



State of New Jersey
Department of the Public Advocate



What is the Public Advocate doing to prevent eminent domain abuse?

Over the past year, the Department of the Public Advocate and its Division of Public Interest Advocacy has worked to reform the laws that govern the use of eminent domain for private redevelopment. These reforms would ensure that the law prevents abuse better protects the rights of tenants and property owners.

We began our work on this project by conducting thorough legal and policy research, and engaging in extensive outreach to government officials, experts and citizens affected by eminent domain.

In May 2006, the Public Advocate released *Reforming the Use of Eminent Domain for Private Redevelopment in New Jersey*, which offers a roadmap for reform. In May 2007, the department issued a follow-up report that documented evidence of eminent domain abuse throughout New Jersey.



The Public Advocate has been working closely with lawmakers to enact the key legislative reforms outlined in our report. Those efforts resulted in the Assembly's overwhelming passage of A-3257 in June 2006 by a margin of 51 to 18.

This comprehensive eminent domain reform bill was sponsored by Assemblyman John Burzichelli, and endorsed by the Public Advocate, Governor Corzine and the New Jersey League of Municipalities.

A-3257 would tighten the definition of blight, ensure better notice to affected citizens, require a more transparent redevelopment process, provide

homeowners with a meaningful opportunity to contest the taking of their homes and provide adequate compensation when homes are taken.

The state Senate is now considering reform proposals. The Public Advocate maintains that any reform bill must address the fundamental concerns of the definition of blight, adequate due process and fair compensation.

In the absence of legislative reforms, the Public Advocate has also filed “friend of the court” briefs in four eminent domain cases that are winding through the courts: *LBK Assocs. v. Borough of Lodi*, *City of Long Branch v. Anzalone*, *City of Long Branch v. Brower and Gallenthin Realty Development v. Borough of Paulsboro*. Each case was strategically chosen because it exposed fundamental flaws in the current laws governing the use of eminent domain.

Lodi. This case, pending in the Appellate Division, concerns the use of eminent domain to take two mobile home parks that provide the last remaining unrestricted private housing for low-income people in Lodi. The trial court rejected Lodi’s attempt to declare the area blighted because the blight designation was based on a superficial and cursory inspection of the property, and the town failed to present any evidence that the area was a detriment to the community. The town is appealing the trial court’s decision.

The Advocate’s brief urged the Appellate Court to affirm the lower court’s ruling that the area is not blighted. The Advocate also asked the court to clarify who bears the “burden of proof” when citizens challenge a town’s decision to deem their home or business part of a blighted area.

The Public Advocate argued that the town should have to produce the evidence to justify the blight designation, and that the designation must be supported by a preponderance of the evidence. In plain terms, this would mean that when the evidence is very close – when property owners present as much or more evidence that an area is not blighted than the town produces to show that it is blighted – the property owners would win.

Fairness dictates that the town should bear this burden of proof. It is the government that has amassed the record to support the blight designation, so the government should be the party that has to produce evidence in court. Moreover, given what is at stake, if the town cannot present a preponderance of the evidence to support the blight designation, we believe citizens should get to keep their homes or businesses.

In addition, the Advocate's brief argued that Lodi's use of eminent domain was in conflict with its constitutional obligation to safeguard affordable housing. The brief concluded that when the use of eminent domain results in a net loss of such housing, the city may run afoul of the state Supreme Court's *Mount Laurel* decisions, which require every municipality to create and maintain a fair opportunity for low- and moderate-income people to live there.

The Advocate argued the case before the Appellate Division on Jan. 30, 2007. A decision is pending.

Long Branch. Also pending in the Appellate Division, the Long Branch case centers on the condemnation of a small neighborhood of modest seaside homes to make way for upscale condominiums.

The Public Advocate filed an amicus brief arguing that the lower court's ruling in favor of Long Branch's use of eminent domain should be overturned because the homeowners' rights of due process were violated. The record before the court contains no proof of that adequate notice was provided to the residents, no indication that homeowners received a fair hearing and some evidence of potential conflicts of interest that warrant additional discovery and fact-finding.

The brief also argued that the record evidence of blight is insufficient to sustain the trial court's affirmation of the municipal decision to demolish the neighborhood.

In response to the Advocate's brief, the City of Long Branch filed a motion, asking the appeals panel to reject the Public Advocate's involvement in the case. The Appellate Division rejected Long Branch's motion to strike the Public Advocate's brief, allowing the Advocate's arguments to be considered when the case is decided. The Public Advocate will participate in oral arguments, which have not yet been scheduled.

Paulsboro. Currently before the New Jersey Supreme Court, this case exposes serious problems with current state law, which defines "blight" so broadly that it could apply to virtually any property in New Jersey, even, as in this case, undeveloped wetlands.

In an amicus brief, the Public Advocate urged the court to narrow that definition to protect the rights of property owners across the state and to ensure they

receive the constitutional protections to which they are entitled.

This case will essentially review the 15-year-old Local Redevelopment and Housing Law.

One section of that law allows government to condemn land for private redevelopment if it deems that land to be “not fully productive” and lacking in “proper utilization.” Under such broad criteria, “there is no parcel of land in New Jersey that is safe from such pursuit,” Chen wrote in the brief.

The Public Advocate asked the high court to narrow the definition of blight and remand the case for further court review. Ronald Chen presented oral argument before the high court on April 26, 2007.



**The Public Advocate:
A Voice for the People**