CAMDEN 2015: CAN CONDEMNATION POWER AND URBAN REDEVELOPMENT PLANS BRING LIFE BACK TO THE CITY?

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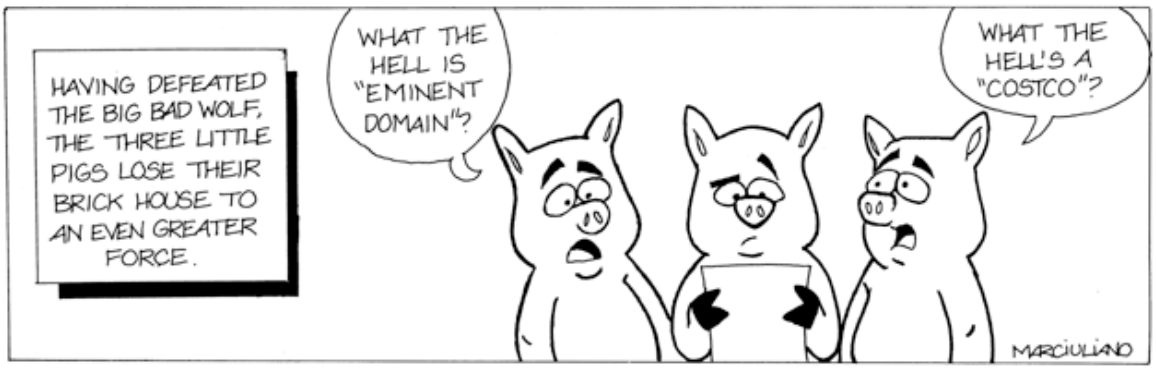

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I. INTRODUCTION

The crisp morning is filled with energy as the city shakes off its mantle of slumber and a new day begins. Wide tree-lined thoroughfares bustle with activity. Shopkeepers unlock their front doors, ready to start a fresh day of business. Doormen pass along cheery morning greetings as tenants file out of luxury apartment buildings and walk to work. Students lug stacks of books along sidewalks on their way to one of many clustered schools and universities. Shoppers gently cruise into the city aboard gondolas suspended above the river for a day of shopping. Landscapers manicure dewy greens perfecting a golf course for the day's first players. Every single one of these activities and more could be taking place in Camden, New Jersey. The now blighted and scarred city is slated for a renaissance – a return to its former glory and a push beyond. All in CAMDEN 2015.

The City of Camden has formed a plan to revitalize the city through a renaissance of projects. In 2002, the Planning Board of the City of Camden adopted a new Master Plan for the city, which Mayor Gwendolyn Faison described as a vision of the future of the city which will preserve the best of Camden's past and chart the way toward a brighter future for those who live and work in Camden.[2] Mayor Faison further envisioned the implementation of the Master Plan to encourage "sustainable economic development" and to provide for "affordable housing, schools, and recreation."[3]

These broad hopes and plans for Camden do not come without a price. A state takeover of the revitalization of Camden was first proposed by then Governor Christine Whitman in the late 1990s and was put in effect in 2002 during Governor James McGreevey's administration with the passage of the Municipal Rehabilitation and Economic Recovery Act (Rehabilitation Act).[4] The State of New Jersey approved $175 million in aid for the rehabilitation of Camden.The state-mandated Economic Recovery Board, which oversees the recovery program, appointed former Camden Mayor Melvin "Randy" Primas as

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[2] PLANNING BOARD OF THE CITY OF CAMDEN, FUTURECAMDEN MASTER PLAN SUMMARY REPORT, (Mar. 3, 2002). A letter from Mayor Faison was included in Camden's new Master Plan. *Id.* at SUMM-1.

[3] *Id.*

[4] N.J. STAT. ANN. § 52:27BBB-1 *et seq.* (2005). The Act was originally drafted by State Senator Wayne R. Bryant of Camden and Gloucester counties as the "Camden Municipal Rehabilitation and Economic Recovery Act." Municipal Rehabilitation and Economic Recovery Act, Pub. L. No. 2002, c. 43 (amended and codified as N.J. STAT. ANN. § 52:27BBB-1 *et seq.* (2005)). *Id.*

the Chief Operating Officer of the city.[5] CEO Primas has veto power over any action taken or attempted by Mayor Faison and Camden City Council and the Governor have superior authority to block any action of the Camden Board of Education. This power structure places more than three quarters of a billion dollars, designated for Camden, under state control and gives rise to concerns that Camden voters will be disenfranchised.[6]

With nearly ninety percent of the city slated to become a redevelopment zone, the condemnation and eminent domain powers of the city and state will soon be brought to bear to acquire privately owned properties as part of the plan.[7] The necessity for relocation of current Camden residents, as part of the redevelopment plan, in significant part empowered by eminent domain condemnation actions, has also created backlash against the revitalization projects. Cherokee Camden, LLC, a subsidiary of the private North Carolina based firm Cherokee Investment Partners, LLC, was named by the Camden Redevelopment Agency (CRA), Governor McGreevey and local leaders as the Lead Developer of the Cramer Hill section of Camden.[8] Cherokee's Cramer Hill Redevelopment Plan calls for the construction of a marina, an eighteen hole golf course, a river walk, 500,000 square feet of space for large retailers, and 5000 new homes, including some estimated to cost $200,000.[9] The Cramer Hill project has become the touchstone of controversy and opposition against the redevelopment plan. In fact, a number of lawsuits have been filed by community groups and businessmen in an attempt to halt the project.[10] The community's vocal and legal protests against the redevelopment project continued in the face of city and state action when, on October 6, 2004, the CRA approved the relocation of nearly 1000 homes as part of Cherokee's $1.2 billion plan to

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[5] George Anastasia and Dwight Ott, *Just who's running this city?,* PHILADELPHIA INQUIRER, April 21, 2004, *available at* http://www.philly.com/mld/inquirer/news/special_packages/camden/ (last visited March 10, 2005).

[6] *Id.*

[7] Elisa Ung and Dwight Ott, *City at a crossroads with development*, PHILADELPHIA INQUIRER, April 21, 2004, *available at* http://www.philly.com/mld/inquirer/news/special_packages/camden/ (last visited March 10, 2005).

[8] Cherokee Camden, LLC, *Camden Redevelopment Agency Announces Cherokee Camden as Lead Developer for the Cramer Hill Redevelopment Project*, CHEROKEE CAMDEN, LLC., *available at* http://www.cherokee-camden.com/ (last visited March 10, 2005).

[9] *Camden 2015,* COURIER-POST Online, , *available at* http://www.courierpostonline.com/

[10] Dwight Ott, *Relocation plan for Cramer Hill is approved,* PHILADELPHIA INQUIRER, October 7, 2004, at B01, *available at* http://www.philly.com/mld/philly/news/local/9855644.htm (last visited March 10, 2005).

rehabilitate Cramer Hill.[11] In a lawsuit brought by South Jersey Legal Services, one of several pending from different parties, the plaintiffs are suing the state for unfairly treating the low-income residents of Cramer Hill in its dealings with the $175 million rehabilitation plan.[12] If any of the past and current strife serves as an indicator, the heavily-funded vision for the future of Camden will likely remain highly controversial for years to come.

II. CAMDEN'S FOUNDATIONS, GOLDEN YEARS AND ITS DECLINE

On June 12, 1682, in the same year the City of Philadelphia was laid out, William Cooper, a resident of Quaker Burlington County, acquired the title to 300 acres of land situated on the Delaware River and Cooper's Creek, which is now the Cooper River.[13] At that time, the land of Camden County contained dense forests, inhabited by fauna ranging from wild turkeys and otters to bears and wolves.[14] In 1764, Philadelphia merchant Jacob Cooper, the great-grandson of William Cooper, purchased land from his father, divided forty acres of it into 167 lots and thereafter laid out a grid of streets which now form downtown Camden.[15] From then on the fledgling area continued to grow and in 1828, Camden was incorporated as a city by the state legislature. [16]

Forty-one years later, after the introduction of the city's first railroad[17] and the creation of Camden County with Camden City as its seat, Joseph Campbell established his preserved food firm which would later become the Campbell's Soup Company – arguably one of the strongest major business ventures in the history of Camden.[18] The turn of the 20th Century and the early years following

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[11] *Id.*; Luis Puga, *Camden approves Cramer Hill plan*, COURIER-POST, July 1, 2004, at 1A. Hundreds of residents have protested the Cramer Hill project at CRA meetings, and of the thirtythree residents who spoke at the June 30, 2004 meeting where Camden City Council officially approved Cherokee's redevelopment proposal, thirty-two were opposed to the plan. *Id.*

[12] Ott, *supra* note 9.

[13] GEO R. PROWELL, THE HISTORY OF CAMDEN COUNTY, NEW JERSEY, 405 (1886)

[14] JEFFERY M. DORWART & PHILIP ENGLISH MACKEY, CAMDEN COUNTY, NEW JERSEY 1616-1976: A NARRATIVE HISTORY, 10 (1976).

[15] *Id.* at 29. *See also* Kevin Riordan, *Camden Through the Years*, COURIER-POST, April 25, 2004, at 18S.

[16] Dorwart, *supra* note 13, at 31.

[17] Riordan, *supra* note 14, at 18S. In 1835, the Camden and Amboy railroad began servicing the city and formed the beginning of a system of freight and passenger rail lines that would foster Camden's growth into a prosperous industrial center. *Id.*

[18] DORWART, *supra* note 13, at 57.

witnessed a physical growth in size of the city as well as its population. In 1901, Eldridge R. Johnson incorporated the Victor Talking Machine Company with Camden as its home and the city was turned into one of the world centers for the burgeoning home entertainment business with the introduction of the massively popular Victrola Phonograph.[19] The Radio Corporation of America (RCA) purchased the Victor Company in 1926 and in 1930, the RCA-Victor Company crowned Camden the "Radio Capital of the World."[20]

Camden survived the travails of the Great Depression[21] in large part fueled by an economic and industrial recovery spurred by World War II, which pushed the city's industries to full tilt, including its large prominent shipyards and the RCA-Victor company.[22] However, by the 1950's, the explosion of the post-war suburbs began a flight of businesses and residents out of Camden and started the city on a downward slide.[23] Over the course of the ensuing years, the city began to take on a blighted character and by 1971, inner city conditions and racial strife in Camden had grown so bad that race riots erupted, forcing even more residents and businesses to flee the city for the ever-expanding neighboring suburbs.[24] Through the end of the 20th Century, the city suffered further decline and was rocked by political corruption which further served to drag Camden into a downward spiral.[25]

Camden City may have taken a final step off the precipice when it received the dubious distinction of being America's Most Dangerous City.[26] In a crime rankings' report published in December 2004 by Morgan Quinto Press, Camden

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[19] *Id*. at 165.

[20] *Id*. at 247.

[21] Riordan, *supra* note 14, at 18S. The Great Depression had such a serious effect on Camden that at one time city officials considered selling the brand-new Camden City Hall. *Id*.

[22] *Id*.

[23] Joseph A. Gambardello, *City craves its comeback*, PHILADELPHIA INQUIRER, April 21, 2004, at G01, *available at* http://www.philly.com/mld/inquirer/news/special_packages/camden/ (last visited March 10, 2005). Camden's population peaked in 1950 with 124,000 residents and would lose over 44,000 through the rest of the 20th Century. The New York Shipyard closed in 1967, RCA shifted much of its operations out of the city, and Campell's stopped producing soup at its Camden plant in the early 1990s. *Id*.

[24] Riordan, *supra* note 14, at 18S. The huge Lit Brothers department store closed in 1972 after just seventeen years of operation, and signaled the fall of downtown as a shopping destination. *Id*.

[25] *Id*. In 1980, Camden Mayor Angelo Errichetti was convicted of bribery charges arising out of a federal investigation known as "ABSCAM." In 2000, Mayor Milton Milan was convicted of federal corruption charges and removed from office. *Id*.

[26] CITY CRIME RANKINGS: 11TH RANKING (Kathleen O'Leary Morgan & Scott E. Morgan eds., Morgan Quinto Press 2004).

overtook Detroit, Michigan as the most dangerous city in the United States.[27] The ranking system used information from all American cities over 75,000 in population and based the results on six categories of crime data reported in 2003 to the Federal Bureau of Investigation: murder; rape; robbery; aggravated assault; burglary; and auto theft.[28] Camden's numbers increased in every category over the previous year with eight more murders, 11 more rapes, 69 more motor vehicle thefts, 173 more aggravated assaults, 248 more robberies and 304 more burglaries than in 2002.[29] Since the inception of the Morgan Quinto rankings, Camden has always ranked among the ten most dangerous cities in America, but 2004 was its first year to rank at the very top of the dubious list.[30]

III. THE VISION OF REBIRTH

In response to these severely depressed conditions, Camden City officials formed a plan to redevelop the city and return it to the thriving urban center that it once was.[31] With Camden as its inspiration and intended designee, the passage of the Rehabilitation Act in 2002 provided a state-level plan to redevelop blighted areas and set in motion much of what is destined to occur in the city.[32] The guide contained in the Act, coupled with the Camden-specific $175 million state-funded program approved by the New Jersey Legislature in 2002, is designed to recover specific areas of Camden and give them a facelift while providing the state broad control and oversight powers.[33] The redevelopment plan includes several key rehabilitation zones: a University District of several college campuses, including a new Rutgers Law School building and other new secondary education schools; a rejuvenated Downtown district with new parks, a town square, a tree-lined promenade and shops and cafes in the midst of government offices; a Waterfront district with elevated gondola service from Philadelphia over the Delaware River, an expanded aquarium, new luxury condominiums and a "town center" complex of restaurants; a turn around of the Lanning Square area south of downtown with

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[27] *Id.*

[28] *Id.*

[29] Jason Nark, *Crime's Numbing Reality*, COURIER-POST, November 23, 2004, at 1A. *See also Play Your Role in Camden's Rebirth*, COURIER-POST, January 12, 2005, at 10S.

[30] CITY CRIME RANKINGS, *supra* note 25.

[31] CAMDEN PLANNING BD., *supra* note 1. The 2002 Comprehensive Master Plan is the first revision of the Master Plan for Camden since 1977. *Id.*

[32] N.J. STAT. § 52:27BBB-1 *et seq.*, *supra* note 3.

[33] Riordan, *supra* note 14, at 18S. The $175 million state grant is only a small portion of the more than one-billion dollars of public and private monies slated to fund Camden revitalization. *Id.*

a $4 million restoration of the Carnegie Library, 3,000 – 5,000 new homes constructed by private developers, and government-funded projects including a new school, firehouse and park; and finally, the Cramer Hill area which is slated for a new marina, an 18-hole golf course, 500,000 square feet of space for large retailers, and 5,000 new homes, including some costing $200,000, constructed under the private development leadership of Cherokee Camden, LLC.[34] Cherokee Camden projected the following costs for the Cramer Hill redevelopment project, which it will head:[35]

Description	**Estimated Cost**	**Capital Source**
Land	$50,000,000	Cherokee
Remediation	$60,000,000	Cherokee
Macro Infrastructure	$90,000,000	Public
Golf Course & Parks	$30,000,000	Cherokee
Residential	$750,000,000	Cherokee
Marina	$10,000,000	Cherokee
Environmental Center	$5,000,000	Public
Public Buildings	$40,000,000	Public
Retail	$65,000,000	Cherokee
TOTAL	**$1,100,000,000**	

The Rehabilitation Act begins with an enumeration of problematic and deteriorating conditions that exist in certain municipalities.[36] The New Jersey Legislature specifically pointed out the following conditions within a municipality which the Rehabilitation Act targets: economically impoverished areas with high crime rates that require large police and fire departments without a sound tax base to support them; the area's depopulation in the past 50 years; local residents with severely limited spending power and local businesses that suffer as a result of the lack of an indigenous client base; substantially higher unemployment rates as compared with other municipalities; steady decline of land values marked by low equalized per capita value; lack of internal municipal audit controls, accountability and oversight; and substantial municipal budget deficits that have only been addressed through extraordinary State aid.[37] When a municipality has

[34] Jim Walsh, *Strategy Plants Seeds Wisely*, COURIER-POST, April 25, 2004 at 3S. *See also* Courier-Post Online, *supra* note 8; CAMDEN PLANNING BOARD., *supra* note 1.

[35] CHEROKEE CAMDEN, CRAMER HILL REDEVELOPMENT PROJECT PROPOSAL AND STATEMENT OF QUALIFICATIONS, at 3 (Sept. 30, 2003). According to their report, Cherokee will bear almost 90% of the project costs funded through a combination of debt and equity capital, and the remaining 10% will be funded through federal, state and local grants and debt. *Id.*

[36] N.J. STAT. ANN. § 52:27BBB-2 (2005).

[37] *Id.*

been deemed in need of rehabilitation under the Act, a revitalization plan must be created.[38] The strategic revitalization plan must include a "blueprint" for the economic, social, and cultural rehabilitation of the area through the promotion of development and redevelopment in residential and business districts with the diversification of land uses, including a full range of housing options.[39]

The 2002 Camden City Master Plan Summary (Plan), which ties in with the actions being taken under the Rehabilitation Act, begins by defining its purpose and vision and sets a goal population base of 100,000 residents and an employment target of 50,000 jobs.[40] The Plan doesn't profess to attempt to solve all the social and economic ills of the City, however it does direct attention to "basic social service needs related to schools, recreation, job training, health and social services, and community facilities...."[41] The vision contained in the Plan is for Camden to realize its "full potential as a great place to live, work, shop and play by the aspirations of its people."[42]

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[38] N.J. STAT. ANN. § 52:27BBB-38 (2005). "Concurrently with the preparation of the capital improvement and infrastructure plan pursuant to section 42 of P.L. 2002, c. 43 (C. 52:27BBB-41), the board shall oversee the preparation of a strategic revitalization plan for the qualified municipality." *Id.*

[39] *Id.* To accomplish these goals, the plan must encourage "strategic land assembly, site preparation, and infill development, and assure that infrastructure improvements support a central role for the municipality within the regional context." Additionally, "[t]he plan shall also provide for the maintenance and enhancement of a transportation system that capitalizes on high density settlement patterns by encouraging the use of public transit, walking and alternative modes of transportation, including the use of water transportation, where appropriate." Finally, the plan must "provide for maximum active and passive recreational opportunities and facilities at the neighborhood, local and regional levels by concentrating on the maintenance and rehabilitation of existing parks and open space. . . ." *Id.*

[40] CAMDEN PLANNING BOARD., *supra* note 1, at SUMM-5. The introduction to the FutureCAMDEN plan echoes many of enumerated problems of target communities as seen in the Rehabilitation Act, stating:

> "[n]o one denies Camden still faces tough challenges. Boarded up houses, coupled with vacant lots, describes an all too familiar landscape in many City neighborhoods. Population decline isn't over yet. While the public school system holds promise for improvement, it still underperforms when compared to much of the State. Camden's Central Business District closes at 5:00PM and shows the cumulative effects of population loss, business decline and disinvestment. Crime, while statistically lower, remains a major community concern."

Id.

[41] *Id.*

[42] *Id.* at SUMM-13. This view of the future envisions Camden as "becoming the governmental, educational, health care and entertainment center of the South Jersey region. It has a thriving downtown, revitalized neighborhoods, a vibrant waterfront tourist industry, premier medical and higher education institutions, specialized business and technology research organizations, and a bustling port facility." *Id.*

IV. FOR PUBLIC USE, NOT WITHOUT JUST COMPENSATION: THE CONSTITUTIONAL EVOLUTION

The Fifth Amendment to the United States Constitution states in pertinent part that private property cannot be taken for public use without just compensation.[43] Prior to the adoption of the Fourteenth Amendment, the States' power of eminent domain was unrestrained and unregulated by the Federal government or the Constitution.[44] Originally, the just compensation provision of the Fifth Amendment due process clause was not held to be applicable to the States as it was to the Federal government.[45] Ten years after the Court held that the just compensation requirement did not apply to the States, it reversed its view and held that the provision was a "settled principle of universal law."[46]

An essential facet of the just compensation clause is that the taking of private property through eminent domain must be for a public use.[47] Initially, the ultimate decision of whether an intended use of property is a public use rested with the judiciary, but the Supreme Court held that a high degree of deference to the legislature was inherently necessary in the determination.[48] Once it has been determined that the use of eminent domain and condemnation power are being exercised for a public use, "the amount and character of land to be taken" is up to legislative determination.[49] The Court recognized that so long as the public use element was satisfied, redevelopment programs need not take place in a piecemeal fashion. Moreover, landowners should not be able to resist or inhibit redevelopment programs on the grounds that their particular parcels of

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[43] U.S. CONST. amend. V.

[44] U.S. CONST. amend. XIV, *see also* Green v. Frazier, 253 U.S. 233, 238 (1920).

[45] Davidson v. New Orleans, 96 U.S. 97, 105 (1887)("[I]t is not possible to hold that a party has, without due process of law, been deprived of his property when, as regards the issues affecting it, he has, by the laws of the State, a fair trial in a court of justice. . . .")

[46] Chicago, B. & Q. R. Co. v. Chicago, 166 U.S. 226, 238 (1897)(The right to compensation was an incident to the exercise of the power of eminent domain; that the one was so inseparably connected with the other that they may be said to exist, not as separate and distinct principles, but as parts of one and the same principle; and that the legislature "can no more take private property for public use without just compensation than if this restraining principle were incorporated into and made part of its state constitution")(quoting Sinnickson v. Johnson, 17 N.J.L. 129, 145 (1839)).

[47] Fallbrook Irrigation Dist. v. Bradley, 164 U.S. 112, 158 (1896). "There is no specific prohibition in the Federal Constitution which acts upon the States in regard to their taking private property for any but a public use." *Id*.

[48] Cincinnati v. Vester, 281 U.S. 439, 446 (1930)("It is well established that in considering the application of the Fourteenth Amendment to cases of expropriation of private property, the question of 'what is a public use?' is a judicial one.")

[49] Berman v. Parker, 348 U.S. 26, 35-36 (1954).

property, within a designated redevelopment zone, were not being used for a public purpose.[50]

In the same case, the Court noted the broad scope and application of the public use doctrine, which included spiritual, physical, aesthetic and monetary values, and that it was not for the Court to reevaluate those standards.[51] The standard for review of public use determinations was further limited to the point that so long as the legislative purpose behind eminent domain was legitimate and rationally related to a public purpose and the means through which it was exercised was not irrational, the Court would not interfere.[52] Once a legislature

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[50] *Id.* at 35.

> "If owner after owner were permitted to resist these redevelopment programs on the ground that his particular property was not being used against the public interest, integrated plans for redevelopment would suffer greatly. The argument pressed on us is, indeed, a plea to substitute the landowner's standard of the public need for the standard prescribed by Congress. But as we have already stated, community redevelopment programs need not, by force of the Constitution, be on a piecemeal basis -- lot by lot, building by building."

Id.

[51] *Id.* at 33.

> "We do not sit to determine whether a particular housing project is or is not desirable. The concept of the public welfare is broad and inclusive. The values it represents are spiritual as well as physical, aesthetic as well as monetary. It is within the power of the legislature to determine that the community should be beautiful as well as healthy, spacious as well as clean, well-balanced as well as carefully patrolled. In the present case, the Congress and its authorized agencies have made determinations that take into account a wide variety of values. It is not for us to reappraise them. If those who govern the District of Columbia decide that the Nation's Capital should be beautiful as well as sanitary, there is nothing in the Fifth Amendment that stands in the way."

Id. (internal citations omitted).

[52] Hawaii Hous. Auth. v. Midkiff, 467 U.S. 229, 241-243 (1984)

> "[T]he Court has made clear that it will not substitute its judgment for a legislature's judgment as to what constitutes a public use unless the use be palpably without reasonable foundation . . . [W]here the exercise of the eminent domain power is rationally related to a conceivable public purpose, the Court has never held a compensated taking to be proscribed by the Public Use Clause . . . When the legislature's purpose is legitimate and its means are not irrational, our cases make clear that empirical debates over the wisdom of takings . . . are not to be carried out in the federal courts."

Id. (internal citations omitted).

has declared a public interest, the role of the judiciary is extremely narrow, leaving the legislature as the main decision making body regarding public needs.[53] Early in the 20th Century, the Court rejected any type of literal requirement of the Public Use Clause, that property condemned through eminent domain must be for the use of the general public.[54] The police power, as traditionally interpreted through the Public Use Clause, includes, but is not limited to, the exercise of condemnation for "[p]ublic safety, public health, morality, peace and quiet, law and order" as the Court further recognized that broader instances of the exercise of eminent domain is appropriate such as where blight adversely affects the spirit of the community.[55] In addition, transferring property seized through eminent domain to private parties does not defeat the public use requirement.[56]

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[53] Berman, *supra* note 48, at 32. In *Berman*, the United States Supreme Court asserted that,

> "[s]ubject to specific constitutional limitations, when the legislature has spoken, the public interest has been declared in terms well-nigh conclusive. In such cases the legislature, not the judiciary, is the main guardian of the public needs to be served by social legislation, whether it be Congress legislating concerning the District of Columbia . . . or the States legislating concerning local affairs. . . This principle admits of no exception merely because the power of eminent domain is involved. The role of the judiciary in determining whether that power is being exercised for a public purpose is an extremely narrow one."

Id. (internal citations omitted).

[54] Rindge Co. v. County of Los Angeles, 262 U.S. 700, 707 (1923). "It is not essential that the entire community, nor even any considerable portion, should directly enjoy or participate in any improvement in order to constitute a public use." *Id.*

[55] Berman, *supra* note 48, at 32-33.

> "Miserable and disreputable housing conditions may do more than spread disease and crime and immorality. They may also suffocate the spirit by reducing the people who live there to the status of cattle. They may indeed make living an almost insufferable burden. They may also be an ugly sore, a blight on the community which robs it of charm, which makes it a place from which men turn. The misery of housing may despoil a community as an open sewer may ruin a river."

Id.

[56] Hawaii Hous. Auth., *supra* note 51, at 243-244. "The mere fact that property taken outright by eminent domain is transferred in the first instance to private beneficiaries does not condemn that taking as having only a private purpose." *Id.*

V. PUTTING THE PLAN INTO ACTION: STATUTORY POWERS IN NEW JERSEY

In 2000, forty-six percent of the occupied housing stock in Camden was owner occupied and the remaining fifty-four percent were renters.[57] Nearly twenty percent of the City's housing stock was vacant in 2000.[58] As almost ninety percent of the city is slated for redevelopment, many of these private properties, owner-occupied, leased, and vacant, will fall under the shadow of condemnation and the exercise of the municipality's and State's eminent domain powers. [59] Currently, boxes of mass-condemnation filings for many of these properties are being processed and executed in the Camden County Superior Court.

The rehabilitation and revitalization of Camden envisioned by the Master Plan, the Redevelopment Plan and the Rehabilitation Act are going to be empowered and put into effect through the New Jersey Local Redevelopment and Housing Law (Local Redevelopment Law).[60] The Legislative purpose which lies behind the Local Redevelopment Law was stated as "the codification, simplification and concentration of the eminent domain and redevelopment processes to provide efficient legal mechanisms for municipalities to arrest and reverse deteriorating conditions in housing, public services and facilities and industrial and commercial areas" – basically giving teeth to the Rehabilitation Act and lending practical power to the redevelopment process.[61] Municipalities in New Jersey are permitted to condemn and take possession of any property, which is necessary for redevelopment project.[62]

The New Jersey Eminent Domain Act codifies the procedures to be followed in condemnation actions and sets forth the limitations on the state or municipality's powers.[63] The measure of damages for a property seized under the Eminent Domain Act is the fair market value of the property as of the date of the

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[57] CAMDEN PLANNING BOARD., *supra* note 1, at SUMM-9. The owner-occupied units are down from 59% in 1970. *Id.*

[58] *Id.* The vacant units in 1970 amounted to only 6%. *Id.*

[59] Ung, *supra* note 6.

[60] N.J. STAT. ANN. § 40A:12A-1 *et seq.* (2004). The Local Redevelopment Law specifically delineates the powers of municipalities to condemn and redevelop property and sets strict guidelines under which an authority must operate. *Id.*

[61] N.J. STAT. ANN. § 40A:12A-2 (2004).

[62] N.J. STAT. ANN. § 40A:12A-8 (2004). A municipality may "[d]o all things necessary or convenient to carry out its powers" to effectuate a redevelopment plan through acquiring, "by condemnation, any land or building which is necessary for the redevelopment project, pursuant to the provisions of the 'Eminent Domain Act of 1971' P.L.1971, c.361 (C.20:3-1 *et seq.*)" *Id.*

[63] N.J. STAT. ANN. § 20:3-1 *et seq.*

taking and is calculated under the standard of what price a willing buyer and willing seller would agree to in the absence of any compulsion.[64] At any stage of an eminent domain condemnation proceeding, the condemnee is entitled to sufficient information that the government condemnor is treating them with absolute candor and fairness.[65] That required information and assurance could only be provided when there is a full disclosure of all information upon which the government relies during negotiations and making an offer.[66] To satisfy the due process requirement of the Fourteenth Amendment, New Jersey provides that a hearing may be had regarding an eminent domain taking via a prerogative writ of certiorari.[67]

The New Jersey Supreme Court has held that a municipality exercising eminent domain may transfer title of a condemned and seized property to private corporation, even if the corporation will benefit from the acquisition, so long as the condemnation and transfer are used to accomplish an eventual public purpose.[68] Furthermore, mere incidental private benefit does not render a condemnation invalid because the main reason for the municipality's eminent domain exercise is public.[69]

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[64] State v. Shein, 662 A.2d 1020, 1024 (N.J. Super. Ct. App. Div. 1995).

[65] State v. Morristown, 586 A.2d 1342, 1346 (N.J. Super. Ct. App. Div. 1991).

[66] *Id.*

[67] Ryan v. Hous. Auth. of Newark, 15 A.2d 647, (N.J. Super. Ct. 1940).

[68] Wilson v. City of Long Branch, 142 A.2d 837, 842 (N.J. 1958) The Supreme Court of New Jersey asserted that a governing body,

> "may, but shall not be required to, acquire the real property within the area by purchase, or by eminent domain proceedings, and may proceed with the clearance, replanning, development or redevelopment of the area as a public purpose and for public use, or the said governing body may, by resolution, agree that a private corporation may undertake such clearance, replanning, development or redevelopment in accordance with statutory authority and subject to the provisions of *paragraph* 1, *Section* III, *Article* VIII, of the *Constitution*."

Id.

[69] State v. Buck, 226 A.2d 840, 842 (N.J. Super. Ct. App. Div. 1967)("The fact that Sheldricks' private interests may be subserved will not defeat a condemnation proceeding; the controlling question is whether the paramount reason for taking land to which objection is made is in the public interest.")

VI. JUST 20 MILES DOWN THE ROAD: THE EFFECT OF THE MT. LAUREL DOCTRINE

In 1975, the New Jersey Supreme Court invalidated a Mt. Laurel, New Jersey zoning regulation, holding that the ordinance had the effect of excluding low-income residents from the township.[70] The Court's holding applied not only to Mt. Laurel, but to all developing suburban communities as well.[71] Eight years after its landmark decision in *Mt. Laurel I*, the New Jersey Supreme Court expanded and reinforced its holding, mandating that every municipality within a designated growth area has a constitutional duty to provide opportunities for the creation of adequate and affordable housing for low and moderate income households and that those municipalities must provide sufficiently realistic creation of affordable housing for its own poor as well as for a fair share of the needs the poor within the region. [72] The municipality must rezone to create affirmative construction incentives for lower income housing and must modify any existing policy to accommodate publicly subsidized housing.[73] In direct

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[70] Southern Burlington County NAACP v. Mt. Laurel, 336 A.2d 713, 724 (N.J. 1975) ("Mount Laurel I"). The court stated,

> "every developing municipality must, by its land use regulations, presumptively make realistically possible an appropriate variety and choice of housing. Presumptively it cannot foreclose the opportunity of the classes of people mentioned for low and moderate income housing and in its regulations must affirmatively afford that opportunity, at least to the extent of the municipality's fair share of the present and prospective regional need therefore. These obligations must be met unless the particular municipality can sustain the heavy burden of demonstrating peculiar circumstances which dictate that it should not be required so to do."

Id.

[71] *Id.*

[72] Southern Burlington County NAACP v. Mt. Laurel, 456 A.2d 390, 422 (N.J. 1983) ("Mount Laurel II"). Here, the New Jersey Supreme Court made clear that,

> "[s]atisfaction of the *Mount Laurel* obligation shall be determined solely on an objective basis: if the municipality has *in fact* provided a realistic opportunity for the construction of its fair share of low and moderate income housing, it has met the *Mount Laurel* obligation to satisfy the constitutional requirement; if it has not, then it has failed to satisfy it. Further, whether the opportunity is 'realistic' will depend on whether there is in fact a likelihood -- to the extent economic conditions allow -- that the lower income housing will actually be constructed."

Id.

[73] *Id.* at 281.

response to the *Mount Laurel* decisions and the string of cases which followed them, the New Jersey Legislature enacted the Fair Housing Act of 1985 which required *every* municipality to adopt and put into action a housing plan to address the municipality's fair share of the regional need for affordable low and moderate income housing.[74]

The original lawsuit in the *Mt. Laurel* litigation was filed by a group of poor residents in 1970 and demanded that the township accommodate a small number of people with low to moderate income and originally only asked for thirty-five apartments to be permitted.[75] The litigation bounced through the state judicial system and went before the New Jersey Supreme Court, which issued several decisions, with the last opinion on the matter issued in 1983.[76] Yet it wasn't until 2000, thirty years after the original filing and seventeen years after the last Supreme Court mandate, that low and moderate-income housing was actually available in Mt. Laurel when the Ethel R. Lawrence Homes opened.[77] The number of people that picked up applications for housing in the new Mt. Laurel low-income development far outweighed the number of units actually

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> "If the trial court determines that a municipality's zoning ordinance does not satisfy its *Mount Laurel* obligation, it shall order the defendant to revise it. Unless it is clear that the requisite realistic opportunity can be otherwise provided, the trial court should direct the municipality to incorporate in that new ordinance the affirmative devices discussed above most likely to lead to the construction of lower income housing."

Id.

[74] N.J. STAT. ANN. § 52:27D-301 *et seq.* (2005).

> "The Legislature declares that the statutory scheme set forth in this act is in the public interest in that it comprehends a low and moderate income housing planning and financing mechanism in accordance with regional considerations and sound planning concepts, which satisfies the constitutional obligation enunciated by the Supreme Court. The Legislature declares that the State's preference for the resolution of existing and future disputes involving exclusionary zoning is the mediation and review process set forth in this act and not litigation, and that it is the intention of this act to provide various alternatives to the use of the builder's remedy as a method of achieving fair share housing."

Id. at 303.

[75] Jennifer Wahl and Richard Pearsall, *Mt. Laurel offers homes for those of low, moderate incomes*, COURIER-POST, November 20, 2000, at pg. 1A.

[76] Mount Laurel II, *supra* note 71.

[77] *Id.* Ethel Lawrence was among the original group of residents who filed suit against the township. She died in 1996 without ever having seen her goal accomplished. *Id.*

available, demonstrating that while the project was a start, it did not come close to addressing the need for such housing in the area.[78]

Low to moderate income housing was not actually constructed in the township that bears the name of the famous landmark string of cases which prompted reform mandates until thirty years after the original complaint was filed. While New Jersey has both strong legal precedent and legislation regarding the inclusion of low income housing, the problems and obstacles in the practical application of these doctrines is readily apparent and reflected in the decades of implementation delays even within the infamous namesake township.

VII. PROBLEMS WITH RELOCATION: THOSE WHO MAY BE LEFT BEHIND

Where does the *Mt. Laurel* Doctrine leave poor and low-income residents of Camden? Virtually all of the City of Camden is slated to be a redevelopment zone.[79] Specifically, in the Cramer Hill neighborhood of Camden, the Camden Redevelopment Authority approved the relocation of almost 1000 households.[80] A Determination of Needs Study was prepared for the City of Camden as one of the first steps on paper toward the redevelopment of the Cramer Hill area.[81] Among several examinations, the study evaluated the qualitative building conditions in the area and determined that out of the 3816 parcels in the study area, only 7.1% of the properties "are in substandard or deteriorated condition and have been classified as 'Poor,' a category which includes vacant properties."[82]

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[78] Wahl, *supra* note 74, at 1A. Eight-hundred people picked up applications for the 100 units available at Ethel Lawrence Homes. The Fair Share Affordable Housing action group advertised the new development for three days in the newspaper and at dawn on the first day the applications were available, hundreds of people had amassed to pick up an application. Out of the 473 applicants who filed complete paperwork seeking housing in the development, 75% were black and the remaining 25% were divided among Latinos, Asians and whites. *Id.*

[79] Ung, *supra* note 6.

[80] Ott, *supra*, note 9. The households are being relocated as part of the $1.2 billion plan to redevelop the Cramer Hill section of the city. *Id.*

[81] CITY OF CAMDEN, CRAMER HILL STUDY AREA DETERMINATION OF NEEDS STUDY, (Draft - Mar. 2004). The study, prepared for the City by the Hillier company, involved the following steps: (1) present inventory of Cramer Hill Study Area's characteristics; (2) propose findings and recommendations relevant to the determination of need for redevelopment of the area; (3) show to what extent they meet the criteria outlined in the State statute; and (4) declare study area in need of redevelopment. *Id,*

[82] *Id.* at 23. Buildings in "Poor" condition are classified as follows: "[t]hese buildings are clearly substandard and deteriorated. They require repairs, construction or replacement at considerable effort. If occupied, structures must be rehabilitated at significant expense. Other properties in this category include vacant, boarded up and vandalized buildings." *Id.*

However, the "Determination" section of the study found that "[d]ue to the concentration of vacant property and the presence of "brownfields"[83] along the waterfront, the Cramer Hill Study Area is [in] need of redevelopment."[84] The Determination Study clearly based its findings on the amount of vacant properties, despite the fact that they represented less that 10% of the entire area. Finally, the study found that the conditions in the Cramer Hill area "are detrimental to the general and residential welfare of those living in Cramer Hill."[85]

One month after Determination of Needs Study was drafted, the Cramer Hill Study Area Redevelopment Plan followed through with the decisions of the City of Camden regarding the redevelopment of the area.[86] The Redevelopment Plan classified Cramer Hill as "ripe for redevelopment" and defined its purpose "to facilitate the redevelopment of Cramer Hill by providing a framework for the design and implementation of development projects throughout the neighborhood."[87] The redevelopment plan contains four pages of properties in the "to be acquired" category, encompassing hundreds of lots, and another full page of "*may be* acquired" properties, covering many more parcels.[88]

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[83] United States Environmental Protection Agency, *Brownfields Cleanup and Redevelopment*, *available at* http://www.epa.gov/brownfields/ (last visited March 8, 2005). "Brownfields are real property, the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant. Cleaning up and reinvesting in these properties takes development pressures off of undeveloped, open land, and both improves and protects the environment." *Id.*

[84] DETERMINATION OF NEEDS STUDY, *supra* note 80, at 29.

[85] *Id.* at 29-30. Pursuant to these findings, the study recommended that the City make a determination that Cramer Hill is need of redevelopment. *Id.*

[86] CITY OF CAMDEN DEPARTMENT OF DEVELOPMENT AND PLANNING, CRAMER HILL STUDY AREA REDEVELOPMENT PLAN (Apr. 19, 2004) ("Cramer Hill Redevelopment Plan").

[87] *Id.* at 4. The plan "documents decisions made by the City of Camden to assist the Planning Board and City Council in their efforts to address the redevelopment needs and potentials of the neighborhood." *Id.*

[88] *Id.* at 14. To be acquired is defined as "property to be acquired in order to effectuate the purposes of this Redevelopment Plan (new construction, rehabilitation and other development)." The May Be Acquired category includes:

> "property that may be needed in order to effectuate [sic] the purposes of this Redevelopment Plan . . . . The City of Camden . . . reserves the right to acquire the property if it is considered detrimental to surrounding uses and/or encumbers property disposition, clear or redevelopment of the area. If the property is not acquired, the owner in accordance with local codes and property rehabilitation standards must rehabilitate it."

Id.

The Cramer Hill neighborhood as it stands today is arguably one of Camden City's strongest neighborhoods. Christina Boyko, a community organizer for the Cramer Hill Community Development Corporation, questioned why people would want to leave the area that she described as representing the "American dream."[89] Problems for Cramer Hill residents will arise as soon as the bulldozers arrive. The redevelopment plan calls for moving approximately 987 households, with roughly 300 homeowners and the remaining 687 residents occupying subsidized and unsubsidized rental properties and a public housing project.[90] Residents don't want to lose their homes and are quick to retort that they believe the City's plan is running the Cramer Hill community out of town.[91] Camden Redevelopment Agency Executive Director Arijit De says the CRA will begin building replacement units within one-year of the mass takeover of these private properties.[92]

While the City contends that it will build enough affordable units to satisfy the demand, those units will not spring up overnight. The development and construction in the Cramer Hill project is scheduled to take over eleven years, barring any setbacks, with an estimated completion date scheduled for 2016.[93] Cherokee Camden's 2003 proposal for the Cramer Hill redevelopment plan estimates a start-date for residential building in 2006 and projects the completion for 2016 while construction of the eighteen-hole golf course is scheduled to begin the same year and be completed in 2009.[94] The Master Plan for the redevelopment of this area and the rest of Camden seems to take into account provisions for low income housing as required by the *Mt. Laurel* Doctrine, but no solution is apparent to address the immediate needs of displaced and relocated residents. In addition to mixed use housing, the Cramer Hill neighborhood is proposed to receive a marina, an eighteen hole golf course, 500,000 square feet of retail space and some homes estimated to be in the $200,000 range.[95] The Cherokee Developers in charge of the redevelopment of

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[89] Luis Puga, *Residents: Cramer Hill safe, but . . .*, COURIER-POST, January 12, 2005, at 7SS.

[90] Ott, *supra* note 9.

[91] Ung, *supra* note 6.

[92] Ott, *supra* note 9. Director De stated that new housing proposed for the Cramer Hill area and other new affordable units elsewhere in the city "will provide sufficient units to meet the maximum location needs." *Id.*

[93] CRAMER HILL REDEVELOPMENT PLAN, *supra* note 84.

[94] CHEROKEE CAMDEN CRAMER HILL REDEVELOPMENT PROPOSAL, *supra* note 34, at 3. The Build-Out Schedule and Assessed Value chart of Cherokee's plan was submitted to CRA in response to a request by the agency. *Id.*

[95] CAMDEN 2015, supra note 8.

Cramer Hill have stated that there would be opportunities for neighborhood residents to occupy some 250 new single-family homes and an additional 150 townhouses.[96] It is immediately apparent that the numbers for the new construction do not adequately address the needs of the current residence base of Cramer Hill.

In response to the City's redevelopment plan for the neighborhood, multiple lawsuits have been filed alleging, among other things, that the plan is treating low-income residents unfairly.[97] Similar lawsuits have also been filed against other redevelopment plans elsewhere in New Jersey, including Mt. Holly, Ventnor, and Lindenwold, all of which allege that these redevelopment plans and the subsequent relocation and displacement of existing residents disproportionately harm African Americans and Latinos.[98] South Jersey Legal Services Lawyer Olga Polmar alleges that there is a racial element involved in these redevelopment plans where a municipality uses redevelopment as an instrument to replace low-income communities with more affluent ones.[99] She further claims that these plans are an "abuse of eminent-domain powers and contrary to the purposes why a municipality is allowed to use eminent domain."[100]

Residents in Cramer Hill and these other contested areas in New Jersey fear that they will have nowhere to go if they are relocated by the redevelopment.[101] With seemingly little recourse available, similarly situated residents in other redevelopment areas in the state even pray for the forgiveness

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[96] Ott, *supra* note 9. Statement of Anselm Fusco, Senior Vice-President of Development for Cherokee Northeast, LLC. *Id.*

[97] *Id.*

[98] Erik Schwartz, *Progress or Discrimination?*, COURIER-POST, August 5, 2004, at 1B.

[99] *Id.*

[100] *Id.*

[101] *Letters to the Editor*, May 12, 2004, Courier-Post Online, *Camden 2015*, *available at* http://www.courierpostonline.com/camden2015/2015letters.html (last visited on March 10, 2004). Elizabeth Kohlenberg of Cramer Hill protests,

> "[n]ow here comes Cherokee to fix Camden and make me move out of my home. But Cherokee will only pay me about $27,000 where am I going to buy a home for that amount? I can't afford a mortgage besides that, I'm sixty seven years old so I'm not likely to get one. I've struggled for thirty three years in Camden while a lot of people left. What happened to caring about the poor people? I am very hurt and upset that I may be losing my home while I've tried and still am trying very hard to keep it."

Id.

of developers who would take their properties.[102] Not all potentially displaced citizens resort to prayer alone, as demonstrated by a show of defiance in July 2004 where thirty-four Cramer Hill residents protested the Cherokee-run redevelopment of the neighborhood on the New Jersey State House steps, chanting "No Cherokee in Camden!"[103]

The residents of Cramer Hill are by no means sitting idly by or relying solely on civil disobedience as their properties are taken from them. Lawsuits brought by residents and businesses in the Cramer Hill area are progressing in the face of the City's sweeping redevelopment plans. Four businesses: W. Hargrove Recycling Inc., Express Marine Inc., Tucker Towing Inc. and Riverfront Recycling and Aggregate, LLC have brought suit in an effort to thwart the Cramer Hill project – all of the four companies will lose their businesses in the rehabilitation.[104] In early January 2005, Camden County Assignment Judge Francis J. Orlando, Jr. declined Camden and Cherokee Investment Partner's request to dismiss the business' suit.[105] Orlando has permitted the suit to move forward and wants to begin looking into four allegations made in the suit:

(1) "Does City Council President Angel Fuentes have a 'conflict of interest' and 'tainted' the Cherokee project by hosting public hearings without disclosing to the public that he recently purchased property in the Cramer Hill area?"

(2) "Why did the council give no reasons for failing to adopt six recommendations made by the city planning board -- including one that a proposed golf course be changed to soccer fields?"

(3) "Did the city make adequate plans to relocate residents in the area?"

(4) "Is the Cramer Hill plan consistent with other development plans in Camden County?"[106]

Judge Orlando will also consider consolidating the business' suit with a similar suit filed by South Jersey Legal Services on behalf of the Cramer Hill residents.[107]

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[102] Schwartz, *supra* note 97. Charlie Mae Wilson, who bought her home upon retiring from her job stocking and cleaning a Wendy's salad bar, said "[a]nd always when I pray I say, God help them because they know not what they do. Have mercy on them, the people who are trying to take our homes from us." *Id.*

[103] Tom Lounsberry, *Suit seeks to halt city plan*, COURIER-POST, July 31, 2004, at 1B.

[104] Alan Guenther, *Cramer Hill suits get go-ahead*, COURIER-POST, January 8, 2005, at 1B.

[105] *Id.*

[106] *Id.*

[107] *Id.* "Orlando also said he would reject a call by South Jersey Legal Services to remove himself from the case. Legal Services filed a motion Thursday saying Orlando should not act as a judge while also serving as arbitrator between the city and Randy Primas, the state-appointed chief operating officer." *Id.*

VIII. THE ONGOING TAKINGS DEBATE: *KELO*, EMINENT DOMAIN AND PUBLIC USE

According to University of Chicago School of Law Professor Richard Epstein, "[f]ew Supreme Court cases in recent years have attracted more attention than Susette Kelo's battle against New London, Connecticut."[108] Over forty separate parties have filed amicus curiae briefs, with at least twenty-five advocating for the Petitioners/Property Owners.[109] Arguments were heard by the Supreme Court on February 22, 2005 in the *Kelo v. City of New London* case, involving whether the "public use" clauses of the Federal and Connecticut Constitutions authorize the exercise of eminent domain power for the purpose of economic development as an appropriate "public use."[110] The City of New London designated approximately ninety-acres adjacent to Pfizer, Inc.'s newly constructed global drug research facility, including Susette Kelo's property, for redevelopment.[111] The New London development plan stated that its goals were to "create a development that would complement the facility that Pfizer was planning to build, create new jobs, increase tax and other revenues, encourage public access to and use of the city's waterfront, and eventually 'build momentum' for the revitalization of the rest of the city, including its downtown area."[112] Bearing many similarities to the proposed Cramer Hill redevelopment, the New London plan includes marinas, a waterfront walkway, a waterfront hotel and conference center, retail space, a museum and high-technology research and office space in the area now occupied by the plaintiff property owners.[113] The public development corporation will transfer parcels within the redevelopment tract to private developers.[114] In January 2000, New London's city counsel

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[108] Richard A. Epstein, *The pain of eminent domain*, PHILADELPHIA INQUIRER, March 2, 2005, *available at* http://www.philly.com/mld/philly/11026227.htm (last visited March 10, 2005).

> "New London, which claims it is a depressed city, wants to boot Kelo and her neighbors off their property to promote economic development. Before they can do so, the Supreme Court has to answer a deceptively difficult question: What, if anything, does the Constitution require of a government when it takes property for a public use?"
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> *Id.*

[109] U.S. Supreme Court Docket, Kelo v. City of New London, No. 04-108.

[110] Kelo v. City of New London, No. 04-108 (U.S. argued Feb. 15, 2005), 843 A.2d 500 (2004).

[111] *Id.* at 7.

[112] *Id.* at 6-8.

[113] *Id.* at 8.

[114] *Id.* at 9. Under a proposed lease between the city and private developer Corcoran Jennison, the developer will pay the development corporation $1 in rent per year. *Id.*

authorized the public development corporation to acquire properties in the area, and in November 2000, the development corporation authorized the use of eminent domain power to acquire property from any remaining owners unwilling to sell them.[115] In December 2000, the unwilling property owner plaintiffs brought actions that gave rise to the entire series of cases challenging the eminent domain condemnations.[116]

In the decision which Kelo and her co-petitioners appeal to the U.S. Supreme Court, the Connecticut Supreme Court held that (1) as a matter of first impression, economic development could be a valid public use; (2) there was evidence supporting the conclusion that the eminent domain takings were primarily intended to benefit the public rather than private entities; and (3) the city's economic development plan contained sufficient statutory and contractual constraints.[117]

In a brief to the U.S. Supreme Court, Petitioners (Kelo, *et al.*), contend that Respondents (City of New London, *et al.*) have made clear their position that "public use" has no substantive meaning.[118] Petitioners argue that this "novel proposition goes against the most basic rules of constitutional interpretation, as well as every public use case ever decided by this Court."[119] Citing U.S. Supreme Court precedent, Petitioners argue that every word in the Constitution must have due force and meaning and that no word was placed into the document unnecessarily, thus the phrase "public use" must carry its own weight and unique

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[115] *Id.* at 10 – 11.

[116] *Id.* The lower trial court noted that,

> "[e]ach of the plaintiffs testified and said that they wished to remain in their homes for a variety of personal reasons. Two. . . referred to the fact that their families have lived in the homes for decades. They all testified that they loved their homes in the Fort Trumbull [New London neighborhood] area. Several have put a lot of work into their property and all of them appeared . . . to be sincerely attached to their homes . . . . All testified that they were not opposed to new development . . . ."

Id. The residents simply did want to lose their homes.

[117] Kelo, *supra* note 106. In making its decision, the Supreme Court will review two key takings precedents: *Berman*, *supra* note 48, which permitted the transfer of private property to private development corporations as part of a plan for urban renewal, and *Hawaii Housing Auth.*, *supra* note 51,which upheld the taking and redistribution of private property to reduce a concentration of land ownership. *Id.*

[118] REPLY BRIEF OF PETITIONERS AT 1, Kelo v. City of New London, 2004 U.S. Briefs 108, (LEXIS 2005), 268 Conn. 1 (2004).

[119] *Id.*

meaning.[120] Public use in the context of takings must mean that the use is something that society equates with governmental activities and not just private profits.[121]

Professor Epstein opines that in the *Kelo* decision, the Supreme Court could articulate a *de minimus* test that before a city can adopt an urban redevelopment plan, it must present an integrated plan with a required inclusion of private homes.[122] Petitioners explain that decisions on condemnations for economic development should employ a "reasonable certainty" test and "deserve enhanced judicial scrutiny in the form of minimum standards for future public benefits, drawing from a body of state case-law as well as the application of higher scrutiny in past cases of this Court."[123] Respondents attack the test and level of scrutiny put forth by Petitioners on the grounds that it would require the formation of economic predictions and projections which courts are ill-equipped to make.[124] Petitioners respond that the test would not require a court to form any such predictions; rather, it would only require a court to review contracts, statutes and other documents with which courts are routinely familiar in order to "determine if they set guarantees and standards that provide a reasonable certainty of the benefits used to justify the condemnation."[125] Petitioners further point out that when the Supreme Court previously set out various level of scrutiny, it included rational basis scrutiny for some liberty and property interests.[126] They argue that when a specific "public use" facial challenge is made

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[120] Wright v. U.S., 302 U.S. 583, 588 (1938)("Every word must have its due force, and appropriate meaning; for it is evident from the whole instrument, that no word was unnecessarily used, or needlessly added.")

[121] REPLY BRIEF OF PETITIONERS, *supra* note 117, at 1.

[122] *Id.*

> "Just wanting to build fancy single-family homes doesn't cut it: Lots of developers do creative in-fill work all the time in Philadelphia and elsewhere, without condemnation powers. What is needed is evidence for a large plant or facility that cannot be located elsewhere. New London's lust for the Kelo home doesn't come within a country mile of meeting that overgenerous standard."

Id.

[123] *Id.* at 13 "Petitioners believe that enhanced scrutiny is appropriate where a particular activity creates higher constitutional risk." *Id.*

[124] BRIEF OF RESPONDENTS at 34-35, Kelo v. City of New London, 268 Conn. 1 (2004).

[125] REPLY BRIEF OF PETITIONERS, *supra* note 117, at 14.

[126] U.S. v. Carolene Products, 304 U.S. 144, 152-153 (1938), REPLY BRIEF OF PETITIONERS, *supra* note 117, at 14 ("[T]here may be a narrower scope for operation of the presumption of constitutionality

to legislation, it warrants a narrower scope of operation for the presumption of constitutionality of that statute.[127] The proposed reasonable certainty test should be based on "guidelines, contracts and requirements, not from a promise that someone else will figure it out later."[128] The standards on which Petitioners contend the test should rely consist of "a commencement date for the project, a construction schedule, a guaranteed number of jobs to be created, selection criteria for potential developers, financing requirements, the nature and timing of land disposition and a commitment as to the amount received in property taxes as a percentage of assessed value."[129]

Respondents argue that determinations regarding property protection and takings should be left within the domain of the states.[130] Since the public use requirement is contained in the U.S. Constitution, Petitioners urge the Court to "set the baseline, the floor beneath which private takings may not sink," and once the Court sets a public use standard the states would follow its guidance.[131] Petitioners contend that if the Court does not set standards in place for the public use context, the states will continue to vary widely in their protection of individual rights and will be less likely to place a check on abuses of power.[132] They also assert that, as a result of allowing the current system to remain in place, any abuses inflicted against minorities, individuals of modest means and the politically powerless would rarely have their day in court.[133] Furthermore, Petitioners state that without a decision of the Court setting minimum standards, every home and business throughout the country could fall under condemnation "if a local government prefers some other private party's use of the property."[134]

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when legislation appears on its face to be within a specific prohibition of the Constitution, such as those of the first ten amendments, which are deemed equally specific when held to be embraced within the Fourteenth.")

[127] REPLY BRIEF OF PETITIONERS, *supra* note 117, at 14. "'Public use' is just such a specific prohibition." *Id.*

[128] *Id.* at 15-16, (citing Opinion of the Justices, 25- N.E.2d 547, 560 (Mass. 1969). "'[I]n the absence of adequate statutory guidance and standards . . . and of a clear provision for reasonable review of compliance with appropriate standards,' the project was not for public use." *Id.*

[129] *Id.* at 15.

[130] BRIEF OF RESPONDENTS, *supra* note 123, at 36-38.

[131] REPLY BRIEF OF PETITIONERS, *supra* note 117, at 16.

[132] *Id.* at 17.

[133] *Id.* at 17-18. "Similarly, homeowners can rarely afford litigation, which is why nearly all appellate public use cases involve businesses. Homeowner cases, when they are brought at all, usually involve pro bono or public interest representation." *Id.*

[134] Iver Peterson, *There Goes the Old Neighborhood, to Revitalization*, N.Y. TIMES, January 30, 2005, at A25. Counsel for NLDC stated that the city needed,

In argument very similar to what has been presented in the Cramer Hill cases, Petioners sum up their cause thusly:

> "The condemnations in this case are an act of raw preference for one type of people, one type of housing, and higher tax dollars over the current residents. Cities may seek wealthy residents and higher taxes, but they cannot do so at the expense of constitutional rights. The ruling of the Connecticut Supreme Court paves the way for increasing use of eminent domain for private development. This Court should resist Respondents' urging to read public use out of the Constitution and thereby fundamentally alter the rights of all property owners in the United States."[135]

Analysts view *Kelo* as potentially one of the most important property rights cases to go before the Supreme Court in decades.[136] *Kelo* is just one of three takings cases before the Supreme Court, all of which have the power to change the scope of Constitutional property rights.[137] Government officials argue that if these cases are decided in favor of the homeowners, countless and costly suits will be filed claiming that governments have impermissibly taken their property in violation of the Fifth Amendment and the federal courts will be forced to reevaluate legislative policy not seen for a hundred years.[138] Advocates for

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> "to get housing at the upper end, for people like the Pfizer employees . . . . They are the professionals, they are the ones with the expertise and the leadership qualities to remake the city -- the young urban professionals who will invest in New London, put their kids in school, and think of this as a place to stay for 20 or 30 years."

Id.

[135] REPLY BRIEF OF PETITIONERS, *supra* note 117, at 20.

[136] Marcia Coyle, *All eyes on high court property cases; High stakes in trio of 'takings' actions*, NATIONAL LAW JOURNAL, January 10, 2005, at 1.

[137] *See* Lingle v. Chevron USA, 363 F.3d 846 (9th Cir. 2004), *cert. granted*, No. 04-163 (U.S. Dec. 10, 2004); San Remo Hotel v. San Francisco, 364 F.3d 1088 (9th Cir. 2004), *cert. granted*, No. 04-340 (U.S. Oct. 12, 2004).

[138] Coyle, *supra* note 135.

> "[E]ach case . . . could re-involve federal courts in second-guessing legislative policy choices to a degree not seen since the discredited Lochner era, named for the 1905 case, Lochner v. New York [198 U.S. 45 (1905)] (a period when the Supreme Court struck down numerous state and federal laws designed to improve working conditions and an economy devastated by the Great Depression)."

property rights and proponents for the imposition of standards for takings counter that the Supreme Court could attach meaning and effect to limit the Fifth Amendment's takings clause, which, for the most part, has been read out of the clause and has given states very wide latitude with governmental takings.[139]

While none of these cases have yet been decided, some of the Supreme Court Justices struck an "unusual populist tone" during arguments in the *Kelo* case, with Justices Scalia, O'Connor and Breyer appearing to sympathize with the petitioning homeowners.[140] Decisions in the *Kelo*, *Lingle*, and *San Remo Hotel* cases will shape the Constitutional policies surrounding eminent domain actions for years to come. Included in their national impact, these cases will undoubtedly provide fodder for one side or the other involved in the Camden Redevelopment projects. The first decision, *Kelo*, is expected to be handed down sometime in late June 2005.[141]

IX. CHALLENGING EMINENT DOMAIN IN NEW JERSEY

In February 2002, Republican State Senators Gerald Cardinale and Henry McNamara introduced a bill seeking to provide protection to business owners whose properties have been condemned for redevelopment.[142] Senate Bill 1074 would have required public authorities condemning business properties to show that the proposed use of the property sought was "of such significant public interest as to justify the relocation or retirement of the private business at that location" and would have also provided property owners more input in the appraisal process of the property.[143] However, the bill died in the New Jersey Senate Community and Urban Affairs Committee and was never enacted.[144]

In Atlantic City, New Jersey, during the mid-1990s, casino and financial mogul Donald Trump decided to enlarge the operations of the Trump Hotel &

Id.

[139] *Id.*

[140] Bill Mears, *Supreme Court examines limits of city's eminent domain powers*, CNN.com, February 22, 2005, *available at* http://www.cnn.com/2005/LAW/02/22/scotus.eminent.domain/index.html (last visited Mar. 10, 2005).

[141] *Id.*

[142] S.B. 1074, 210th Sess. (N.J. 2002).

[143] DANA BERLINER, PUBLIC POWER, PRIVATE GAIN – A FIVE YEAR, STATE-BY-STATE REPORT EXAMINING THE ABUSE OF EMINENT DOMAIN, INSTITUTE OF JUSTICE, Apr. 2003, at 135. In 2003, the Institute of Justice, the nation's only libertarian public interest law firm, whose clients include the homeowners in *Kelo*, published a comprehensive study of eminent domain actions in all 50 states. *Id.*

[144] *Id.*

Casino with green space, a driveway and high-roller customer limousine parking.[145] Trump's company submitted a proposal to the New Jersey Casino Reinvestment and Development Authority ("CRDA") seeking to acquire land for the project, which was currently occupied by a home and several small businesses.[146] While some of the businesses on the tract agreed to sell to Trump, elderly widow Vera Coking, Banin Gold Shop and Sabatini's Italian Restaurant all refused the offers to purchase their properties.[147] In July 1994, after the three owner's refusals to sell to Trump, the CRDA began condemnation proceedings on the properties.[148]

The defendant property owners, including Coking, represented by the Institute for Justice, challenged the CRDA's taking proceedings of their properties on the grounds that Trump's proposed limousine parking was not a public use, or even if it was, the taking was just a pretext for giving Trump control over the property to dispose of it in any manner he saw fit.[149] Eventually the trial court ruled that Trump's proposed high-roller parking could be a public use; however, evidence showed that once Trump acquired the space, he could do whatever he wished and had actually already put into motion plans for additional casino space to occupy part of the land.[150] The court therefore held that the taking was pretextual and the CRDA could not take the property.[151]

In 1995, Steven Wynn, owner of Mirage Resorts, Incorporated, announced that his company was going to return to Atlantic City with a new casino and build on unused land in the city's marina district valued at $111 million which the government of Atlantic City would be giving him at no cost.[152] With Wynn's acquisition of the land to build a new lavish casino came his demand that Atlantic

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[145] *Id.*

[146] *Id.*

[147] *Id.*

[148] Paul Schwartzmann, *She Kicks Sand in Trump's Face, Sneers at Donald's Bucks*, N.Y. DAILY NEWS, Jul. 26, 1998, at News 7; *see also*, Casino Reinvestment and Development Authority v. Banin, 727 A.2d 102 (N.J. Super. Ct. Law Div. 1998). Peter Banin, a Russian immigrant and owner of Banin Gold Shop commented that the "Soviet Union doesn't even do anything like this." *Id.*

[149] Casino Reinvestment and Development Authority, *supra* note 147, at 111.

[150] *Id.* The court determined that the CRDA condemnation, taking and transfer to Trump amounted to handing him a "blank check." *Id.*

[151] *Id.*

[152] BERLINER, *supra* note 142, at 137-138, *see also*, Associated Press, *Now Competing Proposals for Land Nobody Wanted*, N.Y. TIMES, July 16, 1995, at 13NJ.

City construct a 2,200-foot tunnel leading off of the Atlantic City Expressway straight to his new casino.[153]

Wynn's Mirage Resorts offered to buy the land that would become the tunnel from the owners, and all but three accepted and the CRDA began condemnation proceedings for those properties.[154] The three protesting homeowners brought suit in federal court on the grounds of civil rights violations and in state court for lack of public purpose.[155] After several rounds in the courts, the federal complaint was dismissed for lack of standing.[156] The three owners eventually settled with the CRDA only after "exhausting their money and will to fight."[157]

The Institute for Justice alleges that the CRDA views private property interests in a strange way, especially "when the landowner is not a giant, politically favored casino" and treats residents of Atlantic City as "mere obstacles to be moved out of the way whenever a casino comes in and wants their land."[158] To make matters worse, Wynn sold his rights in Mirage Resorts to MGM Grand, Inc., during the middle of the construction phase of the tunnel and MGM did not move forward with construction of a casino on the original proposed site.[159] The Borgata Casino Hotel did eventually move into the property and constructed a facility, which opened in 2003, two years after the demanded tunnel was completed.[160]

The disputes arising out of the Cramer Hill and Camden redevelopment projects share a similar stage with the many condemnation disputes that have

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[153] BERLINER, *supra* note 142, at 138.

[154] *Id.*

[155] Bryant v. N.J. Dept. of Transp., 998 F. Supp. 438 (D. N.J. 1998). Plaintiffs brought suit alleging that the defendants, including the State of New Jersey, the New Jersey Department of Transportation, the CRDA and Mirage Resorts, Inc., alleging that the construction of the Expressway tunnel would harm an African-American neighborhood in violation of Title VI of the Civil Rights Act of 1964, 42 U.S.C.S. § 2000d, *et seq.* *Id.*

[156] Bryant v. N.J. Dept. of Transp., 1 F. Supp. 2d 426 (D.N.J. 1998). After an initial dismissal of the complaint and a *sua sponte* review by the court, the homeowners' complaint was dismissed once again. *Id.*

[157] BERLINER, *supra* note 142, at 138. "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." *Id.*

[158] *Id.* at 137.

[159] *Id.* at 138-139.

[160] *Id.* at 139. The Institute for Justice finally claims that to "the redevelopment bureaucrats in charge of divvying up Atlantic City on behalf of Casino interests, a new casino is worth more than citizen's homes any day." *Id.*

sprung in Atlantic City. Redevelopment and eminent domain in New Jersey have also generated significant conflict and litigation in areas such as Edison Township, Egg Harbor Township, Englewood, Franklin Township, New Brunswick, Pemberton Township and West Orange.[161]

X. CONCLUSION

The CAMDEN 2015 project seeks to rejuvenate the depressed and fallen city with billions of dollars of redevelopment in many zones of the city. Several of the areas already show promise only two years into the project, such as the University District with ground breaking on the new Rutgers School of Law – Camden building scheduled for Summer 2007, expansions to Rowan University and Camden County College's facilities and the newly completed LEAP Academy high school.[162] The Waterfront District, which already boasts the recently opened Victor luxury loft apartments, is soon to be graced with the Radio Lofts luxury condominiums, a new IMAX theater and a renovated aquarium.[163]

However, it is clearly evident that all is not well with Camden's planned redevelopment projects. The challenges and litigation that have emerged out of Camden's sweeping urban redevelopment bear many similarities to others gone past and those before courts throughout the country. The struggle that is being waged in the Cramer Hill section epitomizes many of the topics at the center of the hotly contested property rights arena in the United States. How is "public use" defined? Is it appropriate to transfer condemned private property to other private entities for development? Can urban redevelopment projects be racially and economically discriminatory or violate individual and civil rights? These are among the serious questions pending before the highest court in the land, and decisions in those cases have the potential to drastically alter the face of private property rights in the United States.

Eminent domain has been described as the "800-pound gorilla at the center of the debate over redevelopment in New Jersey."[164] The long-standing exercise of this governmental power has paved the way for innumerable beneficial projects throughout the history of New Jersey and the United states. However, condemnation and eminent domain actions do not come without a cost. The proposed Camden project's implications are twofold: pumping much needed life into an impoverished and destitute city, and generating legal battles

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[161] *Id*. at 139-142.

[162] Kevin Riordan, *A new college town emerges*, COURIER-POST, Apr. 25, 2004, at 9S.

[163] Kevin Riordan, *Waterfront evolves into a family-fun hotspot*, COURIER-POST, Apr. 25, 2004, at 6S.

[164] Richard Pearsall, *Eminent domain before the high court*, COURIER-POST, Jan. 9, 2005, at 7A.

that sit on the forefront of currently evolving American property rights jurisprudence. Whether the disputes over these plans rest on the cusp of a revolution in property law or will be defeated by the maintenance of the eminent domain status quo remains to be seen - all in CAMDEN 2015.