In Need of Redevelopment:
Repairing New Jersey's Eminent Domain Laws

Abuses and Remedies

A Follow-up Report

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To Members of the Public and Policymakers:

The use of eminent domain for redevelopment continues to be a topic of intense public interest and concern to citizens. This is especially true in this most densely populated state in the nation, where a pressing need for redevelopment exists alongside state constitutional limitations intended to protect against the taking of private property for redevelopment, except in carefully delineated circumstances.

One year ago, the Department of the Public Advocate released a report that analyzed, from a general policy and legal perspective, the problems that have arisen in the application of our current redevelopment law.

Social problems also have a human face, however. Some have suggested that, in the absence of detailed evidence of abuse, there is no problem to fix. In response, the department is issuing this second report highlighting particular cases of misuse of the redevelopment process that have violated the rights and disrupted the lives of New Jersey families.

This report is not intended to describe every, nor even the typical, use of eminent domain for redevelopment. Municipalities across New Jersey have used this and other important redevelopment tools to revitalize declining neighborhoods and create jobs, affordable housing and economic opportunity.

But the overbroad statutory authority that permitted the misuses of eminent domain documented here creates a continuing risk. The current statute allows the government to take our homes and businesses without meeting the basic principles of fairness enshrined in the New Jersey Constitution.

The Department of the Public Advocate will continue to advocate for reforms that ensure those constitutional protections are observed.

Sincerely,

Ronald K. Chen

Abuses and Remedies

A Follow-up Report

New Jersey's laws governing the use of eminent domain for private redevelopment are written in a way that leads to abuse. When the government misuses this important redevelopment tool, people can lose their homes without real evidence that their neighborhood is blighted, without adequate notice or hearings, and without fair compensation. Eminent domain abuse has resulted in a growing public distrust of the redevelopment process.

This report, a follow-up to one issued by the Department of the Public Advocate a year ago, is based on a review of recent and ongoing court cases. It documents injustices the courts have identified or we have discovered in our continuing efforts to spur reform.

We have no way to assess how often the power of eminent domain is abused in the service of private redevelopment. Many property owners simply lack the resources to engage in expensive litigation with towns. And even when cases get to court, many are decided without published opinions. What we do know is that abuses occur, sometimes with devastating results for New Jersey residents.

The New Jersey courts must always stand as the final bulwark against injustice, but the Public Advocate continues to support and advocate for legislative reform. The legislature has the power and must summon the will to prevent the kind of unfair treatment that the property owners and renters in these cases have endured.

The Public Advocate's initial report on reforming the use of eminent domain for private redevelopment identified three key elements of legislative reform:

Public Advocate Works to Reform Eminent Domain

On May 18, 2006, the Department of the Public Advocate released its first report on eminent domain reform. That report analyzed New Jersey law permitting the government to take property from one private owner and transfer it to another for redevelopment. The report concluded that current law provides inadequate protections for property owners.

The Public Advocate suggested an array of legislative reforms aimed at restoring fairness while also preserving the tools towns need to carry out essential redevelopment efforts. The Department worked closely with Assemblyman John Burzichelli to negotiate a comprehensive reform bill, A-3257. The bill passed the Assembly in June 2006, but attempts to achieve reform have stalled in the state senate.

The Public Advocate continues to meet with property owners affected by the use of eminent domain for private redevelopment, mayors who have led redevelopment efforts, redevelopers involved with these projects, and other interested parties.

The Department has also filed three "friend of the court" ("amicus") briefs in eminent domain cases pending in the New Jersey courts: *City of Long Branch v. Brower* and *City of Long Branch v. Anzalone, LBK Associates v. Borough of Lodi*, and *Gallenthin Realty Development, Inc. v. Borough of Paulsboro*. In these cases, the Public Advocate has supported property owners and renters who face losing their homes or land to private redevelopment. On April 26, Public Advocate Ronald K. Chen argued the Paulsboro case before the state Supreme Court. Until we achieve legislative reform, it will be up to the courts to stop the abuse.

The Public Advocate will continue to work vigorously to ensure that property owners' rights are protected when towns use eminent domain for redevelopment.

To read the Public Advocate's amicus briefs or first report on reforming eminent domain visit www.state.nj.us/publicadvocate/.

- Tighten the definition of "blighted area";
- Make the process for using eminent domain more fair, open and transparent; and
- Require compensation at a level that allows people to remain in their own communities.[1]

These three changes remain critical. They are addressed in a pending bill, A-3257, which passed the state Assembly last year. Now the Senate must pass a measure that enacts these protections as part of comprehensive eminent domain reform. Additional information about our legislative recommendations is presented at the end of this report.

Forms of Abuse

The Public Advocate has identified recurring abuses in cases involving the use of eminent domain for private redevelopment. These include:

- **Bogus blight** designations, based on scant or superficial evidence, such as chipping paint, loose gutters or weedy patches;
- **Due process deprivations**, in which towns fail to provide clear notice to residents that their property may be condemned and do not hold fair hearings, leading owners to seek review in court, where the rules are also stacked against them;
- **Inadequate compensation and relocation assistance**, leaving people uncertain where and how they will find a new home or launch a new business; and
- **Potential conflicts of interest**, raising questions about whether—in either appearance or reality—public officials stand to benefit personally from the redevelopment projects they approve.

Although we cannot judge the prevalence of such problems, we are confident that they are the exception rather than the rule. Many towns pursue redevelopment with respect for the rights of property owners, and courts regularly uphold the use of eminent domain against challenges by property owners.

Nevertheless, our review of the case law reveals startling injustices. And our review of the statute reveals a system that lacks the basic protections necessary to prevent such injustices.

Thus, owners are left to seek justice in the courts, an expensive undertaking with an uncertain outcome. In most of the cases we discuss, the courts ultimately identified and stopped the abuse. While the owners in these cases cannot be described as lucky, most at least won vindication through means that are out of reach for those with more limited resources.

Bogus Blight

The New Jersey Constitution imposes an important limitation on the use of eminent domain for private redevelopment—a local government may take property for this purpose only if the area is "blighted."[2]

The traditional definition of blight involves deteriorating conditions that are detrimental to the health, safety or welfare of a community. In spite of that constitutional limitation, the legislature has amended the Local Redevelopment and Housing Law over the years to broaden how it defines blight. The legislature has added criteria such as "faulty arrangement or design," "lack of proper utilization," and "not fully

productive." The legislature also eliminated the word "blighted" and substituted the more obscure and seemingly benign term, "area in need of redevelopment." Whatever the label, however, the consequence remains the same: once a town designates an area "in need of redevelopment," it can condemn the properties located within that area.

The current law's vague and broad definition of "area in need of redevelopment" could apply to virtually any property in New Jersey that the government feels it could better utilize or make more productive: any building could have another floor added; any house could be razed to make way for luxury condominiums; and any business could be replaced with a bigger business that generates more tax revenue.

Here are several cases in which towns designated "areas in need of redevelopment" without substantial evidence of blight.

City of Long Branch v. Brower* and *City of Long Branch v. Anzalone[3]

In a quiet corner of Long Branch, three dozen homes are nestled just steps from the Atlantic Ocean. They are modest homes, many former summer bungalows that residents have, over the years, renovated and improved to be year-round residences.

These residents call their neighborhood MTOTSA—an acronym for its three streets, Marine Terrace, Ocean Terrace and Seaview Avenue.

The city and its developers have another name for the area: Oceanfront North Redevelopment Area. To the city, these homes—and the people in them—stand in the way of a multi-million-dollar redevelopment project that spans the entire Long Branch oceanfront.

The city has engaged in a long-term effort to redevelop some genuinely blighted areas. These areas included a burned and long-abandoned amusement pier. In 1994, the city started to investigate whether it should declare MTOTSA and nearby neighborhoods to be "areas in need of redevelopment" under the state eminent domain laws. The city, however, did not provide evidence that the blight of the former pier area—now transformed—infected MTOTSA.

A city inspector completed a superficial assessment of the neighborhood in 1995. He never went inside the homes but rated them based on cosmetic, external features such as "deteriorating" paint or siding and cracked or chipped masonry. A combination of any three such conditions would rate a home in "poor" condition.

Even using these superficial criteria, the inspector found only three MTOTSA houses in "poor" condition. These properties had been vacant for several years.

The city never showed actual blight in MTOTSA. It never produced evidence that the homes were unwholesome, unsafe, or otherwise detrimental to the community. It never proved that MTOTSA was an integral and necessary part of a larger blighted area.

Still, based in part on the inspector's findings, city planners issued a report in January 1996 concluding the area was "in need of redevelopment" within the meaning of the Local Redevelopment and Housing Law. The city found that,

Heaven on Earth

The bugs are bad in Florida. The heat is even worse.

Those are two reasons Lou Anzalone wants to stay in Jersey. But the most important one is this: New Jersey is his home.

The 90-year-old World War II veteran always figured he'd spend his final years relaxing on the porch of his Long Branch home, with the ocean breeze and his family and friends for company.

The City of Long Branch has other plans.

City officials want Mr. Anzalone to give up his house so they can sell it to private developers to raze and build high-rise condos along the coveted Atlantic Ocean.

*Lou and Lillian Anzalone on the porch of the Long Branch home they have owned for 46 years.**

The Anzalones, along with many of their neighbors, are fighting the condemnation in court. But, fearful of losing, Mr. Anzalone, his wife and son, Thomas, spent time this winter looking at places in Florida—just in case.

"I was panic-stricken when they told me they were taking my house," Anzalone remembers. "I looked around. I couldn't find anything in New Jersey. I don't want to move from New Jersey, period. But I gotta have a roof over my head for the few years I have left."

*Photograph courtesy of William J. Ward, Esq.

"I'm looking in Florida where it's supposed to be cheaper," he adds. "I hate it. I can't take the heat. I can't take the bugs. We're down here trying to see our future. My future isn't in Florida."

Like many of their neighbors, the Anzalones say the City of Long Branch gave no notice that it wanted to condemn their home. Instead, officials used fuzzy language, like "area in need of redevelopment." They say it wasn't until the process was far along that they heard words like "blight" and "condemnation" and finally understood what was happening.

By that time, they were forced to hire a lawyer. They have spent thousands of dollars defending their right to keep the home they have lived in for 46 years.

This disturbs the World War II veteran, who supports himself and his wife with a small pension and Social Security.

"Sometimes you wake up at night and you think—eminent domain—this is taking people's home to put other people in their place. This is stealing from the poor people and giving it to the rich," Anzalone says.

"I don't want their money. I want my house. From my back porch, I have a panorama of the whole ocean. It's heaven on earth."

although all but three homes were occupied and well-maintained, the entire neighborhood was "obsolescent" and "underutilized."

Staff of the Department of the Public Advocate have toured many of these homes, which clearly show pride of ownership. Residents say they are devastated at the thought of losing their small spots by the sea.

Gallenthin Realty Development, Inc. v. Borough of Paulsboro[4]

The Mantua Creek flows into the Delaware River near the northern end of the Borough of Paulsboro, Gloucester County. While most of the land near the Delaware has been developed with a mixture of homes and industry, a few tracts remain undeveloped.

Barely a mile from busy highways and half surrounded by a railroad freight line, commercial buildings and suburban homes, 63-acres of trees and marsh grasses survive.

This site is shown as wetlands on official maps prepared by the New Jersey Department of Environmental Protection. Like other wetlands, it is protected by both federal and New Jersey law.

Over the past 40 years the State of New Jersey has spent millions of dollars to preserve a wide variety of undeveloped lands. Both science and the state legislature have long recognized the value of preserving open space, especially wetlands, which provide a host of environmental and practical benefits such as filtering runoff and containing flood waters.

Despite this, Paulsboro officials determined the area was blighted because it was "not fully productive" and suffered from a "lack of proper utilization."

The court upheld this designation and stated "there was substantial credible evidence in the record from which it could have been reasonably concluded that there was 'a growing lack . . . of proper utilization'" of the property, "'resulting in a stagnant or not fully productive condition of land potentially useful and valuable'" for benefiting the community by providing a site for "new business, job creation, enhanced tax base and increased use of the rail line."[5]

Under this reasoning, any undeveloped land in New Jersey can be considered "blighted." Not only is this bad policy that runs contrary to the state's goals of preserving wetlands and open space, it is yet another expansive interpretation of what constitutes blight, giving local governments wide latitude to take land and transfer it to another private party for redevelopment.

The Public Advocate has argued before the New Jersey Supreme Court that the blight designation in Paulsboro is unsubstantiated by the evidence, contradicts wetland preservation laws, and goes beyond the state constitutional limitations on the use of eminent domain for private redevelopment.

LBK Associates v. Borough of Lodi[6]

On a stretch of Route 46 that runs through Lodi, a neighborhood of house trailers sits behind small retail and manufacturing businesses that abut the highway. Both Costa Trailer Court and Brown's Trailer Court have been there for decades, occupying roughly 20 acres and home to more than 200 people.

"A Gift from God"

Kendell Kardt had just married a woman with a 4-year-old child. He was renting a basement apartment from his cousin, but the cousin did not want any additional tenants.

Kardt's new wife was staying in an emergency shelter with the child, while Kardt searched for housing.

"When we found this mobile home it was a gift from God," he remembers. "I could get them off the street. I didn't have to worry about that little kid living on the street."

The marriage only lasted a few years, but both Kardt and his wife had found a place to call home. Kardt gave the trailer to his ex-wife, who still lives there seven years later. In 2005, he bought another home in the same park.

Kendell Kardt practices at his music studio inside his trailer home in Lodi.

"This is the first time in my life that I've actually owned anything," Kardt says. "I'm a professional musician. I've always earned a modest income. Living anywhere has always been a challenge."

"The people here don't make a lot of money," he adds. "To be able to live decently is incredible for them."

Kardt is one of the chief organizers of Save Our Homes. He spends a lot of his free time working on behalf of the residents to fight the borough's attempts to condemn their homes. In these efforts, he has been buoyed by local residents' support of their fight.

"Most of the people locally didn't want anything to do with the redevelopment project because they're decent people," he says. "Decent people understand that kicking 240 people out of their homes is, well, disgusting. Even people paying really high taxes get that."

Kardt says the government should be barred from simply deciding that a neighborhood isn't good enough. They shouldn't be allowed to take people's homes to build something they think would look better—and generate more taxes.

"This isn't just about trying to make your town look like a picture on the postcard," he says. "This is about people's lives. The people who live here are mechanics, janitors. They do something useful. They won't be able to afford to live here if they take this park away."

He says the borough never had a plan for relocating the residents. There was talk that the city would offer up to $4000 for rental expenses over three years. That, Kardt notes, is barely enough for a security deposit and the first month's rent.

"There was nowhere for us to go," he says. "They never had a plan for us. Go away. That's it."

Kardt is optimistic, however, that the residents will prevail.

"I think we'll win. I hope so," because losing would mean homelessness for a lot of the residents, Kardt says. "Most of us have no savings. We live paycheck to paycheck. Have we thought about where we'd go? What's to think about? There really aren't many choices."

The feeling of community in the neighborhood is palpable. Children play ball and dash in and out of the trailers of their friends and neighbors. Older people take strolls, some pushing their spouses or companions in wheelchairs. Residents check in on one another and follow local events in the *Community News*, a free newsletter produced and distributed by one of the residents.

For many residents, this is the only chance they will ever have to claim a place of their own. In interviews with the *Herald News*, however, the then mayor of Lodi questioned whether it is "normal" for people to be "living on a bus on Route 46." (November 16, 2006). Calling the location "prime real estate" (November 16, 2006), he insisted that the borough "need[s] the tax ratables" that redevelopment would bring (August 6, 2006).

The town is considering a redevelopment plan that would replace the trailer courts with 116 age-restricted "active adult villas," 150 age-restricted "active adult apartments," and "an upscale retail mall."

The cheapest rents in the new development would run $1500 per month—far out of reach for the park residents. The redeveloper promoted the proposal by projecting that it would generate more than $3 million in annual tax revenues, as opposed to the $250,000 produced by the property currently. The redeveloper also maintains its plan would decrease the burden on the school system, presumably because senior residents would displace the families with children currently living in the trailer parks.

The parks' owners, Leonard Costa and Robert Bonanno, along with a dedicated group of residents, are fighting those plans.

In 2002, Lodi started to investigate whether it should declare these properties to be part of an "area in need of redevelopment." Lodi officials hired professional planners to study the area and make a recommendation. Relying on tax records, public information, aerial photography and outside-only inspections, the planners concluded the area was "blighted" within the meaning of state law.

Mr. Costa and Mr. Bonanno also hired professional planners, as well as lawyers to represent them in the redevelopment process. These planners refuted many of the town's claims, finding no dilapidated trailers, no citations for health, fire or building code violations, and no traffic problems, noting that the borough had routinely issued certificates of occupancy for the trailer homes.

All of this evidence was submitted in eight hearings before the Lodi Planning Board between August 2002 and June 2003. On June 11, 2003, the planning board sided with the town planners and recommended that the area be declared "in need of redevelopment." On October 20, the mayor and council passed a resolution adopting that recommendation.

Within six weeks, Costa and Bonanno filed cases challenging the decision in the Bergen County Superior Court. The case went to trial on September 22, 2005. The trial court dismissed the town's planning reports as "vague criticism of the conditions at the complex upon superficial observations."[7]

> The [town's] expert admitted that he had not completed a trailer by

> trailer analysis. [He] could not point to one single unsanitary condition, or a condition that would make the area unlivable. The defendants could not explain, other th[a]n stating it as a conclusion, how the property was suffering from a complete lack [of] proper utilization in contrast to the plaintiffs, who provided evidence that the property was successfully operating as a provider of low income housing.[8]

The court also noted "there were no safety or health hazards [and] no excessive police activities," and remarked that, far from being a drain on the town's resources, "the land, as utilized, generated revenue in terms of license fees and taxes."[9]

In short, the court concluded, "there was a complete lack of detailed specific proofs as to why this property should be designated as in need of redevelopment."[10]

The residents celebrated the victory, with the *Bergen Record* reporting that the vice president of the residents' group, Save Our Homes, "drove through the trailer parks in the rain in her nightgown distributing copies of the court decision" (October 9, 2005).

Their feelings of relief and vindication were short-lived. On December 8, 2005, the town filed an appeal, and the parties once again marshaled their arguments for and against the blight designation.

On January 30, 2007, the parties and the Public Advocate presented oral arguments in the Appellate Division in a small courtroom in Hackensack that was packed with residents of the trailer parks. They arrived in wheelchairs and on walkers. They rode in vans and in their neighbors' cars. The young and the fit stood so others could sit. Now, they anxiously await a decision that will determine whether they still have a place to live.

Quagliariello v. Township of Edison[11]

Salvatore and Elvassa Quagliariello owned a parcel of land in Edison Township on which they ran a towing company and school and charter bus services. They also rented adjacent properties to residential tenants. In 2002, the township declared their property to be in need of redevelopment.

Although the township planner found no tax liens, no violations of building, safety or health codes and no other objective evidence of blight, he concluded that the site's layout was obsolete and had been in a stagnant and unproductive state for more than 10 years. Based on his report, the planning board found the property was an "area in need of redevelopment."

The Quagliariellos sued to challenge that designation. The trial court noted the only evidence the township presented to support its designation was "a pothole in the pavement, two boarded-up windows, a few cracks, and a gutter that needed to be cleaned." The court observed that the property was "kept in

better condition than many people keep their own homes." They "are certainly not deteriorated, nor are they violating any laws, regulations, or ordinances."[12]

The court noted that the intended redeveloper for the site had failed in his bid to build a Walgreen's in a wooded area across the street. The public had vehemently opposed the project in that location, and the town apparently sought to secure an alternative site for him.

The evidence convinced the court that the township's efforts to take the property were unrelated to any real public purpose, but spurred by the singular and "improper motive" of benefiting another private party.[13]

"This court finds that there is simply no basis on which anyone could conclude that redevelopment is necessary other than for a desire to construct a Walgreen's Pharmacy."[14] The court concluded that the taking of the Quagliariellos' properties was "purely for private use and therefore unconstitutional."[15]

Edison voters have since passed a referendum banning the use of eminent domain for private redevelopment in the township.[16]

ERETC v. City of Perth Amboy[17]

In this case, the owner of a light manufacturing building in Perth Amboy sued to challenge the inclusion of its property in an area designated as "in need of redevelopment."

The owner used part of the building for his own business and rented the remainder to commercial tenants. He testified that "the building houses thriving businesses and has never been cited for code violations, except for overgrown weeds. [He] has invested more than $300,000 to improve the building over the last five years, and one of the tenants, a manufacturer of hydraulic equipment, spent approximately $225,000 to install its equipment in the building."[18]

He testified further that "the building's tenants are among the City's largest employers."[19] At 65-75% of capacity, 345 people worked in the building, and the owner noted that it "could be fully occupied but for the City's requirement that potential tenants sign a letter acknowledging that they agree to move on demand."[20]

Nevertheless, the trial court dismissed the property owner's lawsuit and upheld the designation, finding it was based on substantial evidence. The owner appealed.

The Appellate Division rejected the city's decision to include the building in the blighted area, finding it was based not on a careful investigation but on "conclusory" testimony by the city's planner. According to the court, the planner

> failed to include any evidence to support his determination that buildings were "substandard, unsafe, unsanitary, dilapidated, or obsolescent." He acknowledged that he did not inspect the interiors of the buildings, did not review applications for building permits, did not review occupancy rates or the number of people employed in the area. . . . His only negative finding was with reference to the "underutilized" parking lot on plaintiff's property.[21]

"In our view," the court concluded, "the evidence presented to the Planning Board, Council and trial court was not sufficient to sustain a finding that the propert[y] . . . met the criteria set forth in [the law]."[22] The court therefore reversed the blight determination.

Due Process Deprivations

The condemnation of a person's home or business infringes fundamental human rights and triggers due process protections.

Following United States Supreme Court precedent,[23] the New Jersey courts have held that "'[t]he critical components of due process are adequate notice, opportunity for a fair hearing and availability of appropriate review.'"[24] Thus, before taking a person's property, the government must provide meaningful notice of its intent to use eminent domain and a forum in which affected persons may object. If the government decides to proceed over an objection, the person must have an opportunity to seek impartial review before a court.

New Jersey's Local Redevelopment and Housing Law includes provisions for notice, municipal hearings and judicial review,[25] but these provisions are insufficient.

The statute does not require residents to be warned in plain language that their property might be taken. Instead, the law allows municipalities to rely on euphemisms informing people that their land is within the boundaries of an area under investigation for redevelopment. In addition, the statute fails to mandate notice to tenants, but only to property owners.

To make matters worse, the statute states that a blight designation is valid even if the municipality fails to mail notice of any kind to affected property owners.[26] Thus, the statute allows municipalities to move forward with redevelopment without ever sending a single letter. Owners are then left to challenge the lack of fair notice in court and to prove that the town violated their constitutional rights.

As to the municipal hearings, the statute fails to guarantee that objectors can bring their own witnesses or question the municipality's witnesses, lacks any requirement that testimony be under oath, and does not ensure the municipality will produce official transcripts of the proceedings. If a property owner pursues the case all the way to court, the law allows only 45 days in which to file the appeal, places the burden on the property owner to prove the blight designation is invalid, and establishes a standard of judicial review that protects all but the most blatantly unsupported designations.[27]

These many holes in the law have resulted in violations of people's right to adequate notice, fair hearings, and impartial review.

Stealth Takings

City of Long Branch v. Brower* and *City of Long Branch v. Anzalone

By their own accounts, the homeowners in Long Branch's MTOTSA neighborhood were surprised when the city moved to take their properties. City officials maintain they provided the required notices when they held a hearing on the blight designation in January 1996, but if letters were mailed to the property owners, they do not appear in the court record.

What does appear there is troubling. When a fire official went to inspect the neighborhood for signs of blight in August 1995, he reported back to the city planning director, "We did not make interior inspections, but as per your instructions. We did not reveal the nature of the inspections to the owners or residents when they made contact with us."

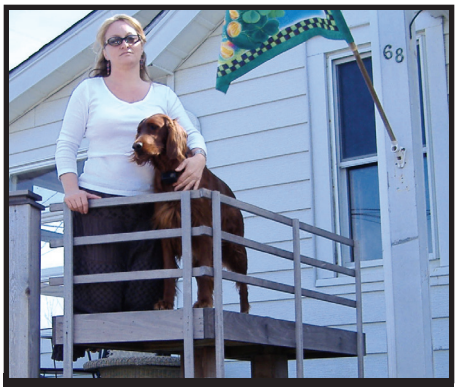
"America Needs Us to Win"

Denise Hoagland has seen more sunrises in the past 14 years than most people see in a lifetime.

But, these days, the peacefulness of those early morning hues is fleeting.

"Besides waking up to an ocean view, I have to say our family is under more stress than we've ever been," Hoagland says. "It's turning quite ugly."

Hoagland has led the fight against eminent domain abuse in her neighborhood. She has spent hours at city hall, poring over documents, attending meetings, talking to lawyers and town officials, trying to understand how she could be losing her home without ever knowing it.



Denise Hoagland on the deck of her Long Branch home

"I thought, 'I live in America. That can't happen,'" Hoagland explains. "If they were going to take my home, wouldn't they at least have to send me a letter?"

Hoagland had closely followed the Long Branch redevelopment project, fearful that her home might be a target. She remembers going to a meeting at the Hilton Hotel in Long Branch fairly early in the process. A display depicted the entire beachfront redevelopment project. She could see her home. It was still there, porch and all.

"We felt safe," she remembers.

That feeling of security was shattered when the Hoaglands applied for a permit to install a deck around the house. The city said she would have to sign a waiver stating she would not seek compensation for the improvement if redevelopment were to become a reality, Hoagland says.

That raised a huge red flag. "They went about this in a very silent way," Hoagland says.

She and her husband began to consult with lawyers, intent on keeping the home she had fallen in love with 14 years ago. She wanted to preserve the place where she had planted her garden and given birth to her daughters.

In the beginning, she had no idea of the long, bitter fight she faced. Now, there are some days when Denise Hoagland wants to give up.

"A lot of our neighbors have left. The neighborhood has changed a lot. It's affected my children. I've lost friends. I don't feel comfortable at PTA meetings anymore," she says.

"My husband and I are very happy together. I have three wonderful honor-roll children. We could drive off into the sunset and live happily ever after."

But something keeps her going.

Hoagland recalls an incident several years ago when an African American man drove into her neighborhood. Hoagland was in the yard, working on her garden. The man stopped and asked about the signs scattered throughout the neighborhood that protest eminent domain abuse. She explained the situation to him.

He was quiet for a minute and then he drove slowly down the street. He parked on the ocean road and walked along the beach. Then he got back in his car and cruised around the neighborhood for awhile. Finally, he stopped again in front of Denise Hoagland's house, where she was still working in the garden.

"Can I ask you a question," the black man said.

"Sure," Hoagland replied.

"How does it feel to be oppressed?"

Until that moment, it had never occurred to Hoagland that she was being oppressed. But she suddenly understood. And so she keeps fighting, not only for herself and her family, but for people everywhere.

"I think America needs us to win."

As planning moved forward, the owners had reason to feel reassured about the fate of their homes. One of the objectives stated in the proposed redevelopment plan was to "conserve sound, well-maintained single-family housing to the extent possible, and encourage residential development through infill." (Infill is the building of new structures without destroying existing ones.)

The city also produced and distributed design handbooks with color-coded maps that marked the MTOTSA neighborhood for "infill residential" and displayed a three-dimensional model of the redevelopment area with the small houses of MTOTSA intact. One resident, Denise Hoagland, recalls looking at the model and seeing her home, "porch and all." Other residents, Lou and Lillian Anzalone, allege that city officials told them their house would not be condemned.

Because at least some of the owners attended a public hearing on the blight designation, the city argues they must have had notice. The city points to its compliance with the legal obligation to publish the resolutions and ordinances associated with the redevelopment process in local newspapers.

But a family that may lose its home should not have to sift through pages of small-print legal notices in the back of their newspaper to understand that their home is a potential target of eminent domain. They are entitled to individual notice, and that notice must make clear what is at stake.

Whatever the MTOTSA residents knew or did not know about the meetings the city held in connection with the redevelopment, they never received any direct communication, written in plain language, that told them they must appear at the meeting and object or risk losing their homes. It was only when the city filed the condemnation proceedings now pending against them that they hired lawyers to defend their property.

City of Passaic v. Shennett[28]

Charles Shennett's family had owned the property at 254 Summer Street in Passaic since 1925. Mr. Shennett received the land from his aunt in 1986. Although the house that had been on the property burned down that year, Mr. Shennett continued to pay taxes until the end of 2004. When he did not receive a tax bill in 2005, he contacted the town to find out why. Town officials told him he no longer owned his family property. The town had condemned the land and transferred it to Wayne Asset Management, owned by former Passaic City Councilman Wayne Alston.

Mr. Shennett had never received direct notice from the city. The city did not attempt to hand him the papers in the condemnation action in person, as court rules require.[29] And the city claimed that the notice it sent him in the mail was returned. The court noted, however, that the city had "consistently mailed tax bills to defendant's correct address."

On May 5, 2004, the trial court entered an order authorizing the taking. Because Mr. Shennett had no notice, he did not appear. In June 2004, the court entered a "default judgment," allowing the city to take title to the property on the condition that it set aside for the absent owner the money the court decided was due.

After learning that his property had been taken and sold, Mr. Shennett asked the

trial court in April 2005 to vacate the orders leading to the taking, but the court refused.

He filed an appeal. The Appellate Division reversed, holding that Mr. Shennett "must be given the opportunity to challenge the City's authority to condemn as well as its authority to set just compensation." In sum, the court concluded, "Without due process, the default judgment is void."[30] The appeals court sent the case back to the trial court to permit Mr. Shennett a fair opportunity to fight the taking.

Anemic Judicial Review

In court, the "standard of proof" establishes how difficult it will be for a party to win a case. In criminal matters, for instance, where a defendant can lose his liberty, the prosecution must prove every element of the crime "beyond a reasonable doubt."[31]

In a child abuse or neglect case, where a parent may lose custody of a child, the state must prove by "clear and convincing evidence" that the parent is unfit.[32]

In an ordinary civil case, where one private party sues another for an injury or to complain about a breach of contract, the party who presents a "preponderance of the evidence"—more than the opponent—wins.[33]

Although condemnation deprives a person of property, and although property ownership is protected under the federal and state constitutions,[34] current state law establishes a low standard of proof—lower than in any of the instances described above.

The Local Redevelopment and Housing Law states that a blight designation must be supported by "substantial evidence."[35] This means a town can win an eminent domain case even if the property owner presents *more* evidence disproving blight than the town presents to support its blight designation.

To make matters worse, the New Jersey courts have interpreted the "substantial evidence" test in a way that robs it of what little force it might have. A recent Appellate Division decision upholding the use of eminent domain in Asbury Park articulated the standard this way: "Like other legislative enactments, [takings] are presumed valid and will be upheld where 'any state of facts may reasonably be conceived to justify [them].'"[36] Under this formulation, property owners will lose their homes or businesses unless they can prove that the taking is irrational or tainted by misconduct.

Once the standard of proof is established, litigants must also know who bears the "burden of proof." The burden of proof refers to which party must submit evidence and persuade the court of its position. When constitutional rights are at stake, the government usually bears the burden of presenting evidence and persuading the court that it has met the applicable standard. For example, when the state seeks to deprive a criminal defendant of liberty, the state must prove him guilty; the defendant does not need to show his innocence.[37] And when the state deprives someone of free speech, it must show a compelling need for its actions.[38]

Again, eminent domain cases are an anomaly. In these cases, it is the property owner, not the municipality, who bears

the burden of proof. Instead of asking the towns and cities to support their blight designations with substantial evidence, the courts hold that property owners "ha[ve] the burden of . . . demonstrating that the blight determination was not supported by substantial evidence."[39]

Given this, it is hardly surprising that the trial court in *City of Passaic v. Shennett* held that even a property owner whose land had been sold without his knowledge could not challenge the taking: "'He would have to upset [the City's] power of condemnation, [the City's] right to condemn, which is difficult,'" the trial court wrote.[40] And difficult, it certainly is. While the Appellate Division gave Mr. Shennett another chance, families and businesses fighting blight designations in court must surmount high hurdles.

Inadequate Compensation and Relocation Assistance

Redevelopment projects tend to displace people with low to moderate incomes more often than affluent property owners or tenants. This is largely because blighted areas are generally poorer areas. Yet decent housing for low- and moderate-income people has long been notoriously scarce in New Jersey.[41] Housing costs here are fourth highest among all states in the nation (after Hawaii, California, and Massachusetts).[42]

When the government uses eminent domain for private redevelopment, therefore, it incurs a strong obligation to compensate owners and renters fairly and to assist them in relocating. Unfortunately, the law fails to ensure fair compensation or adequate relocation assistance.

"The Trailer Park Today, Your House Tomorrow"

Judy Kuchenmeister has been living under the threat of losing her home for a long time.

She moved into Brown's Mobile Home Park 33 years ago. Even back then, there were rumors that someone wanted to buy the park, drive out the residents and make the area into something "better."

But it never got this close.

"You're like walking on eggshells all the time," says Kuchenmeister of the wait for another court decision.

And she worries that even if the court decides in the residents' favor, the town might try to start the redevelopment process all over again.

"That's the part that's really depressing," she says. "You don't mind living like this for awhile. But not forever. Sometimes, it feels like this will never be over."

Kuchenmeister also worries about what will happen to her and the other residents if they lose.

"Some of the people are on fixed incomes," she notes. "If they did close the trailer park, there's a 10-year waiting period for public housing. Where will they go?"

The former bookkeeper lives alone, with just her cat, Diva, to keep her company. But she finds community in her caring neighbors.

"It's much more of a community," she says. "How many people know their neighbors? People here know each other. They help each other."

Kuchenmeister understands that the battle being waged in Lodi is just one fight. Under the current law, she knows that just about any property could become a target of eminent domain.

"It's the trailer park today, your house tomorrow."

Judy Kuchenmeister, front left, shares coffee with her neighbors.

Both the federal and the state constitutions require "just compensation" when property is condemned,[43] but this standard is not always met. Moreover, even if the owner receives the fair market value of the condemned property, this amount may be insufficient to allow the owner to purchase comparable property in the area.

The state Relocation Assistance Act is supposed to help fill the gap, but the levels of compensation it sets have not changed since the law took effect in 1972. The statute authorizes payment of up to $15,000 of the difference between the price a homeowner receives for a condemned residence and the cost of purchasing comparable alternative housing.[44]

Although the language in the statute appears to set a cap, the Commissioner of the Department of Community Affairs issued a decision in 2005 holding that the "$15,000 amount . . . was not intended to be an absolute ceiling."[45] Because the decision is recent, it is not yet clear in what circumstances the government may or must spend more than $15,000 to help owners secure replacement housing.

A "comparable replacement dwelling" is defined as "[d]ecent, safe and sanitary," about the same size and age as the former house, in approximately the same state of repair, in a similar neighborhood, and reasonably accessible to the displaced person's place of employment.[46] The new house need not be in the same municipality as the one taken.[47]

Displaced renters face an even more uncertain fate than owners. A few may be poor enough to qualify for federal or state rental subsidies and lucky enough actually to get such assistance.[48] The waiting time for housing vouchers, however, often stretches into years.[49]

The rest will have only what is available under the laws on relocation. Tenants may receive up to $4,000 over four years to lease or rent a replacement home.[50] The payments are calculated to help make up the difference between the rental the tenant was forced to leave and the new one.[51]

The Department of Community Affairs Commissioner has issued no decision on whether these caps may be exceeded, but the relevant regulation suggests that only the legislature may raise the ceiling.[52]

Current law also limits the compensation provided to owners of businesses and farms. The relevant statutes contain no guarantee that business owners will be compensated for the value of their location or their reputation for dependability and quality. Beyond whatever "just compensation" is awarded, the owner is entitled to actual moving expenses, reimbursement for loss of crops or other property, and reasonable expenses associated with the search for a replacement farm or business.[53] If the owner chooses a fixed payment instead of reimbursement for these actual expenses, that payment is tied to average annual net earnings for one year, but may not exceed $10,000.[54]

The total compensation offered under these laws is often insufficient to allow displaced homeowners, renters, business owners and farmers to continue to live or work in their communities. And sometimes the price the government offers for a condemned property significantly understates its worth.

LBK Associates v. Borough of Lodi

The tenants of the Lodi trailer parks face special problems with relocation. Some own their house trailers and rent the "pads" on which they sit. Others rent both trailer and pad. If the Lodi parks are condemned, the trailer owners will find few alternative locations for their trailers in northeastern New Jersey,[55] and, because the trailers themselves will not be taken, the owners will receive no compensation for them.

If they look for other types of rentals instead, they will find little or nothing in the price range they pay now. The rents in the parks range from $350 to $650 per month. The fair market rent for a two-bedroom apartment in Bergen County is $1,163.[56]

Some of the park residents are senior citizens or have disabilities and live on fixed incomes. Others work as waitresses, janitors, supermarket cashiers, warehousemen, musicians, teachers, or artists. The average income of park residents is less than $30,000 a year. The minimum income necessary to afford the fair market rent for a two-bedroom apartment in the county is $46,520.[57]

The $4,000 over four years that might be available would not even begin to close the gap. Their hopes lie instead with winning in the Appellate Division and staying in the community that is their home.

City of Passaic v. Shennett

On June 16, 2004, when the City of Passaic took Mr. Shennett's land without his knowledge, the trial court set the price at $14,730. The city was required to deposit that amount with the court, to be held for the owner when he appeared. Just a week earlier, however, the city had agreed to resell the property to a business owned by a former city councilman for $60,000, more than four times the "just compensation" awarded to Mr. Shennett by the court.

When Mr. Shennett discovered and challenged the deal, the court ordered a new valuation of the property. With notice this time around, Mr. Shennett submitted his own appraisal, and the property was valued at $78,000. It remains to be seen whether Mr. Shennett will succeed in stopping the taking altogether or will ultimately accept this more realistic price for his property.

City of Long Branch v. Strahlendorf

Not all of the residents in Long Branch's redevelopment area have held on to their homes. Some have sold voluntarily or been forced out. The Strahlendorfs were in the latter camp. They had a two-story, five-bedroom house fronting the beach where they had lived for more than 20 years. After the condemnation, the city offered them $179,500 as "just compensation."[58] They went to court to fight for more. On July 15, 2003, a jury awarded them $500,000. Although the city complained that the verdict was based on a "'fundamentally and legally invalid approach,'" it failed to file an appeal within the period set by the rules of the court.[59]

Potential Conflicts of Interest

The Local Government Ethics Law[60] mandates compliance with certain ethical standards and specifically prohibits a variety of potential conflicts. Among these:

> No local government officer or employee or member of his immediate family shall have an

> interest in a business organization or engage in any business, transaction, or professional activity which is in substantial conflict with the proper discharge of his duties in the public interest . . .
>
> No local government officer or employee shall act in his official capacity in any matter where he, a member of his immediate family, or a business organization in which he has an interest, has a direct or indirect financial or personal involvement that might reasonably be expected to impair his objectivity or independence of judgment . . . .[61]

This statute incorporates principles long recognized under the common law. Those principles include the guarantee of a fair and impartial tribunal, which precludes "the participation of public officials in matters in which they have a personal interest."[62]

Under both the common law and the Local Government Ethics Law, an official action is void if a public official participating in it has some "direct or indirect financial or personal involvement" in the outcome that calls his or her impartiality into question. The following eminent domain cases raise concerns about whether public officials had an impermissible special interest in the outcome.

City of Long Branch v. Brower* and *City of Long Branch v. Anzalone

The MTOTSA homeowners allege that three members of the Long Branch City Council, and two of the law firms that have represented the city at various stages of the redevelopment process, had conflicts of interest between their official positions and their business interests.

Those alleged conflicts involved one of the redevelopers and a bank that loaned money to that redeveloper. The legal question is whether a citizen, knowing the relevant facts, might reasonably believe the city leaned toward a certain redeveloper or bank in part because of business interests that one or more of its councilmen and lawyers had with those entities. The test is therefore one of appearance as well as reality.

One of the city councilmen was the bank's senior vice president and chief financial officer and the treasurer of its holding company, and another was employed by the bank as a messenger. Both of those councilmen and a third member of the council also owned shares in the bank. One of the city's attorneys had represented the bank and sat on its board of directors, and had represented one of the redevelopers. Another of the attorneys that had represented the city in its redevelopment efforts had also represented that redeveloper and sat on its board of directors.

The homeowners knew some information about the bank's loans to the redeveloper and the lawyers' relationships with the bank and the redeveloper but wanted full details of the relationships to determine whether there was a conflict. The homeowners asked the trial court to allow discovery to determine whether any of these councilmen had a personal interest that could impair his objectivity when casting any of the council votes approving the redevelopment and condemnation process. The courts usually allow discovery when such questions arise.

Freedom Lost

Tony DeFaria fought in World War II. He fought for his country. He fought for democracy. He fought for freedom.

That is what hurts his wife, Ann, the most. The 81-year-old Long Branch resident sees that freedom eroding away, one house at a time.

“My husband went to war for our freedom,” DeFaria says. “This is what upsets me most. I’m very patriotic. What they’re doing is scary. It’s unconstitutional, it’s unfair and it’s corrupt.”

“I could sit and cry all day,” says the mother of four, grandmother of seven and great-grandmother of six.

“Only by the grace of God do I get by.”

Ann DeFaria stands inside her Long Branch home.

Known around the neighborhood as Miss Ann, DeFaria and her husband bought the small bungalow on Marine Terrace 46 years ago. Back then, they lived year-round in Newark, raising their four daughters, spending summers in Long Branch and making friends with their seaside neighbors, many of whom came from the same Newark neighborhood.

“The kids couldn’t wait to come down here,” she remembers.

Over the years, the DeFarias made improvements to the tidy blue house, with its ocean views and small backyard. Eventually, they moved in full time, completely renovating the house and building a modest addition.

“We figured we would stay here until the Big Guy called us home,” says DeFaria, who lost her husband of 50 years in 1996, long before the neighborhood became embroiled in its eminent domain battle.

Now, the homes on either side of the DeFaria residence are boarded up. The same person owned both and sold out to the city. When she looks at those houses, she gets angry. To her, they are proof that the city is destroying her cherished neighborhood, little by little.

“I want to replace my fence, but I don’t want to spend the money if I have to move,” she explains. “Plus, they won’t give us permits to do anything. They are making us blighted.”

Like many of her neighbors, DeFaria got an inkling that something was amiss when the city refused to issue a permit for improvements to her home.

“I never remember opening a piece of mail and thinking, ‘They’re going to take my home,’” Ann says.

The former preschool teacher is hanging her hopes on the court case now before the Appellate Division.

“That’s the only hope I have,” she says. “We’re going to win this case. God is on our side. He wants us to be happy in our last years. We worked hard for that.”

And what happens if the residents lose?

With an income of $1,100 a month, Ann DeFaria has few choices—and even less freedom.

“Where can I go and buy a home that’s well insulated, has a new boiler, new heater, 1-1/2 baths, Anderson windows?” she wonders. “I have a nice little house. I have no mortgage. I have no idea where I would go.”

The trial court here, however, denied their discovery request on these critical questions, and dismissed the ethics allegations. The court reasoned that the homeowners failed to show any detriment to themselves from any alleged conflicts. Yet the financial relationships between the councilmen, the lawyers, the redeveloper, and the bank at least raised the possibility of influencing the city council to condemn the homeowners' neighborhood and the lawyers to advise in favor of condemnation.

The homeowners should have had a chance to develop a full and fair record on whether these overlapping relationships would, in the perception of a reasonable citizen, create a substantial risk of impairing the independent judgment of the city officials in deciding to condemn these homes. Without these critical facts, it is unclear how the trial court could have ruled that the potential conflicts of interest were "tenuous" or not "realistic."[63]

Township of Bloomfield v. 110 Washington Street Associates[64]

The conflicts in this case led the property owner on a classic "run-around." The owner of this commercial property challenged the Bloomfield Township's condemnation authority for several reasons, including a conflict of interest by the attorney for the township, its planning board and its zoning board.

The property owner signed a contract to sell the building to a purchaser who intended to use it for light industrial purposes. The purchaser applied to the planning board for approval of this proposed use. A zoning official advised the purchaser to apply to the zoning board for such approval instead. The purchaser applied, and the zoning board held public hearings on the application.

Shortly afterwards, the township council adopted a resolution requesting that the planning board conduct a preliminary investigation to determine whether an area within Bloomfield, including the property in question, qualified as an area "in need of redevelopment."

Around the same time, the zoning board approved the purchaser's proposed use of the building by granting a "variance" but also decided it had received erroneous advice from its own attorney and that a variance was not necessary. Nevertheless, the zoning board directed the township zoning official to issue permits and a certificate of occupancy to the purchaser. Four weeks later, however, the zoning board decided that, because a variance had not been necessary in the first place, it had no jurisdiction to grant one. It rescinded the purchaser's approvals and referred the purchaser back to the planning board.

The purchaser appealed the zoning board's rescission of the variance to the trial court. The issues included the role of the attorney for the township and its two boards. The trial court later described that attorney's role:

At all relevant times, the same attorney represented [the Township], the Zoning Board and the Planning Board. [He] was counsel to the Planning Board when it advised the applicant to apply to the Zoning Board, to the Zoning Board when it held hearings and determined to grant a variance although it deemed the application unnecessary, and to the Zoning Board when it reversed that decision, citing an alleged lack of jurisdiction to hear and decide the application. He also represented the Zoning Board on the appeal [to the Superior Court], wherein the reason for the reversal was that the Board had been erroneously advised by its counsel [i.e., himself].[65]

The result was that "[t]he applicant received contradictory direction from two boards, both represented by the same attorney."[66] The court reversed the rescission of the approvals. Due to the delay, however, the purchaser had terminated the contract and did not buy the property, leaving it vacant. Four years later, when the township sued to condemn the property, it relied on the vacancy as the reason for the taking.

The trial court dismissed the township's condemnation complaint, finding that the same attorney's representation of three municipal entities violated the conflict of interest laws.

Fixing Eminent Domain Abuse

To prevent the types of abuses outlined in this report, New Jersey must enact legislative reforms that better protect the rights of tenants and property owners.

Since the U.S. Supreme Court affirmed the constitutionality of using eminent domain for private redevelopment in its 2005 *Kelo v. New London* decision, more than half of the state legislatures across the country have enacted reforms to limit the use of eminent domain for private redevelopment, to enhance protections for property owners, or both.[67] Despite the history of abuse documented in this report, New Jersey has not enacted reforms.

New Jersey has, however, made some significant progress toward legislative reform. In May 2006, the New Jersey Assembly passed eminent domain reform legislation, A-3257, by a vote of 51 to 18.

This bill, which is discussed in more detail below, was sponsored by Assemblyman John Burzichelli and endorsed by the New Jersey League of Municipalities, the Department of the Public Advocate and Governor Corzine. It passed the Assembly thanks to the leadership of Assemblyman Burzichelli, the other members of the Assembly Committee on Commerce and Economic Development, Speaker Roberts, and other key legislators.

In the Senate, Senator Ronald Rice, chairman of the Committee on Community and Urban Affairs, has done considerable work on a reform bill, including conducting several public hearings throughout the state. He has contributed some important improvements to A-3257, but has yet to introduce legislation with all of the reforms that are necessary for the Department of the Public Advocate to endorse the bill. Other members of Senator Rice's committee, Senator Sweeney, and other senators have also done important work on this topic, but reform remains stalled in the Senate.

Key Elements of Reform

In the Public Advocate's initial report on reforming the use of eminent domain for private redevelopment, we identified three key elements of legislative reform:

- Tighten the definition of "blighted area";
- Make the process for using eminent domain more fair, open and transparent;
- Require adequate compensation and relocation assistance for property owners and tenants.[68]

These three areas are addressed in A-3257 and must be part of any comprehensive eminent domain reform. Below is more detail on the major reforms contained in this bill.

Definition of Blight

Since 1947, when the New Jersey Constitution incorporated a provision allowing eminent domain for private redevelopment but limiting its use to "blighted areas,"[69] the legislature has passed and amended several laws defining blight. As described earlier in this report, these amendments have incrementally broadened the definition to the point where it now ceases to impose a real limitation, as the Constitution requires.

The expansive definition of blight in the current law enables the abuse of eminent domain. It emboldens towns to look at neighborhoods such as the trailer court in Lodi or the MTOTSA neighborhood in Long Branch and decide that they can make better use of the land or make it more "productive."

A-3257 reforms the definition of blight, making it more clear, narrow, and objective. It removes vague terms such as "not fully productive" or "lack of proper utilization" but retains more objective and specific criteria, such as vacancy, environmental contamination, dilapidation, and overcrowding.

Moreover, the bill would permit a blight declaration only upon a finding that such conditions were directly detrimental to the safety, health, or welfare of the community.

Fair, Open and Transparent Process

Many of the injustices faced by the residents of the Lodi trailer court, the families of the MTOTSA neighborhood, Charles Shennett and others stem from inadequate procedural protections in the current redevelopment law. While many towns implement fair and open redevelopment processes, most of these practices are not required. The key procedural reforms in A-3257 include the following:

- Require plain-language notice to tenants and property owners, sent by certified mail, explicitly alerting them that municipal actions could lead to the use of eminent domain to take their property.

  These improved notice requirements would prevent instances in which families remain in the dark about the implications of the redevelopment process, often until it is too late to challenge the municipal action.

- Mandate that planning board hearings on the blight designation be conducted under oath and that property owners be allowed to ask questions, present evidence and bring their own witnesses.

  These new requirements would help build a more complete record and ensure the reliability of the evidence presented. This would help expose bogus blight determinations and prevent the town from misleading residents about the implications of its actions.

- Require more public hearings, a more detailed redevelopment plan, a more open process for selecting a redeveloper and stronger ethics protections. Many redevelopment projects are undermined by the appearance or existence of ethical improprieties, and a lack of transparency and community inclusion. These factors have contributed to several of the instances of abuse outlined in this report.

  A-3257 imposes new requirements to address these problems, including:

  - More public hearings;
  - Additional elements in the redevelopment plan with more detail on the proposed project, plan objectives, the properties to be acquired, affordable housing, relocation and replacement housing;
  - A ban on developers' funding a town's blight investigation;
  - A more competitive and transparent process for selecting developers.

- Require that, when a blight designation is challenged in court, the town bears the burden of proving by a preponderance of the evidence that the designation is appropriate. Under the current law the burden is on property owners to prove that their home or business is not part of a blighted area. Not only is this difficult for individuals who do not have the resources and expertise the town has, but the town must compile the evidence for the municipal process anyway; it would pose little extra burden for the town to present this evidence in court. In addition, under current rules, even if a property owner presents more evidence to disprove the blight designation, the town can still win.

  A-3257 would rectify this situation, placing the burden on the town to show more evidence that the area is blighted than the property owner produces to show that it is not blighted. Given that a court is the only forum in which a property owner may challenge the town's action before an impar-

tial third party, and given the importance of what is at stake, shifting the burden to the town is appropriate and necessary.

Compensation

The current law has inadequate provisions for compensating and relocating property owners and tenants when they are displaced by redevelopment. These inadequacies mean that a family can lose its home and be compensated so little that it is never able to own a home in its community again. And renters, such as the families in Lodi, can lose their homes and be left without any place to live and a maximum of $4,000 in rental assistance over four years.

A-3257 revises the way tenants and property owners are compensated when eminent domain is used for private redevelopment. Families would receive at least replacement value for their home, meaning enough to afford a comparable home in their community.

Maximum compensation for tenants would be increased to $18,000 over four years and indexed to inflation thereafter. Low- and moderate-income tenants would receive additional financial assistance under the State Rental Assistance Program, to be funded by the developer. And the town would be required to conduct more detailed relocation planning.

Maximum compensation for a business based on its average annual net earnings would be increased to $45,000 and indexed to inflation. A displaced business would also be eligible for additional compensation based on the loss of customers, foot traffic, or other benefits particular to its current location.

Impact of Reform on Redevelopment

Effective redevelopment is one of the most important challenges facing municipal leaders. Successful use of a municipality's redevelopment and rehabilitation tools can turn an area in decline into an area on the rise, can make an unsafe neighborhood safe and can help a stagnant area thrive.

Eminent domain can be an important tool in the successful redevelopment of truly blighted areas, but it must be used judiciously and only when accompanied by adequate safeguards to protect the rights of tenants and property owners.

Since our work on this issue began, the Department of the Public Advocate has maintained that eminent domain reform must preserve the ability of towns to achieve effective redevelopment. Eminent domain can be an important tool in the successful redevelopment of truly blighted areas, but it must be used judiciously and only when accompanied by adequate safeguards to protect the rights of tenants and property owners.

Reform would change the redevelopment process and impose more limitations on the use of eminent domain. This has caused understandable concern among municipal leaders and others charged with executing successful redevelopment. But reform need not significantly hinder sound redevelopment efforts.

Moreover, reform would have the positive effect of helping end the climate of uncertainty that surrounds too many

redevelopment projects in New Jersey. Today, courts become involved in redevelopment projects years after they have begun, largely because the vague definition of blight and inadequate procedural safeguards invite court intervention. The prolonged uncertainty that surrounds many redevelopment projects imposes substantial financial costs.

A clearer and more objective definition of blight would still permit towns to use all the redevelopment tools in truly blighted areas, as the New Jersey Constitution allows. The revised definition of blight in A-3257 retains criteria that should be familiar to local officials as the fundamental characteristics of blight, including substantial code violations, high levels of police activity, stagnant commercial properties, dilapidated or obsolescent properties, unsafe or unsanitary areas, overcrowding, vacancy, deterioration and environmental contamination.

Shifting the burden of proof (only in judicial proceedings, not at any other stage of the redevelopment process) would not supplant the judgment of local governments with the judgment of a court, as some have speculated. It would, instead, simply ensure a more rigorous review of whether the town has generated a record to substantiate the blight designation. If a municipality has followed the requirements for documenting blight, it should be able to produce that record in court to support its action.

A-3257 also imposes new procedural requirements that some towns currently do not follow. It mandates levels of compensation that some towns currently do not provide. In this sense, A-3257 would make some projects more time consuming and expensive. But such requirements are necessary to ensure fairness and to create public support for redevelopment projects. A project should not go forward if it can only be financed by depriving citizens of due process or compensating families so little that they can never own a home again.

Elements of Effective Redevelopment

Mayors and planners who have presided over successful redevelopment have told us that adequate notice, a fair blight proceeding, considerable public input, fair compensation and the use of eminent domain only as a last resort are all necessary ingredients to successful redevelopment in New Jersey. Many have told us they already follow most of the requirements contained in A-3257. The bill would require all towns to live up to these principles.

With these reforms, we can restore public confidence in the redevelopment process and public trust in those rare cases where eminent domain is a necessary and appropriate tool. Eminent domain reform would allow good redevelopment to continue while protecting tenants and property owners against the abuses that are undermining redevelopment across the state.

Moving Forward with Reform

The Public Advocate continues to conduct outreach to citizens, mayors, planners and other interested parties who would be affected by eminent domain

reform. Through these efforts, along with continued feedback from Senator Rice and others, we hope to help achieve further improvements to A-3257.

For example, valuable ideas have been generated for ways to streamline certain procedural requirements, better notify tenants, improve tenant compensation and limit the potential for land speculators to exploit the redevelopment process.

And we continue to seek ways to focus new procedural protections imposed by A-3257 on instances in which a town really plans to use eminent domain for private redevelopment, and not on situations where eminent domain is not contemplated.

Ultimately, however, enacting eminent domain reform will require action and leadership from the legislature and the Governor. The abuses outlined in this report violate the fundamental rights of New Jersey citizens and the principles of fairness that we should expect from our government. While it is impossible to quantify exactly how many instances of such abuse have occurred throughout the state, the ones outlined in this report alone are too many.

Without swift legislative reform, existing legal protections are inadequate to prevent eminent domain abuse.

For more information on eminent domain reform, please visit our website at www.state.nj.us/publicadvocate

The Public Advocate: A Voice for the People

Endnotes

[1]Department of the Public Advocate, *Reforming the Use of Eminent Domain for Private Redevelopment in New Jersey* at 10–22 (May 18. 2006), *available at* http://www.state.nj.us/publicadvocate/reports/pdfs/PAReportOnEminentDomainForPrivateRedevelopment.pdf (hereinafter *"Public Advocate's Report"*).

[2]N.J. Const., art. VIII, § 3, ¶ 1; see *Public Advocate's Report* at ii–viii.

[3]*City of Long Branch v. Brower and City of Long Branch v. Anzalone*, Nos. MON-L-4987-05, MON-L-141-06 (N.J. Super. Ct. Law Div. June 22, 2006), *appeals docketed*, Nos. A-191-06T2, A-067-06T2 (N.J. Super. Ct. App. Div. Aug. 30, 2006).

[4]*Gallenthin Realty Dev., Inc. v. City of Paulsboro*, Nos. A-6941-03T1, A-0222-04T1 (N.J. Super. Ct. App. Div. July 14, 2006), *appeal argued*, No. 59,982 (N.J. April 26, 2007).

[5]*Id.*, slip op. at 38, 39 (quoting N.J. Stat. Ann. § 40A:12A-5(e)).

[6]*LBK Assocs. v. Borough of Lodi*, No. BER-L-8768-03 (N.J. Super. Ct. Law Div. Oct. 6, 2005), *appeal argued*, No. A-1829-05T2 (N.J. Super. Ct. App. Div. Jan. 30, 2007).

[7]*Id.*, slip op. at 16.

[8]*Id.*, slip op. at 16–17.

[9]*Id.*, slip op. at 19.

[10]*Id.*, slip op. at 17.

[11]*Quagliariello v. Twp. of Edison*, No. MID-L-2992-02 (N.J. Super. Ct. Law Div. Mar. 31, 2004).

[12]*Id.*, slip op. at 13.

[13]*Id.*, slip op. at 9, 13.

[14]*Id.*, slip op.at 12.

[15]*Id.*, slip op. at 13.

[16]Press Release, Edison Township, Edison Voters Say "Yes" to Ballot Question (Nov. 8, 2006), *available at* http://www.edisonnj.org/mayorchoi/press/2006/11/edisonvoterssay.asp.

[17]*ERETC v. City of Perth Amboy*, 381 N.J. Super. 268 (App. Div. 2005).

[18]*Id.* at 273–74.

[19]*Id.* at 274.

[20]*Id.* at 273.

[21]*Id.* at 280 (quoting N.J. Stat. Ann. § 40A:12A-5(a)) (citation omitted).

[22]*Id.* at 281.

[23]*See, e.g., Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950); *Fuentes v. Shevin*, 407 U.S. 67, 81 (1972).

[24]*Borough of Keyport v. Maropakis*, 332 N.J. Super. 210, 220–221 (App. Div. 2000) (emphasis omitted) (quoting *Schneider v. City of East Orange*, 196 N.J. Super. 587, 595 (App. Div. 1984)), *aff'd*, 103 N.J. 115 (1985); see also *Dep't of Cmty. Affairs v. Wertheimer*, 177 N.J. Super. 595, 599 (App. Div. 1980); *Twp. of Jefferson v. Block* 447a, Lot 10, 228 N.J. Super. 1, 4 (App. Div. 1988).

[25]N.J.Stat.Ann. § 40A:12A-6(b).

[26]*Id.*

[27]*See generally Public Advocate's Report* at 15–17; N.J. Stat. Ann. § 40 A:12A-6; *infra* notes 35, 38, 39 and accompanying text.

[28]*City of Passaic v. Shennett*, No. A-1311-05T5, slip op. (N.J. Super. Ct. App. Div. Feb. 9, 2007).

[29]N.J. Stat. Ann. § 20:3-9; N.J. Ct. R. 4:4-3.

[30]*Shennett*, slip op. at 15.

[31]*See, e.g., United States v. Booker*, 543 U.S. 220, 230 (2005).

[32]*See, e.g., Santosky v. Kramer*, 455 U.S. 745 (1982); *V.C. v. M.J.B.*, 163 N.J. 200, 229 (2000) (requiring clear and convincing evidence of harm to deny a psychological parent visitation); *see also Addington v. Texas*, 441 U.S. 418, 432-33 (1979) (requiring clear and convincing evidence for involuntary commitment to a mental hospital); *Woodby v. INS*, 385 U.S. 276, 277 (1966) (requiring clear and convincing evidence for deportation).

[33]*Liberty Mutual Ins. Co. v. Land*, 186 N.J. 163, 169 (2006).

[34]U.S. Const. amends. V, XIV, § 1; N.J. Const. art. I, ¶¶ 1, 20, art. VIII, § 3, ¶ 1.

[35]N.J. Stat. Ann. § 40A:12A-6(b)(5).

[36]*D&M Asbury Realty v. City of Asbury Park*, Nos. A-3022-03T5, A-3239-03T5, A-3240-03T5, slip op. at 24 (N.J. Super. Ct. App. Div. January 24, 2006) (quoting *Quick Chek Food Stores v. Twp. of Springfield*, 83 N.J. 438, 447 (1980)); *see also, e.g., Concerned Citizens of Princeton, Inc. v. Mayor of Princeton*, 370 N.J.

Super. 429, 453 (App. Div. 2004) ("[T]he burden is on the objector to overcome the presumption of validity by demonstrating that the redevelopment designation is not supported by substantial evidence, but rather is the result of arbitrary or capricious conduct on the part of the municipal authorities.").

[37]*See Booker*, 543 U.S. at 230.

[38]*R.M. v. Supreme Court*, 185 N.J. 208, 217 (2005); *see also Planned Parenthood v. Farmer*, 165 N.J. 609, 642 (2000) (holding that the state must "demonstrate a substantial need" for restrictions on minors' access to abortion); *Lewis v. Harris*, 188 N.J. 415, 457 (2007) (holding that state must "show a public need for disparate treatment" of heterosexual and homosexual couples).

[39]*Levin v. Twp. Comm. of Bridgewater*, 57 N.J. 506, 537 (1971).

[40]*Shennett*, slip op. at 7 (quoting trial court).

[41]*See, e.g., S. Burlington County NAACP v. Twp. of Mount Laurel*, 67 N.J. 151 (1975).

[42]National Low-Income Housing Coalition, *Out of Reach 2006, available at* http://www.nlihc.org/oor/oor2006/mostexpensivetable.pdf.

[43]U.S. Const. amend. V; N.J. Const. art. I, ¶ 20. *See also* N.J. Stat. Ann. §§ 20:3-2(h) (defining "compensation" for takings), 20:3–29 (same), 20:3–30 (fixing dates for valuation of condemned property).

[44]N.J. Stat. Ann. § 20:4-5 ("In addition to payments otherwise authorized by this act, the taking agency shall make an additional payment not in excess of $ 15,000.00 to any displaced person who is displaced from a dwelling actually owned and occupied by such displaced person for not less than 180 days prior to the initiation of negotiations for the acquisition of the property."); N.J. Admin. Code § 5:11-3.7(a) ("[A]n individual who owns and occupies a dwelling unit for a period of not less than 180 days prior to the eligibility date as specified and who vacates the dwelling unit after notice to vacate and as a direct result of the cause of displacement and who purchases and occupies within one year a comparable replacement dwelling unit shall be eligible for a replacement housing payment in an amount not to exceed $ 15,000.").

[45]*Chatterjee v. Atlantic City Bd. of Educ.*, OAL Dkt. No. CAF 4507-04, Agency Dkt. No. OCA-276-04, 2005 N.J. Agen. LEXIS 1373, at *2 (Dep't of Cmty. Affairs Feb. 23, 2005). In this opinion, the Commissioner of the Department of Community Affairs reads the law to require the government to ensure that comparable alternative housing is available to owners before they are displaced, even if that means spending in excess of the statutory amount. *Id*. (citing N. J. Stat. Ann. § 52:31B-6(a)).

[46]N.J. Admin. Code § 5:11-1.2.

[47]*See Chatterjee v. Atlantic City Bd. of Educ.*, OAL Dkt. No. CAF 2857-05, Agency Dkt. No. OCA 276-04, 2006 N.J. Agen. LEXIS 823, at *27 (Office of Admin. Law Oct. 17, 2006); *Rowe v. Pittsgrove Twp.*, 172 N.J. Super. 209, 211 (App. Div. 1980); *but see S. Burlington County NAACP v. Twp. of Mount Laurel*, 92 N.J. 158 (1983) (criticizing principle that relocation outside the municipality is sufficient when municipality has not met its affordable housing obligation).

[48]In the New Jersey State Rental Assistance Program, the Department of Community Affairs requires at least 75% of admitted families to have an income of no more than 30% of the median income in the area as defined by region and household size. N. J. Admin. Code § 5:42-2.3(a)(1). The U. S. Department of Housing and Urban Development ("HUD") imposes a similar requirement for its Housing Choice Voucher ("Section 8") Program. 24 C.F.R. §§ 982.201(b)(2)(i), 5.603(b).

According to HUD, in 2007 30% of the mean income in New Jersey for a family of four ranges from $16,900 in the Vineland-Millville-Bridgeton area to $28,600 in the Middlesex-Somerset-Hunterdon County area. HUD site, *available at* http://www.huduser.org/Datasets/IL/IL07/nj_fy2007.pdf (last visited May 7, 2007).

[49]The waiting lists for both the State Rental Assistance Program and the federal Housing Choice Voucher Program are full and closed. Available data suggest that the wait for housing vouchers varies significantly but can exceed two years. It is unclear when either program will resume accepting applications. *Regional Update—Housing Vouchers (Summer 2005)*, Policy Research Institute for the Region, Princeton University, Woodrow Wilson School of Public and International Affairs, *available at* http://region.princeton.

edu/issue_48.html (last visited May 11, 2007) (largest of New Jersey's more than 80 housing authorities had 18,000-person waiting list and was not accepting new names in 2005); *The Critical Shortage of Affordable Housing in New Jersey—A Brief Overview*, The Legal Services of New Jersey Poverty Research Institute (June 2003), *available at* http://www.antipovertynetwork.org/pdf/criticalshortagehousing100703.pdf at 7 (last visited May 11, 2007) (largest of state's 80-plus housing authorities had more than 23,000 families on waiting list in 2002, and most county offices were not accepting new applications); Telephone call with Dennis Gallagher, Coordinator of Federal Housing Assistance Programs, Department of Community Affairs (May 2, 2007).

[50]N.J. Stat. Ann. § 20:4-6; N.J. Admin. Code § 5:11-3.5(a).

[51]N.J. Admin. Code § 5:11-3.5(b). A displaced tenant may receive instead up to $4,000 for a down-payment on a home, if the tenant has at least $2,000 in matching funds. N.J. Stat. Ann. § 20:4-6; N.J. Admin. Code § 5:11-3.6.

[52]N.J. Admin. Code § 5:11-3.5(a) (displaced tenants "shall be eligible for a rental assistance payment in an amount not to exceed $4000 *or such higher amount as may be established by statute*") (emphasis added).

[53]N.J. Stat. Ann. § 20:4-4. Homeowners and renters are also entitled to reimbursement or a fixed sum to help cover moving expenses. *Id.*; *see also* N.J Stat. Ann. § 52:31B-4.

[54]N.J. Stat. Ann. § 20:4-4.

[55]*See* New Jersey Mobile Home Parks and Manufactured Home Communities, http://www.mobilehomeparkstore.com/directory/listnewjerseymhp.htm (last visited May 7, 2007).

[56]*Out of Reach, supra* note 42, *available at* http://www.nlihc.org/oor/oor2006/data.cfm?getstate=on&getcounty=on&county=1747&state=NJ.

[57]*Id.*

[58]*Jury Raises Price for City on Condemnation*, Atlanticville, July 25, 2003, at 26.

[59]*City of Long Branch v. Strahlendorf*, No. A-2009-03T5, slip op. at 5 (N.J. Super. Ct. App. Div. Nov. 19, 2004) (quoting city's brief).

[60]N. J. Stat. Ann. §§ 40A:9-22.1 to -22.25.

[61]N. J. Stat. Ann. §§ 40A:9-22.5(a), (d).

[62]*Wyzykowski v. Rizas*, 132 N.J. 509, 522–523 (1993).

[63]*City of Long Branch*, slip op. at 41, 46.

[64]*Twp. of Bloomfield v. 110 Washington St. Assocs.*, No. ESX-L-2318-05 (N.J. Super. Ct. Law Div. Aug. 3, 2005), *aff'd*, No. A-6770-04T5 (N.J. Super. Ct. App. Div. Aug. 29, 2006).

[65]*Id.*, slip op. at 2.

[66]*Id.*, slip op. at 10.

[67]United States Government Accountability Office, *Eminent Domain: Information about Its Uses and Effect on Property Owners and Communities Is Limited*, GAO-07-28, November 2006.

[68]*Public Advocate's Report* at 10–22.

[69]N.J. Const. art. VIII, § 3, ¶ 1.