
Committee Meeting

of

ASSEMBLY COMMERCE AND ECONOMIC DEVELOPMENT COMMITTEE

"Testimony from invited guests addressing the use of eminent domain in the State"

LOCATION: Committee Room 9
State House Annex
Trenton, New Jersey

DATE: February 23, 2006
2:00 p.m.

MEMBERS OF COMMITTEE PRESENT:

Assemblyman John J. Burzichelli, Chair
Assemblyman Joseph Vas, Vice Chair
Assemblyman Upendra J. Chivukula
Assemblywoman Pamela R. Lampitt
Assemblyman Louis M. Manzo
Assemblyman Christopher "Kip" Bateman
Assemblywoman Amy H. Handlin



ALSO PRESENT:

Brian J. McCord
*Office of Legislative Services
Committee Aide*

Hannah Shostack
*Assembly Majority
Committee Aide*

Nancy S. Fitterer
*Assembly Republican
Committee Aide*

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ASSEMBLYMAN JOHN J. BURZICHELLI (Chair): Good afternoon, everyone. And welcome to this meeting of the Commerce and Economic Development Committee.

I thank the members for their attendance.

I'm looking for Assemblyman Bateman. Did he step out?

ASSEMBLYMAN BATEMAN: I'm sorry.

ASSEMBLYMAN BURZICHELLI: I didn't want to start without you.

ASSEMBLYMAN BATEMAN: Thanks.

ASSEMBLYMAN BURZICHELLI: Today we take up a topic that is of real interest to many people across this state and, frankly, across the country, based on the attention brought to the issue by the Supreme Court, involving New London, Connecticut.

Those of us who serve in the General Assembly, of course, are in touch with our constituents, as we would like to be, and as we're supposed to be. The leadership of this Assembly has recognized that this issue is one that should be taken up for discussion, for review, and for better understanding that we may, as a group, determine if, in fact, there is work to be done, if there's tweaking to be done, if there are changes to be made.

We are proceeding in the following manner, for those who will follow this issue as we move forward. Today we have invited speakers mainly for the purpose to educate this Committee and, of course, by way of the media and the Internet, to educate anyone who has an interest in watching and listening as to where we stand in present law -- what our Constitution provides for, how it is being applied to the statutes that exist that our municipalities function under.

It's important that we, as this Committee, understand all that. And for those of you who have an interest as well-- Because if we're going to change something, we should understand what it is we're considering changing.

At the next meeting, we will expand the list of those who will speak to us. There will be an opportunity for open microphone participation for those citizens who have an interest. From this meeting today, we will get a better sense of what that shape of speakers will be. I know that many people had offered their time today to speak before us. But it was thought that we should start at the very beginning, because we want to build this process correctly.

And I know Jarrod had asked me to mention that the Board of Realtors was very interested in participating today. And we will have them assure you're on the list, Jarrod, at this next hearing, when that meeting date is set.

We are waiting, I think, on one particular person. But we won't hold, we'll move things around. I know--

Is Assemblyman Gregg here?

Assemblyman Guy Gregg has asked to say hello to this Committee and address this Committee as we begin this work. And we extend that courtesy to our distinguished colleague. So, Assemblyman Gregg, if you'll kick us off--

ASSEMBLYMAN CHIVUKULA: Chairman, attendance.

ASSEMBLYMAN BURZICHELLI: Pardon me. Thank you very much.

Upendra is helpful.

I'm sorry, Guy.

We will call the attendance. My pontification had taken me away from the obligations of the Chair.

A S S E M B L Y M A N G U Y R. G R E G G: I won't make a motion.

ASSEMBLYMAN BURZICHELLI: Thank you.

MR. McCORD (Committee Aide): Assemblywoman Handlin.

ASSEMBLYWOMAN HANDLIN: Here.

MR. McCORD: Assemblyman Bateman.

ASSEMBLYMAN BATEMAN: Here.

MR. McCORD: Vice Chairman Vas.

ASSEMBLYMAN VAS: Present.

MR. McCORD: Assemblyman Chivukula.

ASSEMBLYMAN CHIVUKULA: Here.

MR. McCORD: Assemblyman Manzo.

ASSEMBLYMAN BURZICHELLI: He is here.

MR. McCORD: Assemblywoman Lampitt.

ASSEMBLYWOMAN LAMPITT: Here.

MR. McCORD: And Honorable Chairman.

ASSEMBLYMAN BURZICHELLI: Thank you.

And prior to my forgetting the call for the roll, I was in the process of introducing the distinguished Assemblyman Guy Gregg, who I will ask to lend a comment if he cares to.

ASSEMBLYMAN GREGG: Thank you, Mr. Chairman. I appreciate you affording me the opportunity to come in front of this Committee today.

It's a rarity that we come in front of committees when we don't have a bill up, or we're not asking for something. But you and I have had the privilege of talking about eminent domain, personally, over a long period of time. And I wanted to take an opportunity to come here and congratulate you, to start with.

This is an issue that is reaching into the core of the folks who live in this great state. Clearly, the right to own property in this state and across this country is the cornerstone of our freedoms. And the idea that that freedom might be infringed upon in any way, manner, or form certainly should be addressed by its leaders.

And in your case, I commend you. This is an issue that many may wish to oppose in public and then, when it comes to acting, not act. And you have not taken that approach. You've determined to say, "I'm going to use this Committee to look at what eminent domain means now in the State of New Jersey," after the Kelo decision that occurred, as you referred to before, at the Federal level at the Supreme Court.

So I come to you today to say I think you're on the right track, and I'm glad. And the idea that you've allowed me to speak here already opens the door that I see, on a bipartisan approach, to fixing something that affects 8.7 million people. And that's always the best way to start a trip.

So I am very happy to be here to open that door for you. I think the idea of taking time, in a number of meetings, to look at this very important decision, and not attempt to create a piece of legislation in a room, and then have it pop out and have it discussed -- is not what should happen on this issue, and you're not doing it. You are, clearly, thinking outside of the box. And I appreciate that. I think, over time, we will be

educated on what we do in this State, what we have been doing in the State, listen to the appropriate groups on where they think we should be going with this issue to ensure that we have development, but we have protection, and then move forward to crafting changes that I think are going to be needed.

And I hope that's the direction we move in. I will make this brief. But I believe that whenever I bring up the term *eminent domain* it is electric, wherever it is. I did a TV show this morning. And when the host that was doing the show heard some of the stories and things that are occurring in the State, she was appalled. And this is a news reporter not realizing the dynamic that-- In many cases, we're looking at people who have lived in their homes for their lives, or businesses that have been there for decades and decades. And we, the government, have determined that there's a better use for their property in the hands of some other private person. That is wrong.

And I know this Committee, as it moves forward, will do the right thing. And I am appreciative to that. I wish to follow it as it goes forward. I am not a member of the Committee, and that's why I thank you so much to be allowed in this process. I have legislation that directs and deals with part of it. Other legislators do. Assemblyman Manzo, I know, has legislation. Assemblywoman Vandervalk; Merkt, Pennacchio, and others do.

I think when the process completes-- If all of the great minds that we have here today continue to think about the value of people's property, how government should interact with it to ensure that as we

develop, we develop in the best possible way, protecting all of the freedoms that are so important to us--

So I come to you, again, today thanking you for having this meeting, putting my support completely behind the process that you're going through, and thanking you for allowing me to be a part of the process. And I'm looking forward to listening for the rest of the day.

Thank you, members. And I wish you good speed in your efforts.

ASSEMBLYMAN BURZICHELLI: Thank you, Assemblyman. Thank you for the words of encouragement.

I'll follow up on Assemblyman Gregg, for the purpose of those assembled and those listening through other devices, that as I mentioned, the second meeting would be-- We would intend to have an additional range of speakers, plus an open microphone. The third meeting would be intended to hear from all of our legislative colleagues who have ideas of legislation. And then the fourth meeting or fifth meeting -- in case we have to add an additional meeting -- would be to release, from this Committee, a bill that would include any changes if, in fact, it's decided that changes have to occur. So that would be the pace.

Today we will invite our speakers, and then the speakers will address this group. We'd ask them to keep their comments within a reasonable range, not to exceed 10 minutes, if possible. We invite you to submit written presentation, where you have it. And by the way, let me extend that to any member of this audience who has taken time to be here today. If there's any written documentation you'd like to leave with this group-- If you'd like to be considered a featured speaker at our next

hearing, please see our legislative aide, Hannah, who is sitting to my right, to take your information. You're welcome to contact us through the Assembly Majority Office as the next weeks ensue.

Our first speaker is going to be Stephen Eisdorfer, who is going to give us a perspective overview of where we stand in law. And then, when he finishes, the Committee will have an opportunity to raise questions if it sees fit.

Steve, welcome very much.

S T E P H E N M. E I S D O R F E R, E S Q.: Thank you very much, Mr. Chairman, members of the Committee.

What do I need to do?

HEARING REPORTER: Press the button. (referring to PA microphone)

MR. EISDORFER: Mr. Chairman, members of the Committee, I thank you for inviting me.

I'm here primarily as a resource person. I have taught in this area at the University of Pennsylvania Law School and ICLE programs for lawyers. But, primarily, I'm a practitioner. I was with the Public Advocate's Office for 15 years. And I've been in private practice for 10 years, handling land use and property matters, representing both public entities, and private property owners, and developers.

You have before you a broad issue that touches the most sensitive nerve. The issue goes back to the United States Constitution and the New Jersey Constitution of 1776. The United States Constitution -- the Fifth Amendment to the Constitution provides that properties shall not be taken for public use without just compensation. The New Jersey

Constitution says -- has similar language in Article I, Section XX, but balanced off, modified, by Article VIII, Section III, paragraph 1, which authorizes public entities to engage in redevelopment, clearance, rehabilitation for the purposes of removing blight. And this Legislature, at various times, but most recently in the Local Redevelopment Law, has defined blight -- a term we no longer use -- but has defined the equivalent of blight, which is areas in need of redevelopment, in very broad terms, thus authorizing a wide range of public activities that involve the acquisition for private property through -- involuntarily through the eminent domain process, for a wide variety of public purposes.

I will just say, parenthetically, that if one delves back into the history of New Jersey, it is not clear that, until some time in the mid 19th century, it was uniformly the practice of public entities to provide -- even to provide compensation for the taking of private property. The history of New Jersey, and indeed the history of the 13 colonies, is rather more murky than one would like to believe. But at some point, this crystallized as an important constitutional issue and an important component of our perception of what our rights are as individuals to own and to control private property; but balanced intention against the need for public entities to perform their functions, to construct roads, to construct public facilities, and to engage in economic betterment of various sorts.

The issue has crystallized most recently in a case before the U.S. Supreme Court, *Kelo v. New London, Connecticut*. And *Kelo*, at one level, was a routine case. The U.S. Supreme Court has upheld the use of the eminent domain power for all sorts of purposes that are deemed public purposes over a period of -- well *Berman* was in 1954 -- over a period of 50

years, defining it in the most broad terms; the most extreme case being a case called *Midkiff v. Hawaii*, in which Hawaii said, “We have-- Much of the agricultural land in Hawaii is held by a single owner, the Bishop Estate. We would like to redistribute it to the tenant farmers, and we’re going to seize it, pay for it, and do that.” And that was purely transferred from one private owner to other private owners. And the Supreme Court upheld that use in *Midkiff*.

And, in some level, *Kelo* was an easy case. *Kelo* was involved in a municipality that had a redevelopment plan, wanted to take non-blighted private property to further that redevelopment plan in a relatively coherent way. And one would have thought that, under the prior constitutional decisions, the case would have gone nine-zero in favor of the municipality. It didn’t. What was striking about the case was not that the Supreme Court, ultimately, upheld the taking and reaffirmed *Midkiff* and all the prior cases. But what was striking is it was a five to four decision, and one of the justices who was a part of the five-member majority wrote a concurrence, which was very cautionary. He said, “Yes, of course, this is consistent with our precedence. But we ought to recognize that this is a process that is potentially subject to abuse.” And I think it’s worth just reading a little bit of his decision -- of his opinion, because I think he put the issue very sharply. And because it was the balancing vote, it gives us a little bit of insight into just how -- just the nature of the issue you have in front of you.

It said, “The determination that a rational basis standard review is appropriate --” and that’s a standard review that’s very differential; it says that we trust public entities to do the right thing, and we’re going to assume

that they're going to do the right thing, absent the most compelling showing that they're not -- it said, "it does not, however, alter the fact that transfers intended to confer benefits on particular favored private entities, with only incidental or pretextual public benefits, are forbidden by the Fifth Amendment." He then goes on to list all the kinds of evidence that he would have a court consider to determine if the taking is only pretextually or incidentally a public purpose, rather than a benefit to a private individual.

Now, this decision, although it did nothing more than affirm the existing law -- existing constitutional interpretation, and made no change -- nonetheless triggered a tremendous response. According to the National Center (*sic*) for State Legislatures, there are 37 states that currently have legislation pending, including this one. The states have taken a variety of approaches. Only a little bit of this legislation has actually passed. So far as I can tell, legislation has only actually passed in three states.

But in addition, there has been Federal legislation, as part of the Appropriations Act for Treasury, Transportation, and Housing. Congress prohibited the use of Federal funds for things that were not public uses, as distinguished from public purposes. And then it went on to define public use as not including the taking of private property purely for purposes of economic development. That's only a one-year phenomenon. It's attached to an appropriations bill, not permanent legislation. It ends when the appropriations year ends and only affects Federal funds. But it is indicative of the sensitivity of this issue and the way it has touched a private nerve.

In New Jersey, as I previously indicated, we have both a constitutional provision that authorizes the use of redevelopment properties -- redevelopment powers to clear blight, whatever that means. We have existing legislation that does not use the term *blight*, but uses a different term, *area in need of redevelopment*, which it defines in a quite broad way -- a way sufficiently good that I believe that any competent lawyer, working with any competent planner, can justify declaring almost anyplace in need of redevelopment, if it's done astutely.

In addition, we have a body of State law that largely parallels the law in virtually every place else. Most recently, New Jersey Supreme Court decision *West Orange v. 769 Associates*, which upheld the taking of private property to create an access road for a private residential development -- concluding that the access road would be part of the municipal road system, and would serve properties other than just the private development. And that was a sufficient showing to justify that the taking was a public use, even though it was done at the behest of the developer of the private residential development.

In this respect, New Jersey is-- Existing New Jersey law is consistent with the law of virtually all other jurisdictions in the country. The New Jersey Supreme Court had no difficulty citing numerous authorities from other states upholding similar takings.

Now, in *Kelo*, the Court said what you know and what is self-evident: that the outer constitutional limits of what is permissible -- it does not resolve the policy question of what ought to be permissible. And that's a task for the Legislature. That is the task that you have undertaken.

Now, let me talk a little bit about some policy issues, just to give you some issues to think about without, at this point, suggesting what the resolution of those issues might be. The first is the issue flagged in Kelo itself, which is, are there classes of public purposes, things that we recognize are legitimate, that nonetheless the eminent domain power should not be used for?

For example, we have said in the Green Acres Act -- in the bill that created our Green Acres Trust Fund -- we have said that municipalities cannot use Green Acres to fund acquisition of land by eminent domain. And we've said that, presumably, out of a judgement. That although the purpose of acquisition of public land for Green Acres purposes, for conservation, for public parks is a worthy one, this is not something, as a matter of policy, that we want municipalities to use State money to accomplish.

Now, the most critical question here -- although not the only one -- is under what circumstances, if any, should private property -- should be permissible for a public entity to take private property -- and particularly non-blighted private property, private property that is in economic use of one sort or another -- and seize it to be transferred for what will ultimately be used by another private owner, whether for purposes of economic development, or other purposes? Now, that's the issue which most of the post-Kelo State legislation has addressed.

There is another sort of issue, which is, in some sense, the flip side of that issue, which is: to what extent should it be permissible for the eminent domain power to be used to take property and do nothing with it at all? To what extent should it be permissible for municipalities to say,

“There are uses that we have planned for, in our municipal plans, in our zoning ordinance, that now, when we see someone actually trying to do it, we decide we’d rather have this as open space.” And this is an issue that’s currently pending before the New Jersey Supreme Court, in a case called *Mipro v. Mount Laurel*. And we have these two big policy issues. When can we take private property that’s in economic use for economic redevelopment, when can we take private property for no use at all, except to hold them for open space, for nonuse? When are those permitted? Those are two big policy issues which are clearly in the air.

A second kind of issue is process issue. What process ought to be permitted, or process ought to be required? We have processes for the eminent domain process that are designed to be open and transparent in the process itself. Now, whether they actually work that way or not is a nice question. But in the Eminent Domain Act, the Legislature very consciously tried to create a process that was open and transparent for the actual taking itself. And I can talk more about the details of that. I will merely comment that the courts have read that statute as saying, “Government must cut square corners and can’t take any shortcuts,” and generally construed it very strictly to require that all the procedural steps be taken.

What that statute, however, does not address is what comes before that, which is the decision to acquire property by eminent domain. Once a public entity makes that decision, we have a very elaborate process to regulate how you go about doing it. What we don’t have is much in the way of requirements for a process for how you make that decision.

For example, one of the striking features in the Mipro case is the-- Up until the time that the property owner, the developer, got development approvals, there had never been anything in the municipal master plan, in the zoning ordinance, anything that the planning board had done that had gone through any public process of designating this as an area that the municipality wanted to acquire. And the Court said, "Our laws don't require it. They don't have to do it. So long as the actual condemnation process itself complies with the law, we will not review the decision by the public entity to decide to acquire the property."

This becomes particularly acute in the redevelopment process, because our redevelopment statute permits the decision to be made -- much of the decision to be made in private negotiations. It is designed to give public entities a lot of flexibility in how they go about doing stuff. But the flip side of that, of giving them flexibility, is we have devised a process that is -- largely takes place in private negotiations and is not at all transparent. And if you want to see an example of how that is played out, I commend to your attention the recent decision of *Vineland Construction Company v. Pennsauken*, where the Court acknowledged, in upholding the municipal actions, to designate a particular redeveloper to essentially take the property owned by another property owner -- that this clearly had had been politically influenced, that it had taken place in private, that the property owner had no inkling of what was going on until it was quite far advanced, and that that was okay -- that our laws didn't prohibit that.

Finally, there are a set of issues about the kind of incentives we give to people in this process. And these deal with issues of how we compensate people. If the issue is just compensation, what is just

compensation? We have devised a set of laws that encourage a certain amount of lowballing and, arguably, don't provide for full compensation, at least as some property owners perceive it. And this gets us into complex questions, for example of, should businesses be compensated for loss of goodwill? You have a business at a location; people know you at that location. If you move, you lose all the benefits you've acquired of building up a reputation around that particular location; right now, that's not compensable. When we compensate you, we compensate you for the value of the property as it was before any public action was taken toward redevelopment or to whatever use is ultimately intended. But your property might have been worth much more had the public entity actually built the infrastructure, for example, that it's going to use to facilitate the redevelopment. And so the question of what is -- what should be the standard for compensation are important questions.

There is much more to-- There is much more that could be said in the realm of policy questions. I'm going to stop here. I've given you three big ones and, hopefully, some background. I'd be happy to answer questions to the extent I can. But I don't want to poach on the time or presentations of any of your other esteemed presenters.

ASSEMBLYMAN BURZICHELLI: Steve, may I extend a thank you to you on behalf of this Committee for taking your time this afternoon. I think what you said to us is helpful.

My attention span is generally short, so I struggle. But I stayed with you through most of that. (laughter)

MR. EISDORFER: Well, you know, Senator Sam Ervin said, "No souls are saved after 20 minutes." (laughter)

ASSEMBLYMAN BURZICHELLI: The Senator was probably very wise. Here, it might be 11 minutes.

But the points you touched on help us in the area where, I think, our work will come. If in fact, through deliberation and continued testimony, change is going to come, the areas you've touched on -- with regards to how these declarations are made-- I think it helps this Committee along. And that's the idea for today, is to lay this foundation of knowledge.

I'm going to open it up to the Committee. I'll look around. There may be some questions we'd like to have. We're going to have other speakers come up.

I'll start to the left at this time.

Amy, anything for this particular speaker?

ASSEMBLYWOMAN HANDLIN: Yes, if I may.

MR. EISDORFER: Okay.

ASSEMBLYWOMAN HANDLIN: Can we return to issue number three, which I believe was the issue of transparency, correct?

MR. EISDORFER: That was actually my second issue, but it's a good one.

ASSEMBLYWOMAN HANDLIN: I wonder if you could just, for a review -- and very briefly -- the-- You alluded to the fact that certain key elements of the process are conducted behind closed doors, and that might be considered a problem, from the public's perspective. Could you elaborate on that a little bit?

MR. EISDORFER: Sure. There are really two different kinds of issues under that. One is, in general, when-- I am going to talk about

municipalities particularly, to sort of bring it down to ground. When a town says, “We want to acquire a property to --” makes a petition -- “We want to acquire a property for a park.” We have an official process for doing that, which is, you put it in the master plan. And that commits you to actually doing it. That then sets in motion a timetable for actually doing it. The fact is, most municipalities don’t do that. And in Mipro, the Court said you don’t have to do that. You can make that decision, sort of, on an ad hoc basis.

In my experience, lots of towns have open space committees that quietly sit down and make lists of properties we would like to acquire if the opportunity presents itself. But they never make those lists public -- that there’s a conscious effort to keep that -- those lists private. And you only know about it when the issue actually comes before the municipal governing body, and the municipal governing body has to adopt an ordinance authorizing the acquisition.

But until that happens, nobody, including the property owner or anybody else in town, knows what’s going on. As a result, we don’t have a conscious plan process there. The decision making tends to take place quietly, and only the outcome is public. And by and large, municipalities can and do circumvent the one public process that we’ve actually written into the municipal land use law. So that’s one kind of issue.

The second kind of issue concerns redevelopment. Under the redevelopment statute, the process of writing the plan is a very public process, an admirably public process. The process of implementing the plan is almost entirely private. Once you have formulated the plan, which is a process that has to go through public hearings actioned by the planning

board or by another designated entity-- Once you've made the decision on designating the area for redevelopment and formulating a plan, the process then becomes entirely private. The decision of to whom to designate as the one or more redevelopers, and exactly what deal would be struck with them, what benefits they will be given-- That all gets negotiated in a redevelopment agreement. And that takes place entirely in private. And it is clear that the process of who gets designated as redeveloper is one that is, at least, susceptible to all sorts of forces -- political, personal, favoritism of all sorts.

For someone like myself, who is a lawyer and likes to see things done in a rule-based kind of way, it drives me crazy. But that is the process. And it arises out of a desire to give the public entity a lot of flexibility, to give the public entity a lot of discretion. But the undesirable side of it is that it creates a process that is very private, untransparent, and often creates a perception of favoritism and unfairness, which is sometimes justified.

Does that help, or have I really made things complicated?

ASSEMBLYWOMAN HANDLIN: No, that helps greatly.

And a comment, and just a follow-up question -- which might be necessary to answer, perhaps, giving more information to this Committee at a later time in writing. But the comment is just that I think we share the same bias. I tend to believe that you can burn a lot of unfairness out of a lot of processes by just shining an intense light on them.

And the question that I was going to ask you was, is there-- Are there models in other states of redevelopment processes which are, in fact, what you and I might consider to be quite transparent?

MR. EISDORFER: The answer is, this is an emerging issue. And one of the things that-- The New Jersey statute is a very typical redevelopment statute. They all came out of a set of models that were prepared by the Federal government in the '50s. And our statutes use the same kind of models that most other states now have. I think this is an emerging area right now. And one of the responses to Kelo is for states-- Other state legislatures have begun to think about, how do we make this process both fairer and publicly perceived as fairer in places where we think eminent domain, through the redevelopment law, is proper? How do we assure that it's fair and perceived to be fair?

And I can provide the Committee with some examples of what is now emerging as alternative models. I don't think, at this point, I can put my finger on a model -- another state model that I can say, "Oh, this is the one to imitate," although I'd be willing to check around.

ASSEMBLYWOMAN HANDLIN: And your feeling is that there are some that are at least better, or that would take us in that direction?

MR. EISDORFER: Yes, I think there are.

ASSEMBLYWOMAN HANDLIN: Good. Thank you very much.

Thank you, Mr. Chairman.

ASSEMBLYMAN BURZICHELLI: Thank you, Amy.

Steve, we'll take one more question from Assemblyman Lou Manzo.

Lou, you wanted to address the speaker.

ASSEMBLYMAN MANZO: Thank you.

Most of what I got from you pointing out the problems was the basis of -- there should be more transparency. Because every time there is a problem, it seems to be that the more that is done behind closed doors is creating the problem.

But aside from that, just a thought here-- What are the limits to eminent domain? For example, I happen to be on -- one of the prime sponsors on the Highlands Preservation Act last year. And, in a way, some of that legislation -- although it wasn't eminent domain -- it had the same effect, and is having the same effect, on some of the homeowners in that region. Should the definition of eminent domain be expanded, in your opinion, to sort of encompass a group that is restricted by a local government or a state government on something that is obviously going to impact the value of their properties?

MR. EISDORFER: I will tell you that I represent a client who owned 750 undeveloped acres in the Highlands, which was previously zoned to produce 2,300 units of housing. As best I can tell, he would now be permitted to produce, on this 750 acres, 40 units of housing. He perceives that his property has been taken. Whether it has been taken as a matter of law is a nice question.

Right now, in our law, we have two concepts that sit side by side. One is the idea of eminent domain, which is when the public entity actually says, "I want to grab this property and use it for some worthy public purpose." And that we regulate through our eminent domain statute. And it is limited to where the public actually wants -- where the public entity actually wants to take control of the property.

Sitting side by side with this, we have regulatory processes, which aren't governed by that law at all. And the question you're posing is, at some point, does the regulation become so restrictive that we ought to treat it as if it were eminent domain? And I will say to you that each time we get a court decision on this, the law becomes murkier and murkier. This issue has been up before the U.S. Supreme Court again and again. And as someone who both practices in the area and has tried to teach it, I cannot tell you what the law is. I don't think the Supreme Court knows what the law is. At the moment, this is an area of law which is ripe for legislative action, because the courts are completely befuddled.

In New Jersey, the Pinelands Act has been upheld, which restricts residential development in some areas to one unit in 39 acres. And in a case called *Gardner v. Pinelands*, the New Jersey Supreme Court said that is not -- that does not constitute a taking, that level of regulation. And we have lots of cases which uphold 10-acre zoning, or 20-acre zoning, or 25-acre zoning in New Jersey.

There clearly are some constitutional limits, but I can't tell you what they are, because I don't know. The Supreme Court has told us in its last two cases -- in *Suydam* and the Rhode Island case, whose name eludes me at the moment -- that there are some limits. But I couldn't articulate to you what they are.

But I think that, in terms of a perception of fairness, the property owners who perceive themselves -- the value of their property dramatically reduced. I mean, not reduced 20 percent or 30 percent, but reduced 90 percent or 95 percent. They certainly perceive that their property has been taken. And, you know, if the issue is one of fairness and

perception of fairness, they perceive that they have been unfairly used for other people's benefits.

Now, I will say that there is a counter-consideration, which is guess what? Money. If we were actually to compensate all the people whose property -- the value of whose property has been dramatically reduced by their being placed in the preservation area of the Highlands, the State would be even more bankrupt than it is. That is a phenomenal sum of money. And as residential property-- As developable property becomes scarcer and scarcer in New Jersey -- in part because of population pressures, and in part because we take it out of circulation through regulations and legislation -- the value of those properties go up and up. And the cost of compensating people for their losses in that regulation goes up and up.

And so within the realm of what's constitutionally permissible, there is a difficult policy decision to be made between maintaining a sense of fairness of compensating people when we so regulate their land that they perceive that it's, in effect, been taken, and what we can afford. If you ask me my view, I think that we have been insufficiently generous, that we can do something to diminish the perception of unfairness by providing compensation in more cases. But there is a big policy issue to be made here. It would have a big impact on State policy if we had to do what was actually purported to be accomplished by a constitutional amendment in Oregon several years ago, which is to require that every regulation that impacts on property values, the property owner must be compensated. No one knows what that constitutional amendment means. And it is-- In Oregon, they are even more befuddled than we are generally.

ASSEMBLYMAN MANZO: Thank you.

ASSEMBLYMAN BURZICHELLI: Thank you, Steve.

And let me thank you, again, for your testimony. I think it's been helpful. We don't have a parting gift to give you because of the constraints of our State budget. (laughter) Probably a small appliance, a blender, or something of that nature would be appropriate, but we don't have that to offer you. But let me offer you my thank you, on behalf of the Committee. And your testimony will be helpful to us as we move forward.

We ask you to keep an eye on us, because I would hope, when we finish, what work product we develop you will point to as the model. I'm pleased at where we are.

MR. EISDORFER: I look forward to it. And if there is any way in which I can serve the Committee as a resource, both as to facts and as to policy suggestions, I'd be happy to do that.

ASSEMBLYMAN BURZICHELLI: Thank you very much.

We will call up, next, as speakers--

I think we're bringing three up -- Hannah, are we -- to help us with the continuation of understanding of how our present laws are working, how they're being applied.

We're going to call up Mayor Jim Maley, who is Mayor of Collingswood, and also works in the area of redevelopment law. And I should say, for this assembled group, that he is a redevelopment attorney for the borough of Paulsboro, where I serve as Mayor; Bill Dressel who, of course, represents the League of Municipalities -- who is a fixture in these hallways, in many cases on pleasant occasions and sometimes on less than pleasant occasions; Ed McManimon, who serves the League in a capacity of Legal Counsel.

Is that correct, Ed?

EDWARD J. McMANIMON III, ESQ.: Yes.

ASSEMBLYMAN BURZICHELLI: And when I mentioned I was going to suggest the comments be brief, it was said, “Well, if you’re going to ask Ed to be brief, his introduction alone will take up the time that you allot him.” But I don’t know that that will be the case.

We’ve asked the three of you to sit. And you’ll make your presentations. That way, this body can ask a question, and maybe one of the three will choose to answer. We’ll proceed that way.

Bill, did you want to start with the introductions? How would you like to proceed?

WILLIAM G. DRESSEL JR.: Yes, sir, Mr. Chairman.

Mr. Chairman, I’d like to thank you for convening this informational hearing to help clarify what the U.S. Supreme Court case, *Kelo v. New London*, did and did not do as it impacts on our economic development statutes here in the State of New Jersey.

I have before you, Mr. Chairman and members of the Committee, a copy of our Executive Summary and a white paper -- which is the product of the League’s Economic Development Task Force, chaired by Mayor Glenn Gilmore of Hamilton Township, Mercer County, who could not be here -- but basically establishes a framework, if you will, for some suggested amendments, which Mr. McManimon will get into. Ed McManimon is the League’s Counsel to that committee. And he will talk about that.

I believe one of the most important things that we would like to do today is to briefly give you a historical perspective on the statutes and

the constitutional history of our State, because you can't understand Kelo, and you can't understand what impact it has on New Jersey, unless you really have the historical background.

And, also, as far as the amendments are concerned, we, too, would like to be a resource to this Committee to help put some meat on the bones of the suggested amendments that we present in our white paper.

So at this time, Mr. Chairman, if I could, I'd like to present Mr. McManimon, who can speak on the historical issues.

ASSEMBLYMAN BURZICHELLI: Thank you, Bill.

Ed.

MR. McMANIMON: Thank you, Mr. Chairman and members of the Committee.

Just a very brief background. I'm a partner in the law firm of McManimon and Scotland. We represent, primarily, local governments, also the State of New Jersey, and other entities when they do public financial matters. We do a lot of government work; we do a substantial amount of redevelopment on behalf of public bodies. We're familiar with the issues that have been raised. And as a result, the League, for whom I serve as their special counsel in connection with a number of things including redevelopment, has asked me to engage in the process of the whole eminent domain issue. I've spoken in several conferences in that regard.

What I would like to do, without repeating what Mr. Eisdorfer said, is read a couple of comments which I think are very significant in this whole issue that relates to New Jersey, and what we do, and how we have done it. And I do it in the context of a lot of legislation that's been

proposed as a reaction to Kelo that suggests that there is, somehow, an essential public purpose -- and that redevelopment is not such an essential public purpose, that it is a secondary purpose and, therefore, there should be some difference in the context of how government permits certain things to be done, including exercising the power of eminent domain.

The Kelo case deals with a situation in Connecticut where the power of the government to engage in private development dealt with their powers, which simply said economic development was an essential public purpose. And they could use their essential public purposes and powers to engage in that. And they did. And the question before the Supreme Court was whether that particular purpose constituted a legitimate public purpose for which these types of powers could be exercised.

And they put it in the context of the United States Constitution, the takings clause of the Fifth Amendment. Now, that clause says, "Nor shall private property be taken for public use without just compensation." It doesn't use the word *public purpose* or *public benefit*. So the Supreme Court was faced -- the United States Supreme Court was faced with the issue of determining whether that, by itself, constituted a public purpose.

And what they said, basing it on over 50 years of decisions, was that the petitioner's proposal, that the Court adopt a new bright line rule that economic development does not qualify as a public use, is supported by neither precedent nor logic. Promoting economic development is a traditional and long-accepted governmental function. And there's no principled way of distinguishing it from other public purposes the Court has previously recognized.

And I point that out because, in New Jersey, economic development is not a public purpose or a public use. We cannot engage local governments in that exercise. It first has to determine that the area in which the government wants to act is a blighted area. It uses the term *redevelopment* now, but essentially the criteria that existed to determine what was blighted is now the same criteria. They called it, in 1992, *redevelopment* -- an area in need of redevelopment, because it sounded better. They didn't redefine it, they basically recoded it, in terms of the use of the word.

And I point that out because the New Jersey Constitution, which was enacted in 1947-- This isn't a runaway court, it's not a runaway legislature, it's the New Jersey Constitution. And I know it was eluded to by Mr. Eisdorfer, but I'd like to read the pertinent part, because it says -- our Constitution says, "The clearance, replanning, development, or redevelopment of blighted areas shall be a public purpose and a public use for which private property may be taken or acquired." It didn't leave it to the discretion of the Court to determine whether this was a public use or a public purpose. It said it was both. So this has a historical perspective as a fundamental right.

Now, from the League's perspective, we view it as a fundamental responsibility the local government officials have to exercise, because they sit on the front line of a lot of decisions that get made -- in the context of vesting in them a responsibility to create a vibrant community, to make sure it is financially viable for the people who live there. It is the front line where people come and complain about their taxes over and over again. They ask for you to create a vibrant, vital enterprise in the area.

And so if you take away or make it impossible to use the power of eminent domain, you will take away, essentially, the power of redevelopment.

Now, eminent domain isn't used in most cases in redevelopment. The League did a survey. It has evidence that indicates that most people don't have to use that. But if you don't get the ability to show how, if you don't have that, you won't be able to accomplish something, I think you'll see it. I know Mr. Maley has a classic example of how that really applies.

So I think, in the context of what you're going to study, our main goal, on behalf of the League and the municipalities that it serves, is to ask you, when you react to the public sentiment that comes out, that you recognize that this is not a secondary purpose. It never has been. It's a primary, fundamental purpose. It exists from the Constitution of 1947. The Redevelopment law was enacted in 1949. It had in it the power to exercise eminent domain for these purposes. It recognized its significance as a primary element, and it redid it again in 1992.

So it doesn't require some court to go off the warpath to figure it out. It does require a process. And the statute has a daunting exercise. You have to go through a lot of work to get through the process where an area is determined to be an area in need of redevelopment and that you ultimately have a redevelopment plan.

We recognize, as this has all come about, that there are issues that need to be dealt with. And the League has, in its paper, some recommendations, which bring to the public a whole lot more awareness. Because you can't-- You can invite people to the planning board and to the council, but you can't bring them there. You can't make them go. But you

can give them notice, if they're affected. Right now, you give them notice when you declare the area in need of redevelopment, but you don't give them notice when you adopt the redevelopment plan or if you're going to enact a redevelopment agreement -- in the context of the question that was raised by you in the issue of whether or not these should be made public, and that people should be able to come and comment on them. You can't, essentially, negotiate a redevelopment agreement in a public meeting, because it takes months to do it. But you can certainly make sure that the people that are going to be impacted get notice that you're doing it.

So there's a lot of issues that the League has suggested in its white paper, which we won't repeat here. But we'd like to be able to be in a position-- On behalf of the League -- because there's lots of mayors, and elected and appointed officials who have a point of view. And they'd like to be able to share that with the Committee as it goes through this process.

Thank you.

ASSEMBLYMAN BURZICHELLI: Ed, thank you.

And, of course, the League will be an important partner, because the municipal apparatus is the one that, in large part, touches these issues.

I'd like to ask one question before I open this to our group. And if you do know it, I hope you'll help. If not, maybe someone will get back to us. Through the process, since '47 -- '49 rather -- in '49, when our redevelopment laws, as we have them now, first came to life, has the criteria to establish an area in need of redevelopment changed over time, or are we, essentially, still working with the same push points, just now called *redevelopment* as opposed to blight?

MR. McMANIMON: It is essentially the same. They have-- For instance, recently -- not even in 1992 -- in 2003 they added a category that says the designation of a delineated area is consistent with Smart Growth planning principles adopted pursuant to the law or regulation. That, presumably, broadens the power in a way that says if it's a Smart Growth area, you can make it a redevelopment area.

I believe that when this was codified, that it was intended to say that that needed to apply to all the criteria, not be a separate criteria. It's more likely to be one of the things that's going to come out of your Committee and whatever amendments occur. Because the idea of having the area of Smart Growth, just because it is an area of Smart Growth, being viewed as blighted, or an area in need of redevelopment -- is a category in and of itself -- may not make sense. But it may make sense to say that whatever the categories are, they have to be consistent with the principles of Smart Growth. It does make sense. And so that's a category that's been added. There's been some refinements to some of the words, but substantially the same criteria exists from the redevelopment law that existed before 1992 and after 1992.

ASSEMBLYMAN BURZICHELLI: Thank you, Ed.

And I just sense that's going to be an area where we'll spend a lot of time in subsequent meetings.

MR. McMANIMON: I agree.

ASSEMBLYMAN BURZICHELLI: And I do want to mention, to those who have taken time to attend this afternoon, that you get a theme early on that this issue is not an issue where we have large questions about building roads and those sorts of things. You're hearing the word

redevelopment, you're hearing the word *eminent domain*. And I think our focus, as we move forward in these meetings, is very clearly going to be of how redevelopment is tying to a tool of eminent domain, when, in fact, eminent domain has been used as a tool of last resort.

The other areas of traditional public use -- we'll say roads, for example, and overpasses, and bridges -- that doesn't seem to be in question, although we'll certainly entertain those thoughts as we go along.

Let me go around the horn here. Is there anything for Ed?

Lou.

ASSEMBLYMAN MANZO: Mr. McManimon, on the New Jersey Constitution issue, you raised -- it's a two-fold. Number one, it states that blighted areas for clearance, replanning, redevelopment must serve a public purpose and a public use. First, is that a more stringent guideline we're setting? And, second, from your reading of the Constitution and regulations that followed, have we really honed in on what the definition of *blighted area* means?

MR. McMANIMON: I'll answer the second one first. The Constitution directed the Legislature to define what blighted means. It did it, initially, in the redevelopment agency's law, which was the 1949 law. It has since put it into a body of law, in 1971, called the Eminent Domain law. And there's a definition of it that's determined by the Legislature. And so that's, I think, the question that the Chair asked: Has that criteria changed? And it's modestly changed, and it's added a criteria, and it's added urban enterprise zones that didn't exist back when the law was initially enacted.

So the Legislature defines it, and you can redefine it. So, certainly, there's no question, constitutionally or even statutorily, that the determination of what constitutes blight or, now, an area in need of redevelopment, is in the hands of the Legislature to decide that. You can completely determine that it would be consistent with the Constitution.

As to the question of public purpose and public use, it doesn't say it shall serve that. It shall be. It simply, in my view -- what I'm trying to characterize it is-- They said this is a fundamental, primary right, and that it serves a public use and a public purpose. And the reason that I want to point that out is because this whole case -- the Kelo case -- and much of the debate that goes on in public meetings over redevelopment, deals with whether this is really a public use. Because everybody presumes a public use is a road, a school, a building -- the kinds of things that people view, and I think Senator Inverso and others view, as essential public purposes.

All I'm pointing out is, this has been an essential public purpose for a long time in New Jersey. It's no different. They didn't change-- And the Constitution identified this. It didn't say, "Well, and also this." So my point was simply to make sure that you don't consider it lightly, or just assume -- because now there's this dichotomy of public use and public purpose that existed in Kelo in Connecticut -- that it exists here. And it is a public purpose and a public use. A lot of people get up in public meetings and say, "This is not a public use, because I'm not riding on the road. I mean, I ride on the road, but I don't get to buy this house." And that's true. There's differences between public purposes and public uses. And the Supreme Court, in Kelo -- in a case that didn't have a constitution that said this -- said that that particular use was a public use and a public purpose.

But the view of the centers was that they were stretching to get there. You don't have to have a court stretch to get -- here in New Jersey. Because in 1947, the people voted on a Constitution that actually says it. That was the point I was trying to make. That's all.

ASSEMBLYMAN MANZO: Thank you.

ASSEMBLYMAN BURZICHELLI: Upendra, you're next. And then Vice Chair, Joe Vas.

ASSEMBLYMAN CHIVUKULA: Thank you, Mr. Chairman.

Mr. McManimon, I did serve on the local town council, and I'm familiar with the redevelopment process. One of the things I'm concerned about, with eminent domain, is the abuse. And sometimes you have a redevelopment plan, and you have a redevelopment authority that is created.

In one instance I came across in my tenure is that a particular section of the town was designated for redevelopment. And one particular block -- was said that that block does not require any redevelopment. And it went on for a number of years. And suddenly the anchor project -- the redeveloper wanted to bring in an anchor project. And that anchor project did not fit into that existing plan. So they had to take the block which was not in the original plan. And it was clearly stated in a document that it does not require -- it doesn't have the blight conditions, or doesn't need to be redeveloped. But the council had the authority to vote on that, to add that block -- the redevelopment. I thought it was abuse. Of course, I voted against it, but I was the lone member in the council.

But how do you ensure that we can -- that type of abuse doesn't occur?

MR. McMANIMON: Well, that particular action is authorized by this statute, because it says that in defining a redevelopment area, you can include in that redevelopment area an area or property that otherwise doesn't meet the criteria, but without which the area that you're attempting to develop wouldn't be able to be developed.

Now, you can take that out of the statute, in the context of the things you're going to look at, if you believe that that is more likely to establish an abuse than not. Because it requires the planners to go through an analysis and investigation of all of the properties and determine that it fits one of these categories. And yet, the property you described didn't. And in a number of redevelopment plans, there are properties included which do not meet one of these categories. But the planner, and the planning board, and the council acknowledge that that property, although not meeting one of these criteria, is necessary in order to establish the foundation to be able to improve the area that is blighted.

So the statute permits that. So it's not a legal abuse that they did that. It may be a policy abuse in the eyes of the people who make the decision. And you can either continue to let them have that discretion or take it away if you believe, uniformly, that that's not a good thing. But it is authorized in this law to be able to let that happen.

ASSEMBLYMAN BURZICHELLI: Joe.

ASSEMBLYMAN VAS: Mr. Chairman, thank you.

Just following the process that you've established, and trying to help hone in on what the areas of concern that we should be discussing today--

Mr. Chivukula talked about the area of the law that designates properties in need of redevelopment. I was going to focus on that. Mr. McManimon has spoken about that.

I think it's important for those who are listening in and are in the room today to understand that I think that's an area where, perhaps, the legislation or the law can change to consider notice to properties, and defining more clearly what future uses are. I know that Mr. Eisdorfer talked about transparency and the steps that are established under the State statute that require local governing bodies to ask their planning boards to conduct investigations. I think it probably needs to have more criteria, in terms of what steps should be taken, and not only just a notification of property owners so they're aware of the fact that properties are being considered for redevelopment, but even beyond that -- what the future uses might be.

Now, that's sometimes a little difficult to do because we realize that redevelopment plans are not static documents. They're living, breathing documents. And, very often, when a redevelopment opportunity presents itself, it creates a synergistic effect on a community. And other investors look at the opportunity to sometimes share in the risk of investment, but also share in the profits of investment that are occurring.

So I think that that is certainly an area that, as we start to hone in on redevelopment law as it relates to eminent domain and the power to take property for a redevelopment purpose -- and that is for an economic use and purpose -- that we should take a look at.

And, secondly, I would like to have Mr. McManimon comment about the specific area of the law that speaks to value and how value is

established for property that is designated within the boundaries of areas that are designated for redevelopment. Because as I understand it, the law, as currently is configured, sets the value at the time of the designation, not at the time of the taking.

Is that correct, Mr. McManimon?

MR. McMANIMON: That's correct. There is a case that was decided within the last six months that is, sort of, calling into question what's the appropriate time when that should occur, even within the language here. You actually have some comments that, I think, the Attorney General's Office is submitting, that pretty much explains how the Eminent Domain Act of 1971 is applied, and whether or not that's a fair way to do compensation.

But your specific question is that under condemnation law, and how the courts have viewed it, the value of the property is set at the time when the governing body makes a determination to declare the area in need of redevelopment. Now, it may follow that up with a process that may take two or three years. And what happens is, if you're engaged in redevelopment, and you're changing the zoning, and you're changing the density and all the different types of uses, you're improving the value of that property by doing that, because you've changed what it's worth to someone.

And the law that the courts have applied, in interpreting eminent domain law, is that the private property owner doesn't get the value of the government process that's been undertaken. And it's designed, basically, to make sure that the government doesn't pay for all of the process that it put in place to make the property more valuable. That is the

heart of the issue that you're going to face, because the question is: What should the value be that is paid to the property owner?

ASSEMBLYMAN VAS: So if the value is not what it is at the time that its designated, but rather at the time of the taking-- Mr. Eisdorfer pointed to another aspect of the law that lends itself to *lowballing*, he called it. The purchaser of the property comes in with an appraisal that's -- let's call it a *lowball* -- and the owner of the property comes in with a highball. And, unfortunately, the boards that look at values say, "Well, we're going to split it down the middle --" and it's somewhere down the middle. When, in fact, the law really should be clearer and define what the value really is. And it should also define value, not only as it relates to residential values, but what it costs to relocate into a comparable home; also what it would cost to relocate if it's a business. And, as Mr. Eisdorfer spoke about, what about the value of goodwill, and the value of the business being in a particular location, and what that means to the value of the total business.

I mean, I think these are areas where we can help safeguard against abuses of eminent domain, which in most people's minds is not just about the taking of their property, but an unfair taking where they don't receive the value for their property. There are certainly people who believe that government should not have the authority to take their property. But if the government is going to have the right to take their property, they should be fully compensated for that taking. And I believe that we can do work to improve that. And I think that can safeguard those abuses that people talk about when they hear the word *eminent domain*, and the negativity that's associated with it.

That's all.

MR. McMANIMON: I think, at a session yesterday by the New Jersey Future, it was made clear that if you do that, it will make some of the redevelopment projects too expensive to do. So those that are on the border may not work. And maybe that's not a bad thing. The point is that cost increases, and maybe that makes the concept that you're trying to accomplish not capable of being accomplished financially.

ASSEMBLYMAN VAS: I don't know that it's ever going to make redevelopment not work. What it's going to do is, it's going to change the kind of redevelopment that does work. And in places where they consider redevelopment solely for the reason that they're chasing ratables, and they're looking to expand their tax base to mitigate increases in property taxes for local governments -- and I'm speaking like a mayor, not like an Assemblyman today -- they're going to have to determine whether the impact -- negative and positive impact -- of redevelopment is going to be worth going through with the process.

And in places where they haven't seen volume building up, as opposed to building out, you're going to see that kind of development occur in New Jersey. You're seeing it in some of our larger cities right now -- in the Jersey Citys, and the Newarks, and even in small cities like Perth Amboy and New Brunswick -- where you're beginning to see a skyline, because the values of properties now have reached a point that, in order to make redevelopment work, you've got to change the scope of redevelopment. It's no longer just taking a blighted area and replacing it with either some less intensive use -- from a heavy industrial use that's become obsolete in New Jersey -- and those ratables are not there, the jobs are no longer there -- to a less intense use, a light industrial use -- warehouse

and distribution; but even beyond that to housing and mixed uses that create commerce for a community, not just in terms of ratables, but in terms of jobs -- and recirculating the dollars that are generated from that particular redevelopment project.

ASSEMBLYMAN BURZICHELLI: Assemblyman Vas, that was a good speech. (laughter)

Assemblywoman Lampitt, did you want to jump in? Because I want to get Mayor Maley to speak.

But do you want to go to Ed quickly?

ASSEMBLYWOMAN LAMPITT: Just real fast, for clarity purposes.

And Assemblyman Vas sort of touched upon this. How long can a municipality hold a redevelopment zone? Can it be indefinite? And is there any benefit to putting a time limit on how long a municipality can hold a redevelopment zone?

MR. McMANIMON: It's essentially indefinite. It's interesting, because in Asbury Park there was a question when they designated a redeveloper and didn't put a time limit on that redeveloper. The redeveloper wound up having property rights there -- indefinite. So what happens now is, there's a time frame put on a designation of the redeveloper so that property rights don't attach if they don't meet a timetable for events to occur. But from the government side of it, to answer your question, there is, right now, not a time limit for how long the area is a designated area for which development -- pursuant to a redevelopment plan occurs. And if there was a time limit-- I don't want to -- in case I can't speak for the League -- but I believe that's not an issue that would be a

major problem, because it could be redone if the issues have stayed the same. So putting a time limit on it is not a big issue, in my view.

ASSEMBLYMAN VAS: Mr. Chairman, just for one moment on that topic. It is an important topic.

In some of your larger projects, where you have multiphased projects -- and they stretch out for seven, or eight, or 10 years even -- a property might be designated for redevelopment, which would inhibit the property owner's ability to develop that property. But yet that property owner continues to pay taxes and has to maintain that property.

So I do believe it's an area that we need to take a look at, when it comes to multiyear or multiphased projects, because it does have an adverse affect on that property owner. And I know that's the case, because there have been cases that have gone to the Supreme Court of New Jersey on that.

ASSEMBLYMAN BURZICHELLI: Thank you, Joe.

Upendra, did you want to go again? Because I have Amy -- let Amy go for the first time, and Upendra will come back.

Amy, go ahead.

ASSEMBLYWOMAN HANDLIN: Thank you, Mr. Chairman.

Returning, very briefly, to the theme of transparency -- which I have to believe is a cure for many of our ills in the State in many areas. You made a statement that I wanted to ask you to elaborate on. And your statement was along the lines of, the redevelopment process cannot be -- or the designation of the redevelopment plan cannot be conducted in public. And my question to you is, why?

MR. McMANIMON: Well, the issues involved in negotiating an agreement that any government enters into with a private party, that may wind up being terminated, and then getting into another person-- You really have to map out, with those people in there, what the terms are that you're going to present. I'm not saying it's the issue and the terms of the agreement when you're all done. That's completely public. There has to be a presentation of all the terms of that agreement. And you have to lay that out to the public so they know what it is.

But the actual negotiations-- I don't believe any government can conduct the negotiations of any contract in public. It doesn't mean that you don't disclose the terms of it, you don't have employees subject to it. You give the agreement out to the public. They get to read it, they get to comment on it, they get to criticize it before it's enacted, before it is adopted. In my view, it would shunt any real ability to have a viable agreement that you're negotiating the terms of, that may wind up in the hands of someone else who you're going to negotiate with instead of them.

ASSEMBLYWOMAN HANDLIN: Okay. You just quickly ran through a list of things that you think could be made public, or should be made public.

MR. McMANIMON: They are made public.

ASSEMBLYWOMAN HANDLIN: They are.

Okay. The question I have for you then, as a follow-up is, are there any parts of the law which could be strengthened in that way? In other words--

MR. McMANIMON: Yes.

ASSEMBLYWOMAN HANDLIN: Okay. Such as?

MR. McMANIMON: And I tried-- Well, right now, the process requires the planning board to undertake an investigation of an area to determine if it's an area in need of redevelopment. When they do that, and when they come to a decision on it, there has to be notice given to anybody whose property is affected. You have to give them written notice of that effect.

When that's done, and now you prepare a redevelopment plan -- which is a land use plan, uses and densities -- that comes back to the planning board, and it goes to the council by ordinance. There is no requirement to notify the people whose property is affected at that time. It would be very easy to require that, when you do that, you give public notice.

Similarly, the redevelopment agreement -- that is the next step. That is, in most forms of government, adopted by resolution, not ordinance. It could be required that to adopt that resolution, you have to give a public notice in the paper or some other notice -- maybe to all the property owners again -- so that when that redevelopment agreement is adopted and discussed, the people are actually there to hear it, because they've been told it's going to be considered. A resolution gets on an agenda, but it doesn't get published. An ordinance does. And so that redevelopment agreement, maybe by resolution -- maybe it's required to be adopted by ordinance.

So there are a number of ways that this process -- that the planning board and that council-- And all these have to be done in public, by the way. And the only question is, do you notify the people who ought to come that it's being publicly discussed? And the League certainly has absolutely no objection. They're in favor of that, in terms of the concept of

opening it so that these decisions that get made are made in a public forum. But not just because it's a public meeting, but because it's been called with the people who are impacted being invited to come to hear it.

ASSEMBLYWOMAN HANDLIN: Right, it would be a requirement for a public hearing, and so forth.

MR. McMANIMON: Correct. Those are very simple changes. They make the very-- It doesn't mean the people are going to be happy about it, but they get to be heard, and they get to be invited to know it's being considered.

ASSEMBLYWOMAN HANDLIN: And also, actually linking up to what Assemblyman Vas had said, what that might do is have the effect, in many cases, of slowing down the process, which might--

MR. McMANIMON: Be good.

ASSEMBLYWOMAN HANDLIN: --which might be good. Some projects that might have otherwise been approved will end up not being approved, because the developers didn't want to wait, or they lost money in the waiting, and so on.

Thank you.

MR. McMANIMON: Thank you.

ASSEMBLYWOMAN HANDLIN: Thank you, Mr. Chairman.

ASSEMBLYMAN BURZICHELLI: We'll have one more question, because I want to get Mayor Maley up to speak. We have two other speakers, one from the -- we have a Deputy Attorney General here to talk about some of our compensation formulas, which I think are important to this discussion. Then we're going to have Mr. Potter speak to us, which

will give us a sense of where the groups he represents feel the present rules and parameters of our statutes are not serving the public interest.

Upendra, did you have one more?

ASSEMBLYMAN CHIVUKULA: Thank you, Mr. Chairman.

In terms of the relocation assistance process-- When you look at it, the State of New Jersey has become -- is one of the most expensive states to live in. And when you displace a grandmother who has been living in that home for 40-plus years, and then because of -- unfortunately for her, she happens to be in an area that is in need of redevelopment. Where is she going to go? How do you see that-- I mean, in the State of New Jersey it is impossible to move to any other place. I mean, I don't think the law handles that situation. And nobody anticipated the property values of New Jersey to go -- skyrocket like that 20 or 30 years ago.

MR. McMANIMON: It's a problem.

I'm going to defer to Mr. Maley on that, because he's addressing that issue, in connection with some matters he's actually working on. I'm not saying that what may be suggested is the model, but it is a situation that has -- the State and others have employed. And I'll leave that as part of his remarks.

ASSEMBLYMAN BURZICHELLI: Thank you. And thank you for your testimony. It was very helpful.

Jim, before you step up, I want to mention to Assemblyman Chivukula that we have asked our counterpart Assemblyman Green, in his Committee, to take up the issue of the relocation reimbursement matters on his Committee, and that side that will dovetail into what we're doing here.

Some of our work will be second reference to his Committee. So the issue you've mentioned is an issue that is in our thoughts, as well.

Now I will welcome Mayor Jim Maley to the microphone. It's always good to see Jim.

It's a pleasure to hear from you on a day where I won't get the invoice at the end of the day. So please, under these circumstances, take as long as you'd like. (laughter)

MR. McMANIMON: Are you sure? (laughter)

MAYOR M. JAMES MALEY JR.: Mr. Chair, we talked a little bit earlier. I just want to remind you of that. (laughter)

I just wanted-- A few things as background. Actually, writing up remarks -- I filed some prepared statements.

I've been on our local government for 17 years, and actually writing it made me shake about as much as it does saying it now. I'm in my 10th year as Mayor. And Collingswood sits on the eastern boarder of Camden. We are a town that has gone through a lot of redevelopment changes. We've done some very major redevelopment work.

And according to papers, because of that, we've gone through a renaissance. And I really wanted to try to talk to you a little bit today about my experience as Mayor. I have voted and acted to acquire residences, take people's homes for redevelopment projects. We have acted and taken apartments for redevelopment projects. We have acted and taken commercial properties for redevelopment projects.

And I also have-- I work as a lawyer. My practice has evolved into pretty much doing all redevelopment law. And it's really been a result of a whole lot of years of learning it the hard way, doing it in town.

So I want to just give you a little perspective. And to start out, just to give you a brief account of the-- Taking away eminent domain from our redevelopment tools, for us in Collingswood, simply means that we can just turn off the lights and go home, because there is just no point to keep going. We would have been nowhere had we not had the ability of eminent domain.

We have used it only a few times. And, frankly, the first major project that we did, we did not use it. But because we had the power, it helped us enter into a redevelopment agreement and a deal. And I want to give you that account. And I also think it's important, with these issues about transparency, that we talk about the reality of how these things work.

I can talk about this one project now, because it's 10 years later. We're about to sell this project. It's a 1,000-unit apartment complex -- four towers of 250 units each that sit in our community. Those four towers comprise 20 percent of the households in our town. Back in the early '90s, we had an owner who was not a very good owner. They ran into financial problems. The building was half-empty, it was in bankruptcy, they hadn't paid taxes for two years, there were more fire code and housing code violations than I can tell you about. We went through a process where the local paper in our area was covering a story a week about how horrendous the conditions were in these four towers.

Now, I had a lot of dealings with the owner at the time. And I had some dealings with GE Capital, who held the mortgage on the property. And one of the meetings was GE Capital -- they held \$35 million of a mortgage on this property. They sat with us about our tax assessment -- that the property was grossly overassessed. And it probably was at the time.

It was assessed at around \$30 million. It was probably only worth-- People told me it was worth 10 to 11 because of it being half empty.

And I told them, "That's fine. If you want to appeal, you do that. You're perfectly entitled to. That's the number. Sign right here that that's the value of your property, because we're taking it tomorrow for that number." And that made GE Capital sit back and say, "Well, wait a minute, Mayor. What are we talking about? Why would we-- Why would you do something like that?" "Well, if that's what it's worth, then that's what it's worth."

And what that did for us was, it brought GE Capital to the table. And they sat with us, and we structured a \$45 million redevelopment deal in which the borough invested \$7.7 million into this project which, at the time, was more than what our municipal budget was for the year. We invested that money into this project, had GE Capital stay in the deal being the credit enhancer on the bonds -- the revenue bonds that were issued for it. And we put together a partnership that, 10 years later, I can tell you worked. The property is about to be sold. We became an equity investor in the property. We are going to make money on this deal. But even more important than that, than the financial success, is that it has brought a success to our community. Once that property began to change, it changed the perceptions of everybody in town. Sitting next to Camden, and boarded up buildings, and crime, our folks were always worried. "Should we be moving out to Medford? Should we keep moving east?" And this changed the perception for us.

And that example, our having that in our arsenal, I think, is important. Because, obviously, the press-- And I'm going to talk about

some changes, I think, that should be made. But the press is focusing on taking individuals' residences. And there's things that we should do about that. But understand that the-- And in my work, the overwhelming majority of the times in which we use eminent domain, it's in situations similar to that.

I represent Gloucester City. We're taking-- We're going to probably take 150 acres along the Delaware River. They're owned by Viacom, they're owned by major chemical corporations who, with the DEP's approval, put up a fence and walked. Well, we're moving on it to force them to do -- to take action so that the city can begin to develop that land. Taking away eminent domain for redevelopment purposes ends that. And like I said at the beginning, we can just turn out the lights and go home. We don't have any power to improve things.

Now, having said that, there are changes we can make. I mean, in the work that I do-- And I've taken people's homes. We've done it. And there are changes that can be made in the compensation. There's been some talk earlier about how we compensate people for their properties. In my remarks I've laid out, I think there's a model that's available today, as to how you can do that, and it's being used by another arm of the State -- and that's the Schools Construction Corporation.

Schools Construction has a model whereby they compensate someone for the value of their home, but they also provide a *home ownership differential* -- is what they call it. And what they do is, they do a second analysis of the values of comparable housing in the area so that-- And I deal in projects today where we're -- because of where someone lives, and because of the condition of their property, a house is only worth \$50,000.

A townhouse is only worth \$50,000 in one of the projects I'm working on. They can't get-- And there are people -- seniors who own it free and clear, don't have a mortgage, have nothing. They then can't get another townhouse anywhere in the area for \$50,000. What Schools Construction does is, they do that second analysis, of the 150, and they pay a homeowners differential. They pay the difference between the 50 and the 150 to that property owner.

Now that, I think, is a model that can be looked at as to how to provide some compensation that helps to balance out some of the inequities that people see. And, frankly, there are. So that, I think, is a mechanism that can be used that can work.

I think with respect to-- There's always been reference -- and I'm not going to go over it again -- but relocation benefits. The values were all set in the '70s. I think that there's things, with respect to tenants, that need to be addressed, that there need to be increases to make it more reasonable in today's marketplace, and that you should put in place a mechanism so that that can be adjusted every year or every two years so that we don't go back and look at it in another 30 years.

There's a couple suggestions I have, with respect to redevelopment. And let me just say that the reason I believe all of this has become such a hot topic these days-- Ed and I -- we've seen each other more than we see our wives, because we're out talking about redevelopment and Kelo everywhere.

To step back from it a little bit, the reason why we're now dealing with the acquisition of people's homes is because State policies are succeeding. I have worked in a lot of urban areas. I have been doing that

work for 10, 12 years now; and six, seven years ago, we couldn't get any major developer, any major builder to come close to the Gloucester Citys, the Camdens, to the Paulsboros -- to all those areas. You couldn't get them to come close to it. But because there's things like Smart Growth, there's restrictions on where you can build now, the State and local governments are out now acquiring Open Space and preserving it -- all of that development community has now turned to where, State policy is, we want them to build. Well, where we want them to build, where that existing infrastructure is, is where people live. And if we're going to divert all that energy into getting them to finally go back to where they grew up, to go redevelop it, then we've got to balance this in some way, but not throw the baby out with the bath water. Okay? There's got to be a balance here.

In redevelopment, in the criteria, there's -- changes can be made in these criteria. And I want to give you just one example of, as the professor said, of an astute lawyer and planner. There's property, there's an area down in a shore town where, like, the reason why -- this is a reported decision -- the reason why an area was declared redevelopment area was the criteria used was a lack of adequate ventilation, air. And that's one of the criteria, one of the subsections. And the reason the planner referred to -- is that the houses are built so close together. Okay? Well, that means like most of Ocean City is a redevelopment area, using that criteria that way. I think what the criteria was meant to be is a lack of adequate air ventilation within the unit. It's directed more when it's written to tenement housing, to apartments built with no windows. And I think by clarifying what some of these criteria are, that will go a long way to getting people to feel comfortable that we're doing this blight in the right places.

Two more things I want to touch on. The selection of a redeveloper: There's been some reference made to it, and there is a split right now. There's a difference of opinion in some court decisions about what it means when a municipality appoints or selects a redeveloper. In some towns, the interpretation of the legal counsel and the decisions now are, when you make that decision -- when a redeveloper is selected -- that no one in that redevelopment area can now develop their properties. There's another line of thought -- and frankly, a lot of this has been like a north/south difference of opinion. Down in the South, we don't really take that view. Our view has been, when there's a redeveloper that's designated, individual property owners can still come and develop their property in accordance with the redevelopment plan, but -- until and if the town goes after and buys or acquires that property.

So I think that you really need to clarify this. You need to make it clear. Because I know some towns where there's disputes raging right now, where there are planning boards refusing to hear site plan applications from property owners that are compliant with the redevelopment plan. But they've selected a redeveloper, and, "You have to go talk to our guy so that he can come and build. But we're not going to buy your property, okay?" So I think that there's some clarification and it's just honest difference of opinion in reading the statute, because there is some ambiguity in it.

And the last point I want to touch on is simply the issue of transparency. It's important-- We went through this when we did this Parkview deal, very big deal, went through three different developers coming in. It took five years to negotiate. And I tried to keep people

informed of what we were doing, but there's some good things with that and there's some bad things with that. Deals fall apart. There are fights that go on. The time we spent with GE Capital was not necessarily a very happy time in my life. We do a lot of fighting. And there's a certain amount of that negotiation that just cannot be done in public. The guy sitting on the other side of the table, a whole lot of the time, is doing all he can to get every nickel he possibly can out of the municipality, and a lot of times trying to inflate his number as high as it can be. It's not always -- we refer to Mrs. Magilicutty (phonetic spelling), the 90-year widow -- a whole lot of the time it's a development company, it's a developer. For us, it's a landlord that lives 150 miles away that hasn't put a nickel into his property in 50 years. So that transparency -- we need to keep them advised when we get to some consensus, when we're ready to do things and take action.

But the process, I just caution you -- that that process that we go through-- And I know folks don't always feel comfortable with their elected officials. But the way the change gets made is, you throw the people out that you don't like what they're doing. And when we're in doing that and pursuing our oath to make things better, give us some latitude to make use of those redevelopment laws to make it work. Because it's worked wonderfully for us. But I've had to use all those tools in order to make it work. Okay?

That's all. Thanks.

ASSEMBLYMAN BURZICHELLI: Mayor, thank you.

And it's been probably two governors ago since I've heard anything positive said about these Schools Construction Corporation as a model. (laughter) So it's sort of helping with the afternoon -- on a bit. But

testimony, it all contributes to us getting off on the right foot with this issue.

Let me go around and see if anyone would like to advance a question. (no response)

I have a feeling Ed fielded most -- some of the questions, Jim--

MAYOR MALEY: Yes, he did. Yes.

ASSEMBLYMAN BURZICHELLI: --that you may have fielded. Let me thank the three of you for your time and contribution.

MR. McMANIMAN: Thank you very much.

ASSEMBLYMAN BURZICHELLI: I ask that you keep an eye on the progress of this Committee and please insert yourself where you think you can be helpful to us; and any documentation you can flow to us is helpful. And we will be in touch as well. The League will play a big part.

Thank you, everyone.

MR. McMANIMAN: Thank you.

MR. DRESSEL: Thank you, Mr. Chairman.

MAYOR MALEY: Thanks.

ASSEMBLYMAN BURZICHELLI: Next up is going to be Kevin Rittenberry, Deputy Attorney General, the Division of Law -- assists at the Department of Transportation and works on condemnation for that Department. The testimony here is to give us some insight into just some general theme of compensation.

Kevin, you're scaring me. You've got three law books.

S R. D E P. A T T O R N E Y G E N. K E V I N E. R I T T E N B E R R Y:
Well, I heard some questions. I just wanted to be prepared.

ASSEMBLYMAN BURZICHELLI: Okay. We ought to try and make the 6:00 news for our friends in the media, so we have to try and advance the process.

SENIOR DEPUTY ATTORNEY GENERAL RITTENBERRY: No, I'll keep it short.

ASSEMBLYMAN BURZICHELLI: Very good.

Kevin, the microphone is yours.

SENIOR DEPUTY ATTORNEY GENERAL RITTENBERRY: Good afternoon. I'm Kevin Rittenberry, and I'm a Senior Deputy Attorney General.

ASSEMBLYMAN BURZICHELLI: Kevin, is your mike on, please? (referring to PA microphone)

SENIOR DEPUTY ATTORNEY GENERAL RITTENBERRY: I'm sorry.

Good afternoon. I'm Kevin Rittenberry. I'm a Senior Deputy Attorney General from the Transportation Construction and Condemnation Section, Division of Law, and I act as the Assistant Section Chief of that section, and principally in charge of condemnation litigation. And I thank the Chairman and the Committee for inviting me to come and share, very briefly, with an understanding of how eminent domain works in the State of New Jersey.

Now, I'd like to emphasize that our experience is not with residential or commercial redevelopment applications, but basically for acquiring for public entities. But sometimes we do buy for EDA, and so forth. But principally, we're involved in the acquisition of property for the

New Jersey Department of Transportation, New Jersey Transit, and we also are involved in supervising outside counsel for the SCC.

Now, since 1971, the exercise of condemnation by all State, county, municipal, and private entities -- vested with the power of eminent domain by the Legislature, with the exception of certain bistate authorities because of the bistate requirement -- is governed by the Eminent Domain Act of 1971, which has been in effect since then. That Act was passed, in part, as a result of what was known as the Eminent Domain Revision Commission. Now, the Revision Commission was established by Chapter 50 of the laws of 1962. And they issued a report, which is dated 1965, and a lot of what went into that report was the basis of what, ultimately, became what is known as the Eminent Domain Law of 1971, which is still in effect, with certain amendments that were made subsequent thereto. And also, there were many different interpretations of that rendered by the courts. So there's a whole body of law that exists.

In addition to that, there's also court rules -- specifically the section under Rule 4:73 of the Civil Practice Rules -- that specifically govern condemnation practice. And then there's also, in addition to that, there's -- known as -- which is the next section that follows the Eminent Domain Law of 1971 -- which is the Uniform Relocation Act, which is 20:4-1 et seq. Except for the New Jersey Department of Transportation -- they were exempted and they have their own specific act, which actually was the model for what was referenced -- the SCC -- which is required under 27:7-76. And that section specifically requires of the DOT, because it's required by Federal law, to offer what is called a *housing supplement*, which differs from the Uniform Relocation Act.

Now, in order to construct a needed public infrastructure, especially relating to all forms and modes of transportation, various public agencies have utilized and exercised the power of eminent domain to acquire needed property. Now, it's considered by our office that eminent domain starts at the offer -- not at the filing of the complaint, but the making of the offer. And that offer -- it was required, specifically under the 1965 study. It's important to understand that the study addressed many issues, especially even went into the constitutional issues that were addressed earlier by the first speaker, and went into a lot of the nuances about -- especially as to roads and so forth. But they went also into the question of lowballing, which has been mentioned here today. And they specifically established this act to prevent lowballing. And in fact, the Department of Transportation and the other departments, such as New Jersey Transit, follow that as it's required, and was referenced by the first speaker, by turning square corners to the letter of the law. And they follow that by making an offer based on an approved appraisal.

Now, it's specifically provided under 20:3-6, which is a part -- it was an integral part of the Eminent Domain Law of 1971 that "no action to condemn shall be instituted unless the condemnor is unable to acquire such title of possession through bona fide negotiations with the respective condemnee" -- meaning the owner -- "which negotiations shall include an offer in writing by the condemnor to the perspective condemnee holding title of record to the property being condemned, setting forth the property and interest therein to be acquired, the compensation offered to be paid, and the reasonable disclosure of the manner in which the amount of such

offered compensation has been calculated, and such other matters as may be required by the rules,” which is what I referenced earlier.

Now, under a case law, a copy of the approved appraisal must be provided to the owner of record. Also, the owner of record must be afforded an opportunity by the appraiser, before he finalizes the appraisal report, to accompany him on the inspection, so that that owner and his/her representative may actually have a conversation and provide information to that appraiser as to good and bad aspects of the properties, so that the appraiser doesn't misunderstand or isn't pointed to some very good aspect of that particular property. And if you fail to do so, that's almost an automatic dismissal of your case. So it's very important that that's followed. And the Department of Transportation always ensures that that is, in fact, done.

Thus, the complete condemnation cannot be initiated until bona fide negotiations. Now, bona fide negotiations is an interesting concept. It goes back to when I was in law school, in property, and a professor said that many words are like *hot dog*. They don't really mean what they say. It's not literally a hot dog and so forth. Bona fide negotiations isn't really negotiations. What it is, is due process. It's the insurance that the property owner is assured and told what is the basis of the appraisal, what is being acquired, and what their rights are, also, under the relocation program, which is administered separately under an administrative program. Under the Paterson redevelopment cases, it's clear that the court views those as a separate operation. That you have your right to just compensation. But in addition to that, you have your right to relocation benefit, which in the case of the New Jersey DOT entitles you to

what is called a *housing supplement*, which is in addition to the fair market value price to allow you to buy safe and sanitary housing, and also allows it to be sanitary and safe not only for the owner, but all the occupants -- so that if a house is too small that's presently being occupied that, when they purchase a new house, sufficient money is given to buy a larger facility. And this is really, I believe, based on a premise that was put up by the Port Authority of New York and New Jersey in the 1940s, when they built a bus garage -- that they tried to encourage, when there is condemnation and clearance of properties, that the people that are affected, especially residential properties, are placed in a better circumstance, not a worse circumstance. And the Department of Transportation, pursuant to Federal law, followed that. And New Jersey Transit, DOT, and the SCC -- who is in consultation with the New Jersey Department of Transportation -- has pointed out the fact it follows that procedure also.

Now, if the court-- Now, a property owner has the right to object to appointment of commissioners and the actual taking of the property by filing an answer, and there's an automatic stay pending the Law Division action. There's actually a proceeding that occurs, if the court so finds it necessary, where there's evidence and a determination is made by the court. Otherwise, the court appoints commissioners and then a commissioner hearing is held where there is an exchange of appraisal reports, which is now required under the rules. Prior to that, there wasn't a requirement, but now there is. Now, the property owner has a choice of presenting evidence or not. They are required to attend. Because if they fail to attend, they do not have the right to appeal the decision of the

commissioners, or go to what is known as a trial de novo before a jury trial. But they do not have to put on evidence at the time.

Now, it's been the practice of our section and unit that it's very helpful when the other side -- meaning that when the property owner does, in fact, put on evidence, we many times, not just sometimes, but many times are able to resolve that action after the commissioners render their report. Whereas, if they go through and use it as a discovery method, since there is only limited discovery in a condemnation, then it's fruitful for settlement purposes and it moves on to a trial. And the trial is again presented to a jury if there's a request. There is no burden of proof, meaning that no one has to prove what the value is. There's information that's provided by experts based on comparable sales. The methodologies typically used is the comparable sale approach of finding properties and adjusting for differences. The other approaches are the income approach, which are commonly used on business properties; or the cost approach, on especially unique properties.

And then the jury makes just a decision as to what the value is. If there is what is called a *partial taking*, meaning that a remainder of the property is left, then there's a determination as to what the effect on that property is. And that is decided by a jury. And then if there's some decision that is not in accord with law, there's obviously the right to go to the Appellate Division.

Now, prior to a condemnor taking physical possession of property, the estimated value of the property must be deposited with the clerk of Superior Court, upon getting an order from, usually, the assignment judge. And then a declaration taking must be filed. That does not have to

be filed right away, but there is procedure it has to be filed in six months, without the consent of the court, and there's recent litigation on that issue.

Also, relocation benefits -- which has been mentioned throughout this session -- have to be offered, and there has to be an opportunity to try to attempt to relocate the tenant or owners to suitable housing or suitable business relocation, if that is findable, in the event of commercial properties.

Now, as I pointed out before, the Department of Transportation is not subject to the Uniform Relocation Act, under Title 20:4, but is in fact subject to a separate act, under Title 27-72. And specifically, under Title 27:7-76, they're allowed to offer supplements. And it's been my experience personally, since I review almost every case that comes through our office, that we have very few actual acquisitions of residential properties through the actual filing or complaint. And it isn't because the Department of Transportation doesn't acquire residential properties. In fact, they do. It is because we have this supplement, and we're able to usually work it out. And if it isn't -- if there's a dispute that the supplement isn't sufficient, they have a right for an appeal or an informal hearing beforehand. And we also try to work it out even if it goes through in a regular procedure, to try to resolve that issue before we file a complaint.

Now, it's also our experience that we usually have been able to work things with property owners as to the value of the property through the commission hearing processes I mentioned before. And we do go to trial, but it isn't that common of an event. It does happen, but it's not an

everyday event. Hearings occur all the time, but trials are only when we have the situation where we aren't able to resolved it through that process.

Now, generally, it is this office's experience that the current procedure in statutory framework still works very well and allows the owner to receive just compensation for property acquired, and afforded relocation benefits. There are, of course, issues from time to time requiring resolution, but the intent of the Revision Commission, established in 1962, seems to have been well-served by the Eminent Domain Act of 1971. With respect to the New Jersey Department of Transportation, residential property owners are afforded a housing supplement, which is a nonfederal taxable additive to the offered compensation, to allow that owner to purchase safe and sanitary housing sufficient to the occupants' needs.

Now, also, last resort housing, which is afforded under the Federal guidelines, allows greater latitude in exceptional circumstances, in the situation where it's difficult to provide the people within the general requirements of the regulations. It is observed that it is unusual to have a contested residential property taking, which I've mentioned before.

Now, also, in conclusion though, and strictly from a State perspective, the Eminent Domain Act of 1971 has generally proven to be fair to the owners and occupants from whom property has been acquired for traditional public infrastructure, such as roads and rail, especially when coupled with an effective relocation benefits programs, such as required by FHWA and required under State statute for New Jersey DOT. The flexibility of public entities in acquiring property needed for, or related to, public infrastructure enhancement is essential as well.

I am prepared to answer any questions you may have regarding this office's experience with respect to reasonable exercises of power of eminent domain and relocation.

ASSEMBLYMAN BURZICHELLI: Kevin, thank you. Your testimony is helpful. A couple of things you mentioned in there, about the formula that you use on compensation, I think we're going to want to know more about as we move forward. And I am a New Jersey resident who had property taken by the DOT for a road project a number of years ago. So I have some familiarity with how it works. And frankly, it works. It works. And it had a reasonable pace to it. And lo, in the end, the State had the property, the property was needed. So I have a sense of that.

Does anyone from the Committee--

Lou.

ASSEMBLYMAN MANZO: I have a question just to that point on the compensation. If someone has to be relocated to another municipality or town, because something couldn't be found in their vicinity, how does compensation work and-- For example, the possibility that they're going to another town that has a significantly higher property tax rate?

SENIOR DEPUTY ATTORNEY GENERAL RITTENBERRY: There are certain allocations with respect to mortgage financing and so forth, which is in the regulations. As the taxes -- I don't believe it's specifically addressed. As the tenants, there's a specific provision to allow for, I believe, up to a five-year period for payments for increased rental, and so forth, because they have to--

ASSEMBLYMAN MANZO: And for property taxes?

SENIOR DEPUTY ATTORNEY GENERAL RITTENBERRY:
Well, I don't believe there is one specifically for taxes. There is a reimbursement for the taxes that were previously paid, and there's an adjustment for increase in mortgage payments. I'm not familiar with one specifically for taxes.

ASSEMBLYMAN MANZO: So there could be a situation where someone gets moved to another town, they're compensated for their property, but because they're now paying a higher property tax, they might not be able to afford the relocation property itself?

SENIOR DEPUTY ATTORNEY GENERAL RITTENBERRY:
But the attempt of the relocation procedure is to find within the town, or a town to which they can afford to stay, with the provision that we give them the additional money necessary to acquire the house subject to these rules that are established, and also to pay for any increase in mortgage within the guidelines. So, in my understanding, I have not heard of a situation like that. I'm not saying that doesn't exist. But most of the situations, we are successful in relocating people to places where they're willing to live and wanting to live, and don't have difficulty maintaining that facility. But most times, we are able to find within the municipalities, because a lot of times we're in large, urban areas, and so forth, where there's other available housing.

ASSEMBLYMAN MANZO: You did okay, Assemblyman?

ASSEMBLYMAN BURZICHELLI: I think so. (laughter)

ASSEMBLYMAN MANZO: Okay.

ASSEMBLYMAN BURZICHELLI: Survived.

Thank you.

Amy, anything?

ASSEMBLYWOMAN HANDLIN: No, thank you.

ASSEMBLYMAN BURZICHELLI: Okay.

Kevin, thank you very much for taking time--

ASSEMBLYWOMAN LAMPITT: Mr. Chairman, I have a quick question?

ASSEMBLYMAN BURZICHELLI: Pam, I'm sorry. I always seem to miss you on the right-hand side there. I don't know why that is. Go ahead.

ASSEMBLYWOMAN LAMPITT: I won't say anything.
(laughter)

Just a quick question, because it really hasn't been brought up in any of the conversations. What about anything historic in nature? Historic in terms of eminent domain and a historic building that is dilapidated. Are there laws in eminent domain governing that aspect?

SENIOR DEPUTY ATTORNEY GENERAL RITTENBERRY: There are, but they're not specifically under eminent domain. They're under the SHPO. If the SHPO finds the New Jersey Department of Environmental Protection determines that the property is historical, there are certain protections. There has to be, sometimes-- In fact, we have a property such as that. We have to try to relocate it, or find a place to be relocated, or try to move it within the same subject property, or find another place to move it. It depends on what the requirements of the DEP are as to that. The properties are valued again as to the highest and best use of the property. As historical value, there's a specific case. You would have to show that, in fact, because it's historical, it has a higher value. But

as to whether we take it, there's a whole issue that runs through, that's preliminary to condemnation, which goes through the Department of Environmental Protection and their procedures and regulations.

ASSEMBLYMAN BURZICHELLI: Thank you, Pam.

Again, Kevin, thank you very much. Your testimony, as I said, is important to us. And we don't have a sense, as we talk to residents -- unless members of the Committee have other feedback -- the issue is not so much the Department of Transportation and what's taking place in roads and highways. It seems to work pretty well. The issue seems to be redevelopment, residential, what constitutes redevelopment. But the reason we asked you to come is, we wanted to have a perspective of how the Department was working and what your procedures were. I think there's some things in there that are going to be helpful to us. So I thank you very much for taking the time with us.

SENIOR DEPUTY ATTORNEY GENERAL RITTENBERRY:
You're welcome.

ASSEMBLYMAN BURZICHELLI: Thank you.

Next up, as Kevin makes his way, William Potter will join us. And, William, I apologize, just for the delay. When we planned this, we thought we'd do a little better on the speakers' time, but unfortunately it went a little bit long.

R. WILLIAM POTTER, ESQ.: It's all right.

ASSEMBLYMAN BURZICHELLI: But I want to introduce you as a person who is active in representing the interest of parties who feel that our present redevelopment rules, redevelopment parameters are not serving them. And your testimony today is very important to us, because,

as you can sense, we're trying to get an idea of where we are in present law. And what you'll tell us will help us understand where your people, and the people you represent, think it's not being of service. So this is very important to us. I thank you for taking time.

MR. POTTER: And thank you very much for having me. I recognize that I was sort of added on at the end, and I appreciate that this is taking longer than originally anticipated. Just to introduce myself, my name is Bill Potter. I'm with the law firm of Potter & Dickson, in Princeton, New Jersey. I'm also on the Adjunct Faculty at Rutgers Law School and a lecturer for Princeton University in the Politics department. In fact, I've got two classes I have to hustle back to after this hearing is over.

On February 18, this past Saturday, approximately 75 people came to the Princeton University campus, hosted by the Princeton Justice Project -- students at Princeton concerned about issues of racial justice and environmental justice -- from, as I counted it, 26 municipalities across the state. Every single one of them, Mr. Chairman, had a horror story about eminent domain abuse. Some of them are here now. I'm not going to ask them to speak. I just wonder if they could stand up, if they're still here, a few of them. If nothing else, they can stretch their legs. (people stand)

Thank you.

ASSEMBLYMAN BURZICHELLI: The Chair extends a welcome to everyone who took time to be with us this afternoon. And I assure you that at subsequent meetings, as we piece this together, there will be opportunities to speak, if you care to, at that time.

MR. POTTER: And that is very pleasing to hear. I understand that on March the 6th there will be another hearing?

ASSEMBLYMAN BURZICHELLI: Bill, we're anticipating. We have an order of business before this Committee that may cause that schedule to be altered a bit.

MR. POTTER: Okay.

ASSEMBLYMAN BURZICHELLI: But it is our anticipation to pace that way. We could be off by a meeting session, so we'll know very shortly.

MR. POTTER: Okay. I would hope that my presence today will not preempt anyone else from this coalition, which I believe is expanding as we sit here. I've received e-mails from environmental organizations that want to support us and work with us. David Pringle, from the New Jersey Environmental Federation; Jeff Tittel, from the New Jersey Chapter of the Sierra Club, for example, are all helping us very much. And I expect that whenever you have a subsequent hearing -- I think you used the term an *open mike*--

ASSEMBLYMAN BURZICHELLI: That's correct.

MR. POTTER: --and I think that's a terrific way to proceed as a listening process. I think there will be a lot of people from the New Jersey Coalition Against Eminent Domain Abuse. I might add that we also had people from New York City, Philadelphia, and I think there were even some in there from Connecticut who said, "Let's form the Mid-Atlantic Coalition Against Eminent Domain Abuse." We decided, no, this is New Jersey. We're doing New Jersey first. And we certainly don't want to exclude anyone else from other states, but the issue is so timely and important right

here in New Jersey, right now for thousands of people. And when I say thousands of people, I am not exaggerating at all.

We had a large contingent from the city of Camden. We all recognize that the city of Camden is, and has been for many years, a distressed city. But I wonder if you realize that the entire city has been declared an area in need of redevelopment. And now people in communities such as Cramer Hill -- a stable, lower-to-moderate income area, predominantly Black and Hispanic -- every single person in that community is now facing the prospect of eminent domain so that they will be evicted to make way for higher-income development. That situation is also happening in other cities and other towns across New Jersey -- Mt. Holly, Lodi, Long Branch, Asbury Park, Trenton. It goes on, and it goes on. Therefore, this is a period of intense urgency. I cannot overstate the urgency for these people.

That is why our number one priority, Mr. Chairman -- it's not reform of the Local Redevelopment and Housing Law. And I've given you, through your able staff, copies of a list of some of the points for reform. The number one priority, I believe in my heart and in my mind, has to be a moratorium on any more eminent domain taking of any private property for economic development purposes. I think that has to be categorical. Now, there are several bills pending in this Legislature right now. I'm aware of Assemblywoman Charlotte Vandervalk, Assemblywoman Diane Allen -- oh, I'm sorry.

ASSEMBLYMAN BATEMAN: Senator.

MR. POTTER: That's Senator, excuse me. Wrong House.

(laughter)

ASSEMBLYMAN BURZICHELLI: But we do recognize that House as an equal branch of government, though. (laughter)

MR. POTTER: They are, yes.

ASSEMBLYMAN BURZICHELLI: Yes, we do. We do. Reluctantly on occasion, but we do.

MR. POTTER: The smaller House.

There are several bills pending to have a moratorium and then to establish a study commission. I commend those bills to everyone here. I am hopeful that they will get very close scrutiny and that we can take very prompt action. Barring action by the Legislature, or perhaps even in tandem, we have asked Governor Corzine to use his executive powers to declare a moratorium on any further redevelopment area designations involving residential and private business properties, and any more eminent domain takings of such properties.

If Governor Kean can impose an executive order of moratorium on development of Pinelands to preserve open space, which I strongly supported-- I'm sorry, that was Governor Byrne, going back to the '70s. And Governor Kean did so with respect to freshwater wetlands. If we can save open space, if we can save wetlands, we can save where people live and work every day in our communities.

So I implore you, if nothing else, help us with a moratorium, perhaps through a resolution by this Committee or something similar. There needs to be a halt, because we are facing a veritable frenzy of redevelopment activity.

Now, mind you, redevelopment is an excellent idea to revive our cities and areas. But it must be done in a way that promotes justice for

the people who are actually living there now. They are not detritus. They are not something to be scooped out by bulldozers so that wealthy people can move in. They have stayed there, they've lived there, they've put their lives on the line, and now they're facing eviction and displacement. This is not justice. This is not New Jersey. And I suggest that your Honor will hear-- Mr. Chair. (laughter)

ASSEMBLYMAN BURZICHELLI: That's very nice. Thank you, Bill. Thank you. (laughter) It's a half a step closer to a moratorium.

MR. POTTER: We lawyers sometimes forget which forum we're in.

But I suggest you're going to hear a great deal of stories that will move you to tears, or to anger, but hopefully to action.

Let me say, the first issue that I've set forth here is: Eminent domain abuse begins with abuse of the 1992 Local Redevelopment and Housing Law, the LRHL. I heard a witness say that it really made no substantial changes to the 1949 blighted area. Well, it made a fundamental change. It erased that "odious term blighted area" and substituted an incredibly ambiguous term, *redevelopment area* or *area in need of redevelopment*.

Mr. Chair, there are municipalities where they are voting to declare areas redevelopment areas without knowing what that means. One example, recently, where I advised people in Princeton Junction and West Windsor Township -- I came and gave a talk about this -- they sat there with their jaws hanging open. They thought that a redevelopment area simply meant we're going to improve the area. They didn't think that it meant that the municipality would then have the power of eminent domain of their homes, the power to enact a bond issue that will compel them to

pay for the project, and will forbid them from having a referendum on the bond issue. They didn't realize that it meant that there could be a long-term tax abatement, and a payment in lieu of taxes, that would lead to starving the schools and the county of tax revenues, even though there would be an increase in the need for those services. They didn't know it meant that there could be a master redeveloper selected without competitive bidding, or that a master redevelopment agreement reached, essentially, of indefinite or infinite duration, and on and on. They didn't know.

In Princeton, the members of the Princeton Borough Council did not even know that redevelopment area meant any of those things, yet they voted for it.

Mr. Chair and members of this Committee, I have never before seen an instance where a term embedded in our Constitution -- *blighted area*, Article VIII, Section III, paragraph 1 -- the name has been changed. What do we fear? That people will know what it means? I think so. I think the issue was, they wanted to make it more -- make it easier, more cosmetic, to have this euphemism. Well, it has worked incredibly well. It has worked incredibly well.

Judge Weiss, in Superior Court Law Division in Essex County, actually read that to say that that meant a laxing of the standard. On appeal, the court said, "No, it doesn't mean a laxing of the standard." But in fact, the standard has become essentially whatever the municipality wants it to be.

Again, an example in West Windsor Township, they're using this term *underutilization* or *not fully utilized property*. They're talking about

parking lots for commuters that are packed every day. Not fully utilized simply means there's not a building on them. In West Windsor, they said that the railroad track is not fully utilized, because there's no buildings on them generating tax revenues. In Princeton, they said an area that was generating \$400,000 a year in revenues as a parking lot was underutilized because it doesn't have any buildings on it. Underutilization can mean that your house, my house, the front lawn of this building can be underutilized, because it's not generating any taxes. We've got to tighten up the standards. And this goes on and on.

Now, I've listed them in this outline. I'm not going to go through each and every one of them. But the eminent domain abuse begins with the abuse of Article VIII, Section III, paragraph 1. And in all due respect, that abuse was begun by, I think, the Legislature, and I think unintentionally, in 1992, agreeing to this fundamental change in terminology. It has become too darn easy to say that an area is a redevelopment area. Because it's blighted? No, because we want to redevelop it. And yet, all of the powers reserved by the Constitution for fighting the *cancer of urban blight*, as it was called back in the 1940s -- all of those powers now flow to the municipality.

I suggest to you that this is a violation of the spirit, if not the letter of the Constitution, when it provided for these exceptions to the Uniformity Rule and taxation, and so on and so forth in the Constitution.

The Supreme Court of New Jersey has never ruled on the constitutionality of the 1992 amendments. We've got a lot of lower court decisions. We have some judges who are saying that, "Wait a minute. If you say it's underutilized, or is obsolete or obsolescent, you've got to now

go beyond that and show that this condition is deleterious to the rest of the community.” Those decisions, I think, are taking this two-step process correctly. They’re saying, “It’s got to be a blight on the community,” not just because, “By George, we have a developer who is going to put up a big building on it, if we can just get those people out.” Okay? Other courts are saying, “No, no, no. If it’s underutilized because the planner in XYZ town says it’s underutilized, we’re going to defer to their judgment. Who are we to second-guess elected officials.” So we’ve got these two strains of thought in the courts -- some being strict in their analysis and others being highly deferential. Those decisions have to be adjusted, I believe, starting right here with this Committee.

And there’s a great deal more that I could go onto, but you’ve got my outline. I hope that I will be permitted to reappear with my clients at the next session and perhaps follow through on some of these. Let me just hit a couple of points about the standards. The Legislature, very recently, added Part H to Section V, dealing with standards for what is a redevelopment area. That standard essentially says whatever the Office of Smart Growth designates as being a Smart Growth area is, by definition, a redevelopment area. Now, as we all learned -- for me it was high school algebra -- when A equals B and B equals C , then A equals C . So now we’re saying if it is a redevelopment area because the Office of Smart Growth says, “Growth should go there,” it is now automatically a blighted area, but without ever using the word *blight*.

ASSEMBLYMAN BURZICHELLI: And Bill, if I may, you may have been out of the room. Ed spoke about that from the League. I think he shares your recognition that the addition of that language should not

stand independent of being -- it should be attached to the other provisions. So I don't know if you were here to hear him say that, but I think he recognizes that as well.

MR. POTTER: All right. And believe me, I am very pleased to hear the League of Municipalities and others saying they too agree that there are amendments needed. But again, let me just get back to what I think is the fundamental action that needs to happen now -- is a moratorium. We've got to prevent any further eminent domain abuse. We've got to prevent what amounts to-- This may seem like an exaggeration, but a kind of -- I don't want to say ethnic cleansing, but a kind of cleansing of lower-income people from municipalities, and a cleansing of these smaller businesses. People have poured their lives into their businesses and being told, "You've got to move, because we got a chain store that we want to put in here." This is not justice. I know that everyone of you believes that in your gut. And I know that you want to do the right thing. And my clients -- the Coalition Against Eminent Domain Abuse -- stand ready to help you. They're ready to march. They're ready to vote. They're ready to demonstrate, and they're ready to give you all the evidence that you need.

And thank you very, very much.

ASSEMBLYMAN BURZICHELLI: Well, I thank you. And I wasn't patronizing when I said to you that your testimony is very important to us.

MR. POTTER: I knew it. I didn't take it that way.

ASSEMBLYMAN BURZICHELLI: And I want to also say to you that the word *abuse* has our attention. As Speaker Roberts, who

directed this Chair and this Committee to take up this issue and begin this work recognizes, this is a troubling matter for our residents. We will move at a pace that allows us to be as effective as we can be. Some of the guidance that you've offered, frankly, was shared by some of the people sitting in the chairs prior to you, that recognize that some of these tools, and the tool of eminent domain, is going to have to remain. But very clearly, as you have said, and as others said before you, and it's the sense we're getting, it's how we get to that. And it's a process in the middle, a declaration of the area. It appears to be where the work has to be done.

MR. POTTER: And it's especially important, Mr. Chair, and I don't mean to belabor things. I realize after 4:00 everybody is starting to realize they have other things on their agendas. But one of the fundamental problems is that it's being done in a sort of drive-by manner. Consultants drive through an area. They say, "Well, this is great for redevelopment. We don't care about the individual properties."

To cite an example, in West Windsor every residential -- every home more than 50 years old is being declared obsolete and underutilized. It's not because of anything blighted about those homes -- that were built back in the era of Dwight D. Eisenhower -- that they should be blighted. It's simply to make it easier to acquire those properties.

And then on the other side of the same redevelopment area, businesses and others that have just located there in the last few years, they're also obsolete. But what is not obsolete under that standard?

ASSEMBLYMAN BURZICHELLI: And that of course -- the issue you bring is one of the issues that we recognize -- is our issue.

MR. POTTER: Okay. Forgive me if I seem like I'm preaching to the choir. It's--

ASSEMBLYMAN BURZICHELLI: Well, you're important to us. And that's why we've assembled to do this work. And you talk about how the word *blight* left our laws and rules. Government likes to fix problems, so we just decided maybe there was no blight anymore, so there was not blight. (laughter) So government tries to be effective where it can be effective, so we just took the word away. But we weren't here for that, and I don't know that we would take it away today.

Let me go around the table and see if anyone would like to pose a question. I thought your presentation was very thorough. Anyone?

Kip, finally. I was hoping -- please.

ASSEMBLYMAN BATEMAN: Just a comment. Because in your presentation you list a couple of towns in my district. That's fine. It's Bound Brook and Basking Ridge. I mean, outside of a moratorium tomorrow, I'd like to have your input on how you think we can strengthen the law to protect individuals' rights. So maybe prior to our next hearing you could forward that information.

MR. POTTER: All right.

ASSEMBLYMAN BATEMAN: Because today was basically an outline of your presentation.

MR. POTTER: Yes, it was.

ASSEMBLYMAN BATEMAN: I think you have more materials to share with us.

MR. POTTER: A great deal more, and I--

ASSEMBLYMAN BATEMAN: I'm very interested in receiving those.

Thank you, Mr. Chairman.

MR. POTTER: Thank you, Mr. Bateman. I appreciate that.

ASSEMBLYMAN BURZICHELLI: Lou.

MR. POTTER: I might say, I knew your father and I respected him greatly when he was, also, sitting perhaps there-- Well, no, no. The Court was there at that time. He was over in the other building.

ASSEMBLYMAN BATEMAN: Yes.

ASSEMBLYMAN BURZICHELLI: And Kip carries that family tradition on well, I might add, in the contribution he's making.

Lou.

ASSEMBLYMAN MANZO: I'd be very interested in information you could supply my office with on the changes, and sort of how we drifted from what the Constitution said in '47, as blighted areas, and what applied there--

MR. POTTER: Yes.

ASSEMBLYMAN MANZO: --as to where we got today. If you could outline that--

MR. POTTER: I'd be delighted to.

ASSEMBLYMAN MANZO: --I'd really be interested in that.

MR. POTTER: Thank you very much.

ASSEMBLYMAN BURZICHELLI: Bill, any of that stuff that you develop, please, if it feeds the Committee at large, it will help all of us. And I promise you that we will work at a pace to reach a conclusion, but we intend to be very thorough about how we approach this, because we like to

finish and have New Jersey held up as a model of fairness. And our goal is to restore public confidence that its government is not lurking around the corner to take a person's home.

MR. POTTER: I'm very pleased to hear that.

ASSEMBLYMAN BURZICHELLI: And we recognize our circumstances when the weight of government is the only thing left to improve the social condition. But we want to make certain that the word *abuse* leaves that discussion.

So I thank you for your testimony.

MR. POTTER: Thank you.

ASSEMBLYMAN BURZICHELLI: And I thank everyone here that took time to attend today. This is the first step in what we hope will be a very fruitful effort on the part of this Committee to suggest and to act on whatever change would be appropriate in the best interest of the public.

Thank you.

(MEETING CONCLUDED)