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May 22, 2019

Dr. H. Fred Walker
Executive Director
Erie County Technical School
8500 Oliver Road
Erie, PA 16509

RE: Eminent Domain Procedure- Potential PennDOT Taking of
ECTS Property

Dear Dr. Walker:

We are writing today to address potential concerns regarding the Erie County Technical School (“ECTS”) and the planned Oliver Road roundabout construction project (the “Project”) of the Pennsylvania Department of Transportation (“PennDOT”). The issues surrounding this Project include the ownership of the ECTS property on Oliver Road (the “Property”), the action that each school district that comprises ECTS (the “Participating School Districts”) must take to authorize a property disposition, and the eminent domain procedure in general. Each of these issues will be addressed in turn.

I. Ownership of ECTS Property and Board Action

On April 15, 1983, the Participating School Districts purchased the Property from the Pennsylvania State Public School Building Authority and each Participating School District is vested with a proportional ownership of the Property pursuant to the 1983 Deed and subsequent actions to remove school districts from participation in ECTS’s programs. As such, ownership of the ECTS property is vested in each of the eleven (11) participating school districts and not ECTS itself. Thus, in order to sell or otherwise dispose of any portion of the Property, each Participating School District must receive approval from its own individual Board of School Directors as well as the ultimate approval of the ECTS Joint Operating Committee (“JOC”). Finally, if a portion of the Property is approved for sale, each Participating School District would receive a proportionate sale of the proceeds of such a sale.

II. Eminent Domain Procedure

On May 6, 2019, ECTS received a letter from Brian A. McNulty, Assistant District Executive for PennDOT, which stated the following:

In line with the [PennDOT's] responsibility to develop plans for highway improvements in your area, [PennDOT] employees or our consultants or contractors may need to enter your land in order to conduct surveys, engineering studies, soil exploration, or tests and/or soundings to gather information. This entry is authorized by the Pennsylvania Eminent Domain Code and may include the use of core drilling rigs and/or other equipment.

Subsequent to ECTS's receipt of this letter, PennDOT has agreed to postpone any entrance or drilling on the Property until a May 31, 2019 meeting regarding the Project. However, it is necessary to address the proper steps that PennDOT must follow if it choose to proceed with an eminent domain taking under Pennsylvania law. The procedure is as follows:

1. Prior to filing the declaration of taking, PennDOT has the right to enter the Property to survey and conduct tests on the property, pursuant to the provision of notice to ECTS. This notice was provided in the May 6, 2019 letter. *See* 26 Pa.C.S. §309.
2. To commence the process, PennDOT will file a declaration of taking in the Erie County Court of Common Pleas, which will identify the ECTS property it wishes to condemn, the purpose of the condemnation and the authorization for the condemnation, a statement of the nature of title acquired, a security bond, and the compensation that PennDOT will be providing to ECTS in exchange for the condemned property. *See* 26 Pa.C.S. §302; 303.
3. On the same day PennDOT files its declaration of taking, PennDOT will record a Notice of Condemnation in the Erie County Recorder of Deeds. *See* 26 Pa.C.S. §304.
4. Within thirty (30) days of filing the declaration of taking, PennDOT will provide ECTS, in writing, with notice of the filing and shall serve the same upon ECTS. *See* 26 Pa.C.S. §305.
5. Within thirty (30) days after being served notice of the declaration of taking by PennDOT, ECTS may file preliminary objections to the declaration of taking which are limited specifically to (i) the right of PennDOT to take the condemned property, (ii) the sufficiency of security, (iii) errors in the declaration of taking itself, and (iv) failure to properly follow the Code's procedure. *See* 26 Pa.C.S. §306.
6. If ECTS files preliminary objections, the Court of Common Pleas will hold a hearing on the same and will determine if ECTS objections have any merit. *See* 26 Pa.C.S. §306.
7. If preliminary objections are sustained, the condemnation is terminated. If they are overruled, PennDOT shall will likely attempt to pay ECTS and take possession of the property. *See* 26 Pa.C.S. §307.

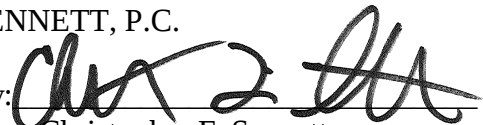
8. If preliminary objections are overruled, the Participating School Districts must determine with their individual Board of Directors whether the compensation provided by PennDOT is fair for the taking. If the Participating School Districts determine that the compensation paid for the taking by PennDOT is inadequate, then they may request a hearing before the Court of Common Pleas of Erie County or a designated Board of View, on just compensation for the taking by PennDOT. See 26 Pa.C.S. §703
9. Prior to this hearing, ECTS and the Participating School Districts could acquire a second appraisal of the property that has been taken by PennDOT and use this as evidence in the proceeding to determine fair market value.
10. Once just compensation for the property has been determined (through the Court or otherwise), PennDOT will provide just compensation to all Participating School Districts and ECTS will turn the property over to PennDOT.

Please do let us know if you have any questions, thank you!

Very truly yours,

KNOX McLAUGHLIN GORNALL &
SENNETT, P.C.

By:


Christopher F. Sennett

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cc: John DiPlacido, JOC President