

**ASSEMBLY PASSES BILL TO SIGNIFICANTLY  
CHANGE REDEVELOPMENT LAW  
By: Howard D. Geneslaw**

The New Jersey State Assembly recently passed a bill that would radically alter the state of redevelopment law in New Jersey. [Bill A-3257](#), which the Assembly passed with amendments on June 22, 2006, would make significant modifications to the manner in which redevelopment designations are made, and redevelopment plans are implemented, in New Jersey. It would also refine and modify the procedures for eminent domain proceedings. The bill is currently pending before the Senate Urban and Community Affairs Committee. It would make the following principal revisions to Local Redevelopment and Housing Law, the Municipal Land Use Law and the Eminent Domain Law:

**Designation as "In Need of Redevelopment"**

The definition of "redevelopment area" would be changed to no longer include designation of properties, not themselves in need of redevelopment, which are necessary to the redevelopment of the area in which they are a part (N.J.S.A. 40A:12A-3); however, property not in need of redevelopment could still be included in the redevelopment area provided it does not exceed 20% thereof (N.J.S.A. 40A:12A-5).

The designation of a municipal redevelopment agency or municipal housing authority to act as redevelopment entity would have to be by ordinance rather than by resolution (N.J.S.A. 40A:12A-4). Currently, such designations may be made by resolution.

Designation of an "area in need of redevelopment" would have to be by ordinance rather than by resolution (N.J.S.A. 40A:12A-5). Currently, such designations may be made by resolution.

The criteria for determining property to be in need of redevelopment would be modified in several important respects:

- The bill would eliminate faulty arrangement or design, lack of ventilation, light and sanitary facilities, excessive land coverage, deleterious land use or obsolete layout, and lack of proper utilization due to the state of title. However, deterioration in the condition of property due to diverse ownership or other conditions of title would become a criterion.
- The bill would require for certain criteria a determination that the property is "detrimental to the safety, health or welfare of the community." That phrase would be defined to mean objective evidence of detriment consisting of or similar to substantial building or health code violations; a repeated need for police intervention over an extended period of time or a lack of structural integrity and,

in the case of commercial properties, a lack of proper utilization of the land or structures resulting in conditions that are stagnant and not fully productive.

- The often-criticized smart growth criteria would be eliminated.
- A new criteria, based on the property being vacant or substantially underutilized for 24 months due to "environmental contamination," would be added. N.J.S.A. 40A:12A-5. "Contamination" would be defined as any discharged hazardous substance or pollutant as defined in specified environmental statutes.

The redeveloper would be prohibited from conducting or funding the preliminary investigation (N.J.S.A. 40A:12A-6), although the municipality could require reimbursement of those costs by the redeveloper.

A public informational meeting would be required, prior to the public hearing, if the area in question exceeds 10 acres, contains more than 100 occupied dwelling units, or more than 50 occupied business premises (N.J.S.A. 40A:12A-6).

Public notices would be required to state that as a consequence of the redevelopment designation, the property so designated could be acquired by eminent domain (N.J.S.A. 40A:12A-6). Notice would have to be sent, by regular and certified mail, 14 days (currently 10 days) prior to the hearing, and would have to be posted on the municipality's web site and in proximity to the redevelopment area. Notice would have to be mailed to tenants of residential rental buildings; where the municipal clerk is unable to obtain a tenant list, notice would be posted on the building itself. However, failure to mail any such notice, as is now the case, would not invalidate any investigation or determination thereon (N.J.S.A. 40A:12A-6).

All documents relevant to the redevelopment designation would have to be publicly available and posted on the municipality's web site, if it maintains one (N.J.S.A. 40A:12A-6).

All testimony at the hearing would have to be under oath, the hearing would be recorded, and a transcript of the hearing would be made publicly available (presumably at the municipality's cost) (N.J.S.A. 40A:12A-6).

A full record of the Planning Board's hearing would be required, and interested persons would be permitted to bring witnesses, present evidence, and submit questions for the planning board to pose to specific witnesses, if the Planning Board deems the questions to be relevant (N.J.S.A. 40A:12A-6).

The Planning Board, following the public hearing, would be required to examine whether other strategies might be a more appropriate means of addressing the conditions identified by the preliminary investigation, and the Planning Board's report shall specifically set forth why the other strategies are less appropriate (N.J.S.A. 40A:12A-6).

The ordinance designating the area to be in need of redevelopment could not be finally adopted until approved by the Commissioner of DCA, or until 30 days elapse with no action by the Commissioner (N.J.S.A. 40A:12A-6).

If the "area in need of redevelopment" designation is challenged in court, the municipality would be required show, by a preponderance of the evidence, that the delineated area fulfills the statutory criteria (N.J.S.A. 40A:12A-6). This represents a significant change compared to the existing standard, which merely requires the municipality to show that its action was not arbitrary, capricious or unreasonable, with the municipality's action entitled to substantial deference.

Upon adoption, the municipality would be required to serve notice of the action taken, within 10 days, on all persons receiving notice of the public hearing, in the same manner. The notice must inform the recipient of the right to appeal the designation and must specify the termination of the appeal period. Notice would also be published in the newspaper. (N.J.S.A. 40A:12A-6)

A redevelopment designation would expire after 10 years following the designation or final adoption of a redevelopment plan, whichever occurs later. A determination could be extended for a period not to exceed 15 years following the initial designation, through the adoption of a confirming ordinance affirming that the conditions supporting the determination are continuing or that substantial progress has been made on the implementation of the redevelopment plan (N.J.S.A. 40A:12-6).

### **Adoption of Redevelopment Plan**

The municipality would be required to wait 60 days following the designation to adopt a redevelopment plan (N.J.S.A. 40A:12A-6).

The redevelopment plan would have to be more specific in terms of specifying the relationship of the plan to the municipal master plan and other official documents, the permitted land uses and building requirements, including a relocation study which identifies replacement housing in the existing housing market and whether adequate replacement housing exists in the existing housing market, as well as a timetable pursuant to which it would be provided. A block by block analysis would be required to show, for each property to be taken, why the objectives of the redevelopment plan cannot be achieved by a means other than eminent domain (N.J.S.A. 40A:12A-7).

The redevelopment plan would also have to include an analysis of the social and economic impact of the redevelopment area on adjacent areas and on low and moderate income residents of the area; an explanation of how the proposed development controls are consistent with smart growth principles; an estimate of the number of affordable housing units that will be required pursuant to the Fair Housing Act; provision for the replacement of any State or Federal affordable housing to be removed by the project; preservation or conservation strategies for the environmental, historical and cultural assets of the redevelopment area; and a statement indicating whether the planning board

shall have the authority to grant variances from the redevelopment plan (N.J.S.A. 40A:12A-7).

The governing body or planning board would be required to hold a public hearing, within 60 days of commencing preparation of a redevelopment plan, on the goals and content of the plan. Notice generally would be as required for an initial designation in need of redevelopment.

The governing body would hold a public hearing on the redevelopment plan prior to its adoption, with notice generally as required for initial designations in need of redevelopment (including a notice of the action taken and apprising interested persons of their appeal rights).

### **Selection of Redeveloper and Negotiation of Redevelopment Agreement**

A municipality would be prohibited from authorizing and executing a redevelopment agreement for 60 days following adoption of a redevelopment plan.

A written redevelopment agreement would be specifically authorized, as would be a provision requiring the redeveloper to reimburse the municipality for the cost of the preliminary investigation (N.J.S.A. 40A:12A-8).

A municipal redevelopment entity would be prohibited from negotiating with or entering into a redevelopment agreement with a redeveloper that, following the authorization to conduct a preliminary investigation, made a reportable contribution to any political party or candidate in the municipality. Such contributions would be barred during the term of the redevelopment agreement.

Redevelopment agreements that call for eminent domain would be required to contain a provision whereby the redeveloper's ability to acquire by eminent domain shall lapse after 5 years.

If more than 20% of the land is municipally owned or will be acquired by eminent domain, the selection of a redeveloper shall be by a competitive process which would be established for reviewing and ranking redeveloper proposals. The municipality would be required to rank the proposals submitted and make the ranking publicly available. Selection of the redeveloper would be by ordinance rather than resolution.

### **Eminent Domain**

Where eminent domain is utilized, the date of valuation would be the higher of the date of filing a declaration of taking or the date of adoption of the redevelopment plan. In the case of residential property, the replacement value would be paid if it exceeds the value on either of the two valuation dates.

Tenants who are displaced by a redevelopment project which utilizes eminent domain would be entitled to receive rental assistance on a priority basis under the rental

assistance program for low income households or individuals. The redeveloper would be required to reimburse the State for the cost of rental assistance, for a period not to exceed 4 years from the commencement of occupancy of the new unit. An estimate of the total amount shall be deposited with the Commissioner of Community Affairs prior to any displacement (N.J.S.A. 40A:12A-8).

A redeveloper would be required, at the time a bona fide offer pursuant to the Eminent Domain Act was made by a redevelopment entity to any property owner, to inform the property owner, in writing, of the total compensation provided for in any contract between the redeveloper and another property owner.

Displaced residents would have a limited right of first refusal to purchase or lease a dwelling unit subsequently constructed within the redevelopment project.

The municipality would be required to submit to DCA an annual inventory of redevelopment areas designated and a list of condemnations undertaken, including the compensation provided. The municipality would also be required to disclose to DCA an accounting of the cost of all municipal investments made in the redevelopment area subsequent to designation as such, including the granting of tax abatements and density bonuses, and the value of municipal infrastructure provided in the implementation of the plan. DCA would then use this information to prepare a report presenting this data on a statewide basis.

### **"In Need of Rehabilitation" Designation**

The criteria for designating areas in need of rehabilitation would be amended to provide that a designation is authorized where a significant amount of the housing stock or infrastructure being in need of repair or substantial rehabilitation, where buildings or improvements evidence dilapidation, obsolescence, overcrowding, faulty arrangement or design, lack of ventilation, light and sanitary facilities, excessive land coverage, deleterious land use or obsolete layout; or a growing lack or total lack of proper utilization of areas resulting in a stagnant or not fully productive condition of land potentially useful and valuable for contributing to and serving the public health, safety and welfare (N.J.S.A. 40A-12A-14). Note that these standards currently apply to areas in need of redevelopment, but would be deleted. Also, tax arrearages would no longer be required, but would be relevant, to show a pattern of vacancy, abandonment or underutilization.

### **Municipal Master Plan**

The municipal master plan would be required to contain a redevelopment plan element which identifies all areas that have been designated as in need of redevelopment or rehabilitation as well as those that may be so designated in the future.

## **Eminent Domain Law**

The Eminent Domain Law would be revised to require that the property owner be provided with the appraisal upon which the offer is based, at the time the offer is made (N.J.S.A. 20:3-6).

The offer could be served by private courier or in person, in addition to by certified mail as is presently required (N.J.S.A. 20:3-6).

The property owner would have 45 calendar days to review the offer and the appraisal, to seek clarification and additional information, to negotiate and to request an opportunity to discuss the offer and the basis thereof, in person, with a representative of the condemnor. The property owner may request an additional 45 days, which shall not be denied except for good cause shown. Under existing law, a condemnor could require a response to its offer in as little as 14 days (N.J.S.A. 20:3-6).

The condemnor would be required to provide "reasonable and timely" responses to the property owner's inquiries, and to provide an opportunity to meet in person at least one time (N.J.S.A. 20:3-6).

If the property owner rejects the offer or fails to respond, the condemnor may send by certified mail, courier or personal delivery a notice of intent to commence condemnation proceedings. Receipt of the letter shall conclude bona fide negotiations and it, together with proof of delivery of the offer and appraisal, shall be deemed to be conclusive proof of the inability to acquire the property through negotiation (N.J.S.A. 20:3-6).

Where the property owner is unknown, resides outside the state or for other good cause shown, the court may dispense with the necessity of bona fide negotiations upon application by a notice of motion pursuant to the Rules of Court (N.J.S.A. 20:3-6).

The bill would quantify the required payments by a condemnor of moving expenses and business relocation expenses (N.J.S.A. 20:4-4).

The bill would increase the required payment to displaced residents occupying the property for at least 180 days, which would top out at \$67,500 two years following adoption of the bill into law (N.J.S.A. 20:4-5). The bill would also increase payments to displaced residents occupying the property for at least 90 days to enable them to rent alternative housing or to make a down payment toward such housing. It would also provide for annual adjustments based on the consumer price index.

Acquisition of property in an area in need of redevelopment would be subject to an additional payment from the redevelopment entity to the owner of a business for the value of goodwill. The DCA would be required to adopt rules establishing requirements to be met in order to obtain the additional payment for the value of goodwill.