Public Advocate Ronald Chen's Testimony on S-1975 before the Senate Committee on Community and Urban Affairs

February 26, 2007

Thank you Mr. Chairman and members of the Committee for this opportunity to testify. The use of eminent domain for private redevelopment is an important issue to New Jersey citizens – the laws governing this process affect the security of a family's most important asset and shape the tools local leaders use to revive our communities.

I commend the Chairman and this Committee for tackling this important topic, and for engaging in public hearings and exhaustive discussions around the state in the past few months to solicit feedback from the people of New Jersey. I also would like to publicly thank Chairman Rice for his effort to foster a positive and productive relationship with me and the Department of the Public Advocate. May I also take this opportunity to thank the staff of the Office of Legislative Services for the yeoman's work they have done both in crafting this bill, and also in drafting A-3257, the correlative bill that has already passed the Assembly. They have done a masterful job in translating very difficult concepts into statutory language, and I know their efforts are appreciated by all of us.

There are many provisions of the Committee Substitute for S-1975 that would help protect the rights of businesses and homeowners.

- It would increase notice to tenants and property owners and provide more opportunity for public input.
- It would increase the transparency of the redevelopment process.
- It includes important increases in the compensation provided to tenants and property owners displaced by redevelopment.
- The bill also makes an important distinction between minor and major redevelopment plan amendments, which will help to keep the redevelopment process moving smoothly.

Finally, the bill creates a new designation of a "condemnation area," a subset of a redevelopment area that would be the only area in which eminent domain for private redevelopment could be used. This

innovation would likely have practical benefits for both municipalities and individuals at risk of losing their homes or businesses.

Under current law, a property owner must contest the designation of an area as "in need of redevelopment" before it is clear whether this designation will in fact lead to the taking of the his or her property.

Under S-1975, a property owner would not need to contest such a designation, unless they were part of a "condemnation area", therefore saving both citizens and the municipality the unnecessary time and expense of litigating a redevelopment designation because of concerns about takings that may never occur.

I commend the Chairman and sponsors for all of these important provisions.

Candor requires, however, that I also address some crucial reforms that are needed to protect the rights of tenants and property owners, which would be required if the Department of the Public Advocate were to support this bill.

In my testimony today, I will focus on three core areas where I believe this bill requires further provisions: tightening the definition of blight, establishing the proper evidentiary standard in court proceedings, and ensuring adequate compensation for tenants and property owners.

Definition of Blight

As you know, the New Jersey Constitution explicitly restricts the use of eminent domain for private redevelopment to "blighted areas."

Although the framers did not define blight, they intended the term to serve as a limitation on this power. In fact, during the 1947 Constitutional Convention, the framers rejected a proposal to allow the use of eminent domain for private redevelopment wherever permitted by the Legislature, without limitation.

After the 1947 Convention, the Legislature passed a bill defining blight, but over the past 50 years it has broadened this definition to the point where it often now ceases to impose any real limitation, as the Constitution requires.

S-1975 recognizes this fact and restricts the definition of blight for a "condemnation area." It also makes explicit the requirement that for

an area to be condemned, there must be found a situation "detrimental to the health, safety and welfare of the community," although it does not seem to require, as does A-3257 and indeed in certain cases the current statute, that there be a causal link between the blighting condition and the detriment to the community.

In our view, however, the blight criteria still fall short of imposing the kind of objective limitations that provide meaningful protections against arbitrary application. The definition still includes terms such as "a lack of proper utilization", "other conditions" or "faulty arrangement" that are too subjective and too broad.

Such terminology could be used to describe any property that a town believes it could better utilize, or could arrange in a superior manner.

Even a causal link between "a lack of proper utilization" and "detriment to the community" would not adequately address this problem because the predicate criterion – underutilization – remains far too subjective.

To protect the rights of New Jersey citizens, I urge you to remove this type of language.

Evidentiary Standard

S-1975 requires that when the designation of a "condemnation area" is challenged in court, the burden is on the "municipality, redevelopment entity, or redeveloper" to prove "by substantial evidence" that the designation is justified.

Requiring the municipality to produce the evidence to support its designation is a positive change, although we have questions about whether the redeveloper should ever stand in for the municipality in such challenges.

Moreover, the bill leaves unchanged the evidentiary standard required to defend the blight designation in court.

The current "substantial evidence" test has been a source of confusion, with some courts accepting virtually any basis for the designation, no matter how slight the evidence; blight designations of entire neighborhoods have rested on findings of chipping paint and loose gutters although superficial defects like these exist in virtually every neighborhood everywhere.

Changing this standard of evidence is crucial in order to give families and businesses a real chance to challenge a blight designation in court.

For most other municipal actions, a relatively low standard is entirely appropriate.

But in this case, a constitutional right is at stake – the right to the undisturbed ownership and possession of one's home or business.

When the government takes a person's home or business and transfers it to another private party, the government should *at least* carry the burden of proving blight by a "preponderance of the evidence," as is required in A-3257.

In plain terms, this standard means that when the evidence is very close – when property owners present as much evidence that an area is not blighted as the town produces to show that it is blighted – the property owners would win.

A preponderance standard would give property owners a real chance to challenge the blight designation, without supplanting the judgment of local governments with the judgment of a court.

And when combined with the subjective and malleable substantive definitions of "blight" that I mentioned previously, such as "proper utilization," imposing the procedural task on the property owner of proving the negative – of bearing the burden of showing that the property is not improperly utilized – can as a practical matter be an impossible one.

Compensation

Finally, S-1975 makes some important and very positive changes in the areas of compensation, such as increasing relocation assistance and rental assistance.

The bill's formula for determining compensation for condemned property, with five different measuring timeframes for determining fair market value, merits more study. We are right now uncertain of how the municipalities would arrive at final appraisals and how other forms of compensation might add to the total offer. Because this is a complicated area of the bill, we want to examine the potential impact of the compensation provisions further before making definitive statements.

But allow me to reiterate the standard I believe must be met on the issue of compensation:

If a family owns their home and that home is taken for redevelopment, that family must be compensated at a level that allows them to own a comparable home in their community again. A reliance on appraised values alone, coupled with caps and time limits on other available compensation, undermines this core principle.

They should receive the highest of three values – the value of the property at the time of the blight designation, the value of the property at the time of the taking, or the "replacement value" of their home.

S-1975 does commendably recognize the concept of replacement value, but it also places a cap on the amount that a property owner can recover under this method, and also imposes a time limit to buy a new home that might not be possible in all circumstances, so there may be circumstances in which a homeowner is not made completely whole.

I look forward to continuing to work with the Legislature to ensure that eminent domain reform adequately protects the rights of tenants, homeowners, and businesses.

Let me once again thank the Chairman and members of this Committee for this opportunity to testify.