

## A Tainted Taking?

Opponents say process was poisoned by city lawyer's having sat on developer's board

By Lisa Brennan

These days, when your back's to the wall in an eminent-domain case and all else fails, claim the condemnor's lawyer had a conflict of interest.

That argument, founded on dicta in the U.S. Supreme Court's summer blockbuster ruling in *Kelo v. New London*, is now the hue and cry of landowners trying to block the city of Long Branch's taking of their homes for a \$1 billion beachfront redevelopment.

The lawyer is Arthur Greenbaum, the Long Branch eminent-domain counsel for 10 years and also a member of the board of K. Hovnanian, whose subsidiary, Matzell & Mumford of Hazlet, is one of the city's two designated redevelopers.

Even though Greenbaum and his firm, Greenbaum, Rowe, Smith & Davis of Woodbridge, resigned in July from its city contract, 20 property owners, 11 of whom got condemnation notices last Monday, claim that his dual role tainted the redevelopment process.

The owners' lawyers, Peter Wegener of Lakewood's Bathgate, Wegener & Wolf and William Ward of Florham Park's Carlin & Ward, says Greenbaum, Rowe did the right thing in withdrawing but they fault the firm, which is being paid \$75,000 for eminent domain work this year, for not raising the issue sooner.

"While earning legal fees from

Long Branch, the Greenbaum firm was simultaneously acquiring properties which ultimately benefited Hovnanian. And Arthur Greenbaum, the senior partner, benefits because he is a shareholder and a member of the board of directors of the very same company, K. Hovnanian, that stands to profit substantially from the redevelopment project," says Ward.

"This is more than the appearance

city's offer of \$179,500. He is waiting to try a case on behalf of Bruce McCloud, who rejected the city's \$140,000 offer for his 17-room Victorian house 400 feet from the beach. The new condominiums built on his property have sold at prices ranging from \$600,000 to \$1.2 million.

"If the conflict of interest issue were disclosed earlier, property owners such as Bruce McCloud, who vehemently opposed the taking of his property, would have raised this issue as a defense to the taking," says Ward.



Property owners' co-counsel Peter Wegener says, 'We are now entitled to discovery on the relationship between Hovnanian and the city.'

of conflict," he says. "It is actual conflict, and a municipality such as Long Branch cannot waive it."

Ward also says he could have used that information in related cases he has handled. Ward won a \$500,000 jury verdict for a couple who lost their home in 2002 after they rejected the

Monmouth County Assignment Judge Lawrence Lawson likely will schedule hearings next year on the validity of the takings. If Lawson sides with the city, he will sign a final judgment appointing commissioners to value the properties. If he sides with the property owners, the city will have

to scrap its plan for the 185 condominiums along Ocean Boulevard, or start the condemnation process anew.

### **Kelo as Catalyst**

Greenbaum's resignation, as well as the property owners' focus on the conflict issue, seem to have been precipitated by the Supreme Court's June ruling in *Kelo*, 125 S. Ct. 2655, which upheld the use of eminent domain to seize private property for economic development.

On July 20, about a month after *Kelo*, Greenbaum, Rowe partner Alan Davis wrote to Long Branch city attorney James Aaron, "reluctantly" withdrawing as eminent domain counsel for the area known as Beachfront North, Phase 2.

"Our interpretation of the Court's decision has led us to re-examine our role in handling condemnation cases for the City in Beachfront North, Phase 2," wrote Davis. "Indeed, that interpretation and our resulting conclusion is that our existing policy of recusal compels us to withdraw from the additional assignment as condemnation counsel in Beachfront North, Phase 2, upon which no work has been started."

He continued: "While we are satisfied that there is no basis to suggest that the city has been engaged in 'impermissible favoritism' or creating a 'private benefit' (as those concepts are characterized in the Supreme Court's opinion), neither the city nor this firm would want our continued service as eminent domain counsel ... to give rise to any inquiry which, although without any foundation, might cause an inordinate delay in the project's completion. Moreover, any

such inquiry would burden the city with unnecessary expenses in defending against such allegations."

Justice Anthony Kennedy's concurrence in *Kelo* has special meaning for Wegener, the property owners' lawyer. Kennedy wrote that the Court might revisit the issue should it be "confronted with a plausible accusa-



**MORE THAN AN APPEARANCE: Says William Ward, one of the attorneys for the property owners: 'It is an actual conflict, and a municipality such as Long Branch cannot waive it.'**

tion of impermissible favoritism to private parties." Some cases involving "suspicious" transfers might require higher scrutiny, Kennedy added.

The Long Branch taking falls into that category, Wegener says. "We are now entitled to discovery on the relationship between Hovnanian and the city," he says. "You have to wonder whether the administration is acting in the best interest of the city."

### **Good Faith Claimed Lacking**

Wegener and Ward also say the

city condemned properties that do not meet the state's blight definition, undervalued the properties and failed to negotiate in good faith with the remaining homeowners.

Wegener says he wants discovery on when and why the city changed its plan for the targeted neighborhood — known as Marine Terrace-Ocean Terrace-Seaview Avenue — which residents believed was to remain intact. But in 2001, the plans changed without a public hearing, and the residents didn't learn about it until late 2002, says Wegener. When residents began going to city council meetings to ask officials to remove the neighborhood from the redevelopment zone, they were told it was too late, Wegener says.

"We want to know when, where and how it came to be that they decided to condemn the whole ... neighborhood," he says. "It was a complete reversal of the initial plan. What was driving it? To what extent was it in the best interest of the developers' interests? To what extent was it in the best interest of the residents' interests?"

Wegener says he has received more than a dozen appraisals on properties in the neighborhood from McGuire Associates, real estate appraisers and consultants in Jersey City, that range from \$400,000 to \$550,000. "They are not fair amounts," he says. "My clients couldn't replicate what they have so close to the ocean for this amount of money."

He adds: "There's no way property owners near the ocean in Long Branch can replace what they have, if and when they finally receive just compensation."

City attorney Aaron, of Ocean Township's Ansell, Zaro, Grimm & Aaron, disputes the charge that the city has not engaged in good-faith negotiations. At least 12 property owners in the neighborhood agreed to take offers by the city, he says. And he says that Greenbaum, Rowe partner Robert Goldsmith told the annual convention of the League of Municipalities in Atlantic City on Nov. 15 that almost 90 percent of redevelopment properties are acquired by negotiation. ■