indeed recover for such improvements. In *GESA, supra*, at p 6, the Court stated

To deny recovery because they were obtained by a predecessor in interest to Claimant and limit Claimant to salvage value would be an injustice. In reality it is Mr. Greenberg who has had, and continues to have, the financial interest herein and who should be treated fairly.

Notably, in *GESA*, the claimant was a corporation which was the successor in interest, and a closely held corporation owned by, the family which had had the fee interest in the premises, and which had previously made the improvements for which compensation was sought by claimant. Here too, G & T is the closely held corporate successor to Leton, which had apparently done many of the improvements for which G & T seek recompense. The Court thus

concludes, in its discretion as a matter of equity, that G & T may properly claim for fixtures installed by its predecessor in interest, Leton. (See also *Gurwitz v. State*, 27 Misc.2d 731 [Ct. Cl. 1962], aff'd 15 A.D.2d 712 [3<sup>rd</sup> Dept. 1962].)

6. In addition, this Court had before it in the fee trial associated with this particular premises, *Leton Inc v. Village of Port Chester* (Supreme Court, Westchester County, Rosato, J., entered August 20, 2004) [hereinafter fee award], appraisals, one of which--the Village's--included in its valuation the following specific types of fixtures already then present on the premises, and thus non-compensable here as already having been the subject of an award: exterior wall covering; windows; flooring (including tiles); interior partition walls; installed finished ceilings; doors (exterior and interior); installed electrical system; heating system; plumbing system; roofing; and air conditioning system.

#### **7. Non-compensable and Compensable Items Generally**

The Court generally concludes that the following classifications of items present in the subject premises are non-compensable due to their having become an integral part of the real estate, and thus the subject of compensation to the fee owner (Leton): interior and exterior wall coverings; curbs, paving and concrete slabs used for drive or walk-ways; windows and skylights; electric, gas, sewer, waste, heating, ventilation and air conditioning systems; doors; floor covering including tiles; interior partitions and finished walls and ceilings; interior and exterior doors.

The Court also generally concludes that items not affixed to the premises, and whose installation was not deemed to be permanent, including many which were in fact removed from the premises, are non-compensable as personalty.

Further, the Court generally concludes that a number of items, set forth in greater detail below, are compensable as trade fixtures, having been installed in the premises for the specific purpose of the business conducted therein (a fast-food restaurant), and whose removal would cause material injury to the realty and/or the fixture or its value. These include, but are not limited to, electrical, wastewater, and ventilation system elements normally non-compensable but which were installed solely to service the business conducted in the subject premises.

## 8. Appraisals and Methodology

The Court generally concludes that the appraisal methods undertaken by both valuers were sound, although, as set forth herein, the Court will determine the weight to be accorded to the conclusions of each as to value. In particular, each appraiser relied generally on pricing manuals to construct current replacement costs for the various items alleged to be trade fixtures herein, and then depreciated those items to compute their conclusions as to current sound values. It should be noted that the claimant's appraiser and his methodology were credited and accepted by the Appellate Division in *Kaiser Woodcraft, supra*, and this Court will similarly accept claimant's methodology and computations as to current reproduction costs (CRC) and current sound value (CSV). The Court notes that, while Jay Rusciano for the Village used a standard depreciation factor of 25% for each item regardless of condition, claimant's appraiser, Anthony Rusciano, depreciated each specific item based on its observed condition. In that respect, the Court credits the latter procedure over the former and accepts the claimant's depreciation percentages. The appraisers then added construction and financing costs, amounting to 29.125% and 2.5%, respectively, for the Village, and 34.5% and 4.0%, respectively, for G & T. The Court finds that a sum of both costs (construction and financing) in the amount of 35% is more fully supported in the record. The final amount offered by each is the proposed condemnation fixture award.

## 9. SPECIFIC NON-COMPENSABLE ITEMS

### ITEM # Description And Grounds for Non-Compensability

- 1-6 Parking Lot and Appliances--Compensated in the fee award; see *GESA, supra*.
- 16-19 Canopies--Compensated in the fee award.
- 20 Exterior Lighting--Compensated in the fee award.
- 21 Electrical for # 20--Compensated in the fee award.
- 22-24 Paving and walkways--Compensated in the fee award; see *GESA, supra*.
- 25-27 Planting Beds--Compensated in the fee award.
- 28-30 Stucco Exterior--Compensated in the fee award; see *GESA, supra*.

- 31-34 Entryway--Compensated in the fee award; see *GESA, supra; Megamat (T) and (AD), supra*.
- 35 Exterior Water Spout--Compensated in fee award.
- 36 Tile Floor--Compensated in fee award; see *GESA, supra Megamat (T) and (AD), supra*.
- 37 Ceiling--Compensated in fee award.
- 38 Wall Covering--Compensated in fee award.
- 39 Window Sill--Compensated in fee award.
- 43 Windows, Block Wall--Compensated in fee award.
- 45 Exit Signs--Compensated in fee award.
- 47 Wall Covering--Compensated in fee award.
- 48-9 Walls--Compensated in fee award.
- 50a Wall Covering--Compensated in fee award.
- 50b Bull Nose (wall covering)--Compensated in fee award.
- 50c Base Cove (wall covering)--Compensated in fee award.
- 50d Tile Floors--Compensated in fee award; see *GESA, supra; Megamat (T) and (AD), supra*.
- 51 Walls--Compensated in fee award.
- 52-78 Bathrooms(2)--Compensated in fee award; see *Megamat(T), supra*.
- 79-80 Tile Floors, Base Cove--Compensated in fee award; see *GESA, supra; Megamat (T) and (AD), supra*.
- 83 Electronic Cash Registers--Not Compensable as Personalty.
- 84 Pastry Display--Not Compensable as Personalty, Removed.
- 85 Entertainment System--Not Compensable as Personalty; see *Megamat (AD), supra*.
- 86 White Chalk Board--Not Compensable as Personalty.

- 87 Walls(divider)--Compensated in fee award.
- 92 Fire Extinguishers--Not Compensable as Personalty;  
*see Megamat (T), supra.*
- 94 Coffee Mill--Not Compensable as Personalty, Removed.
- 96 Wall Covering--Compensated in fee award.
- 97 Wall Clock--Not Compensable as Personalty, Removed.
- 98 Ceiling--Compensated in fee award.
- 103 Ceiling--Compensated in fee award.
- 104 Tile floors--Compensated in fee award; *see GESA, supra;*  
*Megamat (T) and (AD), supra.*
- 105 Wall Covering--Compensated in fee award.
- 110 Refrigerator/Installation--Unit Not Compensable as  
Personalty.
- 111 Shelf Unit--Not Compensable as Personalty.
- 122 Fatigue Mats--Not Compensable as Personalty.
- 127 Walls (partition)--Compensated in fee award.
- 128 Doors--Compensated in fee award; *see GESA, supra.*
- 129 Tile floors--Compensated in fee award; *see GESA, supra;*  
*Megamat (T) and (AD), supra.*
- 130 Wall Covering--Compensated in fee award.
- 131 Ceiling--Compensated in fee award.
- 132 Electric Lighting--Compensated in fee award; *see GESA,*  
*supra; Megamat (AD)supra.*
- 133 Storage Rack--Not Compensable as Personalty.
- 135 Walls (partition)--Compensated in fee award.
- 136 Walls (partition)--Compensated in fee award.
- 137 Walls--Compensated in fee award; *see Kaiser*

- Woodcraft, supra; Marraro, supra.*
- 138 Ceiling--Compensated in fee award; *see Kaiser Woodcraft, supra; Marraro, supra.*
- 139 Ceiling--Compensated in fee award.
- 140 Tile floors--Compensated in fee award; *see GESA, supra; Megamat (T) and (AD), supra.*
- 141 Base Board--Compensated in fee award; *see Kaiser Woodcraft, supra; Marraro, supra.*
- 142 First Aid Kit--Not Compensable as Personalty.
- 145 Floor Drain--Compensated in fee award; *see Kaiser Woodcraft, supra; Marraro, supra.*
- 146 Grease Trap--Compensated in fee award; *see Kaiser Woodcraft, supra; Marraro, supra.*
- 152 Work Table--Not Compensable as Personalty.
- 153 Slicing Machine--Not Compensable as Personalty.
- 154a Bulletin Board--Not Compensable as Personalty.
- 154b Plastic Unit--Not Compensable as Personalty.
- 154c Fire Extinguishers--Not Compensable as Personalty; *see Megamat (T), supra.*
- 155 VCR Unit--Not Compensable as Personalty; *see Megamat (AD), supra. .*
- 156 Exit Sign--Compensated in fee award.
- 158 Light Fixture--Compensated in fee award; *see GESA, supra; Megamat (AD), supra.*
- 159 Doors--Compensated in fee award; *see GESA, supra.*
- 167 Sprinklers--Compensated in fee award; *see GESA, supra.*
- 168 Security Camera System---Not Compensable as Personalty; *see GESA, supra; Megamat (AD), supra.*
- 170 HVAC--Compensated in fee award; *see GESA, supra.*

171-173 Electric and Gas Service, and water meter--  
 Compensated in fee award; see *GESA, supra*.

10. COMPENSABLE ITEMS

ITEM & Desc. /CRC Cl/ CSV Cl (Depr)/CRC Cond/CRC Cond/Court CSV

7 Steel Posts -- \$ 2,594 / \$ 2,335 (10%) / \$ 351 /\$ 281 / **\$ 2,335**

8 Steel Chain -- \$ 1,385 / \$ 1,287 (10%) / \$ 216 /\$ 174 / **\$ 1,287**

9 Parking Signs -- \$ 600 / \$ 480 (20%) / \$ 300 /\$ 225 / **\$ 480**

10 Roof Spots -- \$ 1,745 / \$ 1,396 (20%) / \$ 853 /\$ 640 / **\$ 1,396**

11 Spotlight -- \$ 523 / \$ 418 (20%) / \$ 340 /\$ 255 / **\$ 418**

12 Flood Light -- \$ 1,337 /\$ 1,070 (20%)/ \$ 375 /\$ 281 / **\$ 1,070**

13 Fencing -- \$ 9,600 / \$ 9,540 (10%)/ \$ 9,600/ \$ 7,200 / **\$ 9,540**

14 Sign -- \$10,140 / \$ 9,214 (15%) / \$ 4,700 /\$ 3,525 / **\$ 9,214**

15 Signs -- \$ 7,600 / \$ 6,840 (10%)/ \$ 7,600 /\$ 5,700 / **\$ 6,840**

40 Light Fixt -- \$2,250 / \$1,913 (15%) / \$1,231 / \$923 / **\$ 1,913**

41 Ceil. Fans -- \$ 1,265 /\$ 1,012 (20%) / \$ 878 /\$ 658 / **\$ 1,012**

42 Elec Recep. -- \$ 769 /\$ 692 (10%) / \$ 1,000 /\$ 750 / **\$ 692**

44 Wind. Signs -- \$ 1,780 /\$ 1,513 (15%)/ \$ 600 /\$ 450 / **\$ 1,513**

46 Cust. Seat. -- \$8,570 /\$6,856 (20%)/ \$9,300 /\$6,510 / **\$ 6,856**

81 Serv. Count. -- \$4,620 /\$3,696 (20%)/ \$2,759 /\$1,931/ **\$ 3,696**

82 Formica Barr. -- \$ 760 / \$ 608 (20%) / \$ 108 /\$ 76 / **\$ 608**

88 Back Count. -- \$6,860 /\$5,488 (20%)/ \$2,472 / \$1,730/ **\$ 5,488**

89 Refrig. -- \$2,240 / \$1792 (20%) / \$585 / \$410/ **\$ 1,792**

90 Soda Disp. -- \$ 2,190 /\$ 1,752 (20%)/ \$ 980 / \$ 686 / **\$ 1,752**

ITEM & Desc. /CRC Cl/ CSV Cl (Depr)/CRC Cond/ CRC Cond/Court CSV

91 Elec Recept. -- \$ 785 /\$ 707 (10%) / \$ 750 /\$ 562 / \$ 707  
93 Counter Disp. -- \$ 690 / \$ 587 (15%) / \$ 700 / \$490 / \$ 587  
  
95 Menu Sign -- \$5,445 / \$4,356 (20%)/ \$2,349 / \$1,762/ \$ 4,356  
99 Recessed Lts. -- \$ 750 / \$ 638 (15%) / \$ 568 / \$ 426/ \$ 638  
  
100 Partition -- \$450 / \$405 (10%) / \$371 / \$278 / \$ 405  
  
101 Finishes - \$875 / \$744 (15%) / \$615 / \$464/ \$ 744  
  
102 Storage Rack -- \$5,845 / \$4,968 (15%)/ \$3,000 /\$ 450/ \$ 4,968  
  
106 Recessed Lts -- \$1,219 /\$1,036 (15%)/ \$ 699 / \$ 524 / \$ 1,036  
  
107 Ice Machine -- \$5,090/ \$4,072 (20%) / \$2,250/ \$1,575/ \$ 4,072  
  
108 Steel Sink -- \$1,765 / \$1,500 (15%)/ \$1,697 / \$1,273/ \$ 1,500  
  
109 Paper Twl. Disp.-- \$ 75 / \$ 60 (20%) / \$ 25 / \$ 19 / \$ 60  
  
112 Work Table -- \$845 / \$761 (10%) / \$239 / \$179 / \$ 761  
  
113 Sandwich Table -- \$2,913/\$2,330 (20%)/\$1,805/\$1,264/ \$ 2,330  
  
114 Refrig Inst. -- \$1,818 / \$1,455 (20%)/ \$250 / \$188 / \$ 1,455  
  
115 Shelving Unit -- \$ 210 / \$ 189 (10%) / \$152 / \$114 / \$ 189  
  
116 Toaster -- \$640 / \$512 (20%) / \$483 / \$338 / \$ 512  
  
117 Fry Warmer -- \$1,140 /\$ 969 (15%)/ \$ 100 /\$ 75/ \$ 969  
  
118 Frymaster -- \$5,940 /\$5,049 (15%)/\$ 200 /\$ 150/ \$ 5,049  
  
119 Steel Table -- \$2,270 / \$1,930 (15%)/ \$ 633 / \$ 475/ \$ 1,930  
  
120 Grid./Range -- \$7,088 / \$6,025 (15%)/ \$2,085 /\$1,564/ \$ 6,025  
  
121 St.Wall Cover -- \$1,225 /\$1,102 (10%)/ \$1,170 / \$936/ \$ 1,102  
  
123 Exhst. Hood -- \$6,165 / \$5,550 (10%)/ \$5,561 /\$4,171/ \$ 5,550  
  
124 Exh. Ductwk -- \$5,190 / \$4,670 (10%)/ \$1,958 /\$1,468/ \$ 4,670

ITEM & Desc. /CRC Cl/ CSV Cl (Depr)/CRC Cond/ CRC Cond/Court CSV

125 Exh. Blowers -- \$5,045 / \$4,036 (20%)/ \$2,772 /\$2,079/ \$ 4,036  
126 Fire System -- \$2,310 / \$2,195 (05%)/ \$1,800 /\$1,350/ \$ 2,195  
134 Gas line -- \$ 554 / \$ 500 (10%) / \$ 418 / \$ 313 / \$ 500  
143 H Water Heater -- \$3,450/\$2,760 (20%)/\$2,267/\$1,700/ \$ 2,760  
144 Scrub Area -- \$ 1,614 /\$ 1,372 (15%)/ \$ 764 / \$ 573/ \$ 1,372  
147 Scrub Sink -- \$3,495 /(15%)/ \$1,205 / \$ 765/ \$ 2,970  
148 Scrub Sink-- \$ 1,236 / \$ 1,050 (15%)/ \$ 812 / \$ 609/ \$ 1,050  
149 Shelving -- \$ 3,140 / \$ 2,825 (10%)/ \$ 920 /\$ 690/ \$ 2,825  
150 Mop Holder -- \$ 128 / \$ 103 (20%) / \$ 20 /\$ 15 / \$ 103  
151 Shelving -- \$ 427 / \$ 384 (10%) / \$ 200 / \$ 150 / \$ 384  
157 Lt. Fixt/Switch -- \$ 695 / \$ 590 (15%) /\$ 231 /\$ 173/ \$ 590  
158 Light Fixt/Inst -- \$ 742 /(15%) /\$ 365 /\$ 274 / \$ 630  
160 Freezer Unit -- \$20,467 \ \$17,397 (15%)\  
/ \$12,743 / \$10,248/  
162 Refrigerator -- \$17,042 /\$14,485 (15%)/  
\$37,509 \$31,882  
**Court CSV: \$ 31,882**  
161, 163 St. Racks-- \$ 2,625 \ \$ 2,363 (10%)\  
/ \$1,100 / \$ 770/  
\$ 3,128 /\$ 2,815 (10%)/  
\$ 5,753 \$ 5,178  
**Court CSV: \$ 5,178**

ITEM & Desc. /CRC Cl/ CSV Cl (Depr)/CRC Cond/ CRC Cond/Court CSV

164 Elec Recept. -- \$ 576 / \$ 519 (10%) /\$ 750 / \$ 563 / \$ 519  
165 Storage Racks -- \$4,590 /\$4,130 (10%)/\$ 800 /\$ 600/ \$ 4,130  
166 Circ. Panel Box -- \$6,620/\$5,960 (10%)/\$2,943/\$2,207/\$ 5,960

169 Alarm System -- \$5,340/ \$5,073 (05%)/ \$3,128 / \$2,346/ **\$5,073**

Sub Total: **\$ 179,674.00**

Construction and Financing Costs (35%): **\$ 62,886.00**

Total Condemnation Trade Fixture Award: **\$ 242,560.00**

#### 8. Summary of Value Conclusions

The Court therefore finds for each of the above-numbered items set forth in the fixture claim, in values, depreciation amounts, and associated costs, which are within the range of testimony (*Rose v. State, supra*).

#### Conclusion

Upon the foregoing papers, and the trial held before the Court on August 7, August 8, and August 9, 2006, and February 21, February 23, March 1, March 2, March 5, March 20, and March 30, 2007, it is hereby

ORDERED, that the claim by claimant for fixture compensation for a taking conducted by the Village herein, pursuant to EDPL Article 5, is hereby granted; and it is further

ORDERED, that petitioner Village shall pay as compensation to claimant G & T Restaurant, Corp the amount of \$242,560.00, with interest thereon from the date of the taking, August 1, 2000, less any amounts previously paid, together with costs and allowances as provided by law.

Submit Judgement on notice.

The foregoing constitutes the Opinion, Decision, and Order of the Court.

Dated: White Plains, New York  
March 10, 2008

HON. JOHN R. LA CAVA, J.S.C.

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