

ALERTS AND UPDATES

Eminent-Domain Reform Bill Advances in New Jersey State Senate, But Does Not Take a Big Leap

October 21, 2010

On October 7, 2010, the New Jersey Senate's Community and Urban Affairs Committee approved S-1451, a bill intended to give property owners greater rights in condemnation cases and redevelopment projects (the "Bill"). Namely, the Bill, which is sponsored by Sen. Ronald Rice, D-Essex, is an attempt at eminent-domain reform legislation that would amend three statutes:

- The Eminent Domain Act of 1971, N.J.S.A. 20:3-1 et seq.;
- The Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 et seq.; and
- The Relocation Assistance Act, N.J.S.A. 20:4-1 et seq.

The Bill is a compromise effort that attempts to balance the concerns articulated by interest groups, both for and against the use of eminent domain. While the Bill may be a step in the right direction, it does not provide significantly greater protections or benefits than currently provided under New Jersey law. In large measure, the Bill codifies the existing obligations of condemning agencies and the rights of property owners established by case law.

Revisions to the Eminent Domain Act

The Bill would revise the Eminent Domain Act to enhance the exchange of information between prospective condemners and condemnees during the statutorily required negotiations that must precede the filing of a condemnation complaint. According to the Committee statement, the Bill would:

- Require a condemner to provide a prospective condemnee with a copy of the appraisal being used to determine the amount of the condemner's offer (this is already required under N.J.S.A. 20:3-6);
- Allow a condemnee to provide information to and raise issues with the condemner's appraiser (a property owner already has the right to meet with the condemner's appraiser when he or she inspects the site under N.J.S.A. 20:3-6, during which it is common practice for the owner or the owner's representative to raise issues and provide information);
- Require the appraiser to consider the condemnee's information and issues when estimating the fair market value of the property (the appraiser should be doing this regardless);
- Require the appraiser to transmit the condemnee's information and issues, in writing, to the condemner;
- Require the appraiser to reflect the value attributable to the location of the property, including benefits that accrue to a business as a result of proximity to favorable pedestrian, mass transportation or vehicular traffic (from an appraisal standpoint, these factors should be considered);
- Provide condemnees a 45-day period to review the offer (extendable up to 70 days), with rights to (i) request more information from the condemner, (ii) meet with representatives of the condemner and (iii) obtain their own appraisals. Additionally, the Bill could grant tenants additional rights in a condemnation. The Bill presently includes a provision that would declare as void and against public policy any lease provision or agreement made after a to-be-determined effective date, terminating a leasehold or other property interest in the event of condemnation.

Furthermore, it would codify that such a tenant shall be entitled to an allocation of its leasehold interest, including capital improvements, machinery and equipment that cannot be relocated, from the award of just compensation for the fee interest.

Revisions to the Local Housing and Redevelopment Law

With respect to the Local Housing and Redevelopment Law, the Bill does not significantly grant property owners additional rights. Rather, it codifies the New Jersey Supreme Court's holding in *Gallenthin Realty Development Inc. v. Paulsboro*,¹ and the New Jersey Appellate Division's decision in *Harrison Redevelopment Agency v. DeRose*.² The Bill would require a condemning agency to conclude that:

- The deterioration or stagnation of the delineated area negatively affects surrounding properties because of statutory blight criterion.
- The condition or conditions of blight are the prevailing characteristics of the delineated area.
- Each nonblighted parcel included within the delineated area is necessary for the effective redevelopment of the area and is an integral part of that area.
- There is objective evidence of a statutory blight criterion within the delineated area. More significantly, the Bill removes definitions of blight based on remoteness, lack of access, faulty arrangement or design, obsolete layout or not being fully productive. The Bill also amends several of the blight criteria, deletes subsection h (smart growth basis for blight) from the current act, and adds a new basis for a blight determination where a contaminated property has remained vacant or substantially underutilized for at least two years. Furthermore, the Bill requires condemning agencies to file notices of blight designations at county clerks' offices so that potential buyers will be made aware that properties are subject to condemnation, and provides that a redevelopment designation may lapse after a set period of time if the redevelopment is not progressing. A key component to the Bill can be found in section 21, which specifies that properties acquired for redevelopment must be valued at no less than the replacement value of the property. This could be significant in areas where a replacement property of suitable utility would demand a much higher value than the property being condemned. Section 21 also grants every resident and small-business operator displaced because of redevelopment a right of first refusal to purchase or lease property in the redevelopment area post-development.

Revisions to the Relocation Assistance Act

In terms of the Relocation Assistance Act, the Bill seeks to increase the benefits for the first time since 1971 to try to bring them more in line with current economic conditions and to clarify which persons are entitled to such relocation assistance.

For Further Information

If you have any questions about this *Alert* or would like more information, please contact [George J. Kroculich](#), [Michael J. McCalley](#), any of the [attorneys](#) in the [Real Estate Practice Group](#) or the attorney in the firm with whom you are regularly in contact.

Notes

1. *Gallenthin Realty Development Inc. v. Paulsboro*, 191 N.J. 344 (2007) (holding that determination of "blight" requires finding of "deterioration or stagnation that has a decadent effect on surrounding property," and limiting application of N.J.S.A. 40A:12A-5(e), which allows for finding of "in need of redevelopment" where "stagnant or not fully productive condition," only to such situations where "not fully productive" condition is created by diversity of ownership and conditions of title).
2. *Harrison Redevelopment Agency v. DeRose*, 398 N.J. Super. 361 (App. Div. 2008) (holding that municipalities must provide property owners proper written notice that their properties may be condemned through redevelopment designation, lest they risk waiving the 45-day deadline for challenging redevelopment designation).

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