

---

TOWNSHIP OF READINGTON, a  
municipal 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

---

**POST-TRIAL BRIEF ON BEHALF OF SOLBERG AVIATION COMPANY**

---

Of Counsel:  
Laurence B. Orloff

On the Brief:  
Laurence B. Orloff  
Matthew T. Aslanian

ORLOFF, LOWENBACH, STIFELMAN  
& SIEGEL, P.A.  
A Professional Corporation  
101 Eisenhower Parkway - Suite 400  
Roseland, New Jersey 07068-1097  
(973) 622-6200  
Attorneys for Defendant  
Solberg Aviation Company

**TABLE OF CONTENTS**

	<b><u>PAGE</u></b>
INTRODUCTION .....	1
PROPOSED FINDINGS OF FACT.....	10
A. The Parties And The Airport.....	10
B. History Of Solberg Airport And Vision Of Thor Solberg, Sr.....	12
C. Efforts To Protect And Preserve The Airport After The Founder’s Death.....	14
D. The Linden Airport Episode.....	15
E. The First Threat Of Condemnation .....	16
F. Readington’s Refusal Through The 1980’s And 1990’s To Enact The ASZA Ordinance In Defiance Of State Law .....	18
G. Township Resolutions/Statements/Actions vs. Airport Expansion In Anticipation Of Solberg Master Plan And Continued Defiance Re ASZA Ordinance .....	30
H. Readington Learns Of The Conditional Approvals And Gears Up For Litigation To Stop Any Expansion .....	39
I. Preparation For Eminent Domain In 1999/2001 As The Solberg Master Plan Process Continues .....	52
J. Introduction And Passage Of Eminent Domain Ordinance In 2001 .....	59
K. The Uncompleted Environmental Assessment Process .....	59
L. The Contract to Sell the Airport Property to NJDOT .....	62
M. Readington Rescinds Eminent Domain Ordinance But Remains Vigilant Regarding Expansion of the Airport .....	63
N. The NJDOT-Solberg Deal Falls Through and Readington Resumes Its Anti-Expansion Activity.....	64
O. The Organized Scenario to Frighten the Public Into Approving the Taking of the Solberg Airport Property.....	69

P. The Bond Referendum Campaign.....	78
Q. The Acquisition/Condemnation Ordinances .....	85
R. The Condemnation Action and Declaration of Taking .....	86
S. The 2007 ASZA Ordinance.....	86
T. Continued Efforts By Readington to Frustrate Airport Improvement .....	87
U. Readington’s Fact Witnesses (Township Officials) Did Not Justify the Stated Purpose of the Taking.....	88
LEGAL ARGUMENT .....	119
POINT I.....	119
THE CONDEMNATION SHOULD BE SET ASIDE ON THE GROUND THAT THE STATED PUBLIC PURPOSE IS PRETEXTUAL .....	119
A. Introduction .....	119
B. The Appellate Division Rulings As to Preemption.....	120
C. The Appellate Division’s Ruling As To Pretext .....	121
D. The Authorities Regarding Pretext.....	124
E. Readington’s Purpose In Condemning Solberg Airport Is To Stifle It And Usurp State Authority .....	125
(1) Readington’s Alleged Purpose For Condemning The Airport Would Not Be Furthered By The Taking .....	125
(2) In Addition To Not Furthering The Stated Purposes, The Condemnation Has the Improper Purpose of Attempting to Secure Municipal Control Over An Aeronautical Facility And to Subvert NJDOT’s Ultimate Authority .....	128
(3) The Objective Context Of The Condemnation Reveals The Stated Purposes As Completely Pretextual, Disguising Readington’s True Purpose Of Controlling The Airport And Excluding The Exercise Of State And Federal Authority. ....	130

POINT II..... 135

THE CONDEMNATION SHOULD ALSO BE INVALIDATED  
BECAUSE READINGTON’S TAKING WAS ARBITRARY  
AND READINGTON HAS FAILED TO DEMONSTRATE, ON  
A BALANCING OF PUBLIC INTEREST AND PUBLIC POLICIES,  
THAT THE TAKING WAS "REASONABLE AND NECESSARY" ..... 135

A. Introduction ..... 135

B. Solberg Aviation Company Has Made Out  
A Prima Facie Showing of Arbitrariness ..... 136

C. Readington Failed To Prove That The Condemnation  
Was “Reasonable” ..... 136

D. Readington Has Also Failed To Prove, On The Balancing  
Of Interests Test, That The Condemnation Was “Necessary” ..... 165

E. The Amount Of Open Space Available To Readington Is  
Enormous, And Is In Fact Contributed To By The Airport  
Whether Taken Or Not ..... 165

F. Readington Has Failed To Demonstrate That The  
Condemnation Is “Necessary” As Part Of Its  
“Existing Plans For Continuation Of Its Greenways Plans” ..... 171

G. Readington Has Failed To Demonstrate That Any  
Legitimate Goals Could Not Be Achieved With A “Lesser Taking” ..... 172

CONCLUSION ..... 174

# **POST-TRIAL BRIEF ON BEHALF OF SOLBERG AVIATION COMPANY**

[Emphasis Ours Unless Otherwise Noted]

## **INTRODUCTION**

The enclosed represents Proposed Findings of Fact and Legal Argument on behalf of Solberg Aviation Company in connection with the lengthy trial recently completed before the Court.

This action was commenced in September, 2006, with the filing by Readington Township of its Eminent Domain Complaint, followed shortly thereafter by the filing of a Declaration of Taking, acquiring, through condemnation, fee simple title to all of the lots and blocks existing within approximately 726 acres comprising the Solberg Airport property -- except for approximately 102 acres, characterized as the “airport facilities area” and as to which Readington has acquired development rights for non-airport use, as well as the right to develop the 102 acres beyond certain detailed specifications (e.g., number of seats in restaurant, etc.) as set forth in the Declaration of Taking [R-1].

After the trial court had granted summary judgment to Readington and denied summary judgment to Solberg Aviation Company, the Appellate Division reversed the former ruling on appeal, vacated the summary judgment in favor of Readington, and remanded to the trial court with a variety of guidance, directions, legal analysis and commentary, *Readington Twp. v. Solberg Aviation Company*, 409 N.J. Super. 282 (App. Div. 2009).

In this remand proceeding, Readington presented several minor witnesses, some eight major fact witnesses (Nagle, Allen, Auriemma, Shamey, Gatti, Thatcher, Muir and Gimello) and four expert witnesses (Souza, Conway, Sullivan and Golaszewski).

In addition to extensive cross-examination of many of Readington's fact witnesses, including its own principal, Suzy Nagle, Solberg Aviation Company presented four fact witnesses (Thor Solberg, Vita Mekovetz (by subpoena), Anthony Cicatiello (by subpoena), and Ronald Monaco (by subpoena)), and seven expert witnesses (Ritter, Feldman, Greene, A'Hara, Yap, Kiernan, and Perkins).

By way of rebuttal, Readington briefly examined Mr. Monaco, recalled Mr. Souza, and produced on the last day of trial Victoria Jenkins, a DEP employee.

Several hundred exhibits were marked in evidence during the course of the trial.

The Appellate Division, in reversing the grant of summary judgment, discussed at some length the interplay between Federal legislation and the role of the FAA in aviation and airport regulation; the role of the State of New Jersey through the Department of Transportation (NJDOT) and certain state legislation, in particular, the Airport Safety Zoning Act (ASZA); and concluded, citing prior case law, that the municipality's influence, in terms of local land use control over airports, was limited. As the Appellate Division explained, while Federal law, giving the FAA exclusive control of flight routes and schedules, did not preempt state and local jurisdiction with regard to the location and operation of airports, New Jersey State law is to the contrary, and, more

particularly, the municipality's ability to regulate land use is substantially constrained and the State's power is preeminent, even though the State is to give some consideration to local zoning ordinances when acting on an application to alter an airport facility. Moreover, as the Appellate Division noted, the local approach is to be rejected when it conflicts with state statutes or stands as an obstacle to a state policy.

In this case, the evidence presented to the Court should lead to the conclusion that Solberg Airport, prior to the taking, consisted, for many years, of the assemblage of acreage that totaled no less than 726 acres. That assemblage was recognized repeatedly not only in the Master Records of the FAA and NJDOT (Form 5010) but also in various other references, including but not limited to NJDOT's designation itself, when it contracted in 2002 to purchase the airport property, and also various other references by Readington and/or its experts.

In view of the foregoing principles, as applied to the evidence presented, Readington's effort to permanently constrain the airport to 102 acres, and its runway to a supposed 3,735 feet, by condemning in fee the balance, cannot stand.

The Appellate Division, recognizing the issues raised in the case before it, said, inter alia, the following:

(a) With respect to that portion of the airport property used actually (or, presumably, potentially) for direct airport purposes, i.e., runways, hangars, accessory buildings, taxiways, etc., Readington had no right to take even development rights that would in any way restrict the use of those facilities for the alleged purpose of preserving open space, inasmuch as such a taking would impinge upon the State's

powers; and, further, given the airport's limited capacity to remain economically competitive in its current status and configuration, it would potentially interfere with the airport's economic viability; and it would not in any event preserve open space since the "airport facilities area" is not open space;

(b) That part of the airport property which comprises (or potentially would comprise) an air safety zone, would likewise be limited in that development within the air safety zone would also be essentially open space and not likely filled with structural improvements; and

(c) To the extent that any part of the Solberg Airport property would be outside of any actual (or potential) "airport facilities area" or air safety zone, then and in such event -- subject to an examination of competing policies and the pretext issue -- Readington might conceivably but not necessarily be justified in acquiring same under the rationale of *Mt. Laurel Twp. v. MiPro Homes, L.L.C.*, 379 N.J. Super. 358, aff'd 188 N.J. 531 (2006), cert. denied 522 U.S. 940 (2007).

The Appellate Division discussed two additional issues for this Court to determine on remand:

(i) Whether the entire taking was not for the purpose of acquiring open space but rather that open space was in fact a pretext for a taking that was designed to control the extent of airport operations and to preclude and prevent the

expansion of the airport, with the likely ultimate result of destroying its already fragile economic viability;<sup>1</sup> and

(ii) The virtually conceded public purpose of the airport would also have to be weighed against the asserted public purpose of taking the airport property for open space, with the Court on remand being directed to balance the substantial public benefit alleged to be provided by the airport as compared to the alleged public benefit of Readington taking additional "open space" -- the issue of arbitrariness, i.e., whether the taking was "reasonable and necessary" under the circumstances.

Solberg Aviation Company's position with respect to these issues may conveniently be summarized as follows, as set forth in greater detail in the proposed Findings and Argument herein:

A. Pretext: The claim by Readington that the condemnation was for the purpose of preserving and protecting open space, and in furtherance of Readington's open space goals, is totally pretextual. While, theoretically, the prevention of improvements of any kind might be said to preserve or protect open space, that had nothing to do with Readington's statements, actions, and purposes, as evidenced by its conduct over more than 20 years preceding this lawsuit and the Declaration of Taking. The evidence is overwhelming that Readington's concern, indeed obsession, on an ongoing basis, was that if the airport expanded at all, and the runway was lengthened,

---

<sup>1</sup> In this respect, the Appellate Division reviewed the record evidence before it as suggesting an "ulterior purpose" or "improper purpose" on the part of Readington, pointing out that much of the evidence in the record suggested bad faith on the part of Readington and "impugned the validity" of the condemnation.

Readington and its citizens would be prejudiced and Readington would lose control over the situation.

The evidence is also clear that Readington was not realistically concerned about any potential use of the Solberg Airport property other than as an airport. While it now pretends that its condemnation was connected in some fashion to the prevention of suburban sprawl or housing developments, that concern is totally disingenuous and fabricated. Readington, as of the time of the taking, and even more substantially thereafter, had in place what may well amount to the most restrictive zoning in the state -- at least with respect to the creation and preservation of open space. More specifically, its AR zoning of virtually all (and then, as of 2009, all) of the Solberg Airport property, provided for extraordinary open space set-asides with mandatory cluster provisions, which its own planner and public officials touted as preserving open space. Mayor Shamey's public statement in earlier years that there would never be extensive residential development on the Solberg site was an accurate description of Readington's position, and its zoning ordinances at all times relevant supported that statement.

As a result, and based upon the case law, the improper purpose of the taking invalidates it in its entirety.

Nor can Readington take refuge in its claim that one of the stated purposes in the taking ordinance is to "preserve the airport." While Readington might well have lived with an airport of the exact size and shape as that currently in place if the owners could sustain it indefinitely, it was aware when it engaged in the taking, from its own expert, that the future of the airport operation was questionable, and that the airport

would likely not be economically viable unless it was able to expand and build a longer runway. Moreover, despite claiming that it wanted to "preserve" the airport, Readington designed the scope of its taking (i.e., 102 acres with the existing runway in place and the likelihood of forced contraction rather than precluded expansion) in a manner that virtually guaranteed that no public funding would likely be available to assist the airport because it did not have sufficient protection zones (e.g., runway safety areas), and that if any possible public funding were to be made available the runway would likely have to be shortened from even the 3,735 feet that was supposedly being allowed.

In short, not only was the supposed taking for open space purposes a pretext, but the taking itself was designed to and would in any event have the likely consequence of putting the airport out of business -- tomorrow if not sooner.

B. Absence of Acceptable Public Purpose Re "Airport Facilities Area": The evidence demonstrates, further, as the Appellate Division has already opined, that the taking of development rights to the 102 acres -- colloquially designated as the "airport facilities area" -- is not in furtherance of an accepted public purpose, even if the taking was not pretextual. The proofs before the Court do not demonstrate any "open space"-related purpose or any other public purpose, other than the purpose of constraining and limiting the airport owners and operators, a purpose that is not delegated to the municipality under state law.

C. Absence of Acceptable Public Purpose Re Air Safety Zone: The proofs also more than support the further conclusion of the Appellate Division, which should be incorporated into any findings and conclusions of this Court, that

Readington is not entitled to take fee title to those lands that are within the air safety zone.

In fact, Readington is not entitled to take those lands at all, except arguably to the extent of non-airport-related development rights.

With respect to fee title to the air safety zone acreage, the Appellate Division has expressed its reasons as to why that taking should not be permitted. With respect to any taking of the air safety zone areas, that should not in any event be allowed at this stage because of both the pretext conclusion and, also, because the ultimate design and layout of the air safety zone is dependent upon the final design and layout of an approved and expanded airport, an event which has yet to occur.

D. The Arbitrariness Issue: Finally, in determining the arbitrariness issue, Solberg has more than made out a prima facie case of arbitrariness, thereby shifting the burden to Readington. Readington has failed to satisfy that burden. It has failed to demonstrate that the taking is “reasonable **and** necessary” for the protection and enhancement of open space and related ecological considerations, even as to the presently undefined acreage that may turn out to be beyond the footprint of the ultimate airport facilities layout and air safety zone layout.

When comparing, under the circumstances of this case, the robust state aviation policy -- part of national and regional aviation policy-- furthering the protection of, and need for, general aviation airports, and Solberg's actual and potential role in that picture, against the salutary goals of open space, the scale is tipped heavily on the side of Solberg Aviation Company. This is so for a number of reasons, including the

extensive open space and farmland preservation acquisitions that have already occurred in Readington, the additional open space assured by virtue of its highly restrictive zoning, and the contribution that the airport would make -- in any rational setting -- to the continuation of large amounts of open space and wildlife stewardship.

E. Potential Retention of Non-Airport-Related Rights: What Readington has danced around in connection with this taking, and what it should be asked to if not required to recognize, is that its legitimate "local control" interests are more than protected if it secures from Solberg Aviation Company retention of the right to develop the airport property for non-airport-related uses.

As testified to by the Solberg witnesses, Thor Solberg, Jr., in particular, Solberg Aviation Company is and has been prepared, for fair consideration, to allow Readington to retain any rights to develop the Solberg Airport property for uses other than those related to the ownership and operation of a general aviation airport. This is the dream and vision of Thor Solberg, Sr., which his family is determined to honor to the best of their ability.

Since Readington has already assumed ownership of the 726 acres, subject obviously to the results of Solberg's challenge in this case, this understandable goal -- of preserving open space through the retention of non-airport development rights -- can be achieved for the benefit of all parties. More specifically, Readington can then justify limiting its taking to what might have been a permissible objective but for the existence of the airport -- i.e., to prevent housing or other substantial development -- while at the same time allowing the owners and operators of the airport serving a public benefit to

achieve, or at least attempt to achieve, their goal and vision of a long-term functioning, reasonably profitable airport, the scope and extent of which would obviously be subject to regulatory approvals -- but not that of Readington.

Such a resolution can be achieved by the Court by invalidating the taking as to all of the acreage except as to non-airport related development rights, i.e., ordering Readington to release what it took except for those rights.

Short of such a resolution, the entire taking should be invalidated for the various reasons summarized above and set forth in greater detail herein, supported by the proofs submitted.

### **PROPOSED FINDINGS OF FACT**

#### **A. The Parties And The Airport**

1. Solberg Aviation Company (“Solberg Aviation”) is a partnership organized under the laws of the State of New Jersey, which owns land in Readington Township (“Readington”), Hunterdon County, New Jersey, comprising, among other blocks and lots 726 acres known as, Block 48 Lot 23, Block 55, Lot 33, Block 56, Lots 1, 3, 6 & 8, and Block 67, Lot 2. (3T 51:4-52:8) [R-14A].
2. Solberg-Hunterdon Airport (“Solberg Airport”) operates on land owned by Solberg Aviation Company. (3T 51:4-52:8) [R-14A].
3. Solberg Aviation Co. Inc. is a corporation formed under the laws of the State of New Jersey, with the sole purpose of acting as fixed base operator for Solberg Airport. (3T 51:4-52:8) [R-14A].

4. The Solberg Airport property has consistently been described as comprising in excess of 700 acres, both in Master Records (Form 5010) [R-224], by NJDOT in its 2002 Agreement with Solberg Aviation Company [R-97], in one or more expert reports by Readington's aviation consultant, and at times even by one or more Readington officials.
5. Blocks and lots outside of the 102 acres-- the only acreage not taken in fee by Readington-- have for years housed and hosted airport-related activities. (3T 19:11-30:21).
6. A VORTAC is located on Block 56, Lot 3, within the area of the map marked as R-6 that is colored "mauve", which the map indicates is 108.57 acres. [R-6] (3T 20:14-23:16).
7. Hot air balloon activity also takes place on the portion of Block 56, Lot 3, that falls outside of the existing air safety zone on lands taken in fee by Readington. (3T 23: 21-26:10).
8. Several blimps also use, on a regular basis, the existing area outside the air safety zone on lands taken by Readington, on Block 56, Lot 3, for purposes of mooring, because Solberg Airport is one of the few airports in the region that could accommodate airships and blimps because they need so much space. (3T 26:11-27:6, 3T 29:1-11). In addition to Block 56, Lot 3, blimps also use, for purposes of mooring, areas of Block 67, Lot 2, on lands taken by Readington. (3T 27:14-20).

**B. History Of Solberg Airport And  
Vision Of Thor Solberg, Sr.**

9. Solberg Airport was created by Thor Solberg, Sr. and officially designated a “commercial” airport by Readington in 1941. (44T 13:18-14:11).
10. Thor Solberg, Sr. had been an aviation enthusiast since the age of nine, around the turn of the century. (44T 10:23-11:5). He moved to the United States in 1925 and continued his focus on aviation by become credentialed as a pilot in the United States. (44T 11:8-19). He flew up and down the East Coast and to train himself for what would become his historic flight. (44T 11:23-12:23). In 1935, he set out to fly from America to Norway, by flying through Canada, New Finland, Greenland, and Iceland in an amphibious airplane. (*Id.*)
11. For that historic flight, the King of Norway knighted Thor Solberg, Sr., and the plane that he used to make the historic voyage sits in a museum in Norway. (44T 12:23-13:3).
12. Thor Solberg, Sr., was designated a Great American by President Franklin D. Roosevelt for his achievements and contributions to the security of the United States in the years leading up to and during World War II. [R-97].
13. As part of his historic dedication to aviation, Mr. Solberg began acquiring parcels of real estate to sew together into what he envisioned as an inter-modal transportation facility. (44T 13:21-14:11). He settled on Hunterdon County because of its location and topography, and at one point had assembled over

- 1,000 acres that spanned from the present airport site out to Route 22. (44T 14:12-15:14). Ultimately he reduced the land he held to the core 700-plus acres on which the current airport sits. (44T 15:15-22).
14. Thor Solberg, Jr. joined his father in his enthusiasm for aviation, as early as his teenage years. (44T 15:23-16:4). Their shared love of aviation led to discussions of Thor Sr.'s vision for ensuring that Solberg Airport be preserved for the vital purpose of satisfying general aviation needs in the region and generally. (44T 16:2-20).
  15. Thor Sr. was diagnosed with a terminal illness in 1966, and died a few months later. (44T 16:23-24). Thor Jr. was in graduate school at the time of his father's illness, but upon receiving the call from Norway from his father, he flew there to be by his side. (44T 17:3-17). Thor Sr. confided to his son that he feared he would not be able to live out his dream for the airport, and asked his son, not only to take care of his mother and sisters, but also to carry on his vision for the airport. (44T 17:13-18:16).
  16. Thor Jr. promised his father that he and his two sisters would endeavor to fulfill and honor his father's vision and that mandate has guided and influenced the three of them ever since, and to this day. Upon the death of his father, the responsibility for continuing what Mr. Solberg had commenced -- spending "twenty-five years of their life holding together this [Solberg] airport asset so that it could fulfill its role in the aviation system" -- passed to Thor Solberg and his sisters. (43T 18:12-19:8).

17. During Mr. Solberg's lifetime, and continuing to the present, the Solberg family has ensured that the 726 acres currently the subject of this condemnation, were never offered for sale or used for any developable purpose other than as an airport. (43T 19:6-20:14). The property has never been in danger of being turned over to residential developers by the Solbergs. (43T 20:4-14). Those 726 acres -- in the hands of the Solbergs -- are dedicated to being an airport. (*Id.*)
18. In fact, in order to preserve the 726 acres intact as an airport, the Solbergs have had to sell off other property that they owned. (43T 20:15-21:25). Despite Mr. Solberg's passing, which caused significant additional expenses to accrue by virtue of estate taxes and the loss of income derived from Mr. Solberg's activities selling airplanes, the Solberg family was deliberate in ensuring that only land not needed for the airport was sold, so that the airport could be maintained. (*Id.*)

**C. Efforts To Protect And Preserve The  
Airport After The Founder's Death**

19. After Thor Sr.'s death, issues arose regarding the potential dismantling of the airport property to satisfy tax regulations. Thor Jr. persuaded Congresswoman Millicent Fenwick to help temper the IRS's attempts to force the sale of the airport property. (44T 21:22-22:22). Thor presented the Congresswoman with a 100-page plan to convince her of the value of the airport qua airport, and she was apparently convinced because she helped the Solbergs. Ultimately, after a

- deliberate process of consolidation and liquidation, including the sale of other properties that did not comprise the 700+ acre airport, the Solbergs were able to satisfy the debts left by their father's passing and, at the same time, preserve the primary piece of the legacy: Solberg Airport's prime 726+ acres. (*Id.*)
20. After the Solbergs were able to satisfy those financial obligations, in the 1980s they turned to considering how to improve the airport and its functionality. (*Id.*)
21. The Solbergs went about trying to improve the airport in the 1980s. Shortly after the passage of the Airport Safety Zoning Act (ASZA) in 1983, the Solbergs applied for and received grant funding from the NJDOT to pave the entire licensed length of the main runway, 3735 feet. Previously, only 1800 feet of the main runway had been paved. (44T 24:2-25:17).
22. After approval for construction, Readington thereafter issued a stop work order and said it would not permit paving the main runway beyond 3,000 feet. (*Id.*) The Solbergs, therefore, were only permitted to pave the main runway to the length of 3,000 feet, rather than its full licensed length of 3,735 feet. (44T 24:2-25:17).

#### **D. The Linden Airport Episode**

23. In the late 1980s, Linden Airport considered shutting down to make space for commercial and retail development. As part of that process, the airport was obligated to attempt to find alternative airports for those planes based at Linden. Solberg Airport was considered by Linden Airport, the Federal

- Aviation Administration (FAA), and the New Jersey Department of Transportation (NJDOT), as an alternative to absorb some of the aircraft that were based at Linden Airport. (44T 22:24-24:1). It was decided that Solberg Airport would be a good site to accommodate Linden Airport traffic, and Solberg airport was officially designated as a replacement site. (3T 44:11-21).
24. If Solberg Airport were to take over traffic from Linden Airport, it was envisioned that Solberg Airport would have to make improvements, up to and including paving the remaining 735 feet of the licensed length of the main runway. (44T 25:18-26:9).
25. Readington opposed Solberg Airport assuming any additional based aircraft or air traffic as being part of a deal in the closing of Linden Airport. (3T 44:11-45:6).

#### **E. The First Threat Of Condemnation**

26. In the summer of 1990, Lorraine Solberg, Suzanne Solberg Nagle, and Thor Solberg attended a meeting with representatives of the Township of Readington (“1990 Meeting”). (44T 26:4-9). Representatives of the Township who attended the 1990 Meeting included the Township attorney, William Savo, Esq. and its mayor, Mr. Mirota, as well as an aviation planner working for the Township. (44T 27:9-17).
27. At the 1990 Meeting, the Township expressly threatened to condemn Solberg Airport property for the purpose of putting the airport out of business. (44T 29:1-5)

28. At the meeting in the summer of 1990, the Township expressly threatened to condemn Solberg Airport, stating no legitimate public purpose. The only purpose from context and express words was to put the airport out of business and prevent its expanding to meet demand to accommodate aircraft that require longer runways for safe operation. (44T 27:18-28:11, 31:8-34:15)

29. The following colloquy took place during the 1990 Meeting:

SUZY NAGLE: How much of Readington do you think is the same as it was fifty years ago?

WILLIAM SAVO: Not a lot.

SUZY NAGLE: So why do you think -- how much of Readington do you think is the same as it was fifty years ago?

MR. SPEAKER: Very little.

SUZY NAGLE: So why do you think Solberg Airport has --

WILLIAM SAVO: We're not saying it should stay exactly the same. We are saying that the Township has a vital interest in planning what happens there.

THOR SOLBERG: We say the same.

WILLIAM SAVO: And it has a vital interest in what happens in the future. And our only ability because -- you know -- we tried to talk to you when we were -- about the Linden situation, and -- you know. And we find -- find out there's discussions with the FAA after Richard talked to them -- you know. We thought we were gonna talk, and you're just moving ahead. That's fine. You have a right to do that. You have to understand the township also has a right to have a say in what happens.

THOR SOLBERG: But -- but never have we done anything that put the Township's interest at jeopardy, at risk. But what you're doing is putting my interest at risk all the time.

WILLIAM SAVO: No. Not at all. Not at all. Because --

**THOR SOLBERG: -- you're taking away my livelihood.**

WILLIAM SAVO: No, we're not.

MR. SPEAKER: Not necessarily.

**THOR SOLBERG:** What do you mean not nec -- you want to take the land.

**WILLIAM SAVO:** We haven't done that yet.

**THOR SOLBERG:** It is our land. You want to take our land

(Inaudible.)

MR. SPEAKER: -- our whole --

**WILLIAM SAVO:** Let me tell you what our options are. We could condemn it tomorrow, right?

**MR. SPEAKER:** Right.

**WILLIAM SAVO:** And just enough to put the airport out of business, if we choose to do that. No one said (inaudible)." (44T 31:16-34:17).

30. Thus, Readington threatened to condemn Solberg Airport lands as early as 1990 for the purpose of preventing airport expansion. (44T 31:16-34:17).

**F. Readington's Refusal Through The 1980's  
And 1990's To Enact The ASZA Ordinance  
In Defiance Of State Law**

31. New Jersey passed an Air Safety and Hazardous Zoning Act in 1983, which was later renamed the Air Safety and Zoning Act ("ASZA"), N.J.S.A. 6:1-80.
32. The ASZA required municipalities housing airports to adopt a zoning ordinance incorporating the standards promulgated by the Commissioner of NJDOT. N.J.S.A. 6:1-85.
33. Readington refused to adopt an ordinance, as required by the ASZA, incorporating the standards promulgated by the Commissioner, for approximately 24 years, between the enactment of the ASZA in 1983 and the passage of a purportedly compliant ordinance in 2007, after the instant condemnation had been filed and Readington had acquired fee title to all but

102 acres of the Solberg Airport property by its Declaration of Taking.

[R-223].

34. On or about May 13, 1986, NJDOT advised Readington that “building permits have been issued in direct violation of the Rule” promulgated by NJDOT pursuant to the ASZA. [D-11].
35. On or about July 7, 1986, Readington township attorney William B. Savo petitioned NJDOT for blanket exemption from the ASZA for Readington. [D-12]. On or about July 14, 1986, NJDOT denied Readington’s request for exemption and informed Readington that exemptions must take place by individual application by property owners, pursuant to N.J.A.C. 16:62. [D-12].
36. On or about July 21, 1986, Mr. Savo’s colleague, Cheryl Oberdorfer, Esq., contacted NJDOT to follow up on the Commissioner’s denial of Readington’s exemption request. [D-13]; [D-26]. Ms. Oberdorfer reported to Readington officials that there is no provision in the law for exemption for a municipality unless it is within a NY/NJ Port Authority district, which Readington was not. (*Id.*) Ms. Oberdorfer further advised Readington officials that “based upon the information obtained from [NJDOT official] Catherine Nickolaisen, it is evident that no municipality will be given an exemption under the Air Safety and Hazardous Zoning Act.” (*Id.*)
37. On or about October 29, 1986, NJDOT reiterated to Readington the need to adopt an ASZA ordinance. [D-14]. NJDOT made clear that the deadline for adopting the ordinance had passed, that ample time had been provided for its

- adoption, and that Readington was obligated to provide a copy of its proposed ordinance to the Division of Aeronautics. [D-14].
38. On or about November 4, 1986, Readington’s Township Clerk sent a proposed ASZA ordinance to the Division of Aeronautics . [D-15; D-16\*]. The Clerk advised the Division that the ordinance was “proposed to Readington Township Committee at its regular meeting held November 3, 1986,” and further asserted that the “ordinance is under careful consideration and will be placed on the agenda for adoption at the regular meeting to be held November 17.” (*Id.*) No such ordinance was in fact adopted at that time.
39. Readington’s aforesaid draft ASZA ordinance submitted to NJDOT (“1986 Ordinance”) would have recognized that Solberg Airport was not restricted to 102 acres, but rather encompassed that land “within the lot boundaries occupied on the date of this ordinance.” [D-15, p. 2, § 13.3.1 “Uses permitted by right”] The 1986 Ordinance would have set up **three** runway subzones because there was a second cross-wind runway at the time in 1986. [D-15].
40. On January 5, 1987, NJDOT advised Readington that the ordinance that had been submitted was acceptable and compliant with the ASZA regulations, N.J.A.C. 16:62. [D-17; D-18\*]. The NJDOT principal engineer also advised Readington to forward a copy of the ordinance to his office for review upon adoption, and offered assistance with any questions Readington might have. (*Id.*)

41. As of March 20, 1987, Readington had not adopted the appropriate ordinance to bring it into compliance with ASZA. [D-19]. Readington therefore believed at that point the absence of an ordinance allowed it to issue various building permits on properties that could otherwise have been restricted by the ordinance. [*Id.*]
42. Readington continued to maintain its opposition to the ASZA, and organized community opposition as well as political lobbying to that effect. [D-20]. In a letter dated May 11, 1987, received by Solberg Aviation, but ostensibly sent to the entirety of the Township of Readington, the Mayor of the Township asserted that the Township Committee “has opposed the Airport Hazard Zone designation” and made clear that the Township had “refused to rezone the area for commercial use and [had] instructed our attorney to meet with other municipalities to coordinate legal action on the homeowner’s behalf.” [D-20].
43. On or about July 27, 1987, NJDOT once again communicated with Readington regarding the adoption of an ASZA ordinance. [D-22] In that letter, NJDOT attempted to make it easier for Readington to enact an ordinance compliant with ASZA by permitting the Township to “adopt by reference” such an ordinance. NJDOT noted that “This should reduce the time and effort on your part to enact the appropriate local ordinance in your municipality which would bring you into compliance with the Air Safety and Hazardous Zoning Act of 1983 pursuant to N.J.A.C. 16:62, et seq.” [D-22] NJDOT enclosed a copy of Chapter 62 of the New Jersey Administrative Code. (*Id.*)

44. Readington's opposition to the ASZA ordinance was supposedly grounded in its belief that it was improper for NJDOT to "usurp" Readington's zoning powers and that Readington's prerogatives should take precedence over those of the State. [D-24].
45. Readington did not enact an ASZA ordinance at that time, or at any time for the ensuing 20+ years, up to 2007. [R-223].
46. In the years following Readington's refusal in the 1980s to adopt an ordinance to comply with ASZA, NJDOT proposed revisions to the regulations promulgated pursuant to that Act. [D-28\*]. Readington used the proposed revisions as yet another opportunity to voice its opposition to the Act in general, and opposed the new revisions also. [*Id.*]
47. Readington offered several bases for its opposition to the ASZA, making clear that it was "opposed to defining all pre-existing structures within the clear zone as either nonconforming or conditional uses and objects to the implicit designation of an airport as a conditional or conforming use." [D-28\*].
48. Readington's January 4, 1989, letter opposing ASZA, very specifically grounded its opposition on the claim that the regulations, and the statutes pursuant to which it was they were promulgated, were "an unconstitutional usurpation of municipal zoning powers" and further elaborated on its opposition at pages 2-3 of that letter. [D-28\*].
49. On or about February 27, 1989, the Township attorney forwarded to Readington officials a letter proposing the hiring of a lobbyist to fight the

ASZA. [D-30]. Several months later, the same Township attorney forwarded to the Readington Township Committee a proposal for “public strategies/impact” to be discussed at the Township’s next meeting. [D-34]. The proposal was intended for the purposes of retaining a lobbyist to “either amend or repeal the ‘air safety and hazardous zoning act’ of 1983 to provide that the municipality shall have the power to control airport development.” [D-34 at p. 2].

50. NJDOT published amendments to the ASZA in May, 1989, which became effective upon publication. Shortly after the effective date of the revised ASZA regulations, NJDOT sent a letter to mayors, including that of Readington, underlining that NJDOT intended “to enforce compliance vigorously.” [D-32\*].
51. NJDOT transmitted a list of examples of what it considered “aviation facilities” in connection with the ASZA regulations, which it believed would be subject to the approval of the Commissioner. [D-32\* at 2.]. NJDOT considered as aviation facilities the following, among other things: runways, taxiways, tiedown areas, hangers, air navigation and communication facilities including radar, weather reporting equipment, visual and electronic approaching and root aids, fire and rescue equipment and facilities, as well as operations buildings, storage buildings, parking facilities, security facilities, and maintenance facilities. [*Id.*]. The Solberg Airport property has such an air

navigation structure in the form of the VORTAC located adjacent to the crosswind runway. (3T 19:14-23:1) [R-6].

52. In the same document, NJDOT reiterated its position that airports must be classified as conforming uses in ordinances adopted by municipalities pursuant to ASZA. In commenting on the proposed changes, NJDOT noted that “these changes have not affected the zoning of the airport, itself. The previous provisions of N.J.A.C. 16:62-2.1e, still in effect, require that municipalities refrain from classifying airports as nonconforming land uses. Airports must be classified as permitted uses upon which conditions may be placed, provided that all aviation facilities are accepted uses subject to the approval of the Commissioner.” [D-32\* at p. 4].
53. In September 1989, NJDOT advised Readington with respect to the runway length at Solberg Airport. The letter was in response to a request by Readington that NJDOT “let you know exactly what the length of runway 4/22 at Solberg airport would be after the completion of the current construction project.” NJDOT advised that the runway length would be 3735 feet. The letter from NJDOT, signed on behalf of the Acting Director of the Division of Aeronautics, noted that there would appropriately be additional paved areas at the end of each side of the runway “to enhance safety; these areas are not considered part of the runway since they will be outside of the marked runway threshold.” The anticipated project, according to NJDOT, contemplated that

the “paved length is expected to be 4040 feet with 305 feet to be marked as over-run and not included in the runway length.” [D-38\*]

54. Readington was not satisfied with NJDOT’s response. [D-39\*]. Readington’s attorney advised NJDOT of its concerns with respect to the length of the runway; noted that Readington’s question concerned “verification of the licensed and approved length of the ‘runway’,” and that while plans indicated the length of the runway would be 4040 feet, the instrument approach procedures manual shows the length of runway to be 3735 feet. The attorney further requested verification that Solberg Airport had not requested an extension or modification of the approved length of the runway and that the plans that had been submitted were in accordance with the length of the runway licensed by NJDOT. [D-39\*].

55. Also in September, 1989, NJDOT sent a follow-up letter directly to the Mayor of Readington “regarding the enforcement of the Air Safety and Hazardous Zoning rules and regulations which were amended May 15, 1989.” [D-41]. The Assistant Commissioner of NJDOT, in that letter, wrote that “[s]ince we have not heard from your municipality, I want to remind you that land use ordinances implementing the standards of the amended regulations must be adopted by May 15, 1990. The purpose of this letter is to offer our assistance to you in the development of an ordinance which will preserve the integrity of the Air Safety and Hazardous Zoning Act of 1983 and yet recognize any unique

and special circumstances which may exist in your community.” [D-41].

Readington did not adopt an ordinance in response to this letter.

56. About a month later, in October 1989, Readington’s attorney drafted a resolution once again requesting that Readington be exempted from the provisions of ASZA, and requested that the Clerk put it on the Township agenda for public meeting. [D-42\*]. The resolution expressly acknowledged that townships such as Readington “were to implement pursuant to regulations set forth thereunder.” [D-42\* at p. 2]. The stated purpose of the resolution included a position permitting Readington to “utilize its local zoning ordinances to assert jurisdiction over airports located within its boundaries” (presumably to the exclusion of the powers of NJDOT). [D-42\*].
57. Shortly after the aforesaid meeting, the Clerk sent a copy of the resolution, which had been adopted by the Township Committee on October 16, 1989, to NJDOT requesting, **again**, exemption from the ASZA. [D-44].
58. NJDOT, through its Office of Aviation, again denied Readington’s exemption request, noting that there were “no provisions in the regulations which provide for the exclusion of individual townships .... Land use ordinances implementing the standards of the amended regulations must be adopted by May 15, 1990. I again offer the assistance of this office...” [D-46].
59. On or about April 9, 1990, NJDOT sent a follow-up letter to Readington, emphasizing that the deadline for adopting “a land-use ordinance

- implementing the standards of the air safety and hazardous zoning rules and regulations” was “rapidly approaching.” [D-53].
60. In September, 1990, Readington engaged a lobbyist for the purpose of opposing the ASZA. [D-60].
  61. Also in September, 1990, a public meeting was held to discuss Solberg Airport. [D-61\*]. At that meeting, the Township Committee voted to have an airport consultant submit its own application on behalf of the Township for FAA funding with respect to Solberg Airport, even though Readington didn't own the airport. This was a plain effort to sabotage and preempt Solberg's application to the FAA for funds for an airport master plan, and to wrest control of the process from Solberg Aviation and put it in the hands of the Township even though Readington did not own the airport. [D-61\*].
  62. NJDOT sent yet another letter to Readington dated October 18, 1990. This letter noted that it was “the fourth letter sent to you regarding the enforcement of the air safety and hazardous zoning rules and regulations....the Department of Transportation letter stated that land use ordinances implementing the standards of the regulations must be adopted by May 15, 1990 ....the Department of Transportation is aggressively seeking compliance with the enforcement of this ordinance requirement.” The letter also indicated that NJDOT was again offering its help in drafting such an ordinance, as well as attaching a copy of a sample ordinance together with the applicable administrative code sections. [D-62].

63. In July, 1993, the Director of the Division of Aeronautics, wrote to Readington to advise it that a master plan study had been initiated for Solberg Airport, inviting the Township to participate in the process and stating that community involvement and input are “important aspects of the master plan study.” [D-66\*]. The Director outlined the basic purpose and function of the master plan and noted that a “Technical Advisory Committee” had been established in order “to review the various reports, inform their constituency, and provide comments which reflect community and citizens’ needs and concerns.” [D-66\*]. The Director further explained that the Technical Advisory Committee would include members of Readington’s Township Committee so that they could provide input into the master planning process, to be followed by approval of the master plan by the FAA and the DOT, and then followed by an Environmental Assessment process in accordance with federal and state regulations. [D-66\*].
64. The aforesaid July, 1993 letter, also contained the following paragraph with respect to the powers of the Commissioner [D-66\*]:

The Commissioner of Transportation has the statutory responsibility to license aviation facilities in the State. Should the final master plan recommendations involve a runway extension or realignment, which is subsequently supported by the Environmental Assessment, it is the policy of the Department of Transportation to ensure that public meetings are held, since this affects the Airport Safety Zone placed around public use airports in accordance with N.J.A.C. 16:62 et seq. Let me assure you that the Commissioner of Transportation will give consideration to all local concerns prior to making any aviation facility licensing decision. Finally, if the Township disagrees with the airport’s application to

the Department for a change in the facility license, then the Department can forward the matter to the Office of Administrative Law as a contested matter, under the Administrative Procedures Act.

65. In 1994, Readington contacted NJDOT, requesting a sample ordinance upon which it could base an ASZA ordinance. Although NJDOT did not have a sample ordinance “per se”, it agreed to send an ordinance that adopted the regulations “by reference.” [D-70].
66. On or about November 2, 1994, NJDOT responded to Readington’s request and transmitted a copy of the statute, regulations, a sample ordinance, and also a copy of the Air Safety and Zoning ordinance which it understood would be “proposed to the Readington Township committee at its regular meeting to be held November 3, 1986.” [D-71].
67. In January, 1995, Readington received an estimate from its long time land surveyor, Thomas L. Yager and Associates, to prepare an ASZA map with metes and bounds descriptions at Solberg Airport. [D-76].
68. In May, 1995, NJDOT wrote to Readington again seeking compliance with the ASZA by adoption of an ordinance compliant with that Act. [D-77].
69. Readington’s surveyor continued working on the mapping through June, 1995, at which point it was requested to conduct aerial photographic mapping so as to make it clear which of the surrounding properties would be affected by the ASZA ordinance. [D-78].

70. On or about June 7, 1995, Readington responded to NJDOT's request to adopt an ordinance, said it was working on the issue but had not yet introduced an ordinance, and announced its intention to do so in October of that year. [D-79].
71. Despite Readington's assurances to NJDOT that it intended to adopt the ordinance in October 1995, the Mayor apparently solicited an opinion from the township attorney with respect to the *future of the ASZA*. [D-83]. It appears that the Mayor, and other members the Township Committee, were under the erroneous impression that the Act was set to expire in 1996 or would be repealed; they were told by counsel that "there is nothing in either source which suggests an expiration date of 1996 for the act or that the caps act is going to be repealed in the future."). Again, no action was taken by Readington to adopt the ordinance at that point.

**G. Township Resolutions/Statements/Actions  
vs. Airport Expansion In Anticipation Of  
Solberg Master Plan And Continued Defiance  
Re ASZA Ordinance**

72. At the Readington Township Committee meeting of April 1, 1996, Resolution R-96-31 was adopted, taking square aim at the Solberg Master Plan study that was underway. [D-89 at p. 16] In addition to protesting the findings of several interim reports, the unanimous resolution suggested that there would be a transition to commercial activity at the airport and stated that such an airport would be "highly inappropriate" in a "totally rural residential zone;" went on to

- state that “the Township Committee of the Township of Readington, County of Hunterdon, strongly opposes any increase in the Solberg Airport runway length”; and further resolved that “any type of commercial expansion that would increase the use of turbine powered aircraft is also opposed.” [*Id.*]
73. A copy of Resolution R-96-31 was circulated by the Township Clerk to various political entities and individuals. [D-88\*].
74. On or about May 30, 1996, Julia Allen, then an aspirant for the Township Committee, wrote a letter to the editor of the Hunterdon Democrat, warning citizens that “the threat of a major expansion of Solberg Airport is real and the plan is for a large airport.” [D-92].
75. Ms. Allen’s letter also expressed the need for Readington to reassert control, noting that ASZA supposedly “**took the decision of expansion out of the hands of elected officials of all levels of government and put it in the hands of the state Department of Transportation and the Federal Aviation Administration.**” Ms. Allen encouraged people to contact the Branchburg, Readington Airport Action Committee (BRAAC), a citizens group organized to repel any attempted expansion of Solberg Airport. [D-92].
76. On or about July 1, 1996, Readington retained a law firm for the ostensible purpose of drafting an ASZA ordinance for the Township to adopt. [D-94\*]. No such ordinance was adopted.
77. On or about November 27, 1995, NJDOT advised Readington against the placement of an elementary school in the vicinity of Solberg Airport. [D-86].

An NJDOT official met with the business administrator for the Readington Board of Education to discuss flight patterns at Solberg Airport. While conceding that the siting of the school as proposed was “permissible” under ASZA, he expressly noted that **“I don’t believe it to be prudent to locate a new school building this close to the airport. Aircraft on final approach to runway 13 will be approximately 500 feet above the proposed site and on takeoff, aircraft will be approximately 300 to 800 feet above the proposed site. It is my recommendation that the school board investigate locating the school elsewhere.”** [D-86\*].

78. In furtherance of its position, NJDOT, on or about October 4, 1996, wrote to the Readington Board of Education to object to language it was employing in flyers about the siting of the new elementary school adjacent to Solberg Airport, specifically to any implication in those flyers that the site was endorsed by NJDOT, when in fact the opposite was true. [D-100\*]. There is no evidence that NJDOT’s warning was heeded, or even presented to the public, and the school was built on the site.
79. Readington continued its crusade against expansion of the airport despite contrary positions by other public interest groups. For example, in a January 1997 draft, the Hunterdon County Chamber of Commerce Aviation Task Force recommended taking a stand on “the need for an expanded general aviation airport in Hunterdon County,” noting that “expanded general aviation capacity is an important business issue to enhance Hunterdon County’s ability

to retain existing companies and attract desirable new business and industry,”  
and making the following recommendations and observations:

- (1.) Small and medium-size companies use aircraft with ranges that require precision instrument approach, modern hanger facilities and runways in excess of 4000 feet;
- (2.) Added travel time to airports outside Hunterdon County was a distinct commercial disadvantage to the county’s ability to attract and retain companies in the county;
- (3.) "Solberg Airport is clearly the most logical site in or near Hunterdon County for improved facility"; and
- (4.) “it is clear that Hunterdon County’s capacity to handle business-use aircraft requires improvement.” [D-105\* at p. 1 and 2].

80. On or about February 18, 1997, the Readington Township Committee passed Resolution R-97-18, which challenged the interim reports in the Solberg Master Plan draft document, “most notably the need for a longer runway”; asserted that “the runway length as it exists provides adequate safety for existing aircraft”; misleadingly characterized the improvements as creating a “commercial airport in a totally rural residential zone”; argued that such a placement would be “highly inappropriate”; and “strongly” urged the “Hunterdon County Board of Chosen Freeholders to pass a resolution opposing the proposed expansion of Solberg Airport.” [D-107].
81. On or about March 3, 1997, NJDOT again followed up by letter with Readington regarding the failure to enact the ASZA ordinance. The NJDOT noted that it had corresponded and worked with several people on behalf of Readington over the past year in order to try to bring the Township into

- compliance, but apparently had not heard anything, and requested that the Township administrator “advise [him] of the status of these matters.” [D-108].
82. On or about April 8, 1997, NJDOT received a letter relaying the position of the Hunterdon County Chamber of Commerce with respect to the county’s capacity to handle business aircraft. NJDOT supported the Chamber of Commerce’s position “that Solberg Airport represents the only practical answer in addressing the county’s lack of a comprehensive general aviation facility in that this airport currently owns the acreage needed to accommodate a larger runway and associated support facilities.” [D-113\*].
83. The comment period for the Solberg Airport Master Plan extended until at least April 30, 1997. As Readington planned on making comments, the Township planners at Clark, Caton, Hintz commented on the environmental perspective of the Master Plan. [D-114].
84. On or about April 29, 1997, Readington submitted extensive objections to the final draft Master Plan for Solberg Airport. In its counsel’s letter, Readington “formally and strenuously” objected to the Master Plan conclusions. At the forefront of Readington’s objections was the proposed length of the runway. Readington’s letter was also sent to the Governor, U.S. Senators and other elected officials. [D-115].
85. On or about May 19, 1997, the Readington Township Committee considered and passed a resolution objecting to the use of a navigational instrument-- VORTAC -- at Solberg Airport. [D-117 at p. 2].

86. In July, 1997, Readington's attorneys sent yet another version of a proposed ASZA ordinance to NJDOT. The cover letter enclosing the proposed ordinance requested confirmation from NJDOT that it complied with the statute and regulations. But the transmittal was just a sham, because even the version of the ASZA ordinance submitted to NJDOT was not adopted by the Township, allegedly because of Readington's concerns about the definition, or lack thereof, of "routine improvements" to the airport that would be allowed within the regulated property lines. [D-118]; (16T 37:12-18).
87. At the Township Committee meeting of October 6, 1997 the Mayor represented that Readington had NJDOT approval for an ASZA ordinance and that it was to be presented at the Township meeting on October 20, 1997. [D-122 at p. 7]. There is no evidence that such presentation ever took place.
88. In January, 1998, the Township Committee approved a Resolution opposing "any expansion of Solberg Airport." The Resolution recited that the Master Planning process was underway, and that while Readington did not oppose the operation of the airport as it presently exists, there was no evidence of a "need for a longer runway." The Resolution also included a recitation that **"the Township of Readington is resolutely opposed to any compromise on the length of the existing 3,000 foot paved runway."** [D-126]. At that same meeting, Committeewoman Beatrice Muir stated that it was "extremely important for the Committee to readopt this resolution... the current operation of piston engine aircraft is a historic use of the airport and that is the way the

Township wants the airport to continue to be utilized, not turn into an airport which receives jet aircraft.” [D-126 at p. 3-4].

89. At Readington’s February 2, 1998, Township Committee meeting, a Resolution opposing “the expansion of Solberg Airport” was distributed for consideration and adopted. It included the following language: "The Township Committee is opposed to the location of a commercial airport in a totally residential zone."; "The Township Committee of Readington Township is **resolutely opposed to any expansion or compromise to lengthen the existing paved runway.**"; “The Township clerk is directed to forward a copy of this resolution to” sundry state and federal elected officials, as well as officials of the and FAA. The Resolution was unanimously adopted. [D-127 at p. 7].
90. On or about March 17, 1998, NJDOT once again wrote to Readington with respect to the ASZA ordinance adoption. The letter recounted that Neil Tully, who was an Air Safety and Zoning Specialist with NJDOT, had spoken to the Township attorney at the law firm of Mason and Griffin. [D-129]. **Mr. Tully recounted that he had told the Township attorney in July, 1997, that the draft ordinance submitted to the NJDOT “complied with the requirements established in N.J.A.C. 16:61.1 et seq.”, and advised that NJDOT had reviewed and approved the delineation of the ASZA drawn by the town surveyor.** The letter concluded with the following plea: “Please advise me of the status of this matter. I, again, offer my services to assist you

with this endeavor. If you need additional information, please contact me at (609) 530-2900.” [D-129].

91. At the Township Committee meeting on April 6, 1998, Committeeman Ronald Monaco announced he had received a letter from NJDOT concerning the ASZA and that it was their understanding that the “Township did not have an approved copy of the ordinance.” [D-130 at p. 5]. The Committee at the time “discussed the possibility of placing the Hazard Zone ordinance on the agenda for the next meeting,” but no such steps were taken.
92. In May, 1998, Committeeperson Julia Allen supported the candidacy of Gerard Shamey for Readington Township Committee. Ms. Allen joined in authoring a letter to the editor in which she observed that “Gerry is a founding member of and legal advisor to Branchburg Readington Airport Action Coalition, which leads the citizen opposition to the expansion of Solberg Airport.” [D-132\*].
93. At a Readington Township Committee meeting on June 1, 1998, Ed Nagle (Suzy Nagle’s husband) inquired of the Committee as to when it intended to adopt the ASZA ordinance. The Mayor noted in response that “the committee felt that **the ordinance in its present form might not provide the protection that we think we need from runway expansion.** The appropriate language is being worked on and more information should be forthcoming shortly.” [D-133 at p. 4; R-59 at p. 4].
94. By letter dated October 22, 1998, the FAA granted conditional approval to the Solberg Airport Layout Plan, as well as the Solberg Master Plan. [D-137].

95. In late 1998, the failure of the Readington Township Committee to adopt an ASZA ordinance, as required by statutes and regulations, was brought to the attention of the Hunterdon County Prosecutor. [D-138, D-140, D-141]. On December 21, 1998, the Prosecutor wrote to NJDOT, advising that he had spoken to the Readington's attorney who told him that the ordinances "should be adopted in 1999." [D-141]. The Prosecutor noted that despite this assurance, he did not believe that "formal action has been taken by Readington Township to begin the process," and he went on to "suggest that you [NJDOT] immediately look into this matter and take whatever action you deem appropriate in accordance with your jurisdiction." [D-141].
96. At the January 1, 1999, Township Committee "organizational" meeting, Julia Allen was designated as Mayor and said, among other things, that she intended to "continue to take bold steps" with regard to Readington's efforts in "continuing to hold the line against the expansion of Solberg Airport." [D-607 at pp. 11-12].
97. On January 1, 1999, the Township Committee passed Resolution R-99-01 in which it authorized the payment for services rendered by the Township attorney in excess of that provided for in the professional services contract made by the parties in January 1999 because the parties anticipated additional services being necessary as a result of "litigation concerning the adoption of the agricultural residential zone ("AR Zone Litigation") and Solberg airport and its master plan." [D-143\*].

## **H. Readington Learns Of The Conditional Approvals And Gears Up For Litigation To Stop Any Expansion**

98. By letter dated March 25, 1999, NJDOT conditionally approved the Solberg Airport Master Plan and Airport Layout Plan. [D-146]. The FAA had conditionally approved the Master Plan at an earlier time. [D-137].
99. On or about April 15, 1999, Neil Tully of NJDOT wrote to Mayor Allen, in furtherance of a telephone conversation they had that morning. Mr. Tully requested “a meeting with you to discuss the adoption of an Air Safety and Zoning ordinance by Readington Township.” Mr. Tully noted that the Township had delineated the ASZA as required and “has drafted an acceptable ordinance but never adopted it.” [D-147]. Ms. Allen met with Mr. Tully in response to this letter, but the meeting did not result in the adoption of an ASZA ordinance by Readington. (16T 53:3-17).
100. On or about April 20, 1999, Mayor Allen on behalf of the Township Committee, wrote an extensive and angry letter to Emmett O’Hare, Deputy Director of The Division Aeronautics. She noted that the conditional approval by the FAA and NJDOT of the Solberg Airport Master Plan was met by the Readington Township Committee “**with shock and disbelief.**” [D-151] (15T 25:8-28:10). Ms. Allen attached to that letter an earlier April, 1997, letter to NJDOT listing extensive questions and challenging all aspects of the Master Plan, and added, “please be advised that we have been and continue to be resolute in our opposition to any expansion of Solberg Airport. Our position

remains that the Master Plan submitted was inadequate, self-serving, and in many instances inaccurate and misleading.” [D-151 at p. 1]. Ms. Allen’s letter also protested the exercise by NJDOT and FAA of powers endowed to them by statute and regulation, labelling the conditional approvals as “indefensible”, as was the “expansion it proposes.” Readington also noted that “it must be said that the present action of the FAA and the Division of Aeronautics makes clear that this Master Plan development was simply a choreographed procedure.” [D-151].

101. Readington continuously called into question the exercise of authority by the state government. In Mayor Allen’s letter of April 20, 1999, she advanced the proposition that “it is dubious that a consultant selected by the New Jersey Division of Aeronautics, which in turn will oversee the performance of the consultants work, can be remotely considered as without bias. The New Jersey Division of Aeronautics is an unequivocal advocate for airport expansion and any consultant they hire will feel obligated to exceed to the goal of their employer.” [D-151 at p. 2].
102. At no point in 1998, 1999, or 2000, did the Readington Township Committee take any action with regard to adopting an ASZA ordinance. (16T 43:3-7).
103. Readington consistently and publicly maintained that it believed the State Division of Aeronautics was usurping the municipality’s rightful exercise of its control. The Township Committee wrote to the NJDOT that the Township had “a right to plan for a future of [its] own choosing...” and continued: “We are

convinced that we are within our rights as a Township in a state devoted to Home Rule, to defend the future health, welfare and safety of our community, and to maintain our rural atmosphere. We will not allow the degradation of our environment, as this proposed airport expansion is most certain to do. We, in conjunction with our neighbor Branchburg Township, will do everything in our power to maintain the status quo of Solberg Airport. The position of the Readington Township Committee is that the conditional approval of the Solberg Airport Layout Plan by the Division of Aeronautics, Department of Transportation and the Federal Aviation Administration is arbitrary and capricious.” [D-151 at p. 3].

104. On or about May 3, 1999, Mayor Allen confirmed that Readington was “opposed to any extension of the existing runway length.” [D-153].
105. In 1999, Readington admitted that the proposed expansion of the main runway at Solberg Airport to 4,890 feet was consistent with state aviation planning. In particular, the aforesaid May 3, 1999 letter noted that “the proposal to increase runway length to 4,890 feet is consistent with the length proposed for Solberg Airport in the New Jersey State Aviation System Plan (“NJSASP”). [D-153 at p. 1].
106. At a May 3, 1999, Township Committee meeting, Readington officials discussed the conditional approval of the Solberg Airport Layout Plan with residents. At that meeting, a Resolution was introduced [R-99-48] and unanimously passed, which provided the following: state authorities had not

appropriately responded to municipal concern, the plans in the master plan are unsubstantiated; the “Township of Readington is resolutely opposed to the establishment of a commercial airport in a totally residential zone”; and “**the Township Committee of the Township of Readington remains resolutely opposed to the lengthening of the existing paved runway and will oppose the proposed expansion of Solberg Airport by all means possible.**” [D-155 at pp. 7-9; D-156]. A copy of the Resolution was sent by the Township Clerk and to various state and federal officials. [D-158\*].

107. As the May 3, 1999 minutes reflect, Township Committee members represented “that **the Committee has been working in opposition to the proposed expansion since 1983 and there have been victories along the way.** For example, the pavement on the runway would be longer than it is if it weren’t for the Committee’s efforts,”; that the “Committee will fight the expansion on every conceivable front”; and, according to Mayor Allen, that the only one who could stop the proposed expansion was “James Weinstein, the Commission[er] of the Department of Transportation.” [D-155 at pp. 32-33].
108. Within a month of learning that NJDOT had conditionally approved the Solberg Airport Master Plan, Readington placed the issue of litigation with respect to Solberg airport on its calendar for executive session. (15T 31:21-32:20).
109. In or around May, 1999, Readington engaged two separate law firms to assist in attempting to stifle the expansion of the airport. [D-163].

110. At Readington's May 17, 1999 Committee meeting, Mayor Allen read into the record a list of the Township's efforts made "in response to the proposed expansion of Solberg Airport," including: (a) hiring attorneys Zuckerman and Fisher to oppose the expansion, because one of those attorneys had opposed "the expansion of Princeton Airport"; (b) hiring attorneys Cutler and Stanfield from Washington DC and charging them with a set of strategies for use in "opposing this proposed expansion."; (c) writing letters to governors, senators, and congressmen in opposition to the expansion.; (d) meeting with Congressman Holt to raise concerns about the expansion; (e) meeting with Branchburg Township Committee members in executive session to discuss "possibilities for joint legal efforts with Readington in opposition to the proposed expansion"; and (f) scheduling a public forum to air opposition to the proposed expansion. [D-163 at pp. 6-7].
111. Readington officials also suggested that its residents appear before the Hunterdon County Freeholder Board to voice their support for a resolution "in opposition to the expansion of Solberg Airport". [D-163 at pp. 29-30, D-165, D-166\*].
112. Readington also embraced the position of anti-expansion community activists, including the updating of its website with BRAAC's website address and email. Readington incorporated substantial materials on its website from the anti-expansion airport group BRAAC, including Readington's form letter that could be sent by registered voters to various elected officials purporting to

express the strong opposition of the Board to any expansion of Solberg Airport, as well as the addresses of various federal and state elected officials. [D-169\*].

113. Approximately two months after Readington received copies of NJDOT's conditional approval of the Solberg Airport Layout Plan, Readington conducted a public meeting addressed to that subject. At that meeting on June 2, 1999, representatives of the Township made clear that, in stopping the expansion of Solberg Airport, citizens should not be concerned that residential development would thereafter engulf the Solberg Airport property in the future. [D-171 at p. 14:1-18]; (11T 34:7-24). Mr. Shamey, a Township Committeeman at that meeting, assured residents that the threat of housing development on the airport property was not real:

the other thing that I want to make clear to all of you this evening is that an argument has been bandied about, if you will, that the alternative is 1000 townhouses. That will not happen. That cannot happen. It's a scare tactic. It has no basis of fact. It has no basis in reality.

The fact of the matter is, is that this airport, the fifty-acre or so airport proper, if you will, and the surrounding acreage are located in Readington's AR, or agricultural residential zone, which calls for minimum lot zone of six acres on tracks of this size. So don't let them scare you with a thousand townhouses because that cannot happen and we would never let that happen.

Finally, I would like to cite Mayor Allen in particular and the committee in general for all of their efforts over the last month or so since the news broke that the, the bad news broke on April 8<sup>th</sup>. She has been working feverishly to do everything within her power, and we have been attempting to assist her to the best of our abilities. [D-171 at 14:1-15:2]; (11T 34:7-24).

114. At the same June 2, 1999 meeting, Mayor Allen also spoke:

I think the first thing that needs to be said is that the expansion of Solberg Airport is not a done deal. Both Readington and Branchburg, both Readington Township and Branchburg Township have declared that they're firmly opposed to any such expansion. I am personally convinced that with this opposition, the interests of our townships and the interests of our residents will prevail. New Jersey has a strong tradition of home rule.

That said, we have a lot of work ahead of us. A process designed to lead to airport expansion is in progress. The Solberg Master Plan has been given conditional approval by the aviation authorities. The Solberg Master Plan states that the Solberg expansion is necessary for Solberg Airport to function as a reliever airport for Newark.

The Master Plan describes two phases of construction. The first phase extended the runway to 4,300. The second extends the runway to 4,890 feet. There is mention in the correspondence that at some future time, should the need be documented, the runway could be extended to 5,600 feet." [D-171 at 6:23-7:24]; (15T 40:5-41:1).

115. The Mayor, as other Committee members, promised that they would "draw [a] line in the sand" to prevent airport expansion. [D-171 at 107:8-12]; (15T 43:11-19).

116. Deputy Mayor Monaco said the following at that meeting:

"I believe it is time to draw the line in the sand and not only to stop this particular Master Plan 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 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 are of a like mind." [D-171 at 18:8-21]; (15T 44:15-45:8).

117. It is obvious that, at that time, Township Committee did not believe residential development threatened the Solberg Airport property nor did such a subject

motivate its actions at the time. (11T 36:9-38). At trial, Mayor Shamey testified that he had not reached any conclusions with respect to how much of the Solberg airport property would be subject to residential development “because I don’t think I’ve ever thought of it in terms of development for housing. That was not on my radar screen.” (*Id.*)

118. Then followed this:

“**Q.** So would it be fair to say that even as of 2006 you never thought in terms of a concern that this property would be developed for housing, correct? **A.** Well, that was my testimony then and I suppose it was, but I don’t just--whether it was on my radar screen or not, I don’t--I don’t know why, what impact it has on anything. I have-- **Q.** I’m asking you whether that testimony that you gave to me in 2007 was correct as to what your view was in 2006. **A.** Apparently it was because that was what I testified to in 2007”.

119. In July, 1999, Readington formalized its retention of the law firm McKirdy and Riskin, which the Readington Committee members recognized as a specialist in condemnation matters. [D-670; D-671].

120. NJDOT continued to follow up with Readington as it failed to adopt an ASZA ordinance. [D-176]. On August 11, 1999, NJDOT’s Neil Tully once again wrote to Mayor Allen in follow-up to his prior letter concerning the failure to adopt an ordinance. [D-176]. He stated that he thought that he had “provided you with the information that you requested at our June 22, 1999, meeting. Again, I offer my assistance to you and the other members of Council in order to bring Readington into compliance with the State law. As expressed at the meeting, we are anxious to get this matter resolved if this is possible.”

[D-176]. Readington effectively disregarded NJDOT's communications once again, and took no action on adopting the ordinance.

121. On or about August 11, 1999, Readington's Clerk sent appraisals of the Solberg property to Jack Buonocore, Esq. of McKirdy and Riskin [D-612], an obvious precursor to the use of eminent domain.
122. Readington continued to keep abreast of legislative developments and to oppose any potential action in Trenton that might benefit Solberg Airport. On or about September 20, 1999, Readington passed a Resolution opposing State Assembly Bill Number 3311, which bill related to funding for public use private airports by prohibiting property taxes on airport property and imposing a state income tax instead of such property taxes, Readington's opposition was supposedly based on its perception that **the proposed legislation "represents an additional tool to be utilized by private airports to have the residents of the State of New Jersey subsidize such airports"**. The Resolution also represented Readington's defiant opposition to NJDOT's powers, as reflected in the Resolution's language asserting that the bill would "remove 'home rule' from those municipalities in which such private airports are situated."

[D-180].

123. On December 7, 1999 NJDOT sent "a follow-up to [its] letters of July 7 and August 11, 1999, concerning the adoption of an Air Safety and Zoning ordinance by Readington Township." In that letter, Air Safety and Zoning Specialist Tully enclosed a newspaper article in which Mayor Allen was

- quoted as saying that the map delineating the Airport Safety Zone around Solberg is still in draft form because the Division of Aeronautics and Readington could not agree on details. This statement was false, and NJDOT called her on it. Mr. Tully wrote: “To end any question regarding this issue, enclosed is a copy of a letter dated April 28, 1997, from Mr. Yeager [sic] to Kristine Hadinger, Esq., which states that I approved the map created by Mr. Yeager [sic].” [D-182].
124. At the organizational meeting of the Township Committee on January 3, 2000, Mayor Muir highlighted one of the accomplishments of the past year, and assured citizens that one of the goals of the upcoming year would be “to hold the line against the expansion... of Solberg Airport.” [D-183].
125. On January 18, 2000, Readington passed Resolution R-2000-20, in which it **“vehemently opposed the use of federal subsidies to expand privately owned airports** since such subsidies inhibit competition and divert valuable and scarce financial resources from other deserving programs (including redesigning the nation’s airspace) to privately owned and controlled ventures.” [D-184 at pp. 7-8; D-185]. **Readington claims to have passed that Resolution because it was concerned about federal resources being directed to Solberg Airport’s expansion.** (15T 61:20-62:1).
126. At the June 19, 2000 meeting of the Township Committee, a synopsis of the Solberg Airport “issue” was given by Julia Allen. [D-187A at p. 6]. (15T 66:16-68:19). Ms. Allen relayed that “Readington Township was unhappy

with the FAA's action, along with the Division of Aeronautics, who conditionally approved the Master Plan. When the Master Plan is fully approved the airport becomes eligible for a grant from the Federal Government which can be used for expansion." Ms. Allen noted that the Township "was opposed to this expansion." [D-187A at p. 6].

127. In or around July 2000, the Township Committee publicly opposed Assembly Bill 2332, with companion Senate Bill 1450. [D-190\*]. Assembly Bill 2332 authorized the purchase by NJDOT of development rights associated with certain public use airports, and appropriated \$2.5 million for that cause (the "Development Rights Bill"). [D-191 at p. 1]. **Readington opposed granting NJDOT the authority to purchase development rights to privately-owned public use general aviation airports, because allegedly, it "would effectively negate home rule in the Municipal Land Use Laws that allow a municipality to determine its own destiny."** Readington also expressed concern that the development rights bill was "written by airport owners who were likely to benefit" and thus represented a "direct affront of ethical rules that govern such undertakings." Readington concluded that if the bill became law, it would fight the bill "to the highest court in the land." [D-190\*]. The legislation was in fact enacted. See N.J.S.A. 6:1-95 Pub. .L. 2000, c.165, 51. As Thomas Thatcher testified, the state program was designed to preserve airports and was modeled directly off of the farmland preservation program (20T 45:21-23).

128. Committeeperson Julia Allen decided also to independently write to Governor Whitman and request that she veto the Development Rights law. In her letter, she acknowledged that both houses of the New Jersey Legislature agreed to “buying development rights on farmland and buying development rights on airports.” She maintained that she and the Township Committee, however, were focused on Solberg Airport’s expansion in connection with these letters and resolutions. (15T 73:5-12).
129. Readington officials were deeply concerned that the purchase of development rights by NJDOT would have a “significant” effect because it represented a preservation in perpetuity within municipal borders. Both a letter by Mayor Muir and the letter by Ms. Allen, emphasized concerns about power shifting to NJDOT, and eroding municipal power, insofar as the bill “makes no provision for municipal approval,” and that it “makes absolutely no provision for public or municipal notification, nor any public hearing.” [D-192 at p. 2]. An official Resolution was passed by the Township Committee [D-192 at p. 1].
130. Readington also perceived that the Development Rights Bill, like the ASZA, shifted power from the municipality to the state , suggesting in its Resolution that the bill would “allow the Department of Transportation to intrude into municipal zoning responsibilities as was the case with its designated parent, the 1983 Act. Said Act was characterized as an air safety issue but in reality removed zoning responsibilities from the host communities.” Readington also characterized the Development Rights Bill, which was drafted to permit

- NJDOT to buy development rights for various public use airports to present and preserve New Jersey's aviation infrastructure, as being "a travesty against the citizens of New Jersey." [D-192 at p. 2].
131. Readington solicited other governing bodies in its fight against the Development Rights Bill, which it saw as an affront to the municipal zoning powers. By letter dated July 18, 2000, Readington wrote to other governing body members regarding the Development Rights Bill, requesting that they oppose it. Readington perceived the bill as authorizing the Commissioner to buy developments as essentially "negating zoning" which otherwise is a power retained by the municipality. The Township's perception and concern was that the acquisition of development rights by NJDOT "would take some of the decision-making away from the municipality." [D-193; D-194]; (15T 93:25-94:16).
132. Readington's Mayor considered that the Development Rights Bill would essentially make the Commissioner of NJDOT a "czar" who threatened New Jersey municipal home rule. The Mayor noted that "Solberg Airport is targeted in this legislation; about 650 acres of prime farmland would become a large commercial jetport with dire consequences for all of Hunterdon and Somerset Counties." [D-196\*]. The Mayor argued that the passage of the Development Rights Bill "would place all municipalities in grave danger of losing their constitutional right of Home Rule." Readington's Mayor insisted that the NJDOT Commissioner "must be denied these powers." [D-196].

133. Readington also characterized the Development Rights Bill as “a coordinated attempt by private airport owners and the NJ Department of Transportation to negate NJ Municipal Home Rule.” [D-197].

**I. Preparation For Eminent Domain In 1999/2001  
As The Solberg Master Plan Process Continues**

134. On October 4, 2000, Readington officially communicated a Notice of Intent to take, by eminent domain, the Solberg airport property. [D-204]. The Notice of Intent was promulgated by the eminent domain law firm retained by Readington, McKirdy and Riskin. [D-204].

135. Readington had signed an engagement letter dated July 15, 1999 with the firm of McKirdy & Riskin [D-670]. The formal public confirmation of that retention took place at the Readington Township Committee meeting of July 19, 1999, at the end of a long evening in which there were many "time outs" for executive session. The McKirdy & Riskin resolution was literally, and quietly, put on the record at the very end of the meeting between 11:30 and 11:35 p.m. [D-671]; (37T 105:14-115:9).

136. Annual contracts were thereafter entered into with McKirdy & Riskin; copies have been produced for the years 2001, 2002, 2003 and 2005, and it is likely that there was a contract for 2000 too, since work was done that year. [D-668A, B, C and D]. McKirdy & Riskin was hired only in connection with the Solberg Aviation property. (37T 119:14-19).

137. The McKirdy & Riskin bills and payments for the entirety of their time representing Readington in connection with the Solberg matter are set forth in [D-669] (37T 121:8-122:24).
138. McKirdy and Riskin's invoices [D-634] show a concerted effort, which started within a month or so after Readington learned of the NJDOT conditional approval, with telephone calls between Mr. Buonocore and Mayor Allen in May and June of 1999. The services intensified and involved numerous meetings, telephone calls, retention of and meetings or discussions with experts and potential experts, in 1999 to a limited extent, throughout the year 2000, and throughout much of 2001. McKirdy and Riskin's billings in connection with this work exceeded \$300,000. [D-634, D-669].
139. After publicly announcing in October, 2000, its intent to potentially use eminent domain to prevent any Solberg Airport expansion, Readington went about soliciting, through its eminent domain counsel -- McKirdy and Riskin-- expert reports to bolster potential condemnation. [D-224\*, R-87, R-90 at p. 128]. Thus, on April 1, 2001, Wander Ecological submitted a report [R-87]; on June 27, 2001, GRA submitted a report regarding "the Benefits of Township Ownership of Airport," [D-224\*]; on June 28, 2001, long time Readington professional planning firm Clark, Caton, and Hintz, submitted a report entitled "Evaluation of Land for Municipal Acquisition," [R-90]; and on September 19, 2001, Wander Ecological Consultants submitted another report

on the survey of threatened and endangered species of grassland birds at Solberg Airport. [R-92].

140. It was clear to at least one of the experts gathered by McKirdy and Riskin -- Michael Sullivan of Readington's long-term planning consultants -- that "the Township was not interested in any further development of the airport, or any other type at the site." (39T 24:9-17). In addition, the experts were being assembled and groomed to support the process of public acquisition of the airport, which included interaction with counsel on the part of the municipal planner, the aviation consultant, GRA, Inc., and other experts. (39T 34-22-59:6).
141. The result of all of the foregoing was an Amendment to the Readington Master Plan, issued on or about June 28, 2001, and adopted on or about July 9, 2001 [R-81]; and a report by Readington's planner, Mr. Sullivan, dated June 28, 2001, evaluating specific blocks and lots (the Solberg Aviation property) "for municipal acquisition" [R-90]. Mr. Sullivan had been asked by one or more members of the Township or the Planning Board to perform a report that looked at the Solberg Airport properties and to offer an opinion as to what public benefit might be derived from acquiring them. (29T 59:23-60:17) [R-90].

142. In addition, the aviation consultant, GRA, Inc. also submitted a report, conveniently in the same timeframe (June 27, 2001), regarding “The Benefits of Township Ownership of Airport.” [D-224\*].
143. The aforesaid retention of counsel, and assemblage of expert reports looking to justify acquisition of the entire Solberg Airport property, was the first occasion on which Readington focused particular attention upon, and alleged concern for, open space and ecological issues regarding the property. This further demonstrates and reinforces the conclusion that the proposed taking (which was never completed at that time) was inspired entirely by the threat of airport expansion -- a precursor to the 2006 action which resulted in the taking under review in this Court at this time.
144. On or about 1999 or 2000, a Study Advisory Committee (SAC) was set up by Clough, Harbour & Associates (“CHA”), which Committee met throughout the year 2000. The Study Advisory Committee had approximately a dozen members, including representatives of chambers of commerce, Solberg Airport, freeholders, and Readington Township. Readington used its representatives on the Study Advisory Committee to obstruct, accuse CHA of being slanted, accuse the NJDOT of being slanted, and otherwise attempt to put up various roadblocks to frustrate the conditional approvals that had been granted. [D-210 at pp. 17-22 and 24-28:8]

145. In keeping with its position, Readington's Mayor suggested that BRAAC, the coalition against any expansion of the airport, should have a seat at the table of this SAC, and NJDOT obliged. [D-212\*].
146. The Division of Aeronautics published a pamphlet regarding the Environmental Assessment process and study. NJDOT acknowledged that "the 1997 Airport Master Plan identify projects necessary to maintain and improve SHA's continuing role as a public-use general aviation airport. The goals of the Master Plan to allow the airport to meet current design standards, improve safety, better serve existing users, and accommodate additional corporate aircraft." NJDOT also indicated that improvements contemplated by the 1997 Solberg Airport Master Plan would "improve operational safety by meeting current FAA design standards." [D-213\*].
147. In an effort to derail, delay, and defeat the projects contemplated by the Solberg Airport Master Plan, Readington attempted to compel a full-blown Environmental Impact Study ("EIS"), as opposed to the Environmental Assessment, which is the first step in the process and determines whether an EIS is necessary. [D-214\*].
148. Along these lines, Readington's Mayor submitted a 24-page letter to the Division of Aeronautics in February, 2001. In that letter, the Mayor recounted almost verbatim the 20+ page report provided to the Township by its environmental experts at Princeton Hydro, including but not limited to,

Stephen Souza. [D-217]. The letter was vetted by the full Readington Township Committee before it was sent out. (15T 105:6-13).

149. In response to McKirdy and Riskin's letter to the Hunterdon County Agricultural Development Board advising of Readington Township's intention to use eminent domain to take Solberg Airport, the Board held a public hearing, and on September 24, 2001, the Board advised Readington Township Mayor Ronald Monaco that it would provide its report despite the failure of the Township's attorneys at McKirdy and Riskin to provide answers to the Board's questions within six months after the questions were submitted. The Board strongly suggested that the Township take no "further action on the condemnation until the [board] completes its report." [D-231\*].
150. The Hunterdon County Agricultural Development Board ultimately announced its opposition to the condemnation of the Solberg Airport property by Readington. [D-247]. The Board held a hearing, and did research, and set forth extensive conclusions about the effect of the proposed taking upon agricultural characteristics of the property, and the surrounding land, including the following finding and conclusions: (a) "[W]hen land is privately owned landowner has a greater commitment to manage the land properly than someone managing publicly owned land" [D-247 at p. 3]; (b) the condemnation of Solberg Airport would not be beneficial to the ADA, the local agricultural community, and to surrounding agricultural lands; (c) Condemnation can result in increased deer population and deer damage for

farmers; (d) agricultural lands that are publicly owned and not as well-managed as they are today; (e) lost Township funds for willing sellers or farmland preservation development easements; (f) the potential removal of 400 acres from agricultural production; and (g) an uncertainty the local agricultural community. **In conclusion, said the Board, the condemnation overall, “would have a negative impact on this property, the ADA, and the Township’s farmland preservation program.”** [D-247 at p. 5].

151. The Hunterdon County Board of Chosen Freeholders also passed a resolution opposing the potential condemnation of the Solberg Airport property. In that resolution, the Freeholders noted that: “the Hunterdon County Planning Board has approved a report entitled general aviation airport needs in Hunterdon County which contains findings and recommendations on the continued need for private general aviation airport at Solberg-Hunterdon Airport as a component of the county’s regional transportation infrastructure.” The Freeholders noted that Readington Township has introduced an ordinance to negotiate for the purchase of the airport and possible acquisition by condemnation and they, “respectfully urge[d] Readington Township not to condemn the airport under the guise of Open Space or Farmland Preservation,” and “respectfully urge[d] Readington Township not to consider condemnation” of the airport at all at the time; and “respectfully requested that Readington Township take no action that [would] diminish Solberg-Hunterdon Airport as a county and regional transportation resource.” [D-236].

## **J. Introduction And Passage Of Eminent Domain Ordinance In 2001**

152. At its meeting of September 25, 2001, the Township Committee introduced an ordinance authorizing the condemnation of the Solberg Airport property. Those voting unanimously for the taking included 4 of the 5 committee persons who later voted for the 2006 condemnation: Allen, Gatti, Muir, and Shamey. Public hearing on its ordinance was scheduled for the next meeting of the Township Committee on October 15, 2001. [D-241 at p. 7].
153. Ordinance #27-2001, authorizing the taking by eminent domain of Solberg Airport, was adopted on October 15, 2001. [D-243].

## **K. The Uncompleted Environmental Assessment Process**

154. In connection with the Environmental Assessment process regarding the Solberg Master Plan, a further Study Advisory Committee meeting occurred on November 28, 2001. A memorandum was prepared reciting the proceedings of the SAC at the November 28 meeting. CHA at that point anticipated publication of the draft Environmental Assessment in the winter of 2002. [D-245\* at p. 6].
155. CHA prepared a draft Environmental Assessment for Solberg-Hunterdon Airport dated February 2002 (“February EA”). The February EA lays out in considerable detail the important role played by Solberg Airport in the state, and regional transportation system [D-382 at pp. 1-1 to 2-7], including the following [D-382 at pp. 2-8]: (a) As of February 2002, New Jersey ranked “second in terms of general aviation aircraft per square mile. Conversely, in

- terms of the number of public-use airports per capita, New Jersey ranks last among all states;” and (b) Solberg Airport’s “continued availability and improvement is vital to the state aviation system.”
156. The February 2002 EA considered five alternative development scenarios for Solberg Airport: (i) a “no build” alternative; (ii) a “modified no build” alternative; (iii) a Phase IA alternative; (iv) a Phase IB alternative; (v) a Phase II alternative. [D-382 at pp. 3-1 to 3-11].
157. On or about February 13, 2002, CHA submitted to the Division of Aeronautics of NJDOT, the Pre-Draft Environmental Assessment of “the proposed improvements at Solberg-Hunterdon Airport.” The transmittal indicates that CHA, at that time, was “prepared to edit the report per [] comments, and compile the formal DEA document for public and agency review.” [D-622].
158. Approximately one month later, CHA followed up with an e-mail exchange with NJDOT regarding a “proposed commissioner briefing” regarding the EA study. [D-252].
159. The proposed briefing discussed various development alternatives and noted, inter alia, that “**in order to serve the small airplanes** (i.e., aircraft with maximum gross takeoff weights of up to 12,500 lbs.) **that currently use Solberg-Hunterdon Airport, a primary runway length of 4,300 feet is advised according to FAA standards. In the future, based aircraft (with aircraft ranging from 12,500 to 60,000 pounds) may need a primary runway length of 4,890 feet.**” [D-252 at p. 3].

160. The briefing prepared for the Commissioner of Transportation by CHA contained alternative improvements labelled as “No-Build”, “Modified No-Build”, “Phase IA”, “Phase IB”, and “Phase II”. [D-252 at pp. 3-4].
161. The briefing included CHA’s conclusion that the initial proposed runway length of 4,300 feet “is currently needed and justified per FAA guidelines”, and that “the ultimate length of 4,890 feet is not currently needed, but could be justified in the future if corporate activity grows.” [D-252 at p. 3].
162. At the time of the submission of the briefing paper for the Commissioner in March, 2002, the pre-draft EA had been “submitted to and reviewed by the Division of Aeronautics” and NJDOT’s comments had been incorporated, and the entire DEA document is now prepared for reproduction and subsequent distribution.” [D-252 at p. 6].
163. In the cover e-mail to NJDOT enclosing the briefing, Catherine Bujak of CHA gave CHA’s opinion that “a FONSI could be issued for the Modified No-Build or Phase IA alternatives” but not for the Phase IB alternative. [D-252]. The Phase IA alternative contemplated a new replacement facility for the primary runway, with a length of 4,300 feet and a width of 100 feet, with the existing primary runway being re-paved and converted to a full-length taxiway [D-252 at p. 4].
164. **Thus, as of March, 2002, CHA, with the apparent concurrence of the Division of Aeronautics, had concluded that a 4,300 foot main runway at Solberg Airport was currently justified by existing usage at the airport**

**and FAA guidelines, and thus the FONSI could be issued for the Phase IA alternative.**

165. **While concluding that the Phase II alternative (a runway of 4,890 feet) was “not currently justified”, CHA included it in the EA study “to illustrate the potential long-range impacts of the Airport’s development”. [D-252 at p. 4].**
166. Notwithstanding its conclusions and transmittal, including review by NJDOT, CHA was instructed by NJDOT on March 26, 2002, to cease any further work on the environmental assessment study because the Commissioner of Transportation was “currently exploring options”. [D-253].
167. Acting presumably in accordance with changed instructions, CHA produced a second draft preliminary EA in October, 2002, which was never finalized but did not mention the prior recommendation for a Phase I FONSI and spoke primarily about a “modified no-build” approach showing a 3,735 ft. runway [R-101].

**L. The Contract to Sell the Airport Property to NJDOT**

168. Approximately two weeks later, on April 11, 2002, Solberg Aviation Company executed an Agreement of Sale with NJDOT for the airport. [R-97 at p. 1]. The Agreement was subject to approval and NJDOT’s right to reject a price higher than \$22 million.
169. The Agreement of Sale with the State of New Jersey, signed on behalf of NJDOT, recognized inter alia, that [R-97 at p. 1]:

- (a) **“the Solberg Hunterdon Airport is comprised of several parcels of real property, which total approximately 745[] acres** located in Readington Township and Hunterdon County”; and
  - (b) “the Airport is and has been a vital aeronautical facility and a significant component in the New Jersey State Airport System Plan and the National Plan For Integrated Airport Systems for more than 60 years”
170. In its press release announcing the agreement, NJDOT re-affirmed that Solberg Airport “is a 745 acre facility”, with about 200 acres intended to be preserved as “open space”. [R-98].
171. While the February, 2002, environmental assessment was still in draft form [D-382] and after the contract with Solberg Aviation had been executed, NJDOT became subject to a change of direction by NJDOT, likely occasioned by Readington’s political pressure. And in late 2002, CHA was told to “stop any further progress on the Environmental Assessment Study currently being produced for this facility, effective with [a] phone conversation of November 13, 2002.” NJDOT thus left the environmental assessment incomplete, noting that it expected “to resume the Environmental Assessment Study” at a point in time “[w]hen the sale of the airport has been completed.” [D-266\*].

**M. Readington Rescinds Eminent Domain Ordinance  
But Remains Vigilant Regarding Expansion of the Airport**

172. On December 2, 2002, presumably in light of the NJDOT agreement with Solberg Aviation Company, the Readington Township Committee introduced and then passed an ordinance rescinding prior ordinances that had authorized the taking of Solberg Airport by eminent domain. [D-267 at p. 9].

173. Readington constantly monitored legislation at the state level that may affect the expansion of airport runways. [D-272\*].
174. Readington continuously retained one or another lobbyist to lobby for or against legislation that might affect runway length limitations on Solberg Airport. [D-272\*]. One such example of legislation was Assembly Bill 1937, which would have limited airport runway expansion that occurred within a certain distance of educational facilities, such as the educational facility sited by Readington near Solberg Airport against the advice of NJDOT. [D-272\* at p. 7].
175. Readington lobbied on behalf of proposed State legislation patently aimed at Solberg Airport expansion, including legislation that would preclude expansion in situations blatantly similar to Solberg, up to and including precluding expansion whenever a governing body passes a resolution opposing the expansion, or the NJDOT “has chosen a ‘no-build’ runway extension alternative.” [D-273\*].

**N. The NJDOT-Solberg Deal Falls Through and  
Readington Resumes Its Anti-Expansion Activity**

176. After the transaction between Solberg Aviation and NJDOT cratered in the latter part of 2004, Readington officials resumed their efforts to organize opposition to any possible expansion of Solberg Airport and to pursue aggressively the funding for municipal acquisition of the Solberg Airport property, including possibly the airport operation itself [D-281].

177. Prior to the 2005 Ordinance introduction, Readington had not at that time conducted any negotiations at all with the Solbergs regarding their willingness to sell the airport property to Readington, and the bond ordinance was introduced in July, 2005 with the idea that if the Solbergs were not interested in negotiating, eminent domain was "an option." (19T 66:10-69:9).
178. Mr. Thatcher of NJDOT learned as a result of early discussions in late 2004 or early 2005, after the NJDOT contract fell apart, that Readington was considering acquiring the airport property by condemnation if necessary. (20T 119:22-121:9). Readington was told that NJDOT would not financially support a purchase of the airport property that would involve the use of condemnation powers. (*Id.*); [D-282].
179. On or about July 18, 2005, Readington issued a press release in which it falsely stated that "representatives of the State DOT have approached Readington Township proposing a partnership in the purchase of Solberg Airport . . ." [D-281]. The press release also stated that the Readington Township Committee had introduced a bond ordinance for up to \$22 million for the purpose of raising funding for the acquisition of Solberg Airport. [*Id.*]. The press release described the prior history as including reference to NJDOT's prior contract "to purchase the **730-acre airport**"; and repeated that "a 2001 amendment to Readington Township's Master Plan identified the 730-acre airport and open space parcel . . ." [*Id.*]; (21T 72:20-79:17,125:3-126:25).

180. The main theme of the press release was promptly contradicted by NJDOT, which denied any “partnership” with Readington, and made clear that it did not support acquisition by condemnation. [D-282].
181. NJDOT, as a matter of policy, as of 2005, would not have funded a condemnation for the purpose of acquiring airport property. (23T 11:11-12:2); [R-122].
182. Mr. Rick Gimello of NJDOT wrote the letter [D-282] and agrees that NJDOT had never entered into any arrangement or promise of any kind with Readington to the effect that Readington could move ahead with an acquisition and expect reimbursement from the FAA or NJDOT or NJDEP or Green Acres. (23T 20:3-21:1). In fact there was an ongoing culture at NJDOT that acquiring aviation property should not be done except through consensual arrangement. (*Id.*)
183. During his tenure with NJDOT, Mr. Gimello never became aware of any instance in which NJDOT supported a purchase of an airport that involved the use of condemnation powers. (23T 23:5-20).
184. NJDOT has never used eminent domain for acquiring airport property, and Mr. Thatcher has no knowledge of any situation where a municipality housing an airport acquired all of the property surrounding the airport facility including part of the air safety zone, without acquiring the airport itself. (20T 128:13-129:19).

185. As Thomas Thatcher's memo to Richard Gimello pointed out, none of the Hunterdon County Freeholders, the 23 District state legislators, or the New Jersey congressional delegation came out in public support of the condemnation by Readington of Solberg Airport. [D-282]; (23T 121:14-24).
186. Readington Township understood that NJDOT was opposed to any type of funding for purchase done by eminent domain or condemnation, as opposed to a willing seller and willing buyer basis. (10T 109:22-110).
187. In August, 2005, Readington withdrew a proposed bond ordinance for acquisition of the entirety of the Solberg Airport property, [D-385 at pp. 2:23-3:3, 22:11-23:2], including municipal operation of the airport.
188. In connection with the 2005 Ordinance, there was no analysis made of what the economic consequences would be to Readington if it undertook to own and operate the airport. (19T 124:5-14).
189. Committeeperson Julia Allen, running for re-election as a write-in candidate, sent a letter to residents dated November 2, 2005, in which she lambasted that "small group of people who are working actively to support their personal interest in the airport and its expansion plans" and warned in her campaign literature that: "*Airport*: this threat is real!" [D-291].
190. Readington electioneering prior to the November, 2005 election was largely about preventing the lengthening of Solberg Airport runways. [D-291A-291C]. Committeewoman Allen circulated flyers expressly stating "Stop airport expansion no Jets," and implored residents that writing in for her

candidacy would be equivalent to “VOTE NO ON AIRPORT EXPANSION”.

Ms. Allen and Mr. Gatti’s flyer also stated that: “Committeewoman Julia Allen and Mayor Frank Gatti stand with the residents of Readington who have spoken out strongly against the planned expansion of Solberg Airport. With airport expansion sure to destroy Readington’s environment and quality of life, Allen and Gatti are currently negotiating to maintain Solberg as is.” The flyer concluded with the missive to “Vote To Keep Jet Traffic Out Of Readington, Vote Frank Gatti And Write-In Julia Allen.” [D-291A].

191. Committeewoman Allen and Mayor Gatti circulated similar-type dramatic mailings in 2005 superimposing the shadow of a large commercial jet, that resembled a 747, over the entirety of Readington Township. [D-291B].  
Included in those mailings were various slogans that made clear the Committee’s intent was focused on airport expansion: “Solberg Airport’s expansion will bring corporate jet traffic to our skies”; “It’s not too late to stop the Airport’s expansion”; “For years, Julia Allen has fought to stop the Airport’s expansion and preserve Readington’s quality of life.” [D-291B].
192. In other campaign literature, the same message was repeated: “Say NO to airport expansion”; “Stop Airport Expansion”; “she [Julia Allen] is fighting to stop the Airport’s planned expansion by negotiating to keep corporate jet traffic out of Readington.” [D-291C].

**O. The Organized Scenario to Frighten the Public  
Into Approving the Taking of the Solberg Airport Property**

193. In December, 2005, through its new eminent domain counsel (James P. Rhatican of Connell Foley), Readington engaged an experienced public relations consultant, Anthony Cicatiello, and his firm, CN Communications. [D-297 at p. 1]. Part of firm's responsibilities was either to originate or review all communications sent out to the public by Readington Township committeepeople, including Mayor Gerry Shamey. (11T 84:25-85-7).
194. On or about January 13, 2006, CN Communications submitted a Public Relations Strategy Memo to the Township, as well to "public officials." [D-299]. The Memo noted that "the expansion of the Solberg Airport runway has been a controversial issue since the late 1990s," and highlighted the importance of media coverage in shaping public opinion. [D-299 at pp. 2-3].
195. CN Communications' initial strategy memo in January, 2006, also contained a section entitled "messaging for proponents" and it clearly and unequivocally focused on runway length. The very first bullet point in that "messaging" is entitled "problem with runway expansion." The bullet point goes on to note that "the original matter that drew the most public scrutiny was that of the runway expansion. This was and still should be a major 'not in my backyard' issue." [D-299 at p. 3]. **The first and primary paragraph, which is addressed to airport expansion, ends with the line that "this is the main**

- issue.”** The Township followed out the strategies in that memo. (12T 84:1-86:13).
196. On January 17, 2006, Readington conducted a heavily-promoted Township Committee meeting at the Holland Brook School, where Committee members, in a scenario scripted with Mr. Cicatiello, presented the case for acquisition of the Solberg Airport property to avoid what they represented to the public to be the inevitable expansion of the airport, lengthening of the runways, and surrender of control over the airport’s future to state and federal regulations. [D-385].
197. At the public meeting, Mayor Shamey introduced the discussion about Solberg Airport by noting that “the level of interest in this issue, that is the future of Solberg Airport, is something that has been on the front burner, if you will, for many years, perhaps as many as 30 or 40 years. The level of interest in this issue has not only been high, but it has been sustained over quite a long period of time.” [D-385 at 2:11-22].
198. Mayor Shamey summed up tellingly why, in Readington’s view, negotiations between Solberg and Readington were fruitless: “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.” [D-385 at 11:13-20].

199. At the meeting, though being less than candid about it, Readington's officials made no bones about their willingness to utilize eminent domain in order to retain control of the airport at the municipal level and to preclude NJDOT or the FAA from exercising their acknowledged authority. Mayor Shamey told the assemblage that:

“the most important thing to me and to this committee, and I think for all of us on the Committee, is to retain decision-making power over development of the site here in Readington.... The thing with airports is they are unique, and once an airport is approved to handle certain types of aircraft, once an airport receives funding from the federal government, that is the FAA, a great deal of control, if not total control is lost to the Township. Once those funds are received from the federal government, restrictions become much more difficult with operations and such, and I am not an expert in that field and we do have an expert here in that area. I will leave it at that.” [D-385 at 15:22-16:18].

200. “The chief goal of this Committee,” the Mayor emphasized at that January 17, 2006 meeting, “is to make sure whatever course of action we eventually take, we will retain decision-making power over future development. I believe that Readington should be planned by Readington and not by the federal government, nor by the state government, and when I say Readington, I mean Readington and all of its residents.” [D-385 at 17:10-18].

201. At the 1/17/06 public meeting, Mr. Auriemma told the public that the purpose of the meeting "was to discuss the right sized airport for our Township" (9T 78:15-79:15) [D-385 at p. 138].

202. Readington's aviation consultant, Richard Golaszewski, also spoke at the January 17, 2006, meeting. He noted that 3,000 feet of paved runway was insufficient for most high-performance aircraft, whose operation would not be willing to operate on a sod runway. [D-385 at 56:8-24]. He broke down the capacity of various runway lengths as follows: "what do you need for various aircraft types? I will show you some of these in a minute. Basically, if you have 4,000 feet, you can handle very light jets and turboprops, and when you get to 5,000 feet, you can handle medium-size jets . . . ." [D-385 at 56:8-24]. He went on to note what jet operators look for, including "an instrument approach, lighting, fuel, facilities in the airport, 24/7 availability. If someone will operate a jet here, this is what they're looking for in terms of facilities at the airport." [D-385 at 56:25-57:5].

203. In what was obviously an effort to scare and intimidate the public, all in accordance with the choreographed strategy, Mr. Golaszewski said

"they would like to build up to 500,000 sq. ft. of hangers and other uses. A Boeing 747 is about a little less than 50,000 sq. ft., nose to tail wing, and while you could park them closer, that is to give you some idea of scale. Now, that is 10, 12 or more Boeing 747s fit in something that is 500,000 sq. ft., or you could put 100 small jets in." [D-385 at 59:16-24].

204. Mr. Golaszewski also likened operations and the types of airplanes that might use Solberg Airport if it had a 5,600 foot runway to those that would be used by Continental Airlines out of Newark. [D-385 at 65:3-66:3].

205. In the course of his presentation, Mr. Golaszewski discussed where “the FAA and the New Jersey Department of Transportation [are] on this.” [D-385 at 67:7-8]. He noted that Solberg Airport is on the NPIAS, which means that the “FAA has accepted that this airport is important to the national aviation system.” He also noted that funding from federal sources has an effect on the degree of local control: “If you take FAA money, all of a sudden, the agreements you signed to get that money really take away a lot of what the local communities control at the airport.” [D-385 at 67:7-20].

206. Readington’s expert addressed the issue of economic viability, stating that “the FAA recognizes it is very difficult for small airports to be self-supporting.” [D-385 at 68:12-16]. “So if Readington forced Solberg Airport to remain small, there may be some need for the community, in return for restrictions on development, to provide some form of compensation.” [D-385 at 68:16-20]. What Mr. Golaszewski did not say explicitly but what he undoubtedly would have said had it been in his and Readington’s interest to finish the thought was this in the absence of “some form of compensation’ (or even in spite of it) the airport would probably not survive if it could not be modernized and expanded, including the runway.

207. Mr. Golaszewski described the status of funding, and its likelihood, as follows:

Solberg would “of course, have to pass the normal environmental and other reviews required, but the process would be in motion, and the end of that process would be to provide them grant money. I believe the national plan has somewhere on the order of \$12 million targeted for this airport.... Presuming [Solberg] could get through all that, they are

approved for 4,890 feet, and that is where FAA is willing to go at this point.” [D-385 at 77:10-78:7].

208. In a letter to residents dated January 27, 2006, Readington purported to present history and information on the Solberg Airport “issue.” Readington made plain that it believed the “future of the airport represents the most important issue our community has faced in many years.” It emphasized that “a small airport” was consistent with rural character and that the community had to be aware of “important developments in the aviation industry” that caused overcrowding in nearby airports and that may cause increased traffic at Solberg Airport. [D-306 at p. 2].
209. The January 27 mailer also relayed Readington’s concern that in the absence of action it would lose control to the FAA. [D-306 at p. 2 (if “the owners of the airport accept federal funding for improvements, there is an FAA preemption of local controls.”)].
210. Under the heading “the significance of runway length” Readington made clear that the “preference of the Township Committee is to maintain the *status quo* at Solberg Airport,” and that “[e]ssential to maintaining the *status quo* is maintaining the current runway length.” [D-306 at p. 2].
211. Of the seven topics described in headings in that January 27 mailer, only one dealt with open space, and the others dealt with municipal control vis-à-vis the FAA and the NJDOT, runway length, hangers size, jet aircraft noise, and the purported impact of jet aircraft on property values. [D-306].

212. CN Communications engaged in continual communication with Readington Committee members -- the “team” -- urging them to stay on message, and including emails with snippets suggesting that airplane growth is coming and the pressure to expand airports is right behind it. [D-310].
213. At the February 6, 2006 meeting of the Township Committee, it approved a resolution authorizing its eminent domain counsel, Connell Foley, to take a variety of preliminary steps, many of which were obviously in anticipation of a condemnation. [D-313 at pp. 48-49].
214. At the same meeting of February 6, 2006, the Township Committee introduced a bond ordinance for the purpose of municipal acquisition of Solberg Airport. [D-313 at pp. 52-54].
215. At that February 6 meeting, in the course of commentary with respect to the bond ordinance, Committee member Beatrice Muir said that it was time for “some closure in this matter,” which had been going on for years, and she went on to discuss the issue of runway length. [D-313 at p. 117]. Ms. Muir endeavored to explain at trial that “closure in this matter” did not relate to the size of the runway and airport expansion, but rather, “I think the term ‘closure’ means information for the residents.” (23T 48:24-51:24).
216. In colloquy with the Court, Ms. Muir -- a retired English teacher-- explained her understanding of the word “closure”:

THE COURT: Take your time. But before we go on, “closure” to you meant not an ultimate resolution of this matter but mere information to the people that you served?

THE WITNESS: I think, I think at that point it was information as to the--

THE COURT: Is there a definition of closure which would encompass information?

THE WITNESS: I think information is part of that process

THE COURT: So the answer to my question is yes: you believe "closure" has the definition of information--

THE WITNESS: Think.

THE COURT: -- not a resolution of the matter.

THE WITNESS: I think information is a part of giving the residents--

THE COURT: Let's go back to closure. Let's go back to closure.

THE WITNESS: Uh-huh.

THE COURT: You said closure means giving information, not an ultimate resolution of a matter that has gone not for weeks, not for days, not for years but for a long, long time.

THE WITNESS: I didn't use the words "ultimate resolution."

THE COURT: No. You used the word "closure".

THE WITNESS: Right.

THE COURT: And you're telling me "closure" means--

THE WITNESS: What I said.

THE COURT: What did you say?

THE WITNESS: It's -- I said it includes information about the process.

THE COURT: Not --

THE WITNESS: In public.

THE COURT: Not as in your stewardship as a member for 16-and-a-half-years, to bring this matter to an end?

THE WITNESS: I don't think I intended it in that, in that--

THE COURT: Okay.

THE WITNESS: -- in that definition.

THE COURT: Thank you.

(23T 50:4-51:24).

217. At its February 21, 2006 meeting, the Readington Township Committee adopted the \$22 million bond ordinance for the acquisition of the Solberg Airport property, Committee members spoke on the topic at the meeting, [R-127; D-327\*; D-315; D-386] including their concerns that in the absence of acquisition, the Township would be powerless vis-à-vis the Federal Government and the State. Among the many pages of transcript, one excerpt spoken by Mayor Shamey encapsulates Readington's position and describes what Readington thought of the Master Planning process and its review by state and federal authorities through the environmental assessment: "the process was a cruel joke." [D-315 at p. 41:13; and at 30:18-42:1].
218. CN Communications cheered its client on in describing the February 21 Committee meeting: "to say that the public meeting was successful would be an understatement;" and, like the football coach at halftime, it urged Readington to use the momentum to "head off, if [they] can, the petition drive" that they anticipated Solberg Airport would undertake with respect to the bond ordinance. [D-316].
219. In its communications with residents shortly after adopting the bond ordinance, Readington --consistent with its position at all times-- specifically rejected employment of a mediator to attempt to resolve the dispute. It announced that "Whether or not to allow expanded runways that could accommodate jets is simply not a 'split the difference' issue;" and it made crystal clear that it would "not accept any compromise that would expand the runway to more than its

current permitted length.” [D-317 at p. 2]. Contrary to its history of advocating eminent domain (including the passage of ordinances to accomplish that in 2001 and then introducing a bond ordinance in 2005), Readington disingenuously told its citizens that Readington Committee members were “not proponents of utilizing the tool of eminent domain.” In fact, that outcome had already been discussed, recognized as the likely outcome, and planned for in the February, 2006, authorization of Connell, Foley, among other things. This tactic, of misleading the public, was part of the strategy to gain an advantage in the upcoming referendum on the bond issue. [D-317 at p. 2].

220. After it became clear that the bond ordinance would be the subject of a public referendum, Readington Mayor Gerry Shamey misleadingly represented to the voters in a March, 2006 letter that the bond referendum vote “does not address or concern the issue of eminent domain.” [D-318 at p. 1].

#### **P. The Bond Referendum Campaign**

221. A March 6, 2006 “strategy memo” from CN Communications to the “team” was an unabashed attempt to lay out a plan to ensure the referendum passed. Mr. Cicatiello recommended emphasizing that the Solberg Master Plan would “forever change the character of this township and depreciate property values for everyone in the Township.” “You are the angels here,” Mr. Cicatiello wrote. [D-319].
222. In summary, while mouthing the proposition that neither he nor his clients were entitled to take a public position on the bond referendum, (See *Citizens to*

*Protect Public Funds v. Bd. of Educ. of Parsippany-Troy Hills Twp.*, 13 N.J.

172, 179-181 (1953) (Brennan, J.)), Mr. Cicatiello wrote that “[t]he Township may need to mount a campaign to get the people to vote for the bonding resolution,” [D-319 at p. 3], and proceeded to direct and guide such a campaign, including the issuance of public statements by Committee members in their individual capacities. [D-336].

223. As part of the campaign, Readington Committee member Thomas Auriemma wrote an editorial stressing the lack of municipal control vis-à-vis NJDOT regarding the airport and concluded that it was their “responsibility as a team to bring this issue to finality, once and for all.” [D-426\*].
224. Mayor Shamey secretly tape recorded a telephone conversation with Lawrence Berger, Esq., a Solberg attorney, and withheld the tape recording transcript until a press conference with Julia Allen, where they alleged campaign-finance violations by an adversary. [D-426\*].
225. Readington scheduled several meetings throughout the Township to present its case on the bond referendum, meetings that were chaired by Mayor Shamey. These meetings were the subject of testimony and exhibits, including Mr. Shamey’s representations to the public regarding his lack of knowledge as to the CHA environmental assessment draft, which he and his colleagues now claim as their playbook for how to slice up the Solberg Airport property in the taking to leave Solberg Aviation with no possibility of extending its runway

and, indeed, the likelihood that it might have to be shortened in order to obtain funding.

226. On or about April 26, 2006, shortly before the vote on the bond referendum, CN Communications delivered another “strategy memo” to the “team.” The memo suggested that the Readington representatives advocate that a “yes” vote on the bond referendum, would “stop outsiders from taking over our government” and somehow would preserve the annual Balloon Festival which would otherwise be “imperiled by jets.” The strategy memo also suggested that it was “a key objective” to have the Solbergs be present at the “public information” sessions because they “are extremely vulnerable in a public forum” and that, if they did not attend, then the Committeepersons would “have free sailing to drive home the above message,” supporting the bond ordinance. [D-336].

227. CN Communications purported to acknowledge in the “strategy memo” that Readington’s Committeepersons “cannot conduct a campaign that is considered advocating one side from the other;” but then went on to recommend that one way to skirt that stricture would be for Mayor Allen to “write a personal letter” to Readington residents because that would give “her a great deal of freedom and the opportunity to be candid about the election.” Mr. Cicatiello recommended not that she talk about the issues, but rather that she “talk about the discussion with Berger and the Mayor; she can talk about what it meant to lose last June and the impact of outside money with a specific

purpose to take control of the Township; and she can speak personally about the long-term ramifications of a jetport, something that the Solbergs have wanted for a long time and are at the last stage of getting what they want.” [D-336].

228. In the “strategy memo”, Mr. Cicatiello also recommended that if the going gets “really tough,” the Committee members “may want to mail the discussion between the Mayor and Berger” to Township residents. [D-336 at p. 4]. This in fact was done by hand-outs at public meetings. (35T 160:8-163:1).
229. In connection with campaigning for the bond referendum, slideshows were also prepared with the help of CN Communications. Several slides from that presentation provide evidence of the Township’s purpose in the bonding process: one: “airports future... Expansion plans have progressed under FAA regulations and procedures for over a decade... airports expand incrementally... runway length greater than 4000 feet can safely accommodate certain business jet aircraft...”. Part of the slideshow focuses on public concern over airport use by listing examples of aircraft that can operate on a 4800 foot runway, as was proposed for the long-term development plan. [D-347 at pp. 4-5]. The slideshow also demonstrated Readington’s purpose as being to avoid state and federal authority in the area of airport expansion, regulation, and control. [D-347 at pp. 8-15] (11T 118:17-124:9).

230. The slideshow also acknowledged Readington's awareness that the Solbergs intended to preserve the space around the airport: "parties agree adjacent open space should be preserved." [D-347 at p. 13].
231. In Readington's slideshow for the bond referendum meetings, Readington specifically tied the bond referendum to the long history of the Township in opposing any lengthening or expansion, modernization, or improvement of Solberg Airport spanning back to the 1960's. [D-348\* at p. 2]. In fact, the first eleven pages of the informational slideshow revolve entirely around the history of Readington's antagonism with Solberg Airport's various efforts to modernize its facilities, peppered with frustration at NJDOT and FAA conditional approvals and funding set-asides. [D-348\* at pp. 2-11]. Of the approximately 50 pages in that slideshow, only a very small fraction related to open space and even those were almost exclusively tailored to funding of the potential acquisition. The rest of the slideshow is almost exclusively dedicated to Readington's scare tactics about runway expansion, NJDOT authority, and FAA funding and preemption. [D-348\*].
232. In coordination with CN Communications, Readington also prepared a document intended to answer commonly asked questions about the referendum on the bond ordinance ("FAQ"). [D-349]. One of the more significant questions the Township poses and answers is "can't the Township regulator prevent development at the airport without buying these rights?" And it answers it with a focus on emphasizing the municipality's limited role vis-à-

vis the state and NJDOT and the FAA, noting that while local planning boards retain some authority “their decisions are subject to review and overruled by NJDOT, and in some cases the FAA.... Two recent New Jersey Court decisions have upheld the supremacy of state priorities over local concerns.... So long as the Solberg family owns the rights to develop their property, they are free to pursue an expansion of the airport into a regional jetport. The Township’s legal counsel has explained at public hearings that acquiring land development rights is the only way for the Township to guarantee that the airport is preserved **as it is today.**” The FAQ also noted Solberg held a high priority in the 1992 State Aviation System Plan, and suggested its status as a reliever airport reflected “its prominence among federal planners,” at least for purposes of expansion to accommodate jet aircraft. [D-349 at pp. 2-3].

233. Readington also acknowledged that the New Jersey State Aviation System Plan “articulates a need to relieve congestion and existing jet ports in New Jersey,” while noting that the NJDOT had funded a \$300,000 environmental study required for the expansion, and conditionally approved the Solberg master plan. The FAQ highlights the municipality’s concern about its control of the airport being overridden by the state and federal authorities. A substantial banner at the bottom of page 2 alerts the reader by way of background that “the legal constraints on municipalities’ control of airports is available at the municipal building in both Township libraries.” [D-350 at p. 2].

234. The FAQ expressly says **the Township believes that if it were to “to ensure an acceptable alternative to airport expansion, [it] must reach an agreement with Solberg Aviation before the FAA and the NJDOT grant unconditional approval for the Solberg Airport layout plan.”** [D-350 at p. 2].
235. Committeepersons Thomas Auriemma and Beatrice Muir sent mailings in the Spring of 2006 to Readington Township parents encouraging them to “Protect our Children’s Safety; Protect our property values; Prevent Airport Expansion.” [D-354].
236. In addition, campaign literature by Thomas Auriemma and Beatrice Muir mince no words about either their position on Solberg Airport expansion, or its importance at the top of the agenda that each one emphasized. For example, in a flyer outlining where they stand on major issues, the very first one is Solberg Airport where they state that they “are committed to stopping the expansion of Solberg Airport.” And then go on to state that the Solberg Airport “threat has been hanging over Readington for decades,” and laying out the following rallying cry: “We must resolve it now or lose the opportunity.” [D-596\* at pp. 1-22].
237. On May 8, 2006, Mr. Auriemma once again wrote an editorial focused on Solberg Airport. His editorial is filled with support for the Township’s pretextual purpose: “as a community, Readington has a decades-old position

against the expansion of the airport and had elected its officials based on platforms” opposing the expansion. [D-260\*].

238. Mr. Auriemma’s editorial is laced with invective that reveals Readington’s purpose is undermining the authority vested in the NJDOT:

“the public records are full of documented omission and deception by the airport developers and the Department of Transportation Division of Aeronautics with regard to the Solberg expansion.... The real facts are that the state has already eliminated local control with regard to Solberg Airport development. Only by acquiring the property could Readington protect the agricultural/residential zoning from development of any kind and maintain existing airport buffers, which would be eliminated by the proposed expansion of the runways.... Rather than support the Township’s efforts, the DOT has interfered in local government activity by offering a \$12 million premium (from money they do not have) to prevent Readington from acquiring the property. I am hard-pressed to understand what is not deceptive about this action.” [D-260\*].

#### **Q. The Acquisition/Condemnation Ordinances**

239. On June 28, 2006, Readington introduced an ordinance authorizing the acquisition of the Solberg Airport property by condemnation or otherwise. The ordinance passed on July 11, 2006. [R-126].
240. On July 11, 2006, Readington issued a press release, which deceptively emphasized that the purpose of the ordinance was supposedly the voluntary negotiation and acquisition of the airport, when in fact it was plainly the prelude to an eminent domain proceeding. [D-356; R-126].
241. On or about August 7, 2006, the Township Committee introduced an ordinance authorizing counsel for the Township to make a formal offer in the context of the eminent domain statute for the higher of two appraisals. [D-651A].

242. At the same meeting, the Township introduced an ordinance revising the land-use ordinances of the Township of Readington at section 148. [D-651A at pp. 38-46]. The revisions reduced the lot size subject to **mandatory** open space set-asides in AR zones from 40 to 30 acres, as well as reducing the lot size subject to open space set-asides in the RR zone. [D-651A at pp. 38-46].
243. Readington's press release in September, 2006, relays its preoccupation with precluding the airports runway extension so that it cannot "accept jet traffic" and in order to "preclude jets" as the Township previously proposed. [D-370].

#### **R. The Condemnation Action and Declaration of Taking**

244. On September 15, 2006, Readington filed the instant condemnation action. [Verified Complaint].
245. On October 4, 2006, the Township of Readington executed and filed a formal Declaration Of Taking. [R-1].

#### **S. The 2007 ASZA Ordinance**

246. Readington was one of the last holdouts in not adopting the ASZA ordinance, and even though most of Readington's zoning was "not grossly incompatible" with the ASZA ordinance, Readington "as to form and substance" was "non-compliant." (20T 92:7-18).
247. As of late 2006 and early 2007, Readington was the only municipality with a significant airport in the entire State of New Jersey that had not adopted any Air Safety Zone ordinance. (20T 162:16-163:13).

248. On or about June 29, 2007, Readington enacted an amendment to its zoning ordinance which was purportedly in compliance with ASZA, same 24+ years after the state statute had been enacted and after many years of defiance of the State regulations and evasion of their responsibilities. [R-223]. The ordinance amendment, which is the subject of a separate attack by Solberg Aviation Company in a pending prerogative writs action, is centered around and likely dependent upon the outcome of the instant case, inasmuch as it is premised upon the entire airport property comprising only the 102 acres as to which Readington took no fee, though it also seeks to limit activity even as to those acres to the specific airport-related activities contained in the Declaration of Taking. [R-1; R-223].
249. Under the layout as taken by Readington in its eminent domain complaint, unless Readington changed its position, the airport is limited to 102 acres and that was the assumption given to Mr. Thatcher in drafting the air safety ordinance in 2007. (20T 140:17-142:4).

**T. Continued Efforts By Readington  
to Frustrate Airport Improvement**

250. Solberg Aviation has been prevented from doing any significant construction to the airport for various legitimate reasons, both financial, and artificially imposed by the Township of Readington. (3T 40:13-46:20). The Solbergs sold off much of the real estate they inherited from their father, but did so with the design, purpose, and objective of selling only property that would not

impact the operation and future of the Solberg Airport tract constituting approximately 726 acres that is the subject of this taking. (3T 41:17-42:10.). After the Solbergs finished paying estate taxes, etc., they turned to improving Solberg Airport, and applied to NJDOT for sizable, six-figure grant which the department approved, becoming one of the largest grants as of that time to a privately owned public use airport. (3T 42:19-7). Although Solberg Airport initially obtained approval, and grant monies, to pave the entirety of the 3700 foot runway, plus 305 feet of safety overrun, Township opposition precluded the paving beyond 3000 feet. (3T 43:8-12).

251. In 2010, Solberg Aviation attempted to obtain approval from Readington to pave the existing turf runway and to prove the runway lighting and construct and infiltration basin. The Planning Board wouldn't hear the case because the taxes on the land purportedly were not paid, though that is under dispute, and so the project was put on hold. (3T 39:19-40:12, 44T 46:2-49:25); [D-712; D-713; D-714, R-239].

**U. Readington's Fact Witnesses (Township Officials)  
Did Not Justify the Stated Purpose of the Taking**

252. Readington called to the witness stand on its case the officials and prior officials who voted to condemn the Solberg property in 2006. Two of them in particular, Ms. Allen and Mr. Shamey, were subjected to extensive cross-examination. The other three -- Mr. Gatti, Mr. Auriemma and Ms. Muir -- were cross-examined to an extent commensurate with the scope of their direct.

253. To the extent these witnesses spoke to their "intent" in voting for the condemnation ordinance, the relevance of same is highly questionable in view of the Appellate Division's determination that the focus should be upon "objective factors" in determining the "purpose" of the taking, which "objective factors" should focus on the terms of the ordinance and its operation and effect, as well as the context in which it was adopted. (409 N.J. Super. at 311-312).
254. Although not issuing a final ruling on the subject, the Appellate Division noted that the "objective factors" in this case "impugn" the validity of the ordinance, taking into account the stated purposes in the ordinance itself, together with various other evidence.
255. The record before this Court on this trial, both in its factual material and in the opinions of various of the experts, ratifies the Appellate Division's statement that both as to context and as to operation and effect, the taking is not justified by the purposes stated in the ordinance and that, as the Appellate Division noted:
- (a) "The decision to condemn development rights to the airport was tainted by the Township's desire to control airport operations" (supra. at 315);
  - (b) The foregoing suggests that "the true purpose of the condemnation was to secure a greater measure of land use authority over the airport than the Township currently enjoys" (*Id.*); and
  - (c) The objective evidence suggests that the condemnation was initiated to secure Township control over airport operations (*Id.*).

256. The Appellate Division also made it clear that all of the foregoing were “improper purposes in that they subvert the Commissioners' ultimate authority over aeronautical facilities” (*Id.*).
257. The evidence regarding context has been described at length in the prior Findings herein. The bottom line is that the taking had nothing to do with open space, which was already pervasive in Readington and was assured of increasing by virtue of the cluster zoning ordinances; and as well, open space pervaded the airport property itself and would not significantly be eclipsed even if the airport and runway were expanded.. All of the focus, all of the activity, and all of the enormous expenditure of time and money, was devoted by Readington to control of the airport and prevention of its expansion or the lengthening of the runways -- a theme that existed briefly in the 1980s, more so into the 1990s, and with a protracted vengeance from 1999 forward when Readington learned of the conditional approval of the Solberg Master Plan.
258. Readington Township Committee witnesses, to the limited extent they were credible, at times supported the conclusion of pretext and improper purpose.
259. Readington presented each of the Township Committee persons who voted for the condemnation ordinance here in question. Although each of them endeavored, on direct examination, to mouth the principles of open space and, in most instances, claimed concern for residential housing development as influencing their need to condemn for open space, any conclusion from their testimony that open space was even a substantial, much less legitimate, reason for the taking, evaporated against the background of their many public statements and participations, as well as the inherent lack of credibility in their

testimony -- particularly that of the major participants, Julia Allen and Gerard Shamey.

260. **Julia Allen's** testimony, in particular under cross-examination, was an exercise in evasiveness. While she undoubtedly had and has a passion for open space and farmland preservation, her effort to apply those goals to the involuntary acquisition of the Solberg Airport property does not stand up to scrutiny, notwithstanding her sometimes clever performances on the witness stand. Portions of her testimony, in fact, include compelled acknowledgments of the airport expansion issue as a focal point, and further illustrate her lack of credibility in attempting to downplay it.

The following is illustrative:

- (i). Prior to this matter, Readington had only once before ever used eminent domain in connection with its acquisition of properties. (4T 88:19-89:6). “The only time Readington, other than the Solberg situation, used eminent domain was in the case of Burgess Plazonka in Whitehouse Station... Which involved approximately 10-acre walkway in the Lake Cushetunk area.” (13T 9:9-10:2). The primary purpose of this only other taking by eminent domain of the Readington Township Committee was to create a walkway for a senior citizen center, not open space. (13T 57:14-60:23). Ms. Allen insisted that the eminent domain taking in that instance was for the dual purpose of creating a walkway and for the preservation of open space, expressly denying that the “primary purpose” was actually to provide the walkway. When shown the Amendment to the Readington Master Plan dated November 23, 1998, [R-61] wherein the taking was described as having a “primary purpose [] to provide a path between the newly opened Stephen A. Mirota Senior Citizen Apartment Complex... and the Village of Whitehouse

Station,” she conceded that language was used, but maintained that despite that document’s language, she “considers them equally important.” (13T 56:22-58:14).

(ii). Ms. Allen continued to maintain that she considered the two purposes were equal, even in the face of being shown a document that she herself had authored, [R-215] (report to the Readington Township Planning Board dated September, 1998), wherein she had written the following: “The Township is acquiring 10 acres adjacent to the sizable Lake Cushetunk Woods Community. The **primary purpose** is to provide a path between the newly opened Stephen A. Mirota Senior Citizens Apartment Complex, a public park adjacent to Lake Cushetunk, and the village of Whitehouse Station.” (13T 58:19-59:24). Even when confronted with her own words, Ms. Allen would not concede the obvious truth. She suggested that she had nonetheless copied some unidentified language from some unidentified report written by some other author, and when asked if she would have copied the language unless she thought it was accurate, she responded “I think it’s -- I think we’re -- I know you consider this an important point, but I think it was -- I’m interjecting my own view into this.” (13T 60:3-23).

(iii). Ms. Allen admitted, as she had previously sworn to it in another case [D-605], that the “clustering strategies which the Township has implemented... are designed to enhance the Township’s open space and farmland preservation policies...”, but nevertheless declined to readopt that wording, instead testifying that she “would prefer to say it [clustering] was in furtherance of our natural resource protection policies . . .” (13T 19:18-20:23).

(iv). Ms. Allen also was compelled to acknowledge, as the 1995 Open Space Report stated with respect to Solberg Airport, that “as long as the airport exists, the

open space associated with it in this area is somewhat stable.” (13T 66:18-67:18) [R-48 at p. 6].

(v). Approximately six years before the first ordinance to condemn Solberg Airport was adopted in 2001, the Readington Township Open Space Committee issued an October 23, 1995 re-examination report. (13T 80:3-14). That 1995 re-examination report employed specific methodology to rank various parcels in the Township of Readington according to their open space desirability as well as the development pressure the Township perceived to develop the property. [R-48 at pp. 8-9, Appendix A] (13T 75:2-9).

(vi). Readington identified 60 tracts in its inventory with higher environmental consideration, rural protection scores, than the average of the Solberg tracts currently subject of the condemnation action. (13T 84:17-23) [R-48, Appendix B].

(vii). Readington identified 3800 acres in its inventory with higher environmental considerations and rural protection scores than the average Solberg lot. (13T 84:24-85:4) [R-48, appendix B].

(viii). Readington identified 3860 acres of land in its inventory with higher combined score (Development of partial and environmental consideration, rural protection scores) than the average of the Solberg properties. (13T 85:5-11) [R-48, appendix B].

(ix). Readington identified approximately 54 parcels in its inventory with a higher average combined score than the Solberg parcel subject of this condemnation. (13T 85:12-15) [R-48, appendix B].

(x). Readington in its 1995 re-examination report, after listing various methodologies for the voluntary acquisition of open space, made it clear that voluntary acquisition was the guideline: **“We recommend that all purchases be the result of**

**open, free-market negotiations with willing landowners, and only after the landowner has shown an interest in participating.”** [R-48 at p. 11] (13T 73:18-25).

(xi). In its 1995 re-examination report, Readington also identified various methods of preserving land in the Township, including a notation that the “current cluster ordinance can be used to effectively preserve large tracts of land.” [R-48 at p. 10].

(xii). In its 1995 re-examination report, Readington identified and discussed the Solberg Airport property. In fact, the re-examination attributed the maintenance of Readington Village as a historic and rural treasure as due, in part, to being buffered by the open space “along the Holland Brook and by the open land associated with the Solberg Airport. **The existence of the airport stabilizes over 700 acres of open space adjacent of Readington and thus serves as a ‘Greenbelt’.**” [R-48 at p. 6].

(xiii). Those pertinent recommendations appearing in the 1995 re-examination report, are also found in the Amendment to the Readington Master Plan dated November 23, 1998. [R-61]; (13T 85:16-86:6).

(xiv). Readington’s 1998 Master Plan Amendment contained various recommendations for preserving open space including clustering, farmland preservation, purchase of land in fee, through the Greenacres program, conservation easements, regulation, and donations. (13T 90:3-24).

(xv). There was no recommendation in the Township of Readington’s 1998 Master Plan Amendment for the use of eminent domain to preserve land. (13T 90:25-92:18). Despite the lack of any such recommendation, Ms. Allen had a hard time conceding that in her testimony, and when asked the following question, said she was unable to answer it and requested that it be reworded: “There’s no recommendation, is there, in this amended Master Plan for using the technique of condemnation by eminent

domain power to achieve open space preservation, is that correct?” (13T 90:25-92:2).

The reporter was asked to read the question back, Ms. Allen said “I heard it. I asked if you could reword it,” to which the Court suggested “why don’t we reread it and see if you understand it. If you don’t understand it, then we’ll repose the question.” Ms. Allen immediately responded that “I had a problem with the question, not that I didn’t hear it.” After the question was reread by the reporter, Ms. Allen said that she understood the question but testified that “my problem is that I don’t agree with the premise of the question.” (13T 91:4-92:1).

(xvi). Readington Township’s AR zoning provides for “a permanent preservation of land for agriculture through the clustering of residential development.” [R-61 at III-6] (24T 60: 7-62:4).

(xvii). As incredible as it sounds, the Readington Township Committee believed the Township was in compliance with ASZA between 1998 and 2007, according to Ms. Allen. (7T 110:22-111: 24).

(xviii). Ms. Allen had to concede that Readington did not adopt an ASZA ordinance for almost 20 years, until the point in time in or around 2007 when it owned all but 102 acres of the property, which by virtue of that ownership, prevented the zoning of more than 102 acres as “airport.” That restrictive zoning, limited to the 102 acres that Readington had left to Solberg Aviation Company in its eminent domain taking, ensured that Solberg Airport could not expand as a result of the ordinance eliminating its status as a non-conforming use, as had been mandated by the ASZA for almost 20 years at that point. (16T 62:11-64:25).

(xix). The Township Committee’s understanding, according to Ms. Allen, was that the draft Environmental Assessment of October, 2002, resulted in a conclusion that “there was no need for the last two alternatives that called for lengthening of the

main runway.” (7T 131:17-133:18). The Township Committee purported to understand that there “would have a significant--the environment impacts to the second--for the last two alternatives would be too significant.” (7T 133:19-24).

(xx). At trial, Ms. Allen also had a problem admitting that the October 2002 Preliminary Draft EA was never completed. (13T 95-97). When asked whether the October 2002 EA in fact was never completed, she responded that she understood “that’s a document stamped preliminary draft environmental assessment,” but when asked whether she was acknowledging that it was never completed, she said “I’m not acknowledging that... I’m acknowledging that it’s a preliminary draft,” and she swore under oath that she was “not expert enough to understand the process” in a manner that would permit her to conclude whether the report was complete or not. (13T 95:19-96:8).

(xxi). After professing not to be expert enough to realize whether the report was complete or not, Ms. Allen was confronted with a Certification that she had signed in this matter in October, 2006, wherein she stated “in the late 1990’s the State commissioned an Environmental Assessment of a proposed expansion of the airport, and **although that report was never completed**, a preliminary draft is on file with the state.” (13T 96:15-97:13). Even then, Ms. Allen prevaricated. She was asked whether it was her view in October, 2006, that the October 2002 Preliminary Draft was never completed, and the best she could do by way of a response was, “that’s the sentence that’s written in paragraph 18.” After further questioning about whether she was now changing her view, she finally, at long last, conceded :“No.” (13T 97:7-24).

(xxii). Ms. Allen agreed that Readington’s understanding of Solberg Airport’s role did not conflict with the NJDOT’s expression in the Agreement of Sale, [R-97], that “the Airport is and has been a vital aeronautical facility and a significant

component in the New Jersey State Airport System Plan, and the National plan for integrated airport systems, for more than 60 years.” (14T 44:8-45:1).

(xxiii). Ms. Allen agreed that Solberg Airport “played an important role in serving . . . general aviation . . . .” (14T 47:19-22). She also agreed that there is truth to the statement in the preliminary draft environmental assessment from October 2002, [R-101], that reliever airports are “considered by the FAA to be of national importance and are therefore eligible to receive federal grants for improvements to the public use components of the facility (i.e. runways, taxiways, etc.)” (14T 48:19-50:13).

(xxiv). When asked whether she read and considered the notation in [R-101], the October 2002 preliminary draft EA on pp. 2 - 3 that “a primary runway length of 4,300 feet is advised according to FAA guidelines,” Ms. Allen testified that “I noticed it now.” (14T 56:8-16). She did not recall whether she took note of that portion of [R-101], wherein the author advised that “the 4,300-foot runway length is the FAA guideline to accommodate a small aircraft fleet, which include some of the light business jets that use the airport today. The 4,300-foot runway would enable these aircraft to operate at SHA without restrictions on passengers and fuel on board.” (14T 56:17-57:3).

(xxv). Ms. Allen represented that the Readington Township Committee was cognizant of, and planned around in part, the portion of the October 2002 Preliminary Draft EA marked as [R-101], in designing the eminent domain ordinance to leave 102 acres to Solberg aviation. (14T 54:5-58:15). Ms. Allen testified that she was cognizant of the portion of [R-101] wherein NJDOT will consider development of the 3735 foot runway, but her memory conveniently lapsed when it came time to recognizing the portions of [R-101] that references FAA guidelines with respect to a 4,300 foot runway: “QUESTION: did you also see the references to a 4,300-foot runway on the second paragraph? ANSWER: The-- QUESTION: Before you voted for this ordinance?

ANSWER: Um, I don't remember. Like I said, I don't remember reading -- I don't have these pages committed to memory." (14T 54: 21-55:8).

(xxvi). Ms. Allen embarked on a revealing colloquy with the Court with respect to conclusions she claims to have drawn from [R-101]:

THE COURT: When you voted in '06 you weren't aware of this recommendation with regard to 4,300 feet runway was advised?

MAYOR ALLEN: I was -- I was aware that, um, they had dismissed Phase One and Phase Two. Phase One was 4,300 feet. What I'm saying is I don't have a recollection. I would very clearly remember if they had dismissed the 4,300-foot basis.

THE COURT: Was the 4,300 potentially part of your calculus in voting for the ordinance?

MAYOR ALLEN: Yes, yes.

THE COURT: You did not favor extending the airport to 4,300?

MAYOR ALLEN: What I was favoring was, um, working in concert with the DOT's plans. And the DOT had dismissed Phase One and Phase Two. In other words, the DOT had --

THE COURT: I'm interested in what you thought.

MAYOR ALLEN: No, no, I --

THE COURT: Were you in if [sic] favor of extending this airport runway at 4,300 feet?

MAYOR ALLEN: Um, when we were working with the Environmental Assessment and giving our opinions on the future extension of the runway, I opposed an extension of the runway.

THE COURT: And when you voted for it, were you mindful of that?

MAYOR ALLEN: Was I mindful of when I voted for the --

THE COURT: That you were against the 43 -- it's a simple question, I'm not --

MAYOR ALLEN: Um, was I mindful of it? I was mindful of that and I was also mindful --

THE COURT: But you were opposed to it.

MAYOR ALLEN: I was opposed to it, and I -

THE COURT: That's all, thank you.

(14T 57:3-58:15).

(xxvii). Ultimately, after extensive questioning, Ms. Allen conceded being aware of the portion of the 10/02 Draft EA which stated that “FAA runway guidelines include the provision for a runway length adequate to safely accommodate the most demanding aircraft category that conducts, or is forecast to conduct, at least 500 annual operations at an airport. As turboprop and jet aircraft currently conducted over 500 operations at SHA, it is concluded that a runway length of 4,300 feet is currently justified per FAA guidelines, but is not mandated by FAA standards.” (14T 63:8-22) [R-101 at p. 2-1].

(xxviii). In enacting the eminent domain ordinance in September 2006, Ms. Allen was asked if she was concerned that the Solberg property could be developed for housing, industrial, commercial use, or further developed for airport purposes. She initially responded that her concern was about residential, industrial, or commercial development, saying nothing about airport purposes. It took a further question to cajole her into admitting that further airport development was also a concern. (13T 11:17-12:8).

(xxix). Ms. Allen’s concern, or supposed concern, for industrial or commercial development, was purportedly based on conversations with Thor Solberg, Jr. in or around 1979, some 25 years earlier. She maintains that was a real concern, despite the fact that the airport was and is located in a residential area, and in a zone that would not permit commercial or industrial development. (14T 33:1-34:20).

(xxx). Having conceded, as she had to, that the “AR” zoning would not have permitted commercial or industrial use, Ms. Allen asked the Court to believe that her concern at the time the eminent domain ordinance was introduced and adopted was that some future governing body of Readington would rezone the property to allow for industrial and commercial use. (14T 34:24-35:8). Incredibly, despite the fact that the Solberg Airport property is located among farmland and residential housing development, Ms. Allen asked the Court to believe that she had a concern when the eminent domain ordinance was adopted that, as the question was put, “sometime in the future someone running the Township Committee of Readington Township would vote to allow factories and office buildings on this land . . . .” (14T 35:9-36:13).

(xxxii). Ms. Allen, in a rare moment of candor, conceded that **Readington’s condemnation of the airport entailed an attempt to “determine how long a runway Readington would allow to exist on the Solberg property.”** (13T 101:2-102:1).

(xxxiii). Readington approved a strategy whereby the Township would tell the citizens of Readington that if Readington did not acquire the airport property, the airport might well be expanded because control would pass to NJDOT and the FAA. (14T 88:3-23); [D-350].

(xxxiiii). Ms. Allen’s questionable credibility is further illustrated by her reaction to questioning regarding a letter from Readington’s counsel to the NJDOT dated April 27, 1997, which objected “to any lengthening of the runway at Solberg

Airport at this time.” [D-115]. When asked about the letter, Mayor Allen responded as follows:

QUESTION: You were in favor of the township’s position, as expressed in the letter, that it objected at that time to any lengthening of the runway at Solberg Airport, is that correct?

ANSWER: Um, I don’t know that I had a personal position on that.

QUESTION: How about as a Township committee person, did you have a position?

ANSWER: Um, it depends on what’s meant by any lengthening of the runway.

QUESTION: Well, this letter was written by Readington’s counsel, wasn’t it?

ANSWER: Yes, it was.

QUESTION: And I thought you said that you believe that there was a draft. Did I misunderstand you?

ANSWER: I said I don’t have a clear recollection of the circumstances surrounding the letter, other than to know that we did submit comments, and that they were submitted for us, meaning for the Township committee. On behalf of the Township committee.

QUESTION: Okay. Are you saying today that back in April 1997, you did not, as a committee person, object to any lengthening of the runway at Solberg Airport?

ANSWER: What I’m saying is that this letter may not represent 100% my views at the time.

QUESTION: I’m not asking about the whole letter, I’m asking about the sentence at the end of page one. Are you saying -- are you telling us that you did not agree with the Township’s stated position that it objects to any lengthening of the runway at that time?

ANSWER: It’s possible I did not agree with that. It’s just a question of how that sentence needs to be interpreted.

(14T 125:15-127:2).

(xxxiv). Readington passed many resolutions, in the late 1990’s and into the early 2000’s, where it staked out positions on nearly any proposed legislation or policy proposal, state or federal, that may have in any way encouraged or contributed to

the possible expansion of Solberg Airport, or provided benefits to Solberg Airport. Despite the obvious import of resolutions with language such as “the Township Committee of the Township of Readington vehemently opposes the use of federal subsidies to expand privately owned airports, since such subsidies inhibit competition and divert valuable and scarce financial resources from other deserving programs”, Ms. Allen vigorously denied any recollection or understanding that the resolutions might have been directly tied to Solberg Airport expansion. In an exchange that included the Court and vividly illustrated Ms. Allen’s lack of credibility and treatment of troublesome questioning as a word game, the following occurred:

QUESTION: And was this Resolution [D-184], or at least the portion dealing with privately owned airports, was that adopted by the Readington Township committee because of Solberg Airport?

MAYOR ALLEN: Um, I don’t have a first-hand recollection of passing this resolution.

QUESTION: Did Readington --I’m sorry?

MAYOR ALLEN: Though I could -- I don’t think I could answer that with anything other than I don’t know.

QUESTION: You mean you don’t recall?

MAYOR ALLEN: I don’t recall

QUESTION: Did Readington Township, through it’s [sic] Township Committee, make it a practice of generally commenting upon the use of Federal subsidies, or matters that didn’t directly effect [sic] Readington Township?

MAYOR ALLEN: Um, I would -- I couldn’t make a general statement. I would not be able to answer yes or no to that question.

QUESTION: Did the Readington Township Committee regularly express itself on current -- national current events, international current events, Federal laws that had no direct impact or specific impact on Readington? Is that part of the Township Committee’s practice and procedure?

MAYOR ALLEN: I don't think it was predictable. The comment of the subject of Resolution, the comments on correspondence is not predictable enough to make a generalization.

QUESTION: You understood when this resolution was adopted, didn't you, that it was directed, as far as Readington was concerned, to oppose the use of Federal subsidies with respect to Solberg airport.

MAYOR ALLEN: I don't have a recollection of this.

QUESTION: Why did you vote for this resolution?

MAYOR ALLEN: Um, I don't recall voting for it, so I can't say.

QUESTION: You don't doubt that you voted for it?

MAYOR ALLEN: I don't doubt that I voted for, no.

QUESTION: It seemed like a good idea at the time?

MAYOR ALLEN: This probably--

THE COURT: Other than Solberg Airport, why would Readington Township have an interest in redesigning the nation's airspace, or directing financial resources to other deserving programs?

\* \* \*

THE COURT: Why would Readington be interested in that?

MAYOR ALLEN: because part of the --

THE COURT: I mean, other than Solberg Airport.

MAYOR ALLEN: I'm trying to explain. I'll try to explain.

THE COURT: But see if you can narrowly tailor to my question.

MAYOR ALLEN: Okay, because other than Solberg Airport, we were worried about aircraft noise from large planes up high that were all part of an interconnected system of routing. And it's all interconnected, New York being a very busy airspace. I know Bridgewater, Bedminster, some of the other towns, our neighbors in Central Jersey, and other people in these areas, not just in Readington, have been worried about the amount of overflight of the big planes up high. And the rerouting discussion has, and there's even organizations that put a lot of effort into lobbying, legislative lobby the FAA, to reroute and --

THE COURT: And you recall that this is the reason why you voted --

MAYOR ALLEN: That is mentioned in--

THE COURT: No, do you recall?

MAYOR ALLEN: Well, I remember that it stemmed from discussion over the years, and when it says rerouting, or ocean routing, that's the -- that brings to mind those discussions.

THE COURT: And what are the deserving programs you are talking about?

MAYOR ALLEN: Um, I don't remember what other deserving programs.

THE COURT: Other than Solberg?

MAYOR ALLEN: Um, well, I think there's no doubt that the reason we didn't want Federal subsidies to expand privately-owned airports, that section, I think there's no doubt that the Township Committee had in mind Solberg Airport, because we were generally of a mind not to be in favor of the expansion of Solberg Airport.

THE COURT: Then you've answered the question. Thank you.

(15T 57:16-62:3)

(xxxv). In a short follow-up line of questions with respect to the Resolution condemning federal subsidies for privately owned airports, Mayor Allen attempted yet again to avoid the obvious (15T 63:3-64:2):

QUESTION: But you didn't want [Solberg] to receive any federal subsidies?

MAYOR ALLEN: I didn't have an opinion on that.

QUESTION: Doesn't this Resolution, and it was passed in January 2000, include Solberg Airport as one of the privately-owned airports that's covered by the Resolution?

MAYOR ALLEN: It would, but my -- I don't remember having a personal concern about Federal subsidies of airports.

QUESTION: You had no concern, why did you vote for the Resolution?

MAYOR ALLEN: I apparently did vote for the Resolution.

QUESTION: No, why? If you had no concerns?

MAYOR ALLEN: There were multiple things going on in that Resolution.

QUESTION: I'm only asking about the part of the Resolution that deals with Federal subsidies for privately owned airports. Why did --

MAYOR ALLEN: Why did I vote for it? That was my --

QUESTION: If you had no concern about Federal subsidies for privately owned airports, including Solberg, why did you vote in favor of the Resolution to condemn the use of Federal subsidies for privately owned airports?

MAYOR ALLEN: Well, I don't remember.

261. Gerard Shamey, an attorney and a member of the Township Committee since the 1990's, and Mayor of Readington in 2006, was a principal spokesman for the Township in its staged presentations to the public commencing with the January 17, 2006 performance and concluding with the filing of the condemnation action in September, 2006. Mr. Shamey's public statements highlighted Readington's emphasis with respect to the purpose of the taking -- i.e., wresting control of the airport's future from the regulators. In addition to various citations, infra, Mr. Shamey gave additional testimony at trial, which emphasized that, to the extent he could be deemed credible, the taking was all about the airport and in reality, nothing else:

(i). Mr. Shamey was not aware of any applications to develop the Solberg Airport lands for residential purposes. (10T 92:13-23).

(ii). Readington Township understood that NJDOT was opposed to any type of funding for purchase done by eminent domain or condemnation, as opposed to a willing seller and willing buyer basis. (10T 109:22-110).

(iii). Mr. Shamey had formerly been a member of BRAAC, an organization opposed to any expansion of Solberg Airport. (10T 121:8 to 124-14).

He also did legal research for BRAAC (10T 131:13 to 132:2). At various points in time prior to the introduction of the condemnation ordinance, he was even opposed to extending the unpaved 735 feet of Solberg runway, though he claimed that his view “changed over time” on that subject (10T 130:23 to 131:6). He said, “I may have. I may have. If I did, you can show me where I did. But my view on that changed over time. I may have felt that way at one point. I don’t really remember, quite frankly.” A Resolution adopted in May, 1999 [D-156], which he voted to support, declared the Township’s opposition to any expansion of Solberg Airport runways “by all means possible,” including the unpaved existing runway. (10T 138); [D-156].

(iv). Prior to introducing ordinances to acquire the airport operation itself, the Township of Readington had not undertaken any steps to assess whether the airport could continue to be operated viably if Readington acquired it and leased the operation to somebody else. (11T 41:8-22).

(v). As of the proposed condemnation of Solberg Airport in 2000/2001, the Township of Readington had not gotten far enough in its analysis to consider aspects of controlling the airport, such as how it might do so, and what amount of subsidies might be necessary to keep it operating as a municipally owned airport. (11T 62:1-18).

(vi). Readington Township Committee members continually repeated the same thing throughout early 2006, that is, “the threat of the federal and state regulators taking away local authority.” (11T 70:24-71:6.). The Township Committee conducted a public hearing on February 21, 2006, at which the Township

Committee presented slides, and information pertinent to the bond ordinance, including a discussion of FAA authority over airports, federal regulations, the authority of the part of the State of New Jersey over airport operations, Air Safety Zone ordinance, Solberg status as a reliever airport, and conditional approval of the Solberg Master Plan. (11T 72:5-76:2).

(vii). Through Mayor Shamey, Readington Township represented to its citizens at that February 21 public hearing, that there was a “clear and present danger of an expansion” of the airport because “corporate jet travel is alive and well, Teterboro and Morristown are at capacity, small jet manufacturers and operators are expanding operations nationwide, current capacity again is strained.” (11T 76:9-18). [D-386]. At that meeting the Township, again through its Mayor, also asserted that he didn’t “have any faith in that [environmental assessment] process whatsoever,” and that he did not believe that “anyone else on the Committee does” either. (11T 77:3-24); [D-386 at p. 44].

**(viii). As of February, 2006, the Readington Township Committee considered and told the public that unless Readington “took over” control of the Solberg property, given pressures to expand facilities for airports, “the State of New Jersey might well in the future take the decision out of the hands of Readington.”** (11T 80:7-24).

**(ix). Readington officials also stated at that meeting through Mayor Shamey that the most important thing to the Readington Township Committee**

was “to retain decision-making power over the development of the site [Solberg Airport] here in Readington.” (11T 89:3-8); [D-385 at p. 14].

(x). Also in the context of the January, 2006 public “information session,” Readington, through Mayor Shamey, asserted that “once an airport is approved to handle certain types of aircraft, once an airport receives funding from the federal government, that is the FAA, a great deal of control, if not total control, is lost to the Township.” (11T 89:21-90:9, [see also D-385 at p. 16]).

(xi). Readington Township, through Mayor Shamey, also described its purpose in preparing the public for the upcoming bond ordinance and eminent domain proceeding by citing the ASZA:

“there was also a question with respect to local zoning control, already proposed expansion, and I think this is something we need to look at a little further, because as of right now, the airport exists in the residential zone. It is a pre-existing nonconforming use. However, there is a state statute called the Airport Safety And Hazardous Zoning Act, which requires the municipality to pass an ordinance creating the Airport safety zone and the airport and, thereby, making the airport a conforming use. **We don’t have such an ordinance, but I would never vote in favor of such an ordinance....**(11T 91:7-24); [D-385 at p. 28].

(xii). **Mr. Shamey effectively acknowledged that Readington’s decision to take the Solberg airport property by eminent domain was triggered by the Solberg Airport Master Plan process, and the contents of that Master Plan.** (12T 70:19-73:25)

(xiii). Readington never considered a lesser taking, e.g., of development rights to the airport property for all development with the exception of airport related development. (12T 80:8-81:5).

(xiv). It was acknowledged that one of the purposes of the “bond referendum was to prevent the expansion of Solberg Airport.” (12T 110:11-15).

(xv). Mayor Shamey knew, as of May, 2006, because he had been so advised by Thomas Thatcher of NJDOT, and so represented to the Readington citizens in May, 2006, that the October, 2002 draft EA was “dead on arrival” (12T 167:24 to 168:10), and no longer effective in any way.

(xvi). At some point in 2006, Readington had at least tentatively concluded that only about 76 acres could comprise the airport facilities area. (12T 111:6-11).

(xvii). Mayor Shamey testified at trial that he reviewed the October 2002 Environmental Assessment draft preliminary draft [R-101] in or shortly after the time of its release in late 2002. (10T 15:6-17:9; 10T 151:3-18). He swore that he focused on some of the recommendations contained in the preliminary draft EA shortly after it was issued in or around 2002, (10T 151:24-152:2), and that the materials in the October 2002 preliminary draft EA informed his decision-making with respect to the expansion of the runway at Solberg Airport, and ultimately the condemnation. (10T 153:23-154:4). He went so far as to state that “it was an important factor in that decision” and that the Township Committee had the delineation of the 102 acres based on the EA at least by February 6, 2006. (10T 154:5-156:22).

(xviii). **Despite that testimony at trial that the October 2002 EA played such a critical role in drawing up the condemnation map, Mr. Shamey represented to the Township of Readington residents in May, 2006, that the Township Committee had not received a copy of the preliminary draft October 2002 EA until only days prior to the presentation at that meeting, i.e. no earlier than the beginning of May, 2006.** (10T 161:22-163:16, 170:2-171:20). He said at the public meeting that he had not even seen it as of the date of the meeting [D-598].

(xix). **Mr. Shamey thus conceded that Readington never saw the preliminary draft environmental assessment in October 2002 until May 2006, and certainly not prior to delineating the 101 acres that constituted the so-called Airport Facility Area.** (10T 172:24-173:11).

(xx). Mr. Shamey thereafter endeavored to recant his prior testimony regarding when he first saw the October, 2002 draft EA [R-101], relying upon Julia Allen's claim that she found some documents in a file cabinet in her home closet and had sent materials to Mr. Shamey at an earlier time. He concluded that he may have misrepresented certain aspects regarding the draft EA to Readington citizens in May, 2006, and then tried to reconcile his testimony by claiming that he had not seen the entire report but only "snippets" at an earlier date. As with much of Mr. Shamey's testimony, his credibility is highly questionable on this issue, and the Cour should find that the draft EA of October, 2002 [R-101] was not a basis for the taking of all but 102 acres but rather is a fabricated after-the-fact rationale utilized by the

Committeepersons in an effort to justify the severe decimation of the airport property by taking the fee for 85% of it. (12T 161:13-166:22).

262. Frank Gatti, another Township Committeeman since the 1990's and Mayor in 2005, when a bond ordinance was introduced and then withdrawn, attempted to follow the party line regarding the purpose of the taking, but on cross-examination came closest among the Readington witnesses to candidly acknowledge at various points in his testimony the true purpose behind the condemnation:

(i). The existence of the airport in Readington Township over the prior 40 years, more or less, was consistent with, and in furtherance of Readington's open space objectives. (21T 86:5-9).

(ii). Solberg Airport's expansion, generally incremental, was a motivation behind the eminent domain taking of the airport. (21T 87:9-20)

(iii). There were no facts presented to the Readington Township Committee in 2006 suggesting that Solberg property or any part of it was about to be developed for housing. (21T 92:15-20).

(iv). The Township never considered eminent domain to take the property that Toll Brothers had purchased in earlier years for development, even after Toll Brothers sued the Township with respect to the zoning restrictions. The litigation was settled with the Township purchasing the property **voluntarily** from Toll Brothers. (21T 26:13-28:11)).

(v). Mr. Gatti was concerned about airport development and residential development when he voted for the condemnation ordinance in 2006 (19T 11:17-23).

(vi). The airport in its then-current state was “made up of open space” but that was not a permanent condition because “a more intensive type of development might occur in the future and the ED ordinance would preserve it in perpetuity” (19T 31:10-32:1).

(vii). Mr. Gatti understood that the role of Solberg Airport in the region and state, and its role as a reliever airport, would lead, necessarily, to an expansion of the airport under certain conditions and Readington Township was opposed to that (19T 45:4-47:8):

THE COURT: Were you aware that there were recommendations that the airport, at this time, that, um, DOT and the FAA had suggested that Solberg airport would have an important role to play in the region and in the State as an airport?

THE WITNESS: Was I aware of that?

THE COURT: Yes.

THE WITNESS: I don't remember if I was or I was not. I know it was considered a regional, a reliever airport.

THE COURT: Correct.

THE WITNESS: Okay.

THE COURT: So you were aware of that?

THE WITNESS: Yes.

THE COURT: And that would have led, necessarily, to an expansion of the airport?

THE WITNESS: Under certain conditions.

THE COURT: All right, and that's something that the Township opposed?

THE WITNESS: Um --

THE COURT: Is that something that the Township opposed?

THE WITNESS: The expansion?

THE COURT: Yes.

THE WITNESS: Um, as far as intensive development, yes.

THE COURT: I don't know what that means.

THE WITNESS: Well --

THE COURT: You used that term several times, "intensive development." What does that mean?

THE WITNESS: Well, one of the -- I guess, proposals in the conditional approval was that a runway in excess of about a mile long, that would be an intense development.

THE COURT: Okay.

THE WITNESS: And that was rejected, okay? Um, anything, um, that would support recreational type of aircraft, we were not opposed to. At least I wasn't opposed to. Commercial is intense.

THE COURT: Well, there are various elements of commercial.

THE WITNESS: Okay, from my understanding of commercial is passenger aircraft.

THE COURT: But not Delta or American Airlines, but smaller.

THE WITNESS: From my understanding okay, um, understanding aviation, the goal is to have airports every 50 miles, to accommodate regional type of airport.

THE COURT: You said that earlier. Overflow and --

THE WITNESS: That's the extent of it.

THE COURT: And the Township, it's your understanding was that you would be opposed to that?

THE WITNESS: Yes.

(viii). Mr. Gatti claimed to have been concerned about the length of the runway and other impervious coverage issues that might result from the development of more hangar space, "warehouse space", or "what-have-you" (19T 56:16-57:12).

(ix). His concern about "community character" as part of the reason for the ED Ordinance in 2006, related to the Airport Layout Plan and the fact that it could in

the future be adopted in its most expansive version, with runways and associated development (19T 83:8-84:13).

(x). Although he agrees that in 40+ years of existence, the airport was “consistent with and in furtherance of Readington’s open space objectives” (19T 86:5 to 9), he was concerned that the 1997 ALP or some other version of [R-101] might be adopted, i.e., the whole “permanent vs. temporary problem” (19T 86:10-21).

(xi). He did not consider that the 10/02 draft EA was anything other than "temporary" because "open space is permanent" and "airports generally expand incrementally" (19T 87:9 to 20). In furtherance of the foregoing, he mentioned that "time marches on" and "things change" (19T 88:15). Along the same lines, he was also concerned that "a different Commissioner of Transportation" might consider that the airport should expand further than the 10/02 assessment (19T 88:21-25).

(xii). **In light of the foregoing, he “doesn't know” whether he would have voted to condemn the Solberg Airport property but for the possibility and potential that in the future, the regulators might consider that Solberg Airport should expand beyond the October, 2002 EA.** (19T 90:14-20).

(xiii). There were no facts presented to the Township Committee to his knowledge in 2006 to suggest that the Solberg property or any part of it was about to be developed for housing (19T 92:15-20).

(xiv) Mr. Gatti agrees that the requirements of the AR zone increased the protection of open space in Readington and were, along with the RR zone, in furtherance

of Readington's open space policies, but he was concerned that a future governing body might encourage a zoning change (19T 93:7-94:7).

(xv). Mr. Gatti never saw any study that indicated that if the airport runway was expanded from 3,735 to 4,300 that that would defeat Readington's open space plans. He never made any determination as to whether Readington's open space goals could be accommodated if the airport were permitted to expand beyond 3,735 feet. (19T 95:2-19).

(xvi). Mr. Gatti does not recall anything in any of the 2006 meeting minutes leading up to and including the meeting at which the ED Ordinance was passed, indicating in any way that the Township Committee was relying upon or focusing on the 10/02 EA. (19T 101:1-8).

(xvii). He spoke at the 1/17/06 meeting [D-385 at 22-13] about preserving 650 acres of open space and 75 acres of airport. (19T 106:15-21). At the 2/21/06 Township Committee meeting [D-386 at p. 14] there is again mention by Mayor Shamey of preserving 650 acres for open space and 76 acres for the airport. (19T 119:9-25). He doesn't know how the 102 acres came about as being what Solberg was left with. (19T 106:15-21).

(xviii). As a result of the taking, any airport improvements that might otherwise have been allowed outside of the 102 acres were being precluded by Readington taking the property in fee. (19T 133:2-10).

(xix). Mr. Gatti said he had no direct involvement in the creation of 102 acres as shown on R-6 and no direct involvement in determining how much acreage should be allocated to the airport facilities. (21T 38:15-24).

(xx). As far as he knows, Readington made no effort whatsoever between February of 2006 and the time the eminent domain was enacted to negotiate any resolution with the Solbergs. (21T 42:1-8).

263. Beatrice Muir, another long-time member of the Township Committee, was virtually incomprehensible in trying to explain the basis for the condemnation ordinance. While she mouthed platitudes, she was unable to explain, in any understandable way, a principled basis for the taking, and as a former English teacher, her insistence on certain words was mindboggling, all as illustrated below:

(i). Ms. Muir's alleged reasons for voting for the eminent domain ordinance were "to preserve the airport and to preserve the open space around the airport which is in the AR zone and to preserve natural resources including drinking water, the character of the community, and the historic village" (21T 120:2-14).

(ii). Ms. Muir was concerned in 2006 that while any kind of development would result in large areas of impervious coverage, "residential development" was a particular concern because it had been "rampant" in prior years in Readington (21T 121:4-20).

(iii). Ms. Muir insisted that the eminent domain ordinance would preserve the airport from residential development, meaning the entire 726 acres (22T 142:14-143:9).

(iv). It was Ms. Muir's "personal intention" to preserve the airport and make sure it remained in existence, and she believes the Township Committee's "good word" indicated that they agreed with these "good intentions" and would act in accordance with those intentions (22T 146:16 to 147:14).

(v). She appeared unable to comprehend or respond to questioning based on [R-61], a 1998 Amendment to the Readington Master Plan, indicating that Readington's population was more than 17,000 as of 1998; and that it was less (approximately 16,000) as of 2006. She insisted on her position that development in Readington was "rampant" (23T 28:25-32:13).

(vi). Ms. Muir finally conceded that she was not aware of any specific threat of development in 2006 when she voted for the condemnation ordinance (23T 33:14-20). She continued to maintain, however, that her primary concern was about residential development, although she was generally concerned about "impervious cover," but not necessarily any changes to the airport, since that was highly "political". (23T 34:2-35:7).

264. Thomas Auriemma, another Committeeman, added little to the picture other than to insist, notwithstanding other public comments of his in 2006, that his main concern in connection with the condemnation of the Solberg Airport property was a fear of "runaway housing development":

(i). Mr. Auriemma was concerned, at the time he voted for the condemnation, regarding future "runaway housing development," not at that time, but he realized that "zoning could always be changed in the future," and that possibility

impacted his decision to vote for the condemnation (9T 47:8-23). He was also concerned about "saving the wetlands and the grassland habitat" (9T 47:24-48:4).

(ii). When Mr. Auriemma voted for the condemnation ordinance, there was realistically no plan for a housing development on the Solberg property but "there's nothing to say that it won't happen in the future" (9T 42:18-23).

(iii). After some tugging and pulling with counsel and with the Court, Mr. Auriemma admitted that, at all times, he did not want to see the runway at Solberg Airport expanded (9T 64:10-20).

(iv). At the time that the Township Committee introduced an Ordinance back in 2005 to acquire the airport, with a fixed base operator, he does not recall Readington doing any investigation into the economics of same (9T 74:1-8).

(v). At the 1/17/06 public meeting, Committeeman Auriemma told the public that the purpose of the meeting "was to discuss the right sized airport for our Township" (9T 78:15-79:15) [D-385 at p. 138].

(vi). Mr. Auriemma agreed that the reason the Township's ASZA ordinance, adopted in 2007, only considers 102 acres of the property as being the airport property, is because the fee to the rest of the property had been taken by Readington in the fall of 2006. (9T 61:14-22).

265. Ronald Monaco, was a long-time member of the Township Committee in the few years preceding the 2006 taking, who:

(i.). discussed Readington’s preparation for a possible condemnation of Solberg Airport as early as 1996, stating that Readington was trying to be careful to “do things by the book” so that Solberg Aviation could not challenge the taking and win [42T 9:15-12:7]; and

(ii). suggested that Readington’s near quarter-century of non-compliance with the ASZA was due to “bureaucracy of the municipality” and that it “fell off the stove” a number of times. (42T 25:18-26:20).

## **LEGAL ARGUMENT**

### **POINT I**

#### **THE CONDEMNATION SHOULD BE SET ASIDE ON THE GROUND THAT THE STATED PUBLIC PURPOSE IS PRETEXTUAL**

##### **A. Introduction**

The Appellate Division (409 N.J. Super. 282, 289) tasked this court with trying two primary issues:

A. Given the extent of settled preemption of New Jersey state aviation law over municipal power regarding airports, is the true purpose of the taking (a) to stifle the expansion and modernization of Solberg Airport, which provides substantial public benefits and to frustrate and usurp the clear authority of NJDOT in order to accomplish Readington’s control, which would be improper.

B. Is the condemnation in any event arbitrary, and therefore improper, because the important public interest served by general aviation in general and Solberg Airport in particular outweighs the salutary goal of preserving open space under the facts of this case.

Solberg Airport Company submits that the condemnation cannot stand because it is in conflict with State law and stands as an obstacle to state policy; and is a pretextual attempt to gain control of the airport to prevent expansion and usurp State and Federal controls.

**B. The Appellate Division Rulings As to Preemption**

The Appellate Division noted that:

(i.) State preemption occurs if the municipal action “stands as an obstacle to a state policy expressed in enactments of the legislature.” *Id.* at 306; *Garden State Farms Inc. v. Bay*, 77 N.J. 439 (1978);

(ii.) State preemption means that municipalities “may pass ordinances fixing particular land areas for airports or heliport, or even ban them altogether, [but] they must not exercise their zoning authority so as to collide with expressed policy goals of the state legislation, N.J.S.A. 6:1-20, or the final decision of the Commissioner.” *Id.* at 306 (quoting *Garden State Farms, Inc.*, 77 N.J. at 454.).

(iii.) “[T]he ASZA expresses a clear intent that state policies concerning airport operations and development should prevail over local concerns . . . .” And, therefore, preemption occurs when “the local regulation conflicts with the state statutes or

stands as an obstacle to a state policy.” *Id.* at 307 (quoting *Garden State Farms*, 77 N.J. at 450).

(iv.) “The Township’s authority to exercise zoning control over [Solberg Aviation’s] property is therefore constrained by state law. Acquiring development rights to the airport or fee simple ownership of property within the safety zone would provide the Township with greater control over airport operations than it would have through normal application of the zoning law.” *Id.* at 308.

### **C. The Appellate Division’s Ruling As To Pretext**

On this subject, the Appellate Division held as follows:

(i.) Determining whether purposes are pretextual entails analyzing “the terms of the ordinance and its operation and effect, as well as the context in which the ordinance was adopted.” *Id.* at 312.

(ii.) In considering whether the taking is pretextual, it is appropriate to consider “statements by Township officials; minutes of Township committee meetings; Township resolutions; Township planning documents; correspondence between Township officials and state agencies, legislators, and lobbyists; letters sent by Township officials to local residents . . . and transcripts of meetings between local officials” and the owners of the property. *Id.* at 309, 316 (referencing discussion and later describing factors as “the context of the condemnation”).

(iii.) The objective factors surrounding Readington’s taking of Solberg Airport by its adoption of the condemnation ordinance “impugn its validity.” *Id.* at 312.

(iv.) Readington’s taking of development rights to the 102-acre so-called “Airport Facilities Area” will not achieve airport preservation and preservation of community character, which are the stated purposes of taking the development rights, *Id.* at 312-314, because:

a. Solberg Airport has deferred maintenance to remain viable pending its planned expansion and has limited prospects in its current configuration for future economic success.

b. Readington’s expert Richard Golaszewski conceded that “condemnation itself would not change the outlook for the airport unless it led to upgrading facilities.”

c. Solberg’s experts opined that the taking would not further the preservation of the airport or community character because it would prevent the airport from making necessary adjustments that would enable it to remain economically viable.

(v.) “Even when [the] evidence is viewed in the light most favorable to the Township, there is no support for finding that the condemnation of development rights will achieve airport preservation and preservation of community character.” *Id.* at 314.

(vi.) Condemnation of development rights would also not further the open space and farmland preservation goals, because the area subject to the development rights would be open to development and is otherwise already home to development in the form of airport structures and runway. *Id.* at 314.

(vii.) The objective context surrounding the taking militates against the purposes put forth by the Township, insofar as municipal acquisition was only officially

under consideration after Solberg Aviation received conditional approval of its Master Plan and Airport Layout Plan from the FAA and the NJDOT in 1999. (*Id.* at 314).

(viii.) The Township' possession of large tracts of public open space and recreational land also weighs against the genuineness of the purposes it espoused, especially in conjunction with its failure to identify Solberg Airport for possible acquisition until shortly before 2001. (*Id.* at 314).

(ix.) The public information session held on January 17, 2006, further undermines Readington's case for the taking, insofar as the overwhelming majority of information disseminated at that hearing related to aircraft design and specifications, aviation regulations, and noise analyses, rather than the benefits of open space and farmland preservation. (*Id.* at 314-315).

(x.) The taking of airport development rights over the 102 acres would not achieve its stated purposes, which "indicates that the true purpose of the condemnation was to secure a greater measure of land-use authority over the airport than the Township currently enjoys. Further, objective evidence suggests that the condemnation was initiated to secure Township control over airport operations." (*Id.* at 315).

(xi.) Attempts to obtain greater authority over the airport vis-à-vis the NJDOT and FAA, "are improper purposes in that they subvert the Commissioner's ultimate authority over aeronautical facilities." (*Id.* at 315).

(xii.) The facts and legal principles surrounding the Township's taking of fee simple title to those areas within the Airport Safety Zone are subject to "a similar

analysis,” because “the Township’s current authority to exert land-use control within the Airport Safety Zone is narrowly circumscribed.” (*Id.* at 315). “Vesting the Township with fee simple ownership of property within the airport safety zone would not preserve any open space that is in danger of being developed and would not provide additional recreational land for residents.” (*Id.* at 316).

#### **D. The Authorities Regarding Pretext**

(xiii.) The use of eminent domain is subject to challenge where the stated purposes are pretextual, and the “real purpose of the condemnation is other than the stated public purpose.” *Casino Reinvestment Dev. Auth. v. Banin*, 320 N.J. Super. 342, 346 (Law Div. 1998) (citing *Atl. City v. Cynwd Invs.*, 148 N.J. 55, 73 (1997)). Where a municipality employs its power of eminent domain in bad faith, employing pretext to justify an otherwise improper purpose, and in bad faith, the taking should be set aside. *Borough of Essex Fells v. The Kessler Inst. for Rehab., Inc.*, 289 N.J. Super. 329, 337 (Law Div. 1995).

(xiv.) As the Appellate Division noted in this case, courts across the country recognize that pretextual use of eminent domain cannot stand. *Twp. of Readington v. Solberg Aviation Company*, 409 N.J. Super. 282, 318-20 (App. Div. 2009); *Borough of Essex Fells*, 289 N.J. Super. at 338 (“*Earth Management, Inc. v. Heard County*, 248 Ga. 441 (1981) (condemnation of land for a public park was subterfuge to veil real purpose of preventing construction of a hazardous waste disposal site); *Carroll County v. City of Bremen*, 256 Ga. 281 (1986) (condemnation for police and fire training facility voided when real purpose was to prevent construction of sewage treatment plant);

*Pheasant Ridge Assoc. v. Burlington Town*, 399 Mass. 771 (1987) (land taking for park, recreation and moderate income housing seen as pretext to exclude low or moderate income housing); *Redevelopment Auth. v. Owners or Parties in Int.*, 1 Pa.Cmwlth. 378 (1971) (real reason for condemning defendants' property was to provide a new home for a new owner and not to remove a substandard building); *City of Miami v. Wolfe*, 150 So.2d 489 (Fla.1963) (condemnation suit was not for purpose of extending roadway, but to permit public body to acquire valuable riparian rights.); *In re Real Prop. in Inc. Vil. of Hewlett Bay Park*, 48 Misc.2d 833 (N.Y. Sup. Ct. 1966) (real purpose of condemnation proceeding was not to provide village storage area but to prevent construction of parking facility which village deemed undesirable”).

**E. Readington’s Purpose In Condemning Solberg Airport Is To Stifle It And Usurp State Authority**

**(1) Readington’s Alleged Purpose For Condemning The Airport Would Not Be Furthered By The Taking**

(i) Readington’s alleged purposes in condemning Solberg Airport are essentially twofold: environmental (open space, farmland, natural resource protection and preservation) and “airport preservation.” The taking, however, would not further those purposes, and in fact would defeat them.

(ii) The Solbergs have been extraordinary stewards of the Solberg Airport property since it was put together in or about 1939.

(iii) It is the Solberg Airport's condition as open space and farmland and exceptional stewardship that was recognized in Readington's Master Plan and environmental documents.

(iv) Solberg's stewardship of the land created an environmental condition suitable for the presence of various state threatened grassland birds to inhabit the site, leading to its designation as a Natural Heritage Priority Site (a designation later removed pursuant to reclassification and reorganization in the NJDEP).

(v) In short, it was the Solbergs' stewardship that created the pristine environmental, open space, and farmland conditions that Readington now widely recognizes and admires as worthy of preservation.

(vi) Because Solberg has such an extensive history of preserving land on the Solberg Airport property (a history predating Readington's own preservation efforts), transferring title from the Solberg stewards to Readington would not further the purposes of preserving that open space or farmland.

(vii) Solberg's environmental expert, Amy Greene, surveyed Readington's existing open space inventory. She opined that Readington's efforts to maintain lands it acquires for open space and farmland purposes was insufficient to preserve the characteristics that Readington purports to want to preserve at Solberg Airport. More specifically, Readington's open space program, in at least several instances, permitted the land to transform from grasslands into pre-forest (where trees would grow by natural means or by planting), which would be unsuitable for maintaining those grassland species identified by Readington as inhabiting Solberg Airport and, thus,

worthy of preservation. (38T 18:11-21:8, 26:22-34:8 (Readington was not, with one exception, implementing a program of grasslands management that would be conducive for endangered and threatened grassland bird species)). The Court should accept the substance of Ms. Greene's testimony and opinions.

(viii) Readington's condemnation of the Solberg Airport property that falls within the Air Safety Zone would also not further its open space purpose. Aside from the restrictive nature of development allowed in an appropriate Air Safety Zone, the restrictive zoning already in place in Readington's AR and RR zones precludes any meaningful development that would interfere with the open space nature of the parcels and, indeed, encourages in and of itself preserved open space. In particular, although Readington's ASZA zoning ordinance permits residential development on lot sizes in excess of 3 acres, the underlying AR zoning would trump that and permit development only according to cluster zoning precepts, which would at this time require permanent, deed restricted, open space set-asides of not less than 80% of any parcel to be developed.

(ix) That combination of the very strict and meaningful conditions in the Air Safety Zone and the extremely limiting parameters of development in an AR zone, the latter designed to enhance and permanently preserve open space, means that no significant disruption of the open space on the Solberg Airport property could take place even in the absence of the taking by Readington. Because the open space would remain in the Air Safety Zone area, however ultimately positioned, the taking does not further that purpose.

(x) Readington's instant condemnation of the Solberg Airport property would patently not further the stated purpose of airport preservation, as it would leave such a faint visage of an airport stuck in time as to preclude its ability to modernize and expand to become economically viable, and indeed would likely assure its demise.

**(2) In Addition To Not Furthering The Stated Purposes, The Condemnation Has the Improper Purpose of Attempting to Secure Municipal Control Over An Aeronautical Facility And to Subvert NJDOT's Ultimate Authority**

(i) The taking of fee simple title to approximately 624 acres, and development rights to approximate 102 acres, while not furthering the publicly stated and pretextual purposes of the condemnation, would rather promote the true purposes of the taking: to stifle any airport expansion or modernization and to place the airport in an economically impossible position, as well as to completely nullify meaningful state decision-making authority regarding the future of the airport.

(ii) Readington has arbitrarily designated 102 acres as the "Airport Facilities Area." Rather than taking simply non-airport related development rights to that area, or indeed to the entire Solberg Airport property of 726 acres, Readington furthers its true purpose of stifling the airport by taking more refined development rights, designed to prevent Solberg Airport from adapting to the changing times and making itself economically viable.

(iii) Readington's Declaration of Taking describes taking rights to use the 102 acres for anything other than conservation and passive recreational use,

agricultural use, and limits those airport uses to a single restaurant, a single museum, administrative offices, a gift shop, a lounge for transient passengers and products, a meeting or conference room for transient passengers, and a classroom for flying lessons (with the total of such ancillary uses being limited to no more than 35,000 square feet area), and hanger and maintenance space limited to no more than 150,000 square feet area. [R-1].

(iv) The effect of the taking would be micromanagement-level control of airport operations on the 102 acres by Readington, clearly furthering its purpose in controlling the airport and removing any authority of the State, even within that 102 acres.

(v) In addition, by taking fee simple title to all land except the 102 acres, Readington unequivocally accomplishes its true goal of exercising complete control over Solberg Airport's potential development beyond its existing footprint, at the same time accomplishing its related goal of preventing NJDOT from exercising its legislatively endowed authority over the regulation of the airport and its constituent parts, i.e. runway length, runway width, runway strength, landside facilities, etc.

(vi) By taking fee simple title to all land outside of the 102 acres, Readington makes it impossible for Solberg Airport to expand, improve, or modernize its facilities in compliance with the FAA guidelines underlying Federal funding.

(vii) By arbitrarily redrawing the boundaries of Solberg Airport, Readington has condemned it to likely obsolescence -- a consequence which Readington probably intended but, at the very least, was not concerned about.

**(3) The Objective Context Of The Condemnation Reveals The Stated Purposes As Completely Pretextual, Disguising Readington's True Purpose Of Controlling The Airport And Excluding The Exercise Of State And Federal Authority.**

(i) This Court should consider as “objective context” of Readington’s purpose in enacting the taking ordinance and filing this suit the following, inter alia: (a) the history of Readington’s antipathy towards any expansion of the airport; (b) numerous official Resolutions; (c) strategically-timed Master Plan Amendments; (d) campaign literature; (e) statements at public meetings; (f) lobbying efforts; (g) retention of eminent domain counsel; (h) obsessive focus on limiting the extension of the runway; and (i) all of the public statements and actions in 2006 and before, leading up to the taking. All of the foregoing is set forth in detail in the proposed Findings of Fact and by the proofs referenced therein.

(ii) The Appellate Division instructed that the trial court review the context in which the ordinance was adopted, and noted the pertinence of tension between the Township and the airport, the fact that the condemnation only occurred after conditional approval of the Solberg Master Plan, the failure to identify Solberg Airport for purchase prior to conditional approval of its Master Plan, and the content of public information sessions convened by the Township Committee in 2006. (409 N.J. Super. at 315).

(iii) Prior to the condemnation of Solberg Airport, Readington had never once, despite its professed history of open space and farmland preservation, used eminent domain to achieve that goal.

(iv) Readington's master planning documents, and other Township planning documents, either explicitly advised or at least inferred that municipal acquisition should be on a willing-buyer willing-seller basis. Nowhere in those master planning documents does Readington purport to have a policy of employing eminent domain for the purpose of preserving open space and farmland.

(v) For decades, Readington-- consistent with its opposition to expansion of Solberg Airport and to any action that might promote or protect the airport-- refused to adopt an ASZA ordinance that would have permitted routine improvements to Solberg Airport, and would have rezoned it so that it was no longer a nonconforming use which would require variance for any changes. Readington, in an apparent effort to appease and probably as a delay tactic, drafted ordinances that the NJDOT deemed acceptable, but refused to adopt them. It had maps drawn delineating the Air Safety Zone and that were approved by NJDOT, but misrepresented those maps as not having been approved, and declined to incorporate them or enact an ordinance based on them. It ignored or deflected repeated communications over many years from NJDOT politely insisting that it adopt an ASZA ordinance. It encouraged, and followed closely, litigation challenging the ASZA, which failed. And Readington, at various times throughout this process, consistently railed against the ASZA as being an infringement on its right of "Home Rule" and its desire to retain unbridled power to control the airport to the exclusion of NJDOT and the FAA.

(vi) In Readington's submissions for funding from various state agencies, following the Declaration of Taking, the Township expressly listed one of its

purposes as “municipal control of the airport”. The inclusion of that purpose -- a remarkable admission -- in grant and loan applications remained long after Readington revised its acquisition to limit its taking to development rights over the 102 acres.

(vii) Official Readington actions have made clear its long-standing intent to prevent Solberg Airport from extending-- by paving-- even the balance of its existing main runway “by all means necessary”. In the many years leading up to Solberg Master Plan release, which contemplated an extension of the runway, through the date of the instant ordinance passed by Readington to condemn the airport in 2006, the Township continuously enacted Resolutions opposing any runway length extension, vacillating only between “strongly” opposing it and “strenuously” opposing it.

(viii) Shortly before passing its first ordinance to use eminent domain to take Solberg Airport in 2001, Readington had vociferously opposed any implementation of the 1997 Solberg Airport Master Plan. Readington opposed conditional approval of the plan by the federal and state authorities, reeling in “shock” and “disbelief” upon learning of that approval. Thereafter, Readington employed every conceivable resource at its disposal to oppose, delay, and defeat implementation of any aspect of the Solberg Master Plan that would entail modernization, expansion, or extension of the runway, regardless of those realistic open space goals that might have been achieved by securing the airport’s future.

(ix) Readington hired eminent domain counsel in 1999, and only then did Readington begin the process of attempting to create a catalog of pretextual justifications for taking the property even though it had already spoken of using eminent domain on

prior occasions. It submitted tomes by its experts to NJDOT's consultant, Clough Harbour, with the aim of forcing a never-ending expansion of environmental review, so as to indefinitely delay any expansion.

(x) When all of that failed, and it looked like the improvements might pass environmental assessment, Readington enacted an ordinance in 2001 authorizing the use of eminent domain to stifle expansion of the Airport. Only upon learning that the State had entered into an agreement with Solberg Aviation did the Township rescind its eminent domain ordinance, and commence lobbying the State not to expand the airport runway.

(xi) When the Solberg Aviation Agreement of Sale with the State of New Jersey was terminated, Readington recommenced its efforts to condemn the airport so as to exert its control over its future, to the exclusion of the regulators.

(xii) In anticipation of a bond ordinance to fund the taking of Solberg Airport by eminent domain, Readington put on a public show orchestrated by a PR firm it had retained for that purpose. In its push to achieve public support, Readington's focus was singular: **prevent Airport expansion**. Little was said about open space because the raising of \$20+ million for that supposed purpose had no ascertainable basis and would not have received public support.

(xiii) At its January 17, 2006 meeting, as well as the public "informational" meetings on the bond referendum, Readington presented its citizens with slideshows and speeches, waxing at length about the supposed dangers presented by airport modernization, expansion, and runway extension. Slideshows prepared by

Readington show just how minor a role “open space” and “farmland preservation” played in its thinking, instead revealing overwhelmingly alarmist propaganda connecting hangar space with 747s, and stoking fears of Federal Express aircraft, huge business jet disruptions, and other factoids directed to the nature of the airport’s operation and character. Tellingly, despite the recognition appearing in Readington’s own Master Plans, and the common knowledge of planners, that open space preservation is a natural and compatible land-use with airports, not a single positive slide or piece of information was presented at those meetings suggesting that the existence of the airport itself would preserve substantial open space at no cost to taxpayers. In fact, to the contrary, just about the only time open space or farmland preservation were mentioned, was as a source of funding for the taking by eminent domain.

(xiv) Readington’s persistent efforts to prevent any improvement to Solberg Airport continues through the present. Readington presented evidence in this trial that despite the Appellate Division opinion in the consolidated appeal (409 N.J. Super. at 324) that expressly held, without differentiation between one parcel and another or between airport facilities area, air safety zone, or any other area, that Solberg Aviation is not responsible for real estate taxes, Readington continues to refuse to even consider Solberg Airport’s application to pave the balance of the already licensed length of its main runway. Despite the Appellate Division’s clear holding that Solberg owes no taxes on any property that is the subject of the condemnation, Readington apparently maintains that it does. And despite that clear holding of the Appellate Division, Readington somehow believes that the burden rests on Solberg to clear up any confusion about taxes,

on pain of being denied even the right to pave 735 feet of its currently-constrained 3,735 foot licensed runway.

(xv) The Court should conclude that the entire taking is therefore pretextual and, except to the extent that Readington should retain, for consideration, the non-airport related development rights, it should be voided in its entirety, consistent with the authorities described at length in the Appellate Division opinion (409 N.J. Super. at 318-320).

## **POINT II**

### **THE CONDEMNATION SHOULD ALSO BE INVALIDATED BECAUSE READINGTON'S TAKING WAS ARBITRARY AND READINGTON HAS FAILED TO DEMONSTRATE, ON A BALANCING OF PUBLIC INTEREST AND PUBLIC POLICIES, THAT THE TAKING WAS "REASONABLE AND NECESSARY"**

#### **A. Introduction**

As stated elsewhere herein, the Appellate Division made it clear that, if not as a matter of law then certainly as a matter of fact, Solberg Airport provides a public benefit, serves a public purpose, and that status requires that the Court engage in a "balancing of public interests test" to determine whether to sustain any part of Readington's condemnation. (409 N.J. Super. at pp. 320-323).

The Appellate Division further noted that as part of this balancing test, if Solberg Aviation Company is determined to have made out a prima facie showing of arbitrariness, then Readington is required to prove that the condemnation is "reasonable **and** necessary." That test requires, as to "reasonableness", comparing "the public purpose

served by the airport" with "the public purpose to be achieved through the condemnation". In determining "necessity," the Court is directed in this case to consider (i) the amount of open space already available to the Township, (ii) how defendant's property fits into the Township's "existing plans for continuous greenways;" and (iii) whether the Township's goals could be achieved with a "lesser taking" (*supra*, at p. 323).

**B. Solberg Aviation Company Has Made Out  
A Prima Facie Showing of Arbitrariness**

The record herein, as set forth in the proposed Findings of Fact, infra, and Point I of the Legal Argument, demonstrates more than a prima facie showing of arbitrariness on the part of Readington in the taking of the Solberg Airport property. Indeed, the Appellate Division opinion itself, although stopping short of a final conclusion because it was entertaining a summary judgment record, would seem to have recognized the prima facie showing. As a consequence, Readington was required at this trial to prove that the condemnation was "reasonable and necessary." It proved neither.

**C. Readington Failed To Prove That  
The Condemnation Was "Reasonable"**

The evidence demonstrates that the public purpose served by the airport, as part of the general aviation system in the State of New Jersey and nationally, far outweighs the public purpose behind open space preservation that would arguably be achieved through the condemnation. Indeed, to a large extent, Readington's alleged public purpose --the preservation of open space-- would be satisfied without the taking,

since the airport's existence itself acts to preserve and is consistent with the preservation of hundreds of acres of open space.

The Appellate Division provided additional guidance in connection with the Court's remand assignment. It noted that the evidence presented by Solberg Aviation at the summary judgment stage "strongly supports" the contention that Solberg Airport "serves an important public purpose" (supra.at 322).

The Appellate Division also directed that, on remand, following Texas Eastern Transmission Corp. v. Wildlife Preservation, Inc. 48 NJ 261, 273 (1966), the trial court limit the quantum of proof of arbitrariness required of Solberg Aviation once it has been determined that the land "is devoted to a public use". (supra at 322).

The Appellate Division further made it clear to the Court on remand that engaging in a "balancing of public interests test," was consistent with the MiPro decision; and that Solberg Aviation had presented in the appellate record "substantial evidence to support their claims that the airport provides a public benefit and that the benefit will be impaired or lost if the condemnation proceeds," (supra. at 323).

The documentary and testimonial evidence as to the public importance of general aviation -- nationally, statewide, and regionally and Solberg Aviation's role in particular -- is supported, inter alia, by the following in the record before this Court:

- (i) New Jersey's aviation-connected legislation and regulations, as well as other pronouncements on behalf of the State and its agencies, endorse the public purpose. In the ASZA, the Legislature expressly found and declared that "New Jersey's public use, general aviation airports are an

integral part of the State's transportation network and promote mobility and economic activities of common public benefit." N.J.S.A. 6:1-90(a); see N.J.A.C. 16:56- 2.1(a).

(ii) Although particularly focused upon safety and hazard issues regarding users of the airport and occupants of the land in the vicinity thereof, the Legislature in the ASZA also noted that its legislation was designed to protect "the utility of the airport and the public benefit therein." N.J.S.A. 6:1-80.

(iii) The State, through NJDOT, further recognized the significant role of general aviation and Solberg Airport's role in the Agreement that it entered into with Solberg Aviation Company in April, 2002, which agreement [R-97] included the following recital, inter alia:

"(a) The Airport is and has been a vital aeronautical facility and a significant component in the New Jersey State Airport System Plan and the National Plan for Integrated Airport Systems for more than 60 years."

(iv) The report of the General Aviation Study Commission created by the New Jersey Legislature, in 1993 (Chapter 336-337 Laws of 1993) [D-392], includes Legislative findings that address not only the public importance of general aviation facilities but also the significance of maintaining those facilities against closings, precipitated in part by conflicts with local municipalities in which the airports are located. The Legislative findings in this respect include the following:

a. The general aviation facilities of this State are responsible for attracting upwards of \$1.5 billion into the State, employing over 8,000 people, and serving as a magnet to businesses which are attracted to the convenience of shuttling business personnel and providing business services reliant on air transportation;

b. Within the recent past, nine aviation facilities of regional significance within the State have closed, accelerating a trend that will ultimately result in an economic slowdown having far-reaching effects on the total economy of the State and the region, a result made all the more remarkable by the relative lack of awareness of the many benefits which accrue to the economy of the State through the operation of general aviation airports;

c. General aviation facilities which have been designated by the Federal Aviation Administration as reliever airports play a particularly important role in providing both general aviation uses and service to aircraft when the area's major airports are unable to do so;

d. Conflicts between municipalities and the general aviation airports located within them or adjacent thereto have occurred based on residential and other development in the vicinity of the airport and subsequent problems with the perceived incompatible uses of the airport facility;

e. The State of New Jersey acting through the Department of Transportation is given the statutory responsibility for developing, promoting and regulating aviation in the State and of preparing the New Jersey State Airport System Plan, which has recently been issued in revised form;

f. It is important for the State of New Jersey to determine the proper "mix" of private and public facilities in the area of general aviation, the feasibility of direct State intervention through outright aviation, the feasibility of direct State intervention through outright purchase of these facilities, a "public-private" partnership for this purchase, or

any other arrangement which will facilitate the preservation or expansion of the system of general aviation airports; and

g. It is in the public interest to establish a commission to study the role of general aviation in the State's transportation system, with particular reference to the function of these airports as reliever facilities, their relation to the larger transportation system, appropriate methods to preserve or expand the system of general aviation airports, including both public and private involvement.

[D-392 at initial two pages].

The Study Commission, which issued its report in or about 1996, was comprised of five members appointed by the Governor of New Jersey, four members appointed by the President of the New Jersey State Senate, and four members appointed by the Speaker of the New Jersey Assembly, with the Commissioner of Commerce, the Commissioner of Transportation and the Executive Director of the Port Authority of New York and New Jersey serving as ex-officio members of the Commission. The Commission took testimony and solicited information from State and national experts in the fields of aviation, economics, noise and psychoacoustics, from the League of Municipalities, from communities that host and are near general aviation facilities, and from owners and operators of those facilities. [D-392 at page 1].

The Commission Report dealt at some length with the benefits of New Jersey general aviation airports [*Id.* at 2] and developed a number of recommendations for the preservation of public use aviation facilities, the maintenance and improvement of safety of operations and facilities, the enhancement of State oversight and integration within New Jersey's transportation system and long-term planning all "designed to enable

New Jersey air transportation infrastructure to survive, become competitive with airports of other states, and provide essential services far into the next century.” [*Id.* at 2].

In connection with preservation of general aviation airports, the Commission Report noted that those airports were "in peril," that the number had been reduced over time, that there were "only 6 airports in New Jersey that reasonably can be expected to support modern business aircraft," and that the potential closing of each airport has "significant economic, tourism and open space preservation implications for the State", in that "many of New Jersey's general aviation airports help preserve and protect the open space, woodlands and wetlands that they encompass," whereas, by contrast, "there are now housing and commercial developments where airports once stood". [*Id.* at 11].

Among the other relevant findings of the Commission were the following:

(a) "New Jersey is unique in the United States for having the highest percentage of, and the greatest reliance upon, privately owned public use general aviation facilities” [*Id.* at 2];

(b) Rising costs of operation and other factors contribute to the decline in such facilities and "to the detriment of the State's economic health and transportation efficiency," which can only be salvaged by continuing and encouraging, "privately owned public use airports" because "the continued existence of a publicly owned municipal airport can depend on the whims of a local politician, who, while in office, can close the airport without regard to the consequences on the State's general aviation infrastructure." [*Id.* at 2-3];

(c) On a long-term basis, the "suitability and viability of a general aviation airport" depends upon factors which include "aviation and public safety," "environmental compatibility" and "economic viability" -- all of which "are a function of the quantity of land available to the airport" [*Id.* at 6].

In the view of the Commission, the "starting point" in determining necessary land for a general aviation airport is the "lengths of runways which are determined by the type of aircraft to be served;" and "a safe, environmentally compatible and economically viable general aviation airport designed to serve business aircraft" requires a facility with 800 acres of land. [*Id.* at 6).

The Commission also described at some length, in the balance of the Report, relevant subjects including the definition and goal of general aviation [*Id.* at 14]; the benefits of business aviation [*Id.* at 16]; the economic benefits of business aircraft in New Jersey [*Id.* at 19]; the impact of general aviation airports in northern New Jersey and the New York metropolitan area [*Id.* at 21]; the social benefits of general aviation airports in New Jersey [*Id.* at 23], the opportunity given by general aviation air fields to municipalities to "preserve open space" [*Id.* at 24]; and other various benefits from general aviation airports [*Id.* at 24-28].

The Commission also recommended that New Jersey establish a program "enabling private airport owners to sell and transfer their development rights". Such a program would be analogous to the farmland preservation program in the agricultural sector, with a covenant in the deed, running with the land, requiring that the airport remain an airport in perpetuity.<sup>2</sup>

In a report entitled "Economic Impact of General Aviation in New Jersey," issued in or about May, 1996, and prepared for the New Jersey Division of Aeronautics

---

<sup>2</sup> In fact, to an extent, such legislation was enacted and remains in effect today. See N.J.S.A. 6:1-95, et seq.

and Finance through grants from the New Jersey Transportation Trust Fund and the New Jersey Airport Safety Fund [D-380\*], there is extensive discussion of business use of New Jersey airports, benefits of general aviation airports, positive statewide benefits of general aviation, etc. The report discusses the various general aviation airports in New Jersey, including Solberg Airport (*Id.* at pages 136-138), indicates the various benefits of Solberg Airport and notes that it "plays a key role in the economic future of Readington Township and Hunterdon and Somerset Counties."

The New Jersey State Airport System Plan (NJSASP) was also the subject of extensive testimony, in various of its iterations, by a number of the witnesses at trial. An earlier version of the Plan is in evidence as [D-601\*]. This particular Plan was issued in early 1992, based on work that had started in 1988. [*Id.* at I-1]. This earlier Plan, like its successor, discussed the economic benefits of general aviation airport and aviation system planning [*Id.* at I-7], the development of a "core system" of airports [*Id.* at I-7/8] and, among other things, the "need to have sufficient land available when airport expansion or new facilities are required \*\*\* in the State of New Jersey," emphasizing the need for sound, long-range planning, a dedication to meeting forecasted needs, and the use of "land banking" [*Id.* at I-8].

This early NJSASP also redefined New Jersey general aviation airport priority levels to shift three airports from lower to higher priorities, including Solberg Airport [*Id.* at VIII-2], which would move Solberg Airport from what was then a "general utility" category to a "transport" category with a recommended runway length of 4,800 feet.

The 1992 NJSASP also recommended special attention to securing the "long-term future" of the privately owned airports that are part of the "core system," which includes Solberg Airport, with establishment of a land banking system. [*Id.* at 11; IX-32]

A more recent version of the NJSASP was completed by Wilbur Smith Associates, a consultant retained by NJDOT, in or around February, 2007, and was publicly released by the DOT in January, 2008 [R-225; D-631]. A draft of the 2007 plan was in circulation for some period of time before it issued, and was referred to and relied upon by at least one of the Solberg Aviation expert witnesses, Alan A'Hara. [D-682]. The essential references in the draft [D-682] were repeated in the final version [R-225], including the recommendation that Solberg Airport, among others, be "considered" for upgrading to an "advanced service airport" facility from a "general service" facility [D-682 at 7-27], and, further, that Solberg Airport be immediately classified as a "priority general service airport" and developed accordingly [*Id.* at 7-41].

The finalized 2007 NJSASP [R-225], was described in NJDOT's January, 2008 press release as, "a blueprint for directing the development of New Jersey's airport system" in order to "ensure that the airport system meets the State's air transportation needs and continues to be a cornerstone of the State's economic growth, diversification and development". The NJDOT announcement also commented on New Jersey's unique ownership patterns of general aviation airports, pointing out that approximately 28 of New Jersey's 46 system airports are privately owned. In the words of the Transportation Commissioner in his press release, the report's "key strategy is the preservation of the

existing system of public use airports in New Jersey." The NJDOT's announcement also repeats and details to some extent the significant benefits to the State economy from New Jersey's airport system, including an economic impact analysis resulting in more than 18,000 aviation-related and aviation-dependent jobs with an estimated payroll of at least \$624.7 million, and other commercial benefits, as well as "a wealth of services that improve the quality of life in this State and serve as a gateway for the State's communities." [D-631].

The 2007 NJSASP [R-225] also emphasized the following, with reference to general aviation airports in New Jersey and Solberg Airport in particular:

(a) "Core system airports are to be acquired, preserved, and/or rehabilitated because of their vital importance to the airport system" [*Id.* at pages 26-28];

(b) Solberg is classified as a "core airport" [*Id.* at 26]. Core airports "are those that are essential to the future aviation system in New Jersey" [*Id.* at 28]. The core airports are those within which NJDOT "will pursue future airport improvements that will enable the State's public use airport system to best serve the needs of New Jersey's aviation users" [*Id.* at page 28].

(c) Solberg Airport is categorized as a priority general service airport [*Id.* at pages 264, 307]; a high development potential airport [*Id.* at page 104]; and, as a priority general service airport, an airport that "contributed significantly to the system," and \*\*\* "should ideally be upgraded to the advanced service functional level" and, "developed to the fullest extent possible \*\*\* to comply with the advanced service functional level objectives." [*Id.* at Page 262].

(d) "Advance service airports" should have minimum runway length of 5,000 feet, with a primary runway of 100 feet and primary runway strength of 30,000 pounds. [*Id.* at page 111, and Table 3-7]. "Priority general service airports" should have

minimum runway length of 4,000 feet, and minimum width of 75 feet [*Id.* at Page 263, 352, and Table 7-17].

NJDOT, in its January, 2008 release, "accepted the recommendations of the New Jersey State plan." [D-631]; (25T-72:14-21).

Clough Harbour & Associates (CHA), chosen by NJDOT to prepare for NJDOT an environmental assessment in connection with the Solberg Airport Master Plan, also described the role of Solberg Airport in serving aviation demand at the Federal, State, and are regional levels. While CHA, as the Court is aware, prepared at least two preliminary draft environmental assessments, one in February, 2002 [D-382] and the other in October, 2002 [R-101], both drafts described the role of Solberg Airport in terms that emphasized its importance. [D-382 at pp. 2-6; R-225 at pp. 2-6].

Both drafts of the CHA environmental assessment also discussed (at pp. 2-7 and 2-8) Solberg Airport's role in the National Plan of Integrated Airport Systems (NPIAS) ("considered by the FAA to be of national importance", and designated as a reliever airport with a "high priority designation" in the 1990 State Aviation System Plan, "meaning that the airport's continuing operation and vitality are critical to New Jersey's economy," and that under the pending update to the State Aviation System Plan, Solberg Airport was to be placed in a category with a minimum "recommended paved runway length of 4,000 feet" [D-382 at 2-7; R-101 at 2-8].

Both environmental assessment drafts stated [D-382 at 2-9; R-101 at 2-10] that in order to serve the aircraft "that currently use" Solberg Airport, "a primary runway length of 4,300 feet is advised according to FAA guidelines", which would enable the

current fleet "to operate" at Solberg Airport "with additional passengers and fuel on board" [D-382 at 2-9].

New Jersey's Long-Range Transportation Plan [D-695], mentioned and endorsed by Solberg expert witness Dennis Yap (40T 23-?) and issued by the State of New Jersey and disseminated under the heading of NJDOT, with financing in part by the U.S. Department of Transportation, speaks to transportation needs over time in New Jersey. While the report addresses various forms of transportation, it does have a section focused on aviation; repeats New Jersey's unique status of having 60% of its public use airports being privately owned; and expresses concern about the closure of such airports and their conversion to non-aviation uses, all of which "devastates New Jersey's airport system and disrupts industries served by aviation" -- resulting in "fewer bases for small planes, which cannot be accommodated at the major commercial airports." The Long-Range Plan reiterates and reinforces most of the previous public statements, including in particular the Commission Report from the 1990s, notes that it is "essential to permanently preserve remaining key privately owned public use airports and prevent their sale for conversion to development"; and confirms NJDOT's commitment "to both arresting the decline of its existing general aviation airport infrastructure and to preserving and rehabilitating its core airport system \*\*\*." [D-695 at page 17].

The U.S. Department of Transportation, and in particular the FAA, in various reports, particularly its National Plan (NPIAS), also emphasizes the need to preserve those federally designated airports in the national system. [R-233; D-641; D-639.]

The significance and public importance of the national, state, and regional aviation system, including the role of Solberg Airport, was also acknowledged and confirmed by virtually every aviation-related expert witness as well as many of the fact witnesses:

(i) Arlene Feldman, trained as a lawyer, but involved in the aviation industry for the last 50 years [D-665], having served as Director of Aeronautics in the New Jersey Division of Transportation for several years in the 1980s (37T:9) and for approximately 20 years as a Deputy Director and then Regional Administrator for the FAA, including the Eastern region (which embraced New Jersey) (*Id.* at 10/11), has a particularly broad and well-developed understanding of the state, local, and regional airport needs of the general aviation system throughout the United States, including New Jersey and including Solberg Airport (*Id.* at 13).

Ms. Feldman, who qualified as an expert before the Court, was familiar with the overall decrease in general aviation airports nationwide, and in New Jersey; the negative effect of such decrease upon the welfare of New Jersey citizens; and steps taken over the years by the State of New Jersey in an effort to protect and enhance general aviation airports, including certain legislation passed while she was Director of the Division of Aeronautics (*Id.* at 16-23).

Ms. Feldman was also conversant with economic support given to general aviation airports by the Federal government in the form of the Airport Improvement Program (AIP) and discretionary funding (*Id.* at 24/25).

Ms. Feldman was also familiar with the New Jersey General Aviation Study Commission Report [D-392], which she described as being known professionally as “the Bible of general aviation in the State of New Jersey” (*Id.* at 19).

Ms. Feldman also acknowledged the importance of the NJSASP report [R-225] (*Id.* at 20), as well as a GAO report from August, 2001 on the status of the general aviation industry (*Id.* at 20); and which GAO report discussed, inter alia [*Id.* at pages 2-4], the general aviation industry and the importance of such airports in New Jersey and elsewhere (*Id.* at 41/42) [D-664 at, e.g., pp. 66-68].

(ii) Laurence Kiernan, another expert witness called by Solberg Aviation Company, also had worked a number of years for FAA, primarily as an airport planner for approximately 36 years, and was familiar with aviation and regulatory developments, in that his work included preparation of the National Plan (NPIAS) (41T:6 to 8).

Mr. Kiernan confirmed not only the important role of Solberg Airport in the aviation system, but also indicated his familiarity with, and the significance of, the National Plan which included Solberg Airport [R-233; D-641; D-639], as well as the NJSASP (the Wilbur Smith report), which supported many of his conclusions (41T:32).

(iii) Alan A'Hara, who qualified as an expert in the planning and design of airports, as well as Federal and State airport regulations and funding for the systems, also relied upon and endorsed the policies set forth in the NJSASP [R-225], a draft of that Plan [D-682], and the General Aviation Study Commission Report [D-392] (39T at 20-22).

Mr. A'Hara also spoke of the important role of reliever airports in the national system, and demonstrated extensive familiarity with both the Federal and State aviation systems (*Id.* at 14).

(iv) Dennis Yap, who qualified as an expert regarding airport planning, capacity planning and engineering with regard to airports, and who had worked on many airports in the New York/New Jersey area and elsewhere, also both relied upon and expressed his agreement with the NJSASP, airports in the NPIAS system, and FAA rules, regulations, policies and advisory circulars, including the New Jersey Long-Range Transportation Plan, all of which he confirmed as established authorities in the field (40T at 7/8; 12; 35; 60-61; 75; 81) [D-695; D-697; D-692]

In addition to Solberg Aviation Company's experts, the two aviation-related experts called by Readington also confirmed the importance and significance of the national, New Jersey, and local general aviation system and Solberg Airport's role:

(i) Mark Conway, who qualified as an airport planner, acknowledged, among other things, that the NJSASP was a "thorough, comprehensive job," offered "the right recommendations in its context," and was, in practical effect, if not literally, a reflection of New Jersey State policy (24T:142-10 to 24).

Mr. Conway also confirmed that this Plan, stating New Jersey policy, concluded, among other things, that core system airports were vitally important to the airport system, that core airports house approximately 90% of the system's based aircraft, and that they are essential to the future aviation system in New Jersey (25T:26-2 to 27-15).

After reviewing, on questions from counsel, various other sections of the NJSASP, including the statement that **the New Jersey system should strive to "be able to accommodate demand both now and in the future," and that the New Jersey system" should be able to respond to foreseen and unforeseen growth in aviation demand,**" Mr. Conway said he "agreed with that" (25T at 45:2-23).

(ii) Richard Golaszewski, Readington's other aviation expert, who had worked with Readington Township in connection with its efforts to acquire the Solberg Airport property for many years, also acknowledged familiarity with both the State and Federal plans and policies and, indeed, confirmed that, in his view, at least as of 2006 prior to the taking, there was "interest at NJDOT and FAA in preserving and expanding Solberg Airport;" that "expansion of the airport was recommended" both in the NJSASP and FAA's NPIAS report; and that the State plan that was in place as of 2006 "recommended expansion of the airport" (34T at 23: 3-24:22) [D-340 at pp. 5-6].

(iii) Solberg's experts, particularly Mr. Yap and Mr. Perkins, as well as Mr. A'Hara, opined that the taking of all but 102 acres imperils the ability of the airport to conform to rapidly evolving safety standards and future demand.

Even though Readington's experts question, to some extent, whether the airport would prosper with an expanded footprint and a longer runway, none of the experts seriously disagrees that the taking by Readington, limiting the property under Solberg's control to 102 acres and the 3,735 foot runway [R-6], prevents the airport owner/operator from compliance with FAA guidelines and requirements regarding ownership and at least control over the runway safety area ("RSA"), the runway protection zone ("RPZ"), and the obstacle-free area ("OFA"), as required by the FAA.

Mr. Conway, Readington's own aviation expert, definitively insisted that “the runway safety area absolutely has to be owned by the airport sponsor”, per FAA policy. (24T 170:3-19). The other experts either agreed with him or, at least, confirmed that the FAA strongly favored ownership and, at a minimum, insisted that the owner/operator of the airport "control" the property that contained not only the RSA but also the RPZ and the OFA (*See* 40T 86:21-101:15 (Yap); 39T 48:2-62:23 (A’Hara); 45T 28:25-34:14 (Perkins)); [D-683, D-685, D-686]. It is indisputable that Readington's taking would leave insufficient property to comply with those requirements, thereby forcing Solberg into a state of potential non-compliance and, even more significantly, making it difficult if not impossible for Solberg to obtain Federal funding in the future for improvements to the airport at all; and, if funding were somehow to be entertained, Solberg would have to shorten the runway to make it even less than 3,735 feet. (*Id.*)

The foregoing, which seems to be largely agreed to by all of the experts and in any event clearly established by Solberg's experts, is, we submit, an intended consequence of the taking, i.e., an effort to "control," and ultimately destroy any future for the airport. At the very least, even if it be deemed an unintended consequence, it is an established effect of the taking and, as such, it is clearly improper.

A number of expert witnesses testified regarding congestion at the major area airports, projected general aviation growth, and the need for airports to relieve that congestion, with Solberg Airport having particular potential to fill that need:

- (i) Dennis Yap, one of Solberg’s experts, gave his opinions regarding congestion at major airports, the need to relieve that congestion at general aviation airports, Solberg’s outstanding qualification as a source of

potential relief for that congestion, and the preclusion of Solberg Airport fulfilling that role by virtue of the taking that limited the airport to 102 acres and effectively limited the runway length to no more than (and probably less than) 3,735 feet. (40T 15:14 - 16:6; 17:17-18:13; 20:12 - 22:22); [D-687]; [D-698]; [D-696]; [D-700]; [D-701]; [D-704 A, B, and C]).

(ii) Mr. Yap analyzed the major criteria in considering which airports could best accommodate anticipated growth and determined that Solberg Airport was one of the two airports that could satisfy the necessary criteria and that it had greater potential to meet the needs for medium size general aviation aircraft if it were restored to its former size and had the ability to improve the facility with a longer runway. (40T 37:21 - 60:8).

(iii) Mr. Yap prepared and presented a number of exhibits in support of his conclusions regarding potential future needs and usage:

[a.] [D-687] is the FAA aerospace forecast for the years 2013-2033. At page 58 of the forecast, the FAA addresses general aviation, “calls for robust growth in the long term outlook, driven by higher corporate profits and the growth of worldwide GDP,” and concludes that the FAA holds a cautiously optimistic outlook that “the hard impact of the recession on the business jet market is coming to an end.” [D-687 at p. 58].

[b.] The FAA forecast also predicted “business usage of General Aviation aircraft will expand at a faster pace than that for personal and recreational use.” [D -687 at p. 58]; (40T 29:3 - 30:5).

[c.] [D-687] is the actual FAA Aerospace Forecast that forms the basis for the chart created by Mr. Yap [D-698]; (40T 29:3 - 34:23).

[d.] [D-698] depicts the changing composition predicted in the General Aviation market by the FAA. The chart is a graphic display of the anticipated reduction in piston aircraft, and the contrary increase in turbojet traffic, which is expected to increase at a pace far exceeding the negative projection anticipated for pistons. Indeed, despite an anticipated decrease in the number of piston aircraft by approximately 6%, the FAA forecasted that General Aviation overall would nevertheless increase by approximately 12%, carried largely by increases in turbojets, turboprop, and other more sophisticated aircraft. [D-698]; (40T 30:16 - 32:10).

[e.] [D-696] pulls together tables and graphics from the 2007 NJSASP, which lists airports in the Solberg Airport region designated as “mobility strategic area number 3”, including their status as a reliever, capacity, and acreage, demonstrating that Solberg Airport stands apart as the only airport with over 210 acres available for airport use (726 acres).

The chart also depicts the various coverage area voids identified in the 2007 NJSASP. [D-696]; (40T 62:2 - 65:21).

[f.] To demonstrate the interaction of flight paths between the three major metropolitan airports of JFK, LaGuardia, and Newark, as well as Teterboro Airport, [D-700] uses red coloring in semicircles and triangles (arrows) to indicate where the flight patterns of those airports cross and intersect. When air traffic occurs at those airports in the directions indicated, it strains the capacity of the air system because planes are attempting to fly in the same space, from different directions, from different airports. It also shows the limitations imposed on Teterboro's activities because of the interaction with the region's major commercial airports. (40T 41:17 - 45:9).

[g.] [D-701] contains one table and one chart. The table depicts various aircraft manufacturers and models, and their manufacturers' recommend that optimal runway length for operations. The second page of the exhibit shows the inability of the majority of the region's general aviation airports to accommodate those aircraft requiring runway lengths at or exceeding 4,000 feet, with the exception only of Monmouth Executive and Trenton Robbinsville. [D-701]; (40T 49:8 - 54:11).

(iv) Mr. Yap also presented aerial photographs/images of some of the airports in the area to demonstrate the limitations on their ability to handle additional general aviation aircraft on a going-forward basis. [D-

704]. The aerial images taken from the National Wetlands Inventory depicts severe environmental restrictions at Morristown Municipal Airport, Teterboro Airport, as well as Monmouth Executive Airport. The National Wetlands Inventory map of Solberg Airport shows nominal wetlands on the property. [D-704 A - C];(40T 66:4 - 70:5).

(v) Mr. Yap summarized, and incorporated, various aspects of his study that went into forming his conclusions, in graphic form as [D-702]. That chart depicts many of the most pertinent considerations that went into an analysis of what airports might suitably act to relieve jet traffic. Solberg Airport and Monmouth Executive Airport were the only two airports that could reasonably be expected to absorb future demand because they are (a) not at capacity, (b) not too far away, (c) have sufficient acreage, (d) and would not experience significant flightline traffic. (40T 70:11 - 74:5). At the end of the analysis, Mr. Yap concluded that Solberg Airport had greater potential than Monmouth Executive Airport (40T 61:1-20; 42T 23:6-24:21).

(vi). Alan O'Hara, another qualified expert presented by Solberg Aviation Co. and an extremely experienced airport planner, also confirmed the existing and potential role of Solberg Airport in the system, the importance of Solberg Airport to exist in the future in meeting general aviation needs, and the frustration of any such ability to meet those needs if the taking were sustained so that the airport could not comprise more than

102 acres and the runway not more than (and probably less than) 3,735 feet. (39T 46:10 - 49:4; 61:15 - 64:13).

(vii) Mr. A'Hara produced several exhibits demonstrating the uncertain final nature and location of the ultimate air safety zone, even under the existing expansion alternatives, discussed in the 1997 Solberg Master Plan, thus demonstrating that, at least as of this time, the entirety of the 726 acres must be maintained as an available site, and airport-related rights cannot and should not be allowed to be condemned:

[a.] [D-684 A, B, C and D] demonstrate the location of the runway and the Air Safety Zone that would result from the expansion of Solberg Airport as contemplated in the various alternatives of the Solberg Master Plan. [R-55]. The maps also depict in different colors these various Air Safety Zones, including those in the 10/02 EA Statement, as well as Phase I and Phase II contemplated in the Master Plan. **These exhibits demonstrate that, in one or more of the alternate scenarios, each and every block and lot that Readington seeks to take in this condemnation action would contain, at least partially, the Air Safety Zone created as a result of the particular runway length and location.** [D-684 A, B, C and D]; (39T 66:3 - 70:15).

[b.] [D-683] depicts the various areas required to be maintained pursuant to various FAA regulations and/or circulars. The designated areas are the minimums required by the FAA, and in particular, the Runway

Safety Area depicted therein, at only 200 feet, is likely much shorter than would likely be required. Nevertheless, **the Runway Safety Area (RSA), Runway Protection Zone (RPZ), and Obstacle Free Area (OFA), are all situated beyond the borders of the 102 acres that would remain in fee with Solberg Aviation under the taking.** [D-683]; (39T 57:16 - 61:14).

(iii). Winthrop D. Perkins, testifying as an expert on behalf of Solberg Aviation Company, confirmed the congestion in the New York metropolitan area and the effect of the taking, if upheld, in limiting Solberg Airport's capacity to service a wide variety of general aviation jets, resulting over the long term in such a diminishment of the airport as to seriously question the ability to properly service what Mr. Perkins described as "the most lucrative marketplace for business oriented general aviation in the country". Separate and apart, Mr. Perkins noted that the limitation of the airport to 102 acres, and the length of the existing runway to not more than 3,735 feet, would throw into serious question the ability of Solberg Aviation Company to obtain federal grant money. (45T:16:23 - 18:23; 18:24 - 19:7; 25:5 - 26:17; 27:8 - 19).

(iv). Additional Solberg Airport Company experts, Laurence Kiernan (41T) and Arlene Feldman (37T), both with substantial FAA experience, confirmed many of the conclusions described by the planning/design experts Yap and A'Hara, and the economic viability expert, Perkins.

At least one of Readington's two aviation experts, Richard Golaszewski, acknowledged -- however reluctantly -- the need for flexibility regarding the future expansion of Solberg Airport if the airport were to be economically viable and eligible for federal grant monies. Mr. Golaszewski, in one or more of his memoranda, admitted same. He set forth very clearly in [D-340], a memorandum prepared in May, 2006, that, inter alia:

(a) The FAA might want a more capable runway if they were to provide grant monies to Solberg Airport, including having the runway extended to 4,890 feet [D-340 at p. 3] (34T 11:23-13:9);

(b) There is a scarcity of airport capacity to handle business jets in central and northern New Jersey, both Teterboro and Morristown are at or near full capacity, Solberg Airport is located in close proximity to the interstate highway system, and Solberg Airport would be an attractive location for an airport serving business aviation in the New York metropolitan area. [*Id.* at pp. 4-5] (34T 18:2-15);

(c) There is an interest at NJDOT and FAA in preserving and expanding Solberg Airport, as evidenced by the fact that expansion of the airport was recommended in the last NJSASP and the FAA's National Plan (NPIAS), all showing a need for funding to extend the runway [*Id.* at 6] (34T 23:3-9);

(d) If the runway remained at 3,700 feet or thereabouts, it would be marginal for most business jet operations, since small general aviation

airports generally make most of their monies from fuel sales and hangar parking fees, with Solberg believing that the airport could attract more jet aircraft with a longer runway [*Id.* at p. 4]; and

(e) The economic viability of the airport, without expansion, is questionable, and the cash flow generated is not sufficient to provide both income for the Solbergs operating the airport full-time and a return on the capital implicit in the value of the site [*Id.* at p. 7].

(f) According to the Solbergs, the existing airport is not a viable business, unless the runway can be extended and improved to handle jet aircraft. [*Id.* at p. 12].

Mr. Golaszewski came to some of the same conclusions in an earlier report [D-636] in 2005, where he opined that "small general aviation airports are generally not profitable, and if Readington were to acquire and run the airport, either itself or through an FBO, it would probably have to subsidize the airport operation at "less than a few hundred thousand dollars per year" to operate it (34T 60:15 to 63:6)]. And **he further indicated that the costs could be reduced if the airport were "expanded to handle larger and more complex aircraft."** (34T 63:13-19), a clear indication that an expanded airport with a longer runway would assist the economic viability of the facility, whoever was operating it.

Mr. Golaszewski also confirmed that to the extent Readington would be concerned regarding development of the Solberg property for housing or other non-airport improvements that would invade open space, those concerns could be alleviated

by a conveyance of development rights for anything unrelated to airport use (34T 91:9 to 95:19).

In his 2005 report [D-636], Mr. Golaszewski added to those who described Solberg Airport as consisting of approximately 700 acres (34T 52:12 to 53:8).

Mr. Golazewski also acknowledged the following in his testimony, relevant to, among other things, the pretext issue:

- To the extent he reviewed Solberg's financials, he concluded that there was no evidence of a "capital investment" and "marginal operating performance" so that "in the long run, the airport's not viable" and "you are going to have to fix the runway" and "invest in your buildings" and "you can't live forever by deferring things" (32T 44:25 to 45-9).
- In his opinion, the airport's viability is at risk (32T 46:3-6).
- The long-term viability of the airport would be improved by modernization, by attracting more traffic, by having more based aircraft, by selling more fuel, by having a longer runway with larger aircraft which tend to buy more fuel per visit (32T 51:5 to 52:5).
- At the public meeting of January 17, 2006, he prepared, in conjunction with Readington's consultant, Mr. Cicatiello, his role and the length of his presentation, and he understood, among other things, that his presentation would be to look at future alternatives for the airport were it to remain in private hands and were the airport to be expanded to handle

larger traffic. (33T 56:19 to 58:23). [D-302] was a PowerPoint that he presented (33T 58:24 to 59:13).

- As set forth in his presentation, most but not all corporate jets require runways of around 4,600 feet, including 4,000 feet for small business jets and 5,000 feet for medium business jets and 6,000 feet for the largest business jets (33T 59:18 to 60:10). He made that statement with the knowledge that the existing Solberg Airport runway, even if paved to its full licensed length, would be less than 4,000 feet (33T 60:13-18).

- He also presented documents at the June, 2006 meeting, among which was one entitled "Concern for the Airport's Future" [D-635A] pointing out that the FAA and DOT had conditionally approved the Airport Layout Plan with a 4,890 foot runway in 1999 (33T 84:20 to 86:18).

- His presentation [D-635A] correctly said that a 4,000 foot runway can safely accommodate certain business jets and that a runway length greater than 4,000 feet could safely accommodate other business jets that could not be accommodated on a shorter runway (33T 87:22 to 88:8).

- He was comfortable with indicating to the citizens of Readington, whether he authored the statement or not, that the FAA and the NJDOT could move to give full approval to the Airport Layout Plan (33T 89:4 to 22).

- He also agrees that [D-635D] expresses a concern that, "If the ball started rolling and the FAA approved the airport layout plan," then it

would be more difficult to limit the expansion of the airport in a way that was acceptable to the community (33A-T 8:6 to 9:7).

- His presentation also pointed out that if Readington didn't own the airport and wasn't the sponsor of the airport, it had almost no role in what took place at the airport in terms of who can operate there (33A-T 17:13 to 18:4). More specifically, once a runway is approved and licensed to operate safely with certain aircraft types, there is no way the community can really have a say in the operation of the airport (33A-T 18:5 to 18).

- His message was in effect that if the runway is allowed to reach 4,000 feet, certain business jet aircraft will be allowed and "the horse will be out of the barn" (33A-T 19:6-13).

- As of January, 2006, he knew that the Readington Township Committee, at least as an "opening position", was opposed to developing the airport beyond its current licensed length of 3,735 feet (33A-T 29:20-30:3).

- As far as he was concerned and knew, as of January, 2006, subject to environmental approval, in his view the FAA had approved the Solberg Master Plan for a runway of 4,890 feet (33A-T 35:18 to 36:7) [D-385].

- He told the public at the January, 2006 meeting, [D-385 at page 110] that if Solberg Airport were expanded and could handle more sophisticated aircraft "you will likely see them" (33A-T 43:15 to 44:3). He

agrees that even as of today, if the facility were expanded, one would see more sophisticated aircraft, i.e., larger aircraft, but he hasn't done a forecast as to how many (33A-T 45:10 to 46:5). He also told the public at the January, 2006 meeting that expansion of the airport would likely mean more corporate jets because it would be attractive to corporations in the area and that would in turn produce more helicopter flights, all leading to more jet traffic (33A-T 49:16 to 50:7).

- He agrees that in terms of trying to identify and inventory types of aircraft that might utilize a given runway, there are many variables, including the temperature, the altitude, the weather, the weight (passengers and/or cargo and/or luggage), and the number of passengers, all of which are factors (33A-T 55:1 to 56:17).

- At the time of his presentation in January, 2006, he concluded that most corporate jets require a runway of at least 4,000 feet. A few models could operate on a shorter runway (33A-T 57:19 to 58:1).

The evidence, then, regarding the public importance of general aviation, retention of general aviation airports, and Solberg Airport in particular, as part of New Jersey state policy as well as national policy, is exceedingly strong, and when balanced against the salutary benefits of open space in general -- far outweighs the latter under the facts of this case. In addition, the evidence demonstrates that in order to function

economically, and be able to handle business jet traffic, a larger runway than 3,735 feet is essential in a modernized airport facility.

**D. Readington Has Also Failed To Prove, On The Balancing Of Interests Test, That The Condemnation Was “Necessary”**

The factors articulated by the Appellate Division include consideration of open space already available to Readington, connection between the Solberg property and "existing plans for continuous greenways," and whether Readington's goals of open space acquisition could be achieved with a lesser taking.

Although required to show both reasonableness **and** necessity, Readington has failed to satisfy any of the "necessity" factors listed by the Appellate Division.

**E. The Amount Of Open Space Available To Readington Is Enormous, And Is In Fact Contributed To By The Airport Whether Taken Or Not**

The trial proofs on this subject, through the testimony of Ms. Allen (however inconsistent and ever changing it was), as well as Mr. Sullivan, the Township planner, and most of all, George Ritter, Solberg's expert planner, demonstrated the remarkable extent to which Readington already had open space of a preserved and "to be preserved" nature at the time of the taking, and even more so at the time of trial.

The evidence cited below supports this conclusion indisputably:

[i] Readington Township comprises about 47.8 square miles and contains roughly 30,592 acres. Based on the 2000 census, it had 15,803 residents (36T 33-34). As set forth in [D-644], an open space map prepared by Mr. Ritter, as of the time in question (early 2007), Readington had approximately 3,044 acres of open space, and

an additional 3,652 acres of preserved farmland, or **approximately 6,696 acres out of the Township's 30,592 acres -- about 21.8% of Readington's land area.** All of the foregoing open space was officially preserved and under municipal, county or state control or preserved under the farmland program; about 241 acres was in various types of active recreation (36T 36-38). According to Readington's own calculations as of March, 2007, there were 3,484 acres of preserved open space in Readington, and 4,438 acres of preserved farmland, or **a total of 7,922 acres or 25.8% of the total acreage.** [D-398]

[ii] Township planner Clarke Caton Hintz prepared a map of the Township indicating that the preserved open space as of March, 2014 totaled 5,025.57 acres (including Solberg Airport property) and the preserved farmland totaled 5,142.8 acres. [D-620] (14T 7:12-9:22) (7T 28:21-30:14). Even without including the Solberg Airport property, **according to its own planner, Readington had as of 2014 has 9431.8 acres of preserved lands including open space and farmland, comprising approximately 30.8% of all of Readington.** (36T41).

[iii] In addition to lands already permanently preserved for open space, it is appropriate to assess lands that will be in open space as a result of the cluster zoning regulations of Readington. As of 2006, three zoning categories in Readington provided for open space set-asides pursuant to cluster zoning ordinances: Agricultural Residential (AR), Rural Residential (RR), and Steep Slope Residential (SSR) (now called Special Resource Residential) (SRR). [D-652, R-17; D-651A at pp. 38-46]. In 2006, the clustering set asides were effectively preserved and enhanced. [D-651A at pp. 38-46]

[iv] The AR district regulations and zoning "are designed to enhance the Township's open space and farmland preservation policies by concentrating residential development in portions of properties on 1.5 acre lots so that the remaining portions can be preserved for open space and farmland." [D-605 at p. 3]. Township officials recognize the zoning's purpose to "further enhance" policies of Readington that promote "the preservation of open space and farmland." [D-605 at p. 11] Cluster zoning is considered by Readington as an "integral" part of its "open space and farmland preservation" efforts. [D-605 at p. 13]. Clustering operates by concentrating development in compact portions of a parcel "so that the remaining portion is preserved. The clustering provisions and tract size classifications in the 'AR' District are designed to foster the enhanced preservation of open space and farmland." [D-605 at p. 13]. When the AR district set-asides are applied to tracts, parcels of proportionate acreage are "preserved as open space or agricultural land." [D-605 at p. 14, ¶ 10]. There is no doubt, as Readington's planner concedes, that "the very purpose of clustering [] is to promote the preservation of large contiguous tracts" of land. [D-605 at p. 17, ¶ 13].

[v] Mr. Ritter prepared a number of charts showing the open space set-asides as a result of cluster zoning at various time frames. [D-648] shows open space as of 2006/2007, with the AR zone in light yellow, the RR zone in light orange, and the SSR zone in dark orange. He then superimposed on that map the various preserved parcels, whether by virtue of open space or farmland, applying the criteria in effect as of 2006/2007, focusing on parcels in the AR zone at that time that were larger than 30 acres, identifying them in light yellow, with green cross-hatching, and not including the Solberg

Airport property (36T62-64). Mr. Ritter then did the same thing with the RR district and with the SSR district. In the RR and SSR districts, he did include parcels that would qualify for cluster development even though not mandatory at that time (36T65-66).

[vi] In 2006, because of the mandatory cluster zoning in the AR zone, there was effectively an additional 1,911 acres of open space to be set aside in the AR zone; an additional 304 acres in the RR zone; and an additional 399 acres in the SSR zone, the foregoing totaling an additional 2,615 acres. If the RR or SSR acreage were excluded because clustering was voluntary at the time, there would be an additional 1,911 acres, all exclusive of the Solberg property (36T65-67). Based on the foregoing, and adding the cluster-related open space acreage of 2,615 to Mr. Ritter's then existing preserved acreage of 6,696, **the total open space as of 2006 was 9,311 acres, or approximately 30.4% of the Township (36T67).**

[vii] Mr. Ritter then did a similar type of calculation as of 2014, using the 2009 zoning amendment [D-647]. His approach was the same as with [D-648], except that the dark green on the exhibit reflected the change in zoning (35T 68). Mr. Ritter summarized, as of 2014, the potential open space based on the then-existing zoning resulting from the clustering zones. The additional space in the AR zone was 2,313 acres, the RR zone was 173 acres, and the SRR zone was 690 acres, for total additional acreage of 3,177 acres (36T 71-72).

[viii] Adding this cluster zoning-created open space to the already preserved farmland and open space as of 2014 of 9,431 acres, **the grand total as of 2014 (including the Solberg property) would be 12,609 acres, totaling approximately**

**41.2% of the entire Township in various open space uses (36T 132).** Even if the Solberg 726 acres were excluded (notwithstanding the airport property's obvious contribution to open space regardless of improvements), the 2014 grand total of 11,883 would still comprise approximately 38.8% of the entire acreage in Readington.

[ix] Readington's professed goal was to preserve 8000 acres of farmland within the Township, a figure which came from the Hunterdon County Agricultural Development Board. (7T 28:21-30:14). Farmland preservation is a vital part of open space preservation (36T29-30), and there is effectively no significant difference between land preserved for pure open space and land preserved for farmland (36T 30).

[x] According to Ms. Allen, in response to the Court's inquiry, Readington had a goal for farmland and open space preservation of approximately 35% of the total acreage of the township, or 10,707 acres. (8T 78). But at a later day of testimony, Ms. Allen retracted that goal and increased it. (14T 13:18-18:1). Ms. Allen decided to revise the goal upward to include **every parcel identified as having any open space value whatsoever** in the Township, or 5,300 acres of potential open space acquisition, for a total of 13,300 acres or about 44% of the total acreage in Readington. (14T 13:18-18:1).

[xi] Putting to one side whether her revision from her first day of testimony on the subject is believable as an honest mistake, Ms. Allen's revised goal defies reality, and runs contrary to the Township's methodology in calculating farmland preservation targets as 8,000 acres of the 9,300 acres identified by the County as carrying

some agricultural interest (itself a subset of farmland in the Township). (14T 13:18-18:1).

[xii] Sections of the Merck Property also provide an additional open space and farmland preservation opportunity. [D-657]. The light green or yellow properties on the Ritter exhibit were those owned by Merck, and Mr. Ritter eliminated those areas that were already developed with office resource facilities, with light green showing the undeveloped Merck parcels, which he estimated as 387 acres. After examining additional areas (in yellow) around Merck's existing corporate center that were not developed, he added another 316 acres, coming up with **a total of 704 acres of undeveloped land on the Merck property** (81-83), certainly eligible for open space designation.

[xiii] In any event, if the areas subject to cluster zoning are taken into account, even Ms. Allen's fanciful 44% total "revised" goal is close to realization as of 2014, given the Ritter conclusion set forth above that, taking into account the open space resulting from the mandatory cluster zones, between 38.8% and 41.2% of Readington is in various open space uses.

[ix] In terms of any measure of the need for public open space, Readington is obviously "well ahead of anything" and certainly well ahead of the "Balanced Land Use Guidelines," a methodology used to estimate whether a municipality has a reasonable amount of open space or at least a minimum amount of open space. Using that calculation, Readington should have had at least 800 acres of open space, including at least 126 acres of active open space, as of 2006-07. As of that time, they had

3,044 acres of open space and about 241 acres of active open space, a multiple of the minimums under the SCORP guidelines (36T73-74) [D-649].

[xv] As Mr. Ritter also concluded, taking into account the effect of the zoning regulations on the Solberg Airport property, the condemnation would only yield a net increase of preserved open space of approximately **43 acres**, (i.e., a comparison between the 624 acres that Readington would take in fee simple pursuant to the condemnation, compared with at least 581 acres that would be set aside as open space if fee simple ownership remained with Solberg Aviation and the property were developed pursuant to the zoning) and the purported fears of residential development came to pass. (36T 90:11 to 92:7)

**F. Readington Has Failed To Demonstrate That The Condemnation Is “Necessary” As Part Of Its “Existing Plans For Continuation Of Its Greenways Plans”**

The Appellate Division also directed that the Court consider, in terms of any claim by Readington that the condemnation was “reasonable and necessary, how the Solberg Airport property “fits into the Township's existing plans for continuous greenways.”

No credible evidence was presented that the taking is necessary to accomplish the Township’s supposed greenways or greenbelt goals, and the reason is clear: Readington’s Master Planning documents consistently recognize that, in fact, the existence of Solberg Airport itself created and stabilized the surrounding greenway, to the extent it is next to Readington Village and the Holland Brook stream corridor running adjacent to the southwest portion of the property. [R-61 at p. VIII-13 (1998 Amendment

to Readington Master Plan finding that the “existence of the airport stabilizes over 700 acres of open space adjacent to Readington and thus serves as a greenbelt.”); R-48 at p. 6]

There is also no testimony suggesting anything more than that one of the lots abuts the Holland Brook stream corridor, which lot and block does not appear to be developable residentially or as part of the Solberg Master Plan, and, in fact, would likely fall within a safety area in which no development would occur.

In addition, the evidence shows that Readington had never used eminent domain to preserve greenbelt/greenways (26T 47:3-49:10) and Readington’s own planner admitted that the existence of the airport led to greenway/greenbelt characteristics [R-226; D-683, D-684 at p. 4].

**G. Readington Has Failed To Demonstrate That Any Legitimate Goals Could Not Be Achieved With A “Lesser Taking”**

The Appellate Division (409 N.J. Super. At 32), directed the Court to consider whether Readington's "goals could be achieved with a **lesser taking**" than development rights to the airport facilities area and fee title to all of the other acreage. (We assume, of course, that the Appellate Division is referring to Readington's "legitimate" goals, having already determined -- subject to the proofs being placed in the trial record, which they have been -- that the goal of trying to control the use of the Solberg Airport property for airport purposes is not legitimate.

Given that assignment by the Appellate Division, this Court should conclude from the evidence presented that the continued existence of the airport, even a

potentially expanded airport, would not in any way defeat the Township's goals of open space to any meaningful degree, if at all. As the Township itself acknowledged from time to time in its proofs, and as a number of the experts on both sides have conceded, the airport is consistent with open space, and if anything, airports create and preserve sizeable amounts of open space.

To the extent that, notwithstanding the restrictive zoning governing the Solberg Airport property, the Court credits Readington with a realistic concern that the airport would somehow cease to exist and/or that all or portions of the Solberg Airport property might be subject to residential development, the "**lesser taking**" in such an instance would comprise that which would address the residential development concern -- i.e., a taking of development rights to the property for other than airport use.

Notwithstanding the proofs that question even this taking, Solberg Aviation Company has made it clear, both before and during this case, and certainly at this trial, that it will not oppose such a "lesser taking" subject to fair consideration, and that such a "lesser taking" could be accomplished by invalidating the entirety of Readington's Declaration of Taking with the exception of non-airport related development rights, with such rights remaining with Readington and all other rights being invalidated for the reasons set forth herein.

**CONCLUSION**

For the reasons set forth herein, the Court should invalidate the condemnation in its entirety -- except to the extent of affording Readington the right to retain non-airport related development rights -- and enter judgment accordingly for defendant, Solberg Aviation Company.

Respectfully yours,

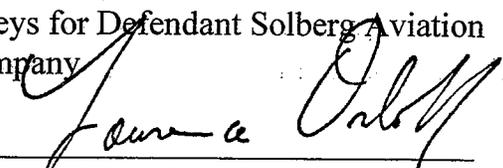
Dated: February 23, 2015

Of Counsel:  
Laurence B. Orloff

On the Brief:  
Laurence B. Orloff  
Matthew T. Aslanian

ORLOFF, LOWENBACH, STIFELMAN  
& SIEGEL, P.A.

Attorneys for Defendant Solberg Aviation  
Company

By:   
LAURENCE B. ORLOFF