

Alerts and Updates

FOUR NEW JERSEY BILLS SEEK TO CHANGE HOW GOVERNMENT CONDEMNS REAL ESTATE, AS U.S. DEBATE ON EMINENT DOMAIN CONTINUES

January 27, 2010

On January 12, 2010, the New Jersey State Legislature introduced four bills that indicate an intention to change eminent domain practice in the state. These bills are anticipated to help eliminate issues that have accompanied real estate condemnation in New Jersey in the past decade.

I. For Single-Family Residences, Just Compensation Should Reflect Pricing of Comparable Relocation Properties

The first bill, [Assembly Bill No. A457](#), which was sponsored by Assemblywoman Joan Voss (D-38) and Assemblyman Gordon Johnson (D-37), would require "just compensation" in the condemnation of a single-family residence to be based on the cost of comparable relocation properties. In particular, the bill proposes to introduce new language to Section 3-6 (Application of Act) of the Eminent Domain Act of 1971,¹ which would require a condemning agency, in the case of a single-family residential property, to increase its approved appraisal and statutory offer of just compensation in order to reflect the average purchase price of "comparable relocation properties." The bill defines "comparable relocation properties" as "single-family residential dwellings located within a 15 mile radius of the property being condemned. . . [which] shall be characterized by similar lot and house size, similar improvements, similar natural, governmental, cultural, and commercial amenities, and shall be located within school districts having the same or higher Department of Education district factor group designation."

In recent years, when a private owner's residential property is condemned, the suggested relocation residences provided by the condemning agency have often been priced higher than the "just compensation" offered to the condemnee for his or her property. Thus, while the condemning agency may offer that a "comparable" relocation property is available for purchase at a certain price, the condemnor's offer of just compensation may not consider the cost of purchasing such a new home. The gap between the offer of just compensation and the purchase price of a relocation home can leave condemnees—whose lives have already been disrupted—incapable of relocating to a similarly improved home in the area of their former home. Bill No. A457 is the Legislature's effort to rectify financial hardship experienced by property owners whose single-family residences are condemned.

II. Eliminating "Pay to Play" in New Jersey Condemnations

[Assembly Bill No. A532](#), whose sponsors include Assemblywoman Amy Handlin (R-13), Assemblywoman Mary Pat Angelini (R-11) and Assemblyman David Rible (R-11), seeks to eliminate the potential for "pay to play" from the eminent domain field. A key purpose of the bill would be to eliminate the actuality or appearance of corruption that may result when property is purchased or acquired for development or redevelopment, as a result of or under risk of condemnation. The bill provides that an individual, business or other organization that has made a campaign contribution would be prohibited for one year from purchasing, or otherwise acquiring title to a right to develop/redevelop, property as a result of proceedings under the Eminent Domain Act of 1971.

In addition, Bill No. A532 would prohibit an individual, business or other organization that has made a purchase or acquisition under the Eminent Domain Act of 1971 from making a campaign contribution for a period of three years after the purchase or acquisition. Any individual, business or other organization that is determined by the Election Law Enforcement Commission to have willfully and knowingly violated the bill's provisions would be subject to a penalty of up to \$50,000 for each violation and debarment from such purchases or acquisitions in New Jersey for up to five years. Similarly, any committee or organization that is determined by the Election Law Enforcement Commission to have willfully and knowingly accepted a contribution in violation of the bill would be subject to a penalty of up to twice the amount of the contribution for each violation.

III. Prohibiting Condemnation of Residential and Other Nonblighted Properties Under the Redevelopment Law

[Senate Bill No. 107](#), sponsored by state Sen. Christopher Connors (R-9), aims to tighten the requirements for using the power of eminent domain for redevelopment purposes. The bill seeks to prevent the condemnation of legally occupied residential properties within redevelopment, or "blighted," areas—as long as these properties meet the applicable housing code and construction code standards. The bill would also prevent the taking of other private property, which is not in need of redevelopment, but is nevertheless located in an area determined to be in need of redevelopment.

In addition to the primary proposed changes discussed above, Senate Bill No. 107 would require a governing body of a municipality to declare an area in need of redevelopment by ordinance. At this time, the redevelopment law allows a governing body to make such a declaration by resolution. The bill also modifies the notice requirements a municipality has to

provide its constituents by requiring that notice must be sent by certified mail to all property owners within the potential redevelopment area.

One of the noteworthy propositions in the bill relates to the possible amendments to a section of the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-5(e). Generally, N.J.S.A. 40A:12A-5 sets forth the requisite conditions for an area to be delineated as needing redevelopment. In 2007, the New Jersey Supreme Court addressed the condition found under N.J.S.A. 40A:12A-5(e)—which related to a finding of "lack of proper utilization of areas"—in *Gallenthin Realty Dev., Inc. v. Borough of Paulsboro*.² In *Gallenthin*, the New Jersey Supreme Court held that the condition under subsection (e) applied only where such circumstances were created by a condition of title or diverse ownership.³ Before the *Gallenthin* decision, subsection (e) was frequently utilized as a catchall condition to support a designation of blight, as it was not viewed as dependent upon title issues or diverse ownership. Senate Bill No. 107 appears to be an attempt to return subsection (e) to its pre-*Gallenthin* use as a catchall provision. While the amendments note—as under the existing law—that lack of proper utilization of areas may be caused by conditions of title or diverse ownership "in some instances," they do not require that the finding of lack of proper utilization be based on those limited conditions.

IV. Placing a Temporary Moratorium on Use of Eminent Domain

[Senate Bill No. 293](#)—sponsored by state Sen. Diane Allen (R-7)—contains the most-significant proposed measure, which would impact the use of eminent domain in New Jersey. While the U.S. Supreme Court decided *Kelo v. City of New London*⁴ nearly five years ago, Senator Allen believes that widespread attention on the potential misuse of the power of eminent domain created by the decision warrants further inspection on its use in New Jersey to ensure the power is being used responsibly. Senate Bill No. 293 proposes a 24-month moratorium on the use of eminent domain in New Jersey for any purpose other than the direct use of the property by the state, county or municipality, or any agency or instrumentality thereof. Thus, the bill largely seeks to place a moratorium on redevelopment. The bill also would create an 11-member Eminent Domain Study Commission to conduct an examination of the use and application of eminent domain in New Jersey. Upon completing its review and holding public meetings on the subject, the commission would then recommend legislation to discourage misuse of the power of eminent domain.

For Further Information

If you have any questions about this *Alert* or would like more information, please contact [George J. Kroclicik](#), any of the [attorneys](#) in the [Eminent Domain and Land Valuation Practice Group](#) or the attorney in the firm with whom you are regularly in contact.

Notes

1. Eminent Domain Act of 1971, N.J.S.A. 20:3-1 et seq.
2. *Gallenthin Realty Dev., Inc. v. Borough of Paulsboro*, 191 N.J. 344 (2007).
3. *Gallenthin*, 191 N.J. at 348, 363–365.
4. *Kelo v. City of New London*, 125 S. Ct. 2655 (2005).