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Compensation and Relocation Assistance for New Jersey Residents Displaced by Redevelopment: Reform Recommendations of the State Department of the Public Advocate

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INTRODUCTION

One of the first initiatives undertaken by the Department of the Public Advocate just after it was reconstituted in early 2006 was an investigation into how New Jersey municipalities were using the power of eminent domain to acquire privately owned land for further use by redevelopers. From the outset, the Department identified three top priorities for reform:

- limiting eminent domain for private redevelopment to truly blighted areas, as the State Constitution requires;
- making the redevelopment process fair and transparent so people receive clear notice and have a meaningful chance to defend their rights in court; and
- providing adequate compensation and relocation assistance so families that lose their homes can rent or buy safe, sound, and comparable replacement housing in their own communities.

We have made real progress on the first two of our stated goals. We continue to pursue the third.

PART I: THE DEPARTMENT OF THE PUBLIC ADVOCATE'S REDEVELOPMENT REFORM LITIGATION

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A. Protecting Non-Blighted Property

The New Jersey Supreme Court's landmark 2007 decision in *Gallenthin Realty Development, Inc. v. Borough of Paulsboro*,[1] which reined in the overbroad definition of "blight" that had prevailed under the Local Redevelopment and Housing Law,[2] has had widespread impact. We participated in the *Paulsboro* case as a friend of the court, arguing for the reassertion of constitutional limitations on the areas that could be designated "blighted" or "in need of redevelopment." The interpretation of the statute had expanded incrementally over the years so that, by the time of the decision, municipalities were interpreting it to apply to any property that could be made more productive or was operated in a less than optimal manner.[3] The Court noted that, under Paulsboro's approach, "any property that is operated in a less than optimal manner is arguably 'blighted.'"[4] "If such an all-encompassing definition of 'blight' were adopted," the Court noted, "most property in the State would be eligible for redevelopment."[5]

The Court responded forcefully, holding that under the New Jersey Constitution, the government may not designate private property for redevelopment unless it is "blighted," that is, marked by "deterioration or stagnation that has a decadent effect on surrounding property."[6] Moreover, the Court insisted on credible, substantial evidence of blight, noting that,

> [i]n general, a municipality must establish a record that contains more than a bland recitation of applicable statutory criteria and a declaration that those criteria are met. Because a redevelopment designation carries serious implications for property owners, the net opinion of an expert is simply too slender a reed on which to rest that determination.[7]

Those serious implications include empowering the municipality to take the blighted property by eminent domain and turn it over to another private party to redevelop. The *Paulsboro* decision protects property from a redevelopment designation unless it is in a blighted area, and demands that the municipality establish real proof of deterioration or stagnation so severe as to have a deleterious effect on surrounding property.

Relying heavily on the *Paulsboro* decision, courts have overturned inadequate blight designations in at least eight cases arising in six municipalities: Belmar, Hackensack, Lodi, Long Branch, Maplewood, and Newark.[8] One case, for example, involved a bakery located in an area that

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[1] Gallenthin Realty Dev. v. Borough of Paulsboro, 924 A.2d 447 (N.J. 2007).
[2] N.J. STAT. ANN. § 40A:12A-5 (West 2006).
[3] *See Gallenthin*, 924 A.2d at 460.
[4] *Id.*
[5] *Id.*
[6] *Id.*
[7] *Id.* at 465.
[8] Land Plus, L.L.C. v. Mayor of Hackensack, No. A-1276-07T3, 2008 WL 4648278 (N.J. Super. Ct. App. Div. Oct. 10, 2008); City of Long Branch v. Anzalone, No. A-0067-06T2, 2008 WL 3090052 (N.J. Super. Ct. App. Div. Aug. 7, 2008), *certif. denied*, 970 A.2d 1050 (N.J. 2009); HJB Assocs., Inc. v. Council of Belmar, No. A-6510-05T5, 2007 WL 2005173 (N.J. Super. Ct. App. Div. July 11, 2007); Dutch Neck Land Co. v. City of Newark, No. A-5825-06T2, 2008 WL 2026506 (N.J. Super. Ct. App. Div. May 14, 2008); BMIA, L.L.C. v. Planning Bd. of Belmar, No. A-5974-05T5, 2008

the Borough of Belmar had designated as "in need of redevelopment."[9] The Borough's consultant had justified this designation by finding that the bakery: "(1) had a faulty and obsolete layout; and (2) had an 'other condition' [residual] (contamination) [from a heating oil tank] that 'causes a stagnant economic condition of the properties in the study area [that] may tend to depress property values.'"[10] Nevertheless, the Appellate Division reversed the finding of blight, observing that the municipality had presented "no proof whatsoever that these conditions are detrimental to the safety, health, morals or welfare of the community."[11] The court concluded "that the Borough has made an insufficient showing that the criteria. . . [required for blight] ha[ve] been met."[12] Quoting from the Supreme Court opinion in *Gallenthin*, the Appellate Division relied on the principle that "[t]he New Jersey Constitution does not permit government redevelopment of private property solely because the property is not used in an optimal manner."[13] The opinion concluded that the bakery "is not a blighted area even if its design is not optimal for its commercial purpose."[14]

In another matter that has attracted considerable public attention, the Appellate Division struck down the blight designation of a residential beachfront neighborhood in Long Branch because it "did not find actual blight under any subsection" of the state's redevelopment law[15] and specifically noted that "the record lacked substantial evidence that could have supported the New Jersey Constitution's standard for finding blight."[16] The ruling relies heavily on the New Jersey Supreme Court's decision in *Gallenthin*. "Under *Gallenthin*, the absence of substantial evidence of blight invalidates all of the City's findings under [the redevelopment statute] that appellants' properties were in need of redevelopment."[17] Moreover, the municipality could not credibly claim that the neighborhood was essential to its redevelopment plans, because its beachfront redevelopment program had proceeded successfully even as the parties litigated whether the municipality had properly designated the small area in question as blighted.

B. Ensuring Procedural Fairness

In February 2008, the Appellate Division decided *Harrison Redevelopment Agency v. DeRose*.[18] Adopting arguments the Public Advocate had advanced, the court held that business owners were

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WL 281687 (N.J. Super. Ct. App. Div. Feb. 4, 2008); LBK Assocs. v. Borough of Lodi, No. A-1829-05T2, 2007 WL 2089275 (N.J. Super. Ct. App. Div. July 24, 2007); Mulberry St. Area Prop. Owners' Group v. City of Newark, No. ESX-L-9916-04 (N.J. Super. Ct. Law Div. July 19, 2007); Evans v. Township of Maplewood, No. L-6910-06 (N.J. Super. Ct. Law Div. July 7, 2007).

[9] HJB Assocs., Inc. v. Council of Belmar, No. A-6510-05T5, 2007 WL 2005173 (N.J. Super. Ct. App. Div. July 11, 2007).

[10] *Id.*, slip op. at 3.

[11] *Id.*, slip op. at 7 (citing Spruce Manor Enter. v. Borough of Bellmawr, 717 A.2d 1008 (N.J. Super. Ct. Law Div. 1998) (holding that failure to meet current design standards could not, by itself, serve as a basis for a designation that area was in need of redevelopment)).

[12] *Id.*, slip op. at 5 (citing N.J. STAT. ANN. §40A:12A-5(d) (2009)).

[13] *Id.*, slip op. at 7-8 (quoting *Gallenthin*, 191 N.J. at 373 (citing N.J. CONST. art. VIII, § 3, ¶ 1)).

[14] *Id.*, slip op. at 8.

[15] City of Long Branch v. Anzalone, No. A-0067-06T2 (N.J. Super. Ct. App. Div. Aug. 7, 2008), slip op. at 41 (citing N.J. STAT. ANN. § 40A:12A-5).

[16] *Id.*, slip op. at 41.

[17] *Id.*, slip op. at 56 (citing N.J. STAT. ANN. § 40A:12A-5 (West 2006)).

[18] Harrison Redev. Agency v. DeRose, 942 A.2d 59 (N.J. Super. Ct. App. Div. 2008).

constitutionally entitled to clear notice and a fair hearing before the municipality could take their property for redevelopment. The court described the elements of a sufficient notice: it must inform the owner that (1) his or her property has been designated for redevelopment, (2) this designation authorizes the municipality to take the property against the owner's will, and (3) the owner has forty-five days to challenge the designation in Superior Court.[19] Only owners who receive – and ignore – such a notice may lose the right to challenge a blight designation, and even in such cases, the courts may extend the time to file a challenge "in the interest of justice."[20] The court thus reinforced the constitutional principle that the "government has an overriding obligation to deal forthrightly and fairly with property owners."[21]

This decision, too, has begun to change the redevelopment process. In one recent decision, the lack of adequate notice to the property owner allowed his challenge to the blight designation to proceed.[22] The city brought a condemnation action against a property within an area that it had designated as blighted. The owner's defense raised substantive and procedural challenges to the blight designation. The trial court ruled that the owner should have objected in writing to the blight designation and filed a court challenge within 45 days, dismissed the defenses as untimely, and entered judgment for the municipality. After the trial court order, the Appellate Division decided *DeRose*. Because the municipality conceded that its notice to the owner did not meet the standard required by *DeRose*, the Appellate Division remanded the case to the trial court so the owner could challenge the blight designation.[23]

PART II: CURRENT COMPENSATION AND RELOCATION ASSISTANCE IN NEW JERSEY ARE INADEQUATE FOR RESIDENTS DISPLACED BY REDEVELOPMENT.

New Jersey law requires a municipality conducting a redevelopment project to pay compensation to homeowners and relocation assistance to displaced homeowners and tenants. The amount and timing of that assistance, however, are problematic. Displaced residents often must endure the slow death of their community, followed by a move into a financial situation worse than before the redevelopment. Finding affordable replacement housing often requires relocating to a distant community, with the attendant loss of neighborhood support networks. And the amounts of relocation assistance required, which have not increased in thirty-seven years, are insufficient to secure decent, safe, sanitary, comparable, and affordable replacement housing.

The Public Advocate recommends that the Legislature enact two important reforms to the statutes governing compensation and relocation assistance. First, the amounts paid to homeowners and renters should be increased by adjusting for inflation since 1972, and by indexing for future inflation. Specifically, homeowners should receive "replacement value" for their homes – enough to allow them to purchase comparable homes in their own communities –, and both homeowners and renters should receive adequate relocation assistance when they move. Second, residents of an area

[19] *Id.* at 90.
[20] *Id.* at 83.
[21] *Id.* at 92 (quoting Jersey City Redev. Agency v. Costello, 592 A.2d 899, 904 (N.J. Super. Ct. App. Div. 1991)).
[22] Jersey City Redev. Agency v. Sadek, No. A3191-07T1 (N.J. Super. Ct. App. Div. Dec. 31, 2008).
[23] *Id.*, slip op. at 4.

deemed blighted should have the right to decide when to move and they should be entitled to fair compensation and relocation assistance at that time.

Although the laws provide different rights to homeowners and renters, neither is guaranteed sufficient compensation or relocation assistance to purchase or rent a similar dwelling in their own community. This often leaves residents displaced by redevelopment little choice but to move from one blighted area to another. The increased cost of purchasing or renting a "decent, safe, and sanitary"[24] replacement home in a non-blighted area usually exceeds the amount of compensation provided. This should not be surprising, as the amount of assistance typically offered was that which had been deemed adequate by the legislature in 1972. Moreover, both homeowners and renters in blighted areas usually live on low incomes and cannot easily afford the additional expense of replacement housing. The result is financial hardship for the residents of an area that redevelopment is intended to improve.

Both displaced homeowners and renters are entitled to relocation assistance, under two New Jersey statutes: the Relocation Assistance Law of 1967 ("RAL")[25] and the Relocation Assistance Act of 1972 ("RAA").[26] The express purpose of these laws is to ensure "the fair and equitable treatment of [displaced] persons."[27] The legislature anticipated that displaced homeowners and renters might face increased housing costs. To offset that financial hardship, the law requires government entities that displace residents to pay up to specific dollar amounts of relocation assistance.[28]

A. HOMEOWNERS SHOULD RECEIVE REPLACEMENT VALUE FOR THEIR HOMES.

The state and federal constitutions require the government to pay a displaced property owner "just compensation."[29] The usual measure of just compensation for a homeowner is the "fair market value" of the property taken, based on a professional appraisal.[30] Because redevelopment

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[24] N.J. STAT. ANN. § 20:4-6(a) (West 2006).

[25] N.J. STAT. ANN. §§ 52:31B-1 to -12 (West 2006).

[26] N.J. STAT. ANN. §§ 20:4-1 to -22 (West 2006). The RAA does not replace the RAL, but rather complements it. *In re* Relocation Claim of Berwick Ice, Inc., 555 A.2d 735, 738 (N.J. Super. Ct. App. Div. 1989). Because the RAA is the more comprehensive and generous of the two statutes, litigants and agencies generally rely on the RAA to determine relocation assistance in cases where both statutes cover the government activity in question. Thus, while both statutes apply to governmental programs of land acquisition, we will refer mainly to the RAA.

[27] N.J. STAT. ANN. § 20:4-2; *accord* N.J. STAT. ANN. § 52:31B-2.

[28] N.J. STAT. ANN. §§ 20:4-4 to-6.

[29] N.J. CONST. art. I, ¶ 20; U.S. CONST. amends. V, XIV, §1.

[30] This is the standard measure of compensation for takings under the United States and New Jersey Constitutions. Kimball Laundry Co. v. United States, 338 U.S. 1, 5-6 (1949); State by Roe v. Nordstrom, 54 N.J. 50, 53 (1969) ("A condemnee must be made whole as a result of the condemnation proceeding. Although a sum of money equal to 'fair market value' cannot always be a perfect measuring stick for determining the worth of property to a landowner, the State must try as nearly as possible, employing objective standards, to replace the land which has been earmarked for public use with equivalent public funds.").

Nevertheless, New Jersey courts have discretion to consider evidence of just compensation other than fair market value. In State by State Highway Comm'r v. Burnett, 131 A.2d 765 (N.J. 1957), for instance, the Supreme Court held that it was appropriate to consider "reproduction cost" (i.e. replacement value) of an unusually constructed residence that did not conform to any conventional architectural style, for which "fair market value" would not fully compensate the owners for the cost of building a replacement. Although noting that "the criterion of market value has

projects are conducted in blighted areas, the fair market values of the properties to be taken are typically lower than those in the surrounding real estate market for non-blighted properties.

Moreover, the designation of a neighborhood as blighted will adversely affect both the value and the marketability of a property. Owners thereafter have difficulty selling or obtaining financing or approval to improve property that the government may condemn. The longer an area remains under the redevelopment designation, the greater the deleterious financial effects, further contributing to blight. In recognition of this fact, the New Jersey courts have held that, when a municipality uses the power of eminent domain to take a property in a blighted area, the owner is entitled to "no less than the value of his land on the date of the [blight] declaration."[31] But municipalities often purchase properties in blighted areas without the use of eminent domain, through "voluntary" sales by landlords or owners who can no longer tolerate the deteriorating conditions of their neighborhood. In these situations, without court oversight of the sales price, the amount of compensation may indeed reflect the deterioration caused by the blight designation. For these reasons, a homeowner displaced from a redevelopment area will rarely receive sufficient compensation to purchase a decent, safe, sanitary, and comparable replacement home within the community.

In addition to payment of fair market value, relocation assistance for homeowners includes a replacement housing payment, moving costs, and costs incidental to relocation.[32] Unfortunately, the cap for the replacement housing payment was set in 1972, and has not been increased or indexed for inflation since then.[33] The RAA states that the replacement housing payment, which is the difference between the price paid for the property taken and the reasonable cost of a comparable replacement dwelling, shall "not [be] in excess of $15,000."[34] This amount, combined with the fair market value of the home in the blighted neighborhood, is often insufficient to enable a low- or moderate-income household to purchase a decent, safe, and sanitary comparable replacement home. Many families therefore must relocate to more expensive or smaller homes, often distant from their community. Some, in fact, cannot afford to purchase a replacement home, but must instead step down the economic ladder and rent replacement housing.[35]

Agency and court decisions interpreting the RAA suggest that, in some circumstances, the government must pay more toward the higher purchase price of replacement housing than the $15,000 fixed by statute. In *Chatterjee v. Atlantic City Bd. of Educ.*, the Appellate Division upheld the principle that the government must pay displaced homeowners the "reasonable cost, on the open

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been the gravitational pole for just compensation," it was nevertheless the case that "admissibility of evidence of reproduction cost was essentially a matter of discretion with the trial court." *Id.* at 769-70.

[31] Housing Auth. v. Ricciardi, 422 A.2d 78, 80-83 (N.J. Super. Ct. App. Div. 1980) (citing N.J. STAT. ANN. §§ 20:3-30, 20:3-38 (West 2006)).

[32] N.J. STAT. ANN. §§ 20:4-4, 20:4-5 (West 2006); N.J. ADMIN. CODE §§ 5:11-3.2, 5:11-3.7 (2009).

[33] N.J. STAT. ANN. §§ 20:4-5 (effective Jan. 1, 1972).

[34] N.J. STAT. ANN. § 20:4-5(a); *accord* N.J. ADMIN. CODE § 5:11-3.7(a) (2009).

[35] *See* Department of the Public Advocate, *Evicted From the American Dream: The Redevelopment of Mount Holly Gardens* 9-11 (November 2008), *available at* http://www.state.nj.us/publicadvocate/public/pdf/gardens_report.pdf.

market, of a comparable replacement dwelling."[36] In that case, the Atlantic City Board of Education took two homes for a public project. The owners appealed the amount of their compensation to the State administrative court. The administrative law judge issued an initial decision, ordering the Board to pay each displaced family $15,000, as a replacement housing payment, on top of the fair market value of each home. The total of fair market value plus $15,000 amounted to far less than the cost of the replacement homes both families found.

The homeowners appealed this initial decision to the Commissioner of the State Department of Community Affairs ("DCA"). (DCA is the designated state agency responsible under the RAA to review, approve, and oversee the "Workable Relocation Assistance Plan" that each municipality must file when a redevelopment project will displace current residents.[37]) In rendering her decision, the DCA Commissioner "reject[ed] the finding that the $15,000 limitation . . . [in the Relocation Assistance Act was] determinative" and held instead "that the determinative principle is that the displacing agency must provide meaningful relocation assistance, including comparable alternative housing, before it can displace the petitioners, and that it may use project funds, if necessary, for such purpose."[38]

On appeal, the Appellate Division left undisturbed the DCA Commissioner's ruling that the displacing agency must pay the actual cost of comparable replacement housing. The court concluded that, "[a]s determined by the Legislature and authorized agency [DCA], the total payment must equal the difference between the 'reasonable cost, on the open market, of a comparable replacement dwelling, and the acquisition price.'"[39]

Other New Jersey state agencies, including the New Jersey Department of Transportation, New Jersey Transit, Economic Development Authority, Casino Reinvestment Development Authority, and Schools Development Authority, regularly provide financial consideration to displaced residents that exceeds the formula of fair market value plus $15,000.[40] Those agencies' practice is to pay the fair market value of the property taken plus a replacement housing payment

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[36] Chatterjee v. Atlantic City Bd. of Educ., No. A-2334-06T1, slip op. at 21 (N.J. Super. Ct. App. Div. Apr. 10, 2008) (citations omitted).

[37] N.J. ADMIN. CODE § 5:11-6.1 (2009).

[38] *Chatterjee*, slip op. at 5 (quoting *Chatterjee*, OAL No. CAF 4507-04, Agency No. OCA-276-04 (Feb. 23, 2005)).

[39] *Id.*, slip op. at 20-21 (quoting N.J. ADMIN. CODE § 5:11-3.7(b) (2009); N.J. STAT. ANN. § 20:4-5 (West 2006)). The Appellate Division also concluded that, because the homeowners did not present evidence to establish what comparable replacement housing of the same size would have cost, they had not shown their entitlement to any additional payment. *Id.* at 22.

[40] Because their projects are financed primarily with federal funds, the New Jersey Department of Transportation (NJDOT) and New Jersey Transit follow federal relocation standards and have adopted them by regulation. N.J. ADMIN. CODE § 16:6-3.4 (2009); N.J. ADMIN. CODE §§ 16:6-1.1 to -3.4 (2009). These standards permit the payment of replacement value, and such payment is the standard practice of these agencies. *Id.* They interpret the federal and state relocation laws under which they operate to allow them to exceed the statutory amounts and spend project funds when necessary to ensure that displaced homeowners receive sufficient money to purchase decent, safe, and sanitary comparable replacement housing. These agencies report smooth and relatively litigation-free relocation processes as a result. *See*, *e.g.*, Memorandum from Bob Cunningham, Manager, Technical Support, NJDOT Right of Way Acquisition, to Victor Akpu, Dir., NJDOT Right of Way Acquisition (June 13, 2008) (from 2002 through 2007, NJDOT resolved seventy-four percent of 1,997 property acquisitions by agreement, including sixty-six percent of the 712 acquisitions that involved relocating a resident or business).

that, together, are sufficient to enable the displaced family to purchase a decent, safe, sanitary, and comparable replacement home.

State agencies and courts have identified replacement value as the appropriate standard for the sufficiency of compensation and relocation assistance, in part because it is more fair and humane to displaced homeowners. Paying a sufficient amount to purchase comparable housing in a non-blighted neighborhood produces additional benefits for the community. While the redevelopment project yields a better stock of housing in the community, adequate compensation improves living standards for the displaced homeowners.[41] Paying replacement value also makes good business sense by reducing the costs and delays of litigation. Government studies have found that the reduced costs and delays are well worth the additional expense of paying replacement value.[42]

The Legislature should amend the law to provide that, when the government displaces a homeowner for redevelopment, the municipality must pay compensation sufficient to enable the owner to purchase a comparable replacement home in the same community.

B. RENTERS SHOULD RECEIVE ADEQUATE RELOCATION ASSISTANCE TO RENT DECENT, SAFE, SANITARY, AND COMPARABLE REPLACEMENT HOUSING.

Tenants, who do not own the property in which they live, are not entitled to "just compensation" under the United States or New Jersey Constitutions. They are entitled only to statutory relocation assistance. New Jersey law requires that municipalities provide a displaced tenant "the amount necessary . . . to lease or rent for a period not to exceed 4 years, a decent, safe, and sanitary dwelling of standards adequate to accommodate such person in [a not less desirable area] and reasonably accessible to his place of employment, but not to exceed $4,000.00."[43] Like the $15,000 limit on replacement housing payments to homeowners, this $4,000 rental assistance cap was set in 1972, and has not since been increased or adjusted for inflation.[44] Four thousand dollars over four years comes to $83.33 per month to help pay the increased rent. This amount is usually far less than the actual rent increase that tenants pay when they are displaced from a redevelopment area.[45][46]

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[41] Congress expressed its intention almost forty years ago, when it enacted the Federal Relocation Act, 42 U.S.C. §§ 4601 -55 (effective Jan. 2, 1971), providing therein that public projects that displace residents should improve the housing conditions of economically disadvantaged persons. 42 U.S.C. § 4621(c)(3).

[42] Memorandum by Susan B. Lauffer, Dir., U.S. Dept. of Transp., Fed. Highway Admin., Office of Real Estate Serv., *Information: Policy and Guidance for Acquisition and/or Relocation Incentive Programs – Voluntary* (April 26, 2006), *available at* http://www.fhwa.dot.gov/realestate/acqincentguid.htm ("Recent studies on the use of incentive payments on transportation projects demonstrate that they can be effective in decreasing the time needed to acquire and clear needed rights-of-way . . . . An incentive payment could . . . expedite the completion of a project; and result in significant cost savings.").

[43] N.J. STAT. ANN. § 20:4-6(a) (West 2006).

[44] *Id.* (effective Jan. 1, 1972).

[45] The National Consumer Price Index increased from 41.8 in 1972 to 215.3 in 2008, an increase of 5.15 times. U.S. Department of Labor, Bureau of Labor Statistics, Consumer Price Index, ftp://ftp.bls.gov/pub/special.requests/cpi/cpiai.txt (last visited Nov. 16, 2009).

[46] In our study of the Mount Holly Gardens, of the sixty-four relocated tenant households for whom we had data, four (6%) paid less rent, three (5%) paid the same rent, and the other fifty-seven (89%) paid more. The average rent

The amount of rental assistance provided under current law is too low. Adjusted for inflation, the $4,000 in rental assistance paid in 1972 would be equivalent in 2009 dollars to $20,306, or $423 per month over four years[47] – an amount far more likely to help displaced individuals today. Renters currently displaced by a redevelopment project, however, receive less than twenty percent of the inflation-adjusted value that the legislature thought was just in 1972.[48] As a result, renters have difficulty securing decent, safe, sanitary, and comparable replacement housing.[49] Moreover, setting relocation assistance at a specific dollar amount, without including an inflation index, inevitably will be inadequate over time, as inflation erodes the value of any fixed payment. This outcome violates the intent of the legislature to ensure "the fair and equitable treatment of persons displaced by [redevelopment]."[50]

Law reform is necessary to ensure that tenants are treated fairly when they are displaced for redevelopment. The law should require municipalities to provide relocation assistance in the amount of the entire difference between the rent paid for the original residence and that paid for a comparable, decent, safe, and sanitary replacement residence. Moreover, relocation assistance should be paid to the displaced resident for a longer period – at least seven years.

For some, even seven years of assistance would only delay the day of reckoning when they suddenly will be unable to afford the rent.[51] A time limit, of four or seven years, implicitly assumes that the displaced tenant can increase his or her income sufficiently during that period to enable him or her to pay the increased rent without assistance. This assumption is almost invariably erroneous for low-income households who live on a fixed income, such as persons who are retired or disabled. Such persons usually have no hope of an increase in their income to meet the costs of rising rents. We propose that the time limit on rental assistance should not apply to senior citizens, people with disabilities, or other low-income households living on fixed incomes. These individuals should receive the full amount of their increased rent in a comparable dwelling for as long as they remain tenants and their incomes remain fixed.

PART III: RELOCATION ASSISTANCE SHOULD BE AVAILABLE TO RESIDENTS WHEN THEY NEED IT, NOT ONLY WHEN THE MUNICIPALITY WANTS TO DISPLACE THEM.

The threat of displacement hangs over residents from the time that the municipality designates their neighborhood as blighted. The threat grows more concrete when the municipality

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increased by $266.13 (38%) per month. This average rental increase is $182.80 (219%) more than the $83.33 per month statutory amount of rental assistance, and $109.88 (70%) more than the $156.25 per month the Township actually offered displaced households. Moreover, the law requires such rental assistance for only forty-eight months, while the rent increases displaced tenants pay are not time-limited. *Evicted from the American Dream, supra* note 35, at 14.

[47] Inflation calculated using the calculator provided by the United States Department of Labor, Bureau of Labor Statistics, based on its Consumer Price Index for All Urban Consumers, U.S. City Average. *See* http://www.bls.gov/data/inflation_calculator.htm (last visited Nov. 16, 2009).

[48] $4,000 is 19.7 percent of $20,306.

[49] *See Evicted from the American Dream*, *supra* note 34, at 12-15.

[50] N.J. STAT. ANN. § 20:4-2 (West 2006); *accord* N.J. STAT. ANN. § 52:31B-2 (West 2006).

[51] This problem of the delayed "day of reckoning" has been recognized since the initial enactment of time-limited relocation assistance legislation. *See* Chester W. Hartman, *Relocation: Illusory Promises and No Relief*, 57 VA L. REV. 745, 775-76 (1971).

adopts a redevelopment plan, and passes an ordinance authorizing itself to acquire properties in the redevelopment area. As properties are acquired and residents move out, the vacant buildings present their own safety and health risks. These include, for example, vermin, vandals, squatters, water leaks, mold, and mildew. Demolition, too, poses risks to the health and safety of the remaining residents: ready examples include physical damage to buildings and utilities from heavy equipment and water leaks, and exposure of residents to demolition dust.

Current law does not clearly state all the circumstances that lead to entitlement to relocation assistance, or give residents in a redevelopment area any right to initiate the process to receive that assistance. Due to unclear statutory terms, some residents displaced from redevelopment areas have moved out without receiving any relocation assistance. Some municipalities have interpreted the law to entitle residents to assistance only when the municipality, based on its own redevelopment schedule, condemns a specific property and directs the resident to leave. A lack of clarity in current law allows a municipality to argue that it has the exclusive power to determine when a household becomes eligible for relocation assistance. A municipality may thus begin to demolish properties that it has acquired without first offering relocation assistance to residents still living in adjacent or nearby properties. The remaining residents then live in a neighborhood that is being demolished around them. While municipalities should retain the power to move residents out of redevelopment areas, the residents themselves should also have the ability to decide to move out before demolition begins, or at any time afterwards, and to sell and/or receive relocation assistance when they go.

Some municipalities have taken the position that they must provide relocation assistance only when they have directed a resident to vacate, or where they have acquired the property by eminent domain, but not when the municipality makes an offer to purchase a property or acquires it through "voluntary" sale. This position reflects ambiguities and lapses in the statutes and regulations that demand correction. First, the law must be revised to make clear that a municipality must provide relocation assistance when it acquires property for redevelopment, whether through eminent domain proceedings or through voluntary sales made under the threat of eminent domain. Second, the law should mandate a system that entitles the owner-occupants and renters of properties identified for acquisition in a redevelopment area to sell and leave before demolitions begin or at any later time of their own choosing. A municipality should not have the authority to adopt a policy that grants this power only to some residents. The law should ensure that this right is vested in all residents.

A. Relocation Assistance Should Be Available Before Condemnation Proceedings Begin.

Both the enforcing agency and the courts have interpreted the RAA to require a municipality to pay relocation assistance when it displaces people or businesses for redevelopment, even before the municipality has begun any condemnation proceedings. Yet some municipalities consider themselves free of any legal obligation to provide such assistance until they attempt to take property by eminent domain. This misunderstanding is largely attributable to the definition of the phrase "taking agency" in the RAA. The RAA defines a "taking agency" as "the entity, public or private,

including the State of New Jersey, *which is condemning private property for a public purpose under the power of eminent domain*."[52]

The history and purpose of the RAA, however, suggest a broader range of circumstances in which a municipality must pay relocation assistance. In *Marini v. Borough of Woodstown*, the Appellate Division noted that the legislature intended the RAA to follow its federal counterpart, which "does not limit relocation assistance to situations where there has been a condemnation of real property in the exercise of the eminent domain power, but authorizes such assistance even when displacement results from the acquisition of real property by voluntary transfer."[53] Sounding this same theme, the Department of Community Affairs, the state agency responsible for enforcing the RAA, contended in *Marini* that "the New Jersey [RAA] statute was intended to have as broad an application as the federal act, which includes voluntary as well as involuntary acquisitions."[54] Ultimately, the court explicitly reserved reaching a decision on this question for a future case, and simply assumed that the borough was a "taking agency."[55]

Following the Appellate Division decision in *Marini*, the Department of Community Affairs issued a final agency decision in another matter that clarified the reach of the RAA. In *Graff v. Township of North Bergen*,[56] the Commissioner explicitly held that "the acquisition of property by a governmental body by means other than a formal condemnation constitutes a taking within the meaning of the Relocation Assistance Act."[57] Like all agency decisions interpreting the legislation enforced by the issuing agency, this DCA decision "is entitled to great weight and is a 'substantial factor to be considered in construing the statute.'"[58]

DCA has supported this position with its regulations implementing the RAA, which do not limit assistance to those displaced by eminent domain. The regulations apply to those displaced by "programs of acquisition,"[59] not only by condemnations. Thus, the DCA regulations contemplate that relocation assistance is due to displaced residents when their homes are "acquired," whether or not by the power of eminent domain. These regulations, too, are entitled to deference.[60]

The Legislature should clarify the reach of the RAA by amending the definition of "taking agency" to conform to the case law and regulations. The RAA should define "taking agency" or

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[52] N.J. STAT. ANN. § 20:4-3(a) (West 2006) (emphasis added).
[53] Marini v. Borough of Woodstown, 369 A.2d 919, 921 (N.J. Super. Ct. App. Div. 1976) (citing 42 U.S.C. §§ 4621-4638 (2006))
[54] *Id.* at 922.
[55] *Id.*
[56] DCA No. 75-13 (July 26, 1976) (final agency decision).
[57] *Id.*
[58] *In re* Relocation Claim of Berwick Ice, Inc., 555 A.2d at 738 ("It is a fundamental maxim that the opinion as to the construction of a regulatory statute of the expert administrative agency charged with enforcement of that statute is entitled to great weight and is a 'substantial factor to be considered in construing the statute.'" (quoting New Jersey Guild of Hearing Aid Dispensers v. Long, 384 A.2d 795, 810 (N.J. 1978)).
[59] N.J. ADMIN. CODE § 5:11-2.2 (2009).
[60] *In re* Freshwater Wetlands Prot. Act Rules, 825 A.2d 167, 176 (N.J. 2004) ("As with any administrative regulation, we begin with the settled principle that [this regulation] must be 'accorded a presumption of validity.'") (citing N.J. State League of Municipalities v. Dep't of Cmty. Affairs, 729 A.2d 21 (N.J. 1999); *In re* Twp. of Warren, 622 A.2d 1257 (N.J. 1993)); *see also In re* Relocation Claim of Berwick Ice, Inc., 555 A.2d at 738.

"acquiring agency" to include any entity that is condemning or otherwise acquiring private property for a public purpose.

B. Relocation Assistance Should Be Due When Residents Decide To Relocate.

Under current law, the municipality holds the exclusive power to determine when residents are entitled to relocation assistance. Only "displaced" persons are eligible. The regulations define "displaced" to mean "required to vacate any real property" by "any order or notice of any displacing agency on account of a program of acquisition . . . ."[61] The "displacing agency" – in the case of redevelopment, the municipality – thus has the authority to withhold relocation assistance until it is ready to send the potential target of displacement an order or notice to vacate. If a resident moves before the municipality triggers his or her eligibility, the resident may forfeit any assistance.[62] A municipality's exclusive control over the timing of relocation assistance can leave residents with few options but to wait, sometimes for many years. Meanwhile, redevelopment law gives the municipality the power to acquire and clear land at any time after it adopts a redevelopment plan for the area.[63] Thus the residents may be waiting in a demolition area.

The law is unclear as to when homeowners become entitled to relocation assistance. One provision in the DCA regulations says homeowners are eligible upon the municipality's "first written offer to purchase the property."[64] Such a written offer does not appear, however, to constitute an "order or notice" to vacate such as would qualify an owner as having been "displaced" under another provision of the regulations.[65] The Eminent Domain Act establishes a process through which the municipality may evict the owner and take possession of the property,[66] an unequivocal governmental action that would clearly entitle the owner to relocation assistance. But the law does not give the owner a reciprocal right to force a sale. The municipality may make a standing offer to purchase properties, but, if the homeowner considers the offer too low, he or she has little legal recourse. If the municipality is not ready to make an offer or enter negotiations over the sale price, a homeowner will again have few legal options. Under current law, in order to demand that the municipality purchase a property in a redevelopment area, the owner must show that "the threat of condemnation has had such a substantial effect as to destroy the beneficial use that a landowner has made of his property."[67] This is a high threshold for a homeowner to meet.

For renters, any person who has lived in a redevelopment area for more than ninety days is entitled to full rental assistance under the law.[68] The DCA regulations clearly require relocation

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[61] N.J. ADMIN. CODE § 5:11-1.2 (2009); *see also* N.J. STAT. ANN. § 20:4-3(c) (West 2006).
[62] N.J. ADMIN. CODE § 5:11-4.2 (2009) (notice to displacees must inform them that they "should not vacate the property prior to being authorized to do so in order to remain eligible for payment and assistance . . . .").
[63] N.J. STAT. ANN. § 40A:12A-8(d) (West 2006).
[64] N.J. ADMIN. CODE § 5:11-2.2(c) (2009).
[65] N.J. ADMIN. CODE § 5:11-1.2 (2009).
[66] N.J. STAT. ANN. §§ 20:3-8, 20:3-19 (West 2006).
[67] Washington Market Enterprises, Inc. v. Trenton, 343 A.2d 408, 415-16 (N.J. 1975) (requiring City of Trenton to purchase a commercial building that had become untenantable because of an abandoned redevelopment project).
[68] N.J. STAT. ANN. § 20:4-6 (West 2006); N.J. ADMIN. CODE § 5:11-3.5 (2009).

assistance when a tenant receives a "formal notice to vacate from the landlord."[69] The law is less clear about other actions that may trigger an entitlement to relocation assistance.

In the case of redevelopment, the municipality may buy occupied rental properties and thus become a landlord itself. Under New Jersey law, a landlord may not evict a tenant or refuse to renew a lease unless the tenant has refused to pay rent, destroyed property, or otherwise given the landlord "good cause" to evict him.[70] The law also does not allow any landlord, municipal or private, to use any extra-judicial means to move tenants out of its properties.[71] But the law allows a municipality, acting as a landlord, to issue its tenants a notice to vacate in order "to permanently retire the premises from the rental market pursuant to a redevelopment or land clearance plan in a blighted area."[72]

A municipality also may trigger its relocation assistance obligations to tenants by demanding that their private landlords evict them. The DCA regulations expressly forbid municipalities to avoid their relocation assistance obligations "by requiring the owner of a building to cause it to be vacated prior to the acquisition."[73]

Still, tenants in redevelopment areas remain largely subject to the municipality's schedule. If the municipality does not send them a notice or order to vacate, they can end up, like owners, in a long waiting-game while the neighborhood empties and comes down around them. By failing adequately to protect those who leave "voluntarily," without an order or notice to vacate, the law allows a municipality to provide or withhold relocation assistance at its sole option. But when a neighborhood is to be demolished for redevelopment, it is difficult to consider the departure of its residents truly voluntary. Whether or not they are deemed eligible for relocation assistance, the residents of a redevelopment area face mounting pressure to leave. Some move away rather than enduring the slow death of their community; others may stay for awhile, only to go when the area has become intolerable or the municipality finally orders them to vacate, clearly entitling them to the assistance that is their due.

Legal reform is needed to give residents of redevelopment areas more control over their own departures. Residents need the right to initiate their own moves, before demolition begins or at any time thereafter, and they should be entitled to a fair sale price and/or relocation assistance when they are ready to go. We propose a three-part solution:

- The law should require municipalities to give owners and tenants in redevelopment areas at least six months' notice before beginning clearance, demolition, site preparation, or similar redevelopment activities. The notice should inform them that, at any time after its receipt, owners are entitled to initiate a sale of their property under the Eminent Domain Act, and owners and tenants are eligible to receive relocation assistance.

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[69] N.J. ADMIN. CODE § 5:11-2.3(a) (2009).
[70] N.J. STAT. ANN. §§ 2A:18-61.1, 2A:18-61.3 (West 2006).
[71] N.J. STAT. ANN. § 2C:33-11.1 (West 2006).
[72] N.J. STAT. ANN. § 2A:18-61.1(g)(4) (West 2006).
[73] N.J. ADMIN. CODE § 5:11-2.2(b) (2009).

- The Eminent Domain Act should be amended to permit property owners in redevelopment areas to initiate sales of their properties to the municipality at any time after receiving the notice described above.
- The definition of "displaced person" in the Relocation Assistance Act should be amended expressly to include all owners and tenants in redevelopment areas once they have received the notice described above, so as to entitle them to assistance at any time after that point.

These proposed statutory amendments would not deprive municipalities of the authority they now possess; towns and cities would retain their powers to initiate condemnations or to order properties vacated in the same manner and within the same timeframes provided under current law. But property owners and tenants would have their own rights to trigger sales and relocation assistance, enabling them to leave with the full protection of the law six months before, or at any time after, demolitions begin. Anything less, even if by simply allowing the status quo to continue, not only frustrates the legislature's original intention in enacting the RAA, but also deprives the residents of redevelopment areas of the benefits of the municipality's efforts to improve the conditions associated with "blight," instead imposing on them the human and financial costs of such efforts.