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NEW JERSEY

## Eminent Domain's Pre-Eminence

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TRENTON

EMINENT domain is a habit in [New Jersey](#). On this point, experts including the state's comfortably liberal new public advocate, Ronald Chen, and the nation's leading conservative property-rights group, the Institute for Justice, agree.

Indeed, they say it is easier in New Jersey than in any other state to take private property and turn it over to developers. It is so easy, Mr. Chen told an Assembly committee this month, that when he consulted a state listing of potential redevelopment areas, he found that his own house could be subject to condemnation.

As opposition to the state's redevelopment law mounts, much of the concern centers on a familiar complaint in New Jersey: legislation meant to lure investment to sagging communities has become a brokerage mechanism for politically connected developers.

Interestingly, legislators here murmured sympathetically when Mr. Chen made his presentation.

Like politicians around the nation, most here have voiced disapproval of a [United States Supreme Court](#) decision a year ago in an emotionally wrenching case, *Kelo v. New London*, that allowed local officials in Connecticut to raze a modest but healthy neighborhood to make way for more lucrative development. And like Mr. Chen, legislators in New Jersey say property owners need stronger protections.

"The post-Kelo case I see going to the U.S. Supreme Court one of these days, and it could very well be a case from New Jersey," said Ted Zangari, a Newark lawyer who represents developers, "would be one involving a hastily hatched redevelopment designation intended to benefit a developer who's a benefactor of some local politician."

But for now, this state is a hard case. The Institute for Justice, which has represented the New London property owners and many others around the country, lists 24 cities and towns in New Jersey where there are "current controversies" involving condemnation for redevelopment; by contrast, Pennsylvania has 6, Massachusetts 2 and New York 7. In addition, even though lawmakers seemed sympathetic to Mr. Chen, they have often been seen as part of the problem rather than the problem's solution.

More than 70 municipalities have designated "areas in need of redevelopment" — which confers the power of eminent domain on local officials — since the state started requiring notice of these declarations in 2003. Others carved out redevelopment zones earlier and could still act on them.

Most redevelopment projects proceed uneventfully, and most eminent domain fights, when it comes to

that, are about the compensation owed to displaced owners. But to change the rules now would hamper redevelopment planning nearly everywhere in the state.

William Potter, a [Princeton](#) land-use lawyer who is chairman of the statewide group the New Jersey Coalition Against Eminent Domain Abuse, put it another way. "I imagine a good bill is going to bring out all the big guns — the consultants, the law firms, the developers — to oppose it," he said.

The consultants, the law firms and the developers are entrenched for a reason. New Jersey, like most states, acted more than 50 years ago to give local governments the power to condemn blighted property. But a 1992 law invited developers to New Jersey's hollowed-out cities by expanding the definition of blight. Growing public subsidies were to follow.

"It led to a frenzy of redevelopment efforts," said Mr. Potter, who also teaches land use at Princeton and Rutgers. "It was a long, slow leading edge, but all these developers and cities saw that this was a gravy train and they better get aboard."

Three years ago, the Legislature gave towns the authority to declare an "area in need of redevelopment" wherever it is "consistent with smart-growth planning principles." It is that criterion — because it applies to suburban as well as urban areas — that could arguably ensnare Mr. Chen's house in Berkeley Heights.

In New Jersey, developers and cities relying on the power of eminent domain have remade broad swaths of Atlantic City and New Brunswick. In addition, they plan to displace 1,200 households and small businesses in Camden, demolish blocks of oceanfront houses in Long Branch and a working-class neighborhood in Lawnside, and take industrial land in Pennsauken and North Arlington.

All those plans would bring in builders of new, more dense and upscale housing.

"It's happening all over the state," said Scott Bullock, a lawyer at the Institute for Justice who represented the New London homeowners and is now involved in the Long Branch case. "It's just a climate, a willingness of government to work with private developers. It's just the climate that says that's acceptable.

"There are a lot of other places in the country that are as densely populated as New Jersey and you don't see rampant eminent domain abuses," Mr. Bullock said. "You don't see eminent domain abuse in Chicago or Los Angeles."

### Cozy Arrangements

Assemblyman Michael Panter, a Democrat from Shrewsbury who is proposing a two-year moratorium on eminent domain, said the Supreme Court decision "really opened a candy store for the developers" — especially in New Jersey.

While most local officials are honestly trying to improve their towns, Mr. Panter said: "There's much to cozy a relationship between local officials and wealthy developers. If mayors and council members, some of whom take money from developers, are approached by a wealthy developer who pitches them the idea that they're going to revitalize a neighborhood if the town takes it by eminent domain, that's very troubling."

"You're never going to read about it in the newspaper," he said, "because those discussions take place behind closed doors."

That is the contention of business owners on Porete Avenue in North Arlington, who stand to lose their property along the rim of the Meadowlands to a 1,600-unit condominium development.

The plan was negotiated by borough officials and a subsidiary of Cherokee Investment Partners, a company that buys contaminated property, cleans it up and usually sells it to home builders. In the last five years, Cherokee, which is based in North Carolina, has come to dominate the development landscape of New Jersey.

Porete Avenue is a small strip on the edge of Cherokee's main project in North Arlington, the site of a former landfill. But Bill Gauger, the president of Cherokee Northeast, the company's development arm, said it needed the profit yield from housing to finance the landfill cleanup. And the company could not put \$500,000 condominiums between the golf course and the existing industrial occupants, he said, "because I can't create a sense of place with the businesses right next door."

Some of the dozen or so owners on the street want to sell, but others are bringing suit to stop the project. Their anger is not directed at Cherokee so much as at their own representatives, and at the way the deal was struck.

According to Councilman Peter C. Massa, who voted against the deal and is trying to unseat the mayor, the city attorney and a lawyer for Cherokee negotiated the plan without any citizen participation and then presented it as a *fait accompli* last March. In October, Mr. Massa said, the council members were given a memorandum of understanding. "They said: 'This is a great deal for everybody. Sign it and pass it.' "

Then, Mr. Massa said, the council members received the 334-page final agreement on April 18, for a vote scheduled April 19 — a vote that was added to the agenda at the last minute. The resolution was adopted without discussion among the council members.

Mayor Russ Pitman says no one was caught by surprise, including the owners, whose property was identified for possible redevelopment more than 15 years ago, or the council members. Mr. Pitman and Cherokee officials noted that the project was under negotiation for three to four years as the mayor and the city attorney insisted on scaling down the original proposal for high rises. Moreover, Mr. Pitman said, the agreement approved in April was substantially the same as the one that all the council members approved in October.

The owners respond that earlier proposals would have allowed them to stay, and that it was only after the deal was done that they learned that Cherokee wanted them out.

Damon Y. Smith, a professor of property and local government law at Rutgers-Camden, said the complaints in North Arlington echoed those in the Cramer Hill section of Camden, a working-class neighborhood in a city with several abandoned areas — which is also to be acquired by Cherokee — about the steps leading to a decision to use eminent domain. "The problem as I hear it from people in Camden was not only that these processes were not followed but that the decision was already made and the whole process was a ruse," said Professor Smith, who is also a former urban planner.

"The fear is that you have very sophisticated private actors who have in mind what they would like to do, and then you have public actors who have certain powers to designate something as blight," he said. "A major concern of critics of eminent domain and its use in the last several decades is that the process has largely been taken over by these private actors."

Underscoring the point, Mr. Chen noted that a local government can choose a developer without any bids and that the current law requires only one public hearing before designating a redevelopment zone. Nor does the law require that the municipality present studies or other evidence.

"Sometimes the process is so abbreviated," he said, that there really is no record by which a court could tell whether local officials complied with the criteria set out in the law, however loose they are.

In addition, studies and projections assessing a proposed development are often financed by the developer, as are other costs. Cherokee, for example, put money into escrow funds that paid part of the salary of the Camden Redevelopment Agency's director and fees to the municipal attorney in Pennsauken, where Cherokee has also won a contract for a huge redevelopment project. While these officials were supposed to be negotiating with Cherokee, state law does not restrict the way developers' fees are spent.

In New Brunswick, where a bookstore owner is fighting a plan to raze his block for a 30-story building across from the Rutgers campus, most downtown projects are collaborations among the city, Rutgers and the New Brunswick Development Corporation, known as Devco, a private nonprofit developer created by the city in the 1970's.

They made a joint announcement of the new tower in February 2005, several months before the New Brunswick Planning Board was asked to begin the required study to determine whether the area is in need of redevelopment. Bill Bray, a spokesman for Mayor James Cahill, said the redeveloper is "likely to be Devco," as it has been in almost all downtown projects.

As a private company, Devco does not have to disclose its finances, or its relationships with local officials. But Mr. Bray said, "It's easy for some people to criticize Devco today, but there was a time when New Brunswick had to create its own corporation to get something built."

A report written by Mr. Chen's office, in addition to recommending a tighter definition of blight, calls for greater public participation in the eminent domain process, better notice to owners and more opportunity to appeal, and ethics rules to insure that public officials working on a redevelopment project do not benefit personally from it.

In the Legislature, about a half-dozen bills, including Mr. Panter's proposed moratorium, have been introduced in the 11 months since the Supreme Court's Kelo decision. The Assembly Commerce and Economic Development Committee has held four hearings, concluding with Mr. Chen's testimony on his report.

#### Call for Stricter Measures

Still, some who are urging stricter eminent domain laws say the New Jersey Legislature is not the most likely place to find relief. Among New Jersey's 120 legislators are dozens of other mayors and other local

officials as well as lawyers, engineers and consultants who work for developers and local governments.

For instance, the Democratic chairman of the Assembly Commerce committee, John J. Burzichelli, is also the mayor of Paulsboro, which has five redevelopment zones. The vice chairman, Assemblyman Joseph Vas, is the mayor of Perth Amboy, where a court recently halted the city's designation of a six-acre tract and its small businesses as a redevelopment zone.

Mr. Burzichelli, for one, says he fully supports a stricter law and more careful procedures — and that his town had taken "great pains" in designating redevelopment areas. "The more public awareness there is, the more transparency, that can only help," he said. "If you can make your case, it will rise on the merit."

On the Senate side, the chairman of the committee that is handling eminent domain legislation, Ronald L. Rice, is a Newark city council member, while the vice chairman is Senator Sharpe James, who as Newark's mayor has overseen the removal of small businesses for the city's new hockey arena and a proposal for a condominium and retail development that would displace more than 60 property owners. A host of other influential legislators work for towns and developers. Senator Raymond Lesniak of Elizabeth is a lawyer who represents many developers, and the law firm of Senator Wayne R. Bryant of Camden was hired by Cherokee for eminent domain work.

"He's on retainer to evict his own constituents," Mr. Potter of the Coalition Against Eminent Domain Abuse said. The state's courts could take a stricter approach than the Legislature, since the New Jersey constitution limits the use of eminent domain for redevelopment to "blighted areas."

The lower courts have used varying degrees of scrutiny in interpreting that provision. Mr. Chen said that while he believes that sections of the 1992 law exceed the constitutional limit, it has not been tested in the State Supreme Court.

Mr. Zangari, the Newark lawyer who represents developers, said that even the United States Supreme Court's 5-to-4 decision in the Kelo case expressed lingering reservations about redevelopment deals.

New Jersey's redevelopment binge may also be slowed by federal investigators.

The United States Attorney's office has subpoenaed officials in at least a dozen towns, including New Brunswick, for records relating to projects involving former State Senator John A. Lynch and his partner and clients in a consulting business that worked for developers.

While it is not clear what projects or developers are under investigation, many of those towns have redevelopment projects.

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