

## **Redevelopment Plan and Designation Challenges**

**Albano v. City of Vineland, Dkt. No. A-3711-05T1 (App. Div.), decided December 14, 2006.....17**

Plaintiffs, citizen objectors, appealed the trial court's order rejecting a challenge to the defendant's redevelopment plan ordinance permitting the opening of a Wal-Mart store. Among other grounds, plaintiffs alleged that the adoption of the ordinance violated the city's Master Plan because the proposed development did not comply with the redevelopment plan adopted by the city. The Appellate Division affirmed the trial court's decision to uphold the ordinance as substantially consistent with the Master Plan as the board, in reaching its decision, had relied on its supervising planner's expert analysis that the ordinance was consistent. Further, the court noted that the adoption of amendments to the redevelopment plan to accommodate Wal-Mart's project was not improper.

**Concerned Citizens of Princeton, Inc. v. Mayor and Council of the Borough of Princeton, 370 N.J. Super. 429 (App. Div. 2004), certif. den. 182 N.J. 139 (2004).**

The trial court dismissed plaintiffs' complaint challenging defendants' designation of certain municipally owned properties located within the central business district of the borough as constituting an area in need of redevelopment. The Appellate Division affirmed, finding that there was substantial credible evidence supporting defendants' findings that the areas were in need of redevelopment. In particular, the court concluded that the redevelopment plan, calling for construction of a parking garage, public plaza and 75 housing units (including 12 affordable units), was supported by a showing that the central business district was becoming stagnant and therefore the designation of the surface parking lot as an area in need of redevelopment was proper. The court further found that in light of the existence of a new public library, the designation of the existing public property containing a public library as an area in need of redevelopment was also proper. Finally, the court held that a municipality is not limited to using the criteria set forth at subsection (c) of N.J.S. 40A:12A-6 when designating a municipally owned area as one in need of redevelopment.

**D&M Asbury Realty, LLC v. Asbury Park, Dkt. Nos. A-3022-03T5, A-3239-03T5, A-3240-03T5 (App. Div.), decided January 24, 2006, certif. den. 186 N.J. 607 (2006).....38**

The Appellate Division consolidated three appeals and affirmed the trial court's grant of summary judgment to the city, holding that a municipality has the discretion to provide in its redevelopment plan that property owners do not have the opportunity to redevelop their own properties, and that such a restriction does not amount to a taking of property because it does not deny all beneficial use of

the property. The court further ruled that such discretion was exercised properly in this case because there was a reasonable basis for the exclusion of individual property owners from the redevelopment plan. That reasonable basis was the owners' failure to redevelop their properties over the previous 19 years, which had seen two redevelopment plans fail (in part because of the individual owners' failure to redevelop). The redevelopment plan also permitted individual owners to petition to redevelop their properties as subsequent developers upon application to the redevelopment entity. The court also rejected equal protection, vagueness and bad faith challenges to the redevelopment plan.

**ERETC, LLC v. City of Perth Amboy, 381 N.J. Super. 268 (App. Div. 2005)**

Plaintiff owned a light manufacturing building that was included in an area designated for redevelopment. The building was in good condition and was 65% to 75% occupied by the owner and tenants. Approximately 345 people were employed in the building, 75% to 80% whom lived within a five to eight mile radius. Plaintiff appealed the designation. The Appellate Division reversed a determination that plaintiff's property should be included in an area designated as in need of redevelopment because the decision was not based on substantial evidence, as there was no analysis of the statutory criteria.

**Gallenthin Realty Development, Inc. v. The Borough of Paulsboro, No. A-6941-03, A-0222-04 (App. Div. July 14, 2006), Petition for Certification granted 188 N.J. 492, October 17, 2006.....103**

Plaintiffs owned a vacant 63 acre parcel in the Billingsport section of Paulsboro, which up until 1963 had served as a US Army Corps of Engineers dredge deposit site. The vacant land also had been leased for ground access, storage trailer placement, employee vehicle parking, and 142 feet of floating docks, although the leases had not been renewed since 1998. In 1998, Plaintiffs listed the property for sale at \$2.5 million and, in the same year, successfully requested that the parcel be rezoned from manufacturing to Marina Industrial Business Park, which permitted mixed non-residential, commercial and light industrial uses. Plaintiffs additionally argued at trial that the parcel was used for the farming of phragmites, defined as "a common weed, used for animal feed". From 1998 to 2001, Paulsboro and its Planning Board and Redevelopment Agency (the "Defendants"), took numerous steps to adopt new master plans, authorize studies and preliminary investigations, adopt resolutions, and conduct public hearings to identify areas in need of redevelopment, none of which included Plaintiffs' property. In 2002, for the first time, Plaintiffs' parcel was identified for possible inclusion within the redevelopment area. Ultimately, on May 20, 2003, the governing body adopted an ordinance that included Plaintiffs' property within the redevelopment plan.

Plaintiffs filed a prerogative writ action seeking to void the ordinance. The trial court dismissed Plaintiffs' complaint finding that the Defendants "meticulously"

followed the statutory requirements in including Plaintiffs' property within the redevelopment plan. Plaintiffs appealed the trial court's ruling. The Appellate Division, however, affirmed the lower court's decision, holding that Borough demonstrated substantial evidence that Plaintiffs' parcel, due to its underutilization (and not because it was vacant land), was an "area in need of redevelopment."

**In Re Protest of Hartz Mountain Indus., et al., Dkt Nos. A-1169-03T3 et al. (App. Div.) decided August 17, 2006.**

The court consolidated nine appeals by Hartz Mountain Industries, Westfield America, Inc. and the Braha Group (collectively "plaintiffs") to final administrative decisions issued by the New Jersey Sports & Exposition Authority ("NJSEA") that approved the award of a contract for the Xanadu project submitted by the Mills Corporation and Mack-Cali Corporation (collectively "Mills/Mack-Cali") for the redevelopment of Continental Airlines Arena. On June 28, 2002, NJSEA issued a public Request for Proposals ("RFP") seeking a master developer for redevelopment of the Continental Airlines Arena. On February 12, 2003, NJSEA adopted a resolution deciding to negotiate a development agreement with Mills/Mack-Cali. On or about February 18, 2003, Hartz Mountain requested a hearing to protest the bid, which was granted by NJSEA. Bid protest hearings were heard, and on August 5, 2003, a report was issued with the recommendation that the bid protest claims be rejected. NJSEA adopted the report on September 10, 2003. Plaintiffs filed suit in the Law Division to contest the bid protest process, which was dismissed by the trial court as unripe. Plaintiffs appealed that determination as well as NJSEA's adoption of the hearing officer's report. Plaintiffs also appealed NJSEA's adoption of the resolution authorizing execution of the Redevelopment Agreement with Mills/Mack-Cali. After the courts resolved several OPRA issues (see Hartz Mountain Industries, Inc. v. New Jersey Sports & Exposition Authority, 369 N.J. Super. 175 (App. Div. 2004)), NJSEA held a supplemental bid protest hearing. NJSEA additionally approved a supplemental report concerning the Master Plan for the Meadowlands project in connection with the Mills/Mack-Cali redevelopment project that involved the transfer of the Empire Tract to the Meadowlands Conservation Trust. The Hartz Mountain and Westfield plaintiffs also appealed adoption of that resolution.

The Appellate Division consolidated these appeals. The court concluded that the NJSEA's broad authority to develop the Meadowlands Sports Complex permitted NJSEA to select the Xanadu project despite the claimed excessive quantity of retail space; that the NJSEA's RFP did not prohibit proposals that competed with local businesses; that the accepted proposal was not non-conforming with the Redevelopment Plan even though there was no proposed use for Continental Arena and did not include a profit-sharing component; that the contacts between Mills and NJSEA did not render the RFP process unfair and that no undue advantage was obtained by Mills/Mack-Cali from its transfer of the Empire Tract

to the State; and that NJSEA was not required to adopt the most remunerative proposal because financial return was only one of many strategic planning goals identified in the Redevelopment Plan.

**LBK Assoc., LLC v. Lodi, Dkt. No. BER-L-8766-03 (Law Div., Bergen County), decided October 6, 2005, on appeal Dkt. No. A-1829-05T2.....149**

Plaintiffs, a coalition of trailer park homeowners, alleged that defendant erred in classifying their properties as “in need of redevelopment”. The court found that the municipality failed to establish by substantial evidence that the trailer park was an area in need of redevelopment because its findings were tantamount to criticisms and failed to address the important criteria such as interior inspection of the trailers, safety violations and identification of health hazards or unsanitary conditions.

**Rose Hill Estates v. Township of Haddon, Dkt. No. A-1443-04 (App. Div.) decided July 12, 2006.....170**

In 2001, Plaintiff, Rose Hill Estates (“Rose Hill”) purchased a 3.3 acre property upon which a cement factory was demolished by the Township. Rose Hill paid the municipal lien of \$190,000, as well as back taxes. The 1999 Haddon Master Plan identified the property area as the “Haddon Avenue Corridor”, with the following uses specifically recommended for the property: “higher density downtown residential uses, such as townhouses, garden apartments, or senior independent or assisted living.” In November 1999, the Township zoning ordinance was revised to include the area within the R-D or Residential Downtown Zone, where permitted uses included single-family detached and semi-detached, senior citizen multi-family, and mid-rise apartment multi-family units.

In October 2002, the Township Board of Commissioners recommended a revised Redevelopment Plan, with the suggestion that only semi-detached and townhouse units (density limited to no more than 10 units per acre) be permitted on Plaintiff’s property. On that same day, Plaintiff submitted a site plan application for approval for a 66-unit, mid-rise, multi-family housing development. The Township did not amend the zoning ordinance to incorporate the recommendation that Plaintiff’s property be limited to a density of ten units per acre, and no revised redevelopment plan was adopted. Instead, in December 2002, an Ordinance was adopted that eliminated mid-rise, multi-family apartment units as permitted uses in the R-D zone. In February 2003, the Plaintiff’s application for site plan approval was denied because the proposed use was not a permitted one and the Planning Board did not have jurisdiction to grant a use variance.

In May 2003, Plaintiff filed a prerogative writ action seeking reversal of the denial. Two months later, Plaintiff filed a second application, this time seeking approval

of a 112-unit senior citizen multi-family development. In October 2003, the Township Board of Commissioners adopted another Ordinance changing permitted uses in the R-D zone, this time excluding senior citizen, multi-family development and permitting only single family detached and semi-detached homes and townhomes in the zone. In January 2004, Plaintiff's second application for subdivision approval was rejected because the proposed use again was not a permitted one under the new ordinance. Plaintiff amended its complaint to challenge the second denial. The trial court dismissed Plaintiff's complaint, finding that the "amendments were consistent with the Master Plan, not arbitrary or capricious and properly applied" to Plaintiff's two applications.

Plaintiff appealed the trial judge's decision. The Appellate Division affirmed the trial court's ruling, holding that actions of the Township Commissioners were entitled to deference and great weight, that the amendment of the ordinances were neither arbitrary nor "substantially inconsistent" with the Master Plan, and that the Master Plan presented provided "housing alternatives consistent with [its] objective to revitalize the downtown area." The Appellate Division additionally rejected Plaintiff's argument that the amendments to the zoning ordinance that were adopted after and during its subdivision application, should not have been considered by the Planning Board or the trial court. . The Court concluded that Plaintiff was free to apply for any required variances.

**ADDITIONAL NOTE:** On January 4, 2007, Assembly Bill No. 3870 was introduced (identical to Senate Bill No. 457, introduced in the Senate, on January 10, 2007) seeking to change the present law regarding the effect and impact of a later-amended ordinance. The bills propose to amend the Municipal Land Use Law with the following language: "Notwithstanding any provision of law to the contrary, those development regulations which are in effect on the date of submission of an application for development shall govern the review of that application for development and any decision made with regard to that application for development. Any provisions of an ordinance, except those relating to health and public safety that are adopted subsequent to the date of submission of an application for development shall not be applicable to that application for development."

**Shelton v. Planning Board of the City of Trenton, Docket No. MER-L-0068-05 (Law. Div., Mercer County) decided December 16, 2006.**

Plaintiffs, whose residence is located adjacent to the Champale Redevelopment Area in the City of Trenton, New Jersey, filed an action in lieu of prerogative writs to challenge alleged procedural and substantive defects in the City's adoption of the amended redevelopment plan. While the trial court found that the procedural defects were insubstantial, the court did find that the governing body's required statutory finding that the area qualified as an "area in need of rehabilitation" was arbitrary and capricious due to a "woefully inadequate" record. Examples cited by the court included: an inadequate report to the planning board by the planner

who failed to sufficiently investigate each parcel; little or no deliberation by the planning board; inaudible recordings and grossly insufficient transcripts of the related City Council hearings (despite prior admonitions by the court in other cases to obtain proper recording equipment and/or hire a stenographer), and failure of the record to demonstrate that there was any dialogue or discussion as to whether the area qualified as an area in need of redevelopment. Despite a presumption in favor of municipal governmental action, without an acceptable record, the trial court found that it could not “engage in judicial review.” The trial court reversed and remanded the matter back to the Planning Board and the City Council for proper consideration and deliberation on the record.

**Shore Memorial Foundation, Inc. v. City of Somers Point , Dkt. No. A-0415-05 (App. Div.), decided June 15, 2006.....185**

Plaintiff, Shore Memorial Health Foundations and Shore Health Services Corporation (“Hospital”) owned a significant amount of property included within the City’s Redevelopment Plan Area. As a result of prior litigation, all actions relating to the Redevelopment Plan, taken on or after January 1, 2004, had been declared “null and void.” Although the final judgment of the trial court negated the entire plan, the trial court’s order gave the Defendant City Planning Board and the Defendant City Council until August 31, 2004, to “reconsider” a plan that would be in accordance with the New Jersey Local Redevelopment and Housing Law. The final judgment additionally allowed the Planning Board to refuse to consider any application for development submitted by the Hospital without City Council’s first approving the Hospital’s proposal. The Hospital appealed from the part of the final judgment that required it to first obtain City Council approval, an action not required under the New Jersey Municipal Land Use Law (“MLUL”).

The Appellate Court agreed with the Plaintiff, in holding that because the Plan had been declared “null and void”, neither the City Council nor the trial court could impose procedural or substantive requirements different from the requirements of the MLUL, while the City reconsidered its redevelopment plan. As the Appellate Court reasoned, to permit the City to interfere and delay consideration of the Hospital’s application while a new plan was being reviewed, would be inconsistent with the New Jersey Legislature’s “unmistakably clear intention to permit owners to develop their properties absent duly enacted restrictions on that right.” The Appellate Court’s ruling permitted Plaintiff to move ahead with its application before the City Planning Board.

## **Procedural Challenges**

### **Asbury Park v. Asbury Park Towers, 388 N.J. Super. 1 (App. Div. 2006).**

The Appellant, Asbury Partners, LLC entered into a contract with Asbury Park to redevelop the city's waterfront. The redevelopment agreement obligated Asbury Partners to bear all costs of the land acquisition process, including the payment of any condemnation awards as a result of the redevelopment. The respondent, Asbury Park Towers, owned a vacant lot that was in the redevelopment zone. Private negotiations were unsuccessful and the city acquired the land by eminent domain. The appraiser, whom Asbury Partners agreed to, valued the lot at \$240,000 and that amount was deposited into court. Asbury Park Towers opposed the condemnation action. Asbury Partners moved to intervene to participate as a party to the condemnation action and valuation proceedings, claiming a unique and unprotected interest in the proceedings. The trial court denied the motion and Asbury Partners appealed. The Appellate Division ruled that Asbury Partners had no right to intervene in the condemnation proceedings because it made no showing that the condemning authority did not adequately represent its interest.

### **Carteret Indus. Project v. Borough Council of Carteret, Dkt. No. A-1893-05T1 (App. Div.), decided January 23, 2007.**

The trial court's grant of summary judgment was affirmed based on plaintiff's failure to file a timely action to contest designation of its property as a redevelopment zone or challenge the city's redevelopment plan. The Appellate Division held that plaintiff's challenge to the condemnation of "private property" was not a matter of important public interest justifying relaxation of R. 4:69-6.

### **Deegan v. Perth Amboy Redevelopment Agency, 374 N.J. Super. 80 (App. Div. 2005), certif. den. 183 N.J. 217 (2005).**

The Appellate Division found that a redevelopment agency's decision to enter into a redevelopment agreement is governed solely by the provisions of the Local Redevelopment and Housing Law and Open Public Meetings Act which do not require a public hearing. In reaching that conclusion, the court noted that a hearing before the Planning Board on a land use application is a quasi-judicial proceeding for which the MLUL requires a public hearing in accordance with the MLUL's procedural requirements, whereas a redevelopment agency's decision to approve a developer's proposed project and enter into a redevelopment agreement is administrative rather than quasi-judicial in nature.

Interesting comment relating to members of the redevelopment agency who did not listen to the tapes but who were familiar with the redeveloper's plan:  
"Consequently, even if a requirement comparable to N.J.S.A. 40:55D-10.2 applied to a vote by a redevelopment agency member who was absent from a

meeting regarding a redevelopment project, the two new members of PARA would have substantially complied with this requirement.” Id. at 88. (Emphasis supplied).

**Jersey Urban Renewal, LLC v. City of Asbury Park, et al., 377 N.J. Super. 232 (App. Div. 2005), certif. den. 185 N.J. 392 (2005).**

Plaintiff, the owner of a dilapidated apartment building in the waterfront redevelopment zone, applied for site plan approval for proposed renovation. Defendants Asbury Park and the redeveloper objected, contending that the application was incomplete without obtaining status as a subsequent developer, approval of TRC Committee and approval of Mayor and City Council. The Appellate Division held that the procedural requirements of redevelopment plan, including requirement that plaintiff obtain status as a subsequent developer, approval of TRC Committee and approval of Mayor and City Council, is required before plaintiff could file a site plan application before the planning board to redevelop apartment building to condominiums.

**Condemnation Challenges**

**Asbury Park Bd. of Ed. v. City of Asbury Park, Dkt. No. A-1076-04T1 (App. Div.), decided April 6, 2006, certif. den. 188 N.J. 355 (2006).....194**

Plaintiff, the board of Education, challenged ordinances adopted by defendant authorizing the acquisition by eminent domain of plaintiff’s property. Plaintiff challenged the taking of its property on the grounds that the defendant could not condemn property, already devoted to public use, owned by another public entity.. The Appellate Division affirmed the trial court’s grant of summary judgment, finding that the prior public use doctrine did not prohibit condemnation of the Board’s property because (1) the city adopted its amended redevelopment plan pursuant to the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 et seq. and Eminent Domain Act, N.J.S.A. 20:3-6, and therefore had express statutory authority to condemn the property of another public entity; and (2) because the greater public interest is served by permitting defendant to exercise eminent domain.

**Century Land Group v. Mayor and Council of Keyport, Dkt. No. MON-L-1869-05 (Law Div., Monmouth County), decided August 22, 2006.....205**

Plaintiff, a contract purchaser, challenged the validity of the designation of property as an area in need of redevelopment. Plaintiff previously indicated in correspondence and at the public hearing that it had no objection to the designation of the property so long as the plaintiff was the redeveloper. Defendant subsequently exercised its right under a Memorandum of

Understanding with plaintiff to terminate plaintiff as the redeveloper because the adopted redevelopment plan called for a substantially lower residential density than that proposed by plaintiff. The trial court denied plaintiff's motion for summary judgment, finding that a redevelopment designation is proper even where the property is likely to be redeveloped by private effort so long as any of the conditions for redevelopment are met under the Redevelopment Law, N.J.S.A. 40A:12A-5. The trial court further held that a municipality is not obligated to re-zone rather than redevelop to preserve ownership of blighted property. The trial court granted defendant's cross-motion for summary judgment, finding that the designation of the site as an area in need of redevelopment was not arbitrary.

**City of Long Branch v. Brower, et al., Docket No.: MON-L-4987-05 (Law Div., Monmouth County) decided June 22, 2006, on appeal Dkt. No. A-196-06T2.....240**

Long Branch filed an order to show cause for the taking of property and appointment of commissioners. Defendants were all property owners of the Marine Terrace, Ocean Terrace and Seaview Avenue properties (collectively the "MTOTSA properties"). Defendants challenged the city's action on the basis that it was (1) arbitrary and capricious; (2) the benefit of the taking was for a private developer and did not advance a public purpose; (3) there were conflicts of interest between law firms, a bank, and a redeveloper; (4) the city improperly delegated its authority to engage in or failed to engage in negotiations pursuant to NJSA 20:3-6; and (5) the city unconstitutionally delegated its power of eminent domain.

To resolve the issues, the court reviewed the New Jersey Constitution, the Redevelopment Law, and the Eminent Domain Act. The court noted that the defendants had the burden of establishing that the city's determination was not supported by substantial credible evidence on the record. The court found that the city's actions were not arbitrary and capricious or unsupported by substantial evidence – indeed, the city had conducted preliminary studies, referred the matter to the planning board for investigation and review, and held public hearings. Because of the extensive work undertaken by the city, the court found that allowing the property owners to challenge the redevelopment project would threaten large scale redevelopment efforts. The court was unmoved by the possibility that the MTOTSA properties should not have been included in the original plan. Indeed, it did not even matter to the court whether the areas were in need of redevelopment. The court deferred to the experts' findings and held that the city properly established that the area was in need of redevelopment as supported by facts consistent with NJSA 40A:12A-5.

The court also addressed the conflict of interest issue, which arose because one of the developers had represented by the same law firm as the city in a separate matter. The defendants claimed that this dual representation influenced the decision to condemn the subject properties. The court found that there was no conflict of interest because there was no evidence that either the city or the law firm were involved in the negotiations for the selection of the developer and condemnation of the properties. The court also found no conflict of interest with respect to city councilmen who owned stock or held positions

at a bank that extended a line of credit to one of the developers, holding that the defendants were unable to show how this was detrimental to them.

The court also found no merit to defendants' argument that the city failed to make bona fide good faith negotiations. Defendants asserted that the condemnees, through their counsel, displayed an unwillingness to negotiate, rendering negotiations impossible.. Finally, the court found no merit to defendants' argument that the city improperly limited its ability to negotiate with property owners by entering into a contract under which the city had to obtain the consent of the redeveloper in order to pay anything above the initial offer to the homeowner. Under the terms of the contract, if consent was not reached, the city was contractually obligated to condemn. Here, the court found that the city could only give away its right to negotiate if it imposed the same standards on the private party. Further, the court strongly urged the city to be cautious in contracting away its ability to continue negotiations in good faith. However, because the city offered the full fair market value to each condemnee, there was no basis for finding that its statutory obligations were imposed upon by any relevant agreements.

**City of Long Branch v. Gray, et al., Docket No. A-3984-04T (App. Div.)**  
**decided January 31, 2007.**

On May 14, 1996, Long Branch adopted an ordinance approving the "City of Long Branch, NJ Oceanfront – Broadway Redevelopment Plan." The defendants owned property in the redevelopment zone consisting of two adjoining lots. On one lot there was a single family home and on the other lot there were two two-family homes. The defendants paid \$200,000 for both lots.

In July 2001, Long Branch sought to acquire defendants' property by way of a verified complaint and declaration of taking, estimating the value of the properties at \$60,000. Defendants objected to the condemnation, but the parties reached an agreement and the defendants withdrew their opposition. The agreement provided that June 22, 1999 (the date that Long Branch adopted the resolution authorizing demolition of defendants' property) would be the date of taking and that the valuation would be determined as of that date, with interest.

Condemnation commissioners found the value of defendants' property to be \$140,000. Both parties appealed, with the matter scheduled for a jury trial. The sole issue for the jury was the determination of the fair market value of the defendants' land and buildings as of June 22, 1999. Long Branch presented experts who testified about the deplorable condition of the buildings and the demolition orders issued against them. The demolition orders had not been presented at the commissioners' hearing. The defendants moved to exclude reference to the demolition orders, but the trial judge denied the motion because parties in condemnation proceedings are not required to exchange discovery aside from appraisals and supporting information. Long Branch's appraiser applied an 85% depreciation factor, and valued the two properties at \$137,000.

The judge precluded the defendants from presenting evidence that Long Branch had caused the deteriorated condition of the buildings and the surrounding neighborhood. The judge reasoned that the defendants had the right to choose their own valuation date and the defendants chose a date 3 years after the city declared the area in need of redevelopment. Accordingly, the judge only allowed evidence regarding the physical

condition of the structures and neighborhood as of the date that the defendants chose. Defendants also were precluded from offering evidence of their purchase price, but could present evidence of comparable sales up to 7 months after the valuation date. Defendants' expert testified that continued residential use was the highest and best use of the properties. He valued the two properties at a total of \$635,000. The jury awarded the defendants \$155,000 for both properties, plus interest.

Both parties appealed. The Appellate Division found that the comment by the city's attorney at the commissioners' hearing that the demolition order may or may not have existed was not "inconsistent" with its position at trial that the demolition orders had been issued. Accordingly, a finding of judicial estoppel was unwarranted. As to the city's cross appeal, the court found that the city had agreed to the valuation date, and that interest on a condemnation award ran from either the commencement of the action or the date of the actual taking, whichever was earlier. Here, the actual taking occurred before filing, so that was the correct date for calculation of interest.

**New Jersey Meadowlands Commission v. Thirteen East Group, LLC, Dkt. No. BER-L-7752-02 (Law. Div. Bergen County) decided November 29, 2006.....300**

Plaintiff, New Jersey Meadowlands Commission, (hereafter "the State") filed a motion to request that the court permit it to present evidence of the "true condition" of the property at trial. Closure costs, including environmental clean up for the 40 acre landfill located in Lyndhurst, Bergen County, had been estimated by the State to exceed 24 million dollars. During the commission hearings, the State estimated the fair market value of the landfill at \$480,000, whereas the Owner valued the property for residential development at 7.7 million dollars. The appraisal report presented during the commission hearings identified in excess of 7 million dollars of extraordinary site preparation costs. The commission award for the property was 3.5 million dollars. The issue presented on appeal to the Law Division by Plaintiff of the commissioner's award was "whether or not landfill closure costs would be treated as environmental cleanup costs in condemnation actions" which the trial court termed "a somewhat novel question." The trial court denied Plaintiff's motion in upholding the existing rule in New Jersey, i.e., that in condemnation cases, issues of environmental cleanup are addressed in a subsequent cost-recovery proceeding, separate and distinct from the condemnation proceeding itself. Relying on past case law, the trial court reasoned that a condemnation hearing is not the procedural arena in which to evaluate, assign and allocate liability for environmental contamination and clean-up. New Jersey courts have taken the position that the complexities of environmental contamination claims, with their related third party claims and defenses, are better determined in a separate hearing. Moreover, the trial court was concerned that the State could receive a potential "windfall" if the property was not valued as remediated. The existing system of bifurcated proceedings where the property is first valued at its "highest and best - as if remediated" fair market value, was held to ensure that the owners of the condemned property are awarded just compensation.

**NL Industries, Inc. v. New Jersey Department of Environmental Protection, Sayreville Economic and Redevelopment Agency, No. A-5804-04 and No. A-6094-04 (Consolidated) (App. Div. March 2, 2007). .....314**

Plaintiff, NL Industries, Inc. (“NL”) owns four hundred acres of land located on the shore of the Raritan River in Sayreville. The parcel had been used for industrial purposes for more than fifty years, with titanium oxide and sulfuric acid produced on site. In 1998, when the Middlesex County Utilities Authority considered acquiring the property, Plaintiff acknowledged its responsibility to remediate the site. Because the acquisition involved “ECRA” obligations, Plaintiff contacted Defendant, the New Jersey Department of Environmental Protection (“DEP”) and in 1989, Plaintiff and Defendant DEP entered into an Administrative Consent Order (“ACO”). By December 2004, Plaintiff had spent more than 11 million dollars in its remediation, conducted with DEP acknowledgement and approval.

In 1996, the Borough of Sayreville designated NL’s property as an “area in need of redevelopment” and in 1998 created Defendant, the Sayreville Economic and Redevelopment Agency (“SERA”) to take control of the municipal redevelopment program. Although NL and Sera worked cooperatively for some time, with NL hoping to recoup some of its remediation costs, cooperation ended and lawsuits were filed. In 2000, SERA began efforts to obtain NL’s property through eminent domain and in 2001 contacted DEP to request executing a Memorandum of Understanding (“MOU”) with DEP. The intent of the MOU was to permit SERA to take over the remediation of Plaintiffs’ property. NL objected, claiming that SERA had no right to interfere or intervene with its clean up work. Litigation ensued, with the trial court ruling in favor of Plaintiff, NL, barring DEP from executing a MOU with SERA. On appeal, the Appellate Court was called upon to decide whether DEP had the right to remove NL from the work that it had undertaken and paid for on its own property, and permit SERA to complete the remediation. The court specifically needed to determine whether under the Brownfield and Contaminated Site Remediation Act, N.J.S.A. 58:10B-1 et seq., NL had failed in its responsibilities, and SERA could step in as the “transferee” with authority to perform the remediation. The Appellate Court affirmed the trial court’s rulings, holding that under the Act, DEP could not remove NL unless and until it failed in its clean up responsibilities, despite the interest of SERA, a municipal body, to take on the remediation work.

**Township of Bloomfield v. 110 Washington Street Associates, Dkt. No. A-6770-04 (App. Div.) decided August 29, 2006, certif. den. 188 N.J. 578 (2006).**

Plaintiff, Bloomfield Township, sought to condemn Defendant’s property, pursuant to the New Jersey Local Redevelopment and Housing Law (“LRHL”) and the Eminent Domain Act. Defendant challenged the condemnation and the trial court dismissed the complaint because the Township had failed to demonstrate that the Defendant’s property posed a detriment to the public health, safety or welfare, or that it was underutilized – both requirements under the

LRHL. The Township appealed, arguing, that since the Defendant had unsuccessfully challenged the redevelopment designation and condemnation proceedings in a prior lawsuit, the trial court should have abided by the prior court case and not reheard the matter. The trial court rejected Plaintiff's argument because the original challenge by the Defendant was dismissed due to a late-filed Complaint. The trial court held that the prior dismissal "was not an adjudication of the merits [of the case], and that defendant was entitled to a full and fair opportunity to litigate the issues it raised." The Appellate Court affirmed the trial court's decision, indicating that the trial court holding was "a full decision on the merits. . ." The Appellate Court further held that while it was bound by the lower court's findings of fact, it was not bound by the trial court's interpretations of law. Nevertheless, the Appellate Court, determining that there was no error or misapplication of law, agreed with the trial court's legal holding.

**Harrison Redevelopment Agency v. Amaral Auto Center, Dkt. No. HUD-L-4116-06 (Law Div.) decided February 13, 2006.**

Defendant, Amaral Auto Center, challenged the plaintiff's designation of their property as an area in need of redevelopment and legal authority to condemn their property. The defendant received notice of the town's meeting and resolution identifying their property as an area in need of redevelopment in 1997. The township adopted the redevelopment plan in 1997, and amended the plan in 1999 and again in 2003. In 2005, plaintiff engaged in bona fide negotiations and offered defendant the appraised value of the property. In 2006, plaintiff filed a complaint seeking to acquire the property through condemnation. The defendant filed an answer opposing the complaint. The trial court found that that defendant's action was time-barred and declined to follow the court's decision in Township of Bloomfield v. 110 Washington Street Associates, Dkt. No. A-6770-04 (App. Div. August 29, 2006), distinguishing that case on the grounds that in this case, there was no apparent conflict of interest and that the defendant in this case had notice of the designation of their property since 1997. The trial court also found defendant's other claims were meritless.

### **Contributions for Off-Site Improvements**

**Britwood Urban Renewal, LLC v. City of Asbury Park, 376 N.J. Super. 552 (App. Div. 2005).**

Plaintiff, owner of an apartment complex located in an area designated as in need of redevelopment, appealed from the trial court's decision requiring plaintiff to deposit \$300,000 in escrow for off-site improvements. The Appellate Division held that the Local Redevelopment and Housing Law does not permit the public body to require contributions for off-site infrastructure costs from property owners who are not redevelopers.

**MLUL & Redevelopment**

**Carrington v. Lambaise, Dkt. No. A-2961-99T1 (App. Div. 2001), certif. den. 169 N.J. 605 (2004).....342**

Plaintiff sought to create a community facility within a sub-district of the 1995 Martin Luther King Drive Redevelopment Plan. Defendant, Jersey City Division of Zoning, denied the proposal, citing the Redevelopment Plan only permitted that use in the sub-district where the community facility was operated by the city, not a private entity. The trial court ordered that the zoning board consider plaintiff’s appeal of the defendant’s decision. The city appealed. The Appellate Division affirmed, ruled in effect that development standards in a redevelopment ordinance become zoning standards for the redevelopment area and a planning or zoning board may entertain applications for variances.

**First Montclair Partner, L.P. v. Herod Redevelopment I, LLC, et al., 381 N.J. Super. 298 (App. Div. 2005).**

In 1999, the Montclair Township Council designated the plaintiff’s property within the township’s redevelopment plan. In November 2003, Defendant filed a site plan application and a request for variances for a redevelopment project on plaintiff’s property. The planning board approved the application in January 2004. Plaintiff filed a complaint in lieu of prerogative writs challenging the planning board’s decision. The trial court dismissed the complaint. Plaintiff appealed, contending that the height of the building proposed by the redeveloper exceeded the redevelopment plan’s height requirements. The Appellate Division affirmed, holding that the planning board’s interpretation relative to the height of the proposed structure made pursuant to the redevelopment plan is entitled to judicial deference, notwithstanding the fact that the zoning ordinance may suggest a different interpretation.

**Rose Hill Estates v. Township of Haddon, Dkt. No. A-1443-04 (App. Div.) decided July 12, 2006.**

See Page 4.

**Shore Memorial Foundation, Inc. v. City of Somers Point , Dkt. No. A-0415-05 (App. Div.), decided June 15, 2006.**

See page 6.

**Weeden v. City Council of Trenton, Dkt. No. A-2200-05T5 (App. Div.), Approved for Publication March 19, 2007.....348**

In March 1991, the Trenton City Council adopted the Roebling Complex Redevelopment Area Plan. The Redevelopment Plan, amended in 1997, permitted restaurants but prohibited drive-in restaurants. In March 2004, JAT Properties, LLC, (“JAT”) applied to the city’s Zoning Board for a use variance to

construct a fast food restaurant with a one-lane drive-thru window in the Redevelopment Area. During two days of hearings, JAT presented expert testimony establishing that the project was not economically viable without the drive-thru window. Several objectors opposed the use variance at the hearings because the proposed use was inconsistent with the Redevelopment Plan.

In July 2004, the Zoning Board approved the application, finding that the property was particularly suited to the proposed use due to its shape, size, and unique location near the Sovereign Bank Arena, as well as being bounded by Route 29 and South Broad Street. The Board further concluded that in spite of the drive thru feature, the restaurant was consistent with the Redevelopment Plan because it would promote after-hours use, service neighborhood residents and patrons of the arena. The City Planners further recommended approval of the use variance. The Zoning Board's decision was appealed and the City Council affirmed the Board's decision in October 2004.

On November 5, 2004, plaintiffs filed a complaint challenging the City Council's decision in Superior Court, contending that the Board did not have jurisdiction to grant a use variance from the Redevelopment Plan. In July 2005, the trial court disagreed, ruling that the Zoning Board had jurisdiction to hear the application and grant a use variance from the Redevelopment Plan. However, the trial court concluded that the City Council failed to make independent findings of fact justifying its decision and remanded the matter to the City Council. In September 2005, the Council again approved a resolution granting the application. Plaintiffs again challenged the Council's decision, alleging that the approval was based on political dealings rather than the merits. The trial court found that permitting discovery relating to these allegations would unduly delay the application and therefore bypassed the Council's review and decided the application in favor of JAT.

Plaintiffs appealed. The Appellate Division held that the zoning board had the jurisdiction to grant a variance from the Redevelopment Plan because plan constituted "overlay zoning" because the City had not amended its Zoning District Map in accordance with the Redevelopment Law. The trial court was held to have properly reviewed the application and determined that the Zoning Board's decision was sustainable.

## **Bill Summaries**

**S-1975** Sponsored by Sen. Rice (Dist. 28 – Essex).....**372**  
Synopsis: Substantially revises law concerning eminent domain and municipal redevelopment.

**A-3257** Sponsored by Assemblyman Burzichelli (Dist. 3 – Salem, Cumberland, Gloucester).....**405**

Synopsis: Revises procedures for the use of eminent domain in municipal redevelopment programs.

**A-1292** Sponsored by Assemblyman Manzo (Dist. 31 – Hudson).....**446**  
Synopsis: Prohibits municipal officers and employees serving on redevelopment or housing agencies from voting to condemn property.

**A-537** Sponsored by Assemblyman Panter (Dist. 12 – Mercer and Monmouth).....**452**  
Synopsis: Prevents use of condemnation to acquire residential property under redevelopment laws.

**A-1220** Sponsored by Assemblyman Diegnan (Dist. 18 – Middlesex).....**464**  
Synopsis: Requires DCA approval for designation of areas in need of redevelopment and requires referendum before condemning land for private economic development.

**A-1926** Sponsored by Assemblyman Burzichelli (Dist. 3 – Salem, Cumberland, Gloucester).....**470**  
Synopsis: Authorizes establishment of dedicated local tax to finance redevelopment.

**A-2017** Sponsored by Assemblyman Kean (Dist. 11 – Monmouth).....**476**  
Synopsis: Requires increased notice to affected property owners for proposed redevelopment and rehabilitation areas.

**A-3143** Sponsored by Assemblyman Corodemus (Dist. 11 – Monmouth).....**482**  
Synopsis: Establishes an Eminent Domain Study Commission, provides for judicial oversight of the redevelopment process and enhances fair market value of property by a “value multiplier factor” intended to compensate a property owner for aesthetic or quality of life factors.

**A-3277** Sponsored by Assemblyman Connors (Dist. 9 – Atlantic, Burlington and Ocean).....**493**  
Synopsis: Prohibits use of condemnation to acquire residential and other private property under redevelopment laws.

**S-2457** Sponsored by Sen. Doria (Dist. 31 – Hudson).....**505**  
Synopsis: Requires prevailing wages to be paid for construction work on State-owned properties.

**Public Advocate’s Reaction to Kelo**

**Reforming the Use of Eminent Domain for Private Redevelopment in New Jersey (May 18, 2006)**.....**511**