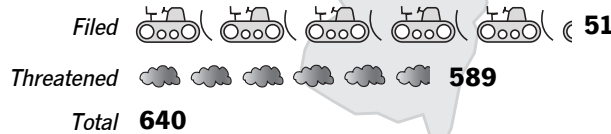


NEW JERSEY

Known Condemnations Benefiting Private Parties*



Known Development Projects w/Private Benefit Condemnations*



State Record of Condemnations Filed, for All Purposes:† 2,571

Legend = 10 = 100 = 10

OVERVIEW

New Jersey is a hotbed of private condemnations and attempted condemnations. While Atlantic City has seen three private condemnation projects, cities and towns all over the state have been trying to take property for developers they think will bring in more tax dollars. New Jersey courts have largely gone along with these condemnations, although there are some signs that the courts intend to impose at least outer limits. One court denied a condemnation on procedural grounds and another because the supposed public purpose was really a pretext for transferring the property, no strings attached, to a private party. Greater community opposition also has resulted in the failure of at least one private condemnation in recent years. Meanwhile, a bill that would have discouraged the casual condemnation of one business for another stalled in the New Jersey legislature, but its introduction is at least a hopeful sign.

*These numbers were compiled from news sources. Many cases go unreported, and news reports often do not specify the number of properties against which condemnations were filed or threatened.

†New Jersey State Judiciary (includes condemnations for traditional public uses).

LEGISLATIVE ACTIONS

A bill introduced in the New Jersey Senate in February 2002 sought to provide additional protection to business owners whose property is condemned for redevelopment purposes. Senate Bill 1074, sponsored by Republican Senators Gerald Cardinale and Henry McNamara, would have required condemnors to demonstrate to a court that the proposed use of a targeted business property is “of such significant public interest as to justify the relocation or retirement of the private business at that location.” The bill also would have given the property owner more input into the appraisal process.⁴⁴⁶ S.B. 1074 died in the Senate Community and Urban Affairs Committee.⁴⁴⁷

PRIVATE USE CONDEMNATIONS



Vera Coking was victorious in keeping her property. To this day she is still outraged, “The government was going to take my home from me to give to Trump so he could expand his casino. Where is the justice in that? We're not in another country where anyone can come in and say, ‘We want your home. Get out!’ This is America. My husband fought in the war and worked to make sure I would have a roof over my head, and they want to take it from me? I couldn't understand what the government was doing.”

Atlantic City

Sometime in the mid-1990s, Donald Trump decided that he wanted to enlarge the operations of the Trump Plaza Hotel & Casino. He submitted a plan to the Casino Reinvestment Development Authority (CRDA), a state redevelopment agency, to enlarge the hotel and put green space, a driveway, and high-roller limousine parking on property across the street. That area happened to be occupied by several small businesses and a home. Some of the businesses agreed to sell, but Vera Coking, an elderly widow, Banin Gold Shop, and Sabatini's Italian Restaurant refused. Coking had lived in her house for more than 30 years. Peter Banin, who owned Banin Gold along with his brother, had emigrated from Russia and commented at the time, “The Soviet Union doesn't even do anything like this.”⁴⁴⁸ The family-run Sabatini's Restaurant had occupied that same corner for more than 20 years. After the owners refused to sell, the CRDA initiated condemnation proceedings in July 1994.⁴⁴⁹ The owners then challenged the taking, arguing that Trump's limousine parking was not a public use and that, even if it was, the park-

⁴⁴⁶ See S.B. 1074, 210th Sess. (N.J. 2002).

⁴⁴⁷ Charles Toutant, “Small Businesses Standing Ground Against ‘Private’ Condemnations Try to Stop Use of Eminent Domain that Aids March of Drug Superstores,” *New Jersey Law Journal*, Apr. 22, 2002.

⁴⁴⁸ Paul Schwartzmann, “She Kicks Sand in Trump's Face, Sneers at The Donald's Bucks,” *New York Daily News*, July 26, 1998, at News 7.

⁴⁴⁹ *Casino Reinvestment Development Authority v. Banin*, 727 A.2d 102, 107 (N.J. Super. 1998).

ing was just a pretext for giving Trump control of the property, which he could then use however he saw fit. The Institute for Justice represented Vera Coking.

Peter Banin, who owned Banin Gold along with his brother, had emigrated from Russia and commented at the time, “The Soviet Union doesn’t even do anything like this.”

After some twists and turns in the courts, the trial court eventually ruled that Trump’s limousine parking could be a public use. However, the court said, the evidence showed that once the property was transferred, Trump could do whatever he wanted with the property, and in fact Trump had already drawn up plans for additional casino space. The court therefore held that the CRDA’s condemnation amounted to giving Trump a “blank check” to the property.⁴⁵⁰ Because the taking was pretextual, the court ruled that the CRDA could not take the property.⁴⁵¹ Vera Coking still lives contentedly in her home; Banin’s Gold Shop operates; and Sabatini’s Restaurant still serves up delicious Italian meals.

Atlantic City

MGM Grand, Inc. wanted to open a new casino in Atlantic City. In 1996, the company announced plans to build a \$700 million hotel/casino/resort complex in the South Inlet section of town.⁴⁵² Within the few months following MGM Grand’s announcement, the casino developer reached agreements to purchase most of the 147 homes and 402 vacant parcels in the way of the project.⁴⁵³ As a means of forcing out the remaining property owners in the targeted area, the City in 1998 declared the unsold 9-acre portion of the 35-acre site to be “in need of redevelopment,” which would allow for the use of eminent domain by the CRDA to further MGM Grand’s casino plan.⁴⁵⁴

This action by the City prompted a lawsuit by Joseph Zoll, a businessman who owned about 200 parcels of land around Atlantic City, including eight lots within the MGM Grand project area. Zoll went to state court to challenge the validity of the City’s redevelopment designation, but the trial court ruled in favor of the City. Zoll’s appeal dragged on, however, tying up the entire MGM Grand project for several years.⁴⁵⁵ Finally, after MGM Grand had spent more than \$50 million buying property, paying lawyers and financing other development issues in connection with the planned casino,⁴⁵⁶ Zoll in August 1999 finally accepted an offer from MGM Grand and agreed to drop his appeals. With Zoll’s lawsuit out of the way, the CRDA was free to use eminent domain to take the few remaining properties not yet owned by MGM Grand.⁴⁵⁷

New York businessman Shalom Dai owned two such properties in the project area. When the negotiations between Dai and MGM Grand failed to produce a settlement, the CRDA decided to use eminent domain

⁴⁵⁰ *Id.* at 111.

⁴⁵¹ *Id.*

⁴⁵² “MGM Grand’s Grand Casino; \$700M Hotel Combo Would Be One of Atlantic City’s Biggest,” *Newsday*, July 10, 1996, at A32.

⁴⁵³ Bill Kent, “Real-Life Monopoly: MGM Bids on the Boardwalk,” *The New York Times*, July 14, 1996, at 13NJ-6; Amy S. Rosenberg, “A.C. Residents Hold Ground; They Say they Will Make Way for Casinos—For a Fair Price,” *Philadelphia Inquirer*, July 26, 1996, at B1.

⁴⁵⁴ John Curran, “MGM Grand Frustrated by Atlantic City Project,” *Las Vegas Review-Journal*, June 28, 1999, at 1D.

⁴⁵⁵ John Curran, “No Sure Bet: Land Acquisition, Delays Plague A.C. Casino Plan,” *AP Wire*, June 23, 1999.

⁴⁵⁶ *Id.*

⁴⁵⁷ Amy S. Rosenberg, “Holdout A.C. Landowner Sells to Casino,” *Philadelphia Inquirer*, Aug. 13, 1999, at B5.

Local Opposition Defeats Plan to Condemn Famous Music Venue for Redevelopment

Asbury Park is redeveloping its waterfront under a plan put together by the City and private developer Ocean Front Acquisitions. Under the \$1.25-billion plan, Ocean Front would divide a 56-acre area into parcels, selling or leasing most to other builders to develop in phases over the next decade. Its developers claim the new waterside enclave will contain 2,500 new condominiums, 500 renovated units and 450,000 square feet of retail and entertainment space.¹

Asbury Park's redevelopment threatened to displace the Stone Pony, a seaside rock 'n roll venue that was once the stomping ground of such New Jersey icons as Bruce Springsteen, Southside Johnny and Bon Jovi. The City wanted to condemn the Stone Pony and relocate the club to a new entertainment district south of the new waterfront development. However, local citizens started a massive letter-writing campaign arguing that the original Stone Pony was an important part of the City's heritage, and should be incorporated into the City's revitalization rather than forced out by it. Under a revised plan unveiled in February 2002, the Stone Pony and its outdoor beer garden will stay put. Other businesses nearby were not so lucky.²

¹ Rachele Garbarine, "A New Plan to Revitalize Asbury Park Waterfront," *The New York Times*, Mar. 3, 2002, at K7.

² Andy Newman, "Just Up the Road from E Street, a Rock Landmark Stands Its Ground," *The New York Times*, Feb. 25, 2002, at B1.

proceedings to condemn the two properties and transfer ownership to MGM Grand. Dai sued the CRDA, claiming that it did not have the authority to condemn his land, because the casino project was not a "public purpose," as required by New Jersey law.⁴⁵⁸ On November 19, 1999, New Jersey Superior Court Judge Michael Winkelstein rejected Dai's arguments and ruled in favor of MGM Grand. Judge Winkelstein then appointed three commissioners to set the price MGM Grand would have to pay Dai for his properties.⁴⁵⁹ The jury set the price for Dai's property at \$1.3 million, a price much closer to MGM Grand's appraisal than Dai's.⁴⁶⁰

As soon as it had wrested control of the properties from Dai using the state's power of eminent domain, MGM Grand began making additional demands for millions of dollars in taxpayer-funded road and infrastructure improvements to benefit the resort.⁴⁶¹ However, before the new casino was ever built on the taken land, MGM Grand bought Steve Wynn's Mirage Resorts, Inc. (see below), and decided to walk away from its South Inlet casino plan in favor of developing the marina district site for which the CRDA had been busy condemning properties on behalf of Mirage Resorts. Even though the MGM Grand project fell through, the CRDA still took Shalom Dai's properties, in hopes that another casino might take MGM Grand's place sometime in the future.⁴⁶²

all Atlantic City has to show for its original deal with Steve Wynn is community devastation and a tunnel to nowhere.

Atlantic City

The CRDA has a strange attitude about private property ownership, especially when the landowner is not a giant, politically favored casino interest. It treats Atlantic City residents like mere obstacles to be moved out of the way whenever a casino comes in and wants their land. In 1995, shortly after the development agency filed condemnation actions against Coking, Banin and Sabatini, casino magnate

⁴⁵⁸ "Atlantic City Wins Condemnation Case," *The Record* (Bergen County, N.J.), Nov. 20, 1999, at A3.

⁴⁵⁹ *Id.*

⁴⁶⁰ "MGM: Jury's Land Award to Hurt Atlantic City," *Gambling Online Magazine*, May 13, 2001, available at <http://www.gamblingmagazine.com/articles/40/40-486.htm>.

⁴⁶¹ Amy S. Rosenberg, "MGM Grand Is Picked to Develop South Inlet; Atlantic City's Council Gave the Firm the Right to Build a Casino Complex. MGM Wants Road Improvements," *Philadelphia Inquirer*, Jan. 6, 2000, at B3.

⁴⁶² "MGM Grand May Cash in Its Chips on Casino Site," *Las Vegas Review-Journal*, May 22, 2000.

Steve Wynn announced that his Mirage Resorts Company was returning to Atlantic City, which the company had abandoned in 1989 over the City's refusal to suspend its own regulatory rules for Mirage Resorts' benefit.⁴⁶³ Wynn's return, however, came at a price: He demanded that the City build a 2,200-foot tunnel leading from the Atlantic City Expressway directly to the new casino, which he wanted to build on unused City land in the marina district and which the City would be giving him for free.⁴⁶⁴

CRDA officials set about the process of condemning the land under which the new tunnel would run. Standing in the way were nine homes and one business along Horace J. Bryant Drive, which was the centerpiece of a thriving African-American neighborhood. When Mirage Resorts approached the landowners with offers to buy their property, six of the homeowners reached agreements to sell, as did the owner of the area's only dentist's office, whose office was among those targeted. However, when three homeowners refused to sell, the CRDA condemned their properties. The owners took the CRDA to federal court on civil rights grounds, and also challenged the lack of public purpose in state court. Lillian Bryant, the daughter of the street's namesake, was one of the owners fighting the CRDA. After exhausting their money and will to fight, Bryant and the other two owners eventually reached settlements with the agency. However, the money they received in return could never make up for the loss of homes they cherished in one of Atlantic City's only thriving and vibrant minority communities.⁴⁶⁵

One of the problems with corporate welfare projects supported by the government is that developers are not as committed to the plans as when they have invested their own money. So what happened next was no surprise. After the condemnations, Steve Wynn abruptly announced during the middle of the tunnel's construction that he was selling Mirage Resorts to MGM Grand, Inc. MGM Grand was already planning a mega resort at another location in

⁴⁶³ "Wynn Makes His Return to Atlantic City," *The New York Times*, June 28, 1995, at D13.

⁴⁶⁴ Phil Roura, "Wynn Undeterred by Highway Detour," *New York Daily News*, Dec. 17, 1995, at Spotlight 33.

⁴⁶⁵ Amy S. Rosenberg, "A Tunnel Straight Through the Heart; To Some Displaced A.C. Residents, Moving to Facilitate Entry to a Casino Is Sheer Trauma," *Philadelphia Inquirer*, Aug. 18, 1998, at South Jersey B1.

New Jersey Township Tries to Use Condemnation to Squelch Affordable Housing Development

Local governments often abuse the power of eminent domain by taking or threatening to take property for other private parties. Sometimes, however, local governments improperly use their eminent domain power to punish an unpopular landowner or to eliminate a legal use that City leaders find undesirable. Panther Valley in Allamuchy Township is an exclusive gated community that contains 1,500 homes and approximately 80 percent of the township's population. Two private developers owned parcels of vacant land within Panther Valley, on which they wanted to build affordable multi-family housing in accordance with the New Jersey Supreme Court's requirement that localities attempt to increase the availability of affordable housing.¹ Baker Residential L.P. and Progressive Properties, Inc., owned 426 acres. The land was zoned properly and had been outfitted with sewers and other infrastructure in preparation for future development. However, after the developers obtained all the necessary permits to build their new residences, the Township filed condemnation actions against the property, claiming that it needed the land for "open space preservation, parkland and/or other public purposes." The developers took the Township to court and alleged that the takings were a pretextual attempt to prevent development of affordable housing in Panther Valley. At trial, the judge agreed with the developers, and held that the state's requirement that the Township provide affordable housing outweighed any need it might have for open space.²

¹ See *Southern Burlington County NAACP v. Township of Mt. Laurel*, 336 A.2d 713 (N.J.), cert. denied, 423 U.S. 808 (1975).

² See *Carco Development Corp. v. Allamuchy Township*, No. L-277-01, slip. op. at 54 (Hunterdon County Super. Ct. Apr. 26, 2002).

Atlantic City. MGM Grand was not going to go forward with two major construction projects at the same time. Making matters worse, the other planned MGM Grand casino project had itself become embroiled in an orgy of financial concessions and eminent domain takings paid for by the public. Lillian Bryant, who all along had been an outspoken critic of the City's tactics and lack of civic responsibility in destroying the neighborhood once named in honor of her father, could say nothing about the situation except, "I told you so."⁴⁶⁶

The tunnel was completed in 2001, leaving neighborhood devastation in its wake.⁴⁶⁷ A new casino has taken Steve Wynn's place and is slated to open in mid-2003. To the redevelopment bureaucrats in charge of divvying up Atlantic City on behalf of casino interests, a new casino is worth more than citizens' homes any day.

Edison Township

A private developer wanted to build a retail center on a vacant, wooded six-acre parcel in Edison. The proposed center would consist of a Walgreens store, a bank and several other shops. After local opposition scuttled the plan, Township officials stepped in and agreed to buy the site for \$5.6 million, to preserve it as open space. To appease the developer, the Township decided to give it another site right across the street from the rejected one. Inconveniently for the Township, the Oak Tree Bus Co. occupied the substitute spot. A consultant hired by the Township concluded that the bus property was "unproductive and stagnant" because of a "pattern of underutilization" and "structural obsolescence." On the basis of the consultant's report, the Township declared the property a redevelopment zone, and began eminent domain proceedings. The Township uses the Oak Tree facility to transport local schoolchildren but apparently isn't concerned about what will happen when they have no buses.⁴⁶⁸ Salvatore and Elvassa Quagliariello, owners of the bus facility and three rental homes on the property, opposed the condemnation and have taken the Township to court. The Quagliariello family has lived in Edison for generations, operating the Oak Tree Bus Co. for more than 50 years. Aside from the fact that the Town has no valid public purpose behind its decision to take their property for the benefit of another privately owned business, the Quagliariellos are insulted by their Town's apparent willingness to sell out local industry in favor of more attractive and lucrative chain retailers.⁴⁶⁹

Egg Harbor Township

The state Casino Reinvestment Development Authority (CRDA), in partnership with Egg Harbor Township, plans to acquire 27 privately owned properties on the north side of U.S. 40 over the next five years in an effort to rid the highway of the many lower priced motels that sprang up during the 1950s along this gateway to Atlantic City. The plan is to condemn the properties, raze the structures on them, and then consolidate the land in hopes of attracting a large private development to the area. Supporters of the project hope that they will land a large hotel/office complex to replace the roadside motels, which CRDA executive director James Kennedy believes attract illegal activity because they provide low-rent lodging. However, some of the motel owners are not too excited about the prospect of the City they have supported for decades snatching up their property and replacing them with large, favored developers. As Sunny Chokshi, owner of the Hi Ho Motel, says, "For the last

⁴⁶⁶ Amy S. Rosenberg, "Stunned Atlantic City Officials Put up a Good Front," *Philadelphia Inquirer*, Mar. 8, 2000, at C1.

⁴⁶⁷ Amy S. Rosenberg, "Atlantic City Tunnel Bears a Human Cost," *Philadelphia Inquirer*, July 22, 2001, at B1.

⁴⁶⁸ Charles Toutant, "Small Businesses Standing Ground Against 'Private' Condemnations Try to Stop Use of Eminent Domain that Aids March of Drug Superstores," *New Jersey Law Journal*, Apr. 22, 2002.

⁴⁶⁹ Jan Hefler, "Burlco Case Stokes Dispute Over Seizing Land; Pemberton Twp. Plans to Use Eminent Domain to Make Room for a CVS; A National Group Calls the Move Part of a Disturbing trend," *Philadelphia Inquirer*, Apr. 4, 2002.

10 years, I've been good here. I make money. Why should I go anywhere?"⁴⁷⁰ The answer to that question, once Egg Harbor lines up a wealthy developer, is "because you have no choice," unless the motels decide to undertake the difficult and expensive process of going into court.

Englewood

In 1999, the City of Englewood designated a 60-acre redevelopment zone, and began working with developer Hekemian Kasparian Troast LLC (HKT) on a plan to replace an industrial area with an office/retail/residential development. Under the \$500-million proposal, HKT would cover all of the City's costs in condemning properties and relocating the displaced businesses. Also, the developer would own and manage the development.⁴⁷¹ In order to accommodate HKT, City officials claimed that the properties targeted for condemnation were blighted and had caused a steady erosion of Englewood's tax base. However, the City's own study of the area found that active businesses occupied, or had plans to develop in the near future, more than 97 percent of the properties within the redevelopment area. The study also determined that only three of the 37 properties were poorly maintained, and only one building was not occupied and productive. Furthermore, most of the disputed land was located within one single office-industrial park that generated \$1.2 million per year in property taxes.⁴⁷²

In June 2001, 19 of the targeted property owners sued Englewood, seeking to reverse its 1999 designation and stop HKT's attempt to steal their land. The owners argued that the City's own findings contradicted the claim that there was "lack of proper utilization of land," which was necessary to justify eminent domain.⁴⁷³ Those issues never got decided, however, because the owners discovered that the City had failed to publish a proper notice of its 1999 hearings. The lack of notice was a "fatal defect," ruled Judge Jonathan N. Harris, a New Jersey Superior Court judge. The judge dismissed the condemnation actions.⁴⁷⁴

At first, City officials retaliated with a smear campaign in which they distributed fliers portraying the challenging property owners as greedy individuals willing to use "scare tactics" to preserve their "tax haven." David Ulrich, one of the owners, explained why he brought the lawsuit: "I don't think anybody down here is against the concept of redevelopment. Our concern from the beginning is, 'Do not threaten to take away our properties.'" City leaders implied that they would simply approve another plan, without making any technical mistakes this time.⁴⁷⁵ In the end, however, HKT came up with a modified development proposal, one that won't require condemning property. This project features 350 apartments, an 11-story office building, three retail structures and a parking garage, and can be accomplished without the City resorting to eminent domain.⁴⁷⁶

Franklin Township

Residents in the Renaissance redevelopment area along Route 27 are outraged at the Township's attempts to push them out in order to make way for a private big-box retail development. The redevelopment area was adopted in 1995, with little fanfare or opposition. Residents did not protest the plan, mainly because the Township did

⁴⁷⁰ John Curran, "Low-Roller Roadside Motels Face Extinction," *The Record* (Bergen County, N.J.), Aug. 24, 2001, at A4.

⁴⁷¹ Douglass Crouse, "Englewood Redevelopment Plan Unveiled; \$500 M '24-Hour Community' Proposed," *The Record* (Bergen County, N.J.), Apr. 18, 2001, at L1.

⁴⁷² Douglass Crouse, "16 Sue to Stop Englewood Redevelopment," *The Record* (Bergen County, N.J.), June 12, 2001, at L3.

⁴⁷³ Douglass Crouse, "Expert Questions Plan to Raze Industrial Park," *The Record* (Bergen County, N.J.), May 9, 2001, at L3.

⁴⁷⁴ Douglass Crouse, "Redevelopment Plan Nullified in Englewood," *The Record* (Bergen County, N.J.), Oct. 13, 2001, at A1.

⁴⁷⁵ Douglass Crouse, "New Sparks in Englewood Redevelopment Battle," *The Record* (Bergen County, N.J.), Feb. 1, 2002, at L3.

⁴⁷⁶ Christina Joseph, "Developer Downsizes His Plan for Englewood," *The Record* (Bergen County, N.J.), Nov. 7, 2002, at L1.

Neighbors Rally to Defeat Condemnation Plans in New Brunswick

Bob and Eileen Albert own the Court Tavern in New Brunswick. The bar has been the Albert family business for decades, but since Bob and Eileen took over in 1981, they have booked popular bands and helped turn the area into a popular nightspot. When local developer Omar Boraie decided to build a project next to the Court Tavern with 100 condominiums, an office building and parking deck, he asked the City to condemn the bar to accommodate his project. After the New Brunswick Planning Board backed Boraie's plan, the Alberts organized over 250 people, who packed a public meeting on the project to protest the possible taking. Bowing to this public pressure, the City Council in April 2001 declined to allow the use of eminent domain for Boraie's development.¹

¹ Sharon Waters, "Small-Business Owners Fight City's Big Plans," *Home News Tribune (East Brunswick, N.J.)*, Dec. 15, 2002, at A1.

"I don't think anybody down here is against the concept of redevelopment. Our concern from the beginning is, 'Do not threaten to take away our properties.'"

not bother to provide notice of public hearings to any of the affected owners, so they weren't aware that their properties could be taken under the plan. Now, however, the Township wants to bring Home Depot, Target and a supermarket to the Renaissance area, and it is not about to let the property owners stand in its way. A private developer has purchased some properties for the proposed retail center, and hopes that the Township will acquire the rest through eminent domain.⁴⁷⁷

New Brunswick

Frederick Haleluk owns Mister Ice Bucket, a small business in New Brunswick that specializes in making ice buckets for hotel chains. Haleluk keeps his property in good shape—better than most in the area. It sits on a prime location at a busy local intersection. Unfortunately, the New Brunswick Housing and Urban Development Authority decided that Haleluk's business is "not the best utilization" of a site that is "key to developing the rest of the area." Since Mister Ice Bucket is an industrial business in the middle of an area the City has recently designated for retail uses, the redevelopment agency is trying to force Haleluk to sell his property to a private developer who wants to build a Walgreens pharmacy. The developer, Jack Morris, is the same one behind the condemnation of the bus facility in Edison for a Walgreens. In early 2002, Haleluk was served with condemnation papers. The matter is on hold until another location can be found for Mister Ice Bucket, but Haleluk says all the alternatives are too expensive or far away. Most of his employees live in the neighborhood and do not own cars, so any move will likely cost them their jobs. The City believes, on the other hand, that a nice, new chain drugstore on that prime corner is worth all those lost jobs.⁴⁷⁸

New Brunswick

In the late 1980s, Jamaican immigrant Newell White bought a blighted building on rundown George Street in New Brunswick. He completely gutted the building and transformed it over the next decade into two popular dining draws, the Green Grotto restaurant and Jamaican Delight takeout. However, the City wants to take White's restaurants through eminent domain and give the property to favored developers as part of an amendment to the Lower George Street Redevelopment Plan. White does not want to give up his prime location, especially after he invested in the area at a time when the government left it to deteriorate. Though no specific development plans are in place, the City's planning director says that it's "probably not a realistic possibility to construct any new development around White's existing building." About 3,000 local residents signed a petition asking that the City refrain from taking White's property,⁴⁷⁹ but still the planning board formally recommended in December

⁴⁷⁷ "Residents Fear Route 27 Development," *Somerset Spectator*, Nov. 16, 2002.

⁴⁷⁸ Charles Toutant, "Small Businesses Standing Ground Against 'Private' Condemnations Try to Stop Use of Eminent Domain that Aids March of Drug Superstores," *New Jersey Law Journal*, Apr. 22, 2002.

⁴⁷⁹ Sharon Waters, "George St. Eateries Feeling the Squeeze," *Home News Tribune (East Brunswick, N.J.)*, Nov. 24, 2002, at A1

2002 that the City Council approve the redevelopment plan amendment that will now allow the City to take White's restaurants.⁴⁸⁰

Pemberton Township

Dr. Khaton Ginwala owned a small building in the Browns Mills section of Pemberton Township, where she had run her solo obstetrical practice for 10 years. Also operating in the building was a small clothing store. CVS Pharmacy, the nation's largest drugstore chain, wanted to open a new store on a parcel that included two vacant lots and Ginwala's building. Pemberton already had four locally owned pharmacies, but the Township Council, which had slapped Browns Mills with the "redevelopment area" label in 1996, made clear that the Town would condemn Ginwala's property if she refused to sell it to CVS's developer. Faced with the prospect of eminent domain, Ginwala felt compelled to reach an agreement with the developer.⁴⁸¹

West Orange

769 Associates LLC owned a parcel of property in West Orange consisting of a medical office building and its parking lot. This parcel is located between a main road and two large tracts of land owned by Nordan Realty and Bel-Aire, both of which are private developers. In 1986, the Township planning board gave preliminary approval for a 95-home subdivision on the Nordan site, and a 198-home subdivision on the Bel-Aire site. The resolution provided access to the new subdivisions via Cedar Avenue, an existing but unimproved gravel/dirt road that would have to be paved and outfitted with utility lines, sidewalks and drainage sewers in order to meet local standards.

The Township's plan encountered heavy opposition from residents who lived close to the proposed road. Bowing to this pressure, the Township determined that it should study an alternative means of access to the two proposed subdivisions. The resulting study, presented in December 1991, recommended the construction of a new roadway on land that included one half-acre of the 769 Associates property, passing within several feet of the medical office building.

In July 1992, the Township entered into an agreement with Nordan Realty to implement the 1991 traffic study. The agreement also provided that Nordan would negotiate with the adjoining property owners to secure the necessary right-of-way access to its subdivision. If such negotiations failed, after a reasonable time the Township was obligated to acquire the property through eminent domain, with Nordan reimbursing the Township for all of its acquisition costs.

In January 1998, the Township began condemnation proceedings against the 769 Associates property. The case wended its way through the courts. The trial court ruled that the Township could take the property. The Appellate Division reversed the trial court's decision in July 2001, finding that the primary beneficiary of the condemnation was the private developer, not the public.⁴⁸² The New Jersey Supreme Court then reversed that decision, holding that the case involved condemnation for a public road, and a public road is a public use. Commenting on the 1998 Banin decision, the court held that pretextual condemnations were still impermissible, but that this condemnation was not pretextual and therefore could go forward.⁴⁸³ The Institute for Justice filed an amicus brief in the New Jersey Supreme Court in support of 769 Associates.

⁴⁸⁰ Sharon Waters, "Small-Business Owners Fight City's Big Plans," *Home News Tribune (East Brunswick, N.J.)*, Dec. 15, 2002, at A1.

⁴⁸¹ Jan Hefler, "Pact Reached on Property Sale," *Philadelphia Inquirer*, Apr. 20, 2002.

⁴⁸² See *Township of West Orange v. 769 Associates LLC*, 775 A.2d 657, 664 (N.J. Super. Ct. App. Div. 2001).

⁴⁸³ See *Township of West Orange v. 769 Associates, LLC*, 800 A.2d 86, 94 (N.J. 2002).