IN THE COMMONWEALTH COURT OF PENNSYLVANIA

In re: The Matter of Proceedings by the Redevelopment Authority of the County of Schuylkill for the Condemnation of the Property of Reading Anthracite Company, et al., located in the Borough of St. Clair Appeal of: Reading Anthracite Company and Redevelopment Authority of the County of Schuylkill	: : : : : : : : : :	**CASES CONSOLIDATED** Nos. 391 C.D. 2024 & 748 C.D. 2024
In re: The Matter of Proceedings by the Redevelopment Authority of the County of Schuylkill for the Condemnation of the Property of Reading Anthracite Company, et al., located in the Borough of St. Clair Appeal of: Robert B. Sher, Jr., Robert Berger, Susan S. Blodgett, Beatrice Boardman, John R. Boardman, Christ Church in Philadelphia, George H. Dunkel, Virginia Dunn, George S. Gerhard, Marie Eggleston R. Ginther, Edward Haldeman, Elizabeth Haldeman, Henry B. Haldeman, John J. Haldeman, John S. Haldeman, June Elizabeth Haldeman, Raymond Haldeman, Ruth S. Hempel, Walter Hempel, House of Good Shephard, William Kerr, Marcia Moravitz Kobs, Dayne Kreach, Martha Mary Kunkel, Augusta W. Lochner, Diane L. Lotz, Sally M. Luckenbill, Joseph V. Trustee Montoro, Stanley Thomas	: :	

Moravitz, Marilyn Carol	:	
Moravitz-Wilson, Helen Marie	:	
Pedell Obey, James Reeser,	:	
Richard Reeser, Richard H.	:	
Reeser, Glenn T. Roth, Monica	:	
Scanlon, Alice L. Schober,	:	
Katherine E. Shaw, Harry L.	:	
Steinrock, Jr., Marie Steinrock,	:	
Fern Swope, John A. Swope,	:	
James C. Eckert Trust, Mary Ann	:	
Cornwell Trust, Mary N. Van Reed,	:	
Nelson J. Venette, and Harold H.	:	
Webber, Jr.	:	Argued: September 11, 2025

BEFORE: HONORABLE RENÉE COHN JUBELIRER, President Judge
HONORABLE MICHAEL H. WOJCIK, Judge (P.)
HONORABLE MATTHEW S. WOLF, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION BY
JUDGE WOLF FILED: September 25, 2026

In these consolidated appeals, the Redevelopment Authority of the County of Schuylkill (Authority) and the Reading Anthracite Company (Reading Anthracite) (collectively, Condemnors[1]) seek the reversal of four orders of the Court of Common Pleas of Schuylkill County (trial court) issued in the course of an eminent domain

[1] Reading Anthracite was a co-owner of the land at the core of this dispute and, therefore, a condemnee. As explained below, however, Reading Anthracite is a co-party of the Authority in this case because of its obligation to pay out any additional compensation due as just compensation for the land in question. As a result, we refer to Reading Anthracite and the Authority together as "Condemnors" for purposes of this opinion.

action that began in 1999 with the taking of a parcel of land (Condemned Land) for commercial redevelopment. Meanwhile, Robert B. Sher, Jr., leads a class of 49 individuals and entities (Heirs) in appealing to this Court from two of the trial court's orders.

Condemnors argue that the matter should be dismissed for Heirs' failure to file a timely petition for a Board of View, that all of the Heirs other than Mr. Sher are not proper parties to the matter, and that the trial court erred by improperly applying the relevant statutes and case law in reaching its calculation of just compensation and delay damages. For their part, Heirs argue that the trial court's calculation of just compensation was erroneously low and that the trial court erred by failing to credit the testimony of their expert witness on that issue. For the reasons that follow, we affirm the trial court's orders that denied Condemnors' request to dismiss the matter and allowed Heirs to proceed as proper parties. We vacate, however, the trial court's order calculating just compensation, as such legal analysis was erroneous, and remand for further proceedings consistent with this opinion.

I. Background

The Condemned Land consists of 116.4 acres situated along State Route 61 in St. Clair Township, Schuylkill County. Reproduced Record (R.R.) at 695a-96a. Before its acquisition by the Authority, the Condemned Land was just one of many tax parcels constituting a far larger tract of land comprising approximately 1,700 acres east and west of Route 61 across several townships. *Id.* The larger tract, commonly referred to as the Lee Lands, were the property of one Jacob Seitzinger until his death in 1850, when it was passed to his heirs. *Id.* at 699a. Heirs include Jacob Seitzinger's direct descendants and other successors to those heirs. *Id.*

Sometime soon after Mr. Seitzinger's death, Reading Anthracite acquired a 75% stake in the entire Lee Lands in order to conduct coal mining operations. *Id.* at 27a.

In 1994, long after the mining activity had ceased, the Authority initiated proceedings to take the Condemned Land via eminent domain and rezone it for commercial development. *Id.* at 1511a. The Authority thus notified the Schuylkill County Planning Commission (Planning Commission) in 1998 of its intent to sell the Condemned Land to the St. Clair Real Estate Development Company (St. Clair), which expressed interest in rehabilitating the property and preparing it for the opening of a Walmart store. *Id*. at 1517a. In its letter to the Planning Commission, the Authority explained its willingness "to condemn the area, a portion of which would be leased to [Walmart]." *Id.* The Authority also executed a lease (Walmart Lease) making Walmart the tenant of a 20.1278-acre plot (Demised Premises) within the Condemned Land, which was to be the site of a Walmart retail store to be built by St. Clair. *Id.* at 1527a. The Walmart Lease granted Walmart its choice of either terminating the agreement with no liability or purchasing the Demised Premises for $1,176,316.13 in the event that St. Clair had not completed the building's foundation by June 1, 2000. *Id.* at 1531a-32a.

On April 14, 1999, the Authority recorded a Declaration of Taking with the Schuylkill County Recorder of Deeds, through which it acquired fee simple ownership of the Condemned Land. *See id.* at 17a-19a. The Authority and Reading Anthracite executed a stipulation on the same day, in which it was agreed that the Authority would pay $6,443.30 per acre, for a total purchase of $750,000.00. *Id.*at 27a. A 50% installment payment was to be paid on May 24, 1999. *Id.* at 28a. The parties also agreed that Reading Anthracite would indemnify the Authority in the event that any additional compensation was later found due to Heirs. *Id.* at 1607a.

Reading Anthracite also pledged to "exercise its best efforts to obtain the cooperation and agreement of the [Heirs] to the proposed transaction." *Id.* Accordingly, Reading Anthracite petitioned the trial court on May 24, 1999, to appoint a trustee *ad litem* who could identify and represent the as-yet-unknown Heirs. *Id.* at 255a. The trial court granted the petition and appointed Frederick Hobbs, Esq., as trustee *ad litem*. *Id.*

In January 2004, on his own behalf and that of the other Heirs, Mr. Sher filed a Petition for Appointment of Board of Viewers (Board Petition) with the purpose of determining the Condemned Land's properly assessed value.[2] *Id.* at 1639a-40a. Once it was convened, the Board of Viewers decided that it could not move forward until it possessed more information on the identities and whereabouts of the living heirs of Mr. Seitzinger, and instructed the parties to cooperate on finding and contacting them. *Id.* at 257a. The matter then languished until February 2007, when Mr. Sher filed a mandamus petition in an effort to have the Board of Viewers proceed with the assessment of compensation. *Id.* Following a view of the property on September 13, 2007, the Board of Viewers scheduled an evidentiary hearing to take place on January 29, 2008. *Id.* at 258a. During a telephone conference on the day before the scheduled hearing, Mr. Sher, through counsel, informed the Board of Viewers that he would be unable to attend. *Id.* The Board of Viewers cancelled the hearing in response; the matter then lay dormant for 11 years, while neither party announced its readiness to proceed with a rescheduled hearing. *Id.*

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[2] A board of viewers is a group of three independent individuals appointed by the court upon the filing of a petition for their appointment, which is tasked with inspecting the premises, holding hearings, and filing a report. *In re Condemnation of Land in Bristol Twp.*, 238 A.3d 585, 587 n.2 (Pa. Cmwlth. 2020).

Finally, on March 3, 2018, Heirs filed a praecipe requesting that the Board of Viewers schedule a hearing to resolve the matter. *Id.* at 41a. Before such a hearing took place, Condemnors moved for summary judgment on the Board Petition on September 5, 2019, arguing that it was time-barred. *Id.* at 53a. The trial court initially granted the motion but, after Heirs moved for reconsideration, denied the motion in a February 26, 2020 order. *Id*. at 104a. In an accompanying opinion, the trial court explained that it was "the duty of the condemnor to file preliminary objections" to the appointment of a board of viewers rather than "wait to present the objection" by moving for summary judgment. *Id.* at 108a (citing *Mountaintop Area Joint Sanitary Auth.*, 166 A.3d 553, 564 (Pa. Cmwlth. 2017)).

On June 14, 2021, Mr. Sher filed a supplement to the Board Petition (Petition Supplement) joining all Heirs who had not timely filed for a Board of Viewers. *Id.* at 110a. The Authority filed preliminary objections to the Petition Supplement on July 7, 2021, arguing that it, too, was time-barred. *Id.* at 154a-61a. The trial court initially sustained the Preliminary Objections but, again, reversed upon motion for reconsideration in a December 16, 2022 order. *Id.* at 678a.

A Board of Viewers was convened and, following a July 27, 2021 hearing, issued its report on July 11, 2022. *See id.* at 254a-78a. Therein, the Board of Viewers determined the Condemned Land's fair market value to be $1,164,000.00, a $414,000.00 increase over the amount originally paid. *Id.* at 277a. The Authority was directed to pay the difference, plus fees for attorneys, engineers, and appraisers. *Id.* at 278a. However, the Board of Viewers declined to award delay damages[3] on

[3] In condemnation cases, the property owner may be entitled to recover damages—traditionally called detention damages—from the date of the taking of the property to the date of the award as compensation for the detention of the landowner's money. *In re De Facto Condemnation and Taking of Lands of WBF Assocs., L.P. ex rel. Lehigh-Northampton Airport Auth.*, 903 A.2d 1191, 1199 (Pa. 2006). The property owner may also receive interest from the

the ground that there was no evidence in the record of when the Authority's possession of the Condemned Land began. *Id.* at 277a-78a.

On Mr. Sher's appeal, a two-day *de novo* bench trial was held before the trial court on May 4 and 5, 2023. *See id.* at 686a. Heirs presented the testimony of Charles Moyer, a real estate appraiser who first drafted a report on their behalf in 1999. *See id.* at 756a-57a. Mr. Moyer reached his conclusion through the so-called sales comparison approach, whereby an appraiser assesses value by reference to similar property sales. *Id.* at 758a. The other main approaches to assessment, the cost approach and the income approach, were inapposite in this instance—the former because it tends to be based on improvements to the site, the latter because it is primarily used to calculate the potential rental income of investment properties. *Id.* at 758a-59a. Mr. Moyer further explained that he arrived at his appraisal of the Condemned Land through analysis of six comparable sales:

- Moyer Comparable No. 1: a 45.73-acre parcel in Cumberland Township, Adams County, purchased in 1999 for $2,750,000.00 for the construction of a new visitors' center to serve Gettysburg National Military Park. *Id.* at 854a; 1770a.

- Moyer Comparable No. 2: an 82.77-acre parcel in Lower Nazareth Township, Northampton County, purchased in 1998 for $7,700,000.00 for hospital and related uses, contingent on rezoning. *Id.* at 858a; 1771a. Acknowledging that Moyer Comparable No. 2 was in a "superior" location relative to the Condemned Land, Mr. Moyer applied a 30% reduction to its value to make it a fairer comparison. *Id.* at 774a-75a.

- Moyer Comparable No. 3: a 40.256-acre parcel in Lower Macungie Township, Lehigh County, purchased in 1998 for $2,680,000.00 for a shopping center that included a Walmart. *Id.* at 860a; 1772a.

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date of the award to the date of payment. *Id.* The sum of detention damages and interest from the date of the award have become known as *delay damages*. *Id.*

- Moyer Comparable No. 4: a 31.91-acre parcel in Westfall Township, Pike County, purchased in 1992 for $2,125,000.00 for the construction of a shopping center that included a Kmart. *Id.* at 770a; 1773a. As with Moyer Comparable No. 2, Mr. Moyer found this property to be in a superior location and therefore applied a 10% reduction to its value for comparison. *Id.* at 777a.

- Moyer Comparable No. 5: a 41-acre parcel in Dickson City, Lackawanna County, purchased in 1991 for $1,300,000.00 for a shopping center that included a Walmart and Wegmans supermarket. *Id*. at 866a-67a; 1774a.

- Moyer Comparable No. 6: two parcels comprising 114.79 acres in Hazle and Butler Townships, Luzerne County, purchased in 1991 for $2,180,231.00. One parcel became a commercial development, the other a residential development.

Id. at 869a-70a. Mr. Moyer noted that the per-acre values of the foregoing six sales, as adjusted, ranged from $38,048.00 to $65,118.00. *Id.* at 779a. Accordingly, Mr. Moyer assigned to the Condemned Land a per-acre value roughly equal to the average of those figures, or $50,000.00, yielding a total fair market value of $5,820,000.00. *Id.* at 765a.

Asked if it was possible to assess the value of the Condemned Land by subtracting it from the value of the Lee Lands, Mr. Moyer opined that the Lee Lands' value was "irrelevant." *Id.* at 809a. Mr. Moyer explained that an encompassing larger set of properties is only relevant if it is a standalone parcel under common ownership with a uniform highest and best use of the land. *Id.* at 808-09. The Condemned Land's value could not be determined simply by subtracting it from the value of the Lee Lands, because the Lee Lands' zoning and uses were too dissimilar. *Id.* at 809a.

Condemnors presented the testimony of Alan Kaplan, also a professional real estate appraiser. *Id.* at 931a. Mr. Kaplan testified that he first issued an appraisal report on St. Clair's behalf in 1998, in which he determined the Condemned Land's fair market value to be just $270,000.00. *Id.* at 997a. Shortly before the 2023 trial, however, Mr. Kaplan modified his methodology with the result that his new estimate of the Condemned Land's fair market value was $500,000.00 at the time of taking. *Id.* at 936a. Mr. Kaplan explained that he arrived at that estimate through a "diminution of value" approach—that is, by appraising the Lee Lands as a whole before the taking and after the taking, then subtracting the difference from the pre-taking value. *Id.* at 938a. In contrast to Mr. Moyer, who dismissed that approach as inapposite, Mr. Kaplan reasoned that the Lee Lands were "one economic unit" under common ownership, with a common set of uses, i.e., "woodlands, open land, and prior mined areas." *Id.* at 937a, 939a.

Like Mr. Moyer, Mr. Kaplan derived his estimate from what he determined to be a set of comparable sales. For that purpose, he cited the following properties:

- Kaplan Comparable No. 1: a 22.2-acre parcel, also situated along Route 61 in Schuylkill County, purchased in 1995 for $26,500.00. *Id.* at 943a; 1883a. The record does not mention the purchaser's intended use, but the land was zoned for commercial use. *Id.* at 1883a.

- Kaplan Comparable No. 2: a 51.23-acre parcel in Orwigsburg, Schuylkill County, purchased in 1996 for $425,000.00. *Id.* at 1884a. The land had been approved for the construction of a subdivision several years before, but part of its acreage also lay within a wetland. *Id.*

- Kaplan Comparable No. 3: a 169.92-acre parcel in New Ringgold Township, Schuylkill County, purchased in 1996 for $802,000.00 for "[a]gricultural/[w]oodland/[r]ecreation"-related uses. *Id.* at 1885a.

- Kaplan Comparable No. 4: an 857.26-acre parcel in Barry and Eldred Townships, Schuylkill County, purchased in 1997 for $200,000.00 for "[w]oodland" and "[r]ecreation" uses. *Id.* at 1886a.

- Kaplan Comparable No. 5: a 70.9-acre parcel in Frackville, Schuylkill County, purchased in 1993 for $267,000 for recreational uses.

Id. at 1887a.

Mr. Kaplan acknowledged that the zoning was likely to change at the time of his 1998 report and that the Condemned Land's zoning indeed changed just weeks after the taking. *Id.* at 960a-61a. However, Mr. Kaplan did not believe such conditions had a substantial effect on the Condemned Land's fair market value, since there had been some risk that the zoning change would be denied. *Id.* at 962a. Mr. Kaplan also opined that the expenses of reclaiming and remediating a former mining site would substantially raise the costs of development, further diminishing the Condemned Land's fair market value. *Id.* at 968a-69a. While acknowledging that Walmart had signed a lease for the property, Mr. Kaplan noted that it was contingent on improvement of the Condemned Land's physical condition, which, at the time of the taking, was "just terrible." *Id.* at 966a.

Condemnors also presented the testimony of Frank Derrick, a 36-year veteran employee of Reading Anthracite who supervised much of the reclamation work that took place on the Lee Lands after mining activity had ceased. *Id*. at 884a. Mr. Derrick recalled that he and his staff were tasked in April 1999 with rendering the Condemned Land suitable for commercial development as well as bringing the site into compliance with Department of Environmental Protection (DEP) regulations. *Id*. at 892a-93a. Among the challenges before them were the draining and backfilling of a flooded six-acre mining pit, the diversion of the water flowing toward the Condemned Land from uphill areas into proper channels, and the excavation and removal of a four- to six-foot bed of mud across a significant portion of the land. *Id.* at 893a-94a, 902a. Mr. Derrick recalled that the work continued into "mid to late" 2001. *Id.* at 897a.

With the trial concluded and the record sealed, the trial court issued a November 27, 2023 order finding that the Condemned Land's fair market value was $1,176,000.00 at the time of the taking. *Id.* at 1176a. Taking into account Heirs' 25% ownership and the $750,000.00 already paid, the trial court thus found Heirs to be entitled to an additional $106,500.00 in compensation. *Id.* To that amount, the trial court added $500.00 in litigation costs and delay damages of $6,390.00 yearly between 2004 and the date of the order, compounded annually. *Id.*

In an accompanying opinion, the trial court characterized the Condemned Land as "a 116.4-acre portion of a 1,777-acre coal tract known as the Lee Lands," which, in turn, were described as "all former mining tracts within the anthracite coal fields of Schuylkill County." *Id.* at 1177-78a (cleaned up). The trial court then explained that its task was to determine just compensation for the taking of the Condemned Land out of "the larger tract." *Id*. at 1182a. Just compensation, according to the trial court, was the difference between the fair market value of Heirs' "entire property interest" immediately before and immediately after the taking. *Id.* at 1178a (quoting former Section 702(e) of the Eminent Domain Code[4]). Fair market value, the trial court further explained, was defined as "the price which would be agreed to by a willing and informed seller and buyer, taking into consideration . . . [t]he present use of the property and its value for such use [and

[4] Act of June 22, 1964, Special Sess., P.L. 84, *as amended*, *formerly* 26 P.S. § 1-702(e), repealed by the Act of May 4, 2006, P.L. 112 (Act 34). As the trial court noted, Act 34 applies to condemnations that occurred after its September 1, 2006 effective date. Thus, the "parties agree that the Act of June 22, 1964[,] is the Code applicable to this proceeding." R.R. at 1181a.

the] highest and best reasonably available use of the property and its value for such use." *Id.* at 1181a-82a (quoting former Section 610 of the Eminent Domain Code).

Addressing the trial testimony, the trial court noted that both "Moyer and Kaplan were accepted as experts and testified in accord with their respective appraisal reports admitted into the record." *Id.* at 1182a-83a. While acknowledging Mr. Moyer's "extensive appraisal experience in the lending and banking industry," the trial court observed that he had little experience in eminent domain acquisitions or in evaluating former coal mining lands. *Id.* at 1183a. Accordingly, the trial court declined to adopt Mr. Moyer's $5,820,000.00 estimate of the Condemned Land's fair market value. *Id.* The trial court also expressed incredulity about the comparable properties cited by Mr. Moyer, explaining that "his market data summary of land sales involve[s] real estate that already had accessible frontage on various roadways" and "did not require . . . extensive reclamation and access development." *Id.* at 1184a.

While rejecting Mr. Moyer's estimate of fair market value, the trial court also declined to adopt Mr. Kaplan's far lower estimate. Instead, the trial court looked to the Walmart Lease, which gave Walmart the option of buying the land it leased for $1,176,316.13 if St. Clair did not complete the building's foundation on time. *Id.* at 1185a. The trial court thus concluded that the purchase option was the most accurate reflection of the buyer's and seller's estimation of the Condemned Land's value.[5] *Id.* It further noted that the figure was nearly identical to the purchase price of Moyer Comparable No. 5, which was also purchased for the construction of a Walmart;

[5] Although the trial court's valuation of the Condemned Land was nearly the same as that calculated by the Board of Viewers, the similarity appears to be coincidental. As the trial court noted, the Board of Viewers' report "and the amount of their award are not to be admissible as evidence and were not considered by this [c]ourt." R.R. at 1181a (citing former Section 602 of the Eminent Domain Code, *formerly* 26 P.S. § 1-602).

however, the trial court also acknowledged that the land in that purchase was "fully developed with level to rolling topography" rather than unrehabilitated mining lands. *Id.*; *see also id.* at 1774a.

Both Condemnors and Heirs moved for post-trial relief. Heirs argued that the trial court erred by finding the entire Condemned Land worth the amount stated in the Walmart Lease, given that Walmart was leased only 20.1278 of the Condemned Land's 116.4 acres. *Id.* at 1189a. Thus, Heirs reasoned that the $1,176,316.13 agreed to in the Walmart Lease should be extrapolated to all of the Condemned Land, yielding a total fair market value of $6,802,690.68. *Id.* at 1190a.

Condemnors, on the other hand, maintained that the trial court should not have denied their summary judgment motion in the February 26, 2020 order, nor should it have granted the Petition Supplement joining all heirs as parties. *Id.* at 1306a-07a. As for the trial court's fair market value determination, Condemnors argued that it "substantially inflate[d] the value of the Condemned Land." Finally, Condemnors contended that the trial court erred by awarding delay damages because the delays in this case were the fault of Mr. Sher himself, and further contended that the award of compounded delay damages in particular was contrary to law. *Id.* at 1308a-09a.

In an April 1, 2024 order, the trial court granted Condemnors' post-trial motion insofar as it objected to compounded delay damages, acknowledging that Pennsylvania law does not permit an award of delay damages on a compound basis.[6] *Id.* at 1469a (citing *McGaffic v. Redevelopment Auth. of the City of New Castle*, 732 A.2d 663, 669 (Pa. Cmwlth. 1999)). The delay damages owed to Heirs were modified accordingly. *Id.* Denying all other post-trial motions, the trial court noted that it took all of Mr. Moyer's and Mr. Kaplan's comparable properties into account

[6] The docket reflects that the trial court entered judgment on April 24, 2024, and April 30, 2024.

but maintained that the Walmart Lease constituted the most important "factor" in its calculation. *Id.* at 1464a-66a. These appeals followed.[7]

II. Issues

Condemnors present four main appeal arguments for this Court's disposition. First, Condemnors maintain that the trial court's denial of summary judgment in its February 25, 2020 order was in error, as Mr. Sher's Board Petition was subject to a one-year statute of limitations. Second, Condemnors continue to assert that the trial court erred by permitting the joinder of all identified Heirs in spite of their lack of participation in the case. Third, Condemnors argue that the trial court's finding of the Condemned Land's fair market value was erroneous because there was no determination of the entire Condemned Land's fair market value, the Walmart Lease's language was irrelevant, the future zoning change was speculative at the time of the taking, and Mr. Moyer's comparable properties were inappropriate. Lastly, Condemnors maintain that the trial court erred in awarding delay damages, since the delays in this matter were the fault of Heirs.

Meanwhile, Heirs assert that the trial court correctly denied Condemnors' summary judgment motion in its February 25, 2020 order, correctly determined the Walmart Lease to be the best evidence of the Condemned Land's fair market value, and correctly awarded delay damages. However, Heirs maintain that the trial court erred by failing to apply the per-acre fair market value of the Demised Premises to all of the Condemned Land. Heirs further argue that the trial court erred by failing to credit Mr. Moyer's expert testimony.

[7] In eminent domain cases, this Court reviews whether the trial court committed an abuse of discretion or an error of law. *In re Condemnation of Land in Bristol Twp.*, 238 A.3d at 587 n.3. When an appeal presents a question of law, such as statutory interpretation, our scope of review is plenary. *Id.*

III. Discussion

A. Summary Judgment and Preliminary Objections

As a preliminary matter, we will address Condemnors' procedural objections to the orders below. Condemnors argue that the trial court erred as a matter of law when it denied their motion for summary judgment of the Board Petition. Condemnors moved for summary judgment on September 5, 2019, contending that Mr. Sher's Board Petition was time-barred pursuant to Section 19.2 of the Urban Development Law,[8] which provides relevantly that "a proceeding to challenge just compensation or other damages if a redevelopment authority has exercised powers of condemnation pursuant to this act and made payment in accordance with [the former Eminent Domain Code] is subject to a one-year statute of limitations." R.R. at 54a. In support, Condemnors point to this Court's holding in *McDonald v. Redevelopment Authority*, 952 A.2d 713, 717 (Pa. Cmwlth. 2008), that Section 19.2's limitation must be retroactively applied.

Condemnors' arguments are unpersuasive. As the trial court observed in its February 25, 2020 order denying summary judgment, Condemnors failed to raise the issue of the statute of limitations properly. In *In re Mountaintop Joint Sanitary Authority*, this Court held that preliminary objections are "the exclusive" method under the Eminent Domain Code of raising legal and factual objections to a petition for an appointment of viewers. 166 A.3d at 107-08; *see also Gross v. City of Pittsburgh*, 741 A.2d 234, 243 (Pa. Cmwlth. 1999) (holding that the city government "waived any factual or legal challenge" to a petition for a board of viewers by withdrawing its preliminary objections). Since Condemnors only raised the issue in

[8] Act of May 24, 1945, P.L. 991, *as amended*, added by the Act of October 2, 2002, P.L. 796, No. 113, 35 P.S. § 1719.2.

their summary judgment motion, we agree with the trial court that it was improperly raised.

Next, Condemnors argue that the trial court erred as a matter of law when it granted the Petition Supplement, thus permitting the joinder of dozens of Heirs as parties. Below, Condemnors raised their Preliminary Objections asserting, *inter alia*, that the Petition Supplement was time-barred under Section 5527(a)(1)(i) of the Judicial Code:

> If a condemnor has filed a declaration of taking, a petition for the appointment of viewers for the assessment of damages under 26 Pa.C.S. (relating to eminent domain) must be filed within six years from the date on which the condemnor first made payment in accordance with 26 Pa.C.S. § 307(a) or (b) (relating to possession, right of entry and payment of compensation).

42 Pa.C.S. § 5527(a)(1)(i). Condemnors argue that, even if they could only have raised the statute of limitations through their Preliminary Objections, the filing of the Petition Supplement by Heirs "afforded [Heirs] a new opportunity to raise the . . . issue." Condemnors' Br. at 43 n.6.

Condemnors' arguments are, again, unpersuasive. While it is true that Mr. Sher did not file his Petition Supplement until June 18, 2021, more than two decades after the first payment was due from the Authority, the Board Petition that it supplements had already been filed in 2004—well within the six years mandated by Section 5527(a)(1)(i). That provision is silent on documents such as the Petition Supplement, which seek relief that is ancillary to the petition for a board of viewers.

Additionally, Condemnors argue that the Petition Supplement was improperly granted due to the non-participation of the other Heirs, but this, too, misses the mark. The purpose for which a trustee *ad litem* was appointed in the first place, at Reading Anthracite's own request, was to identify the many Heirs who were not yet known.

To suppose that Mr. Sher could only have acted alone in this case would be at odds with former Section 1-507(a) of the Eminent Domain Code, which provided as follows:

> The claims of all the owners of the condemned property, including joint tenants, tenants in common, life tenants, remaindermen, owners of easements, or ground rents, *and all others having an interest* in the property, and the claims of all tenants, if any, of the property, shall be *heard or tried together* and the award of the viewers or the verdict on appeal from the viewers shall first fix the total amount of damages for the property, and second, apportion the total amount of damages between or among the several claimants entitled thereto.

Formerly 26 P.S. § 1-507(a) (emphasis added). Thus, the fact that Mr. Sher has taken a more active role in this matter than others does not make the joinder of other Heirs in any way improper. We therefore see no reason to overturn the trial court's determination that the other Heirs could be joined as parties. Accordingly, we affirm the trial court's orders dated February 25, 2020, and December 16, 2022.

B. Just Compensation

In their respective cross-appeals, Condemnors and Heirs both take issue with the manner in which the trial court determined just compensation for the Condemned Land. We begin with an overview of the relevant provisions of the Former Eminent Domain Code, which applies to this matter. *See supra* n.3.

Until its repeal by Act 34 in 2006, the former Eminent Domain Code provided "the exclusive method and practice governing eminent domain proceedings." *Linde Enters., Inc. v. Lackawanna River Basin Sewer Auth.*, 911 A.2d 658, 661 (Pa. Cmwlth. 2006). Former Section 601 of the Eminent Domain Code entitled condemnees to just compensation for the taking of their property, defined in former Section 602(a) as "the difference between the fair market value of the condemnee's entire property interest immediately before the condemnation and as unaffected thereby and the fair market value of his property interest remaining immediately after such condemnation and as affected thereby, and such other damages as are provided in this code." *Formerly* 26 P.S. §§ 1-601, 1-602(a). Former Section 605 elaborates on what constitutes a condemnee's "entire property interest" for purposes of Section 602(a) when dealing with contiguous tracts or separate tracts with a unity of ownership and use. It provides:

> Where all or a part of several contiguous tracts owned by one owner is condemned or a part of several non-contiguous tracts owned by one owner which are used together for a unified purpose is condemned, damages shall be assessed as if such tracts were one parcel.

Formerly 26 P.S. § 1-605. Former Section 603(1)-(4) articulates the following formula to be used in determining fair market value:

> [T]he price which would be agreed to by a willing and informed seller and buyer, taking into consideration, but not limited to, the following factors:
>
> (1) The present use of the property and its value for such use.
>
> (2) The highest and best reasonably available use of the property and its value for such use.
>
> (3) The machinery, equipment, and fixtures forming part of the real estate taken.
>
> (4) Other factors as to which evidence may be offered as provided by Article VII [governing proceedings of Boards of Viewers].

Formerly 26 P.S. § 1-603(1)-(4).

In this case, the Authority filed a Declaration of Taking on April 14, 1999, to acquire the Condemned Land, in which Reading Anthracite held a 75% ownership stake and Heirs held a 25% stake. On the same day, Reading Anthracite and the Authority signed a stipulation setting just compensation to $750,000.00 and agreeing that the former would indemnify the latter if further compensation was found due. Meanwhile, the Authority transferred the Condemned Land to St. Clair, who contracted to build commercial premises thereon for a Walmart retail center. After a Board of Viewers determined that the Condemned Land was worth $1,164,000.00—a 55% increase from the amount initially agreed upon by Reading Anthracite and the Authority—the two parties appealed to the trial court. Condemnors presented Mr. Kaplan's expert testimony and other evidence to support the conclusion that the Condemned Land was, in fact, worth less than had been agreed upon. Rejecting their contention, the trial court ultimately found the Condemned Land to be worth $1,176,000.00, based on a clause in the Walmart Lease granting Walmart the option to purchase the Demised Premises for that amount if St. Clair failed to follow through on its construction obligations.

1. Condemnors' Arguments

Condemnors argue that the trial court ignored the Eminent Domain Code's instruction to determine "the [fair market value] of the condemnee's *entire property interest* immediately before the condemnation and as unaffected thereby and the [fair market value] of his property interest remaining immediately after such condemnation[.]" *Formerly* 26 P.S. § 1-602(a) (emphasis added). They maintain that former Section 605 of the Eminent Domain Code provides that "damages shall be assessed as if such tracts were one parcel" if contiguous tracts were under common ownership and "used together for a unified purpose." *Formerly* 26 P.S. § 1-605. Condemnors argue that the record establishes that the Lee Lands were under common ownership and constitute contiguous tracts and therefore must be valued as one. *See* Condemnors' Reply Br. 8-12. Even in the event the Lee Lands are considered non-contiguous, Condemnors maintain they should still be valued as one because the unity of use doctrine is satisfied. Thus, Condemnors maintian the trial court erred by failing to adopt the analysis of Mr. Kaplan, "who [alone] employed the statutorily required method by measuring the value of the entire Lee Lands before and after the taking." Condemnors' Br. at 51.

In support of their argument, Condemnors cite *Scranton Penn Furniture Company v. City of Scranton*, 498 A.2d 469 (Pa. Cmwlth. 1985). In that case, this Court considered the claim of a business owner whose building was partially condemned for a street extension, resulting in the loss of a loading dock. *Id.* at 470. The trial court allowed jurors to hear testimony by the city government's expert that the business owner should only be compensated for the value of the land occupied by the loading dock. *Id.* at 471. Remanding for a new trial, we held the jury should never have been permitted to consider the testimony of the city's expert due to her failure to "testify as to the 'before' and 'after' values of the *entire* property." *Id*. at 470 (emphasis added).

Since *Scranton Penn*, Condemnors aver this Court has consistently reaffirmed the principle that "the scope of the property interest to be valued is the entire property interest, not just the portion set forth in the declaration of taking." *2800 No. Broad St., LLC v. Dep't of Transp.*, 259 A.3d 1022, 1025-26 (Pa. Cmwlth. 2021) (holding that just compensation for the taking of a row of properties along a city street was to be calculated based on their change in total value, because "the *de jure* partial taking of the properties . . . contemplates damages to the remainder of the property"). In instances where multiple tracts have the same owners, "they are to be treated as one tract in assessing damages." *Dep't of Gen. Servs. v. Fake*, 405 A.2d 971, 973 (Pa.

Cmwlth. 1979). Even where "portions of a single tract are adaptable to different uses," this Court has held it to be "a mistake to appraise each area's separate values and then add them together to get the value of the whole." *Dep't of Transp. v. Becker*, 546 A.2d 1282, 1285 (Pa. Cmwlth. 1988).

2. Heirs' Arguments

Heirs agree with the trial court that the Walmart Lease was the best evidence of fair market value but maintain that the trial court erred by failing to extrapolate the total fair market value of the Condemned Land on a per-acre basis. Heirs reason that "there is no difference between the approximately [20] acres subject to the Walmart Lease and the remainder of the Condemned Land," since the latter's 116.4 acres were all taken by the Authority for the purpose of creating a "Wal-Mart Redevelopment Area." Heirs' Br. at 56. Heirs note that the entire Condemned Land was rezoned to commercial all at once, not just the Demised Premises, and that all 116.4 acres were sold to St. Clair for redevelopment purposes. *Id.* at 56.

Heirs further argue that former Section 605 of the Eminent Domain Code is inapplicable here, as the parties' reference to the parcels at issue as the "Lee Lands" was for mere convenience, and was never meant to reference the entire approximately 1,700 acres of land previously used for mining. Heirs maintain that Condemnors produced no evidence that each of the parcels consisting of the 1,700 acres of mining land are contiguous to the 116.4 acres that were condemned here. Thus, Heirs maintain that the trial court rightly rejected the expert testimony presented by Condemnors, which utilized a diminution in value approach considering the entire Lee Lands as contemplated by former Section 605.

3. Analysis

We first address the evidentiary value of the Walmart lease in determining fair market value for Condemnors' taking of the Condemned Land. As explained above, former Section 1-603(1)-(4) defines fair market value and sets forth a list of various factors a trial court may consider in fixing a property's numeric fair market value both immediately before and immediately after condemnation. However, as plainly stated in former Section 602, it is the *difference* of these two numeric fair market values which yields the amount of just compensation owed. *Formerly* 26 P.S. § 1-602.

It is readily apparent that by relying on the Walmart Lease, the trial court did not utilize the statutory formula for determination of just compensation. Here, the trial court was required to determine Heirs' damages by calculating the difference in the value of their property interest immediately before and immediately after the Condemned Land's 116.4 acres were taken on April 14, 1999. We note that upon the Authority's acquisition of the Condemned Land on April 14, 1999, there were numerous hazards on the property and hindrances to its development, including the flooded six-acre pit and numerous drainage channels that funneled water from the surrounding mountains. See R.R. at 892a-99a. It was not the April 1999 version of the Demised Premises that Walmart had the option of purchasing for $1,176,316.13; rather, as Mr. Derrick's testimony made clear, it was land that had been essentially transformed and reclaimed from decades of waste and neglect. That is not all that was to have been accomplished; the Walmart Lease provided that St. Clair was also to finish the foundation of the retail building by June 1, 2000, for its work to be deemed timely.[9]

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[9] Even if St. Clair had not proceeded apace with construction by June 1, 2000, Walmart could have still exercised the additional option of terminating the lease for no money at all. As

We thus find that the Walmart Lease is of little or no relevance to the question of the Condemned Land's value immediately before or after the taking. Most notably, the $1,176,316.13 purchase price was optioned a year after the taking and following major improvement to the site. Accordingly, we reject Heirs' argument that the fair market value of the Condemned Land may be accurately determined by extrapolating the per-acre purchase price contemplated in the Walmart Lease to the entire 116.4 acres taken.

We next address Condemnors' argument that the trial court erred in failing to abide by the just compensation formula set forth in former Section 1-602 of the Code. We agree that the trial court did not so much as attempt to calculate just compensation by subtracting the fair market value of the Condemned Land immediately before and immediately after the taking, which constitutes an error of law. Condemnors further argue that under the former Eminent Domain Code and case precedent, all approximately 1,700 acres of the Lee Lands must be considered the "entire property" for purposes of determining the difference in value before and after the condemnation. *See former* 26 P.S. §§ 1-602, 1-605. Thus, Condemnors maintain that the trial court should have credited and relied on Mr. Kaplan's expert testimony, which utilized a diminution of value approach as to the entire Lee Lands.

On the record before us, the applicability of former Section 605 is unclear. As explained above, under the former Eminent Domain Code, multiple tracts of land that are taken at once may or may not constitute a single "property interest" for purposes of just compensation. Former Section 605 provides that the "damages shall

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Condemnors note, the Walmart Lease "thus contemplat[ed] scenarios whereby[,] with little or no construction work, the Demised Premises [were] worth significantly less than $1,176,000.00," in which case Walmart would have been free to walk away from the agreement. Condemnors' Br. at 53.

be assessed as if such tracts were one parcel" in either of two scenarios: where the condemnation encompasses "all or a part of several contiguous tracts owned by one owner," or where a part of several non-contiguous tracts belong to one owner and "are used together for a unified purpose." *Formerly* 26 P.S. § 1-605. Under the so-called unity of use doctrine, separate properties are to be treated as one when they are "so inseparably connected by the use to which they are applied that injury to one will necessarily and permanently injure" the others. *Powley v. Dep't of Gen. Servs.*, 631 A.2d 743, 745 (Pa. Cmwlth. 1993). This Court has held that unity of use may apply when non-contiguous parcels are merely "in 'use' as open space" rather than being put to any active use. *Glen Lincoln, Inc. v. Dep't of Transp.*, 658 A.2d 881, 883 (Pa. Cmwlth. 1995). An issue concerning unity of use is a factual question to be determined preliminarily by the trial court. *Dep't of Transp. v. Yudacufski*, 479 A.2d 635, 640 (Pa. Cmwlth. 1984).

While the trial court begins its opinion by describing the instant matter as an "eminent domain action for a 116.4[-]acre portion of a 1,777[-]acre coal tract known as the Lee Lands" and makes passing reference that "[t]he Lee Lands are all former mining tracts," it makes no specific findings of fact on whether the Condemned Land is contiguous to the remaining Lee Lands, or are noncontiguous but have a unity of use, such to qualify for the language of former Section 605. R.R. at 1177a. Without such factual findings, no mathematical equation of just compensation may be performed as required by former Section 602, as identity of the "entire property interest" is the necessary starting point for such calculation. *See former* 26 P.S. § 1-602 (describing fair market value as to "entire property interest"). As explained above, Condemnors believe the whole of the Lee Lands must be considered the "entire property interest" for purposes of former Section 602. Heirs, on the other hand, dispute that the parcels comprising the Condemned Land are contiguous to the remaining Lee Lands, and argue that as non-contiguous parcels, they lacked a unity of use to qualify for the Section 605 provision.

In the absence of factual findings regarding the applicability of former Section 605, we are constrained to remand this matter to the trial court for an evidentiary hearing on whether the Lee Lands, or some smaller property interest, constitutes the "entire property interest" for purposes of Sections 602 and 605 of the former Eminent Domain Code. Following such evidentiary hearing, the trial court shall determine the proper method of valuation for just compensation of the Condemned Land in accordance with the dictates of the former Eminent Domain Code.

C. Delay Damages

Lastly, Condemnors argue that the trial court's award of delay damages was erroneous and should be reversed. Former Section 611 of the Eminent Domain Code provides, in relevant part:

> Compensation for delay in payment shall . . . be paid at the rate of six per cent per annum from the date of relinquishment of possession of the condemned property by the condemnee, or if the condemnation is such that possession is not required to effectuate it, then delay compensation shall be paid from the date of condemnation. . . . Compensation for delay . . . shall at the time of payment of the award or judgment be calculated as above and added thereto.

Formerly 26 P.S. §1-611. This Court has repeatedly held that "the award of delay damages is a matter of right." *Appeal of Cossell*, 668 A.2d 231, 233 (Pa. Cmwlth. 1995); *see also Redevelopment Auth. of the City of Phila. v. Assoc. Retail Stores, Inc.*, 408 A.2d 181, 182 (Pa. Cmwlth. 1979) (observing that the Eminent Domain Code "sets forth a mandatory requirement of delay compensation for delays in payment of just compensation for property taken"). Because there is no statutory provision abrogating the presumption favoring the award of damages, this Court has concluded that "it remains the condemnor's burden to overcome the presumption that the condemnee is entitled to delay compensation from the date of taking." *Pa. Game Comm'n v. 21.1 Acres of Land in Wash. Twp., Butler Cnty.*, 433 A.2d 915, 918-19 (Pa. Cmwlth. 1981). The condemnor may meet its burden with evidence ascribing the delay to the condemnee. *See, e.g.*, *Hagan v. East Pennsboro Twp.*, 713 A.2d 1187, 1188 (Pa. Cmwlth. 1998) (affirming a trial court's decision tolling damages for a 12-month delay "attributable to the [condemnees] because of the demise of their expert witness"); *21.1 Acres of Land*, 433 A.2d at 918 (explaining that the "presumption in the owner's favor could be overcome" by proof that delay was caused by "excessive demands or obstructive conduct on the part of the owner").

Instantly, the trial court awarded Heirs $106,500.00 in delay damages, finding that the near-two-decades of delay in this case occurred for "various reasons that were not within [Heirs'] control," such as the COVID-19 pandemic, the retirement of various Board of Viewers members, numerous filings by Condemnors, and "procedural issues." R.R. at 1474a. Before this Court, Condemnors maintain that the instant matter "languished for decades due to the inaction and delay tactics of [] Mr. Sher." Condemnors' Br. at 55. Condemnors further allege that, even after waiting five years after the taking to petition for a Board of Viewers, Mr. Sher "demanded an exorbitant amount of over $5.8 million, despite being represented during that entire period," and "failed to present any evidence demonstrating justification for the 20[-]year delay or to excuse his dilatory actions." *Id.* at 57.

We disagree with Condemnors. The observation that Mr. Sher failed to present any evidence accounting for the delay rests on a misapprehension of the burden of proof. As explained above, it is the condemnor, not the condemnee, who carries the burden of establishing that the condemnee is *not* entitled to damages. There is no indication in the record that Condemnors attempted to present evidence before the trial court to overcome the presumption in Heirs' favor; rather, they waited until submitting their post-trial motion to assert that delay damages were not due. Given that the trial court was within its discretion when awarding delay damages, we see no reason to disturb that part of its decision. Accordingly, on remand, the trial court shall appropriately calculate delay damages and add that amount to the award of just compensation.

IV. Conclusion

Former Section 602(a) of the Eminent Domain Code's clear instruction to determine just compensation is to find the difference between the fair market value of a condemnee's "entire property interest immediately before the condemnation and as unaffected thereby and the fair market value of his property interest remaining immediately after such condemnation[.]" *Formerly* 26 P.S. § 1-602(a) (emphasis added). Despite passing references that the Lee Lands were commonly owned by Heirs and Reading Anthracite, and were former mining tracts, the trial court made no specific factual findings on whether the tracts were contiguous or, if non-contiguous, had a unity of use under former Section 1-605 of the Eminent Domain Code. *Formerly* 26 P.S. § 1-605. Without such clear factual determinations, it is impossible for the trial court to proceed onto a just compensation analysis as required by the remaining statutory provisions.

As a result, we must reluctantly conclude that remand of this already long-protracted dispute to the trial court is necessary. On remand, the trial court shall hold an evidentiary hearing on the question of whether former Section 605 applies and shall identify the entire property interest at issue. *Formerly* 26 P.S. § 1-605. Thereafter, the trial court shall follow the directives of Sections 602 and 603 of the former Eminent Domain Code to arrive at an amount of just compensation. *Formerly* 26 P.S. §§ 1-602, 1-603. Upon fixing such amount, the trial court shall add delay damages in accordance with former Section 611 of the Eminent Domain Code. *Formerly* 26 P.S. § 1-611.

For the foregoing reasons, we vacate the trial court's November 27, 2023 order concluding that the Condemned Land's value was $1,176,000.00 at the time of the taking and remand for a new determination of its value applying the correct legal standard. We also vacate the trial court's April 1, 2024 order disposing of post-trial motions.[10] Lastly, we affirm the trial court's February 25, 2020 and December 16, 2022 orders.

MATTHEW S. WOLF, Judge

[10] Although the trial court's April 1, 2024 order properly concluded therein that delay damages should not be awarded on a compound basis, it must be vacated as to the dismissal of the remaining post-trial motions and a recalculation of appropriate delay damages.

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

In re: The Matter of Proceedings by the Redevelopment Authority of the County of Schuylkill for the Condemnation of the Property of Reading Anthracite Company, et al., located in the Borough of St. Clair	:	**CASES CONSOLIDATED**
Appeal of: Reading Anthracite Company and Redevelopment Authority of the County of Schuylkill	:	Nos. 391 C.D. 2024 & 748 C.D. 2024
In re: The Matter of Proceedings by the Redevelopment Authority of the County of Schuylkill for the Condemnation of the Property of Reading Anthracite Company, et al., located in the Borough of St. Clair	:	
Appeal of: Robert B. Sher, Jr., Robert Berger, Susan S. Blodgett, Beatrice Boardman, John R. Boardman, Christ Church in Philadelphia, George H. Dunkel, Virginia Dunn, George S. Gerhard, Marie Eggleston R. Ginther, Edward Haldeman, Elizabeth Haldeman, Henry B. Haldeman, John J. Haldeman, John S. Haldeman, June Elizabeth Haldeman, Raymond Haldeman, Ruth S. Hempel, Walter Hempel, House of Good Shephard, William Kerr, Marcia Moravitz Kobs, Dayne Kreach, Martha Mary Kunkel, Augusta W. Lochner, Diane L. Lotz, Sally M. Luckenbill, Joseph V. Trustee Montoro, Stanley Thomas Moravitz, Marilyn Carol Moravitz-Wilson, Helen Marie	:	

Pedell Obey, James Reeser,	:
Richard Reeser, Richard H.	:
Reeser, Glenn T. Roth, Monica	:
Scanlon, Alice L. Schober,	:
Katherine E. Shaw, Harry L.	:
Steinrock, Jr., Marie Steinrock,	:
Fern Swope, John A. Swope,	:
James C. Eckert Trust, Mary Ann	:
Cornwell Trust, Mary N. Van Reed,	:
Nelson J. Venette, and Harold H.	:
Webber, Jr.	:

O R D E R

AND NOW, this 25th day of September 2026, the orders of the Court of Common Pleas of Schuylkill County (trial court) dated November 27, 2023, and April 1, 2024, are hereby VACATED. We REMAND the matter to the trial court for further proceedings consistent with the Memorandum Opinion accompanying this Order. The trial court's previous orders in this matter, dated February 25, 2020, and December 16, 2022, are AFFIRMED.

Jurisdiction relinquished.

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MATTHEW S. WOLF, Judge