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# *Committee Meeting*

of

SENATE COMMUNITY AND URBAN AFFAIRS COMMITTEE

SENATE BILL No. 1975

*(Revises law concerning eminent domain and municipal redevelopment)*

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**LOCATION:** Committee Room 6  
State House Annex  
Trenton, New Jersey

**DATE:** June 15, 2006  
10:00 a.m.

**MEMBERS OF COMMITTEE PRESENT:**

Senator Ronald L. Rice, Chair  
Senator Fred H. Madden Jr.  
Senator Leonard T. Connors Jr.  
Senator Nicholas Asselta



**ALSO PRESENT:**

Robert C. Rothberg  
*Office of Legislative Services*  
*Committee Aide*

Julius Bailey  
*Senator Majority*  
*Committee Aide*

Nicole DeCostello  
*Senate Republican*  
*Committee Aide*

***Meeting Recorded and Transcribed by***  
The Office of Legislative Services, Public Information Office,  
Hearing Unit, State House Annex, PO 068, Trenton, New Jersey

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**SENATOR RONALD L. RICE (Chair):** Good morning.

Could I ask everyone to take their seat. It's a good way to start our meeting. I've got a mike here that is somewhat disabled. They'll be coming back to change it, because it controls all the other mikes and the speakers' mikes. (referring to PA microphone)

In the interim, we're going to start our meeting, because like most things, I can control this mike.

We're going to ask for a roll call from staff.

**MR. ROTHBERG (OLS Committee Aide):** Good morning.

Senator Asselta.

**SENATOR ASSELTA:** Here.

**MR. ROTHBERG:** Senator Connors.

**SENATOR CONNORS:** Here.

**MR. ROTHBERG:** Senator Madden.

**SENATOR MADDEN:** Here.

**MR. ROTHBERG:** Senator Rice.

**SENATOR RICE:** Here.

All right. Let me start off thanking the participants for coming. Let me start off, also, by scolding those whose comments I read in the media, not that I really care. If you know me after 20 years, you know there's not too many things that bother me. I try to do the business of New Jersey residents. I'm not perfect. There's no such thing as perfect legislation. For those who are going to testify this morning -- yes, they were invited. But for those who went to the meeting and never called my office or sought me down here in the hallways, I know who you are, because you've been here a long time and your agenda has always been yours, but

your means have always been the same means. So it doesn't upset me whatsoever. You upset my colleagues every once in a while, because of your special interest. So I think I need to say that publicly. There was never any intent to pass a bill this morning.

We're going to be going up and down the state with additional hearings. This is a very important piece of legislation. The question has always been one of equity over the years. Whether we like it or not, from my perspective and from the perspective of many, many others, including the 500-plus municipalities, eminent domain is one of those necessary issues that, unfortunately -- it shouldn't be like affirmative action. And so I look at eminent domain as a necessary evil, like I look at affirmative action. And for those who fought to get rid of affirmative action, I'm not happy about that. So you know what I think about eminent domain. There will be legislation.

But I want to put the rest to you -- that there won't be a bill passed at this session. Also, I want to let you know there are going to be other hearings for those who are signed up today, or those who have called who want to testify but did not appear today, where you can sign up and testify.

Unlike maybe some other legislators, I spend a lot of time in Trenton. I think a lot of you know that. When the Legislature is not in, I'm down here. And the reason I do, is because I meet a lot of people. And what I did was, on a bill of this magnitude and the concerns we have, I brought a lot of people into the room -- 20-plus people. We looked at 13-plus bills that are in the hopper. Some have some substance. Some may go too far. Some may just keep things status quo, but we took a look at them.

We evaluated them, and others outside, to analyze the bills for comments. And then I listened to those who are for or against, and things like that, and we tried -- I tried to put together a bill, which was introduced, that I've called a foundation bill. A foundation bill is one that we're going to start to build on by either adding something, deleting something, or keeping things the same. And that's the reason I wanted to have hearings.

I'm never going to put up 50, 60 bills of the same magnitude that say pretty much the same thing differently, as Chair. If you want that to happen, then you wait until you get another Chair. When it comes to solo bills, or one or two or three, I have no problem of putting them up and see where they go, and try to get to compromise.

I would also be working with the Assembly, because there's another House here who has the concerns that we have. And that's what they are there for. And I'm sure that the Assemblyman and his Committee, and myself and our Committee, at the end of the process, would have a compromise bill that some people are going to be satisfied with, some people are not going to like at all, because some people don't want the eminent domain process at all. And I respect that, too. So I want to at least do that -- say that to you.

I want to say good morning to my colleagues and let you know we're going to hear from several individuals regarding the proposed changes to the redevelopment law. Now, our time today is rather limited because of the afternoon committee hearings, and I think we all know that. But the purpose of this hearing is to really try to provide, with the Committee, a preliminary discussion for the Committee and for others who want to hear

it regarding this issue. And while the General Assembly has a number of public hearings on this topic, this is our first time coming together on it.

And the bill, that is listed for discussion only today, is one that was drafted with the cooperation, as I said earlier, with the input of a lot of people. And while I'm sure there are those who would argue that this bill does not go far enough, I believe it takes a balanced approach to the issue. And given the media-generated hysteria that surrounds this issue, one would think that every home in the state is threatened by eminent domain. This issue generates a great amount of passion among individuals, especially those who face the loss of their properties; which by the way, my grandfather did many years ago. Their individual passion is certainly understandable. One of the most fundamental tensions in our democracy is forging the proper balance between the needs of the many versus the needs of individuals.

Sometimes we lose sight of the public interest in these debates. Now, perhaps it's because of the culture we're living in that people believe we can have it all without paying any associated costs or with no strings attached. Unfortunately, life is not a rose garden. It's not perfect, and we have to do the best we can as it relates to fairness and equity.

We hear it in advertising all the time, "You can eat what you want and still lose weight with this magic diet pill." We hear this rhetoric quite often, especially in political campaigns. For example, we can cut taxes and increase spending by simply eliminating waste, fraud, and abuse. We can build a super highway like the Garden State Parkway, that connects Cape May to Bergen County, without taking anyone's home. We can create an international center of capitalism, like the World Trade Center,



without taking anyone's business. We can turn around the economic fortunes of our older cities, like Newark, New Brunswick, and Long Branch, the Camdens and others without using the powers of the redevelopment law as a tool.

I'd like to think that the framers of our Constitution recognized that redevelopment is an important tool for turning the abandoned relics of our industrial past into productive properties. I remember the riots in 1967, but I also remember what the city was like before 1967. And I also know, as a Councilperson for 16 years and a legislator here for 20, what it really took -- for government, and people working together in corporate America, and residents -- to get moved to where it is. And unfortunately, we have come so far -- and most of you who sit here, who have never been to Newark, still criticize us -- probably your private circus or your special interests groups -- and that's fine. But we're building New Jersey and we're building New Jersey cities.

Our State plan for development recognized the need for redevelopment in the metropolitan and suburban planning areas. And when considering changes to this law, there are a number of things that we must keep in mind. Redevelopment is in the economic best interests of our state. Communities that have used the redevelopment process have provided affordable housing, created higher-paying jobs, and generated wealth. The vast majority of redevelopment projects in the state do not rely upon the use of eminent domain. Let me say that again -- the vast majority of redevelopment projects in this state, than most states, do not rely upon the use of eminent domain.

And I can also say to you that eminent domain is not something that is used all the time. Interestingly enough, New Jersey has been fortunate in its economic development and growth, and so it's been used a lot more over the last 10-plus years -- probably statewide authorities and elsewhere, municipal, (indiscernible) that's been used in the past. But the municipalities often used redevelopment to exert more control over a project than they can exercise under traditional zoning. And so we have to take a look at that.

I believe it was a mistake to change the law in a way -- at least it would be to change the law in a way to make the use of redevelopment process so cumbersome or expensive that it prevents it from being used.

I wanted to say these things to you before we started to call up the speakers. And I also wanted to say to you that we must not allow that process to be hijacked by ultraconservatives who want to use this debate to undermine all of our environmental regulations. And that's not all the environmental group. We do have some -- that's an individual thing that would do that. It needs to be said -- it's not to offend anyone. Nor must we allow this debate to be hijacked by those liberals who believe that it's a person's civil liberty to contribute to neighborhood decay.

It is my hope that today we will have sober discourse about these long-term interests of the State.

I want to thank all of you for attending hearings. You know my position, I just stated it. I'm being honest with you. I think leadership leads, during tough times. We have challenges and controversy, such as we have with the budget. We have them with bills like this. We have them with the SCI legislation. You have it with the condominium legislation.

And when attendance in the Legislature becomes that serious and substantial and important, we have hearings -- not just a hearing -- we would have some hearings.

With that, I want to call up, first of all, the Public Advocate, Mr. Ron Chen, who is new to us, who has his own view of eminent domain. And we'll agree and disagree on some issues, as well.

Excuse me. So we don't have to disturb this any more, before you get started, Commissioner, we need to take a five-minute break. The technician is here, and I understand he has to turn all the systems off, because this is the main, because he's going to replace this box.

So why doesn't everybody -- you need a break after I made my statement anyway. (laughter) Why don't you go over there and talk about me, get to know each other -- fellowship, shake hands, and say, "We're going to pray for him."

## RECESS

### AFTER RECESS:

SENATOR RICE: Okay. See why I can't get rid of State workers?

All right. Public Advocate.

**R O N A L D K. C H E N:** Thank you very much, Mr. Chairman, members of the Committee, for this opportunity to testify before you on S-1975. I commend the Chairman and the members of the Committee for

holding this hearing today on S-1975, which will reform the laws governing the use of eminent domain for private redevelopment in New Jersey.

Clearly, eminent domain is one of the government's most awesome powers. Taking a family's home or business should be a last resort. At the same time, many areas of this state are in need of redevelopment to create more jobs, create more housing, and spur economic growth. These are the key goals that I share, I know, with the Legislature and the Governor.

And let me echo your words, Mr. Chairman, that at bottom this should be an issue of equity. My Department has conducted extensive research on these issues surrounding the use of eminent domain for private redevelopment. We met with experts and interests groups; studied the laws and their history in New Jersey and across the nation; and, most importantly, we have sat in the homes of families who have been impacted by the use of eminent domain for private redevelopment and heard their concerns.

Our research and recommendations were released publicly on May 18. Copies of the report were sent to every member of the Legislature and are available on our Web site.

After spending the last few months working on this issue, I am actually surprised, pleasantly, by the number of people with divergent interests who agree that some fundamental reform of our State's redevelopment laws is necessary. Along with members of the Legislature, groups ranging from the League of Municipalities to the Business & Industry Association, to the Sierra Club have stepped forward to offer solutions and positive ideas to meet this challenge.

In that spirit, I would like to offer my suggestions on how to improve the State's redevelopment law. Knowing that there are others here today who wish to testify, I'll focus my testimony on three key issues identified in our report: The definition of blight, the requirement of municipalities to bear the burden of proof when the blight designation is challenged, and fair compensation. I have also submitted a copy of the testimony I gave before the Assembly Committee on Commerce and Economic Development, which provides additional details on our reform recommendations.

First, the fundamental requirement in our Constitution for the use of eminent domain in redevelopment is that an area must be deemed to be blighted before eminent domain can be used. Let me state simply, the current statutory definition of blight is in some ways so broad that it has ceased to be a meaningful limitation on the use of eminent domain, as our Constitution requires. So we believe that the definition of blight must be reined in. It must be as objective as possible. It must provide real limitations on the power to use eminent domain for private redevelopment, as our Constitution contemplated. And it must focus only on the current state of the land and what it is, not what it could be, which could too easily degenerate into a self-fulfilling prophecy of blight.

We believe the definition of blight contained in the Assembly bill, which we've be working on, meets this test, and we encourage you to consider that language. There are many burdens-- On the burden of proof, there are many important procedural issues, changes, that need to be made to the redevelopment process to make it more fair, open, ethical, and transparent.

I commend you, Mr. Chairman, for addressing many of these important issues in S-1975, including requiring more notice and ensuring more meaningful opportunities for public transportation. That transparency is key to restoring public confidence in the use of eminent domain.

However, perhaps the most important procedural change that is necessary to protect the rights of tenants and property owners is to require that in any court proceeding in which the blight designation is challenged, that the municipality bear the burden of proof to justify that the area is, in fact, blighted. By placing the onus on the municipality to prove that the area is blighted, we give property owners a meaningful chance to appeal this designation. And a municipality that has established its record and done its homework should not fear such a burden. It merely requires that the municipality make its case.

We have worked with Chairman Burzichelli to draft a new subsection to his bill that will ensure that municipalities bear this burden, and we hope that new language will also be considered by this Committee.

Lastly, on fair compensation, the third key area where reform is needed, is the compensation offered to families and businesses in the rare instances in which eminent domain is used for private redevelopment. Under current laws, a family effectively can have its property taken, but the compensation it receives may not be enough to allow that family to ever own a home again in their community. That is unconscionable.

We believe homeowners should have the right to the highest of three measurements of their home's value -- the fair market value at the time of the blight designation, the fair market value at the time of the

taking, or the replacement value of the home. And I commend you, Mr. Chairman, for including in your bill provisions for providing property owners fair market value at the time of the taking. However, we still believe that a third measure for replacement value is necessary in order to make families whole. Replacement value would mean enough money for a family to buy a home of similar size and quality within the municipality, under comparable conditions.

We also believe that the needs of displaced tenants must be addressed by any redevelopment project. These provisions are included in the Assembly version, and we encourage your support for these critical provisions.

There are many other reforms our Department has recommended that are outlined in the report, many of which are addressed in bill 1975.

I want to express my interest in working with you, Mr. Chairman, and members of this Committee, to craft a bill to deal with other suggestions not contained at the moment. I just want to urge the Legislature to address the need for strong ethics reform that will stop pay-to-play and redevelopment projects. When redevelopment occurs, there's a tremendous amount of money at stake. The government assumes awesome powers, and pay-to-play reform is essential to eliminate even the appearance of impropriety.

Thank you very much, Mr. Chairman. I would be happy to answer any questions.

SENATOR RICE: Thank you very much for taking the time to come over. And that's one of the reasons we're having the hearings. I read

your report. There are some things, I think -- and here before I go too far -- there are things in your report that we have had discussion on, that are not reflected in the bill, that we intend to potentially amend. Some of the things you said about where the burden should be -- this is an issue that we always have to look at from a legal perspective. I've seen burdens, not just in government legislative pieces, placed on the wrong side. I've seen burdens placed, period, on people. In fact, the GR Corporation, on affirmative action -- she had the burden of (indiscernible), showing that they were harmed, but the State decided to pick up the burden. So I like the burden to be where it's supposed to be. We're going to look at burden in terms of fair market value.

The whole essence of this debate that was taking place throughout the country -- I'm telling you from experience, and I've been around low-ball, too -- has always been one of fairness and equity. The State Constitution, the U.S. Constitution -- and you're an attorney and I'm not -- but the Fifth Amendment says *just and fair* compensation. The question is, how do you define just and fair? And that's been the problem. When you come to a city like Newark, and someone buys a brand new building that was built, and they give you a document and it says that the note is \$300,000 -- that's what it is right now -- and you have three tenants, two tenants, and they're relocated, and you're left holding a \$300,000 note, and the first offer is 250,000 -- how is that defined as just and fair? You should at least start at 300,000, that's the note, and then you work from there.

Then there's this whole issue of relocation, relocation costs. Because you may get something just and fair for the property, but then



fairness dictates to reasonable minds that there has to be some compensation or something done, whether it was in kind, to make sure you can get from point *A* to point *B*. And so we are looking at it. And I would hope that the Assembly and you and all those others out there stay focused, as I will be, on the issue of fairness and equity that is expressed very sincerely but not well-defined in the Constitution of the State, as well as the United States of America.

There are other issues that are going to come up in terms of this bill. And that's why I said this is a foundation bill. It's a bill that could be built that we can use as a foundation to build around this notion of equity, fairness, and accountability in a process that is transparent. But not so transparent that municipalities and government cannot do what we exist for: Number one, to create quality means of lives for people in our municipalities in this state where they can be healthy and safe, and where our young people can have an opportunity to grow and reach adulthood with sound, healthy minds. It takes a lot of tools. It doesn't just take the abandoned property bill, the receivership bill we passed. Unfortunately, it takes a tool, like any other toolbox, such as eminent domain. The question is, how do you use that tool? You don't want to use a pair of pliers where you need a screwdriver. And that's where we're going. We're trying to make sure the tool is properly used and there's fairness in the process where there's no real harm.

By the same token, we have to make sure those who get impacted by eminent domain, or condemnation, that there are no windfalls out there that go beyond what is reasonable and go beyond the definition of just and fair compensation. So we have to have input from the public. We

have, to have input from the invited guests today, we have to have from the residence and others -- those who have been affected, those who fear being affected. But I want to emphasize, eminent domain is not something that is used every day by every municipality or the government. But it is used, and we want to make sure it's used properly.

And so I'm not going to let this bill in this House become a political bill, even though politics will probably jump into it. It's going to try to be a bill of equity and fairness. And those in the paper yesterday who indicated that what the Assembly and myself have done so far makes matters worse, let me publicly disagree with them. The decision of the Supreme Court made matters worse. Anything above zero is a plus. Sometimes it's just not enough.

So I want to thank you very much.

I'm going to open up, to see if my colleagues have any comments or any questions to the Public Advocate.

Senator Connors, Senator--

SENATOR ASSELTA: I kind of forgot what I was going to ask.

(laughter)

SENATOR RICE: Oh, Senator Asselta. I almost didn't see you.

MR. CHEN: Needless to say, I'm at the Committee's disposal if questions come up, either now or hereafter during this process.

SENATOR CONNORS: Mr. Chairman?

SENATOR RICE: Yes, Senator.

SENATOR CONNORS: I have a question for Mr. Chen.

Prior to 1949, our Constitution, dating back from the time we had a Constitution, eminent domain was part of that, was it not?

MR. CHEN: Well, eminent domain was part of the police powers that existed and that was enjoyed by the State from medieval times.

SENATOR CONNORS: And to the best of your knowledge -- which I really don't know, I'm just asking this question -- prior to 1949, eminent domain -- wasn't it always considered to be for public use?

MR. CHEN: Yes, Senator. That's always been the -- we understand, certainly in the United States Constitution, to at least -- since 1789, private property could be taken for public use. The question is--

SENATOR CONNORS: For public use. And there was never any question, from my meager readings of it, to be taken for redevelopment or any other--

MR. CHEN: Well, actually, our research of the history shows that at least in New Jersey, and in other states perhaps, beginning during the Depression, there is historical examples of use of eminent domain for redevelopment, or more broadly, if not for public use, for public benefit. It did happen. It was part of the original, the first wave, of urban renewal. And perhaps because of the concerns that were raised when that first happened, our 1947 Constitution inserted the limitation that in order to do this the area had to be blighted. So it would not just be a question of any government and an entity deciding, "I think I can think of a better use for this land." The land itself would have to be blighted, as the term-- That's how I think our State Constitution strikes the balance.

SENATOR CONNORS: So, in 1947, the amendment to that Constitution permitted, for the first time in the history of this State, for blighted areas or redevelopment -- to the best of your knowledge.

MR. CHEN: Well, I think it was the first expressed mention of it. As I said, I think there were examples of it occurring before 1947, and on the Federal level, I think, in 1951 or 1952. The U.S. Supreme Court validated the use of eminent domain for redevelopment if the area was blighted.

What *Kelo* did -- the decision that has drawn all the attention did -- is expand it to areas that were not blighted. Because the area up in New London, Connecticut, that was the subject in that case was not deemed to be blighted; but the taking was deemed to be necessary just for general economic development. The *Kelo* decision, therefore, is somewhat irrelevant in New Jersey, because we have a State Constitution limitation that says the area must be blighted in order for eminent domain to be used for redevelopment.

SENATOR CONNORS: Thank you.

SENATOR RICE: Anyone else? (no response)

Let me say this. I'm not an attorney and an attorney is not always right. I'm not so sure if the *Kelo* decision does not affect New Jersey in a different way, even though we have the State Constitution with the blighted language. And that's what we're trying to make sure that it does not -- okay? -- that we keep our stuff the way it's supposed to be without getting it preempted by the Federal Government or in Supreme Court cases. And that's why we're looking at it this way. What *Kelo* did was say, "Look, you can pretty much do anything." But I'm smart enough to know, and it's

something that yourself or others may not appreciate, maybe you can. You don't spend 16 years working in government on council in a decayed city-- You can also say how it got that way, but don't recognize it. People said, for example, why it took Newark so long to get to where it is. Do you know why it took so long? Number one, we had people that didn't want to help. But beyond that, every time when we tried to go left or right, we found out there was a State law, or Federal law, that preempted us. And so the Legislature, in the State level -- we weren't preempted by the Federal -- over the years helped cities like Newark to change laws and amend the laws to give them the ability to move forward. And so, once things like tax abatements and other types of legislation, to allow folks to go out to assemble land, because we're not -- municipalities are not in the construction business. We're in what you call the *rateable business*. When you're getting nothing for a piece of property and you have to come from the State over here for distressed cities moneys, people don't like to give it up. They do it out of kindness, because it's the right thing to do. But in the meanwhile, the rest of New Jersey may not be getting it. And the question becomes, why don't you do something for that vacant property? Why don't you do something for those abandoned buildings? Well, we can't, because the laws have handcuffed us, because a lot of special interest groups come down and a lot of them keep you handcuffed, governing being rational and reasonable about what your needs are. So the question is to move legislation that is needed for the toolbox, but to put the checks and balances to make sure it's not abuse. But also to move, to make sure it can be used, because in some bills we have-- If you take a bill, like this particular legislation, we can put all kinds of transparency stuff to it, and

you would have groups coming in that would tie you down that would take you 20 years. But they have to die or move before people just stop frustrating or giving public misinformation. They're confusing the public. And so we have to be mindful of that situation.

Anyone else? (no response)

Okay. Let me thank you, Mr. Public Advocate. I don't know what your time is, but you and your staff may want to stay around in case there is other testimony -- you may want to take notes, you may not.

Are we being transcribed? We will have a transcript that you can get, if you're not.

MR. CHEN: Thank you very much, Mr. Chairman.

SENATOR RICE: Thank you.

Next, I believe my colleague, Senator Allen, has come in. We certainly are going to give her the courtesy, and any other legislator, the opportunity to speak on their comments. So now, won't you come up.

**SENATOR DIANE B. ALLEN:** Thank you.

Thank you very much, Mr. Chairman, members of the Committee. I'm very concerned about where eminent domain is in New Jersey right now. People are having their homes taken from them inappropriately, and we're seeing the American dream become more and more elusory for many. It is, I think in some respects, a matter of civil rights, because a lot of those whose homes are being taken are older, poorer, black, Hispanic, other minorities. And we're seeing towns, in some respects, use eminent domain to clear different groups from their town. It's not just un-American, it's absolutely immoral, and it's happening every single day in the State of New Jersey.

I'm thankful that we are discussing the issue, and I appreciate that a bill has come forth. I have a number of bills that are sitting in this Committee. And it would be my hope that some of the things that we have worked on might also be considered in this bill.

I think, perhaps, the first thing is the definition of blight. And I think we all probably agree that that's the crux of this matter. Blight really needs to be defined very specifically. And in the bill that we're considering today, we say that we want to remove the possibility of a property owner losing their home simply because of better uses envisioned by a local government official. In general, that's a very positive move. But the question is, who determines this objective evidence that something is detrimental to safety, health, or welfare of the community? I believe the bill's definition simply says, "Objective evidence." But it doesn't state who determines that and what parameters are being used. It's essential that we tack down the exact definition of blight, the exact people who make that decision, and on what basis they make that decision. Because if we don't do that, we will have accomplished little or nothing with this piece of legislation.

Right now, it's determined that something is not living up to what it should be because perhaps it's a modest home, perhaps people are keeping it the best that they can and, in fact, there's nothing wrong with it except that it's a very modest home in an area that could possibly support a 25-story high rise or very expensive homes. That's not enough. We need to know exactly what the definitions are. We have an amendment in, S-501, that would effectively address, I think, the definition of blight, and I'd be happy to work with you on that.

Also, I have concerns about resolutions and ordinances. In Section 5 of the bill that you're considering, which actually amends Section 6 of the law, it calls for, "No municipality to determine a redevelopment area unless the governing body, by resolution, authorizes the planning board to undertake a preliminary investigation." And this section needs to be amended to be congruous with the remaining sections that call for an ordinance, rather than a resolution.

Later in the same section of the bill concerning the hearing notices, it states that, "Failure to mail any such notice shall not invalidate the investigation or determination of whether the proposed area is a redevelopment area." So there goes transparency, and it doesn't really exist. If we don't have any teeth in this and we say, "Well, if you forget to send it out or you don't feel like sending it out, it doesn't really matter. We're going to move ahead anyway." We need to make sure that hearing notices are sent. We need to mandate it and we need to enforce it.

The sentence that says, "Failure to mail out any such notice will not invalidate," was dropped from our bill, 501, and that was the reason. That you lose all transparency, you really aren't making the headway that needs to be made. So it would be my hope that you would consider eliminating that sentence. It should be that failure to notify would, in fact, invalidate the investigation, pure and simple, no questions about it.

I do thank you for the change in use of ordinance, as opposed to resolution, in the remaining sections of 6(b)4, and also requiring the clerk to transmit a copy of the ordinance determining the delineated area to the Office of the Public Advocate. I think that that is a very positive move as well.



I know that you're going to be taking testimony on this today, and you're going to be taking it on the road. I believe you're going to be looking for input, and I think that that's important. But it's my understanding that it's probably going to be six months or more before you, perhaps, get to the point of seeing a vote on this bill. And during that period, we're going to have people's homes in New Jersey taken from them inappropriately, immorally, and, in my mind, unethically and illegally.

I would ask that you consider a moratorium while you consider this bill. Stop all of taking private property and giving it for private things that -- public reasons, absolutely. If a town needs it, for its town, for a new school, or if there's a road, we'll certainly let that continue. But let's put a moratorium on taking private property that we're then going to transfer to other private owners -- just for the six months that it's taking you to consider this. Let's put a hold on it while you go around and listen to what people are saying. That way we really can do this from the ground floor up. There are a lot of people who are hoping that you consider this moratorium.

I do think that a limited moratorium would give us the time to really make an adequate finding and recommendations on everything involved with eminent domain.

There's another piece, on just compensation. And I did hear that you're discussing this. This needs to continue to be discussed, and I do hope that you'll take testimony from many people who have been put in a very difficult position by not getting the kinds of compensation that they should.

I also hope that you'll take a look at businesses that are having their properties taken. Because we're seeing that small businesses, perhaps,

aren't producing the kind of income that a town might want, and yet what they do have are jobs. They do pay taxes. And we can't just banish business, the same way that we really can't just banish people.

So again, I'm very pleased that we're seeing movement on it. And I thank you, Mr. Chairman, and those on the Committee. This is such an important piece of legislation. It is so being abused in New Jersey right now. I'd like to, if possible, work further with you, Mr. Chairman, on this. It's something that I know we have more than a dozen hot spots in the State of New Jersey, right now, where people's homes are under siege. And in most of those cases, they're places where there are people who are keeping their homes up and who should be able -- who've wanted all their lives to own their own property, who do, and who now have the possibility of losing it.

So again, I would ask that you consider the moratorium. And at the very least, I would like to continue to work with you on this.

SENATOR RICE: Thank you, Senator.

You know I'm an honest person, so I have to be honest with you, too. I'm not going to do a moratorium for a lot of reasons. But one reason, you have laws that protect. And unfortunately, it winds up in litigation, but sometimes that's resolved too, as (indiscernible) litigation. But you have 556 municipalities. Some of those are already moving forward with school construction and other projects that must get in the ground. And that's going to cost the taxpayers a hell of a lot more money, believe me.

SENATOR ALLEN: I'm not asking for a moratorium on schools.

SENATOR RICE: I understand that. No, no. We're not going to have a moratorium. I'm just being honest with that. I'm working from another issue. Some things that you're concerned about, I'm concerned about. I know of a business in the Bergen County area, but because of politics, they probably could have stayed in the area where the development was taking place. They wound up in court. One of the businesses negotiated, got a settlement (indiscernible) -- they could have stayed, but for some reason they just didn't want the (indiscernible). I think it was more politics than anything else, and the issue of fairness arose. But the issue and location also arose because once they got their fairness point, the question was, where do I go now, because of the nature of the small business, the space needed.

Senator, you're right. But I can give you another example of one we worked with where the issue of fairness was resolved from day one. The problem is the business person decided they wanted a windfall of over \$200,000. Back in those days, which was a windfall to some degree, they were pushing for over a million. Eventually, they got resolved -- 200,000, where they're supposed to be. And personally, I said, "Come on, you got to be kidding me, right?" But they figured it was an opportunity. And so all those -- they really have to be tightened up, including there's fairness on this side. But it's also fairness on the side of government where the government is being honest, with the Chair having integrity, commitment in the process.

But for the hearing now, I understood we took notes. We're going to go over the transcripts. I'm sure we're going to have some more individual, collective dialogue on it.

And so I want to thank you.

Any questions to the Senator?

Mr. Asselta.

SENATOR ASSELTA: Good morning, Senator Allen.

Let me get back down to what determines the definition of blight, and maybe there's some alternative here to allow the municipal government to play a role in that, and which, in turn, the general public also has the ability to communicate with their municipal leaders at the ballot box. So I don't know-- Through you, Mr. Chairman, I don't know if your bill goes to that length as to when an area is deemed blighted by the redevelopment zone, if that then goes to a planning board situation, which then has to be created in an ordinance form, which then has to be voted on by a local government and city council, which allows that check and balance, and allows that public input, eventually, to take place.

SENATOR RICE: The legislation we put in has changed resolution to ordinance. There was one area of the bill where they have picked up, the draft bill that is, the word *resolution*, which I've asked staff to change, because there had to be continuity coming through. And that's why I had to respond to that, because it was already observed.

I want to say something while I am speaking. Another problem of moratoriums is that it's nice to say, "Do them for projects yet to come." We don't know what's not yet to come. For example, a municipality or council may have documents sitting there where people have actually gone through some preliminary soft costs to get from point *A* to point *B*, but they're not going to come up for another 90 days. And in the meanwhile, if in fact you have a legitimate project you're ready to move forward and

you're trying to wrap up one end of it -- and just maybe one business, whether it's some business or something else -- if you can't negotiate because someone is playing games, you're tied up in court, the project may die because of courts.

If we were back 15 years ago, I may say, yes, and take my shots for six months, three months. But anybody who knows construction will tell you, if you go in your office right now, you're going to get a fax -- sheetrock went up five cents more, or whatever. This went up. Go back three hours later, another fax. If you're not locked in on some of the construction costs or some of the other things, there's a problem. That may not be all the cases. It may be one case. But I don't want to be the one, legislatively, to roll the dice on that. Because if I did nothing, as Chair -- if I say, "You know what? We're just not going to do a bill," then everything is still moving forward anyway in the next three months. So, first, my preference is to leave things status quo, then to pass a bill until we can get something here. I can assure that by, hopefully, the end of the year -- November, October, someplace -- and then we come back. See, I'll be working over the Summer, for those who want to participate, to get this thing to where it should be. But we can take a vote -- then it's going to go up, it's going to go down. That's where we are right now.

Senator Madden.

SENATOR MADDEN: Thank you for your comments, Chairman.

I just wanted to voice my support of a temporary moratorium on eminent domain. I believe that you make a very valid statement regarding the issues that are in the pipeline, so to speak, and under

operation. But I think in terms of the seriousness of the eminent domain problems that the State of New Jersey has, the inability of being -- to travel south Jersey and public meetings without having that issue come up is almost nil. It comes up almost as much as property tax reform.

There are bigger problems out there. There's more problems, I think, than I even realize. That being said, I think the thought of maybe expanding our ability to do what, I think anyhow, is a reasonably good forward step in addressing eminent domain and trying to curb, say, new projects, not existing projects where we're pricing sheetrock-- Those projects are already under movement. I'm talking about something that's brand new and just put a hold on it, much like we did the death penalty until we had studied the causes and what not.

We have just done that recently, and I thought that made good sense. And quite honestly, you know that I am a pro-death penalty Senator. But I also thought that in terms of the new information that I received and read about throughout the nation, it made good, reasonable legislative sense to put a hold on that to further educate myself and my colleagues on the dangers of that particular punishment. And I think that the analogy between that and the eminent domain issue, to me personally, are synonymous.

And I just wanted to be on record and kind of share with you my concerns on that. And possibly, as we go through the hearings, you could just keep that in the back of your mind, and maybe there would be something that we could do as we move through these hearings to at least put a moratorium on new projects, not the existing projects.

Thank you for the time to comment on that.

SENATOR RICE: Sure, Senator.

I hope that the Committee cooperates. I don't get lazy during warm weather or cold weather, and my members don't mind it. We will be holding hearings. So the quicker we can hold the hearings and people participate, we can wrap the bill up. But I also want to say that in terms of the moratorium -- you may not know this. When I was on council in the city of Newark, I could have said, I'm not doing eminent domain. (indiscernible) moratorium just needed government locally. So I would like to think that, where there are problems right now, taking place in municipalities, that the people who are concerned, and those who have supported such a thing that's down here -- just like they go and knock on doors in Monmouth County and Long Branch, and everyplace else, and come to my city -- just organize and go in to tell the council to put a moratorium on until we get a bill. I don't need to affect and try to figure out the situation for 556 municipalities. But I do hear what you're saying. My job is to get legislation done the right way as quick as we can, that we all can consider. But I just wanted you to know that moratoriums, in this case, can be done locally by the town. But there may be a project out there that's moving forward, where moneys were spent, that's active. It's just got one piece that's underway, which means that the sheetrock is going to go up.

But anyway, that's not an issue we're going to continue to debate here, because, prerogative of the Chair, it has to come through me, and that's not going to happen. The rest of it will happen. But I will encourage the municipalities with problems to do moratoriums. Okay?

Thank you very much, Senator.

SENATOR ALLEN: Thank you.

SENATOR RICE: Next, we have with us Mr. George Hawkins, from New Jersey Future.

**G E O R G E H A W K I N S:** Good morning. My name is George Hawkins. I'm the Executive Director of New Jersey Future, a statewide advocate for the State Development and Redevelopment Plan, as well as Smart Growth. I'm very grateful to be here today, to be invited to testify. Thank you, to the Chair and this Committee, for the leadership you're showing on, in my career, one of the most difficult issues I've ever encountered as a group.

In preparation for coming here today, we have been part of the consensus group that brought forth much of the language that you're working from today. We want to express our admiration for the Housing and Community Development Network, the League of Municipalities, the Builders Association, New Jersey Apartment Association, and many enterprises that were involved in that preparation. It has been a serious and thoughtful effort.

We also called together, independently, a number of groups that had additional ideas and interests in the eminent domain redevelopment debate, including Downtown New Jersey, the Center for Civic Responsibility, Legal Services of New Jersey. We also hosted a meeting with some of the environmental justice and community activists that had thoughts on eminent domain. So while that certainly was not everyone we wanted to talk to, we have tried to reach out to hear the voices that have strong views.



And we've come down to -- as an organization, at New Jersey Future, we have a broad-based board of community business development and municipal leadership -- that there's two extraordinarily compelling issues, potentially a collision course, with this legislation. One is the compelling need for redevelopment. We have been telling developers and municipalities to redevelop for 20 years. The State Development and Redevelopment Plan, founded on the State Planning Act, passed by this Legislature, focuses initially on the need to redevelop. Let's stop sending development out to farm fields, fragmenting habitat, covering watershed lands, eliminating farms that we want to protect. Let's revitalize the urban areas of this state, the inner-ring suburbs, that for 30 years we've depopulated.

One of the features that I know you know -- that the tax rates, that are a burden to all of New Jersey's residents, are highest in our communities with the lowest incomes, as those places have worked hard, accepted higher tax rates to try to maintain the services of those places. And we're anxious to see that redevelopment can bring prosperity and jobs and opportunity to those areas, which is good in its own right, but also reduce the pressure on our remaining farm fields and open spaces. So the compelling need of redevelopment is clear.

And Chair, you spoke very eloquently on that point.

But the second is this compelling interest to have people safe and secure in their homes. There's another -- a fundamental, compelling issue of the highest order. And as you do redevelopment and confront projects which may involve the taking of a residential property, there you now have this collision. And what's before us is the effort to resolve that

question. And I express support for the bills you've drafted so far, and I'm impressed with how far we've come.

We do have one principal concern that has some practical outcomes. My experience -- and I was a lawyer for the Federal Government for many years in the environmental field. And one of the issues that bedeviled us the most is when we had one outcome, a one-size-fits-all solution for an issue that had a various set of issues. There are many redevelopment projects that are undertaken, under the Redevelopment Act, that do not engage condemnation. The concern we have is about condemnation and eminent domain. And all the protections we seek are in response to that concern. So additional public hearings, which are necessary; the relocation issues, which we agree with the Public Advocate -- with the relocation and the third tier of relocation within a suitable house in the same area. Those are all referenced to redevelopment projects that engage condemnation for residential and commercial properties.

The question is, where we engage changes to the redevelopment law that apply to all the redevelopment projects -- that may involve warehouses and old parking lots and downtrodden strip malls -- that we seek to engage, back to the prosperity of the State, bringing the jobs and the revenue that we're talking about, in the other hearings in this building today, and make them so difficult. That 10 years ago, or five years ago, we would have been worried that those projects would go out to a farm field, we're worried, in New Jersey today, that those projects will go to Pennsylvania, or maybe even India or another country. We want that prosperity here.

So the question is twofold: Can we make the protections here, that are needed for those cases where condemnation is an issue, without causing so much cost and extra expense to those redevelopment projects that bring benefit in jobs and prosperity, and how do we distinguish the two? Now, I don't have an answer for that, but I can say that many of the issues that you've been discussing so far -- the question-- I'll give you an example. Would an amendment to a redevelopment project require all the steps and the protections, that you would have to pass the original Redevelopment Act? If you're going to engage condemnation, my answer would be, yes. If it's a redevelopment project that's about three warehouses and a gas station, my reaction would be, no. And the question is, can we tier the protection? So you add more to those projects where citizens homes are involved; but less when it's economic and commercial, and redevelopment without condemnation.

And I don't, unfortunately, have an answer. I don't like testifying unless I can-- Well, I'd like to say, "Well, Section 7 should be modified in this manner." What New Jersey Future would like to do is offer two: One is, there is obviously the area in need of rehabilitation. And that would be the notion of getting many of the powers that you'd have under the redevelopment law without the prospect of condemnation. Unfortunately, some of the tools that come with the redevelopment designation aren't available in the rehabilitation designation. So one suggestion we will have -- and we'll try to do the back work of this -- is how can we strengthen rehabilitation -- tax increment, financing, revenue allocation districts -- that we want to have available for the rehabilitation of

places, without condemnation to strengthen that, and add that as an alternative.

A second question would be, is there a trigger? Do you add some of these additional protections, which we think are warranted, in cases where there's condemnation, but don't add them in cases where there's not? So we don't have a one-size-fits-all protection that adds protections for projects which we essentially want to encourage and speed up and bring to our state, not force elsewhere.

I also want to mention that New Jersey Future very much agrees with the notion of pay-to-play. Of course, we're interested in pay-to-play reform for any development project, whether it's in a farm field or in a redevelopment area. But I don't think any of our reforms in a redevelopment area will, in fact, work, unless the prospect of the behind-the-scenes dealings is eliminated. And that's a fundamental precursor, is handling pay-to-play, whether done in separate legislation or here. We've mentioned it on the valuation. We do think the residential valuation should be in concert with what was recommended by the Public Advocate.

We're also very concerned about redevelopment in connection to affordable and workforce housing. As many of you know, we hired the Brookings Institution to look at our fair State in connection to prosperity. And the single, biggest issue they've raised is whether development in this state is connected to housing that's affordable for the workforce who needs to get to those jobs. And that's not only a question of values for the folks that we want to have that housing, it's now a question for those businesses of whether they'll relocate out of state and have employees that can get to

those jobs. So as we do redevelopment, making sure that housing in those places is affordable and suitable for workforce is a great concern.

So I thank you for the opportunity to come forward on S-1975. We're largely in agreement with many, if not all, of the provisions that are there. We'd seek additional protections and advances, as I've mentioned. But the question is, would there be a trigger that you would employ to make sure they occur when condemnation is an issue, but not hold up the kind of projects we encourage that would not have condemnation?

So thanks for your time.

SENATOR RICE: Okay, George. Thank you.

If you could remember, or if you have notes, the list of questions that we may need to bridge some gaps or fill in some voids -- would you give them to us? Bob was writing them down. I hope that Julius is, too. The transcript, hopefully, is picking it up. But I want to take a look at that because-- I hear what you're saying, and some of those are important, if we can find answers. We may not be able to find answers right now. And if we can't we're going to move forward. We just can't go back. We can't stay status quo. But you raised some interesting points, because I'm always wanting to argue, why are we demolishing so many buildings? Some of these buildings I'd like to see stay around, if they can, and be rehabbed. Some things we can't rehab. I know it's cheaper to take it down. But like you said, it may be because the way a project is situated. We may have to look at other laws and say, "Well, we know that, traditionally, you couldn't change to what this project looked, this particular structure. But in this case, we'll allow you to change it, so it will fit in, so you don't have to take it in some other kind of way." I don't

know. That's why I said we have to have some hearings. And we're still not going to answer all the questions that everybody raised. But at least if reasonable people raised the questions, rather than unreasonable people who never want anything to happen making the statements -- because I'm not paying attention to those things. But I will try to answer questions, and the Committee will try to assign things, where we can, to get clear of this.

So if you could do that, I'd appreciate it.

MR. HAWKINS: We would.

And one other thing that New Jersey Future -- I'm committing my staff time to this. But what I think is necessary as a whole -- and we'd like to try to produce this on a two-foot or three-foot large board -- is a redevelopment project, from the moment the idea raises to the point when the building is complete, of all the steps in between. As we consider individual changes to the law and how it affects it, do we see what the whole is? How many total additional hearings have been added? How many total additional features to see as the whole? Particularly this notion that some projects that we want to have happen -- does the whole become so burdensome that even projects that everyone would agree to gets stymied, because the whole of the additions, rather than taking them at piecemeal? And I think it would be helpful to see the whole process, start to finish, with the additions we've added in. And we will commit to try to produce that for your Committee.

SENATOR RICE: Thank you very much.

No questions from the Committee?

Senator Asselta.

SENATOR ASSELTA: Mr. Chairman, through you, let me just compliment Mr. Hawkins. I've been up here 12 years, and your testimony today is probably the most informative and insightful that I've seen in a long, long time or heard in a long, long time up here. And I'm very interested in your concept of the triggering mechanism as to respect of condemnation. I think that is probably a key component of what you just have testified to us.

And I hope, through you, Mr. Chairman, we'll take that under advisement, because I think that's critical in this legislation.

I also want to congratulate you on your insight about how important redevelopment is and has been for this State. And this goes back to the '60s. If you know the history of redevelopment, and Housing and Urban Development, which that agency was formed at the Federal Government level, that's when at least -- I can remember when it began in my area. So your insight is well-taken, at least on my part, and I think some of the members here. And I look forward to working with you.

MR. HAWKINS: Thank you, Senator.

SENATOR RICE: Thank you.

The next speaker we have is going to be Mr. Bill Dressel. And I guess he's bringing Tom up with him, Tom Hastie, New Jersey League of Municipalities.

See, Senator Connors, I can do better with these names.

SENATOR CONNORS: You're doing better. (laughter)

**WILLIAM G. DRESSEL JR.:** Thank you, Mr. Chairman.

My name is Bill Dressel. I'm Executive Director of the State League of Municipalities. Tom Hastie, Associate Lead Counsel, who has

been actively involved in a lot of the discussions with New Jersey Future on a broad spectrum of groups, that Mr. Hawkins mentioned, joins me, and he can address any technical and legal issues that you have.

But for the public record, Mr. Chairman, I have a prepared statement -- I am not going to read -- that you have and members have, as well as a white paper that we put out entitled, "Redevelopment — A Fundamental Right and Responsibility of Local Governments, The Need to Preserve Eminent Domain." You have a copy of that, and I would encourage you all to take a look at that, because it really does an analysis and a background on the Colonial law, the statutory law, all of the law, from the beginning of economic development and redevelopment. And I think that it's important that you have that understanding, and I would avail yourself to that.

We applaud you, Mr. Chairman. We applaud you personally for getting involved with this issue, as your years of service to the city of Newark, as a local official, in getting involved with this. We also have to acknowledge the involvement of Assemblyman Burzichelli for taking a leadership role in this. And we concur with you. We believe that the Legislature has an obligation, if not a moral responsibility, to do what the League believes is the important thing to do. And that is to do something to ensure the public that there are adequate safeguards, that there is greater transparency, that there is adequate compensation to those that are impacted by eminent domain. And we look forward to working with you to ensure that.

It would have been easy, Mr. Chairman, for the League and for this legislative body to take the easy way out, as other states have done, and



do a moratorium, or to do away with eminent domain or not to deal with the issue. Status quo is something that legislative bodies sometimes -- just don't want to deal with the issue. But you're taking this issue head on. I applaud you for that.

And as a representative organization of the 566 municipalities across the state, again we think it is our obligation to be up front on this, to basically help and assist you in your endeavor to deal with this issue. And believe me, we welcome that charge by you to do that, and we stand ready to assist.

Mr. Hastie -- through you, Mr. Chairman -- if you have anything to add.

**THOMAS J. HASTIE JR., ESQ.:** Thank you.

If I could just touch on a couple of things that have been said, kind of early on in this process. One, I know the Public Advocate -- and as an attorney, I agree with his analysis that *Kelo* couldn't have happened in New Jersey, that there was a constitutional like provision in New Jersey that didn't exist in Connecticut. There are fundamental differences, such as facts and laws, that were in operation. But I think *Kelo* really focused the attention and the debate. And I know Bill Dressel called us, probably when the Supreme Court granted cert, and said this is an issue, that when it comes to a head, we have to have a response for, because it's an issue that's emotional. It's an issue that's going to resonate with people. And it's also an issue that, for local governments, is a critical issue, because without the ability at times to exercise eminent domain -- whether you're building a school or a firehouse, or helping assemble parcels of land to attract development back into a center city -- if you don't have that power, the

ability of government to respond and to provide the necessary services to their people becomes limited. And Bill's concern from the League and our, kind of, mission coming forward was to try and save it by making it better, by making it more fair, by making it more transparent.

I've heard, over the last six months in particular -- you hear a lot of horror stories, or a lot of information or impressions of what is or isn't fair. I can tell you, as an attorney who practices redevelopment law, some of the stories out there are true, some of the stories out there are impressions or colored -- where you sit depends on where you stand, type of thing, but-- As an organization, the League -- and Bill's kind of guide to us was, come up with improvements to the law to make it better. And I think -- you said-- You opened the meeting by saying this isn't a perfect bill, and there is no perfect bill. I would echo that. It's not a perfect bill, but I think it's an appropriate response. I think it does a lot to increase public involvement. I think it does a lot to increase equity and fairness. I think it does a lot to help municipalities deliver redevelopment better without tying a municipality's hands.

I know there's provisions or suggestions on what needs to be done to a bill, and we need to make this and this and this. And my concern, as counsel to the League, is that every time you go down that path, trying to make it just a little better, you're going to make it a little harder. And when you make it a little harder, it becomes a little less effective. The net result of this bill, if it was adopted today -- and I know it's not going to be voted on today -- in its present form is that marginal redevelopment projects would not occur. The notice, the standing, the compensation -- we're already taking projects that could happen under the existing law, and

under this bill are not going to happen. And the further you go down that line, whether-- The concerns that are being raised are legitimate. I mean, we talked about notice. Well, a municipality, if there's no notice -- or the law says you have to give notice, but then there's a wink and a nod and really notice doesn't have to be given -- I can tell you that if a municipality didn't send out notice, or somebody showed up and said, "Look, they're taking my house for redevelopment, and I never received anything," and a municipality couldn't stand up there and submit proofs, the judge would tell the municipality, "Go back and start again." However, municipalities are not perfect. And we were joking that -- you make it two years from now on something, and my concern is whether the Clerk's Office, or somebody, has maintained the records in an adequate form that you can actually get and show it to the thing.

I know Senator Connors is also a mayor. Municipalities are not perfect, and we hold them to a perfect standard and require a perfect standard. It's not going to work. So we ask on -- notice provisions and things like that. Municipalities are willing, and I think they're capable of doing this. If you write perfection into the law, all you're going to do is prevent a municipality from moving forward.

I know the issue of moratoriums has been discussed. The League, obviously, became proactive in this in an attempt, I think, not to avoid a moratorium, but to deal with it logically and straightforward and thoughtfully, to fix the system and improve the system, rather than throw up our hands and say, "It can't be fixed. Let's just stop it." I think the bill and certainly the provisions in the bill are tailored to help make the law better. And I think, if adopted, they would.

So if anybody has questions.

SENATOR RICE: Any questions from any of my colleagues?

Senator.

SENATOR ASSELTA: Mr. Hastie, try to define for me, like, a marginal project that this bill would adversely affect, as far as the numbers just won't work through this particular bill -- is adopted. Give me, kind of like, an example.

MR. HASTIE: Well, part of what happens with redevelopment projects, by and large, you're starting with the constitutional prerequisite of blight. And I don't know if it's environmental contamination or inadequate buildings or small lots or-- There's some burden on that land already. And that's why the private market hasn't discovered, it hasn't built on it, and my government got involved. When a redeveloper comes into town, it's not public impressions. It's not some sort of like feeding frenzy or anything like that. Construction projects, by their nature, are driven by numbers, they're driven by financials.

Under this bill, one of the key provisions that's being changed is, if you're taking property by eminent domain, there's a change in the way that property would be valued. And again, I think that the way this bill addresses it was fair, because what it says is, if the redevelopment plan increased the building potential of that property-- If you had a quarter-acre ranch and it was zoned for a quarter-acre ranch, but under the redevelopment area it could be 24 units of condo per acre, because you can go up six, well then, that piece of land became more valuable. And what the old law said, and the old appraisal standards were, there was a concept called the *project impact rule* that was initially there to protect property

owners. Because it said, no one wanted to live in a blighted house, and when government blighted something it would devalue it. And the courts came in and said, "That's really not fair. If their house was \$200,000 and you blighted it, and you wait six months and now it's down to \$150,000, you're going to pick it up on the cheap. That's not fair. We don't want you to do that." And with redevelopment, it kind of got flipped on its head, because now you might have -- at the time of the area need designation, it might have been worth 200,000, but when the redevelopment plan gets adopted, perhaps the value of that parcel is now 300 or 350, and there was always this conflict between the project impact rule and the actual value.

And what this bill is saying is, "Pay them the actual value." If you've got someone who's lived in the area, and they're a property owner and their property is made more valuable because of government action, compensate them for it.

Stepping back, that's a fair way to do it. It's a practical way to do it, but it is a more expensive way to do it. And that's one of the things that I think, if you have projects that rely on eminent domain, it's going to impact the pro forma on that project. The developer is going to come in. He's going to say, "I've got to spend this much on wood and this much on pipe and this much on permanent--" As a counsel to municipalities, I'm going to try to stick him with every bill that the municipality has had to date for the redevelopment designation. I'm going to try to stick him with the Redevelopment Plan. I'm going to try to stick him with my time. So he may walk in and the municipality says, "Look, when we're done with our agreement, there's \$300,000 in legal, and planning, and engineering

expenses that you are going to have to compensate us for.” So there’s an added expense. More land becomes an added expense.

There’s issues; and I think, fairly, this bill says, if you’re relocating people or you’re impacting on people in the plan, do an analysis and look at who your population that you’re going to displace is and try and figure out what you’re going to do with them. They’re still the town’s responsibility.

I know there’s some efforts or some discussions to say, “Well, you should build the replacement housing right there on site, or you should move this--” And they’re all, I think, well, good meaning things, but at some point, that’s another cost and expense onto a project that’s going to make it less probable of happening. So that’s my only point.

The big one in the bill right now is changing the valuation for eminent domain. It’s going to change a lot of pro formas and make projects more expensive. And the more expensive they are, the less likely they are to happen.

SENATOR ASSELTA: Thank you.

SENATOR RICE: Maybe and maybe not -- comes from the experience, probably the loss for most municipalities. I think what has to happen is that we’ve gotten smart enough in government -- those of us with the experience. Understand, there are 556 municipalities. Most of them have been idle, almost since they were started as municipalities, because there’s nothing to do -- and that’s a good thing. Times have changed, and so local governments don’t have the experience of big cities and urban. And the State has done a lot over the years, during my 20 years here and prior to. Also, the Federal Government understands there has to be some

additional tools. This whole project that one may look at -- that they believe that the use of eminent domain may be necessary, they may find, if they look at all the other tools in the State -- they can make the project manageable because you can pull these other pieces together. So we package things.

The reason Newark is growing is not because we rely on one thing. Because we found out that one thing didn't help us. And we had to keep coming down here arguing the case and getting cooperation for the Legislature to pass additional things to help the League, so that we could have this toolbox. And now we know we can connect this piece, maybe in DEP, with this piece in Community Affairs, and this piece over here. The same thing in our shore communities. We have started to look at pieces that could come together, because it was always one way. And it became clear that the Federal Government was not going to help us, so we had to become creative. And so it may diminish some of the potential opportunities or interests, but I'd rather have the diminution, which I think would be small if any. Because one thing I know about businesspeople, they find a way to make money. They're the kind of people, like research -- you give them some money, they're going to find a way to get another research grant. Because some of them, when they make money and there's another place that they can make it and they see holes, they're going to get real smart. They get R&D teams that we don't even know about. They may come from the street, small business, but they figure a way to come up with an idea you never thought about, and you're thinking, "You know what, that makes sense."

And that's how we do laws, by the way, too -- for most people, not for ourselves. They just think we're smart. But we're going to try to do the best we can. You made a couple of points that I think are very important. And I meant to tell Senator Allen, in one of the areas that she mentioned, that you mentioned, when she was talking about -- I believe it was -- not the moratorium. That's okay. You had made a similar notion that it's just not going to happen. But I forget exactly what the point was.

No other questions? (no response)

Let me call the next speaker up.

I want to thank the League for your participation. Try to hang in there with us. We're moving up and down the state so you can hear, because I want to know. I think State government's first responsibility is to the people of New Jersey. And if, in fact, that's our responsibility, then we're talking about 556 municipalities. So we can say that an eminent domain bill is going to be for Newark or Roseland or Deal, New Jersey -- as though there's no other municipalities out there on this kind of legislation. It becomes very important. We may be building urbans now, but we never know when that little community -- because we keep talking about regionalization and people coming together and making little big. Well, if I'm going to take in your town, and I'm going to pass that referendum -- I may decide you're going to be a part of my town -- I've got to clean that stuff up. I'm just being honest. There are things that we don't think about here that's commonsense stuff. And so they're going to have to have tools. The question is, one that will keep the process expedited in a fair way -- one that's fair to the people, fair to government. And that's why I said this (indiscernible) issue is going to be one of equity.



When people come to these hearings and talk about 50 million other things, I'm going to sit here and do this, as one (indiscernible) the other. I really believe the issue is the process and equity. And that's my concern. What I would like everyone to think about, I need help on -- and that's the area -- my colleagues need to think about this, too-- As I go through the equity piece, I can't figure out how to take a \$300,000 property, or a \$100,000 property, or 30,000 -- it doesn't make a difference what the number is -- each problem is somewhat different. I want to give you what it's worth. Now, I certainly want to be fair as it relates to relocation, and things that have to be considered, with what it's worth. You just can't say, "Here's what it's worth, deduct your other needs," and then you can't go any place at all.

The whole issue of the value of it, at the time, in the municipality -- we're going to be working with that, on the amendments. But if I'm landlocked, now I've got to leave that municipality. And I know we have a relocation clause. I don't know how to deal with the replacement value, if you will, if I went someplace else, and how far should I go? Are we going to be perfect, no. But I'd like to have a little bit more in the bill in case someone has to go to another municipality, or-- There was an incidence I can cite -- a real one recently -- where a person, through the SCC, they were relocated. It was not really fairness in the process of eminent domain. I believe they received someplace in the area of maybe \$110,000 for a piece of property -- or 200,000 plus -- and relocation. The bottom line is that they were old. They said, "The heck with it," they went south. They knew they didn't really have enough money to really situate them, the way they should be situated down south, so they could make it.

But from the time they left here, the van and the movers -- it was taking everything they basically owned. Court (indiscernible) on the highway. I don't know how to address things like that. In other words, I couldn't address the fire. But she left here upon fairness. Do you understand what I'm saying? I should at least have had fairness out of the way, as it relates to relocation too. So it's something to think about.

Thank you very much.

The next speaker we're going to have is Alan Mallach. Alan is with the Housing and Community Development Network.

How are you, sir?

**ALAN MALLACH:** How are you, sir?

**SENATOR RICE:** All right.

**MR. MALLACH:** Senator, members of the Committee, I'm here on behalf of the Housing and Community Development Network of New Jersey. And we have been working with the League of Municipalities, the homebuilders, and others to help move this bill forward. And I'd like to start by commending Senator Rice for his leadership in bringing the parties together and encouraging us to work together, which I think was very important in terms of getting us where we are now.

I think we have a very good bill. I think the bill, S-1975, is an excellent foundation, as the Senator mentioned, for the kind of changes we need with respect to redevelopment and eminent domain. I think it addresses a lot of key issues. I think some of the issues that have been raised earlier today, particularly those by George Hawkins and New Jersey Future, are worth dealing with, and we look forward to working with him, with the Committee, on those.

Today I'd like to -- first, I have a couple of what I would characterize as very minor, technical amendment suggestions, which I'll give copies to Mr. Rothberg, and we'll deal with. I'd like to just raise one important issue, I think, about redevelopment and about this bill, which is, I think we all understand and realize that redevelopment by its nature tends to remove inexpensive and affordable housing and replace it either with more expensive housing or with, often, no housing at all. And that's not because of a conspiracy or anything. It's the nature of projects that lend themselves to redevelopment -- tend to be occupied by lower-income people. They tend to contain inexpensive, affordable housing.

So the nature of the redevelopment process is one that removes affordable housing from the housing stock and affects lower-income people most directly. I don't think there's an alternative to that. It's a reality, and I think it's important to address this issue in two ways: One is to make sure that people get fair compensation and adequate relocation provision. And I think the bill and some of the ideas that have been raised today go a long way to doing that. The second is to have language in the bill that sees that at least a reasonable amount of the inexpensive, affordable housing that is removed is replaced in some fashion, to address the continuing need for affordable housing in this state.

Today, even in Newark, Paterson, Passaic, houses are going for \$300,000, \$400,000, \$500,000, and this need is not being addressed. And redevelopment, again despite the benefits that it creates to New Jersey's towns and cities, without this issue being addressed -- it will make this problem worse. So the Network supports redevelopment and supports the careful use of eminent domain for redevelopment, but we think it's

important that this issue, of its impact on lower-income people, be addressed. We don't have a specific suggestion to offer here today, but we would like to work with the Committee, and with you Senator, to try to come up with language that will, in fact, address this issue in a constructive way, while still allowing redevelopment to go forward.

Thank you.

SENATOR RICE: Thank you.

It came to me -- you see, that's what happens when you have gray hair. The issue I wanted to -- this has to have made it -- as well as Senator Turner (*sic*). I wanted to go on record to say that Senator Turner -- I don't mean Senator Turner -- Senator Allen had indicated that a Failure of Notice should invalidate the project. That's not going to happen in this bill, primarily because in the Failure of Notice people are held to high standards by the Constitution and the courts, with further notice. And you're right, the courts will fine you and say, "You're going back on the project, and you're going to start from day one." If not, there's some serious consequences. So we don't need to deal with that.

In terms of the housing, I don't think -- I think I'm just as concerned about affordable housing as anyone, and we're going to address that. But I'm smart enough to know -- and I've been around long enough to know, not just in Newark. I don't know why everybody thinks I'm just Newark, and I don't live a life outside of Newark. You know, other areas didn't (indiscernible) for nine months. But the point is, is that there are some areas you can't build back. And so the affordability is the issue we have to address, but there are ways of doing it that's not going to make it 100 percent. And that's why relocation becomes a very important element

of the bill in terms of how we treat it. Because, obviously, there are going to probably be many more relocations outside than inside in most cases, depending on the project.

The other thing is, is that the relocation becomes necessary only -- we're talking residential now -- depending on the project. A municipality does not have to accept a particular project in terms of rebuilding their community. That's a matter of their planning and their master plan and their vision for that community. And hopefully, eminent domain is not going to set the planning stage. That's not what this bill is about. This doesn't set the planning stage. This doesn't set your vision. This doesn't address your needs. This bill basically says that if, in fact, your vision is *A*, and you need these kinds of tools, tax abatement, etc., etc., this is in-- It is a tool to help you make your dream come true. But it's your dream. And you can kill a dream any time you want. You can modify and change it. So I don't want us to get into trying to make this -- this eminent domain bill, if you will -- the bill that's going to say that, no, it's going to have all these wonderful things, okay, which you can have, but there's going to be some exclusion in the process. Well, if there's going to be some exclusion, that's your plan. You deal with that -- local government, local control -- because people are going to beat you up. But we do have to address, where we can, housing needs. But it may take up a legislation, which I know is going to take on some areas, because we were talking long before this case about affordability, how do you get affordability, how do you talk about perpetuity and other things. It's not going to happen here, but there's things we have to get back to.

Any questions or comments from my members? (no response)

Okay. Let me thank you very much. And let's continue to work together to try to make the bill better.

MR. MALLACH: Thank you.

SENATOR RICE: Okay.

We now have Joanne Harkins and Peter Reinhart, New Jersey Builders Association.

**J O A N N E H A R K I N S:** Good afternoon, Mr. Chairman, members of the Committee.

I am Joanne Harkins, a Professional Planner and Director of Land Use for New Jersey Builders Association. I am accompanied by Peter Reinhart of K. Hovnanian. He will talk on some of the more practical business applications of some of the provisions of the amendments to the bill.

We commend you for your leadership on this issue, and your willingness to address the redevelopment issues and some of the significant reforms that are needed in the existing process. NJBA is a member of Homes for New Jersey, and I was part of the working group which submitted recommendations to you for amending the law. We do support S-1975. We do have, however, several comments and recommendations.

A great deal of effort has gone into tighten the procedural requirements for determination of areas in need of redevelopment, preparation and adoption of the redevelopment plan, and designation of the redeveloper. Mr. Hawkins spoke quite clearly about some of the concerns that his organization has and that are shared by the NJBA and others, that in tightening some of these requirements we may make it difficult to move some of the projects that should be moved more easily. We do not have

recommendations for amendment at this time. However, we do think that at some point there may be amendment. It may be after the bill is adopted, to make it easier to go in and make some amendments and changes to plans that are not affecting other properties and property rights of people. But there are unanticipated conditions that are encountered in the field that are going to need some amendment.

We do have a recommendation for amendment to the grandfather provision relating to designation of the redeveloper. There is usually a time lag between the times the redeveloper is named and the execution of the actual agreement, and we have given you some clarifying language on that.

We also make a suggestion to valuation of the bill. As has been explained, the current law sets valuation at the time the area is determined to be in need of redevelopment. The bill would change that to the time of the date of declaration of taking, or the date of adoption of the redevelopment plan, whichever yields the higher value. NJBA supports those changes. The Public Advocate has also recommended another change that would establish a minimum -- that at least the relocation value of the property has to be taken into account so that you can buy a new home, and we support that.

We do have concern, however, with language that says, "The valuation shall take into account the uses permitted for such property under the redevelopment plan." We feel that that could be a complicating factor, in that the valuation at the time of taking would already take that into account, so that we feel that you could be confusing the issue somewhat.

We have given you some amended language and that is attached to our comments.

While the redevelopment law continues to allow the use of eminent domain, the proposed amendments under this bill would provide additional notice, relocation assistance, compensation, and safeguards to ensure the practice is not abused.

Senator Rice, you, in your introductory remarks, indicated that, in fact, eminent domain is not used in the vast majority of redevelopment plans.

Senator Allen has alluded to some situations where, in fact, some considerable acquisition of private property has been proposed in redevelopment plans. In fact, plans of those natures have not been implemented. They have been set aside by the court if the municipalities have decided to abandon them or they have decided that they need substantial revisions. So that, in fact, there is not the extent of eminent domain abuse actually implemented that has been suggested by some other parties. However, this bill would significantly tighten up the protections that would be provided for the use of eminent domain.

Again, we commend you for your efforts, and we support the bill and encourage you to accept the amendments we have offered.

SENATOR RICE: Go ahead, sir.

**P E T E R S. R E I N H A R T, ESQ.:** Thank you, Mr. Chairman.

My name is Peter Reinhart. I'm the Senior Vice President with K. Hovnanian Homes. We've been in the redevelopment business for over 20 years now. In fact, I think our earliest redevelopment was in the city of Newark.



We agree with the concerns as mentioned by Mr. Hawkins, and Mr. Mallach makes an excellent point as well. Just a couple of practical reports. The redevelopment process is very expensive for the person who is laying out the money. In many cases, it's typically the redeveloper. And there are significant dollars spent right up front early on in that process. So uncertainty in the process is extremely critical to the decision for the municipality and the designated redeveloper to move ahead. So just keep that in mind whenever the decision making, in particularly that time line that Mr. Hawkins alluded to, are made. There are business, financial decisions being made every day during this process. And to the extent that those insert some uncertainty in the process, it will affect the entire decision-making process on redevelopment, and you may end up having a situation where you go down the road a certain point and then, whoops, it doesn't make sense any more. And that would be destructive to the entire process.

Another point to be made is, there's this concept, I think, that some people believe that there is, sort of, an unlimited bucket of money for doing redevelopment projects. It's not true -- Senator Asselta alluded to that issue -- to the extent that you chip away at the financial viability of a project with valid concerns about paying fair equity for homes, to the extent that you increase the time line, to the extent that you do these various things that impact on the overall viability of a project. One of the benefits of redevelopment heretofore in many municipalities is that there's been sufficient moneys available for the redeveloper to do public infrastructure improvements that not only are part of the redevelopment area but, in fact, extend beyond it. And many municipalities have benefited significantly

from these dollars. So to the extent that you reduce the pot of money available, some of that availability of funds for other necessary infrastructure projects, or design work infrastructure projects, will be reduced.

So, Senator Rice, I had a thought while I was sitting back there -- your suggestion on replacement home values and things like that -- it's just a thought: That perhaps the HMFA could make low interest on mortgage money available for people who are displaced through the condemnation process, because affordability is a factor of a down payment and a mortgage. So the extent you can reduce the affordability (*sic*), that would be a pretty small amount of State dollars that could help to assist in that area.

Finally, I want to commend your Committee, Senator Rice, and the Assembly Committee. It's just a very difficult issue. And the process that you have used to engage all interested parties, as well as, frankly, Public Advocate Chen -- in his report, he reached out to many interested groups -- is just a good example of the public process at work. And the sausage that's being made in this legislation will probably be better sausage than is often made in the legislative process.

Thank you.

SENATOR RICE: Thank you.

You always rely on HMFA. That's taken us back to the State government. I guess the issue will be whether we deal with a private deal that's going to make sense versus a combination or partnership. It's something we'll look at. We always look at that anyway. Then that may require -- generate some more dollars, which triggers something else that

people get into debates with down here. Then the special interests have a problem. But it is a way. But traditionally, the whole idea of economic development is for the municipality to kind of grow in stature for the will to do better. So the benefit is really there. As to the State, directly sometimes, most times it's indirectly. So some kind of way, we have to have the municipality in a position where they can benefit without being losers, but the State doesn't have to pick up the burden -- some of it or most of it. That's the whole idea. If that's the case, then we don't need the tools. I always tell people, if I'm a good carpenter, give me the tools. I won't call you anymore. I'll find the work, and I'll make it work.

People on welfare, they tell you up front, "Give me a job and you don't have to worry about welfare." So we don't want to put municipalities in a position that they lose their incentive to be creative in their thinking and lose the incentive to be creative in their negotiations.

Some of this pay-to-play stuff, which I'm not going to address in my legislation -- I need to put that up front. We've got Pay-to-Play laws. But to be quite frank, we have a lot of other laws that put people in jail, and hold them accountable, and fine them too. But I think it's good -- motherhood and politics that keep saying pay-and-play. I'm getting so tired of the word, that I think most people know what it means. And so I'm not going to get into that. That's not the subject matter of this bill. So if those who are here that want that -- find another playground to play in. I don't have time for it right now. I don't have time for the politics of it, because people are hurting.

But I just want to indicate, we do want to give people the incentive to recognize that you have to negotiate a fair deal, because you're

not going to have some of the revenues (indiscernible) from the State that you think you can use to offset affordability, to offset relocation. And this way you'll cut a better deal with developers too.

There are other bills that have been placed in our committees that haven't really moved, that we're going to start to take a look at, that deal just with that -- how does a municipality get more from a developer in a process, given whatever it is their profit margins are? But by the same token, we don't want to hurt businesspeople. So it's not an easy task. So my job is not to say it's easy. My job is just to say it's fair and not care too much about those who want to be barriers. That's the advantage of being a Viet Nam veteran. I can stay focused. And if people get in my way, I just push them aside, and either I get hurt or they get hurt. Sometimes we got to come out of a tunnel. That's how I got back here.

Thank you very much for your testimony.

The next person we're going to hear from--

Any questions from any of my members? (no response)

It's going to be-- Okay, Jarrod Grasso -- RCE, man. Good thing you didn't put an *I* there (referring to his written testimony) -- Vice President of Government Affairs, New Jersey Association of Realtors.

**JARROD C. GRASSO:** Let me explain what the RCE--

**SENATOR RICE:** What's the RCE? I thought you misspelled my name, you know?

**MR. GRASSO:** RCE is actually a designation that I just earned from the National Association of Realtors. It means I'm a Realtor Certified Executive. It's a class that I had to take in order to position myself for, one day, advancement in the Association. So that's what RCE designation is.

SENATOR RICE: I have a real estate license. I can get one of those too? Can I become an honorary?

MR. GRASSO: I'll work with the national association on that, Mr. Chairman.

My name is Jarrod Grasso. I'm Vice President of Government Affairs to the New Jersey Association of Realtors. The New Jersey Association of Realtors would like to thank the Committee for this opportunity to testify regarding the eminent domain issue. We also would like to thank Senator Rice for taking the lead on this issue and being the first to reach out to the Association for our views on how to protect private property rights.

Eminent domain abuse deprives residents of their homes and businesses without giving them proper notification, a voice in this process, or conversation that will allow them to remain members of the communities they know and love.

S-1975 is a good first step in curbing the eminent domain abuse by creating a more stringent criteria for declaring an area in need of redevelopment. NJAR is requesting a laundry list of amendments that give greater protection and more notice to the public, and would also make S-1975 similar to the legislation that was already introduced in the Assembly.

NJAR supports aspects of the bill that ensure property owners in the redevelopment area are notified if the redeveloper may take their property through eminent domain, and that an appeal process is available if their property is subject to a taking. We would also suggest going a step further by expanding property owner notification during the redevelopment

process and allowing for greater public access to all documents relevant to the redevelopment area.

In cases where private property is acquired through eminent domain, NJAR believes property owners deserve proper compensation based on the highest value of their property. They deserve proper compensation for relocation, closing, and other costs incurred as a result of the taking, as well as assistance in finding a comparable home or business location.

S-1975 ensures greater compensation for both property owners and tenants. NJAR supports the mandate that displaced owners and tenants be given the first right of refusal if a redevelopment plan contains a housing component. We suggest an amendment to extend the right of first refusal to owners of commercial property if the redevelopment plan includes a commercial element.

As I said before, this legislation is an important first step in protecting the rights of private property owners. Further steps should be taken down the road to ensure eminent domain is only invoked when it is truly for a public purpose, not in the broader sense seen in the *Kelo* decision. NJAR would support additional legislation that more clearly defines public purpose and public use, as referenced in the New Jersey Constitution.

This is an important issue to the Association. I appreciate the opportunity to share our views. We have submitted, with our testimony, our amendments and suggestions for your legislation, Senator Rice.

And thank you very much.

SENATOR RICE: Thank you.

Any comments or questions from Committee members? (no response)

Okay. Thank you very much.

Next, we have Mr. Conor G. Fennessy -- is he here? -- the New Jersey Apartment Association, Vice President of Government Affairs.

**C O N O R G. F E N N E S S Y:** Thank you, Mr. Chairman. Good afternoon.

Again, my name is Conor Fennessy, Vice President of Government Affairs in the New Jersey Apartment Association. I would like to express our appreciation for the open, collaborative effort the Chairman has offered various stakeholders regarding efforts to craft legislation addressing changes to New Jersey's redevelopment laws.

The NJAA has worked closely with the Homes for New Jersey Coalition and also the League of Municipalities to promote legislation that is fair and equitable for all stakeholders involved, including housing providers, developers, housing advocates, rental property residents, single-family homeowners, municipal government, and hopefully, business owners.

The NJAA believes that S-1975 seeks to strike a balance between the need to preserve the use of eminent domain in specific, defined, and targeted situations as part of redevelopment efforts to revitalize our urban centers and older suburbs; and the fundamental property rights of residential property owners, homeowners, and commercial businesses.

One clarification we'd like to ask the Chairman and the Committee to consider is with regard to redevelopment and eminent domain -- that multifamily buildings are residential in nature. The bill does

not explicitly state this. It infers that multifamily is residential, that multifamily is not commercial -- we would simply ask for clarification that it is. This plays into the definition of a detriment to the health and welfare, which creates a commercial requirement, and also with regard to residential properties first in the definition.

The other change we'd like the Committee to consider is under Letter I in Section 4, regarding the 20 percent threshold -- including properties within a redevelopment area, those healthy properties that don't meet the definition of detrimental. We would like to ask, respectfully, that the Committee would consider lowering that 20 percent threshold to 10. This would protect those better property owners from having their properties taken simply because the neighborhood nearby falls under the detrimental definition, although their property might not.

The last thing we would ask at this time is regarding the bill statement or, hopefully, the forthcoming Committee statement, with regard to adding buildings or property alongside of homes. The sentence currently talks about, "The possibility of a property owner losing their homes." We would like to respectfully request if we could add *buildings* or *property*, simply because a "better" use could be envisioned by a local government official. The bill talks about homeowners and it talks about commercial property, and we would simply like that to be reflected, respectfully, in the bill statement as well -- homeowners, properties, and also business.

Again, we'd like to reiterate our support for the Chairman, and the open and collaborative process that he has shepherded these past few months. We are happy to support S-1975 publicly, and we look forward to



continuing to work with the Chairman and the Committee members on this important issue.

I'd be happy to answer any questions you might have, Mr. Chairman.

SENATOR RICE: Yes. What's the consignment to 20 versus 10 percent?

MR. FENNESSY: The 20 percent threshold creates a threshold where 20 percent of the properties in the redevelopment area, even though they may not meet the -- excuse me -- they do not fall under the detrimental definition, 20 percent of those properties could still be taken. We would like to see, respectfully, a smaller percentage. We're trying to say that if there's a good building element -- be it a good apartment owner, a good single-family homeowner, or a good business owner -- that their properties be protected -- and not just because perhaps they've taken care of their property, but the rest of the neighborhood has perhaps declined. That they either be drawn out of the redevelopment zone or we establish a threshold that's lower, so fewer buildings that don't meet the detrimental definition would be taken.

SENATOR RICE: Okay, thank you.

MR. FENNESSY: Thank you, Mr. Chairman.

SENATOR RICE: You're talking residential neighborhoods?

MR. FENNESSY: Primarily, yes, sir. Although the 20 percent threshold, I believe, encompasses all buildings. But Mr. Rothberg may have a better handle on that.

SENATOR RICE: Okay.

MR. FENNESSY: Thank you, Mr. Chairman.

SENATOR RICE: Any questions from the Committee members?

SENATOR MADDEN: No, sir.

SENATOR RICE: Okay, thank you very much.

We're coming to the end, we're coming to the end.

Next we have Stan Slachetka and David Roberts. Did I say Slachetka correctly?

**S T A N S L A C H E T K A:** You did fine.

SENATOR RICE: Listen, I can't get most of the names in my community right, so you're lucky I got that close. It's just bad -- it was worse down in Whiting, New Jersey, the other day.

MR. SLACHETKA: And at this stage in the hearing process, Senator, it's certainly acceptable. It's no problem, whatsoever.

SENATOR RICE: This is the Planning Association, right?

MR. SLACHETKA: That is correct.

SENATOR RICE: Go ahead, sir.

MR. SLACHETKA: Thank you.

Good afternoon, Mr. Chairman. Good afternoon--

SENATOR RICE: Just hit your red button. (referring to PA microphone)

MR. SLACHETKA: The red button? (referring to PA microphone) Actually, it's not lighting. Let me use this one.

SENATOR RICE: It's not lighting? It was working for everybody else. Did you plan this? Always got to mess a project up, you know what I mean, just make us come back to replan this thing.

MR. SLACHETKA: I think it's a long-term planning effort here, Mr. Chairman.

Thank you, Mr. Chairman. Thank you, members of the Committee. We appreciate your patience and appreciate the opportunity to participate in the hearing process. As I said, my name is Stan Slachetka. I'm a Professional Planner. To my right is David Roberts. He's also a Professional Planner. We are representing the New Jersey Chapter of the American Planning Association, a statewide organization representing planners throughout the State of New Jersey. David and myself also have been deeply involved in the redevelopment process, and also have a long history in working and developing legislation on redevelopment in the State of New Jersey.

We're the co-authors of the *Redevelopment Handbook*, which is published by the Department of Community Affairs and, jointly, by the New Jersey Chapter of the American Planning Association. We both had the opportunity to chair the Committee of the New Jersey Chapter of the American Planning Association, that actually crafted the local Redevelopment Housing Law and the two companion bills that were created at the time, which is the Long-Term Tax Exemption Law and the 5-year tax abatement law.

I have two brief introductory comments and points before Mr. Roberts reads a formal statement from the Chapter concerning the bill and, also, the Assembly version of the bill. First, on the record, David and myself, both personally, and the New Jersey Chapter of the American Planning Association as an organization, is proud of our role in crafting the Local Redevelopment and Housing Law and the two companion bills that I

mentioned before. Literally, that was a three-to-four-year process, including professionals, attorneys, practitioners, as well as elected local and State officials, who worked together to craft a comprehensive rewrite of the State's redevelopment laws. Now, some of the legislators who have worked on that effort included Senator Lynch, Senator Orechio, and Senator Van Wagner, as well as Assemblyman and, then ultimately, State Senator Richard Bagger -- worked closely with our organization to craft the bill.

Over the last 15 years, the Local Redevelopment and Housing Law has done far more good than harm in the State of New Jersey, benefiting the citizens of the State of New Jersey in promoting Smart Growth, in accordance with the State Development and Redevelopment Plan; preserving natural resources by directing growth into urban areas and areas where infrastructure is available; revitalizing our state's cities and towns; cleaning up brownfields and contaminated sites; helping suburban and rural communities promote economic development and prevent the spread of blighting conditions; and, to a certain extent, providing affordable housing -- and actually, more and more, providing affordable housing in the State of New Jersey.

Where the harm has been done has been in those instances where individuals, or professionals, or municipalities have not followed the requirements and procedures that are specified in the Local Redevelopment and Housing Law, particularly in providing the substantial evidence and proof that an area is, in fact, in need of redevelopment.

We agree with the prior comments by a number of speakers that the intent in the Local Redevelopment and Housing Law, and in any redevelopment effort, is not to substitute one person's opinion for another

about what is best for a certain property or area of the municipality. And to the extent that the criteria designating an area in need of redevelopment can be revised to be more explicit and clear, particularly as related to providing substantial evidence and providing objective criteria -- which is required under the requirements of the statute, to the extent that we can make that clear and reduce ambiguity in the legislation -- we, as an organization, as professionals, concur with that. And we think that S-1975 does a good job of getting us to that point. We think there can be some further changes and clarifications.

The New Jersey Chapter of the American Planning Association and planning professionals recognize the significant and life-changing impact that eminent domain, in any context, can have on homeowners, tenants, property owners, and business owners. We've consistently recommended, both in the *Redevelopment Handbook* and as professionals working with municipalities, that communities participate in the redevelopment process by maximizing community involvement in establishing the vision and the plan for the community, involving property owners and business owners in planning limitation, making them part of the plan and benefiting from the plan, and exploring other alternatives than redevelopment to address the problems and concerns that the redevelopment approach or the redevelopment process is attempting to address. And finally, we've always recommended, as planning professionals, that eminent domain be used as a last resort.

Mr. Roberts is going to read a statement that was presented to the Assembly Committee concerning the Assembly bill. We think that there are certain provisions of the Senate bill that are an improvement over

the Assembly version, but in general, some of the concepts and issues and concerns are also addressed in this statement, which our Chapter President read into the record at the Assembly session.

**DAVID ROBERTS:** Thank you, Senator Rice. I appreciate the opportunity to be here as well, along with Stan.

Just one or two very brief side comments: One is that the number of the proposals that you've included in your bill that have to do -- and I think they were also included in the Assembly bill -- that have to do with required components of a redevelopment plan, I also wanted to make a personal note of congratulating you for and supporting. Because Stan and I, as in our respective firms -- T&M with Stan and Schoor DePalma with myself -- have already incorporated a number of those ideas in our redevelopment plans. And it's good to see that they're actually recognized in the bill as being now mandatory.

A couple of examples of those would be the process of redeveloper selection to make sure it's very transparent in the actual redevelopment plan; the requirement that the COAH requirements, especially the fair share requirements, the growth share requirements that are now part of the cycle through rules being incorporated into the redevelopment plan-- I know Stan and I have, in all of our redevelopment plans since the COAH rules came out, have been automatically putting them in our redevelopment plans, because it's important that municipalities know that redevelopment is incurring a growth share requirement for affordable housing. So we make sure that any redevelopment projects that occur in those redevelopment plans -- that they provide for their portion of

the growth share. I think that's important and I applaud you for putting that in the statute of the proposed bill.

Also, the protection for historic and cultural resources -- something that I think we both used in our reviews -- Redevelopment Plans IV -- which is to protect those resources through the redevelopment process. And also planning board discretion on waivers, and variances, and relief of those redevelopment plans. I think many redevelopment plans are silent on that issue, and I think that's been a flaw in the past. And I think your bill will help to correct that. So I applaud you on that.

I'd go so far as to say that many of our redevelopment plans recently, based on the pay-to-play attention, have actually even put some requirements in our redevelopment plans that cover pay-to-play. So even though that's not a requirement in your bill, I think it is something that we have actually already incorporated into some of our redevelopment plans that we've done.

The other point I wanted to make had to do with rehabilitation. And Senator Rice, you might be aware that with all of the activities that I've had personally with projects in Newark, that Newark has recently redesignated itself, within its entire municipality, as a rehabilitation area. And I had something to do with that, I have to say. And in addition to that, we've also had some influence in the towns of Dover in Morris County, Keansburg in Monmouth County, in qualifying themselves as rehabilitation areas, which allows them to use the redevelopment tool without eminent domain. And I think that's my one concern, that I would suggest that you look more carefully at, is to clarify the current changes to

Section 14 of your bill, which deal with the qualification of a rehabilitation area.

Up until 2001, very few towns in the State of New Jersey were using this tool. And as Stan mentioned in the *Handbook*, we mentioned rehabilitation areas as one of the alternatives to redevelopment because it takes eminent domain off the table, but it still allows you to use some of the other powers of Section 8 of the bill in terms of redevelopment -- such as, for example, conveying public property without public bid. In the current version of the bill, some of the concerns we have with respect to criteria D and E is that a lot of the language was moved to Section 14 and made applicable to rehabilitation areas. And my point is that, what I would not like to see happen is for us to go backwards, go back to 2001, when the statute was amended to include the criteria currently in the law that allows 50 percent of the housing stock over 50 years old, or if the infrastructure -- water and sewer lines -- are 50 years old or older and in need of maintenance and repair-- When that language was added in 2001, it made the use of rehabilitation much more easy and palatable for towns to use as an alternative to redevelopment. And what I want to make sure of or have a concern about is that the proposed language doesn't go backwards to a point where it makes it more difficult to use rehabilitation areas.

And my suggestion would be that it's clear. And we had two different planners read that section and had come up with two different interpretations -- one that said you could pick one, or two, or three, or four, or five, under the current list of criteria that you proposed; or that you had to show all, one through four -- or five. So my suggestion would be that it's just clarified. And my hope would be that any one of those sections that



you had now added to the previous language -- the qualifying area in need of rehabilitation -- so it's not more difficult than it is currently. Because I think a number of towns are using that tool. We've recommended it -- that they look at rehabilitation first before they consider redevelopment. And if only -- if rehabilitation doesn't work, that they consider going the next step. And I think it's a valuable tool, and I would hate to see a confusion in terms of how to interpret the language that you proposed. And we'd certainly be willing to work with you on that, Senator Rice, and your group.

And with that, if -- with your permission, Senator Rice -- I'd just like to read that same statement on behalf of Carlos Rodrigues, our President, that Carlos read into the record at the hearing on the A-3257 on Monday: "The New Jersey Chapter of the American Planning Association appreciates the opportunity to comment on A-3257 and S1975, which proposes changes to New Jersey's redevelopment laws. We find that much of the proposed bill's language is consistent with the New Jersey Chapter of APA's January 2006 position statement on redevelopment" -- which I believe Mr. Slachetka has already provided to your Committee, Senator Rice -- "and the exercise of eminent domain previously distributed to this Committee. Many of the proposed provisions will strengthen the redevelopment process and result in a better public policy. There are a few proposed changes, however, which raise serious concerns to the planning community. We believe that the unintended consequences of these changes could seriously damage the redevelopment process and the Smart Growth planning objectives it serves." And I think I was very impressed, as you were, by George Hawkins's testimony, and we would echo his comments on that point. "With respect to proposed changes to the Local Housing and

Redevelopment Act, NJAPA is very concerned with the proposed changes to criterion D and E. We believe that these criteria have been targeted for change on the basis of faulty assumptions. There is no evidence that these criterion have been used on their own to justify any of the more contentious redevelopment projects involving controversial residential condemnation. There is evidence on the other hand” -- and I would mention the Downtown Core project and the (indiscernible) project in Newark as a couple examples of those -- “where there has been considerable merit, many of which do not involve condemnation of residential properties. There is reason to believe that the main casualties of the proposed weakening of criteria D and E would be the grayfields projects -- projects that typically involve underperforming shopping centers, surface parking lots, cramped parking arrangements, multiple curb cuts on State highways or major roads, poorly designed layouts, backward circulation, and so forth. The proposed changes to criteria A, D, and E would make it more difficult and perhaps preclude the use of redevelopment statutes in award-winning projects such as Princeton’s downtown mixed-use redevelopment or the Willingboro Town Center.” An example of grayfields -- as you drive down Route 130 in South Jersey and see some of those vacant shopping centers, you’ll understand a little bit more of what we’re concerned about. “We would add that this type of Smart Growth grayfields projects receive technical and financial support through DCA’s pilot grayfields grant program. Some county Smart Growth programs, for example in Camden, also target grayfields. If the concern with criteria D and E is that they can be used to justify controversial economic development projects involving condemnation of residential structures, then A3257 or S1975 could be

amended to limit the applicability of this criterion in those circumstances.” And I think some of the discussion in earlier testimony referred to that -- the idea of layered, of which I think George Hawkins talked about, and I know you took note of. “However, the current proposed language changes would severely limit the use of redevelopment statutes in many worthwhile projects involving marginal or underperforming properties where no residential displacement is contemplated. With respect to changes to the Municipal Land Use Law, the New Jersey APA feels that it would be advantageous to further strengthen the linkage between the planning process and the redevelopment process, between the redevelopment statute and the Municipal Land Use Law. While A-3257 and S-1975 would authorize a redevelopment plan element as part of a municipal master plan, it does not actually require this element. NJAPA would like to suggest that if there is an opportunity to further strengthen this linkage by either, one, making the redevelopment plan element a prerequisite to adoption of a redevelopment plan; two, making the redevelopment plan element a prerequisite to the ability to use eminent domain; or three, making the redevelopment plan element a prerequisite to the use of either criteria D or E,” which we have been talking about -- that that might be a potential strengthening of that linkage. “Finally, we note that many proposed changes will make the redevelopment process considerably more expensive, even as the possibility of private sector funding is targeted for elimination,” which would be the idea of a redeveloper paying for an investigation or a plan, for example. “The increased financial burden will affect primarily smaller municipalities, which may find it impossible to participate in the redevelopment process in the future, no matter how worthwhile the project

is and whether or not it involves the use of eminent domain. Public sector funding for municipal redevelopment projects is already currently limited to a small portion of DCA's Smart Future grant program, and to grant programs available from only a few counties. If the redevelopment planning process is to continue to contribute to growth in our state, NJAPA would recommend that the Legislature consider additional public funding for this purpose." And I know Peter Reinhart mentioned the use of HMFA, for example, as additional funding for affordable housing as part of redevelopment projects, and there may be some other different ways that can be accomplished.

And with that, I'd like to indicate that APA will be happy to provide written comments to you, Senator Rice. We'd like to take these formal written comments, presented to Assemblyman Burzichelli, and provide it, specifically addressed to your Committee as well. And also, we would be happy to provide some proposed legislative amendments that would address some of these issues, if you'd be willing to consider them.

And I thank you for your time. I appreciate your patience with the proceeding this afternoon.

MR. SLACHETKA: Senator, I thank you as well, and appreciate your deliberate and thoughtful effort on this very complex legislative concern.

SENATOR RICE: Thank you very much.

Through the Chair, if you would get the amendments, I'd like to take a look at some of them. Some of them seem to make sense. Some I want to look at because I need clarity on what exactly is being asked to Bob and Julius -- staff, and they'll be touching base with you, too, in terms of

that. Let me thank you for taking the time to come out and for the participation. That's why it's important to bring people together prior to any legislation. It's just (indiscernible) the bills. We're trying to work the process a little bit different. Rather than back into one, we want some foundation. So the work that everybody's done thus far, I think, is really commendable to the people who came together and spent the time, when others weren't around to get us this far.

Any questions from the Senator? Do you have any questions?

(no response)

Okay. We're going to wrap up, Senator.

Thanks for hanging in there.

We have the last person -- I don't know if they're going to testify or not -- Jim Leonard, New Jersey Chamber of Commerce. Is Jim still here? (declines from audience)

Okay, thank you very much.

We're getting ready to end and conclude the hearing.

I want to say to those who signed up to speak at this hearing, you will have the opportunity at the public hearings that will be coming up, over the course of the next month or so, throughout the state. I think we got a pretty good foundation laid. I don't think you wasted your time coming here. At least, I think you didn't, because it gave an opportunity to hear some of the concerns that you may have been raising yourself, that have been addressed already. And we're going to take the comments in our own record -- we're going to go back and analyze them. We're going to access them and see how they fit into the direction that we're trying to go --

the direction that I'm trying to go. Someone has to be on point, and I'm on point. It's my bill.

Thank you very much.

This meeting is officially adjourned.

**(MEETING CONCLUDED)**