

***DiFrancesco, Bateman, Kunzman,
Davis, Lehrer & Flaum, P.C.***

15 Mountain Boulevard
Warren, N J 07059
(908) 757-7800
Attorney ID# 020011980
Attorneys for Plaintiff

<p>TOWNSHIP OF TOMS RIVER,</p> <p style="text-align: center;">Plaintiff,</p> <p>v.</p> <p>JOHN P. HERLIHY; USBANKCUSFOR PRO CAPITAL I, LLC; TTLBL, LLC; MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.</p> <p style="text-align: center;">Defendants.</p>	<p>SUPERIOR COURT OF NEW JERSEY LAW DIVISION: OCEAN COUNTY</p> <p>DOCKET NO. OCN-L-</p> <p style="text-align: center;">CIVIL ACTION (In Condemnation)</p> <p style="text-align: center;">VERIFIED COMPLAINT</p>
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Plaintiff Township of Toms River, by way of Verified Complaint against the Defendants John P. Herlihy, USBANKCUSFOR PRO CAPITAL I, LLC; TTLBL, LLC; Mortgage Electronic Registration Systems, Inc. hereby says:

1. Plaintiff was created and now exists pursuant to N.J.S.A. 40:43-1, et seq., with all the functions, powers and duties heretofore vested in Plaintiff pursuant to said statute, as amended and supplemented.
2. Plaintiff is authorized by N.J.S.A. 40A:12-5, to acquire lands or rights therein by gift, device, purchase, condemnation or otherwise in the manner provided by the New Jersey Eminent Domain Act, N.J.S.A. 20:3-1, et seq.
3. Plaintiff has determined that it is necessary acquire for public use, either a

fee simple or lesser interest, or both, in the land and premises hereinafter described for the purpose of promoting the Township's Master Plan goal of providing adequate open space for present and future use, and to develop passive and active recreation use.

4. The property interest sought to be condemned is located in the Township of Toms River, County of Ocean, State of New Jersey, and is known as Lot 7 in Block 171 on the Tax Map of the Township of Toms River, and is more commonly known as 133 Riverwood Drive, Toms River Township, Ocean County, New Jersey.

5. Plaintiff has made an offer in writing to the property owner in the full amount of the approved appraised value. Plaintiff has been unable to acquire said interest in the land or premises through bona fide negotiations with the property owner.

6. The amount of compensation offered by Plaintiff to the property owner is \$2,130,000.00, which amount assumes that the property is free of contamination or has been remediated. This amount was calculated in the manner set forth in **Exhibit A**, attached hereto and made a part hereof.

7. Plaintiff hereby reserves any and all rights it has or may have to recover in a separate action or by the administrative means, against Defendant property owner or any third parties, for release of the funds retained in the Superior Court Trust Fund, and for reimbursement of all costs or for remediation and/or cleanup of contamination and/or removal of solid waste and/or sanitary landfill closure that have been or may be incurred in the future by reason of conditions which were in existence as of or prior to the date of vesting of title and possession pursuant to N.J.S.A. 20:3-19. Plaintiff further reserves the right to seek, in its sole discretion, any and all available legal, administrative and

equitable remedies to compel Defendant to remediate and/or clean up the property in accordance with applicable State and Federal statutory and regulatory provisions, or to remove solid waste or carry out closure of a sanitary landfill if located on the subject property. Pursuant to N.J.S.A. 58:10-23.11g.d(4), Plaintiff is not liable for the cleanup and removal costs of any discharge which occurred or began prior to Plaintiff's ownership. Plaintiff does not accept any liability for preexisting contamination, hazardous materials, and/or solid waste, whether now known or subsequently discovered.

8. Plaintiff has valued the property as if it has been remediated in accordance with applicable regulatory requirements and subject to the imposition of any conditions as to use, excepted as noted in the appraisal and subject to paragraph 7 above. Plaintiff does not accept liability for any preexisting contamination, hazardous materials, and/or solid waste, known or unknown. If contamination, hazardous materials, and/or solid waste are subsequently discovered within the subject property, Plaintiff reserves the right to move appropriately under the law in equity or to move for any other relief, including administrative relief, which may be necessary to protect Plaintiff's rights and interests, including, but not limited to seeking an order that the Clerk of the Superior Court not release funds remaining equal to the estimated costs of the remediation on deposit until the contamination is remediated or until any solid waste is properly removed, or closure is performed in accordance with applicable State and Federal standards. It is the Plaintiff's position that such funds should remain on deposit until the issue of liability for remediation is resolved between the parties in accordance

with applicable State and Federal law.

9. Plaintiff is depositing herewith the full amount of the estimated fair market value of the property as remediated. However, in addition to the rights reserved in paragraph 7 above, Plaintiff will object to any withdrawal of the funds that reduces the amount on deposit below the sum required to properly remediate or clean up any contamination, hazardous materials and/or solid waste on the property, and will seek an order that the Clerk of the Superior Court not release any such funds on deposit until any contamination or hazardous material is properly remediated, cleaned up and/or any solid waste is removed or properly capped, all in accordance with applicable State and Federal standards.

10. The owner of record of said land and premises is John P. Herlihy, having an address of P.O. Box 1413, Island Heights, New Jersey 08732.

11. Defendant USBANKCUSFOR PRO CAPITAL I, LLC, having an address of U.S. Bank TLSG, 50 S 16th Street, Suite 1950, Philadelphia, PA 19102, is a purchaser and holder of a Certificate of Sale for unpaid municipal liens issued October 4, 2011 and bearing Certificate No. 11-00076.

12. TTLBL, LLC, having an address of 4747 Executive Drive, Suite 510, San Diego, CA 92121, is the holder of a Certificate of Sale for unpaid municipal liens issued July 3, 2013, Certificate No. 13-00065.

13. Mortgage Electronic Registration Systems, Inc., having an address of a Kansas corporation, having an address of 1010 West Loop, Manhattan, KS 66502, is a lender and mortgagee pursuant to a mortgage dated September 24, 2018 and recorded

in the office of the Clerk of Ocean County in Mortgage Book 15622, Pg. 1837.

14. No other persons or corporations appear of record to have an interest in said land or premises.

WHEREFORE, Plaintiff Township of Toms River demands judgment against the Defendant John P. Herlihy that it is duly vested with and has duly exercised its authority to acquire the property being condemned, and for an order appointing Commissioners to fix the compensation required to be paid, in accordance with N.J.S.A. 20:3-12, and preserving the reservations in paragraphs 7, 8 and 9 of this Complaint, and granting such other relief as the Court deems just and equitable.

CERTIFICATION OF COUNSEL

1. Pursuant to Rule 4:5-1, the undersigned hereby certifies that at the time of filing this Complaint, the matter in controversy is not the subject of any other action pending in any court and/or arbitration proceeding. The undersigned is unaware of any non-party who should be joined in this action.

2. I hereby certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.


Paul R. Rizzo

Dated: September 16, 2022

**DiFrancesco, Bateman, Kunzman,
Davis, Lehrer & Flaum, P.C.**

15 Mountain Boulevard
Warren, N J 07059
(908) 757-7800

Attorney ID#: 020011980

Attorneys for Plaintiff

<p>TOWNSHIP OF TOMS RIVER, Plaintiff, v. JOHN P. HERLIHY; USBANKCUSFOR PRO CAPITAL I, LLC; TTLBL, LLC; MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. Defendants.</p>	<p>SUPERIOR COURT OF NEW JERSEY LAW DIVISION: OCEAN COUNTY DOCKET NO. OCN-L- CIVIL ACTION (In Condemnation) ORDER TO SHOW CAUSE</p>
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THIS MATTER being brought before the Court by Paul R. Rizzo, Esq., attorney for Plaintiff Township of Toms River seeking relief by way of summary action pursuant to R. 4:67-1(a), based upon the facts set forth in the Verified Complaint filed herewith; and for good cause shown;

IT IS ON THIS ____ day of _____, 2022

ORDERED that the Defendants John P. Herlihy, USBANKCUSFOR PRO CAPITAL I, LLC; TTLBL, LLC; Mortgage Electronic Registration Systems, Inc. appear and show cause on the ____ day of _____, 2022 before the Superior Court of New Jersey at the Ocean County Court House in Toms River, New Jersey at ____:____ o'clock in the ____ noon, or as soon thereafter as counsel may be heard, why an order should not be entered appointing three disinterested Commissioners in accordance

with N.J.S.A. 20:3-12(b) to fix an amount of compensation to be paid for the acquisition of the property interests described in the Complaint, including damages to the remaining property, if any, resulting from the acquisition existing as of or prior to the date of vesting of title and possession pursuant to N.J.S.A. 20:3-19, or as of such other date as this Court shall fix; and further why final judgment should not be entered declaring that the Plaintiff has duly exercised its power of eminent domain, as well as declaring that the reservations made in paragraphs 7 and 8 of the Complaint as to the issue regarding contamination or solid waste, and existing prior to the date of vesting of title and possession pursuant to N.J.S.A. 20:3-19, are preserved in accord with the proposed form of Order for Judgment and Appointing Commissioners; and it is further

ORDERED as follows:

A. A copy of this Order to Show Cause, Verified Complaint and all supporting affidavits or certifications submitted in support of this application be served upon Defendants John P. Herlihy, USBANKCUSFOR PRO CAPITAL I, LLC; TTLBL, LLC; Mortgage Electronic Registration Systems, Inc. **PERSONALLY OR BY OVERNIGHT DELIVERY WITH SIGNATURE CONFIRMATION ONLY** within seven (7) days of the date hereof, in accordance with R. 4:4-3 and R. 4:4-4, this being original process. **DELIVERY BY REGULAR MAIL AND CERTIFIED MAIL, RETURN RECEIPT REQUESTED, SHALL NOT CONSTITUTE EFFECTIVE SERVICE.**

B. The Plaintiff must file with the Court its proof of service of the pleadings of the Defendants no later than three days before the return date.

C. Defendants shall file and serve a written answer, an answering affidavit or a motion returnable on the return date to this Order to Show Cause and the relief

requested in the Verified Complaint, and proof of service of same within fifteen (15) days of service. The answer, answering affidavit or motion, as the case may be, must be filed with the Clerk of the Superior Court in Ocean County, and a courtesy copy of the papers must be sent directly to the chambers of Assignment Judge Marlene Lynch Ford by hand delivery or overnight carrier.

D. The Plaintiff must file and serve any written reply to the Defendants' Order to Show Cause opposition no later than three (3) days before the return date. The reply papers must be filed with the Clerk of the Superior Court in Ocean County, and a courtesy copy of the papers must be sent directly to the chambers of Assignment Judge Marlene Lynch Ford by hand delivery or overnight carrier.

E. If the Defendants do not file and serve opposition to this Order to Show Cause, the application will be decided on the papers on the return date and relief may be granted by default, provided that the Plaintiff files a proof of service and a proposed form of order at least three (3) days prior to the return date.

F. If the Plaintiff has not already done so, a proposed form of order addressing the relief sought on the return date (along with a self-addressed return envelope with return address and postage) must be submitted to the Court no later than three (3) days before the return date.

G. Defendants take notice that the Plaintiff has filed a lawsuit against you in the Superior Court of New Jersey. The Verified Complaint attached to this Order to Show Cause states the basis of the lawsuit. If you dispute this Complaint, you or your attorney must file a written answer, an answering affidavit or a motion returnable on the return date to the Order to Show Cause and Proof of Service before the return date of the Order to

Show Cause.

H. These documents must be filed with the Clerk of the Superior Court in Ocean County. A directory of these offices is available in the Civil Division Management Office in the county listed above and online at:

http://www.judiciary.state.nj.us/prose/10153_deptyclerklawref.pdf

Include a \$175.00 filing fee payable to "Treasurer, State of New Jersey". You must also send a copy of your answer, answering affidavit or motion to the Plaintiff's attorney whose name and address appear above or to the Plaintiff if no attorney is named above. A telephone call will not protect your rights; you must file and serve your answer, answering affidavit or motion with the fee or judgment may be entered against you by default.

I. If you cannot afford an attorney, you may call the Legal Services office in the county in which you live or the Legal Services of New Jersey Statewide Hotline at 1-888-LSNJ-LAW (1-888-576-5529). If you do not have an attorney and are not eligible for free legal assistance, you may obtain a referral to an attorney by calling one of the Lawyer Referral Services. A directory with contact information for local Legal Services Offices and Lawyer Referral Services is available in the Civil Division Management Office in the county listed above and online at the following website:

http://www.judiciary.state.nj.us/prose/10153_deptyclerklawref.pdf

J. The Court will entertain argument, but not testimony, on the return date of the Order to Show Cause, unless the Court and parties are advised to the contrary no later than three (3) days before the return date, or no opposition to the Order to Show Cause is filed.

K. ABSENT A SHOWING OF EXCEPTIONAL AND UNFORESEEN

**CIRCUMSTANCES, THE COURT WILL NOT ENTERTAIN ADJOURNMENT REQUESTS
RECEIVED ON THE DAY BEFORE THE RETURN DATE.**

J.S.C.

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<p>TOWNSHIP OF TOMS RIVER,</p> <p style="text-align: center;">Plaintiff,</p> <p>v.</p> <p>JOHN P. HERLIHY; USBANKCUSFOR PRO CAPITAL I, LLC; TTLBL, LLC; MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.</p> <p style="text-align: center;">Defendants.</p>	<p>SUPERIOR COURT OF NEW JERSEY LAW DIVISION: OCEAN COUNTY</p> <p>DOCKET NO. OCN-L-</p> <p style="text-align: center;">CIVIL ACTION (In Condemnation)</p> <p style="text-align: center;">ORDER FOR FINAL JUDGMENT AND APPOINTING COMMISSIONERS</p>
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THIS MATTER coming on to be heard on Verified Complaint and Order to Show Cause, upon application of Paul R. Rizzo, Esq., attorney for Plaintiff, and no reason appearing to the contrary,

IT IS ON THIS _____ day of _____, 2022

ORDERED and ADJUDGED that:

1. A final judgment is hereby entered that the State of New Jersey is authorized to and has duly exercised its power of eminent domain as to the property and rights described and depicted in the Verified Complaint

2. _____ of _____

(Presiding Commissioner) (Address)

(Phone)

(Email)

_____ of _____
(Address)

(Phone)

(Email)

_____ of _____
(Address)

(Phone)

(Email)

selected in accordance with N.J.S.A. 20:3-12(b) are hereby appointed Commissioners to examine the land and premises set forth in the Verified Complaint of Plaintiff, Township of Toms River, for public purposes as stated therein, and to fix compensation to be paid for the rights and interests acquired under the Declaration of Taking, including damages, if any, to any remaining property resulting from said acquisition as of the date of the commencement of this action, and to do whatever else the said Commissioners are by law authorized or required to do.

3. The attorney for the Plaintiff shall cause the parties to this action to be given ten (10) days notice, in writing, of the time and place when and where they will meet and proceed to execute their duties under this appointment by serving said notice pursuant to Rule 1:5; provided, however, that service upon Defendant whose whereabouts are unknown shall be made in the same manner as prescribed in the original Order to Show Cause in this action.

4. Said commissioners shall file their report with the Superior Court on or before the ____ day of _____, 2022.

5. In accordance with the reservations made by Plaintiff in paragraphs 7 and 8 of the Verified Complaint relating to issues of contamination or solid waste existing as of or prior to the date of vesting of title and possession pursuant to N.J.S.A. 20:3-19, Plaintiff may raise any such claims or any other claims relating thereto without being barred by the principles of *res judicata*, collateral estoppel and/or the Entire Controversy Doctrine. Defendant shall also retain the right to assert any and all defenses when and if such claims are raised, except for the defenses of *res judicata*, collateral estoppel and/or the Entire Controversy Doctrine premised upon this condemnation proceeding.

6. Failure to appear at the Commissioners' hearing, personally or through counsel, will preclude appeal from the Commissioners' report, which will then become final.

7. Plaintiff shall serve a copy of this Order upon the owner of record and all other parties appearing in this action, as well as upon the Commissioners herein appointed within ____ days of Plaintiff's receipt of a filed copy of this Final Judgment.

J.S.C.

OPPOSED _____
UNOPPOSED _____

Civil Case Information Statement

Case Details: OCEAN | Civil Part Docket# L-002050-22

Case Caption: TOWNSHIP OF TOMS RIV ER VS HERLIHY JOHN

Case Initiation Date: 09/16/2022

Attorney Name: PAUL R RIZZO

Firm Name: DI FRANCESCO BATEMAN

Address: 15 MOUNTAIN BLVD

WARREN NJ 070595686

Phone: 9087577800

Name of Party: PLAINTIFF : Township of Toms River

Name of Defendant's Primary Insurance Company
(if known): None

Case Type: CONDEMNATION

Document Type: Verified Complaint

Jury Demand: NONE

Is this a professional malpractice case? NO

Related cases pending: NO

If yes, list docket numbers:

Do you anticipate adding any parties (arising out of same transaction or occurrence)? NO

Does this case involve claims related to COVID-19? NO

Are sexual abuse claims alleged by: Township of Toms River? NO

THE INFORMATION PROVIDED ON THIS FORM CANNOT BE INTRODUCED INTO EVIDENCE

CASE CHARACTERISTICS FOR PURPOSES OF DETERMINING IF CASE IS APPROPRIATE FOR MEDIATION

Do parties have a current, past, or recurrent relationship? NO

If yes, is that relationship:

Does the statute governing this case provide for payment of fees by the losing party? NO

Use this space to alert the court to any special case characteristics that may warrant individual management or accelerated disposition:

Do you or your client need any disability accommodations? NO

If yes, please identify the requested accommodation:

Will an interpreter be needed? NO

If yes, for what language:

Please check off each applicable category: Putative Class Action? NO Title 59? NO Consumer Fraud? NO

I certify that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with *Rule* 1:38-7(b)

09/16/2022

Dated

/s/ PAUL R RIZZO

Signed

