EVICTED FROM THE AMERICAN DREAM:

THE REDEVELOPMENT OF MOUNT HOLLY GARDENS

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INTRODUCTION AND SUMMARY

Redevelopment can be a powerful tool to revitalize local communities and neighborhoods. It has special relevance in New Jersey, where the relative scarcity of undeveloped land focuses attention on previously developed areas whose vitality may have diminished with the forces and passage of time.

Like all governmental powers, however, the redevelopment power is susceptible to misuse. The history of post-World War II "urban renewal" projects that shattered low-income communities is an unhappy reminder of the possible consequences of the indiscriminate exercise of such sweeping powers.¹

The Department of the Public Advocate has, since its restoration in 2006, argued for reform of the laws that govern the use of eminent domain for private redevelopment, in order to protect the rights of tenants and property owners. In two short years, remarkable progress has been achieved in the courts, including the landmark decision in *Gallenthin Realty Development, Inc. v. Borough of Paulsboro*. In *Gallenthin*, the New Jersey Supreme Court reinforced the state constitutional limitation on the use of

¹ For one of the most influential critiques of the "shim clearance" techniques of the 1950s and 1960s, *see* Jane Jacobs, *The Death and Life of Great American Cities* (1961). In particular, Jacobs argued for urban revitalization programs that preserved the uniqueness inherent in individual neighborhoods, rather than clearance and attempts to create new communities.

 $^{^{2}}$ 191 N.J. 344 (2007).

eminent domain for redevelopment to those areas that meet the constitutional definition of "blight." The Court made clear that this definition is not broad enough to include properties simply because the municipality believes that they can be put to a more productive use. The courts have also inter-posed significant procedural protections that require meaningful notice and a fair hearing before a municipality attempts to designate an area as "blighted."

The New Jersey Constitution's requirement of "blight" has provided an authoritative basis for reining in the improper exercise of redevelopment powers such as eminent domain. But some have questioned the uncritical reliance on the concept of "blight" as inevitably leading to a disproportionate impact on economically disadvantaged communities.⁴ The reasoning behind such criticism seems unimpeachable. Simply put, poor people live in blighted areas; rich people do not. Redevelopment is not only the act of

³ Harrison Redevelopment Agency v. DeRose, 398 N.J. Super. 361 (App. Div. 2008).

⁴ See, e,g., Amanda W. Goodin, Rejecting the Return to Blight in Post-Kelo State Legislation, 82 N.Y.U. L. Rev. 177,199-200 (2007) (citations and footnotes omitted):

Some commentators have argued that "justifying eminent domain on a finding of blight invariably targets low-income communities. . . ." This seems to be a particularly accurate prediction regarding restrictive definitions of blight, because the factors that constitute blight are more likely to be found in low-income areas-for example, the less-valuable buildings in low-income neighborhoods are far more likely to be "dilapidated, unsanitary, unsafe, vermin-infested or lacking in the facilities and equipment required by statute or an applicable municipal code" than buildings in upper-and middle-income neighborhoods.

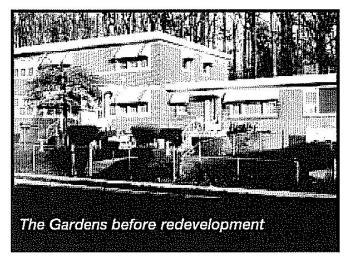
creation, but also, at least in part, of deconstruction of elements of the existing community. It can involve the displacement of people from their homes and the elimination of existing businesses. Economically disadvantaged communities are inherently more susceptible to these negative effects of redevelopment when the use of redevelopment powers is linked to the existence of "blight."

If applied in isolation, therefore, the "blight" requirement could lead to the very result that the New Jersey Supreme Court has said, in many different contexts, is anathema to our state constitutional jurisprudence: disparate treatment by government of its economically disadvantaged residents. But our Constitution is not read in a piecemeal fashion. While the famous Mount Laurel cases dealt with exclusionary zoning ordinances that had a disparate impact on low-income households, the Court made clear that the principle of equity applies to all exercises of governmental power, including redevelopment: "It is plain beyond dispute that proper provision for adequate housing of all categories of people is certainly an absolute essential in promotion of the general welfare required in all local land use regulation."5 Thus, whenever government exercises any of its redevelopment powers, including in areas that may properly be found to be "blighted," our state constitution requires it to do so in a way that is consistent with its obligation of fairness and equity to low-income residents.

The theme of this study is the effect of the use of redevelopment powers other than eminent domain in

⁵ South Burlington County NAACP v. Mount Laurel, 67 N.J. 151, 179 (1975) (emphasis added).

a residential neighborhood in Mount Holly Township. This study was triggered by our concern that a core value embedded in our state constitution—that all government powers must be exercised fairly with respect to low-income residents—has not been successfully or completely translated into the statutes and practices that govern the everyday implementation of redevelopment plans.



Mount Holly Gardens was built in the mid-1950s to satisfy the housing needs of enlisted military personnel and their families in the Fort Dix and McGuire Air Force Base defense area. The 379 low-rise, garden apartment-style units have provided affordable housing to the low-and moderate-income residents of the Gardens for the past fifty years. Like many older, low-income communities, the Gardens has faced a number of challenges over the years, including deteriorating building conditions caused in part by negligent absentee landlords, a significant number of vacant properties, and a crime problem.

But our visits to Mount Holly Gardens also revealed a community in every sense of the word: a close-knit collective whose residents have worked and lived together and depended on one another in all aspects of daily life. As one young resident explained, "All of us here are like family. We live with each other, basically help each other our" The remaining residents are fiercely loyal to, and protective of, one another, and they are determined to preserve their sense of community.

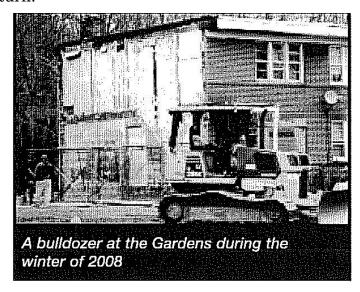
The Township's finding of "blight" in Mount Holly Gardens, since upheld by the courts, would justify the exercise of eminent domain for redevelopment. But thus far, the Township has mainly avoided using its condemnation powers in the Gardens. It has, however, exercised other redevelopment powers that have had drastic consequences: (1) The Township has purchased properties at set prices it has offered based on appraisals that have never been tested in court. Our research shows these prices to be insufficient to allow most former homeowners to buy decent replacement homes in Mount Holly. (2) The Township has provided relocation assistance in excess of what the law requires to some households while offering nothing to others. Even tenants who received the most generous relocation assistance, however, paid so much more in new rents on average as to far exceed the level of assistance they received. (3) Having purchased a

⁶ Public Hearing on the Redev. of Mount Holly Gardens, Dep't of the Public Advocate, Tr. 51:1-3 (Dec. 12, 2007) (statement of Garrick Rodriguez) [hereinafter "Public Hearing"] (on file with Dep't of the Public Advocate).

⁷ Citizens in Action v. Twp. of Mount Holly, No. A-1099-05T3, slip op. at 32-34 (N.J. App. Div. 2007), cert. denied, 193 N.J. 275 (Dec. 4, 2007).

majority of the units in the Gardens, the Township has either demolished them or boarded them up and marked them with conspicuous "No Trespassing" signs. By its own actions, the Township has thus removed any further doubt as to whether the area is "blighted;" if it wasn't before, it is now.

The result has been the dispersal and partial destruction of the existing community. Most former residents, pressed by the boarded-up units and the ongoing demolitions, have simply moved on. Those who remain are unable to receive any assurances from the Township that they will be able to live in the redevelopment after the project is complete; the Township has said that it cannot answer that question until it knows how many residents want to come back, thus indicating that it would not be able to accommodate them if all the remaining residents wished to return.



While the negative results of the redevelopment efforts are distressing, it appears that, with a few possible exceptions, they are nevertheless permitted under existing statutes governing redevelopment and relocation. This is the most disturbing conclusion of this study, and undergirds our call for quick remedial action. Whatever their original intent may have been, the current compensation and relocation assistance laws allow a redevelopment to proceed, triggering the displacement of large numbers of residents, without ensuring that every resident is protected against the immediate and foreseeable adverse consequences of the redevelopment.

The first duty of any local government is to its existing residents. The law should not permit a municipality to proceed on the assumption that some of its residents, regardless of their economic status, will simply disappear for the convenience of those who remain or who arrive to replace those who have left. It is our hope that statutory reform will reconcile the laws governing compensation and relocation with the overriding principle that the costs of redeveloping a community should not be borne by those who can least afford it.

Specifically, we have identified three critical areas for reform.

- First, the law must demand that municipalities pay displaced homeowners and tenants enough to enable them to relocate to decent, safe, sanitary, and comparable replacement homes.
- Second, the laws must guarantee that residents who move away receive relocation assistance and that they can qualify for such assistance on their own timetable—when they are ready to go.

 Third, when redevelopment results in the demolition of affordable housing, the municipalities must be required to replace as much of this housing as possible so as to avoid aggravating an already dire shortage of affordable housing in the State.

Statutory reform is critical if the laws are to achieve equity for residents of areas in need of redevelopment. Without that equity, the process of redevelopment will be marked by the perverse result of harming the vulnerable constituents that the redevelopment of "blighted areas" is ostensibly intended to help.

Methodology

In an effort to understand how the redevelopment process affects residents once a municipality designates an area as "blighted" or "in need of redevelopment," the Department of the Public Advocate undertook an investigation of the redevelopment of Mount Holly Gardens in Mount Holly Township. Our investigation began in the fall of 2007.



During the past year, we have interviewed dozens of current and former residents of the Gardens and their families and met with representatives of community groups based in Mount Holly. On December 12, 2007, more than 100 people attended a public hearing we held to hear testimony about the Gardens redevelopment. We also participated in a community forum in April 2008 with local activists and South Jersey Legal Services, which represents some Gardens residents in fighting the redevelopment in the courts. During the summer of 2008, twenty-seven former residents completed surveys detailing their individual experiences relocating from the Gardens.

We also met on several occasions with representatives from the Township; its redeveloper, Keating Urban Partners; and its relocation consultant, Triad Associates. In addition to these meetings, we reviewed Township documents responding to our public hearing and our Open Public Records Act requests. In April 2008, we issued a subpoena to the Township and, as a result, were able to review every file maintained at the time that related to the Township's relocation efforts.

We complemented this investigative work with extensive legal and policy research: analysis of current state and federal law and various reform proposals; review of press coverage of the Gardens spanning five decades to enhance our understanding of the community; examination of government and private real estate market information to assess the real-world value of relocation assistance; and evaluation of other state agencies' relocation and compensation practices.

A Profile of Mount Holly Gardens

During the Korean War in the mid-1950s, Mount Holly Gardens was built as part of a larger plan to create 1,800 new housing units within a twelve-mile radius of Fort Dix and McGuire Air Force Base.⁸ Designed for rank-and-file members of the military, the more than 350 two-story, attached units in the Gardens have been a source of scarce affordable housing in the region ever since.

Various sources of data dating from the year 2000 or later reveal the recent demographics of Mount Holly Gardens. During this period, the residents fell almost entirely within the low- to moderate-income range—forty-seven percent of the households earned less than \$20,000 per year; forty-three percent earned between \$20,000 and \$40,000; nine percent earned more than \$40,000; and 0.7% earned more than \$60,000.9 Fifteen percent of households were headed by senior citizens. 10 Of the 1,605 individuals who lived in the Gardens at the time of the 2000 census, forty-four percent were

⁸ Ileen Schwartz-Henderson, *Mount Holly Gardens: Yesterday, Today, and Tomorrow*, The Burlington Gazette, September 9, 1987, at 1.

⁹ Citizens in Action, No. A-1099-05T3, slip op. at 5 (N.J. App. Div. 2007); THP, Inc., Neighborhood Issues Analysis: The Gardens Redevelopment Study 2 (Oct. 9, 2000) (on file with Dep't of the Public Advocate).

¹⁰ Triad Associates, Workable Relocation Assistance Plan: Township of Mount Holly, West End Redevelopment Project 3 (2006) [hereinafter "WRAP"] (on file with Dep't of the Public Advocate).

African-American, twenty-two percent were Hispanic, and twenty-eight percent were non-Hispanic White.¹¹

For the past half century, the Gardens has been a close-knit community whose residents have repeatedly come together to respond to challenges that have arisen over the decades. In the 1980s and 90s, residents protested against absentee landlords who were not properly caring for their properties, 12 developed a program to assist individuals to purchase units from absentee landlords, 13 and worked with local police to stop drug-related crime. 14 Even with the challenges the community faced residents felt strongly about the benefits of living in the Gardens: "We've never felt unsafe down here. People look out for each other. I like the neighborhood, I wouldn't live anywhere else." 15

Ultimately, the Township did not view the community's efforts as sufficient to bring about the revitalization that it envisioned, and it took steps of its own to redevelop the community. In October 2002, the Township passed a resolution designating most of the Gardens as "blighted" or "in need of redevelopment," citing the poor maintenance of the buildings,

 $^{^{11}}$ Citizens in Action, No. A-1099-05T3, slip op. at 3 (N.J. App. Div. 2007).

¹² Ileen Schwartz-Henderson, *Township, Gardens Residents Meet in Forum*, The Burlington Gazette, October 14, 1987; Christopher Quinn, *Renters, Key Landlord at Odds Over Who To Blame*, Burlington County Herald, December 10, 1981, at 3.

¹³ Patricia Parente, *Mount Holly Housing Group Showcases Its Efforts*, Burlington County Times, December 4, 1996.

 $^{^{14}}$ Schwartz-Henderson, $Township,\ Gardens\ Residents\ Meet\ in\ Forum,\ supra\ note\ 12.$

 $^{^{15}}$ Tina Kelly, Seeds of Hope in Mt. Holly Development, The Philadelphia Inquirer, Nov. 8, 1989, at 28-BR.

the elevated crime rate, and the limited common recreation space in the area.¹⁶

The next year, the Township Council adopted a redevelopment plan, the Gardens Area Redevelopment Plan (GARP), and passed an ordinance allowing the Township to acquire property in the redevelopment area. The adoption of the GARP, the Township was allowed, under State law, to "proceed with the clearance, replanning, development and redevelopment of the area designated in that plan. The redevelopment plan, officially amended and renamed the West Rancocas Redevelopment Plan in 2005, has undergone several revisions. None of the iterations of the plan has made clear what will eventually be constructed in the redevelopment area.

 $^{^{16}}$ Mount Holly, N.J., Resolution 2002-217 (Oct. 28, 2002); accord Citizens in Action, No. A-1099-05T3, slip op. at 6-9 (N.J. App. Div. 2007).

¹⁷ Mount Holly, N.J., Ordinances 2003-12 (Sept. 8, 2003), 2003-37 (Nov. 10, 2003) (both on file with Dep't of the Public Advocate); Janice E. Talley, *The Gardens Area Redevelopment Plan* (May 2003), Pls.' App. Vol. II at 164a, *Citizens in Action*, No. A-1099-05T3 (N.J. App. Div. 2007).

¹⁸ N.J. Stat. Ann. § 40A:12A-8.

¹⁹ H2M Associates, West Rancocas Redevelopment Plan 23 (rev. Feb. 21, 2005) (on file with Dep't of the Public Advocate); Statement of Mount Holly Township in Response to Questions of the Public Advocate 1 (Jan. 24, 2008) [hereinafter January 24, 2008, Mount Holly Statement] (on file with Dep't of the Public Advocate).

²⁰ The latest version of the plan, amended as of Sept. 8, 2008, remains indefinite. It calls for "a maximum of 520 dwelling units" and states that, 'quip to 75% of the residential units may be townhouses" and that "[a]partment units may comprise up to 50% of the total residential units." H2M Associates, *West Rancocas*

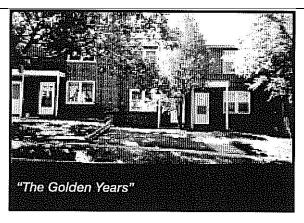
To this day, current residents remain uncertain about what will replace their homes and whether there will be any place for them in the new development: As a community organizer who works with Gardens residents explained, "[The residents] liv[e] in fear . . . of their future . . . [T]he plan keeps changing. Everybody we go to, the plan's different. I understand that things have to be worked out, the plans have to change, but it's just a very fearful situation for everybody living there."21

Mount Holly Gardens—A Timeline

1950s Mount Holly Gardens was built to accommodate enlisted military personnel and their families. The Federal Housing Authority (FHA) bought and managed the attached, garden-style apartments after the builder defaulted on its mortgage. The FHA provided on-site maintenance staff and sustained what one resident called a "high quality of life" for the community. Gardens residents refer to this period as the "Golden Years."

Redevelopment Plan 4, 5 (rev. Sept. 8, 2008) [hereinafter September 2008 Redevelopment Plan] (on file with Dep't of the Public Advocate); see also Mount Holly, N.J., Ordinance 2008-25 (Sept. 22, 2008) (adopting amended plan) (on file with Dep't of the Public Advocate).

 $^{^{21}}$ Public Hearing, $supra\,$ note 6, Tr. 34:24-35:6 (statement of Doris Pulone).



1960s The FHA sold the Gardens to Mazeltuff Realty Corporation of New York City. Soon after the sale, conditions in the Gardens deteriorated. While the Township cited Mazeltuff for code violations, it took limited action to force the landlord to fix the problems it had identified. Tenants formed Citizens in Action to push the Township to do more to enforce the housing code, after which some tenant activists were evicted. In response to tenant complaints, the State investigated some properties and issued an order requiring the landlord to correct multiple violations of state housing lam

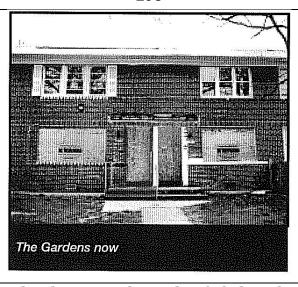
1970s Properties continued to deteriorate. Mazeltuff Realty sold its properties to individual buyers—both absentee landlords and owner-occupants. While the Township brought occasional enforcement actions against negligent landlords, these actions were not sufficient to arrest the decline. Community groups attempted to purchase the Gardens but were unsuccessful.

1980s Negligent absentee landlords continued to allow their properties to fall into disrepair. As one individual explained: "It goes in cycles. . . . The

Township gets tough, the owners give token cosmetic improvements and everybody's happy for six months. Then, the problems start all over again." A community organization, Strength to Love, attempted to work with absentee landlords and Township officials to improve housing conditions. Drug-related crime increased as dealers began selling drugs in certain alleys in the Gardens. According to the Township, only a very small percentage of residents were involved, and often the people arrested were from outside of the Gardens. The community worked with the police, and by the end of the decade the crime problem had lessened.

1990s Residents, community organizers, and Township representatives formed the Mount Holly Gardens Revitalization Association to address the enduring issue of decline. The Association commissioned a redevelopment plan which proposed that the Township acquire all 225 rental units in the Gardens and transfer them to a nonprofit organization, which would rehabilitate them. While the Township supported the plan in many ways, it did not provide the resources necessary to accomplish its goals. Mount Holly 2000, the nonprofit formed to oversee the rehabilitation of the Gardens, was ultimately able to acquire and renovate only eleven properties. Although drug-related crime persisted, the community and the police continued to fight it together. The Township opened a police substation and community center in the Gardens.

2000s The Township declared the Gardens to be "blighted," acquired more than 200 properties, boarded up vacant units, and began demolitions. The police substation and community center were closed.



The redevelopment plans also failed to discuss in any detail which residents the Township would displace or how it would help those it did displace. The financial and other assistance a municipality is required to provide to displaced residents would be included in the Township's Workable Relocation Assistance Plan (WRAP), filed in September 2006. In the nearly four years that elapsed between the blight designation in October 2002 and the filing of the WRAP in September 2006, residents had neither information about nor access to relocation assistance. During that period, however, the Township moved forward with its plan; according to press reports, it had acquired 170 properties in the Gardens by February 2006.²² By the time the WRAP was filed in September 2006, 116 Township-owned units were vacant. 23 We do not know when or why the residents of those units left.

²² Carol Comegno, *Mount Holly Signs Deal on the Gardens*, Courier-Post, Feb. 16, 2006, at 1G.

²³ WRAP, supra note 10, at 3.

In addition to declining to offer assistance to those who moved out of the Gardens before the WRAP was filed, the Township has informed residents who moved into the Gardens after August 1, 2006, that they are ineligible for relocation assistance,²⁴ although some seem to have been offered \$500 in moving expenses.

The WRAP identified 179 households in the Gardens as potentially eligible for relocation assistance.²⁵ As of January 2008, the Township had provided relocation assistance to sixty-two households.²⁶ Rather than forcing the members of those households to wait until the Township determined it was ready to purchase their property, as the law allows, the Township agreed to provide assistance when they were ready to relocate.²⁷ It also offered greater financial assistance than the statutorily required amounts for both homeowners and tenants.²⁸

Unfortunately, even the more generous assistance offered by Mount Holly has been insufficient to cover the actual costs of relocation. Of those individuals with whom we have been in contact or whose relocation records we reviewed, both displaced homeowners and tenants have taken on significant additional costs following their relocation. Displaced homeowners

²⁴ WRAP, supra note 10, at 5; Letter from M. James Maley, Jr., Township of Mount Holly Redevelopment Counsel, to Ronald K. Chen, Public Advocate (July 16, 2008) (on file with Dep't of the Public Advocate).

²⁵ WRAP, supra note 10, at 3.

 $^{^{26}}$ January 24, 2008, Mount Holly Statement, supra note 19, at 8.

²⁷ WRAP, supra note 10, at 4-5.

²⁸ WRAP, supra note 10, at 6.

either were not able to purchase another home or had to take on more debt than they had in the Gardens. Renters who were displaced are financially strained because the rental assistance provided by the Township has not offset the additional costs of the more expensive apartments to which they have relocated.

Moreover, the sixty-two relocated once part of a close community, have scattered. Only nineteen relocated within Mount Holly; thirty-nine went to other municipalities in New Jersey; three moved out of state; and one left the country.²⁹

Then there are those who remain in the Gardens. The Township began demolishing housing in March 2004,³⁰ and had torn down seventy-five of the 232 units it owned as of August 2008.³¹ It has boarded up dozens of additional properties. The dismantling of the neighborhood has taken an emotional and physical toll on the families and individuals still living in the Gardens.

In 2003, a group of residents, represented by South Jersey Legal Services, challenged the blight designation and redevelopment plan and claimed an array of civil rights violations in a state court lawsuit. In 2005, the trial court upheld the designation as supported by substantial evidence and dismissed the remaining

 $^{^{29}}$ January 24, 2008, Mount Holly Statement, supra note 19, at 8.

³⁰ The Township demolished the first seventeen Gardens homes in March 2004. Carol Comegno, *Demolition of Gardens Homes Will Continue*, Courier-Post, March 16, 2004, at 2G.

 $^{^{31}}$ Certif. of Kathleen Hoffman \P 2 (undated), Dfs.' Br. Opp. Mot. Prelim. Inj., *Mt. Holly Citizens in Action, Inc. v. Twp. of Mount Holly*, No. 1:08-cv-02584 (D.N.J. Aug. 19, 2008).

claims. The Appellate Division affirmed in 2007, and the New Jersey Supreme Court declined to hear the case.³² Some of those same residents, and some others, have since filed a federal case arguing primarily that the redevelopment violates laws that forbid discrimination on the basis of race or ethnicity in housing.³³ This case is ongoing.

The Scope of Our Analysis

The residents of Mount Holly Gardens have asked many questions about the redevelopment, only some of which we address in this report.

- "I'm raising three grandchildren . . . I'm seventy-six years old. Where am I going to get a mortgage? . . . Where am I going to go with three children: seven, fifteen, and sixteen [years old]?"³⁴
- "Who can afford a mortgage on a \$150,000 condominium, \$250,000 for a three-bedroom? Who can afford that at seventy years old?" 35
- "How . . . [is the municipality] going to buy my house for \$50,000 or whatever and tell me [I]

 $^{^{32}}$ Citizens in Action v. Twp. of Mount Holly, No. A-1099-0513, slip op. at 32-34 (N.J. App. Div. 2007), cert. denied, 193 N.J. 275 (Dec. 4, 2007).

 $^{^{33}}$ Am. Compl., *Mt. Holly Gardens Citizens in Action, Inc.*, No. 1:08-cv-02584 (D.N.J. June 10, 2008).

³⁴ Public Hearing, *supra* note 6, Tr. 80:20-81:15 (statement of Rosemary Roberts, seventy-six-year-old homeowner in the Gardens raising three grandchildren).

³⁵ Public Hearing, *supra* note 6, Tr. 94:14-17 (statement of Jurgen Mozee, former resident who lived in the Gardens for decades until he and his mother relocated in April 2008).

can buy a house . . . for \$200,000? Where am I going to get that kind of money?"³⁶



Looking Back over Several Decades in the Gardens and Forward to Returning There

At seventy-two years of age and in reasonably good health, Lieselotte Rich said she expected to have more control over her life than she has. She and her husband, Carl, purchased their home in the Gardens in November 1969 and expected to leave it to their seven children.

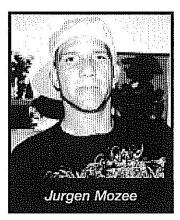
Several years ago, when the Riches heard talk about blight and eminent domain in the Gardens, they were determined not to sell the home they loved. They were not willing to trade the Township anything for their little piece of this community.

Jurgen Mozee, Mrs. Rich's fifty-two-year-old son, remembers his childhood in the Gardens as a life-

³⁶ Public Hearing, *supra* note 6, Tr. 23:13-17 (statement of Nancy Lopez, a single mother who raised her five children in the Gardens).

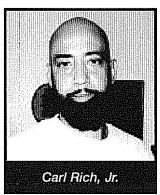
enriching experience. "I would leave festivities at my house to visit a number of neighbors uninvited. I never felt unwelcome by anyone in the neighborhood. In the Gardens, my family was the people who lived at home with me in addition to the people who lived with us in our community." The adults communicated with kids in a way that made him feel valued, "important and sure of myself."

In addition, Jurgen found "mentors and role models" among his neighbors. "The Gardens was a community with a wealth of skills." He lived among teachers, mechanics, roofers, and masons, among others. The many skilled residents were glad to help anyone in the Gardens who needed their skill.



Jurgen and Carl Rich, Jr., Mrs. Rich's youngest son, agreed that the Gardens started to change around twenty years ago, at about the same time that rumors and talk of blight and eminent domain began. They pointed to the actions of some property owners as a factor in the change "Some absentee property owners began to rent to families without a known source of income because the family was willing to pay much more than what was the typical rent." "Everyone knew there were drug dealers in

the Gardens," Jurgen continued. "One of the alleys in the Gardens was known as 'Cocaine Alley."



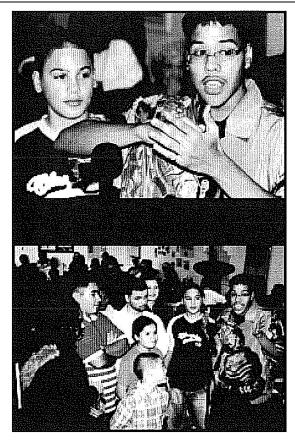
Along with these changes came rumors that the Gardens was a dangerous place. Jurgen and Carl Jr. agreed that "the talk simply was not true." When he was a teenager, Carl Jr. met a teenage girl who did not live in the Gardens. When she learned he lived in the Gardens, she exclaimed, "The Gardens! Aren't there machine guns and everything down there?" Carl Jr. responded, "Where? Tell me, because I don't know anything about any machine guns."

Mrs. Rich said she never felt unsafe when she lived in the Gardens. She and her husband would visit her relatives in Germany for a month at a time leaving their home empty. When they returned from their trips, their home was as they had left it.

Following her husband's death about three years ago, Mrs. Rich grew more ill at ease as her community emptied, with only a fraction of the families that used to live there. Seeing the bright orange signs on vacant homes was a constant reminder of the coming demolitions. In the past, the Township bulldozed some homes before all of the families in the adjoining homes had moved. Mrs. Rich said one

such demolition caused her bathroom and bedroom ceilings to collapse.

After years of talking to her, Jurgen finally convinced his proud mother to leave the Gardens. They moved from their three-bedroom home into a two-bedroom rental apartment in Lumberton. They could not afford to buy, and besides, they want to go back. Mrs. Rich hopes to become one of the first homeowners to take up residence in the new Gardens.



• 'I'm still in school. I hear I have to leave . . . I want to go to school. I want to fulfill what

maybe my parents didn't do or couldn't do. I want to make something with my life. Now . . . the Township is saying that we can't fulfill this. What ant I going to do?".³⁷

- "Everybody has their families out here . . . don't want to move from this area. Why would I want to move front an area where I just built my life? If they take this away from us what do the people . . . have for hope anymore?"³⁸
- "What's going to happen when I have to move away? I don't want to go back out there. I don't want to go, to have to move away from my family."
- "I came here five years ago thinking that I was going to have a better life and I do have it. Why do they want to take that away from me?".⁴⁰
- "Now the Gardens is almost desolate . . . Now, should the Gardens be like that? No, [it] shouldn't be. [The Township] should have just told us what [it] can do to help us. [It] could have helped us.⁴¹

³⁷ Public Hearing, *supra* note 6, Tr. 115:2-3; 116:8-13 (statement of Justin Rodriguez, seventeen-year-old resident)

³⁸ Public Hearing, *supra* note 6, Tr. 53:2-10 (statement of Garrick Rodriguez, twenty-year-old resident).

³⁹ Public Hearing, *supra* note 6, Tr. 60:21-24 (statement of Taisha Tirado, renter who moved to the Gardens in 2004).

⁴⁰ Public Hearing, *supra* note 6, Tr. 120:8-11 (statement of Alexander Molina, sixteen-year-old resident).

 $^{^{41}}$ Public Hearing, supra note 6, Tr. 46:1-6 (statement of Carlos Rodriguez II, fourteen-year-old former resident).

These are important questions in particular, it would be well worth studying what actions might have ameliorated the problems that the Township cited in 2002 as reasons for declaring the area "blighted." Those problems were not new, and both residents of the Gardens and government officials had made efforts over the years to address them as they developed. Had these or other efforts succeeded, they might have prevented a decline into "blight" and saved the Gardens from the demolition now under way.

Residents have also questioned whether their neighborhood was really "blighted" when the designation was made in 2002 or fell into this condition only afterwards, as the Township purchased, boarded up, and tore down units.⁴² While we have criticized blight designations in other contexts,⁴³ this has not been our focus in Mount Holly. Residents have also objected that the redevelopment will force African-American and Latino families out of the Township, in violation

⁴² Citizens in Action, No. A-1099-05T3, slip op. at 13, 23-35 (N.J. App. Div. 2007).

⁴³ See, e.g., Brief for Dep't of the Public Advocate as Amicus Curiae Supporting Petitioners, Gallenthin Realty Dee., Inc. v. Borough of Paulsboro, 191 N.J. 344 (2007); Brief for Dep't of the Public Advocate as Amicus Curiae Supporting Appellants, City of Long Branch v. Anzalone, No. 0067-06T2 (N.J. App. Div. 2008); Brief for Dep't of the Public Advocate as Amicus Curiae Supporting Respondents, LBK Associates, LLC v. Borough of Lodi, No. A-1829-05T2 (N.J. App. Div. 2007); Dep't of the Public Advocate, In Need of Redevelopment: Repairing New Jersey's Eminent Domain Laws, Abuses and Remedies, A Follow-Up Report (2007); Dep't of the Public Advocate, Reforming the Use of Eminent Domain for Private Redevelopment in New Jersey (2006). To view any of these documents, visit the Public Advocate's webpage on eminent domain at http://www.state.nj.us/public advocate/public/issues/eminentdomain.html.

of laws that guarantee fair and equal housing opportunities to all.⁴⁴ This issue, too, is beyond the scope of our current investigation.

We focus here, not on whether the redevelopment was justified at the outset, but rather on its consequences once it had begun. We have examined how the redevelopment process affects those who are displaced: Are they treated fairly? Are they kept whole? Are they better off after relocation? Do they get the assistance they need when they need it? Our investigation reveals that the answer to these questions is no.

PART PROVIDING ENOUGH ASSISTANCE TO KEEP DISPLACED RESIDENTS WHOLE

When a public redevelopment project requires families and individuals to move out of their homes, the municipality is legally obligated to pay for the properties it takes and to assist both owners and tenants in relocating. We discuss homeowners and renters separately because they have distinct rights under the law. Unfortunately, the thread that unites them is the insufficiency of the money they receive: it is not enough to allow them to relocate to similar homes in their own communities. Our investigation shows that residents displaced by redevelopment often end up in worse positions than they were in before.

HOMEOWNERS

The Mount Holly Gardens Experience

To comply with the state and federal constitutions, the government must pay a displaced homeowner "just

⁴⁴ Am. Compl., *Mt. Holly Gardens Citizens in Action, Inc.*, No. 1:08-cv-02584 (D.N.J. June 10, 2008).

compensation.⁴⁵ Just compensation is generally calculated as the "fair market value" of the property based on a professional appraisal.⁴⁶

In addition, two New Jersey statutes require the government to provide relocation assistance: the Relocation Assistance Law of 1967 (RAL)⁴⁷ and the Relocation Assistance Act of 1972 (RAA).⁴⁸ The stated purpose of these laws is to ensure "the fair and equitable treatment of [displaced] persons."⁴⁹ The legislature realized that displaced homeowners and tenants might face increased housing costs from forced relocations. To offset that anticipated financial hardship, the law requires government entities that

⁴⁵ Const. art. 1, ¶ 20; U.S. Const. amends. V, XIV.

⁴⁶ This is the standard measure of compensation for takings under the United States and New Jersey Constitutions. *Kimball Laundry Co. v. United States*, 338 U.S. 1, 5-6 (1949); *State by Roe v. Nordstrom*, 54 N.J. 50, 53 (1969) ("A condemnee must be made whole as a result of the condemnation proceeding. Although a sum of money equal to 'fair market value' cannot always be a perfect measuring stick for determining the worth of property to a landowner, the State must try as nearly as possible, employing objective standards, to replace the land which has been earmarked for public use with equivalent public funds.").

⁴⁷ N.J. Stat. Ann. §§ 52:31B-1 to -12.

⁴⁸ N.J. Stat. Arm. §§ 20:4-1 to -22. The RA.A does not replace the RAL but rather complements it. *In re Relocation Claim of Berwick Ice, Inc.*, 231 N.J. Super. 391, 396 (App. Div. 1989). Because the RAA is the more comprehensive and generous of the two statutes, litigants and agencies generally rely on the RAA to determine relocation assistance in cases where both statutes cover the government activity in question. Thus, while both statutes apply to governmental programs of land acquisition, we will refer mainly to the RAA.

⁴⁹ N.J. Stat. Ann. § 20:4-2; accord N.J. Stat. Ann. § 52:31B-2.

displace residents to pay up to specific dollar amounts of relocation assistance.⁵⁰ Beyond fair market value, relocation assistance for homeowners includes a replacement housing payment, moving costs, and costs incidental to relocation.⁵¹ Unfortunately, the cap for relocation assistance was set in 1972 and has not been increased or indexed since then.⁵² The RAA states that the replacement housing payment, which is the difference between the price paid for the property taken and the reasonable cost of a comparable replacement dwelling, shall "not [be] in excess of \$15,000."⁵³ This amount, as illustrated by the experiences of displaced Gardens homeowners, is insufficient to enable a low-or moderate-income household to purchase a decent, safe, and sanitary comparable replacement home.

The Township offered a set range of prices to every individual homeowner in the Gardens redevelopment area: \$27,000 to \$32,000 for a one-bedroom, \$39,000 to \$40,000 for a two-bedroom, and \$49,000 for a three-bedroom. These prices were based on appraisals the Township commissioned.⁵⁴ In addition, although under

⁵⁰ NJ. Stat. Ann. §§ 20:4-4 to-6.

 $^{^{51}}$ N.J. Stat. Ann. §§ 20:4-4, 20:4-5; N.J. Admin. Code §§ 5:11-3.2, 5:11-3.7.

⁵² N.J. Stat. Ann. §§ 20:4-5 (effective Jan. 1, 1972).

 $^{^{53}}$ N.J. Stat. Ann. §§ 20:4-5(a); accord N.J. Admin. Code § 5:11-3.7(a).

⁵⁴ See Appraisal from Todd and Black, Inc., Real Estate Appraisers and Consultants, to Kathleen Hoffman, Acting Mount Holly Township Manager, at 39 (June 29, 2007) (appraising 376 S. Martin Ave., a one-bedroom Gardens home) ("the unadjusted and adjusted range [of identified one-bedroom homes] is from \$27,000 to \$32,000"); Appraisal from Todd and Black, Inc., to Kathleen Hoffman, Acting Township Manager, at 40 (June 29, 2007) (appraising 259 Levis Dr., a two-bedroom Gardens home)

no legal obligation to do so, the Township offered homeowners a \$20,000 no-interest loan, to be re-paid when the replacement home is sold.⁵⁵

Our research suggests that the Township's appraisals were reduced because the properties were located in a redevelopment area the Township itself had created. The Mayor explained in a Township Council meeting in May 2008 that a home similar to homes in the Gardens had sold for more because it was outside the redevelopment area. ⁵⁶ One Township appraiser indicated, in his critique of a homeowner's higher appraisal, that the location of the homes in question within a redevelopment zone was a relevant factor that the homeowner's appraiser should have considered in the valuation. ⁵⁷ Moreover, the appraisals

("the unadjusted and adjusted range [of identified two-bedroom homes] is from \$39,000 to \$40,000"); Appraisal from Todd and Black, Inc., to Kathleen Hoffman, Acting Township Manager, at 40 (June 29, 2007) (appraising 327 N. Martin Ave., a three-bedroom Gardens home) (similar three-bedroom homes "sold for a sale price of \$49,000") (all on file with Dep't of the Public Advocate).

At least one absentee landlord received more. Harry W. Fry, principal of Fry Realty Co., was an absentee landlord who owned the largest number of units in the Gardens. He sold sixty-two units to the Township for approximately \$3.25 million, an average of about \$52,400 each. See Carol Comegno, Mount Holly Buys 63 More Homes in Gardens Section, Courier-Post, March 30, 2005, at 1G.

⁵⁵ WRAP, supra note 10, at 6.

⁵⁶ See Minutes for the Regular Meeting of Township Council 4 (May 27, 2008) (on file with Dep't of the Public Advocate).

⁵⁷ Appraisal from Todd and Black, Inc., Real Estate Appraisers and Consultants, to Patty Clayton, Township of Mount Holly (July 30, 2007) (appraising 112 Levis Drive, a two-bedroom home) ("The fact that this is a redevelopment zone should have been

prepared by the Township did not include comparable nearby homes outside the redevelopment area that sold for significantly amounts.⁵⁸ For example, a home just outside the redevelopment area sold recently for \$99,900, almost twice the price the Township paid for nearly identical homes inside the redevelopment area.⁵⁹ Two other homes within half a mile of the redevelopment area, and also similar to the housing there, recently sold for \$82,000 and \$87,000.⁶⁰ A municipality should not be permitted to devalue the properties it intends to purchase by relying on their location in a redevelopment area it designated. In fact, if the Township had acquired the properties in Mount Holly Gardens by eminent domain, the law would have prohibited it from reducing their value as a result

discussed in [the 'neighborhood'] section. It is alluded to by the appraiser, where he says'... the twp. commitment to demolish the development...") (homeowner's appraiser had valued the two-bedroom home at \$64,000; Township appraised it at \$39,000 to \$42,000, *id.*) (on file with Dep't of the Public Advocate).

⁵⁸ *E.g.*, compare Appraisal from Todd and Black, Inc., Real Estate Appraisers and Consultants, to Patty Clayton, Township of Mount Holly (July 30, 2007) (appraising 11.2 Levis Drive) *with* Appraisal from Leo J. Solomon to Pamela and Nelson Hayspell, owners of 112 Levis Drive, at 2 (May 2, 2007) (both on file with Dep't of the Public Advocate).

 $^{^{59}}$ Appraisal from Leo J. Solomon to Pamela and Nelson Hayspell, supra note 58, at 2.

⁶⁰ New Jersey Association of County Tax Boards, http://www.njactb.org (follow "Record Search" hyperlink; submit search for owner name "Diamond" in Mount Holly, Burlington County) (154 Grant Street sold for \$82,000 on October 30, 2007, and 124 Brown Street sold for 587,000 on October 30, 2007) (last visited Sept. 26, 2008).

of the blight designation.⁶¹ Because the Township has been purchasing properties through negotiation rather than condemnation proceedings, however, there has not yet been judicial or other third-party review of its valuation practices.

Whether or not the Township's offers to Gardens homeowners represent the fair market value of their properties, however, individual owners who sold at the prices offered have had difficulty relocating to comparable housing. We have information about six former homeowners who had left the Gardens as of May 2008. (The number is small because many owner-occupants remained in their homes; it was primarily landlords who had sold to the Township.

Two of these homeowners could not afford to purchase replacement homes. Carole Richardson, a seventy-one-year-old retiree living on a fixed income, sold her two-bedroom home to the Township and bought a used trailer with the proceeds.⁶²

⁶¹ See Housing Auth. v. Ricciardi, 176 N.J. Super. 13, 1822 (App. Div. 1980) (citing N.J. Stat. Ann. §§ 20:3-30, 20:3-38) ("[W]hen there is an eventual taking of property in an area which has been declared blighted, the property owner is entitled to no less than the value of his land on the date of the declaration.").

 $^{^{\}rm 62}$ Interview with Carole Richardson in Vincentown, N.J. (June 13, 2008).

Losing a Home



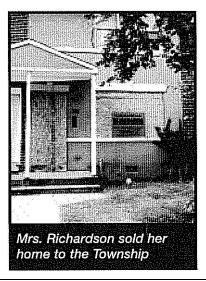
Eleven years ago, Carole Richardson became a first-time homeowner and fell in love with her renovated two-bedroom house. "Everything was brand new, everything was nice," she said. Mrs. Richardson also loved the Gardens community. "Everybody called me Ms. Carole. Little kids would say, 'Hi Ms. Carole."

Mrs. Richardson recalled attending a meeting called by the Township. The meeting was chaotic. There was a lot of yelling. She heard someone say, "If you don't leave when you're supposed to, a policeman will escort you from your home and you won't be able to get your belongings."

The big orange "NO TRESPASSING" signs nailed to vacant houses, the demolitions, and the silence that had fallen over evenings and nighttimes in the neighborhood were frightening to her. Mrs. Richardson kept replaying the words she had heard at the Township's meeting.

The Township offered her \$39,000 plus \$15,000 toward a replacement home. Her monthly mortgage had been \$320. After she paid off the balance of her mortgage, Mrs. Richardson had only enough to purchase a used trailer in Southampton for \$17,000. She pays \$450 a month for the trailer pad.

Remembering her home in the Gardens, her friendships, and the community still makes Mrs. Richardson cry. "I never expected to live a life of luxury, but you get a house and you figure you'll be there until you die."



Lieselotte Rich, another senior citizen, and her adult son, Jurgen Mozee, moved from the three-bedroom home they had owned in the Gardens since 1969.⁶³ The

⁶³ Deed between Lieselotte Rich, Administrator for the Estate of Carl Daniel Rich, and Lieselotte Rich (July 29, 2005), available at http://co.burlington.nj.us/departments/countyclerkrecords/search.htm (search first name "Lieselotte" last name "Rich"; then follow "4201465" hyperlink; then follow "View Document" hyperlink).

Township purchased their home for \$49,000 plus \$15,000 in relocation assistance.⁶⁴ After paying off a \$30,000 mortgage, they moved to a two-bedroom apartment in Lumberton which they rent for \$1,240 a month.⁶⁵

Four of the homeowner households purchased replacement homes, but at higher prices than their homes in the Gardens. All four assumed more debt. For example, Evans Jackson, a sixty three-year-old machinist, lived in the Gardens for almost thirty years. He had purchased two two-bedroom, onebathroom units and combined them into a fourbedroom home with two full bathrooms. After finding out that the Gardens would be demolished rather than rehabilitated, Mr. Jackson decided to sell. The Township purchased his combined units in December 2006 for \$81,000. He used those funds, plus the \$15,000 replacement housing payment and the nointerest loan of \$20,000 (a total of \$116,000), to purchase a four-bedroom, one-bathroom home in Mount Holly for \$135,000. In the Gardens, he anticipated paying off his mortgage in three years;

⁶⁴ Deed between Lieselotte Rich and Township of Mount Holly (April 10, 2008), available at http://co.burlington.nj.us/departments/countyclerk/records/search.htm (search first name "Lieselotte" last name "Rich"; then follow "4544470" hyperlink; then follow "View Document" hyperlink); Memorandum from Gerard Velazquez, 111, Triad Associates, to Karen M. Donnelly, Vice President, Keating Urban Partners, LLC (April 14, 2008) (on File with Dep't of the Public Advocate).

⁶⁵ Telephone Survey with Lieselotte Rich (July 14, 2008); Interviews with Jurgen Mozee and Carl Rich, Jr. in Lumberton, N.J. (July 30, 2008); Lease between Lieselotte Rich and Jurgen Mozee and East Coast Lumberton (April 10, 2008) (on file with Dep't of the Public Advocate).

now, he is paying a thirty-year mortgage, and the new place needs some work. 66 Similarly, Hamid Ullah and his wife, Mahmuda Khanam, sold their two-bedroom unit in the Gardens to the Township for \$39,000 in May 2008. They used the proceeds of the sale, along with the \$15,000 in relocation assistance, the \$20,000 interest-free loan from the Township, and \$27,000 of their own savings to purchase a three-bedroom home in Mount Holly for \$290,000.

They now have a mortgage of \$190,000. Their monthly mortgage payments increased from \$352 in the Gardens to \$1,138 now.⁶⁷

⁶⁶ Telephone Survey with Evans Jackson (Sept. 5, 2008); Certif. of Evans Jackson ¶¶ 1, 3, 13 (April 25, 2004), Pls.' App. Vol. III at 500a-501a, 502a, Citizens in Action, No. A-1099-05T3 (N.J. App. Div. 2007); Deed between E.F.&C. Corp. and Evans Jackson (July 18, 1980); Memorandum from Gerard Velazquez, III, Triad Associates, to Karen M. Donnelly, Vice President, Keating Urban Partners, LLC (November 26, 2007) (on file with Dep't of the Public Advocate); Deed between Evans Jackson and Township of Mount Holly (November 27, 2007), available at http://co.burlington.nj.us/departments/countyclerk/records/search. htm (search first name "Evans" last name "Jackson"; then follow "4513688" hyper-link; then follow "View Document" hyperlink); Deed between Leonard and Donna Jeffries and Evans Jackson (November 29, 2007), available at http://co.burlington.nj.us/ departments/countyclerkrecords/search.htm (search first name "Evans" last name "Jackson"; then follow "4509229" hyperlink; then follow "View Document" hyperlink).

⁶⁷ Deed between Hamid Ullah and Mahmucia Khanam and the Township of Mount Holly (May 14, 2008), available at http://co.burlington.nj.us/departments/countyclerkrecords/search. htm (search first name "Hamid" last name "Ullah"; then follow "4561464" hyperlink; then follow "View Document" hyperlink); Contract of Sale between Hamid Ullah and Mahmuda Khanam and Tainzrian Investment Ent., Addendum (April 11, 2008) (on file with Dep't of the Public Advocate); Memorandum from

While this sample of former Gardens homeowners is too small to establish any definitive pattern, our research into the broader housing market points to the problem other Gardens owners may ultimately have to face: there is little to nothing available for the dollar amounts the Township is offering. The owner of the largest standard unit in the Gardens (a threebedroom) stands to receive up to \$84,000 from the Township: \$49,000 in "just compensation," \$15,000 in relocation assistance, and \$20,000 as an interest-free loan. There are virtually no homes in the community that a displaced owner can buy for \$84,000. A search on www.realtor.com for Mount Holly returned 318 listings: the average listing price for a Mount Holly area home was \$279,895; only three properties (0.94%) were listed below \$84,000.68 A search of the Multiple Listing Service for actual home sales in Mount Holly between July 2007 and July 2008 returned 127 recorded sales: the average sale price was \$206,560; only four properties (three percent) sold for under \$84,000, and all four included notes indicating extreme repairs were necessary. 69 According to the

Gerard Velazquez, 111, Triad Associates, to Karen M. Donnelly, Vice President, Keating Urban Partners, LLC (April 25, 2008) (on file with Dep't of the Public Advocate); Telephone Survey with Hamid Ullah (Aug. 4, 2008).

⁶⁸ www.realtor.com (last visited July 24, 2008) (search results for terms: "City: Mount Holly, State/Province: New Jersey" retrieved on Thursday, July 24) (to arrive at the average listing price, the individual entries were averaged; duplicative addresses were omitted, as were addresses that failed to list both the street address and the town) (on file with the Public Advocate).

 $^{^{69}}$ TREND Multiple Listing Service (July 2007-July 2008) (on file with Dep't of the Public Advocate):

New Jersey Association of Realtors (NJAR), the median sale price for a home in Burlington County in the first quarter of 2008 was \$242,200.70 The median sale price for a one- or two-bedroom home in South Jersey was \$167,100, for a three-bedroom home in South Jersey was \$213,100,71 and for any home in South Jersey was \$232,700.72 The median sale price of a home anywhere in New Jersey in the first quarter of 2008 was \$350,700.73 The NJAR estimates that a family trying to purchase a median-priced home in New Jersey needs to earn \$80,928 per year to afford a mortgage at six percent interest, with principal and interest payments of \$1,686 per month.74 Fewer than one percent of Gardens residents earn more than

 ³⁵⁹ Washington St. sold for \$65,500: "Buyer Responsible for ALL REPAIRS and [Certificate of Occupancy]. Extensive Termite Damage";

^{• 153} Washington St. sold for \$70,000: "Property needs work! Property being sold 'as is' condition";

^{• 319} Mount Holly Ave. sold for \$75,000: "HUD case # 351-390612. Property sold AS-IS"; and

^{• 154} Grant St., a Gardens home just outside the redevelopment area, sold for \$82,000: "Buyer responsible for all repairs required by lender and township."

⁷⁰ New Jersey Ass'n of Realtors, *New Jersey Home Sales Report* tbl.10 (2008), available at http://www.njar.com/research_statisticspdf/quarterly_stats/2008Q1. pdf

⁷¹ *Id*. at tbl.6.

⁷² *Id*. at tbl.2.

⁷³ *Id*. at tbl.1.

 $^{^{74}}$ *Id*. at tbl.9.

\$60,000 a year.⁷⁵Thus, even a Gardens resident who owns the largest three-bedroom unit outright will be unable to buy replacement housing for the amount offered by the Township (see sidebar). There is simply nothing that is "decent, safe and sanitary" in the \$84,000 price range. Indeed, were the sum doubled to \$168,000, only twenty-eight of the 127 homes sold in Mount

Holly in the last year (twenty-two percent) fell between \$84,000 and \$170,000.⁷⁶ If the amount were tripled to \$252,000, the median home in Burlington County would just barely be within reach, according to the NJAR.⁷⁷ Even when the government pays more than its legal obligation, as Mount Holly has in some cases,

The Problem Is Especially Acute for Seniors

homeowners are evicted from the American dream.

"Now, what are we going to do? Where do I go at sixty-eight years old?... This is a problem for a lot of people, seventy years, sixty years, sixty-five. Where do we go? That's my question... Go buy a house for \$170,000? How am I going to pay \$170,000? I can't pay that, another mortgage." (Statement of Marlene Tobar, Public Hearing Tr. 102:14-25.)

"I like where I'm living. Where am I going to move? I don't know. Now am I going to pay a mortgage? I'm seventy-seven years old. I'm still working. Where am I going to find a mortgage to pay? Right now my mortgage, I can pay that. I pay

 $^{^{75}}$ Citizens in Action, No. A-1099-05T3, slip op. at 5 (N.J. App. Div. 2007).

⁷⁶ See TREND, supra note 69.

⁷⁷ New Jersey Ass'n of Realtors, *supra* note 70, at tb1.10.

my taxes, everything like that. Where is my future? Where will I go? If they buy my house, where will I go? What am I going to do? (Statement of Lyra Badre Singh, Public Hearing Tr. 99:19-100:3.)



Homeowners Should Receive Replacement Value for Their Homes

The experiences of the residents in Mount Holly Gardens illustrate that the law must be changed. When the government displaces a homeowner for redevelopment, the law should guarantee compensation sufficient to allow him or her to purchase a comparable replacement home in the same community in the contemporary market.

Agency and court decisions already have suggested that the compensation now typically offered is too low. In *Chatterjee v. Atlantic City Board of Education*, the Appellate Division recently upheld the principle that a government entity must pay displaced homeowners

the "reasonable cost, on the open market, of a comparable replacement dwelling."78 That case involved the taking of two homes by the Atlantic City Board of Education (BOE). The administrative law judge had ordered the BOE to pay the displaced families \$15,000 in relocation assistance, on top of the fair market value of their homes. The total came to far less than the cost of the replacement homes both families found in rendering her decision in the homeowners' appeals. the State Department of Community Affairs (DCA) Commissioner—reject[ed] the finding that the \$15,000 limitation . . . [was] determinative" and held instead "that the determinative principle is that the displacing agency must provide meaningful relocation assistance, including comparable alternative housing, before it can displace the petitioners, and that it may use project funds, if necessary, for such purpose."79

On appeal, the Appellate Division left undisturbed the DCA Commissioner's ruling that the displacing agency must pay the actual cost of comparable replacement housing. The court concluded that, "[a]s determined by the Legislature and authorized agency [DCA], the total payment must equal the difference between the 'reasonable cost, on the open market, of a comparable replacement dwelling, and the acquisition price." 80

⁷⁸ Chatterjee v. Atlantic City Bd. of Educ., No. A-2334-06T1, slip op. at 21(N.J. App. Div. 2008) (citations omitted).

 $^{^{79}}$ *Id.* at 5-6 (quoting *id.*, OAL No. CAF 4507-04, Agency No. OCA-276-04 (Feb. 23, 2005)).

⁸⁰ *Id.* at 20-21 (quoting N.J. Admin. Code § 5:11-3.7(b); N.J. Stat. Ann. § 20:4-5). The Appellate Division also concluded that, because the homeowners did not present evidence to establish what comparable replacement housing of the same size would

Other New Jersey state agencies, including the New Jersey Department of Transportation, New Jersey Transit, the Casino Reinvestment Development Authority, and the Schools Development Authority, regularly provide financial consideration to displaced residents beyond fair market value plus \$15,000."

They interpret the federal and state relocation laws under which they operate to allow them to exceed the statutory amounts and spend project funds when necessary to ensure that displaced homeowners receive sufficient money to purchase decent, safe, and sanitary comparable replacement housing. These agencies report smooth and relatively litigation-free relocation processes as a result."

have cost, they had not shown their entitlement to any additional payment. Id. at 22.

⁸¹ Because their projects are financed primarily with federal funds, the New Jersey Department of Transportation (NJDOT) and New Jersey Transit follow federal relocation standards and have adopted them by regulation. N.J. Admin. Code § 16:6-3.4; N.J. Admin. Code §§ 16:6-1.1 to -3.4. These standards permit the payment of replacement value, and such payment is the standard practice of these agencies. Id.; Telephone Interview with Kevin Rittenberry, Counsel, New Jersey Transit (June 6, 2008). The NJDOT follows these same regulations when it handles property acquisitions and relocations for the Economic Development Authority. Telephone Interview with Kevin Rittenberry, supra. The Casino Reinvestment Development Authority (CRDA) and Schools Development Authority (SDA) apply the Relocation Assistance Act and its regulations, but ensure displaced residents can secure decent, safe and sanitary comparable replacement housing. Id.: Telephone Interview with agency representative of CRDA (July 2008); Memorandum from Sandra Vieser, Associate Counsel, SDA to Brian Weeks, Dep't of the Public Advocate (Sept. 2008) (on file with Dep't of the Public Advocate).

 $^{^{82}}$ See, e.g., Memorandum from Bob Cunningham, Manager, Technical Support, NJDOT Right of Way Acquisition, to Victor

State agencies and courts have identified replacement value as the appropriate standard for compensation in part because it is more fair and humane to displaced homeowners. By definition, the payment of replacement value should enable homeowners to relocate to comparable housing in a non-blighted neighborhood, resulting in improved living standards for them while the redevelopment yields better housing stock in the community. Paying replacement value also makes good business sense by reducing the costs and delays of litigation. Government studies have found that the reduced costs and delays are well worth the additional expense of paying replacement value. Paying replacement value.

Reform Recommendation: When homeowners and their family members are displaced by redevelopment,

Akpu, Director, NJDOT Right of Way Acquisition (June 13, 2008) (from 2002 through 2007, NJDOT resolved seventy-four percent of 1,997 property acquisitions by agreement, including sixty-six percent of the 712 acquisitions that involved relocating a resident or business).

⁸³ Congress expressed its intention almost forty years ago, when it enacted the Federal Relocation Act, 42 U.S.C. §§ 4601 to 4655 (effective Jan. 2, 1971), that public projects that displace residents should improve the housing conditions of economically disadvantaged persons. 42 U.S.C. § 4621(c)(3).

⁸⁴ Memorandum by Susan B. Lauffer, Director, U.S. Dept. of Transportation, Federal Highway Administration, Office of Real Estate Services, *Information: Policy and Guidance for Acquisition and/or Relocation Incentive Programs—Voluntary* (April 26, 2006), *available at* http://www.fhwa.dot.gov/realestate/acqincentguid.htm ("Recent studies on the use of incentive payments on transportation projects demonstrate that they can be effective in decreasing the time needed to acquire and clear needed rights-of-way.... An incentive payment could... expedite the completion of a project; and result in significant cost savings.").

the law should guarantee them enough money to buy comparable replacement homes in their own communities.

RENTERS

The Mount Holly Gardens Experience

Because tenants do not own the property in which they live, they are not entitled to the "just compensation" constitutionally required for owners. They receive only relocation assistance. New Jersey law requires that municipalities provide a displaced tenant "the amount necessary . . . to lease or rent for a period not to exceed 4 years, a decent, safe, and sanitary dwelling of standards adequate to accommodate such person in [a not less desirable area] and reasonably accessible to his place of employment, but not to exceed \$4000.00."85 As with the \$15,000 limit on replacement housing payments to homeowners, this \$4,000 rental assistance cap was set in 1972 and has not been increased or indexed since.86 Four thousand dollars over four years amounts to just \$83.33 per month to help pay the increased rent.

The Township of Mount Holly has paid tenants up to \$7,500 in relocation assistance to contribute toward the difference between rent in the Gardens and rent in the new apartment.⁸⁷ That is almost twice the statutory amount of \$4,000, but \$7,500 comes to only \$156.25 per month over forty-eight months. As illustrated by the experiences of those displaced from

⁸⁵ N.J. Stat. Ann. § 20:4-6(a).

⁸⁶ Stat. Ann. § 20:4-6(a) (effective Jan. 1, 1972).

⁸⁷ WRAP, supra note 10, at 6.

Mount Holly Gardens, this does not approach what is needed to pay their actual rent increases.

Tenants displaced from the Gardens are generally paying more for less. For example, Linwood Perry and Patricia Broy, individuals with health problems who pooled their benefits to lease various units in the Gardens over many years, moved out of the twobedroom apartment they had last rented for \$700 per month and into a one-bedroom apartment in Beverly for \$900 per month.88 Their new rent is almost half of their entire monthly income. Some, like Kendra Dockery, who cared for both her young son and her terminally ill mother while living in the Gardens, now find themselves dependent on others to drive them to buy food because they are farther from basic amenities: "If I forget something, too bad for me."89 Others are in the position of Georgianna Jester and her adult daughter Ellen, who have had to move twice now because they cannot find a decent place to settle (see sidebar)."90 And there is the common refrain from almost everyone we spoke to: "I wish I still lived in the Gardens. I miss my home and my friends."91

⁸⁸ Telephone Interview with Linwood Perry (Oct. 7, 2008).

⁸⁹ Telephone Interview with Kendra Dockery (July 14, 2008); Interview with Kendra Dockery in Hainesport, N.J. (July 23, 2008).

⁹⁰ Telephone Interview with Ellen Jester (July 24, 2008).

⁹¹ Telephone Survey with Georgeanna Grey (July 14, 2008).

"I keep running into slumlords."

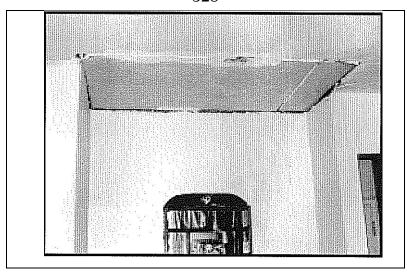
Ellen Jester, her three younger siblings, and their mother Georgianna, rented their three bedroom apartment in the Gardens for thirteen years.

Ellen did not find the Triad office helpful in relocating her family. She was unable to rent any of the units on the lists of possible rental that Triad gave her. "When I called half were already rented and the other half wanted tenants with perfect credit. Each time I called Triad for updated lists of apartments, they had nothing except places that wanted tenants with perfect credit."

Finally, in April of 2007, Ellen found another home for her family on her own. She received \$7,500 in relocation assistance plus \$500 in moving costs.

Ellen said she and her hamily miss the life they had in the Gardens. Her mother's doctors are farther away. "We can't get anywhere with a car. My mother needs oxygen and her wheelchair more because everything is so far away now. . . .In the Gardens, I felt that I was part of a community."

Ellen and her family have moved twice since leaving the Gardens. "We lived in our first apartment in the Willingboro almost a year. The landlord wouldn't do anything so we had to move. Now we live in Burlington City. This landlord doesn't want to do anything, and it looks like we will have to move again. I keep running into slumlords."



Based on the data we compiled, the Gardens' lowincome residents have suffered significant costs as a result of being displaced from their affordable housing into an expensive market with little financial support (see graphs below and Rent Change Chart, Appendix). Of the sixty-four relocated tenant households for whom we had data as of June 30, 2008, four (six percent) paid less rent, three (five percent) paid the same rent, and the other fifty-seven (eighty-nine percent) paid more. The average rent increased from \$705.40 in the Gardens to \$971.53 in the new unit, a difference of \$266.13 or thirty-eight percent more each month. 92 This average rental increase is \$109.88 (seventy percent) more than the \$156.25 per month the Township's offer covers over forty-eight months. The rent for fifteen families (twenty-three percent)

⁹² These figures are derived from the total rents for the units, although some tenants received rental subsidies in the Gardens, the new unit, or both. The contribution of each household to the total tent varied with the rules governing each subsidy program. *See* Rent Change Chart, Appendix.

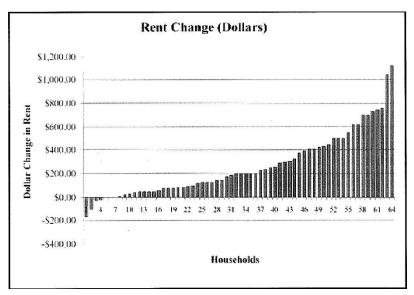
increased between fifty and one hundred percent, averaging \$476.53 more per month, or \$5,718 more per year. 93 This increase represents at least twenty-eight percent of the entire income of a family living on \$20,000 or less per year (as forty-seven percent of Gardens residents do). 94 The increase would consume at least fourteen percent of the annual income of a family living on \$20,000 to \$40,000 (as forty-three percent of Gardens residents do). 95

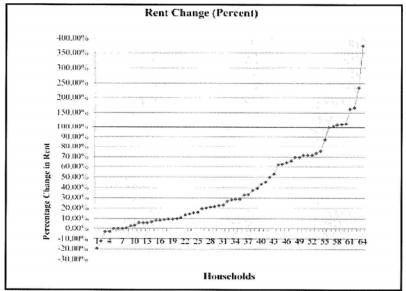
The Township's own relocation consultant, Triad Associates, routinely referred tenants to rental units costing hundreds of dollars more per month than they had paid in the Gardens, clearly exceeding the rental assistance provided. We compared the Gardens rent of sixty-seven tenants with the rents of comparable replacement housing Triad recommended to them. Had those residents followed Triad's suggestions (most did not actually relocate to properties Triad listed), they would have paid an average of \$218 more each month—almost forty percent more than the enhanced relocation assistance the Township offered for four years (see Triad Referrals Chart, Appendix).

 $^{^{93}}$ In addition, the rent for eight families (thirteen percent) increased more than one hundred percent.

 $^{^{94}}$ Citizens in Action, No. A-1099-05T3, slip op. at 5 (N.J. App. Div. 2007).

 $^{^{95}}$ Id.





While most tenants found themselves further impoverished by relocation, an occasional success story shows that relocation can have positive results. Two former tenant households became homeowners

after being displaced from the Gardens. We obtained information on one of these households, and it is clear that a significant infusion of public funds enabled this desirable outcome (*see* sidebar, p. 16).

Municipalities Should Provide Renters with Enough Assistance To Pay the New Rent

The amount of rental assistance provided under current law is too low. Adjusted for inflation, the \$4,000 in rental assistance paid in 1972 would be equivalent to \$20,965, or \$437 per month over four years, in 2008⁹⁶—an amount far more likely to help displaced individuals today. Renters displaced by a redevelopment project today, however, receive less than twenty percent of the inflation-adjusted value that 1972 legislators thought was just.⁹⁷

As with homeowners, limiting relocation assistance for renters to a set dollar amount makes no sense as time will inevitably erode the value of any fixed payment. If tenants are really to be made whole, municipalities must be required to provide the entire difference between the rent paid for the original residence and that paid for the replacement residence, and for a longer period—at least seven years.

For some, even seven years of assistance only delays the day of reckoning when they suddenly cannot afford

⁹⁶ Inflation calculated using the calculator provided by the United States Department of Labor, Bureau of Labor Statistics, based on its Consumer Price Index for All Urban Consumers, U.S. City Average. *See* http://www.bls.gov/data/inflation_calculator. htm (last visited Sept. 26, 2008).

⁹⁷ \$4,000 is nineteen percent of \$20,965.17.

the rent. 98 The time-limit implicitly assumes that the displaced tenant can supplement his or her income sufficiently during that period to pay the increased rent without assistance. The merits of this assumption are at least debatable for low-income households who must pay rent increases that are as high as those now paid by most tenants displaced from the Gardens and that will continue to rise with the market. This assumption, though, is simply wrong with regard to those who live on a fixed income such as persons who are retired or disabled. They usually have no hope of an increase in their income to meet the costs of rising rents. We propose that the time-limit on rental assistance should not apply to senior citizens, people with disabilities, or others with fixed incomes.



⁹⁸ The problem of the delayed "day of reckoning" has been recognized since the initial enactment of time-limited relocation assistance legislation. *See* Chester W. Hartman, *Relocation: Illusory Promises and No Relief*, 57 Virginia Law Review 745, 775-76 (June 1971).

Carmen Fernandez, her husband, Romualdo, and their young daughter had lived in the Gardens since 2001. She recalled the Gardens as a good supportive community. The residents were neighborly and did what they could to help on another in times of need.

In December 2006, Mrs. Fernandez made her first visit to Triad, which had just opened an office in the Gardens. She and her husband had been saving money in the hope of someday becoming homeowners. With poor credit rating, whoever she did not think it could happen soon.

Her interactions with the Triad staff member assigned to her case were difficult. "Sometimes I would look at her. I knew she didn't know what it was like to be poor and to work hard for what you wanted." Nevertheless, Mrs. Fernandez preserved, and she found the help she needed to realize her family's dream of homeownership.

In collaboration with a realtor, Triad lined up \$23,726 in public funds, grants, and loans toward the down payment and closing costs, enabling the family to purchase a replacement home in Mount Holly for \$193,500; from the Township, a grant of \$7,500 in relocation assistance in a lump sum toward the down payment; from the Burlington County First Time Homebuyer Program, a loan of \$5,000 toward the down payment and a loan of \$4,000 toward closing costs; and from the State Housing and Mortgage Financing Agency Smart Start program, a second mortgage of \$7,226 toward the down payment and closing costs. Triad also helped them pay an attorney to represent them at the closing on their new house. Mr. and Mrs. Fernandez paid \$475 monthly rent in the Gardens; they now pay \$1,513 a month to cover their mortgage and property taxes.

Reform Recommendation: When tenants are displaced for redevelopment, the law should entitle them to receive the full difference between their old rent and their new rent in a comparable replacement dwelling for at least seven years. This time-limit should not apply, however, to senior citizens, individuals with disabilities, or others who are living on fixed incomes. These individuals should receive the full amount of their increased rent in a comparable dwelling for as long as they remain tenants and their incomes remain fixed.

PART II: PROVIDING ASSISTANCE TO DISPLACED RESIDENTS WHEN THEY NEED IT

Because the laws governing relocation assistance are ambiguous and outdated, residents who move out of redevelopment areas are sometimes deprived of any assistance at all. Even when they receive assistance, the law leaves them at the mercy of the municipality's redevelopment schedule. Under current law, the municipality has the exclusive power to trigger a household's eligibility for relocation assistance. A municipality is free, therefore, to begin the demolition of properties it has acquired without first offering relocation assistance to residents still living in adjacent or nearby properties. These residents then find themselves watching the bulldozers dismantle the neighborhood around them. While municipalities should retain the power to move residents out of redevelopment areas, the residents themselves should also have the ability to decide to move on before demolition begins, or at any time afterwards, and to receive relocation assistance at that point.

The Mount Holly Gardens Experience

The experiences of present and former residents of Mount Holly Gardens illustrate several problems with the timing of relocation assistance. The threat of displacement has loomed over Gardens residents since October 2002, when the Township designated the area as "blighted."99 That threat grew more concrete a year later when the Township adopted a redevelopment plan and passed an ordinance that authorized the Township to acquire the properties in the redevelopment area through "voluntary agreement or, if necessary, condemnation."100 By September 2006, when the Township filed its Workable Relocation Assistance Plan, its intentions were clear: "In order to permit the redevelopment of the area in accordance with the goals of the redevelopment plan, the Township intends to acquire all the units in the Mount Holly Gardens, which will necessitate the relocation of its residents."101

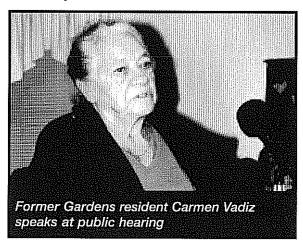
At our public hearing, Ms. Vadiz, a senior citizen who used to live in the Gardens and still visits and looks after friends there, explained their distress at living under the constant threat of losing their homes: "The feeling of the depression is very bad for everybody in the

⁹⁹ Mount Holly, N.J., Resolution 2002-217 (October 28, 2002) (on file with Dep't of the Public Advocate).

 $^{^{100}}$ Mount Holly, N.J., Ordinances 2003-12 (Sept. 8, 2003), 2003-37 (Nov. 10, 2003) (both on file with Dep't of the Public Advocate).

¹⁰¹ WRAP, supra note 10, at 1.

Gardens because they always fear that somebody would come and tell them that they just have thirty days to leave. They ask me, 'Where are we going to go with so less money from this?' with their social security. It's very low. . . All of [bent are very depressed, and they tell me that they don't want to leave." 102



The Township began to purchase units early in the process, and the vacancy rate climbed as the acquisitions progressed. The Township purchased its first unit in the Gardens in November 2000. The largest single purchase came in 2005, when the municipality bought sixty-two units from an absentee landlord. At the time of the blight designation in

 $^{^{102}}$ Public Hearing, supra note 6, Tr. 57:23-58:9 (statement of Carmen Vadiz).

¹⁰³ Responses of Mount Holly Township to Issues Raised at Public Advocate Meeting, December 12, 2007 at 10 (January 25, 2008) (Township Respone [sic] column, reply to comment by Mr. Mo[zee]) (on file with Dep't of the Public Advocate).

¹⁰⁴ The Township bought sixty-two homes in the Gardens from one private owner for more than \$3 million. Carol Comegno,

October 2002, the planner whose report the Township adopted estimated that approximately fifty-nine units (eighteen percent of the 327 units in the proposed redevelopment area) were vacant. Four years later, when the Township filed its WRAP, it represented that there were 123 vacant units in the Gardens, 116 of which the Township owned and had boarded up. These documents indicate that more than sixty Gardens units were vacated after the blight designation but before the WRAP was filed.

The residents who left in those early years received no relocation assistance.¹⁰⁷ The WRAP announces that "tenants and homeowners in residence on August 1, 2006 shall be deemed eligible for relocation assistance."¹⁰⁸ Apparently, those who moved out before, or in after, that date were deemed ineligible.

Because the Township did not provide assistance to or keep track of residents who left the Gardens before August 2006, we know little about them. We managed,

Mount Holly Buys 63 more homes in Gardens Section, supra note 54, at 1G.

¹⁰⁵ Janice E. Talley, *Redevelopment Area Determination Report: Township of Mount Holly, Burlington County*, New Jersey 1, 2 (September 3, 2002) [hereinafter Talley, Determination Report] (on file with Dep't of the Public Advocate).

¹⁰⁶ WRAP, supra note 10, at 3.

¹⁰⁷ January 24, 2008, Mount Holly Statement, *supra* note 19, at 9 (Question: "Did the Township offer relocation assistance to those displaced from The Gardens before August 2006? If not, why not?" Answer: "Relocation assistance was offered to residents at the end of 2006, following DCA's [the Department of Community Affairs'] approval of the WRAP, in an effort to spur the redevelopment of the area.")

¹⁰⁸ WRAP, supra note 10, at 5 (emphasis omitted).

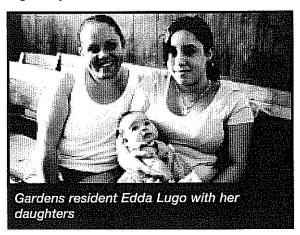
however, to learn about a few. Georgeanna Grey is a senior citizen who worked at General Motors in Moorestown and raised her children in and adjacent to the Gardens for thirty years before moving out in 2005. She received no benefits, and moved because "I was afraid that I would become homeless after hearing some of the Township people talk at meetings."109 Alandia Warthen had lived in the Gardens since she was ten years old and was raising her two sons there before she was forced to move. She was a renter, able to afford a home with the help of federal subsidies, and she had "hoped I could continue living in the Gardens and buy a house there someday." Ms. Warthen's lease expired on April 1, 2005, and her landlord told her that she had to move out—the Township was buying the house. "No one told me I could receive any relocation assistance or get any other help to move out."110



¹⁰⁹ "Interview with Georgeanna Grey in Lumberton, N.J. (January 23, 2008); Telephone Survey with Georgeanna Grey (July 14, 2008).

 $^{^{110}}$ Decl. of Alandia Warthen $\P\P$ 1, 2, 4, 6, 9, 10 (July 9, 2008), Pls.' Br. Supp. Mot. Prelim. Inj., *Mt. Holly Gardens Citizens in Action, Inc.*, No. 1:08-cv-02584 (D.N.J. July 18, 2008).

The Township has also informed residents who moved into the Gardens after August 2006 that they are ineligible for any assistance other than \$500 in moving expenses. Edda Lugo, a young single mother who supports herself and her two daughters working on the housekeeping staff at a nearby hospital, moved into her own apartment in the Gardens in March 2008. Before finally settling into her apartment in the Gardens, Ms. Lugo had moved five times over the past few years. Soon, it seems, she may have to move again: "My landlord wrote in my lease agreement that I may rent my apartment fine a year unless the Township takes the property through eminent domain. I plan to go to the relocation office to fill out an application for relocation benefits. I'm not planning to move right now, but my experiences have taught me to be prepared."111 Despite her vigilance, under the Township's policy she may not qualify for relocation assistance.



Another tenant reported that, before moving to the Gardens, he and his wife and two young children lived

 $^{^{111}}$ Certif. of Edda Lugo (July 16, 2008) (on file with Dep't of the Public Advocate).

in a motel for two years. Although both parents worked full-time, they could not find affordable rental housing in Burlington County or save enough money for a security deposit. He found a landlord who was willing to rent them a two-bedroom home in the Gardens without a security deposit. The Township plans to take that home, and Triad told him and his wife that, although they have lived in the Gardens for more than ninety days (the period that should entitle them to full rental assistance under the law¹¹²), they will receive only \$500 for moving expenses because they have not lived in the Gardens since August 2006. Five hundred dollars is not enough for their family to pay the security deposit to rent another affordable two-bedroom apartment, even if they could find one.¹¹³

In contrast, those who were in residence as of August 2006 had more ready access to relocation assistance than the law requires. The Township's decision to "deem" them eligible allowed at least some residents to initiate a move. They could decide to leave, and the Township would act to trigger their eligibility for assistance. The standing offer of relocation assistance had a positive impact for some residents: the Township did not make those it deemed eligible wait for relocation assistance until it decided it was ready to move them out; instead, it offered them relocation assistance when they decided they were ready to go. Between the end of 2006, when the WRAP

¹¹² N.J. Stat. Ann. § 20:4-6; N.J. Admin. Code § 5:11-3.5.

¹¹³ Interview with anonymous resident (August 6, 2008).

was approved, and January 2008, sixty-two house-holds sought and received relocation assistance.¹¹⁴

Other families and individuals stayed put. On August 1, 2008, there were approximately 112 households still living in the Gardens. 115 Although those who had been in residence two years earlier had the option to leave and to receive relocation assistance, some decided to stay and fight the redevelopment. Mr. Santos Cruz, a married father of four who has lived in the Gardens for eighteen years, is determined to keep his home. 116 "I will chain myself to my house because I have been an upstanding, law abiding citizen, but I guess that does not work in the United States, or not in Mount Holly Township at least, so I will chain myself to my house and they will destroy it around me."117 Others stayed because they did not have the will or the means to move on. As of August 1, 2008, the Township owned 232 Gardens lots: seventy-five of these lots had been cleared by demolition, 148 units stood vacant, and the remaining nine were among the units still occupied.¹¹⁸

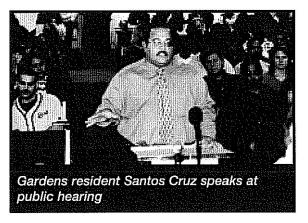
 $^{^{114}}$ January 24, 2008, Mount Holly Statement, supra note 19, at 8, 9.

¹¹⁵ Certif. of Kathleen Hoffman, *supra* note 31, ¶ 2.

¹¹⁶ Decl. of Santos Cruz 4 (July 17, 2008), Pls.' Br. Supp. Mot. Prelim. Inj., Mt. Holly Gardens Citizens in Action, Inc., No. 1:08-cv-02584 (D.N.J. July 18, 2008).

¹¹⁷ Public Hearing, *supra* note 6, Tr. 7:10-13 (citation is to separate transcript from early part of meeting captured on DVD, before court reporter arrived) (on file with Dep't of the Public Advocate).

¹¹⁸ Certif. of Kathleen Hoffman, *supra* note 31, ¶ 2.



The experiences of those who remain illustrate the harms of living in a redevelopment area as it is dismantled. There are the most obvious dangers. Regina and Carlos Rodriguez, parents of four who both held full-time jobs, lived in the Gardens for ten years. Mrs. Rodriguez testified at our hearing that, when demolition began next door, they "tore up my ground with the bulldozer where I park my car. The bulldozers tore up all the tar from the back of my house. They didn't care. The siding from the side of my house came down."119 Similarly, Vivian Brooks, a widowed retiree who has lived in the Gardens with her extended family for thirty-six years, described damage to her home so severe that it became uninhabitable: "[T]he people that the Township hired [to demolish the house next door] hit my house with their bulldozer, shifted my roof, cracked mu walls and loosened the beams . . . I lived in that house when it rained. We had trash cans, buckets, plastic covering my furniture . . . The day the bulldozer hit the house my great granddaughter . . . was sitting on the bed. The bulldozer hit the side of the house

 $^{^{119}}$ Public Hearing, $supra\,$ note 6, Tr. 40:10-15 (statement of Regina Rodriguez).

[where] she was sitting and she could actually put her hand where the wall crashed and pushed in. She had sheetrock all in her hair. The ceiling fell."¹²⁰ Terry Muse and her school-age grandchildren left their apartment in the Gardens when it failed inspection by a federal agency that provides housing assistance to the family. Leaks in the adjacent vacant unit owned by the Township had caused mold and water damage in her unit.¹²¹



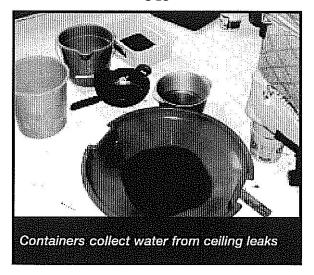
 $^{^{120}}$ Hearing, $supra\,$ note 6, Tr. 6:9-7:5 (statement of Vivian Brooks).

Telephone Survey with Terry Muse (July 17, 2008); Telephone interview with her former landlord, Josephine Pogue (Sept. 18, 2008); Letter from Burlington County Dep't of Econ. Dev. and Reg'l Planning, Housing and Cmty. Dev. Office to Josephine Pogue (June 27, 2007) (on file with Dep't of the Public Advocate), see also Letter from Burlington County Dep't of Econ. Dev. and Reg'l Planning, Housing and Cmty. Dev. Office to Kendra Dockery (July 12, 2007) (Ms. Dockery would lose her housing assistance if she remained in her Gardens apartment because it did not meet minimum housing standards) (on file with Dep't of the Public Advocate).

Other consequences are more subtle. Fifteen-yearold Heather Ridgeway explained the pain of the young people living in the ravaged community. "Walking home and seeing your best friend's—he lived across the street—seeing your best friend's house knocked down that's the saddest thing ever, seeing that. The Gardens was so beautiful. . . . My friends, they're not allowed to come in the Gardens because of what they hear. . . It's bad now because like when you walk in it looks like trash. Sorry to say. To my friends, I have to say, I'm sorry where I live, it's not my fault "122 Another resident described her unease as the Gardens emptied of its residents. "It was intimidating to look out of the window at seven or eight in the morning to see workmen boarding up buildings and bulldozing. Not knowing what was going to happen and when was . . . stressful. My mother and I were very anxious about when we would have to move out. . . . I would go to Triad to ask how much longer before the Gardens would be closed. They'd tell me, 'a little longer, six months, a few months'—never a definitive answer."123

 $^{^{122}}$ Public Hearing, supra note 6, Tr. 83:5-18 (statement of Heather Ridgeway).

¹²³ Telephone Survey with Robin Williams (Aug. 4, 2008).



In offering relocation assistance to some Gardens residents while denying it to others, the Township acted upon its view that such assistance was then, and remains, voluntary. In response to questions posed by this Department, counsel to the Township explained its position this way:

We do not believe State law requires the Township payment of relocation benefits at this time. Payments have been made to expedite the redevelopment process that has been slowed by litigation. While there certainly is some language within the relocation regulations that could be construed to require relocation assistance to be paid whenever any municipality makes an offer to purchase a property, we believe those regulations only apply where a person has been directed to vacate or where the property is acquired by eminent domain. . . . [T]he Township has undertaken no eminent domain proceedings and

has ordered no resident of the Gardens to vacate their property. 124

The Township's view that its actions are voluntary reflects ambiguities and lapses in the law that demand correction. First, the law must be revised to make clear that relocation assistance is required when a municipality begins to acquire property for redevelopment, whether through eminent domain proceedings or through voluntary sales made under the threat of eminent domain. Second, the law should mandate a system that entitles the tenants and owner-occupants of properties marked for acquisition in a redevelopment area to sell and/or leave before demolitions begin or at any time afterwards, on their own initiative. Mount Holly adopted a policy that gave this power to some residents. The law should ensure that this power is vested in all residents.

Relocation Assistance Is Due Before Condemnation Proceedings Begin

Both the enforcing agency and the courts have interpreted the Relocation Assistance Act (RAA) to require the payment of relocation assistance when a municipality displaces people or businesses for redevelopment, even before condemnation proceedings have begun. Yet some municipalities, including Mount Holly, consider themselves free of any legal obligation to provide such assistance until they attempt to take property by eminent domain. This misunderstanding

¹²⁴ Letter from M. James Maley, Jr., Township of Mount Holly Redevelopment Counsel, to Catherine Weiss, Director, Division of Public Interest Advocacy, Department of the Public Advocate, (Jan. 24, 2008) [hereinafter January 24, 2008, Letter from M. James Maley] (on file with Dep't of the Public Advocate).

is largely attributable to the definition of "taking agency" in the RAA. The RAA defines a "taking agency" as "the entity, public or private, including the State of New Jersey, which is condemning private property for a public purpose under the power of eminent domain." ¹²⁵

The history and purpose of the RAA, however, suggest a broader reach. In Marini v. Borough of Woodstown, 126 the Appellate Division noted that the RAA is intended to follow its federal counterpart, which "does not limit relocation assistance to situations where there has been a condemnation of real property in the exercise of the eminent domain power, but authorizes such assistance even when displacement results from the acquisition of real property by voluntary transfer."127 Sounding this same theme, the Department of Community Affairs, the state agency responsible for enforcing the RAA, contended in Marini that "the New Jersey statute was intended to have as broad an application as the federal act, which includes voluntary as well as involuntary acquisitions."128 Ultimately, the court explicitly reserved this question and simply assumed that the borough was a "taking agency."129

Following the Appellate Division decision in *Marini*, the Department of Community Affairs issued a final decision that clarified the reach of the statute. In *Graff*

¹²⁵ N.J. Stat. Ann. § 20:4-3(a) (emphasis added).

¹²⁶ 146 N.J. Super. 235 (App. Div. 1976).

¹²⁷ *Id.* at 240 (citing 42 U.S.C. § 4621 *et seq.*)

¹²⁸ *Id*. at 241.

 $^{^{129}} Id.$

v. Township of North Bergen, 130 the Commissioner explicitly held that "the acquisition of property by a governmental body by means other than a formal condemnation constitutes a taking within the meaning of the Relocation Assistance Act." Like all agency decisions interpreting the legislation they enforce, this DCA decision "is entitled to great weight and is a 'substantial factor to be considered in construing the statute." 132

Furthermore, the implementing regulations do not limit assistance to those displaced by eminent domain. The regulations cover those displaced by "programs of acquisition," not only by condemnations. Thus, the regulations contemplate that relocation assistance will be due to displaced residents when their homes are "acquired," whether or not by the power of eminent domain. These regulations, too, are entitled to deference. 134

¹³⁰ DCA No. 75-13 (July 26, 1976) (final agency decision).

 $^{^{131}}$ *Id*.

¹³² In re Relocation Claim of Berwick Ice, Inc., 231 N.J. Super. at 396-97 ("It is a fundamental maxim that the opinion as to the construction of a regulatory statute of the expert administrative agency charged with enforcement of that statute is entitled to great weight and is a 'substantial factor to be considered in construing the statute. (quoting New Jersey Guild of Hearing Aid Dispensers v. Long, 75 N.J. 544, 575 (1978)).

¹³³ N.J. Admin. Code § 5:11-2.2.

¹³⁴ In re Freshwater Wetlands Prot. Act Rules, 180 N.J. 415, 430 (2004) ("As with any administrative regulation, we begin with the settled principle that [this regulation] must be 'accorded a presumption of validity." (citing New Jersey State League of Municipalities v. Dep't of Cmty. Affairs, 158 N.J. 211, 222 (1999);

Reform Recommendation: To clarify the reach of the RAA, its definition of "taking agency" should be revised to conform to the case law and regulations. A "taking agency" or "acquiring agency" should be defined to include any entity that is condemning or otherwise acquiring private property for a public purpose.

Relocation Assistance Should Be Due When Residents Decide To Relocate

Under current law, the municipality holds the exclusive triggers for entitling residents to relocation assistance. Only "displaced" persons are eligible. The regulations define "displaced" to mean "required to vacate any real property" by "any order or notice of any displacing agency on account of a program of acquisition "135 The "displacing agency"—in the case of redevelopment, the municipality—thus has the authority to withhold relocation assistance until it is ready to send the potential target of displacement an order or notice to vacate. If a resident moves before the municipality triggers his or her eligibility, the resident may forfeit any assistance. 136 A municipality's exclusive control over the timing of relocation assistance can leave residents with no recourse but to wait, sometimes for many years.

In re Twp. of Warren, 132 N.J. 1, 26 (1993)); see also In re Relocation Claim of Berwick Ice, Inc., 231 N.J. Super. at 396-97.

 $^{^{135}}$ N.J. Admin. Code \S 5:11-1.2; see also N.J. Stat. Ann. \S 20:4-3(c).

¹³⁶ N.J. Admin. Code § 5:11-4.2 (notice to displacees must inform them that they "should not vacate the property prior to being authorized to do so in order to remain eligible for payment and assistance").

It is not clear under the law when homeowners become entitled to relocation assistance. One provision in the regulations says that they are eligible upon the municipality's "first written offer to purchase the property."137 Such a written offer does not appear. however, to constitute the kind of "order or notice" to vacate that would qualify an owner as "displaced" under another provision of the regulations. 138 The Eminent Domain Act establishes a process through which the municipality may evict the owner and take possession of the property, 139 which would clearly entitle the owner to relocation assistance. But the law does not give the owner a reciprocal right to force a sale. The municipality may make a standing offer to purchase properties, as Mount Holly did, but if the owner feels the offer is too low, or if the municipality simply is not ready to make an offer or enter negotiations over the sale price, a homeowner will usually be stuck. In order to demand that the municipality purchase his property at a fair value under current law, the owner must show that "the threat of condemnation has had such a substantial effect as to destroy the beneficial use that a landowner has made of his property."140 This is a high threshold to meet.

As to renters, the regulations explicitly require them to await a "formal notice to vacate from the

¹³⁷ N.J. Admin. Code § 5:11-2.2(c).

¹³⁸ N.J. Admin. Code § 5:11-1.2.

¹³⁹ N.J. Stat. Ann. §§ 20:3-8, 20:3-19.

¹⁴⁰ Washington Market Enterprises, Inc. v. Trenton, 68 N.J. 107, 122 (1975) (requiring City of Trenton to purchase a commercial building that had become untenantable because of an abandoned redevelopment project).

landlord."¹⁴¹ In the case of redevelopment, the municipality may buy occupied rental properties and thus become a landlord itself. Mount Holly has acted as a landlord to at least some residents of the properties it purchased (see sidebar).¹⁴² Under New Jersey law, a

"Railroaded Out"

Kendra Dockery and her twelve-year-old son had been tenants in the Gardens for several years when she began hearing rumors that the Township would close down the neighborhood.

During their last year, problems developed. The roof leaked into the ceiling fixture in her son's bedroom, which dripped onto the carpet and made the room smell of mildew. The exterior windows needed repair to keep out the weather. But the real problem was the front door.

The Township was Ms. Dockery's landlord. In February 2007, she informed the Township that her front door would not close or lock properly. The Township sent a maintenance person who said he could not fix the door because the closing mechanism was broken. Every time she left her home, Ms. Dockery would put the inside chain lock on her front door and leave through the back door.

It took the Township four months to replace the broken part. During that time, the apartment was robbed. "To have this happen when my landlord the Township had not fixed my door, the door I

¹⁴¹ N.J. Admin. Code § 5:11-2.3(a).

 $^{^{142}}$ As of August 1, 2008, the Township was the landlord to the tenants of nine units in the Gardens. Certif. of Kathleen Hoffman, supra note 31, \P 2.

complained about and the Township did not fix for four months, seemed really, really pitiful." She believed the Township delayed fixing her front door "to force me to move. I felt that the Township railroaded me and my family out of our home."

When Ms. Dockery finally left the Gardens in the summer of 2007, she found replacement housing herself because none of the possibilities suggested by the relocation office was affordable to her.

While she is happy in her new home in Hainesport, she and her son miss the Gardens. "My son and I don't have the independence we had when we lived in the Gardens. I don't drive and I live on the highway. When I lived in the Gardens, I could walk to the store if I wanted. . . . I can't do that now. I have to ask someone to take me shopping or go when someone else is ready to go."

When they lived in the Gardens, her son never complained of boredom as he now does. In the Gardens, he always had some freedom. So now, when Ms. Dockery tells her son he cannot go outside, he doesn't understand. "But what mother would let her child go outside to walk around on the highway?"



landlord may not evict a tenant or even decline to renew a lease unless the tenant has refused to pay rent, destroyed property, or otherwise given the landlord "good cause" to evict him. Has But the law does allow a municipality, acting as a landlord, to issue its tenants a notice to vacate in order to permanently retire the premises from the rental market pursuant to a redevelopment or land clearance plan in a blighted area." Hourt Holly maintains that it has never issued any tenant such a notice. Horover, the Township states that it has never used any other means to move tenants out of its properties, asserting that those who left did so of their own accord. Horovery, Incompany to the properties of their own accord.

¹⁴³ N.J. Stat. Ann. §§ 2A:18-61.1, 2A:18-61.3.

¹⁴⁴ N.J. Stat. Ann. § 2A:18-61.1(g)(4).

 $^{^{145}}$ January 24, 2008, Letter from M. James Maley, supra note 124, at 2.

¹⁴⁶ Telephone Interview with M. James Maley, Jr., Township of Mount Holly Redevelopment Counsel. (Sept. 8, 2008). Although the Township maintains that it has never refused to renew a lease for any of its tenants, some of its contracts to purchase occupied units suggest that it would only assume a lease for the duration of its term. An October 2006 contract for the sale of six Gardens units, for example, contains this provision: "The Buyer [i.e., the Township] is aware that some of the properties are tenant occupied and agree[s] to abide by the terms and conditions of said lease(s) until the expiration thereof." Contract for sale of six Gardens properties between the Township of Mount Holly and Ralph Gelber (Oct. 2, 2006) (on file with Dep't of the Public Advocate); see also Contract for sale of one Gardens property between the Township of Mount Holly and Angel Ramos (Jan. 31, 2006) ("The Buyer is aware the property is currently tenant occupied . . . with a lease expiration date of 2/28/06.") (on file with Dep't of the Public Advocate). Yet the expiration of a lease alone cannot be grounds to demand that a tenant vacate the property. See N.J. Stat. Ann. §§ 2A:18-61.1, 2A:18-61.3.

these reasons, it views itself as free to provide or to deny tenants relocation assistance at will.

A municipality may also trigger its relocation assistance obligations to tenants by demanding that their private landlords evict them. The regulations expressly forbid municipalities to avoid such obligations "by requiring the owner of a building to cause it to be vacated prior to the acquisition."¹⁴⁷

It is unclear whether Mount Holly ran afoul of this regulation. The Township maintains that it never demanded that any landlord vacate a unit. Instead, at various times in the redevelopment process, it negotiated with landlords to convey their units empty. 148 The contracts of sale that we obtained under subpoena from the Township confirm such negotiations. Of the thirty-eight contracts we reviewed pertaining to fifty-four apparent rental units in the Gardens, 149 nineteen contained clauses guaranteeing vacancy upon sale. The most common clause reads: "The Seller is aware of the fact that the Buyer [Mount Holly] will only purchase this property if it is VACANT at the time of closing." The Township claims to have no information about how or when the private landlords might have

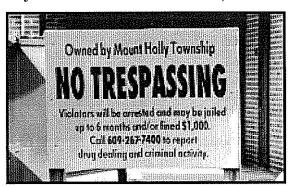
¹⁴⁷ N.J. Admin. Code 5 5:11-2.2(b).

¹⁴⁸ Telephone Interview with M. James Maley, Jr., Township of Mount Holly Redevelopment Counsel (Sept. 8, 2008).

¹⁴⁹ We excluded from the fifty-three contracts we reviewed in total fifteen in which the seller's address and the address of the property sold were the same; we assumed that these were owner-occupied residences. On the other hand, we assumed that the property was a rental when the seller had a different address from the property sold.

vacated the premises.¹⁵⁰ We have learned from some individual tenants that their landlords simply told them to leave in apparent violation of the law (see sidebar).¹⁵¹ What remains unclear is whether the Township owed these tenants relocation assistance, regardless of whether they left before or after August 2006 when they were "deemed" eligible. While there is a strong argument that the Township incurred relocation assistance obligations when it negotiated for the transfer of vacant units, thereby in effect "requiring the owner of a building to cause it to be vacated prior to the acquisition," ¹⁵² we could find no court decisions addressing this question.

"My landlord told me to move, so I did"



Yubelkis Fernandez moved into a two-bedroom rental apartment in the Gardens with her husband and two children in 1998. She went to the early meetings the Township and developer had with community residents. She felt "they were not there

¹⁵⁰ Telephone Interview with M. James Maley, Jr., Township of Mount Holly Redevelopment Counsel (Sept. 8, 2008).

¹⁵¹ See N.J Stat. Ann. § 2A:18-61.1.

¹⁵² N.J. Admin. Code § 5:11-2.2(b).

to help, just there to get us out to construct new expensive homes."

Ms. Fernandez and her family watched the bull-dozers come to demolish vacant units. They watched workers post orange "NO TRESPASSING" signs on the buildings as families moved out.

It was clear to Ms. Fernandez that she and her family would have to leave eventually. But she thought there would be some time to search for the best replacement housing they could afford.

Then in 2006, before the Township began to offer relocation assistance, her landlord told her he was going to sell his rental unit to the Township for the redevelopment project. He said that she and her family would have to leave. "We had to move out fast due to the sale to the Township. We had to look for money for a new place to live without any help."

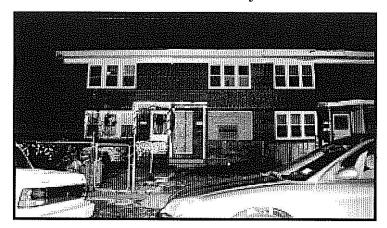
Whether or not the Township failed to pay relocation assistance to some tenants who were entitled to it, the larger problem lies in the law's failure to guarantee such assistance to all who should receive it. Mount Holly has been able to set its own terms for providing and denying relocation assistance in part because the law does not adequately protect those who leave "voluntarily," without an order or notice to vacate. Yet in the redevelopment context, when a neighborhood is slated for demolition, no departure can truly be considered voluntary.

The redevelopment law gives the municipality the power to clear the land it acquires at any time after the redevelopment plan is adopted, ¹⁵³ and before it is

 $^{^{153}}$ N.J. Stat. Ann. § 40A:12A-8(d).

required to trigger the residents' eligibility for relocation assistance through the mechanisms described above. The result is that residents may be trapped in their homes while clearance and demolition take place around them. By offering relocation assistance to all residents who lived in the Gardens in August 2006, Mount Holly ameliorated the effects of this system for some. Nevertheless, the residents—whether or not deemed eligible for assistance—have faced a mounting pressure to leave. This pressure has resulted, not from the direct orders of the Township, but from the deteriorating condition of their community (see sidebar).

"I'm not safe there anymore"



Lyra BadreSingh, a seventy-seven-year-old who lived in Mount Holly Gardens for eighteen years before finally moving out in the summer of 2008, explained the creeping unease this way: When I went there the Gardens was a nice place to live. There were neighbors. There were children running around, playing around. Everything was nice. Now it's not looking nice anymore. There are whole lots of boarded up houses on my block. I'm the only one

there with my house open and my little lights. All the other houses on that block are nailed up. There is a sign on them. All the rats and the roaches and all of them contained in there. They make holes in the house which make water run down and everything. I was quite content to live here, but now I'm not, This place, like vagrants can come in. They can live next door to me and I don't know. They know I'm there by myself. They can break in my house. I'm not safe there anymore."

Reform Recommendation: Residents of redevelopment areas need more control over their own departures. They need the right to initiate their own moves, before demolition begins or at any time thereafter, and they should be entitled to relocation assistance when they go. We propose a three-part solution:

- The law should require municipalities to give owners and tenants in redevelopment areas at least six months' notice before beginning clearance, demolition, site preparation, or similar redevelopment activities. The notice should inform them that, at any time after its receipt, they are entitled to initiate a sale of their property under the Eminent Domain Act and they are eligible to receive relocation assistance.
- The Eminent Domain Act should be amended to permit property owners in redevelopment areas to initiate sales of their properties to the municipality at any time after receiving the notice described above.
- The definition of "displaced person" in the Relocation Assistance Act should include owners and tenants in redevelopment areas

upon their receipt of the notice described above, so as to entitle them to assistance at any time after that point.

The proposed amendments would not deprive the municipalities of the triggers they now possess; towns and cities would retain their powers to initiate condemnations or to order properties vacated in the same manner and within the same timeframes provided under current law. But property owners and tenants would have their own triggers, enabling them to leave with the full protection of the relocation assistance laws at least six months before, or at any time after, the bulldozers roll.

PART III: STEMMING THE LOSS OF AFFORDABLE HOUSING

In addition to the losses suffered by individuals, the State loses a significant amount of affordable housing in the course of redevelopment. The New Jersey Constitution limits the use of eminent domain for redevelopment to "blighted areas." ¹⁵⁴

Residential areas that are truly "blighted" are almost always poor neighborhoods. Affordable housing in any given municipality is likely to be concentrated in these neighborhoods. Without a requirement to replace affordable housing demolished in the course of redevelopment, that housing is lost and an already severe affordable housing crisis deepens.

 $^{^{154}}$ N.J. Const. art. VIII, \S 3, II 1; Gallenthin, 191 N.J. at 356-59.

The Mount Holly Gardens Experience

At the time of the blight designation, there were 327 units in the Mount Holly Gardens redevelopment area, 155 which accounted for approximately seven percent of Mount Holly Township's total housing stock. 156 Nearly all of these units were in fact affordable to low- and moderate-income families, as evidenced by the population in the Gardens which consisted almost entirely of families with incomes below \$60,000 per year.¹⁵⁷ Eleven homes were "deedrestricted" (subject to pricing controls that kept them affordable to low- and moderate-income families). 158 The remaining units were affordable at private market rates; they were simply inexpensive enough for lower-income families to buy or rent. This private, market-rate housing was not supported or maintained by any government program. In fact, barely one percent of Mount Holly Township's total housing stock consists of government-subsidized housing. 159

Mount Holly's most recent redevelopment plan indicates that there will be a dramatic reduction in the number of units actually affordable to low- and moderate-income households when the new development is built. According to the September 2008 plan, the development will include a maximum of 520

¹⁵⁵ Talley, Determination Report, *supra* note 105, at 1.

¹⁵⁶ Alan Mallach *et al.*, Housing and Community Development Network of New Jersey, *Cities in Transition: New Jersey's Urban Paradox* n.15 (Sept. 2006).

 $^{^{157}}$ Citizens in Action, No. A-1099-05T3, slip op. at 5 (N.J. App. Div. 2007).

¹⁵⁸ September 2008 Redevelopment Plan, *supra* note 20, at 18.

¹⁵⁹ Mallach, *supra* note 156, at 22, 23 tb1.34.

residential units.¹⁶⁰ Of these, only fifty-six will be affordable to low-and moderate-income families: the redeveloper will build forty-five new deed-restricted units and, in accordance with the law, will replace the eleven that will be torn down as a result of the redevelopment."¹⁶¹

Aside from these, there will be no market-rate housing affordable to low- and moderate-income households in the redevelopment if the Township's projections are correct. The market prices of the new housing will be far too high for current residents. At the time of the redevelopment study in 2002, the median rent in the Gardens was \$705 per month. The 2008 fair market rent for a one-bedroom apartment in Burlington County is \$781 per month, which is slightly more expensive than what renters who make the average wage in Burlington County can afford according to a national study. The Township estimates that the rent for one- and two-bedroom units in the new development will range from \$1,248 to \$1,840 per month, twice the median rent of an apartment in the

 $^{^{160}}$ September 2008 Redevelopment Plan, $supra\,$ note 20, at second page 4 (misnumbered).

¹⁶¹ *Id.* at 18; N.J. Stat. Ann § 40A:12A-7(a)(7), as amended by P.L.2008, c.46, §2, effective July 17, 2008 (requiring replacement of deed-restricted units demolished through redevelopment).

 $^{^{162}}$ Citizens in Action, No. A-1099-05T3, slip op. at 5 (N.J. App. Div. 2007).

¹⁶³ Nat'l Low Income Housing Coalition, *Out of Reach 2007-2008*, http://www.nlihc.org/oor/oor2008/data.cfm?getstate=on&getcounty=on&county=1749 &state=NJ.

¹⁶⁴ Nat'l Low Income Housing Coalition, *Out of Reach* 2007-2008, 124 (2008), *available at* http://www.nlihc.org/oor/oor 2008/pdf/NJ.pdf.

Gardens.¹⁶⁵ The Township's estimated cost of purchasing a market-rate unit will be equally out of reach. The "price points" will range from \$210,000 to \$240,000 for two- and three-bedroom townhouses in the redeveloped area.¹⁶⁶ According to the Township's appraisals, the property values of the two- and three-bedroom units now in the Gardens range from \$39,000 to \$49,000, just twenty percent of the projected cost of the new homes.¹⁶⁷ At these anticipated market prices, the newly constructed units will be unaffordable to people who are being displaced from the Gardens.

Based on the Township's estimates, when this project is over, more than 300 homes that were affordable to low- and moderate-income house-holds will have been demolished, and fifty-six such units will be built. The result will be a loss of more than 250 affordable housing units.

¹⁶⁵ Richard B. Reading Associates, Fiscal Impact Analysis for the West End Redevelopment: A Proposed Mixed-Use Redevelopment in the Township of Mount Holly, Burlington County, New Jersey 21 (Sept. 8, 2008) (on file with Dep't of the Public Advocate).

 $^{^{166}}$ *Id*.

¹⁶⁷ See Appraisal from Todd and Black, Inc., to Kathleen Hoffman, Acting Township Manager, at 40 (June 29, 2007) (appraising 259 Levis Dr., a two-bedroom Gardens home) ("the unadjusted and adjusted range of identified two-bedroom homes] is from \$39,000 to \$40,000"); Appraisal from Todd and Black, Inc., to Kathleen Hoffman, Acting Township Manager, at 40 (June 29, 2007) (appraising 327 N. Martin Ave., a three-bedroom Gardens home) (similar three-bedroom homes "sold for a sales price of \$49,000") (both on file with Dep't of the Public Advocate).

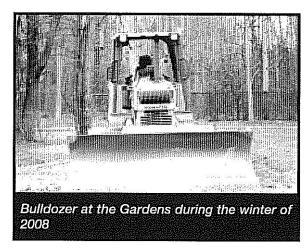
Redevelopment Should Not Exacerbate the Loss of Affordable Housing

The importance of affordable housing is reflected in the New Jersey Constitution's demand that each municipality provide meaningful opportunities for low- and moderate-income families to live there. In the Mount Laurel cases, the state Supreme Court held that each municipality must address both the present affordable housing needs of low- and moderate-income people already living in the geographic region and the future housing needs of those who might seek housing as the municipality grows. 168 In response to these rulings, the Legislature passed the Fair Housing Act, which created the Council on Affordable Housing (COAH) to help municipalities comply with the constitutional mandate to provide affordable housing. 169 COAH sets voluntary municipal targets for the creation and rehabilitation of such housing. Municipalities that satisfy the obligations COAH has defined are thereby protected from certain lawsuits,

¹⁶⁸ Toll Bros. Inc. v. Twp. of W. Windsor, 173 N.J. 502 (2002); In re Twp. of Warren, 132 N.J. 1 (1993); Van Dalen v. Washington Twp., 120 N.J. 234 (1990); Hills Den. Co. v. Twp. of Bernards, 103 N.J. 1 (1986); S. Burlington County NAACP v. Twp. of Mount Laurel, 92 N.J. 158 (1983) ("Mount Laurel II"); Pascack Ass'n v. Mayor of Washington, 74 N.J. 470 (1977), overruled in part by Mount Laurel II, 92 N.J. 158; Oakwood at Madison, Inc. v. Twp. of Madison, 72 N.J. 481 (1977); S. Burlington County NAACP v. Twp. of Mount Laurel, 67 N.J. 151 (1975); see also Dep't of the Public Advocate, Affordable Housing in New Jersey: Reviving the Promise 2-5 (2007), available at http://www.state.nkis/public advocate/public/pdf/Mt%20Laurel%20report%20FINAL-10-24-07.pdf.

 $^{^{169}}$ N.J. Stat. Ann. § 52:27D-301 to -329.19 (as amended by P.L.2008, c.46, §§ 7-10, effective July 17, 2008).

and Mount Holly has elected to participate in this process.



COAH has recently revised its regulations to require participating municipalities to ensure that one in five of all new units constructed be affordable to low- and moderate-income households. This twenty-percent rule applies town-wide, and not to any particular site, but it can influence the proportion of affordable housing built in a redevelopment area. The current redevelopment plan in Mount Holly does not call for twenty percent affordable units in the redevelopment; the planned proportion will be closer to eleven percent. Mount Holly relies on a 2006 court ruling

 $^{^{170}}$ N.J. Admin. Code § 5:97-2.2(d); see also N.J. Admin. Code § 5:97-1.4 (definition of "growth share").

¹⁷¹ September 2008 Redevelopment Plan, *supra* note 20, at second page 4 (misnumbered), 18 (fifty-six affordable units constitute eleven percent of the maximum 520 units planned).

holding that it has shown compliance with its COAH obligations through the year 2014.¹⁷²

Notwithstanding the constitutional guarantee of affordable housing in New Jersey, the State has been in the midst of an affordable housing crisis for the past thirty years and still "faces the toughest housing challenges of any state in the nation." The lack of affordable housing is literally pushing low-income residents out of the State. A recent Princeton University report found that the driving force behind the migration of residents out of state is low-income individuals seeking places with lower costs of living. It concluded that "[t]he most important step to reducing out-migration would be to improve the affordability of housing in the state, particularly for low-income residents."

Most affordable housing is private, market-rate housing rather than government-subsidized housing, and most of this housing is located in low- and

¹⁷² *Id.* at 18 (citing *In re Twp. of Mount Holly*, No. 13URL-002531-02 (N.J. Law Div. 2006) (Third Round Final Judgment of Compliance and Repose)).

¹⁷³ Bruce Katz, Vice President and Director, & Robert Puentes, Fellow, Metropolitan Policy Program, The Brookings Institution, Address at the Land Use Institute at the New Jersey Institute for Continuing Legal Education: Why Housing and Land Use Matter for New Jersey's Toughest Challenges at 2 (May 2, 2006), available at http://www3.brookings.edu/metro/speeches/20060502_NewBrunswick.pdf.

¹⁷⁴ Cristobal Young et al., Woodrow Wilson School of Public and International Affairs, Princeton University, *Trends in New Jersey Migration: Housing, Employment, and Taxation* 6 (Sept. 2008).

 $^{^{175}}$ *Id*.

moderate-income communities.¹⁷⁶ According to the Department of Community Affairs, approximately 700,000 (more than sixty percent) of all low- and moderate-income households in the State are "cost-burdened," meaning they pay more than thirty percent of their pre-tax income toward housing.¹⁷⁷ More than forty percent of all low- and moderate-income households pay over half of their income toward housing.¹⁷⁸

Adding to these longstanding pressures, the fore-closure crisis will make the already tight rental market even tighter. Many owners who have lost their homes will become renters. Indeed, after averaging just 0.7% annual growth nationally between 2003 and 2006, the number of rental households increased by 2.8% in 2007, even before the full extent of the foreclosure crisis had materialized.

¹⁷⁶ See Joint Center for Housing Studies of Harvard University, America's Rental Housing: The Key To a Balanced National Policy 13, 20-21 (2008).

¹⁷⁷ See N.J. Dep't of Cmty. Affairs, Consolidated Plan FY 2007 Action Plan 66 (May 15, 2007), available at http://www.nj.gov/dca/dh/pubs/conplan2007 final.pdf (calculations based on data in chart).

¹⁷⁸ See id. (calculations based on data in chart).

¹⁷⁹ Joint Center for Housing Studies, *supra* note 176, at 2.

 $^{^{180}}$ Id.



Redevelopment can greatly exacerbate these already challenging conditions through the demolition of affordable housing. According to the New Jersey Supreme Court, the "essential characteristic" of blight is "deterioration or stagnation that negatively affects surrounding properties." Unfortunately, poor neighborhoods often exhibit such deterioration or stagnation for a variety of reasons: absentee landlords may fail to maintain properties, and low-income owners may be unable to do so; 182 rentals, generally less well maintained, may prevail over owner-occupied homes; 183 and crime problems may go unresolved. 184 It is not surprising then that "[b]lighted [residential] areas are almost always poor neighborhoods. 185 In fact,

¹⁸¹ *Gallenthin*, 191 N.J. at 363.

¹⁸² Alexander von Hoffman *et al.*, Joint Center for Housing Studies of Harvard University, *The Impact of Housing on Community: A Review of Scholarly Theories and Empirical Research* 29-30 (March 2006).

¹⁸³ *Id*. at 36-37.

¹⁸⁴ *Id*. at 38-39.

¹⁸⁵ Matthew J. Parlow, *Unintended Consequences: Eminent Domain and Affordable Housing*, 46 Santa Clara L. Rev. 841, 859

the Township of Mount Holly and the courts cited each of the factors above as indicia of blight in the Gardens.¹⁸⁶ By virtue of the very meaning of blight, poor neighborhoods in distress will be the areas targeted for residential redevelopment projects in New Jersey.

In Berman v. Parker, U.S. Supreme Court Justice William O. Douglas wrote, "Miserable and disreputable housing conditions may . . . suffocate the spirit by reducing the people who live there to the status of cattle." 187 Scholars have noted the implication "that blight condemnations will make way for the creation of new, more livable housing and social conditions for the poor who had lived in blighted housing."188 Unfortunately, redevelopment projects often fall far short of this goal. As in Mount Holly Gardens, such projects often end up destroying affordable housing and forcing displaced residents into less desirable and less affordable living situations. The *Mount* Laurel cases hold that a municipality may not use exclusionary zoning to deny low-income families a realistic opportunity to move into the community¹⁸⁹; in

^{(2006);} see generally Wendell E. Pritchett, The "Public Menace" of Blight: Urban Renewal and the Private Uses of Eminent Domain, 21 Yale L. & Pol'y Rev. 1 (2003).

 $^{^{186}}$ Citizens in Action, No. A-1099-05T3, slip op. at 32-34 (N.J. App. Div. 2007).

¹⁸⁷ Berman v. Parker, 348 U.S. 26, 32 (1954).

¹⁸⁸ David A. Dana, The Law and Expressive Meaning of Condemning the Poor After Kelo, 101 Nw. U. L. Rev. 365, 379 (2007).

¹⁸⁹ E.g., S. Burlington County NAACP v. Twp. of Mount Laurel, 92 N.J. at 208-09; S. Burlington County NAACP v. Twp. of Mount Laurel, 67 N.J. at 174-75, 179.

many ways, it seems even more compelling to prevent municipalities from using their redevelopment powers to force *existing* low-income residents to move out.

Various national studies have identified the negative effect of redevelopment on the stock of affordable housing."190 For example, city and state governments devastated affordable housing stocks throughout the country with their use of eminent domain during the "urban renewal" period in the twentieth century. demolishing low-cost housing and replacing it with high-cost, middle-to-upper-income housing. 191 Ironically, the stated purpose of these takings was often to develop new affordable housing. 192 Between 1950 and 1960, urban renewal projects demolished 126,000 housing units and erected only 28,000 in their place, almost all of which commanded much higher rent.¹⁹³ Studies examining more recent periods of gentrification have found that the associated displacement caused an "exacerbat[ion of] already dire low and moderate income housing shortages."194 This should come as no surprise. It only makes sense that where affordable housing is demolished or converted into housing for those with higher incomes and not replaced, there is less housing affordable to low- and moderate-income households. 195

¹⁹⁰ Adam P. Hellegers, Eminent Domain As an Economic Development Tool: A Proposal To Reform HUD Displacement Policy, 2001 L. Rev. M.S.U.-D.C.L. 901, 938 (2001).

 $^{^{191}} Id.$

 $^{^{192}}$ Id.

 $^{^{193}}$ Id.

¹⁹⁴ *Id*. at 939.

 $^{^{195}}$ Id.

When affordable housing is lost, people are forced to move and their "shelter costs almost always [rise] after displacement . . . 'Mower income residents bear particularly heavy shelter cost increase burdens in relation to their ability to pay."" The loss of affordable housing often forces residents to live in overcrowded conditions after displacement. 197

There are limited data about how redevelopment affects affordable housing in New Jersey, in large part because there is no requirement for data collection. There is evidence, however, that New Jersey's experience follows the nationwide and common-sense trend that redevelopment reduces the stock of affordable housing. Beginning in 2000, there was a significant increase in the amount of development and redevelopment in cities in New Jersey.'198 Unlike in the early 1980s, when the availability of federal funds led to the construction of subsidized rental housing, housing production in cities is currently marketdriven and results in housing that is unaffordable to lower-income households. 199 Along with the increase in development, there has been a related increase in the price of housing. Although real estate prices in New Jersey cities decreased between 1994 and 2000, they increased by forty-nine percent between 2000 and 2004.²⁰⁰ This increase has not been limited to new housing; prices of existing homes have also

¹⁹⁶ *Id.* (quoting Richard T. LeGates & Chester Hartman, *Gentrification-Caused Displacement*, 14 Urb. Law. 31, 47 (1982)).

 $^{^{197}} Id$

¹⁹⁸ Mallach, *supra* note 156, at 18, 20.

¹⁹⁹ *Id*. at 20.

²⁰⁰ *Id*. at 18.

increased.²⁰¹ Not surprisingly, where there has been a significant increase in the price of homes, the percentage of lower-income homebuyers (those who make less than eighty percent of the region's median income) has dropped.²⁰² New Jersey must identify ways to stem this tide.

Reform Recommendation: The Legislature must set clear requirements for replacing affordable housing that is demolished as part of a redevelopment project. The requirements should provide for the construction or rehabilitation of as much affordable housing as possible. The recently passed affordable housing law ensures the replacement of some affordable housing lost to redevelopment. We believe that the law should go further in protecting the affordable housing stock. We therefore recommend amendments to strengthen the obligation to replace affordable units that are demolished for redevelopment.

PART IV: PROTECTING THE COMMUNITY

The experiences of the residents of Mount Holly Gardens are not unique. The intrinsic value of communities is well documented.

 $^{^{201}}$ Id.

²⁰² *Id*. at 20.

"Everybody here's family"



"People are really nice to me. Anywhere I go, they want to know, 'Can I help you?' 'Can I help you?' A lot of them call me mom and want to know if they can help me. I mean, people—I don't know—just want to know if they can help me." Public Hearing Tr. 85:10-16 (statement of Charlie Mae Wilson, 78-year-old home-owner).

"I want you to understand one thing. It's just not about the houses. All these people, they're all my family. My grandparents, both my mother's and father's parents, are here. They had kids. Their kids are my friends. Everybody here's family." *Public Hearing Tr. 106: 12-18 (statement of Jules Brooks, resident and businessperson)*.

"I brought up my children here . . . I did it with the help of my neighbors, too. They watch out for my kids. Everybody knew each other." *Public Hearing Tr. 19:611* (statement of Nancy Lopez, resident since 1987).

"It's just hard to think about everything that has happened. All of us here are like family. We live with each other, basically help each other out." Public Hearing Tr. 50:25-51:3 (statement of Garrick Rodriguez, twenty-year-old resident).

"I never left the Gardens because I have family here and a lot of people that I know. For tonight, I invited a lot of people and talked to them about this meeting. A lot of them that are here, I met them from at least thirty years ago. I have always tried to help them out to survive. Now almost all the time I'm here in Mount Holly Gardens . . . I helped my neighbors and I helped my family members that are looking for information for how to get to the store . . . I have a family member, too, who is very sick and sometimes I take care of him and his wife. I also have an elderly lady [neighbor] who doesn't drive. She can't read. She can't drive. I do everything for her." Public Hearing Ti: 55:14-56:13 (statement of Carmen Vadiz, former resident).



Especially among the poor, the existence of a matrix of mutually shared values and . . . concern and support is a necessary condition, not just to psychic wellbeing, but to physical survival itself. . . The poor must often depend on a web of

mutual support . . . with each individual contributing to the others whatever . . . special talents he might have. [Such] exchanges . . . reinforce [one another], creating a milieu the value of which far exceeds what the physical reality might suggest. When this milieu is destroyed and its members scattered, it is irretrievably lost. 203

As it has been conducted in Mount Holly, redevelopment forces people to relocate. This displacement disregards the value of a community and causes a breakdown in neighborhood social structures, scattering former neighbors who have relied on one another. Research on the massive dislocations caused by urban renewal in the 1960s and 70s and more recent experiences with gentrification demonstrate that displacement has "consistent negative effects on . . . neighborhood stability" that go beyond the community directly affected.²⁰⁴

Reform Recommendations: One way to address this issue is to engage the community in a meaningful way throughout the entire redevelopment process, from the blight designation to the redevelopment plan and throughout the relocation and rebuilding processes.

1. Engage Members of the Community. Engaging members of the community in the redevelopment process from the beginning will increase community support and the likelihood of success. Community

²⁰³ Barbara L. Bezdek, *To Attain "The Just Rewards Of So Much Struggle": Local-Resident Equity Participation In Urban Revitalization*, 35 Hofstra L. Rev. 37, 88 (2006) (alteration in original) (quoting, Denis J. Brion, *The Meaning of the City: Urban Redevelopment and the Loss of Community*, 25 Ind. L. Rev. 685, 702 (1992)).

²⁰⁴ Hellegers, *supra* note 190, at 938, 936, 941.

members can be engaged in project and neighborhood planning through the use of advisory committees as well as community-wide discussions.²⁰⁵ For example, Atlanta Beltline, Inc., an affiliate of the Atlanta Development Authority, has established a multitiered system to ensure community engagement. Included in its Community Engagement Framework is an affordable housing advisory board, quarterly public briefings, study groups used to gain community input. a board position for a community member, and a staff member designated as the Citizen Participation advocate.206 The City of Atlanta has required redevelopment projects to "reflect through development agreements or funding agreements . . . certain community benefit principles," such as prevailing wages for workers, hiring people from the community, and apprenticeship programs.²⁰⁷

Similarly, East Baltimore Development Incorporated (EBDI), a public-private partnership redeveloping eighty-eight inner-city acres in East Baltimore, Maryland, has actively engaged the community throughout the process. Its efforts have included early community input into the design of the redevelopment plan, ongoing meetings regarding the relocation process, creation of a resource center for the community,

²⁰⁵ The Urban Institute, *The Impact of Community Development Corporations on Urban Neighborhoods* 12 (June 2005).

²⁰⁶ BeltLine Atlanta Connected, BeltLine Basics, Community Engagement Program, http://www.beltline.org/BeilLineBasics/CommunityEngagement/tabid/1728/Default.aspx (last visited Sept. 25, 2008).

²⁰⁷ Atlanta, Ga., Ordinance 05-0-1733 (Nov. 7, 2005), *available at* http://apps.atlantaga.gov/citycouncil/2005/images/adopted/1107/0501733.pdf.

inclusion of two community representatives on the EBDI Board of Directors, and regularly distributed monthly newsletters since 2004.²⁰⁸

2. Empower Displaced Individuals. Redevelopment, in addition to being an opportunity to improve a place better housing, safer streets—is also an opportunity to improve the lives of individuals. For example, EBDI approaches redevelopment in a way that "combines economic, community, and human development strategies" to benefit area residents, businesses, and the surrounding communities.²⁰⁹ The foundation of EBDI's relocation strategy rests on providing each affected individual with a Family Advocate to coordinate a range of services, including financial literacy counseling, special services for senior residents, employment training and referral, health services, day care, and other assistance as needed. This assistance is in addition to the services of a Relocation Counselor who helps residents find appropriate replacement housing using the relocation benefits to which they are entitled by law as well as

²⁰⁸ East Baltimore Development Incorporated, Relocation Plan for the East Baltimore Development Project 58-61 (Nov. 2004), available at http://www.ebdi.org/docs/Relocation%20Plan.pdf [hereinafter EBDI Relocation Plan]; East Baltimore Development Inc., Board of Directors, http://www.ebdi.org/board_of_directors.html (last visited Sept. 26, 2008); East Baltimore Development Inc., Newsletters, http://www.ebdi.org/newsletter.html (last visited Sept. 26, 2008).

²⁰⁹ East Baltimore Development Inc., East Baltimore Development Inc. (EBDI), http://www.ebdi.org/thestory.html (follow "About EBDI" hyperlink, then "Read More" hyperlinks) (last visited Sept. 26, 2008).

supplemental benefits provided by EBDI.²¹⁰ An independent survey found that most of the individuals displaced were satisfied with their experiences with EBDI. Eighty-one percent of homeowners and eighty percent of renters felt their compensation and relocation benefits allowed them to relocate to homes that met their needs. A majority of respondents stated that they were better off after the relocation than before.²¹¹

3. Give Priority Bidding to Community Development Corporations. Community development corporations are "non-profit, community-controlled real estate development organizations dedicated to the revitalization of poor neighborhoods.²¹² In addition to building physical structures, CDCs also focus their efforts on economic development and social services.²¹³ Because of the nature and structure of CDCs, they can create a redevelopment plan that addresses the various needs of community members as well as the needs of the municipality.²¹⁴ For example, Newark-based New Community Corporation (NCC) is one of the largest community development corporations in

²¹⁰ *EBDI Relocation Plan*, *supra* note 208, at 6; *see also id*. at 19-23 ex.3 (summary of relocation benefits).

²¹¹ Rhae Parkes & Pedram Mandavi, Abt Associates, Final Report: East Baltimore Development Initiative Post-Relocation Satisfaction Survey, Highlight and Key Findings 14, 15, 38, 41 (2007), available at http://www.ebdorg/docs/FRSS_Combined_Report_FINAL_1%2018%2007.pdf.

²¹² Christopher Walker, *The Urban Institute, Community Development Corporations and Their Changing Support Systems* 1 (Dec. 2002).

 $^{^{213}}$ *Id*.

²¹⁴ See The Urban Institute, supra note 205, at 13-14.

the nation, and over the past thirty years it has engaged in a variety of initiatives in support of its community. NCC currently manages more than 3,000 units of affordable housing for families and seniors. NCC has not only developed and managed affordable housing but has connected the residents of that housing with needed services.²¹⁵

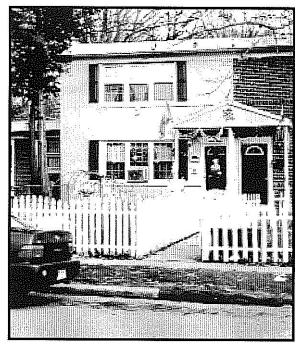
4. Adopt Community Benefit Agreements. A Community Benefit Agreement (CBA) is a legally enforceable contract between the redevelopers and a coalition led by members of the neighborhood being redeveloped and others representing their interests. CBAs may require that the redeveloped area include affordable housing for current residents, local hiring and training for jobs, and community services such as health centers. CBAs have been used across the country, including in Los Angeles, New Haven, San Diego, San Jose and Denver. San Diego, San Jose and Denver.

²¹⁵ New Community Corp., *About NCC*, http://www.newcommunity.org/main.htm (follow "About NCC" hyperlink) (last visited Oct. 7, 2008); New Community Corp., *What We Do*, http://www.newcommunity.org/whatwedoframe.htm (last visited Sept. 29, 2008).

²¹⁶ David A. Marcello, Recent Developments in Land Use, Planning and Zoning Law: Community Benefit Agreements: New Vehicle for Investment in America's Neighborhoods, 39 Urb. Law. 657, 657-58 (2007).

²¹⁷ See generally id.

²¹⁸ See The Partnership for Working Families, Major Partner Organization Policy Advocacy and Community Benefits Campaign Victories, http://www.communitybenefits.org/article.php?list=type&type=8 (last visited Sept. 26, 2008).



5. Offer Tenants the Option to Return to the Community. Displaced residents should be offered an opportunity to return to their community once the redevelopment is complete. This can be accomplished by giving the original tenants an option to buy or rent in the redeveloped community before soliciting new tenants. However, the new housing offered to the original tenants should not be priced in a way that places the tenants in a worse financial position than they were in prior to the redevelopment. EBDI has taken special measures to ensure that displaced residents have the opportunity to return to affordable housing in their community.²¹⁹ The redeveloped area

²¹⁹ East Baltimore Development Inc., *Relocation with Right to Return and Homes Made Affordable*, http://www.ebdi.org/relocation.html (follow "Relocation with Right to Return and Homes Made Affordable" hyperlink) (last visited Sept. 26, 2008);

is a mixed-income community with properties priced to ensure equal representation of households in three income categories: low-income, moderate-income, and market rate. A "pre-public" marketing phase gives relocated residents an opportunity to apply to rent or purchase the new units. Returning residents receive moving expenses to defray the cost of returning to the area, in addition to closing costs for homeowners (not to exceed \$5,000) and security deposits for renters (not to exceed \$2,500).²²⁰

Conclusion

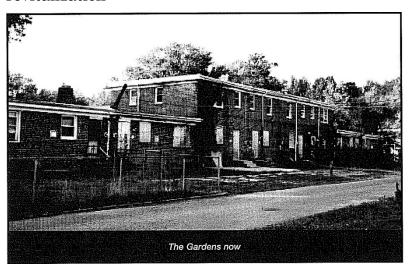
The redevelopment of the Mount Holly Gardens has dismantled a neighborhood while people still live there, dispersed most of its residents, undermined the support systems that had sustained the community, and placed greater financial strain on dozens of already struggling low-income families. Meanwhile, the new development promises no discernible benefit to the majority of present and former Gardens residents. We believe these results were not what the legislature intended when it authorized municipalities to redevelop blighted communities.

Redevelopment reform cannot prevent disruption and displacement, but it can minimize the trauma visited upon individuals and neighborhoods that are the sites of redevelopment projects. The remaining residents of the Gardens deserve better treatment than they and those who left before them have received so far. And the New Jersey Legislature must

see, e.g., East Baltimore Development Inc., Residents Stories, http://wwtiv.ebdi.org/community.html (follow "Residents' Stories" hyperlink) (last visited Sept. 26, 2008).

²²⁰ EBDI Relocation Plan, supra note 208, at 53-54.

take steps to ensure that those who live in "blighted areas" do not become the casualties of our efforts at revitalization



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SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION

[Filed 11/26/08]

Docket No. A-001099-05T3

CITIZENS IN ACTION, ELMIRA NIXON,
LUZ VALENTINE, KATHY HOWARD, JOYCE STARLING,
JESUS RODRIGUEZ, SHEILA WORTHEN, LEONA WRIGHT,
NICOLAS BALBUENA, BLANCA PEREZ, BERTHA
WILLIAMS, YVONNE MAJOR, ALANDRIA WORTHEN,
MERCEDEZ FIGUEROA, MATTIE HOWELL, JAMES WISE,
VALERIE WISE, CRYSTAL TUCKER, DAGMAR VICENTE,
ANTONIO DELGADO, CERVANTE AMPARO, MANUEL
CANAS, EDWIN GOMEZ, TERRY MUSE, CARL RICH,
RADAMES TORRES-MORENO, ANNELISE WESTED,
ILSE CARTER, CHARLIE MAE WILSON, ANGELO NIEVES
AND YOLONDA AROCHO,
Plaintiffs-Appellants,

v.

TOWNSHIP OF MT. HOLLY, A MUNICIPAL CORPORATION OF THE STATE OF NEW JERSEY, DONALD SCATTERGOOD, AS MAYOR OF THE TOWNSHIP OF MT. HOLLY, AND TOWNSHIP COUNCIL OF MT. HOLLY, AS GOVERNING BODY OF THE TOWNSHIP OF MT. HOLLY, Defendants-Respondents.

On Appeal From: SUPERIOR COURT OF NEW JERSEY LAW DIVISION Docket No. BUR-L-3027-03

Sat Below Hon. John A. Sweeney, A.J.S.C.

CIVIL ACTION CERTIFICATION OF THOMAS CASEY IN OPPOSITION TO MOTION FOR EMERGENT RELIEF

I, THOMAS CASEY, being of full age hereby certify

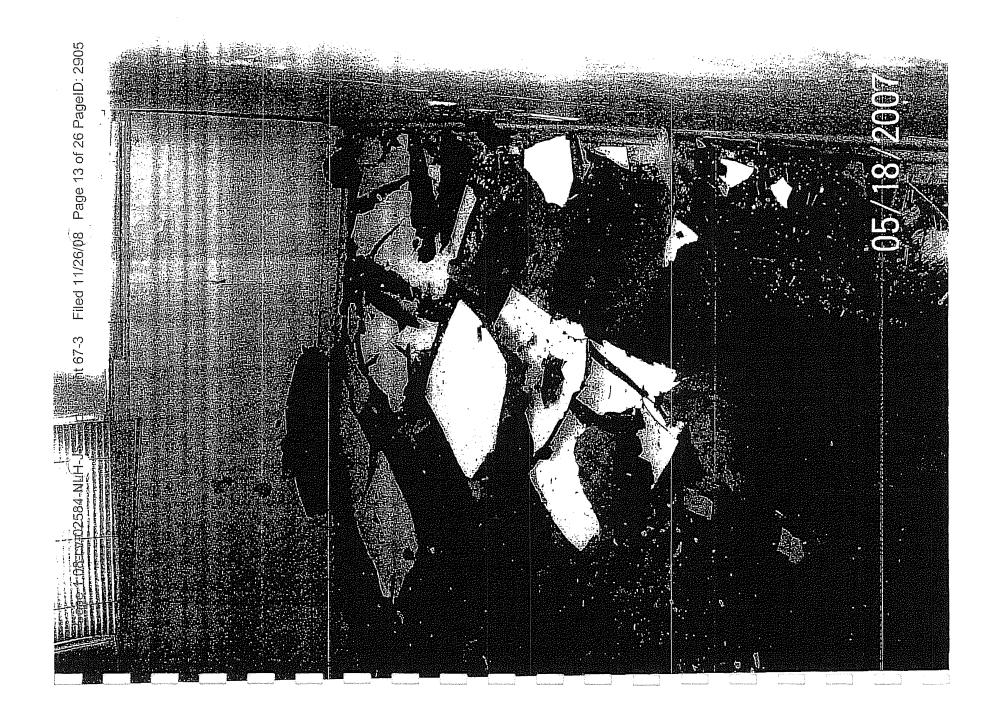
- 1. I am employed as the construction official in the Township of Mt. Holly, New Jersey.
- 2. I have served in that capacity since March of 2001.
- 3. I have held a Hazardous High Rise (HHS) Building subcode license issued by the State of New Jersey Department of Community Affairs (DCA) to act as the building subcode inspector since 1990.
- 4. I also hold an HHS fire subcode license issued by the (DCA) and I serve as fire subcode inspector in the Township of Mt. Holly.
- 5. Prior to becoming an inspector I was in business as a general contractor sole proprietor for fifteen (15) years.
- 6. I have inspected a number of vacant properties within the Gardens neighborhood during my tenure with Mt. Holly Township.
- 7. On June 22, 2007, I personally inspected the buildings known as 247, 249, 251, 253, 257, 259, 261, 263 Levis Drive, Mt. Holly New Jersey. These inspections were completed in response to Appellants' Motion to stop demolition. I testified to the condition of those properties before Judge Sweeney on June 21,

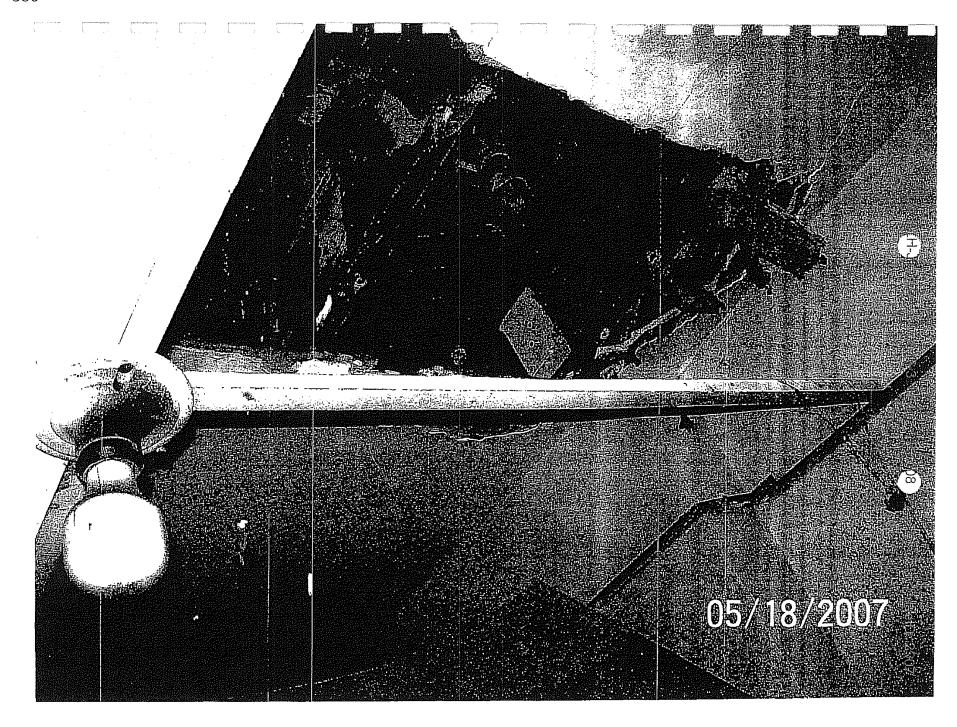
- 2007. A copy of my testimony and the report submitted to the Court are attached hereto. These buildings 1ere subsequently demolished by the Township.
- 8. For three months following performing these inspections, I was repeatedly treated by a physician for respiratory ailments.
- 9. I will no longer inspect any vacant buildings within the Gardens without wearing a respirator to protect myself from airborne contaminants that made me ill.
- 10. The conditions founds in my June 2007 inspections are similar to the conditions in all vacant buildings within the Gardens neighborhood. These buildings tend to suffer from water damage due to leaking roofs, vandalism, mold, insect infestation and other issue that make them unsafe and a nuisance.
- 11. Many of the conditions have worsened with the passage of time from June 2007.
- 12. There are vacant buildings throughout the Gardens area. I would expect to find similar conditions throughout these buildings. All of the vacant buildings within the Gardens have been boarded up and similarly maintained as those I inspected on June 22, 2001.

I certify that the foregoing is true to the best of my knowledge, information and belief and am aware that if any of the foregoing statements are knowingly and willfully false, I am subject to punishment.

Dated: January 24, 2008

<u>/s/ THOMAS CASEY</u> THOMAS CASEY





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UNITED STATES DISTRICT COURT DISTRICT OF NEW JERSEY CAMDEN VICINAGE

Case No.: 1:08-cv-02584 HON. NOEL L. HILLMAN, U.S.D.J.

MT. HOLLY GARDENS CITIZENS IN ACTION, INC., A NEW JERSEY NON-PROFIT CORPORATION, MARIA Arocho, Pedro Arocho, Reynaldo Arocho, Ana AROCHO, CHRISTINE BARNES, VIVIAN BROOKS, BERNICE CAGLE, LEON CALHOUN, GEORGE CHAMBERS, DOROTHY CHAMBERS, SANTOS CRUZ, ELIDA ECHEVARIA, NORMAN HARRIS, MATTIE HOWELL, NANCY LOPEZ, VINCENT MUNOZ, ANGELO NIEVES, DOLORES NIXON, ELMIRA NIXON, LEONARDO PAGAN, JAMES POTTER, ROSEMARY ROBERTS, WILLIAM ROBERTS, EFRAIM ROMERO, HENRY SIMONS, PHYLLIS SINGLETON, JOYCE STARLING, ROBERT TIGAR, TAISHA TIRADO, FLAVIO TOBAR, MARLENE TOBAR, RADAJVIES TORRES BURGOS, RADAMES TORRES-MORENO, LILLIAN TORRES-MORENO, DAGMAR VICENTE, ALANDRIA WARTHEN, SHEILA WARTHEN, CHARLIE MAE WILSON AND LEONA WRIGHT

Plaintiffs,

vs.

TOWNSHIP OF MOUNT HOLLY, A MUNICIPAL CORPORATION OF THE STATE OF NEW JERSEY,
TOWNSHIP COUNCIL OF TOWNSHIP OF MOUNT HOLLY,
AS GOVERNING BODY OF THE TOWNSHIP OF MOUNT HOLLY, KATHLEEN HOFFMAN, AS TOWNSHIP MANAGER OF THE TOWNSHIP OF MOUNT HOLLY, JULES THIESSEN,
AS MAYOR OF THE TOWNSHIP OF MOUNT HOLLY,
KEATING URBAN PARTNERS, L.L.C., A COMPANY DOING

BUSINESS IN NEW JERSEY, TRIAD ASSOCIATES, INC., A CORPORATION DOING BUSINESS IN NEW JERSEY, Defendnts.

SECOND AMENDED COMPLAINT AND DEMAND FOR JURY TRIAL

I. PRELIMINARY STATEMENT

- 1. This is a civil rights action challenging Mount Holly Township's ("Township") wide-scale redevelopment of the neighborhood known as Mt. Holly Gardens ("Gardens"). Plaintiffs are an association of residents, Mt. Holly Gardens Citizens in Action, Inc., ("CIA"), and five individual residents ("Residents") living in the Gardens, which is a cohesive, ethnically diverse neighborhood within Mt. Holly Township that is predominantly African-American and Hispanic with mostly low and moderate income families. CIA and Residents are challenging the Township's sweeping redevelopment project that is demolishing existing homes, displacing numerous families, and dismantling and destroying the entire Gardens neighborhood.
- 2. The Township and its redevelopers have been and currently are aggressively implementing their redevelopment project, ultimately seeking acquisition, through purchase and eminent domain, and total demolition of all 329 homes within the Gardens redevelopment area affordable to current and displaced families and replacement with new, much higher-priced market rate homes intended for households that are more affluent. In carrying out redevelopment, the Township and its redevelopers have greatly

increased blighted conditions and have rendered the Gardens unsafe and unlivable. Among other things, under the implied threat of eminent domain, the Township has systematically acquired, vacated and boarded up more than 200 previously occupied homes-approximately two-thirds of all residential properties within the Gardens—and has demolished to date approximately 70 properties. If not stopped, the Township and its redevelopers will succeed in irrevocably tearing down the most identifiable minority community within Mt. Holly—with the highest rates of African-American and Hispanic homeownership within Burlington County—and permanently displacing hundreds of lower income minority residents from their community where they will no longer be able to afford to live.

- 3. In prior state court litigation, the Township's finding of blight," i.e., its determination that the Gardens neighborhood met New Jersey's criteria for designation as an—area in need of redevelopment," was upheld in April 2005. However, in August 2005 and subsequently upheld on appeal in 2007, CIA's and Residents' civil rights and other substantive challenges to the redevelopment plan were dismissed without prejudice as then not being ripe for adjudication.
- 4. These claims are now unquestionably ripe in light of the Township's subsequent destructive implementation actions devastating the Gardens community, its adoption of a revised plan, and its presentation of the Redevelopers' proposed general development plan for the redeveloped community. Specifically, the Township and its redevelopers have unlawfully discriminated against the Residents on the basis of race and national origin in violation of

Title VIII of the Civil Rights Act of 1968, 42 U.S.C. § 3601 et seq.; the Civil Rights Act of 1866, 42 U.S.C. § 1982; the New Jersey Law Against Discrimination, N.J.S.A. 10:5-1 et seq.; and Equal Protection under the United States and New Jersey Constitutions. Furthermore, the Township's actions deprive Residents of just compensation by driving down the value of their homes, while the Township has failed to adequately plan or prepare for replacement housing realistically affordable to current and displaced residents and failed to provide adequate relocation assistance that would enable displaced residents to purchase replacement housing.

The Township has also acted arbitrarily, capriciously, unreasonably, ultra vires and unconstitutionally, by first making substantial de facto changes to the redevelopment plan in closed meetings and then adopting an inadequate amended redevelopment plan, in violation of the New Jersey Local Redevelopment and Housing Law, N.J.S.A 40A:12A-1 et seq., as well as procedural due process of law as guaranteed by the Fourteenth Amendment to the United States Constitution and fundamental fairness protected under Article I, Paragraph 1 of the New Jersey Constitution. The Township has additionally acted unconstitutionally in violation of the general welfare under Article I, Paragraph 1, of the New Jersey Constitution, by carrying out redevelopment activities that will result in the destruction and substantial net loss of housing affordable to low and moderate income families, as well as the forcible displacement of hundreds of low and moderate income residents from the Gardens community without providing affordable replacement housing.

6. Residents and CIA seek, among other things, declaratory and injunctive relief invalidating the redevelopment plan; mandating that the Township carry out redevelopment in the Gardens in a manner having the least discriminatory adverse impact upon African-American and Hispanic households; and prohibiting implementation without providing adequate affordable replacement housing for all current and displaced Gardens residents. Residents and CIA also seek damages and/or just compensation sufficient for Residents to secure permanent replacement housing in the local housing market.

II. JURISDICTION

- Jurisdiction over the Plaintiffs' claims is con-7. ferred on this court by 28 U.S.C. § 1331 (federal question jurisdiction) in that this action arises under the Constitution and laws of the United States; 28 U.S.C. § 1343(a)(4) because the Plaintiffs seek equitable and other relief under Acts of Congress providing for the protection of civil rights under Title VIII of the Civil Rights Act of 1968, 42 U.S.C. § 3601 et seq.; 42 U.S.C. § 3613 for civil actions under Title VIII of the Civil Rights Act of 1968, 42 U.S.C. § 3601 et seq.; and 42 U.S.C. § 1983, which provides redress for the deprivation, under color of state law, of rights, privileges and immunities secured to all citizens and persons within the jurisdiction of the United States by the Constitution and laws of the United States.
- 8. Plaintiffs seek declaratory and injunctive relief against the Defendants pursuant to 28 U.S.C. §§ 2201 and 2202 and injunctive relief pursuant to 42 U.S.C. § 3613(c)(l).

- 9. In addition, 28 U.S.C. § 1367 confers supplemental jurisdiction on this court over Plaintiffs' related claims under state law.
- 10. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b) because the Plaintiffs' claims arose in this district.

III. PARTIES

A. Plaintiffs

- 11. Plaintiff Mt. Holly Gardens Citizens in Action ("CIA"), Inc., is a voluntary membership non-profit corporation composed of residents of Mt. Holly Gardens. Its primary purpose is to advocate for the wellbeing and the betterment of the residents and neighborhood. Its address is: c/o Santos Cruz, 356 South Martin Ave, Mt. Holly, New Jersey 08060. CIA brings this action on its own behalf and on behalf of its members. The individually named Plaintiffs are members of CIA.
- 12. Plaintiff Maria Arocho is a resident of Mt. Holly Gardens living at 406 South Martin Street, Mt. Holly, New Jersey 08060. She owns her home. She is Hispanic.
- 13. Plaintiff Pedro Arocho is a resident of Mt. Holly Gardens living at 316 South Martin Street, Mt. Holly, New Jersey 08060. He owns his home. He is Hispanic.
- 14. Plaintiffs Reynaldo and Ana Arocho are residents of Mt. Holly Gardens living at 154 Levis Drive, Mt. Holly, New Jersey 08060. They have lived in the Gardens for 19 years. They own their home. They are Hispanic.

- 15. Plaintiff Christine Barnes is a resident of Mt. Holly Gardens living at 122 Joseph Place, Mt. Holly, New Jersey 08060. She is a tenant. She is White.
- 16. Plaintiff Vivian Brooks is a resident of Mt. Holly Gardens living at 295 Grant Street, Mt. Holly, New Jersey 08060. She owns property located at 319 South Martin Avenue. She is African-American.
- 17. Plaintiff Bernice Cagle is a resident of Mt. Holly Gardens living at 281 Grant Street, Mt. Holly, New Jersey 08060. She is a homeowner. She is African-American.
- 18. Plaintiff Leon Calhoun is a resident of Mt. Holly Gardens living at 113 Levis Drive, Mt. Holly, New Jersey 08060. He is a homeowner. He is African-American.
- 19. Plaintiffs George and Dorothy Chambers are residents of Mt. Holly Gardens living at 341 South Martin, Mt. Holly, New Jersey 08060. They are homeowners and senior citizens. They are African-American.
- 20. Plaintiff Santos Cruz is a resident of Mt. Holly Gardens living at 137 Joseph Place, Mt. Holly, New Jersey 08060. He is a homeowner. He is Hispanic.
- 21. Plaintiff Elida Echevaria is a resident of Mt. Holly Gardens living at 370 South Martin Street, Mt. Holly, New Jersey 08060. She owns her home. She is Hispanic.
- 22. Plaintiff Norman Harris is a resident of Mt. Holly Gardens living at 313 South Martin Street, Mt. Holly, New Jersey 08060. He is a senior citizen and has lived in the property for 36 years. He is a homeowner. He is African-American.

- 23. Plaintiff Mattie Howell is a resident of Mt. Holly Gardens living at 118 Levis Drive, Mt. Holly, New Jersey 08060. She has lived there with her family for 37 years. She is a homeowner and a senior citizen. She is African-American.
- 24. Plaintiff Nancy Lopez is a resident of Mt. Holly Gardens living at 319 North Martin Street, Mt. Holly, New Jersey 08060. She is a homeowner. She is Hispanic.
- 25. Plaintiff Vincent Munoz is a resident of Mt. Holly Gardens living at 382 South Martin Street, Mt. Holly, New Jersey 08060. He is a senior citizen and a homeowner. He is Hispanic.
- 26. Plaintiff Dolores Nixon is a resident of Mt. Holly Gardens living at 114 Joseph Place, Mt. Holly, New Jersey 08060. She is a homeowner. She is African-American.
- 27. Plaintiff Elmira Nixon is a resident of Mt. Holly Gardens living at 21 Saul Place, Mt. Holly, New Jersey 08060. She is an elderly widow and is homebound. She owns her own home and has lived there lived there for 28 years. She is African-American.
- 28. Plaintiff Angelo Nieves is a resident of Mt. Holly Gardens living at 276 Levis Drive, Mt. Holly, New Jersey 08060. He is a homeowner. He is Hispanic.
- 29. Plaintiff James Potter is a resident of Mt. Holly Gardens living at 126 Levis Drive, Mt. Holly, New Jersey 08060. He is a homeowner. He is White.
- 30. Plaintiffs William and Rosemary Roberts are residents of Mt. Holly Gardens living at 346 South Martin Street, Mt. Holly, New Jersey 08060. They are homeowners. They are White.

- 31. Plaintiff Efraim Romero is a resident of Mt. Holly Gardens living at 115 Joseph Place, Mt. Holly, New Jersey 08060. He is a homeowner. He is Hispanic.
- 32. Plaintiff Henry Simons is a resident of Mt. Holly Gardens living at 7 Saul Place, Mt. Holly, New Jersey 08060. He has lived there for 23 years. He is a senior citizen and a homeowner. He is White.
- 33. Plaintiff Phyllis Singleton is a resident of Mt. Holly Gardens living at 128 Joseph Place, Mt. Holly, New Jersey 08060. She is a homeowner. She is African-American.
- 34. Plaintiff Joyce Starling is a resident of Mt. Holly Gardens living at 23 Saul Place, Mt. Holly, New Jersey 08060. She has lived there for 36 years. She is a homeowner. She is a senior citizen and is African-American.
- 35. Plaintiff Robert Tigar is a resident of Mt. Holly Gardens living at 353 North Martin Street, Mt. Holly, New Jersey 08060. He is a homeowner. He is White.
- 36. Plaintiffs Taisha Tirado and Leonardo Pagan are residents of Mt. Holly Gardens living at 211 Levis Drive, Mt. Holly, New Jersey 08060. They are tenants. They are Hispanic.
- 37. Plaintiffs Flavio and Marlene Tobar are residents of Mt. Holly Gardens living at 226 Levis Drive, Mt. Holly, New Jersey 08060. They are homeowners. They are Hispanic.
- 38. Plaintiff Radames Torres Burgos is a resident of Mt. Holly Gardens living at 326 South Martin Street, Mt. Holly, New Jersey 08060. He is a homeowner. He is Hispanic.

- 39. Plaintiffs Radames and Lillian Torres-Mareno are residents of Mt. Holly Gardens living at 308 North Martin Street, Mt. Holly, New Jersey 08060, They are homeowners. He is Hispanic.
- 40. Plaintiff Dagmar Vicente is a resident of Mt. Holly Gardens living at 371 South Martin Street Mt. Holly, New Jersey 08060. She rents the premises and lives there with two children. She is White.
- 41. Plaintiff Alandria Warthen is a former resident of Mt. Holly Gardens who currently resides at 1130 Sunset Road Apt. 4-A, Burlington, NJ 08016. She lived in the Gardens for over 20 years, most recently at 3 Saul Place, Mt. Holly, New Jersey 08060. She is African-American.
- 42. Plaintiff Sheila Warthen is a former resident of Mt. Holly Gardens who currently resides at 1701 Salem Road, Apt. 01, Burlington Township, New Jersey 08016. She lived in the Gardens for 18 years, most recently at 330 North Martin Avenue, Mt. Holly, New Jersey 08060. She is African-American.
- 43. Plaintiff Charlie Mae Wilson is a resident of Mt. Holly Gardens living at 120 Joseph Place, Mt. Holly, New Jersey 08060. She is 78 years old and owns her own home. She is African-American.
- 44. Plaintiff Leona Wright is a resident of Mt. Holly Gardens living at 208 Levis Drive, Mt. Holly, New Jersey 08060. She is a homeowner and has lived there for 33 years. She is 89 years old and widowed. She is African-American.

B. Defendants

45. The Township Defendants, herein referred to as "township," are as follows:

- a. Defendant Township of Mount Holly ("Township") is a municipal corporation chartered under the laws of the State of New Jersey.
- b. Defendant Township Council of Township of Mount Holly is the governing body of the Township. The Council is responsible for the passage of local ordinances and resolutions, including Ordinance No. 2003-12 adopting the Gardens Redevelopment Plan, Ordinance 2005-07 adopting the West Rancocas Redevelopment Plan, and all ordinances and resolutions related to the effectuation of its redevelopment plan, for the appointment of the Township Manager, and for passing and modifying the Township's budget.
- c. Defendant Kathleen Hoffman is the Township Manager of the Township of Mount Holly and is the chief executive and administrative officer of the Township responsible for the overall administration of the Township's agencies and execution of the Township's laws. Defendant Hoffman is sued herein in her official capacity.
- d. Defendant Jules K. Thiessen is the Mayor of the Township of Mount Holly and is responsible, *inter alia*, for presiding over Township Council meetings and executing bonds, notes, contracts and written obligations of the Township. Defendant Thiessen is sued herein in his official capacity.
- 46. The Redeveloper Defendants, herein referred to as "Redevelopers," are as follows:
 - a. Defendant Keating Urban Pminers, LLC ("Keating") is a limited liability company with

- offices located at One Liberty Place, New Brunswick, NJ 08901 Defendant Keating entered into a redevelopment agreement with the Township to implement the WR Redevelopment Plan and has been actively engaged since that time in project planning, development, and implementation.
- b. Defendant Triad Associates, Inc. ("Triad") is a corporation doing business in New Jersey with offices at 238 West Chestnut Avenue, Vineland, NJ 08360, which the Township and/or Keating hired to assist with implementation of the WR Redevelopment Plan, including but not limited to serving as property manager of Township-owned rental properties, preparing the Workable Relocation Assistance Plan ("WRAP") and conducting relocation activities.

IV. FACTUAL ALLEGATIONS

A. Mt. Holly Gardens Neighborhood

- 47. Mt. Holly Gardens ("The Gardens") is situated on 30 acres of land within downtown Mt. Holly Township in Burlington County, New Jersey.
- 48. It is a cohesive, racially and ethnically diverse community.
- 49. At the time the redevelopment process started in 2000, the neighborhood contained 329 houses.
 - 50. The houses were constructed during the 1950s.
- 51. Houses are primarily two-story buildings of solid brick construction with joists made of old-growth hardwood, and are situated in rows of 8 to 10

homes set back approximately 50 feet from the street, allowing for front and back yards.

- 52. Many homes are well-maintained and have attractively landscaped yards and gardens.
- 53. Until approximately March 2004 there was a playground area of approximately 14,000 square feet and a community center converted from a dwelling unit, both which the Township owned.

B. Residents of Mt. Holly Gardens

- 54. According to the 2000 U.S. Census, Burlington County's total population was 423,394. Of the total population, Whites comprised 323,171—76.3%; African-Americans comprised 62,476—14.8%; and Hispanics comprised 17,632—4.2%.
- 55. According to the 2000 U.S. Census, Mount Holly Township's total population was 10,728. Of the total population, Whites comprised 7,101—66.2%; African-Americans comprised 2,231—20.8%; and Hispanics comprised 942—8.8%.
- 56. The residential section of the Gardens redevelopment area corresponds approximately to Blocks 1000, 1001, 1003 and 1009 of U.S. Census Tract 7026.04., Burlington County, New Jersey.
- 57. Approximately 1,031 residents lived within the Census Blocks corresponding to the residential section of the Gardens redevelopment area. Within the residential section of the Gardens redevelopment area, Whites comprised approximately 203 residents—only 19.7%, compared to 475—46.1%—African-American residents and 297—28.8%-Hispanic residents.

- 58. Thus, African-American and Hispanic residents comprised the overwhelming majority—nearly 75%—of the residents living in the Gardens redevelopment area.
- 59. Further, according to the 2000 U.S. Census, the concentration of African-American and Hispanic residents in the Gardens was the highest of any neighborhood in Mt. Holly Township and much higher compared to Burlington County, while the concentration of Whites was comparatively much lower.
 - a. 46.1% of the Gardens redevelopment area was African-American, compared to only 20.8% for Mt. Holly Township and 14.8% for Burlington County.
 - b. 28.8% of the Gardens redevelopment area was Hispanic, compared to only 8.8% for Mt. Holly Township and only 4.2% for Burlington County.
 - c. Only 19.7% of the Gardens redevelopment area was non-Hispanic, White, compared to 66.2% for Mt. Holly Township and was 76.3% for Burlington County.
 - d. In addition, approximately 31.5% of Mt. Holly Township's entire Hispanic population and approximately 21,3% of Mt. Holly Township's entire African-American population lived within the Gardens redevelopment area, compared to only 2.9% of the entire non-Hispanic, White population.
- 60. Further, according to the 2000 U.S. Census, the median household income in the Gardens redevelopment area was only \$30,104, while the median

income for the Township was \$43,284, and the median income of Burlington County was \$58,608.

- 61. According to the 2000 Census, in Census Tract 7026.04 containing the Gardens, the housing characteristics were as follows:
 - a. 50% of the households in Census Tract 7026.04 were renters, and 50% were homeowners.
 - b. 31% of the African-American households were homeowners while the percentage in the entire Township was 13%, and the percentage in the County was 11%.
 - c. 17% of the Hispanic households were homeowners while the percentage in the entire Township was 8%, and the percentage in the County was 2%.
 - d. 81% of the owner-occupied households in Census Tract 7026.4 had lived in their homes for at least 9 years, while 72% of the renter-occupied households had lived in their homes for at least 5 years.
 - e. The median cost of homeownership for owneroccupied homes with mortgages in Census Tract 7026.04 was only \$969 a month, compared to \$1,536 for the Township and \$1,393 for the County.
- 62. According to the 2000 Census, the Gardens neighborhood therefore had among the highest rates of African-American and Hispanic home ownership in Burlington County.
- 63. Despite the lower incomes of the Gardens' households, the community is remarkably stable and has many longtime residents.

- 64. Residents have a strong sense of community and like that it is racially and ethnically diverse.
- 65. Many Gardens residents have family and friends living in the neighborhood.
- 66. Residents enjoy the convenient location of the Gardens and its proximity to schools, employment, businesses, and downtown.
- 67. The stability of the Gardens neighborhood is attributable in part to lower housing costs than that of Mt. Holly and Burlington County, making the Gardens more affordable for lower income households.
- 68. According to a more recent survey conducted by Triad in July 2006, the average monthly homeowner cost being paid in the Gardens is \$445 and the average rent is \$696.
- 69. In addition, many longtime homeowners of the Gardens, particularly seniors, paid off their mortgages in full and can afford to keep their homes, although they would not be able to purchase much higher-priced homes in the current real estate market on their present incomes.
- 70. According to a survey conducted by planners commissioned by the Township in 2000, 90% of the households in the Gardens had annual incomes below \$40,000, 43% earned between \$20,000 and \$40,000, and nearly half—47%—earned less than \$20,000.

C. Redevelopment Activities Before 2002

71. For almost thirty years, community members and Mt. Holly Township have engaged in various planning initiatives to improve living conditions in the neighborhood.

- 72. These planning initiatives included a community-led effort in the 1980's that resulted in development of a strategy to increase the homeownership rate through targeted property acquisition and rehabilitation; however, this strategy was never adopted by the Township.
- 73. Another planning initiative was a housing rehabilitation program known as "Mt. Holly 2000." Through this program, eleven homeowners in the Gardens obtained grants and loans to fix up their properties.
- 74. The Township subsequently decided not to support such revitalization efforts. It instead began to plan for a sweeping redevelopment of the entire community that would involve acquisition and demolition of most or all of the Gardens homes.
- 75. In 2000, the Township began to purchase properties in the Gardens and leave them vacant.
- 76. In 2000, the Council also commissioned a private firm, THP, Inc., to investigate whether the Gardens neighborhood met the criteria of an—area in need of redevelopment" within the meaning of N.J.S.A. 40A:12A-1 et. seq.
- 77. In November 2000, THP, Inc. prepared a report entitled—Redevelopment Area Determination Report" ("2000 Redevelopment Report"), which it presented to the Council.
- 78. As part of the preparation of this 2000 Redevelopment Report, the planners conducted a survey of the Gardens residents.
- 79. The survey demonstrated that when questioned about the Township's plans for redevelopment, residents were concerned about displacement and that

more than 2/3 of the residents stated that they would prefer to remain living in the Gardens.

- D. Redevelopment Planning and Adoption of Redevelopment Plan
- 80. The Township adopted a Master Plan pursuant to the Municipal Land Use Law, N.J.S.A. 40:550-1 *et seq.*, dated April 13, 2000.
- 81. The Master Plan set forth certain goals, which included improving the qualify of Mount Holly's housing stock, upgrading the Gardens Area, and utilizing the LRHL to Mount Holly's best advantage.
- 82. With regard to the upgrade of the Gardens area, the Master Plan stated that one objective of this Master Plan is to upgrade the quality of units and the character of area, and that measures should be taken to reduce the overall density in the Gardens Area, to rehabilitate deteriorated units, and to provide additional amenities.
- 83. In the land use plan element, the Master Plan characterizes the Gardens as one of two "high density areas" containing some deteriorated units, high proportion of rental properties, and with overcrowding an identified problem. The Master Plan recommended "redevelopment/revitalization" to allow for reduction of density, modernization of housing stock, and improvement to overall perception of the area.
- 84. On July 30, 2002, Council passed Resolution No. 2002-166 authorizing the Township's Planning Board to undertake a preliminary investigation and to hold a public hearing to determine whether the Gardens neighborhood was an area in need of redevelopment.

- 85. The Planning Board subsequently received a report prepared by THP, Inc. entitled "Redevelopment Area Determination Report," dated September 3, 2002.
- 86. The September 3, 2002 Redevelopment Area Determination Report was almost identical to the 2000 Redevelopment Report prepared for Council.
- 87. On September 16, 2002, the Planning Board held the first public hearing on the question whether the Gardens should be designated as a redevelopment area.
- 88. On October 21, 2002, the Planning Board passed Resolution No. 2002-10, adopting the findings and conclusions of the 2002 Redevelopment Report and recommending that the Township Council designate the Gardens neighborhood as a "redevelopment area" within the meaning of N.J.S.A. 40A:12A-1 et seq.
- 89. On October 28, 2002, the Council passed Resolution No. 2002-217, accepting the factual findings of the 2002 Redevelopment Report, accepting the Planning Board's recommendations and formally designating the Gardens neighborhood as an area in need of redevelopment under *N.J.S.A.* 40A:12A-1 *et seq*.
- 90. Resolution No. 2002-217 did not state or otherwise indicate that by designating the Gardens neighborhood as an area in need of redevelopment, homes in the Gardens would be demolished.
- 91. At the Planning Board hearing and at the Council meeting, Township officials misled Residents by telling them that including their properties in an area in need of redevelopment did not mean that the

Township would take their properties by eminent domain.

- 92. In April 2003, the Council publicly released a document entitled "The Gardens Area Redevelopment Plan" ("Gardens Redevelopment Plan").
- 93. The Gardens Redevelopment Plan provided for the following:
 - a. Total demolition of all the homes in the neighborhood and relocation of all the residents.
 - b. Building 180 new housing units.
 - c. No construction of any affordable housing units.
 - d. No guarantee that any new housing in the redevelopment community would be made available for Gardens residents either before or after displacement.
 - e. No guarantee that any new housing in the redevelopment community would be realistically affordable for Gardens residents.
 - f. Building only 30 rental units, available only to seniors.
- 94. The proposed 180 new units would be much more expensive than existing homes; therefore, the plan would permanently displace current residents who are predominately low-income.
- 95. On August 11, 2003, the Township held a public hearing on the adoption of the Gardens Redevelopment Plan.

- 96. Over 100 residents appeared before the Council protesting against the proposed redevelopment plan and the demolition of their homes.
- 97. Among the objections raised by the residents were the following:
 - a. They feel a strong sense of community and have pride in the community. Many are long-term residents. They feel surrounded by family and friends. They like that it is racially and ethnically diverse.
 - b. Many residents are low-income. Some had been homeless in the past. They are fearful that they will not be able to afford the new units that were being planned for construction and that they will not be able to find other housing in the area they could afford.
 - c. Some residents, including some elderly homeowners, have paid off their mortgages. They are afraid that if they lose their homes they will never be able to purchase another one.
- 98. Also on August 11, 2003, Plaintiff CIA submitted to the Township Council detailed written objections to the Gardens Redevelopment Plan with proposed alternatives to demolition of the residents' homes, including that the Gardens Redevelopment Plan was drafted without meaningful input from the residents and in disregard of the residents' needs; that it discriminated against African-American and Hispanic residents on the basis of race and ethnicity; that it did not realistically provide for housing that was decent and affordable for the residents, either as to units to be newly constructed in the Gardens area or replacement housing elsewhere in Mt. Holly Township or Burlington County; and that it would

cause severe hardship by forcing most residents, many of whom have lived in the Gardens for many years, to lose their homes and move out of their community.

- 99. On September 8, 2003, the Township Council passed Ordinance No. 2003-12 adopting the Gardens Redevelopment Plan as originally proposed.
- 100. On October 23, 2003, Plaintiffs CIA and 35 individual residents filed an action in the Superior Court of New Jersey, Law Division, Docket No. BUR-L-003027-03, challenging the designation of the Gardens as an area in need of redevelopment and the adoption of the Gardens Redevelopment Plan under state law and on civil rights and constitutional grounds.
- 101. In February 2005, the Township Council directed the Planning Board to consider amending the Gardens Redevelopment Plan.
- 102. On February 21, 2005, the Planning Board held a public hearing concerning a revised redevelopment plan called the West Rancocas Redevelopment Plan (WR Redevelopment Plan), which encompassed the Gardens neighborhood and increased the area for commercial redevelopment.
- 103. The WR Redevelopment Plan proposed the following:
 - a. 228 new residential units.
 - b. Permitted residential uses increased up to 50% for two-family dwellings, up to 33% for townhouse/senior apartment combination dwellings, and up to 33% for townhouses. The permitted uses; however, did not include any multifamily rental units.

- c. Demolition of existing homes and new construction of the above permitted uses.
- d. Possible rehabilitation of existing units, but rehabilitation was purely optional with no specified amount or percentage of existing residential units that were to be rehabilitated.
- e. Only 10% of the 228 dwelling units—a total of 23—to be affordable housing units, with the remaining 205 units to be market rate units.
- f. Commercial development in the area adjacent to the Mt. Holly Bypass Road on the western edge of the redevelopment area.
- 104. Many Gardens residents appeared and spoke at the Planning Board hearing on February 21, 2005, raising the same objections to the proposed WR Redevelopment Plan that they had raised concerning the Gardens Redevelopment Plan.
- 105. Also on February 21, 2005, a planning expert, Alan Mallach, FAICP, PP, submitted a report and testified on behalf of the residents regarding the proposed WR Redevelopment Plan.
- 106. In the report, Mr. Mallach opined that the rehabilitation option under the Plan was at best illusory and that given the lower-income status of most of the Gardens residents, very few if any of the families could afford the 205 market rate units.
- 107. Mr. Mallach also testified that the Township could improve the Gardens community using much less drastic alternatives than the large-scale acquisition and demolition called for the WR Redevelopment Plan.
- 108. In addition, Plaintiff CIA submitted detailed written comments to the Planning Board on February

- 21, 2005, raising numerous objections and recommendations, including: that the WR Redevelopment Plan should mandate as an overriding goal that existing homes be rehabilitated instead of demolished to avoid displacement of residents; that the WR Redevelopment Plan should permit multifamily rental housing—which constituted at least half of the existing residential units in the Gardens—among the permitted uses; that the WR Redevelopment Plan unlawfully discriminated against African-American and Hispanic residents on the basis of race and ethnicity; and that the WR Redevelopment Plan's limit of 23 affordable housing units was a misapplication of the new growth share regulations promulgated by the New Jersey Council on Affordable Housing ("COAH") and was otherwise contrary to the general welfare under the New Jersey Constitution.
- 109. At the conclusion of the public hearing on February 21, 2005, the Planning Board passed a resolution recommending that the Council adopt the WR Redevelopment Plan, with the recommendation to increase the townhouse permitted use to up to 75% of the total 228 residential units.
- 110. The Planning Board did not recommend adoption of any amendments addressing the concerns raised by the residents and plaintiffs.
- 111. On March 14, 2005, the Township Council held a public hearing on the adoption of the WR Redevelopment Plan.
- 112. Many residents appeared and voiced similar concerns against the WR Redevelopment Plan as stated before the Planning Board.
- 113. Plaintiffs also submitted written comments similar to those presented to the Planning Board.

- 114. At the conclusion of the hearing, the Township Council adopted Ordinance 2005-07, adopting the WR Redevelopment Plan.
- 115. The Township Council disregarded all of the input it received from the Gardens residents and failed to address the residents' objections and concerns.
- 116. The Township officials made false, misleading, and/or inaccurate statements in response to public comments regarding the designation of the Gardens community as an area in need of redevelopment and regarding the adoption of the Gardens Redevelopment Plan and the WR Redevelopment Plan.
- 117. The Township also took other actions to avoid informing the residents of its plans and to minimize public comment and participation in the redevelopment process.
- 118. CIA and the other plaintiffs in the state court litigation amended their complaint to allege that the adoption of the WR Redevelopment Plan was in violation of state redevelopment law, civil rights laws, and the federal and state constitutions.
- 119. On April 17, 2005, the Superior Court, the Hon. John Sweeney, held a bench trial on the issues of whether the Gardens met the statutory criteria of a redevelopment area and whether the WR Redevelopment Plan complied with the requirements of LRHL. On May 5, 2005, the court ruled in favor of the Township and entered judgment dismissing the prerogative writ claims.
- 120. On August 30, 2005, Judge Sweeney granted the Township summary judgment dismissing without prejudice the residents' civil rights and constitutional

claims upon finding that they were not ripe for adjudication.

- 121. On July 5, 2007, the New Jersey Superior Court, Appellate Division, affirmed the rulings of the trial court. On December 11, 2007, the New Jersey Supreme Court denied the residents' petition for certification, and on February 5, 2008, the New Jersey Supreme Court denied the residents' motion for reconsideration.
- 122. The Gardens redevelopment project is the only redevelopment initiative in Mt. Holly Township during the last 10 years that calls for large-scale demolition of homes and displacement of residents.
- 123. The Township conducted a reexamination of its Master Plan in June 2007.
- 124. The Master Plan Reexamination repeats the discussion of the Gardens in the Master Plan, and notes that the Township is improving the Gardens Area by declaring it a redevelopment area and adopting the WR Redevelopment Plan, which includes residential and non-residential properties, as recommended in the Master Plan.
- 125. The Reexamination includes a section of specific recommendations, which incorporate the specific proposals set out in the WR Redevelopment Plan for Residential, Commercial, Limited Industrial, and open space uses. The Reexamination does not propose any changes to the Master Plan with regard to the Gardens Area.

- E. Township's and Redevelopers' Implementation of the Redevelopment Plan
 - 1. Acquisition of Properties
- 126. By 2002, at the time the Gardens Plan was being considered by the Planning Board and Council, the Township had acquired a total of 20 units, which it had intentionally left vacant and boarded up rather than attempting to renovate or sell them.
- 127. On November 10, 2003, the Township Council enacted Ordinance No. 2003-37, authorizing Township officials to negotiate and acquire all of the properties located in the Gardens redevelopment area by voluntary sale or, if necessary, by condemnation, at a price not to exceed fair market value.
- 128. After adoption of the WR Redevelopment Plan in 2005, the Township increased its efforts to acquire homes in the Gardens.
- 129. In or about March 2005, the Township purchased the 62 rental properties from Fry Properties for approximately \$53,000 per unit totaling \$3.27 million.
- 130. In or about April 2006, the Township obtained an appraisal report, which determined that the value of a one-bedroom house in the Gardens was \$32,000, a two-bedroom house was \$39,000, and a three-bedroom house was \$49,000.
- 131. Since 2006, the Township has purchased numerous homes at prices ranging from \$32,000 to \$49,000, except for two purchases at \$64,000 and one purchase at \$81,000 for properties that contained two units converted into one larger home.
- 132. By December 2007, the Township had acquired a total of 219 residential units out of the 329

original homes in the Gardens redevelopment area. Most of these residential units had been occupied by tenants or homeowners before the Township acquired them. The Township had demolished 42 of its acquired units, and kept 165 of the remaining 177 units vacant and boarded.

- 133. Because the Township had not re-rented or resold its units upon acquisition, the Township's acquisitions increased the overall vacancy rate in the Gardens to nearly 65%.
- 134. Since December 2007, the Township has demolished an additional 31 residential units, for a total 73 demolished units.
- 135. The only measures the Township has taken to secure its vacant properties has to put particle board panels on the windows and to plaster large orange—no trespassing signs" on them.
- 136. The Township has not adequately secured or maintained the houses and yards of the properties it owns, allowing these properties to deteriorate and become vandalized by trespassers.
- 137. The vacant Township-owned properties have caused and are continuing to cause a severely blighting and deleterious effect on the Gardens neighborhood, created risk of infestation, fire hazards, and mold, and encouraged further disinvestment in the community.
- 138. The Township and Redevelopers have made and are continuing to make offers to Gardens property owners to purchase units for the prices of \$32,000 for a one-bedroom house, \$39,000 for a two-bedroom house, and \$49,000 for a three-bedroom house.

- 139. The Township recently initiated the eminent domain process against one absentee property owner to acquire additional properties.
- 140. On April 12, 2008, the Township Council introduced and passed on first reading Ordinance 2008-12. The Ordinance states that the Township is or will be the owner of all of the properties in the redevelopment area, and authorizes the Mayor, and/or the Township Manager and/or Township Clerk to negotiate and execute a Purchase and Sale Agreement, and all other necessary documents, between the Township and Redevelopers for all of the properties for the minimum purchase price of \$9 million and to execute any documents necessary to effectuate the sale, including any documents that may be required for Eminent Domain proceedings.

2. Selection of Redevelopers

- 141. On February 15, 2006, the Township executed a Redevelopment Agreement with Defendant Keating.
- 142. In or about March 2006, Keating hired Triad to conduct the relocation activities associated with the WR Redevelopment Plan.
- 143. Pursuant to Exhibit C of the Redevelopment Agreement, Keating was to form a single purpose limited liability corporation with another redeveloper, Pennrose Properties, with Keating assigning its rights and obligations under the Redevelopment Agreement to the newly formed LLC and maintaining majority ownership. Upon information and belief, the single purpose limited liability corporation described in Exhibit C of the Redevelopment Agreement has not yet been formed and is presently not in existence.

- 144. Keating subsequently began to take various actions to move the redevelopment project forward including obtaining a survey; negotiating on behalf of the Township for the acquisition of a number of properties; meeting with various professionals such as planners, architects, and engineers; and submitting applications for permits and approvals.
- 145. On February 23, 2007, the Redevelopers became responsible for prope1iy management of the Township-owned properties.
 - 3. Relocation of Gardens Residents
- 146. On September 28, 2006, the Township submitted a Workable Relocation Assistance Plan ("WRAP"), prepared by Defendant Triad, to the New Jersey Department of Community Affairs.
 - 147. The WRAP provided the following:
 - a. Proposed relocation of all current Gardens residents.
 - b. A "Right of First Opportunity" for residents to return to the Gardens area after the redevelopment project is completed.
 - c. No provision that any replacement units realistically affordable to the residents would be created in the Gardens
 - d. No provision that any replacement units realistically affordable to the residents would be created in any other areas in the Township or in the surrounding region.
 - e. All residents on August 1, 2006, would be eligible for relocation assistance.
 - f. Qualified resident homeowners would be eligible, in addition to the \$15,000.00 required

- by N.J.A.C. 5:11-3.7(a), for a \$20,000 nointerest loan payable if and when the relocated homeowner sold the replacement dwelling.
- g. Qualified tenants who moved into non-subsidized rental units were eligible for up to \$4,000.00 in assistance as provided by N.J.A.C. 5:11-3.5 and additional assistance up to \$3,500.00.
- h. However, homeowners or tenants who used relocation funds to move out the Gardens would not be eligible for additional relocation funds to return to the Gardens if and when any affordable units were ultimately constructed.
- 148. In November 2006, the Township received notification from the Department of Community Affairs that the WRAP was approved.
- 149. On November 15, 2006, Triad opened an office in the Gardens to conduct relocation activities.
- 150. Triad staff began to send letters and notices to tenant households asking them to come in for interviews.
- 151. After assessing their housing needs, Triad staff started to make efforts to locate housing for these households outside of the Gardens.
- 152. The Township did not provide any relocation assistance to residents who moved out of the Gardens prior to November 2006.
- 153. Since the WRAP was approved in November, 2006 through January, 2008, the Township paid relocation funds to 62 families to move out of the Gardens.

154. Of these 62 households, 43, or 69%, were relocated outside of Mt. Holly.

4. Demolition of Units

- 155. The Township and Redevelopers have and are continuing to dismantle the Gardens community by demolishing homes in the Gardens.
- 156. As of May 2008, the Township has demolished a total of 73 residential units, most of which were previously occupied by tenants or homeowners.
- 157. Although the Township claimed that the demolitions of the houses were necessary for health and safety concerns, the units were generally structurally sound, capable of rehabilitation, and did not pose a threat to public safety.
- 158. To the extent the units were in poor condition and being used by trespassers, this was a result of the Township's failure to take measures to adequately secure and maintain them.

5. Reduction in Municipal Services

- 159. Starting in 2000, before the Township even initiated the formal redevelopment planning process, the Township itself began to create blighted conditions in the Gardens.
- 160. Starting in 2000 and continuing during the course of the redevelopment process, the Township neglected the needs of the Gardens neighborhood by failing to apply for and utilize available funding for community improvements and housing rehabilitation.
- 161. From January 1999 to the present, the Township entered into regional contribution agreements pursuant to the New Jersey Fair Housing Act, N.J.S.A. 52:27D-301 *et seq.*, with the municipalities of

Moorestown, Hainesport, and Westhampton, with the Township receiving more than \$4 million to rehabilitate 218 residential units occupied by low and moderate income households within Mount Holly.

- 162. The Township has not at any time allocated or used any funds from the regional contribution agreements to rehabilitate homes in the Gardens.
- 163. The Township failed to utilize a \$25,000 grant from the New Jersey Department of Community Affairs earmarked for social, educational, and recreational programs for residents at the Gardens community center and in July, 2003 was forced to return the unspent funds.
- 164. In 2004, the Township removed the only playground equipment in the Gardens and refused to replace it.
- 165. The Township also failed to conduct proper code enforcement, prompt trash removal, adequate policing, and other basic services needed by the Gardens residents.
- 166. The Township twice used its vacant properties in the Gardens to conduct live police tactical training, bringing in numerous police officers and vehicles into the Gardens in the early morning hours, without providing advance notice to residents in the neighborhood.
- 167. The Township's failure to provide adequate and proper municipal services has negatively impacted upon the community and decreased the quality of life for residents.
- 168. In spite of the Township's actions, Gardens residents, through their own efforts, continued to

- combat significant deterioration of their neighborhood and tried to preserve their quality of life.
- F. Continued Planning and Changes to WR Redevelopment Plan
- 169. On March 9, March 23, and April 5, 2006, the Redevelopers held three meetings with Gardens residents.
- 170. The residents participating in these meetings thought that the purpose of the meetings was to consider revisions to the redevelopment plan.
- 171. At all three of the meetings, Gardens residents gave input about the redevelopment process and stated that they did not want to lose their homes or to be moved out of the Gardens.
- 172. The Gardens residents presented to the Redevelopers a list of proposals for revising the WR Redevelopment Plan, which included a guarantee of affordable replacement units for all residents to be displaced who wished to remain in the Gardens.
- 173. At the third meeting, resident surveys were distributed.
- 174. In July of 2006, Triad completed the resident survey process. 169 households responded, including 107 tenant households and 60 homeowners.
- 175. The Triad survey showed that 120 out of the 169 families were interested in either purchasing or renting a new home in the Gardens, only 64 families were interested in purchasing or renting outside of the Gardens, and only 8 households were interested in selling their property.

- 176. In or about October 2006, the Township and Redevelopers notified the residents of the completion of the Relocation Plan.
- 177. The WRAP stated that 560 units were being planned for the redevelopment area.
- 178. During the period between February of 2006 and September 2007, the Redevelopers prepared and revised approximately eight conceptual plans for the redevelopment area, referred to by the Township as "concept plans".
- 179. Since the adoption of the WR Redevelopment Plan, the Township Council has conducted many discussions during closed executive session.
- 180. The Township did not provide any public notice or conduct any public meetings regarding the concept plans that were being prepared by the Redevelopers or refer them to the Planning Board for review.
- 181. On or about September 24, 2007, the Township Council approved a concept plan during a closed executive session, in violation of the Open Public Meetings Act, N.J.S.A. 10:40-6 et seq. Council did not notify the public about its review of the concept plan, offer any opportunity for public input, or provide any subsequent information to the public about the actions taken during the executive session. The concept plan proposed construction of 203 market rate and 25 COAH income restricted apartments and 261 market rate and 31 COAH townhouses.
- 182. On September 8, 2008 the Township Council passed on first reading Ordinance 2008-25, adopting a Revised West Rancocas Redevelopment Plan

(Revised WR Redevelopment Plan), and referred it to the Planning Board for review

- 183. The Revised WR Redevelopment Plan contains, *inter alia*, the following provisions:
 - (a) It includes as objectives increasing the number of owner-occupied dwelling units by increasing homeownership opportunities for existing and future residents and ensuring that new dwelling units remain affordable.
 - (b) It calls for acquisition and demolition of all existing homes in the Gardens.
 - (c) It proposes construction of up to 520 housing units and 54,000 square feet of commercial space in the redevelopment area. Up to 75% of the housing units may be townhouses and up to 50% may be apartments.
 - (d) The Land Use Plan proposes situating the apartments on a vacant land area north of the Gardens, the commercial district on the western side of the redevelopment area along the Mt. Holly Bypass Road, and the townhouses on the eastern and southern portions of the redevelopment area.
 - (e) It proposes the replacement of the 11 deed-restricted houses in the Gardens, and creation of 45 additional deed-restricted "affordable units", and states that the current occupants of the existing 11 deed-restricted units would have priority for the replacement units, without any provision for the replacement of the other 273 units formerly occupied by predominately low income families and without any guarantee that any of the affordable units

- would be realistically affordable to current and former Gardens residents and would be made available prior to displacement.
- (f) The Revised WR Redevelopment Plan acknowledges that it is inconsistent with the Township Master Plan because it does not reduce density and because it calls for total demolition rather than rehabilitation of existing homes, but concludes that this inconsistency is warranted based economic on conditions and redeveloper preference. The Plan states that it there would be no adverse impacts to neighboring Westhampton Township land uses and that the Plan is consistent with the State Development and Redevelopment Plan.
- 184. On September 9, 2008 the Township and Redevelopers held a public meeting at which the Redevelopers presented their proposed plans for redevelopment. This general development plan proposed construction of 228 luxury rental units, and 292 townhouses, totaling 520 housing units, along with 54,000 square feet of commercial development. The construction would take place in phases, with the Phase IA to consist of the apartments and 60 townhouses to be built on vacant land just north of the Gardens, Phase IB to consist of the commercial development to be situated along the Mt. Holly Bypass, where North and South Martin Avenues are currently located, and Phases II and III to consist of additional townhouse development in the eastern portion of the Gardens. The Redevelopers' proposal called for 56 affordable units to be interspersed among the remaining 464 market-rate units.

185. On September 15, 2008 the Planning Board reviewed the Revised WR Redevelopment Plan and heard public comment. The Planning Board members and their professional consultants had not been previously involved in developing or evaluating the Revised Plan. Several Gardens residents appeared before the Planning Board and objected to the Revised WR Redevelopment Plan because it required taking of their homes and failed to provide affordable replacement housing. Counsel for the residents also testified and submitted written objections. The Planning Board recommended adoption of the Revised WR Redevelopment Plan, without meaningful consideration of the residents' objections.

186. On September 22, 2008 the Township Council held a public hearing and considered the Ordinance to adopt the Revised WR Redevelopment Plan, Several Gardens residents again appeared and objected to Revised WR Redevelopment Plan, Counsel for the residents also testified and again submitted written objections. The Council voted to adopt the Ordinance on second reading, without meaningful consideration of the residents' objections.

G. Failure to Provide Affordable Replacement Units

187. The Township has estimated that the prices of the new townhouses to be built in the redevelopment area will range from \$200,000 to 275,000 and that apartments will rent at approximately \$1.65 per square foot, with a one-bedroom unit renting for \$1,230 per month. The Redevelopers stated at the public meeting that the apartments are to be priced above current market prices, and the first set of townhouses are expected to cost \$240,000.

- 188. Nearly all Gardens residents cannot afford to purchase or rent the new units.
- 189. The affordable housing provision in the Revised WR Redevelopment Plan does not constitute adequate replacement housing because it proposes to replace the 329 Gardens homes with only 56 affordable units, without any guarantee that even any of these 56 units would be realistically affordable or available to Gardens residents.
- H. Harm to Residents and CIA by Township's and Redeveloper's Actions
- 190. By acquiring and vacating properties, failing to maintain the properties it owns, reducing municipal services, demolishing units, and creating increasingly blighted conditions in the Gardens, the Township and Redevelopers have interfered and are continuing to severely interfere with the Gardens residents' use and enjoyment of their property and to otherwise injure Gardens residents.
- 191. Gardens residents risk losing their financial investments in their homes if they continue to make improvements or repairs.
- 192. Because the Township's and Redeveloper's actions have created severely blighted conditions and greatly lowered property values, and because of the imminent threat of condemnation. Gardens residents are unable to sell their home on the private market at a price that provides just compensation and that would enable them to find alternate comparable housing.
- 193. The Township's proposed prices for purchase of the properties also do not constitute just compensation and are inadequate to enable residents to

purchase decent, safe, and affordable comparable replacement housing.

- 194. Because of the Township-caused increased vacancy rate, proliferation of abandoned home, and ugly appearance of the neighborhood, Gardens residents increasingly fear for their security and safety, experience pest infestation and mold, cannot enjoy spending time in their yards and open areas, and are embarrassed to have family and friends visit.
- 195. Gardens residents have experienced and are continuing to experience great stress, anxiety, and grief because of their fear of losing their homes and their strong community ties and becoming unable to find adequate affordable replacement housing.
- 196. Many former Gardens residents have moved out of the Gardens community because the community had become such an undesirable and unsafe place to live and because eventual eviction or condemnation by the Township appeared inevitable.
- 197. Many former Gardens residents who moved out of the Gardens under threat of condemnation or eviction have not been able to find comparable replacement housing at locations as desirable as the Gardens community and have been forced to live under worse conditions and/or pay higher housing costs.
- 198. The Township's and Redeveloper's actions have harmed CIA by impeding its ability to organize residents and operate effectively as a representative organization.
- 199. The Township's and Redeveloper's concerted actions render ripe for adjudication the civil rights and constitutional claims that were dismissed by the

state court without prejudice for lack of ripeness, including but not limited to the following:

- (a) Actions to effectuate the redevelopment of the Gardens between March of 2005 and the present, including the selection of the Redeveloper, the execution of the Redeveloper Agreement, the preparation of the WRAP, the acquisition, vacation, and demolition of properties, the relocation of two-thirds of the residents, the creation of severely blighted living conditions, the failure to provide affordable replacement housing to those being displaced, and the injury suffered by the Residents as a result of these actions;
- (b) The Township's formal adoption of a third, revised redevelopment plan in September 2008—five years after the Township's first redevelopment plan in 2003—that specifically details the number, type, and affordability levels of the housing units;
- (c) The Township's preparation of a Redeveloper general development plan that provides details concerning the type and price of the housing units.

428

FIRST COUNT

UNLAWFUL DISCRIMINATION UNDER THE FAIR HOUSING ACT, 42 U.S.C. § 3601 et seq.

200. Residents and CIA reallege and incorporate by reference the allegations in all previous Paragraphs of this Complaint as if fully pleaded herein.

201 By the actions described above, the Township and Redevelopers have violated and continue to violate the rights of plaintiffs under the Fair Housing Act, 42 U.S.C. § 3601 *et seq.* and implementing regulations by:

- a. Making unavailable or denying dwellings to persons because of race, color and national origin, in violation of 42 U.S.C. § 3604(a) and implementing regulations;
- b. Discriminating on the basis of race, color or national origin in the terms, conditions or privileges of services or facilities in connection with the sale or rental of a swelling in violation of 42 U.S.C. § 3604(b) and implementing regulations; and
- c. Coercing, intimidating, threatening or interfering with any person's exercise of his or her rights protected under 42 U.S.C. § 3604, in violation of 42 U.S.C. § 3617.

202. The Township's and Redevelopers' actions, practices and policies, as described above in the Complaint, have had and continue to have a substantial adverse, disparate impact on African-American and Hispanic households in violation of the Fair Housing Act, 42 U.S.C. § 3604 (a) and (b).

- a. The Township's and Redevelopers' actions, practices and policies will dismantle and destroy the Gardens, which is predominately African-American and Hispanic and has the most concentrated populations of African-American and Hispanic persons in the Township.
- b. The Township's and Redevelopers' actions, practices and policies will substantially and disproportionately displace African-American and Hispanic households from the Gardens and from Mt. Holly Township, who are mostly lower and moderate income and who cannot afford the homes that will be constructed in the Gardens or existing housing in the local housing market.
- c. The Township's and Redevelopers' actions, practices and policies will destroy hundreds of residential homes affordable to lower and moderate income African-American and Hispanic Households without providing replacement housing that is affordable to most such households.
- 203. In addition, the Township's actions demonstrate that Township officials acted with intent to discriminate, as follows:
 - a. The Township knew that the residents of the Gardens were predominately African-American and Hispanic, and that the Gardens community was one of the most concentrated populations of African-American and Hispanic persons in the Township.
 - b. The Township decided to abandon efforts to rehabilitate the Gardens and instead initiate

- a redevelopment project that would require the forcible relocation of all or most Gardens residents.
- c. Even before adoption of a redevelopment plan, the Township took actions to create blighted conditions in the Gardens and to drive down the costs of property acquisition and relocation.
- d. The Township knew or should have known that the predominately African-American and Hispanic Gardens residents would be unable to afford the proposed new housing to be constructed wider its redevelopment plan.
- e The Township also knew or had reason to know that there was an inadequate supply of affordable housing in the area and especially within the Township.
- f. The Township knew or had reason to know that Gardens residents would find few affordable housing options within Mt. Holly Township and would be likely be forced to move out to other municipalities.
- g. The Township knew or should have known that implementation of its redevelopment plan would therefore result in decreasing the numbers of African-American and Hispanic residents in Mt. Holly.
- h. The Township knew or should have known that the African-American and Hispanic residents would experience severe hardship from being forcibly relocated and would have great difficulty in securing adequate replacement housing.

- i. The Township officials also knew or had reason to know that the redevelopment would thus cause severe harm to Gardens residents, as they would lose their homes and their community and have great difficulty in finding decent, safe, affordable replacement housing in Mt. Holly Township and the surrounding region.
- j. The Township officials adopted and began to implement the Gardens Redevelopment Plan, the WR Redevelopment Plan, and the Revised WR Redevelopment Plan with the intent to displace current Gardens residents and force a significant number of them to move out of Mt. Holly.
- k. The Gardens community, which has the highest concentration of African-American and Hispanic residents in the Township, is the only community the Township has targeted for large-scale displacement and relocation.
- I. The Township deviated from procedural and substantive norms by when the Council violated the procedures mandated by the LRHL, N.J.S.A. 40A:12A-I et seq., and the OPMA, N.J.S.A. 10:4-12 by changing the redevelopment plan by vote in closed session without first conducting a public process to formally amend the plan, curing these statutory violations only after the Residents had brought claims based on these violations, and conducting a sham public process without opportunity for meaningful public input;
- m. The Township deviated from procedural and substantive norms by adopting a revised

redevelopment plan that is inconsistent with the policies and priorities of the Township's Master Plan.

- n. The Township knowingly and deliberately created adverse and unsafe living conditions at the Gardens by failing to provide adequate essential services, by purchasing properties and leaving them in vacant and deteriorated condition, by demolishing structurally sound units that were capable of rehabilitation, by failing to obtain and expend funds for community improvements, and by failing to support community-led initiatives for improving housing and quality of life in the Gardens.
- o. The Township intentionally took action to drive down property values and its acquisition and relocation costs, improperly assessed the value of the properties, and failed to make available to the predominately African-American and Hispanic Gardens residents just compensation and adequate relocation assistance.
- p. When the Township adopted the Revised WR Redevelopment Plan in September 2008, the Township knew or should have known of the significant harmful and discriminatory effects that its redevelopment project has had on Gardens residents since 2003. Nonetheless the Township failed to make changes to the revised redevelopment plan that would have alleviated such harm and discriminatory effects, but instead in adopting the Revised Plan, intentionally continued to perpetuate

- these harmful and discriminatory impacts upon the residents.
- q. The Township's prior history regarding its treatment the Gardens and its adoption of the original and revised redevelopment plans, despite knowledge of its discriminatory effects demonstrate that the Township intended to and did discriminate against plaintiffs on the basis of race, color, and national origin.
- r. The Township intentionally took action it knew or should have known would coerce, intimidate, threaten and interfere with residents' rights to rent, own, sell, buy and otherwise exercise their rights protected under the 42 U.S.C § 3604 by coercing residents to sell their property to the Township, by leaving the properties it purchased vacant, poorly maintained and attractive to vandalizers and trespassers, by demolishing units attached to units it knew to be occupied by residents, thus frightening the residents and structurally damaging their units, by conducting live police weapons and tactics team trainings in vacant units in view of residents and their children and by sending residents notices of relocation interviews, that they knew or should have known would be coercive. intimidating, threatening and would interfere with residents' rights.
- 204. By the actions described above, the Township has intentionally, knowingly, and continuously discriminated against African American, Hispanic and other residents of the Gardens neighborhood because of their race, color or national origin, or the racial,

color or national origin composition of their neighborhood, in violation of the Fair Housing Act.

- 205. The Township have intentionally, knowingly, and continuously engaged in the practices described above that have a predictable discriminatory effect with the intent of denying equal housing opportunities to Residents.
- 206. The actions of the Township and Redevelopers in adopting, revising, and implementing the redevelopment plans for the Gardens have caused and are continuing to cause severe harm to the low and moderate income, predominately African-American and Hispanic Gardens residents.
- 207. The acts and conduct of the Township and Redevelopers complained of above have caused and continue to cause substantial injury to each of the individual plaintiffs and to plaintiff Citizens in Action.

SECOND COUNT

VIOLATION OF CIVIL RIGHTS ACT OF 1866, 42 U.S.C. §1982

- 208. Residents and CIA reallege and incorporate by reference the allegations in all previous Paragraphs of this Complaint as if fully pleaded herein.
- 209. The Civil Rights Act of 1866, as amended, 42 U.S.C. § 1982, guarantees that—all citizens of the United States shall have the same right, in every State and Territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold, and convey real and personal property."
- 210. By seeking to demolish all 329 homes within the Gardens neighborhood and proposing to construct much more expensive replacement housing units

unaffordable to most African-American and Hispanic households living in the Gardens, the Township is intentionally seeking to deprive the plaintiffs and other African-American and Hispanic residents of the same right to inherit, purchase, lease, sell, hold, and convey real and personal property as is enjoyed by white citizens, in violation of to 42 U.S.C. § 1982.

- 211. The Township has otherwise intentionally discriminated against Residents and other African-American and Hispanic residents of the Gardens neighborhood as described under the First and Third Counts of this Complaint.
- 212. The Township has thus violated plaintiffs rights guaranteed under 42 U.S.C§1982.

THIRD COUNT

VIOLATION OF EQUAL PROTECTION CLAUSE OF FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION ACTIONABLE PURSUANT TO 42 U.S.C. § 1983

- 213. Residents and CIA reallege and incorporate by reference the allegations in all previous Paragraphs of this Complaint as if fully pleaded herein.
- 214. The Township has intentionally discriminated against plaintiff Residents and other African-American and Hispanic residents of the Gardens neighborhood as described under the First and Second Counts of this Complaint.
- 215. The Township has, under color of state law, intentionally deprived the Residents of their rights to equal protection under the law as guaranteed to them by the Fourteenth Amendment of the United States Constitution because of their race, ethnicity and/or

national origin, actionable pursuant to 42 U.S.C. § 1983.

FOURTH COUNT

VIOLATION OF NEW JERSEY LAW AGAINST DISCRIMINATION, N.J.S.A. 10:5-1 ET SEQ.

- 216. Residents and CIA reallege and incorporate by reference the allegations in all previous Paragraphs of this Complaint as if fully pleaded herein.
- 217. N.J.S.A. 10:5-12.5 of the New Jersey Law Against Discrimination states that—it shall be unlawful discrimination for a municipality, county or other local civil or political subdivision of the State of New Jersey, or an officer, employee, or agent thereof, to exercise the power to regulate land use or housing in a manner that discriminates on the basis of race, creed, color, national origin, ancestry, marital status, familial status, sex, nationality or handicap".
- 218. As set forth in Counts One through Three, the Township has taken actions that are causing and will continue to cause the disproportionate displacement and forced removal of African-American and Hispanic households, that have reduced and will continue to reduce the overall number of African-American and Hispanic households living in Mt. Holly Township, that discriminate against African-American and Hispanic households living in the Gardens neighborhood in the provision of services or facilities in connection with housing, that will create barriers for African-American and Hispanic households to remain in and move into Mt. Holly Township, and that thus have a discriminatory impact upon the basis of race, color and national origin and perpetuate segregation

within Mt. Holly Township in violation of N.J.S.A, 10:5-12.5.

- 219. In addition to violating the New Jersey Law Against Discrimination due to discriminatory impact, the Township has intentionally discriminated against plaintiffs and other African-American and Hispanic households living in the Gardens neighborhood contrary to N.J.S.A. 10:5-12.5 as described under Counts One through Three of this Complaint.
- 220. In addition, as set forth previously herein, the Township and Redevelopers have otherwise discriminated against African-American and Hispanic households in the provision of housing in violation of N.J.S.A. 10:5-4 of the LAD.
- 221. The Township and Redevelopers have thus unlawfully discriminated against plaintiffs in violation of N.J.S.A. 10:5-4 and N.J.S.A. 10:5-12.5 of the New Jersey Law Against Discrimination.

FIFTH COUNT

VIOLATION OF EQUAL PROTECTION CLAUSE OF ARTICLE I, PARAGRAPH 1 OF NEW JERSEY CONSTITUTION

- 222. Residents and CIA reallege and incorporate by reference the allegations in all previous Paragraphs of this Complaint as if fully pleaded herein.
- 223. The Township has intentionally discriminated against plaintiff Residents and other African-American and Hispanic residents of the Gardens neighborhood by initiating and implementing a redevelopment project that forcibly displaces these residents as described under the First, Second, Third, Fourth, and Fifth Counts of this Complaint.

224. The Township, under color of state law, has intentionally deprived plaintiffs of their right to equal protection of the law because of their race, ethnicity and/or national origin, in violation of Article I, Paragraph 1 of New Jersey Constitution.

SIXTH COUNT

VIOLATION OF THE RIGHT TO DUE PROCESS OF LAW AND FUNDAMENTAL FAIRNESS AS GUARANTEED BY ARTICLE I, PARAGRAPH 1 OF THE NEW JERSEY CONSTITUTION

- 225. Residents and CIA reallege and incorporate by reference the allegations in all previous Paragraphs of this Complaint as if fully pleaded herein.
- 226. The Township failed to provide individualized notice to all owners of properties to be acquired under its redevelopment plans and to otherwise meaningfully inform and give notice to residents of the effects of redevelopment activities upon their constitutionally protected property rights.
- 227. The Township conducted private meetings with Redevelopers and other entities regarding the redevelopment initiative without giving notice to residents or an opportunity to be heard.
- 228. The Township Council decided to make revisions to the WR Redevelopment Plan based upon private discussions with the Redevelopers without first holding a public meeting as required by OPMA, N.J.S.A. 10:4-13, conducting a formal process for amending a redevelopment plan as required by the LRHL, N.J.S.A 40A:12A-7, obtaining recommendations from the Planning Board, and providing notice to the public and an opportunity for residents to he heard with regard to the amendments, instead conducted

private meetings with Redevelopers and approved the Redevelopers' concept plan in a closed session.

- 229. The Township and Redevelopers continued to aggressively implement this new version of the redevelopment plan which had not been formally adopted.
- 230. Although the Township attempted to cure these violations by formally revising the WR Redevelopment Plan, the Council members had already decided to adopt the Revised Plan that is fully consistent with the previously approved Redevelopers' concept plan, and failed to consider any public comment and input, rendering the public process a sham.
- 231 The Township's improper actions to amend and implement the redevelopment plan significantly and substantially interfere with and infringe upon the property rights of Residents.
- 232. The Township's failure to follow the LRHL's formal plan amendment procedures, before taking drastic implementation actions destroying and dismantling the Gardens neighborhood, and its failure to conduct an open process allowing for meaningful public input is unjust and arbitrary governmental action, resulting in the unfair treatment of Gardens residents, and inflicting upon them oppression, harassment, and egregious deprivation causing unjustified harassment, anxiety, and expense.
- 233. The Township's actions violate due process and fundamental fairness under the Article 1, Paragraph 1, of the New Jersey Constitution.

SEVENTH COUNT

VIOLATION OF THE RIGHT TO DUE PROCESS OF LAW AS GUARANTEED BY THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION ACTIONABLE PURSUANT TO 42 U.S.C. § 1983

- 234. Residents and CIA reallege and incorporate by reference the allegations in all previous Paragraphs of this Complaint as if fully pleaded herein.
- 235. As set forth above in the Sixth Count of this Complaint, the Township has taken actions that infringe upon and deprive Residents of their property rights without meaningful and adequate notice and opportunity to be heard.
- 236. The Township, acting under color of state law, has deprived Residents of their rights secured by the Due Process Clause of the Fourteenth Amendment, actionable under 42 U.S.C. § 1983.

EIGHTH COUNT

ADOPTION OF THE REVISED WR REDEVELOPMENT PLAN CONTRARY TO THE PROVISIONS OF THE NEW JERSEY LOCAL REDEVELOPMENT AND HOUSING LAW, N.J.S.A. 40A:12A-1 *et seq.* and Arbitrary, Capricious and Unreasonable

- 237. Residents and CIA reallege and incorporate by reference the allegations in all previous Paragraphs of this Complaint as if fully pleaded herein.
- 238. The actions of the Township in adopting the Revised WR Redevelopment Plan violate the LRHL, N.J.S.A. 40A:12A-7, and are arbitrary, capricious, and unreasonable as, *inter alia*:
 - (a) The Plan was revised without opportunity for meaningful community input and without

- consideration by the Planning Board and Council of the Residents' comments;
- (b) The Plan does not further several of its own objectives;
- (c) The Plan is substantially inconsistent with the Township's Master Plan and does not demonstrate any legitimate basis for deviating from the Master Plan;
- (d) The Plan is inconsistent with the State Plan for housing and fails to address that inconsistency as mandated by N.J.S.A. 40A:12A-7;
- (e) The Plan is does not address whether it is consistent with the County Master Plan, as mandated by N.J.S.A. 40A: 12A-7;
- (f) The Plan is inconsistent with the purposes of the LRHL, N.J.S.A. 40A:12A-2, as it fails to promote the advancement of community interests and physical development which will be most conducive to social and economic improvement and is otherwise arbitrary, capricious, and unreasonable.

NINTH COUNT

EXCLUSIONARY REDEVELOPMENT IN VIOLATION OF THE GENERAL WELFARE UNDER ARTICLE I, PARAGRAPH 1 OF THE NEW JERSEY CONSTITUTION

- 239. Residents and CIA reallege and incorporate by reference the allegations in all previous Paragraphs of this Complaint as if fully pleaded herein.
- 240. The general welfare under Article I, Paragraph 1 of the New Jersey Constitution requires municipalities to regulate and use land to promote the public health, safety, and general welfare of peo-

ple of all incomes and economic status within the municipality, and therefore prohibits municipalities from using their redevelopment police powers in a manner that displaces and excludes existing lower-income residents from their community.

- 241. The Revised WR Redevelopment Plan calls for replacing the 329 residential units in the Gardens with 520 residential units, of which only 11%—a total of 56—would be affordable housing units, with the remaining 464 units to be market rate units.
- 242. The Township is in the process of acquiring and demolishing all of the existing homes in the Gardens, although the houses were structurally sound and the Township had not demonstrated that they constituted a substantial threat to health and safety and could not be restored to standard condition within a reasonable time and at a reasonable expense.
- 243. Most of the households in the Gardens are lower and moderate income and will not be able to afford the market rate units called for in the Revised WR Plan.
- 244. The Township has violated the general welfare under Article I, Paragraph of the New Jersey Constitution by adopting the Revised WR Redevelopment Plan and by exercising its redevelopment, eminent domain, and demolition authority and its powers of regulation and use of land in a manner that fails to promote the public health, safety, and general welfare of people of all incomes and economic status within Mt. Holly Township, in particular:
 - a. The Township has violated the general welfare by destroying existing housing affordable to and occupied by low and moderate income households formerly and currently living in

the Gardens and forcibly displacing such low and moderate income residents;

- b. Despite its compliance with the recent amendments to the LRHL requiring replacement of existing subsidized and deed-restricted units, the Township nevertheless is violating the general welfare under the state constitution by replacing only the existing 11 deed-restricted units and failing to rehabilitate or replace the 300 homes of housing affordable to, and formerly and currently occupied by, low and moderate income households living in the Gardens;
- c. The Township has further violated the general welfare by implementing its redevelopment plans in a manner that has created unsafe and increasingly blighted conditions, greatly decreased quality of life, interfered with the residents' use and enjoyment of their property, forced residents to move out of their community, and provided them with inadequate compensation and relocation assistance to enable them to secure comparable decent safe replacement housing in the Township.

PRAYER FOR RELIEF

WHEREFORE, Residents respectfully request that the Court enter judgment against the Township and Redevelopers:

A. Declaring that the Township and Redevelopers have violated Residents' rights under Title VIII of the Civil Rights Act of 1968, 42 U.S.C§ 3601 *et seq.*;

- B. Declaring that the Township and Redevelopers have violated Residents' rights under the New Jersey Law Against Discrimination, N.J.S.A. 10:5-1 *et seq*.;
- C. Declaring that the Township has violated Residents' rights under 42 U.S.C. § 1982;
- D. Declaring that the Township has violated plaintiffs' rights to equal protection of the law guaranteed by the Fourteenth Amendment to the United States Constitution;
- E. Declaring that the Township has violated plaintiffs' rights to equal protection of the law as guaranteed by Article I, Paragraph 1 of New Jersey Constitution;
- F. Declaring the Township has deprived Residents of due process rights guaranteed under the United States Constitution;
- G. Declaring the Township has violated due process and fundamental fairness guaranteed under the New Jersey Constitution;
- H. Declaring that the undervalued prices being offered and paid by the Township to purchase homes under threat of eminent domain and the amount of relocation benefits being provided violate the requirement of just compensation mandated under Article I, Paragraph 20 of the New Jersey Constitution and the Fifth Amendment of the United States Constitution;
- I. Declaring that within the context of redevelopment of lower income communities resulting in low and moderate income homeowners being displaced, payment of fair market value violates the requirement of just compensation where fair

market value is less than the replacement value of housing within the local housing market mandated under Article I, Paragraph 20 of the New Jersey Constitution and the Fifth Amendment of the United States Constitution;

- J. Declaring the Township's actions in adopting the Revised WR Redevelopment Plan violate the LRHL and are arbitrary, capricious, unreasonable;
- K. Declaring that the Township has violated the general welfare in Article I, Paragraph 1 of the New Jersey Constitution;
- L. Preliminarily and permanently enjoining the Township and Redevelopers from further implementing their current Redevelopment Plan;
- M. Preliminarily and permanently requiring the Township and Redevelopers to carry out any further redevelopment in the Gardens in a manner having the least discriminatory adverse impact upon African-American and Hispanic households;
- N. Preliminarily and permanently prohibiting the Township and Redevelopers from demolishing, removing, purchasing or obtaining through eminent domain residential dwellings within the Gardens, or otherwise implementing redevelopment, without providing for rehabilitation of housing and/or adequate affordable replacement housing for all current and displaced Gardens residents;
- O. Damages and/or just compensation sufficient for Residents to secure permanent replacement housing in the local housing market;
- P. Preliminarily and permanently compelling the Township to provide the Gardens residents

with adequate municipal services, including but not limited to police, fire protection, code enforcement, trash collection and community services;

- Q. Awarding compensatory damages;
- R. Awarding punitive damages;
- S. Awarding plaintiffs costs of suit;
- T. Ordering the Township and Redevelopers to pay plaintiffs' reasonable expert and attorney's fees, except that no attorney's fees are requested by South Jersey Legal Services, Inc; and
- U. Granting such other relief and the Court deems just and proper.

DEMAND FOR JURY TRIAL

Pursuant to Fed. R. Civ. P 38(b), the plaintiffs demand a trial by jury of all issues so triable as of right.

Dated: December 2, 2008

SOUTH JERSEY LEGAL SERVICES, INC.

Attorneys for Plaintiffs: Mt. Holly Gardens Citizens In Action, Inc., Ana Arocho, Reynaldo Arocho, Maria Arocho, Pedro Arocho, Christine Eames, Vivian Brooks, Bemice Cagle, George Chambers, Dorothy Chambers, Elida Echevaria, Nom1an Harris, Angelo Nieves, Elmira Nixon, Leonardo Pagan, Joyce Starling, Taisha Tirado, Dagmar Vicente, Charlie Mae Wilson, Mattie Howell, Nancy Lopez, Vincent Munoz, Hemy Simons, Alandria Warthen, Sheila Warthen, and Leona Wright

By: <u>/s/ Olga D. Pomar</u>
OLGA D. POMAR, ESQUIRE

By: /s/ Kenneth M. Goldman
KENNETH M. GOLDMAN, ESQUIRE

By: /s/ David M. Podell
DAVID M. PODELL, ESQUIRE

AARP FOUNDATION LITIGATION

Attorneys for Plaintiffs: Maria Arocho, Reynaldo Arocho, Ana Arocho, Vivian Brooks, Bernice Cagle, Leon Calhoun, Santos Cruz, Mattie Howell, Nancy Lopez, Vincent Munoz, Angelo Nieves, Dolores Nixon, James Potter, Rosemary Roberts, William Roberts, Efraim Romero, Hemy Simons, Phyllis Singleton, Robert Tigar, Flavia Tobar, Marlene Tobar, Radames Torres Burgos, Radames Torres-Moreno and Lillian Tones-Moreno, Charlie Mae Wilson, Alandria Warthen, Sheila Warthen, and Leona Wright

By: <u>/s/ Susan Ann Silverstein</u>
SUSAN ANN SILVERSTEIN, ESQUIRE

POTTER AND DICKSON

Attorneys for Plaintiffs: Leon Calhoun, Santos Cruz, Dolores Nixon, James Potter, Rosemary Roberts, William Roberts, Efraim Romero, Phyllis Singleton, Robert Tigar, Radames Torres Burgos, Radames Torres-Moreno and Lillian Torres-Moreno

By: <u>/s/ R. William Potter</u>
R. WILLIAM POTTER, ESQUIRE

L.CIV.R. 11.2 CERTIFICATION

Pursuant to L.Civ.R. 11.2, the undersigned attorneys hereby certify that the matter in controversy is not the subject of any other action pending in any court, or of any pending arbitration or administrative proceeding. The undersigned attorneys certify that the foregoing statements are true. The undersigned attorneys understand that if any of the above statements made by me are willfully false, the undersigned attorneys are subject to punishment.

Dated: December 2, 2008

SOUTH JERSEY LEGAL SERVICES, INC.

Attorneys for Plaintiffs: Mt. Holly Gardens Citizens In Action, Inc., Ana Arocho, Reynaldo Arocho, Maria Arocho, Pedro Arocho, Christine Eames, Vivian Brooks, Bemice Cagle, George Chambers, Dorothy Chambers, Elida Echevaria, Nom1an Harris, Angelo Nieves, Elmira Nixon, Leonardo Pagan, Joyce Starling, Taisha Tirado, Dagmar Vicente, Charlie Mae Wilson, Mattie Howell, Nancy Lopez, Vincent Munoz, Henry Simons, Alandria Warthen, Sheila Warthen, and Leona Wright

By: <u>/s/ Olga D. Pomar</u>
OLGA D. POMAR, ESQUIRE

By: /s/ Kenneth M. Goldman
KENNETH M. GOLDMAN, ESQUIRE

By: /s/ David M. Podell
DAVID M. PODELL, ESQUIRE

AARP FOUNDATION LITIGATION

Attorneys for Plaintiffs: Maria Arocho, Reynaldo Arocho, Ana Arocho, Vivian Brooks, Bernice Cagle, Leon Calhoun, Santos Cruz, Mattie Howell, Nancy Lopez, Vincent Munoz, Angelo Nieves, Dolores Nixon, James Potter, Rosemary Roberts, William Roberts, Efraim Romero, Hemy Simons, Phyllis Singleton, Robert Tigar, Flavia Tobar, Marlene Tobar, Radames Torres Burgos, Radames Torres-Moreno and Lillian Tones-Moreno, Charlie Mae Wilson, Alandria Warthen, Sheila Warthen, and Leona Wright

By: <u>/s/ Susan Ann Silverstein</u>
SUSAN ANN SILVERSTEIN, ESQUIRE

POTTER AND DICKSON

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By: <u>/s/ R. William Potter</u>
R. WILLIAM POTTER, ESQUIRE

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY

[Filed 12/04/08]

Docket No. 1:08 CV-02584

MT. HOLLY CITIZENS IN ACTION, INC. ET AL. Plaintiffs,

vs.

THE TOWNSHIP OF MT. HOLLY ET AL., Defendants.

CERTIFICATION OF MARCIA HOLT IN OPPOSITION TO MOTION FOR PRELIMINARY INJUNCTION

I, MARCIA HOLT, of full age hereby certify:

- 1. I am an employee of Keating Urban Partners, redeveloper for the Township of Mt. Holly. I make this certification of my own personal Knowledge except where specific reference is made to a source document.
- 2. For 2 years, I have been responsible for acquisition of property in the Gardens neighborhood and for the management of Township owned property within the Gardens redevelopment area. Until 2 months ago, my office was located in the redevelopment area. My office is now located in the Mount Holly municipal building. I work closely with Triad Associates employees to assist them in finding decent, safe, and sanitary new homes for relocating Gardens residents.

- 3. I have met with many Gardens Residents in order to assist them with obtaining relocation benefits and replacement housing.
- 4. The residents I have met with include a few of the Plaintiffs named in the Complaint, as well as many of the individuals named in the Public Advocate's report.
- 5. Part of the relocation benefits received by the Gardens residents includes monetary payments to help with their expenses. Renters are provided up to \$7,500 in relocation payments. Homeowners are provided up to \$15,000 in relocation payments and up to a \$20,000 loan that does not accumulate interest or need to be repaid until the property owner sells the new house.
- 6. The relocation assistance provided by the Township, and administered by me personally, has involved more than just the payment of money. I have provided the following services to residents who have been relocated:
 - a. Clearing property titles. All but 2 properties that have been purchased by the Township from Gardens residents (not from landlords) have title issues. Specifically many have past or current bankruptcy matters that have not been properly discharged. In addition, several of the properties have been in various stages of foreclosure and I have worked with the bank to postpone sheriff's sales. Many of the properties have various liens and judgments from credit cards, hospital bills and other debt collection agencies that need to be paid off and removed.
 - b. *Credit counseling*. Along with staff from Triad, I have worked with various Gardens residents

to reduce and/or forgive debts and otherwise improve credit for families who would otherwise not qualify for mortgages or credit due to their financial situations. I have also worked with families who could not initially qualify for mortgages to help them find private mortgages.

- c. Rental Assistance. For tenants of Township owned properties, I have worked with the tenants who have requested assistance. In some instances, I have accepted rental payments twice a month and waived late fees, or I have allowed them to remain by postponing eviction (for those who were not paying rent) to give them extra time to find a new place to live.
- d. Assistance with school issues. Some of the families have needed assistance with matters and problems that their children are having in school. Triad staff has met with school officials (superintendent and teachers) and provided support to these families to help them resolve these school issues.
- e. Assisted with Legal Matters. I have attended court and spoke on behalf of at least two of the Gardens residents to assist them with such matters as temporary restraining orders, child endangerment charges, and eviction matters. I have also helped to clear criminal records and resolve criminal issues with some of the families.
- f. Wellness checks for elderly. Approximately every other day in the summer when the temperature exceed 89 degrees, either a Triad Staff

member or I would go to the house of the elderly residents we knew of living in the Gardens to check on how they are doing. I will stop by to see if they need anything and I have offered to provide them with fans when it has been really hot.

- g. *Education Assistance*. The relocation office has made calls to local schools and community colleges to assist at least one resident in registering for computer classes and welding classes.
- h. *Transportation Assistance*. Triad staff and I have provided rides to and from relocation office to those residents who have requested a ride and on occasion, we have provided Gardens residents with rides to and from work.
- i. Purchases. I have personally purchased a variety of goods and have given them to the Gardens residents at no cost to them. For example, on occasion, a Triad staff member or I have purchased packaging material and garbage bags to assist residents who are moving. I have also purchased products such as toilet paper when the resident needed it. Also, I purchased a car seat for one resident who did not have one for her child.
- j. General counseling. Many of the residents who visit the relocation office simply want to talk to someone. The Triad staff and I offer a listening ear and console them when they are upset.
- 7. All of these services that have been provided to the Gardens residents have value, including monetary

value, which is not reflected in the Public Advocate's Report.

- 8. I have reviewed the Report prepared by the Department of the Public Advocate Entitled "Evicted from the American Dream: The Redevelopment of Mount Holly Gardens" and found it to contain false or misleading information. It does not tell the complete story of many of the individuals referenced in the Report. The Report relies on "interviews" with people; it is based largely on information other than Township documents.
- 9. For example, [Redacted] ("Homeowner 1") is featured in a photograph on photograph on page of Report. What the Report does not tell you is that Homeowner 1's living conditions are substandard.
 - a. Homeowner 1 is a homeowner that resides at [Redacted]. She has had multiple code violations filed against her for the condition of the outside of her home as well as charges for abuse/neglect to dogs. (See Exhibit A),
 - b. A few months ago, code enforcement was called out for an inspection because Homeowner 1's dogs had gotten loose. It was found that there had not been water service to the property since December of 2007. (See Exhibit B). Homeowner 1 was questioned by code enforcement and she advised that she did not live there. Rather, her sons lived at the property and she cannot control her sons. Final outcome was that they were given 24 hours to restore utilities or vacate the property, as it is unsafe to inhabit without water. (See Exhibit B).
- 10. [Redacted] ("Homeowner 2") is quoted on page 6 of the Report regarding her inability to obtain a

mortgage. I have personally worked with many homeowners and renters who wanted to purchase new homes to assist them in qualifying for mortgages. (*See* 116 above). There is no reason why I could not provide Homeowner 2 with similar assistance.

- a. Homeowner 2 resides at [Redacted] Homeowner 2 came into the township building on 8/21/2007 requesting information and an offer on her home. She spoke with Patty Clayton, a Township employee, who sent Homeowner 2 a letter a week later on 8/28/2008 reviewing their conversation, briefly explaining some relocation benefits available to her and offering to answer any questions and give any assistance she could. (See Exhibit C). No response was ever received from Homeowner 2 and she has never visited the relocation office to learn more about the assistance that could be provided to her.
- 11. [Redacted] ("Homeowner 3") and her family are featured in a story on page of the Report. The Report states [Redacted]." This statement suggests that they voluntarily left. This is not the full story.
 - a. Homeowner 3 resided at Homeowner 3 came to the relocation office because their house was in foreclosure and they owed too much money for them to catch up. I spent two months holding off the sheriff's sale of their property even though the sale was already scheduled when they came to us.
 - b. It was found that Homeowner 3 for several years before and after her husband's death had not paid any federal or state taxes, which is another reason why so many liens had been

placed on their property. I spent two months negotiating with various representatives to ensure that all of Homeowner 3's liens, taxes, and debts were paid off. In the end, I was able to reduce the \$70,000 state/federal taxes debt so that Homeowner 3 only had to pay half what was owed.

- c. As a result of Homeowner 3's past financial situation, she did not qualify for a mortgage. As a result, her son chose and put a down payment on an apartment in Lumberton because it was across the street from his kids and their mother who he is separated from.
- d. Homeowner 3 also allegedly reported that "one such demolition [by the Township] caused her bathroom and bedroom ceilings to collapse." However, Homeowner 3's property is in a row of 16 townhomes and none of them have been demolished. Nothing directly behind her property or on the other side of the alley has been demolished.
- 12. [Redacted] ["Homeowner 4") claims that the Township has not helped "us" on page 8 of the Report. However, the relocation office helped Homeowner 4 tremendously. It is untrue that the Township has not advised residents of how the Township could help them because all residents was have been sent notices about the relocation and the availability of relocation benefits. (Exhibit D) Residents who are interested in meeting with a relocation officer are invited to schedule meetings to discuss relocation benefits. All notices were sent in accordance with the Workable Relocation Assistance Plan ("WRAP") approved by the New Jersey Department of Community Affairs. We only stopped sending out letters to those residents who

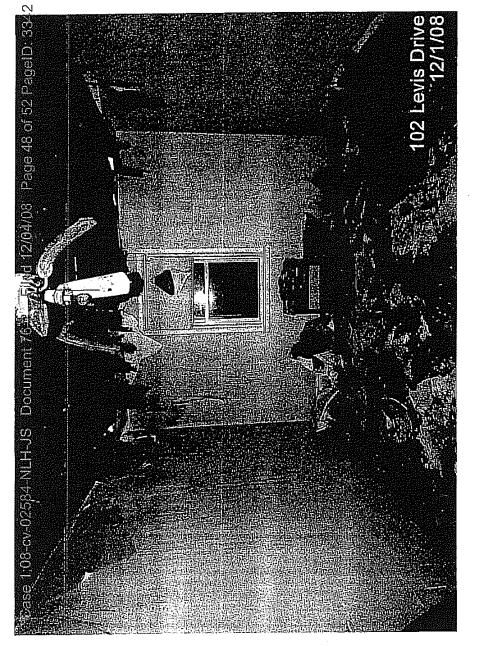
have been represented by South Jersey Legal Services because the lawyers have asked us not to contact their clients.

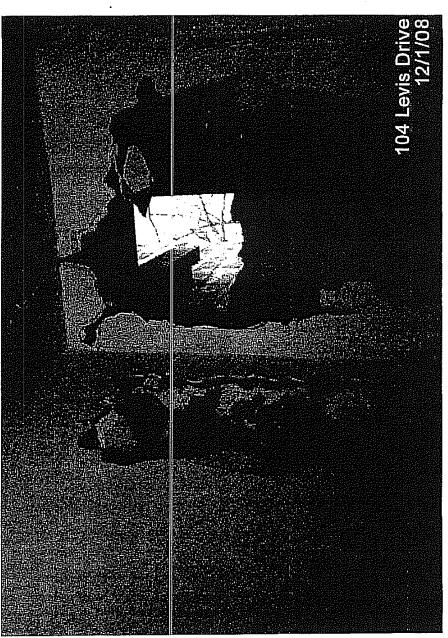
- a. As demonstrated above (see ¶ 23), several of the homeowners moved because they faced foreclosure on their houses. This had nothing to do with the Township's redevelopment activities.
- b. In addition, several tenants were faced with or were in fact evicted for various reasons, including non-payment of rent. For example, [Redacted] was a Township tenant who was evicted because she owed more than \$9,000 in back rent. (See Exhibit P). Similarly Tamiko Smith was a tenant of a private landlord who was also evicted for nonpayment of rent. (See Exhibit Q)

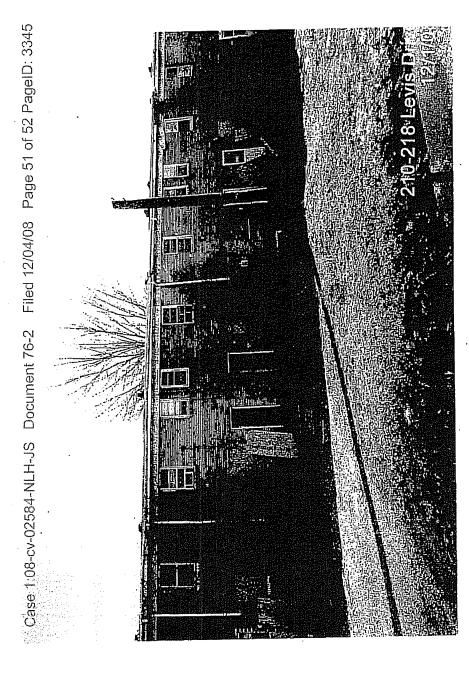
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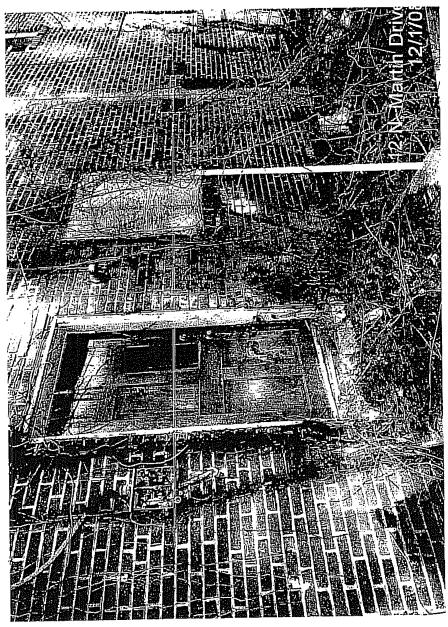
- 30. Not everyone is low or moderate income. For example, [Redacted] and her husband reported earnings of over \$100,850 on their 2007 federal income tax returns. The numbers used by the Public Advocate on page 4 of this Report to allege that 47% of the households in the Gardens earned less than \$20,000 per year and 43% earned between \$20,000 to \$40,000 was based on numbers received from a Planner's survey of the Gardens residents in 2000. Obviously, these figures are out of date and unreliable.
- 31. Attached as Exhibit R are pictures of the condition of the buildings in the Gardens take on November 24, 2008.

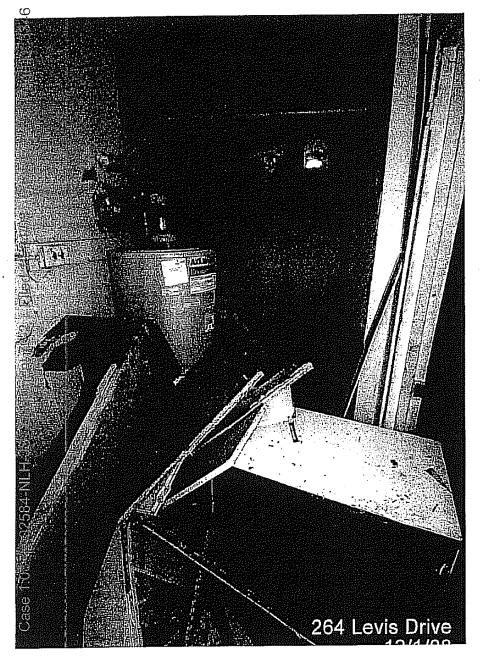
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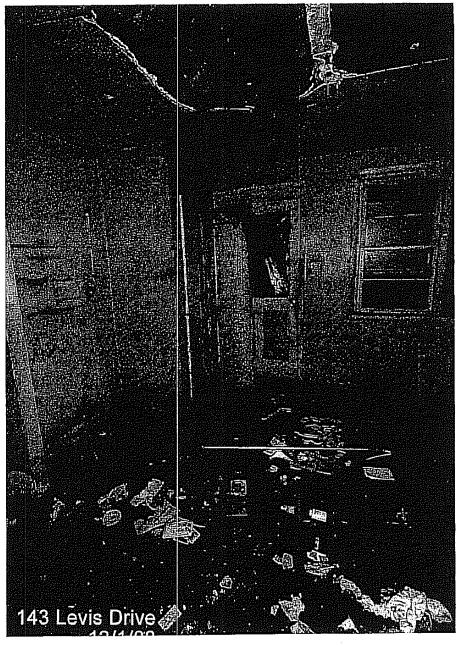












UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY

Civil Action No. 08-2584 (NLH)

MT HOLLY CITIZENS IN ACTION, INC., ET AL., Plaintiffs,

v.

TOWNSHIP OF MOUNT HOLLY, ET AL., Defendants.

OPINION

HILLMAN, District Judge

This matter comes before the Court on plaintiffs' motion for preliminary injunctive relief. In so moving, plaintiffs rely solely on their claim that defendants violated the Fair Housing Act, Title VIII, as amended, 42 U.S.C. § 3604(a). For the reasons expressed below and at oral argument, plaintiffs' motion will be denied.

BACKGROUND

Since the filing of plaintiffs' complaint, this case has involved several hearings, the filing of numerous motions and a second amended complaint, and the issuance of two Opinions. At issue is the redevelopment of the Mount Holly Gardens neighborhood (the "Gardens") in Mount Holly, New Jersey. Plaintiffs are low-income, African-American, Hispanic and "white," residents of the Gardens, who object to the plan because they are being forcibly removed from their homes, which are being replaced with new, much higher-priced market rate homes. Plaintiffs contend

that the redevelopment plan is violative of several laws, but they are currently seeking a preliminary injunction to stop the redevelopment based on the defendants' alleged violation of the Title VIII of the Civil Rights Act of 1968 (the Fair Housing Act or FHA), 42 U.S.C. § 3601 et seq. They argue that the redevelopment plan has a disparate impact on the African-American and Hispanic residents, and they are facing irreparable harm from the threat of losing their homes and their community ties, being inadequately compensated for their properties, and being unable to obtain affordable and decent replacement housing.

Defendants counter that they did not violate the FHA because there is no intentional discrimination or disparate impact on the Garden residents, and even if there were, the defendants are proceeding pursuant to a bona fide governmental interest in the least restrictive way. Therefore, defendants argue that plaintiffs are not entitled to a preliminary injunction.¹

DISCUSSION

In Winter v. Natural Resources Defense Council, Inc., 129 S. Ct. 365, 377 (2008), the Supreme Court recently reiterated that a "preliminary injunction is an extraordinary remedy never awarded as of right," and directed lower courts that "in each case, courts must balance the competing claims of injury and must consider the effect on each party of the granting or withholding of the requested relief." Winter, 129 S. Ct.

 $^{^1}$ Defendants have also moved to dismiss plaintiffs' FHA claim. Because the standard for reviewing a motion for preliminary injunction is different from a motion to dismiss pursuant to Rule 12(b) (6), the Court will not address defendants' motion to dismiss at this time.

at 377. It is based on these principles that this Court assesses plaintiffs' request for an injunction to enjoin defendants from continuing with their redevelopment plan.

In order to obtain a preliminary injunction, a plaintiff must establish that (1) he is likely to succeed on the merits, (2) he is likely to suffer irreparable harm in the absence of preliminary relief, (3) the balance of equities tips in his favor, and (4) an injunction is in the public interest. Id. With regard to the first two elements, the Supreme Court has instructed that "issuing a preliminary injunction based only on a possibility of irreparable harm is inconsistent with our characterization of injunctive relief as an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief." *Id.* at 375-76 (citation omitted). With regard to the second two elements, the Supreme Court has emphasized that in "exercising their sound discretion, courts of equity should pay particular regard for the public consequences in employing the extraordinary remedy of injunction." *Id.* at 376-77.

In this case, plaintiffs have not demonstrated, at this stage in the proceedings, that they have pleaded a successful Fair Housing Act claim, they have not shown that they will suffer an irreparable injury, and they have not demonstrated that an injunction is in the best interest of the public or that the equities tip in their favor.

A. Likelihood of Success on the Merits

Section 3604(a) of the Fair Housing Act makes it unlawful to "refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a

dwelling to any person because of race, color, religion, sex, familial status, or national origin." 42 U.S.C. § 3604(a) (emphasis added).

The FHA can be violated by either intentional discrimination or if a practice has a disparate impact on a protected class. Community Services, Inc. v. Wind Gap Mun. Authority, 421 F.3d 170, 176 (3d Cir. 2005). Plaintiffs here contend that the Gardens redevelopment plan has a disparate impact on the minorities living in the Gardens. In order to prove their claim, plaintiffs must first establish a prima facie case of disparate impact. Resident Advisory Board v. Rizzo, 564 F.2d 126, 148 (3d Cir. 1977). To show disparate impact, plaintiffs must show that the Township's actions have had a greater adverse impact on the protected groups (here, African-Americans and Hispanics) than on others. Lapid-Laurel, L.L.C. v. Zoning Bd. of Adjustment of Tp. of Scotch Plains, 284 F.3d 442, 466-67 (3d Cir. 2002). If a plaintiff establishes his prima facie case, the burden shifts to the defendant to demonstrate justification. The "justification must serve, in theory and practice, a legitimate, bona fide interest of the Title VIII defendant, and the defendant must show that no other alternative course of action could be adopted that would enable that interest to be served with less discriminatory impact." Rizzo, 564 F.2d at 149. Finally, "[i]f the defendant does introduce evidence that no such alternative course of action can be adopted, the burden will once again shift to the Plaintiff to demonstrate that other practices are available." *Id.* at 149 n.37. "If the Title VIII prima facie case is not rebutted, a violation is proved." *Id.* at 149.

Here, for the purposes of their motion for preliminary injunction, plaintiffs have not demonstrated that they will likely succeed with their FHA claim because they have not demonstrated that they can make their prima facie case. Plaintiffs argue that the redevelopment plan has a disparate impact on minorities in two ways. First, plaintiffs argue that the redevelopment more negatively affects minorities in Mt. Holly than non-minority residents because the redevelopment is driving out the minority population of Mt. Holly. To support their position, plaintiffs present a report of a demographic and statistical expert, Andrew A. Beveridge, Ph.D., who states that as of 2000, seventy-five percent of the people living in the Gardens were minority residents. Dr. Beveridge states that the Gardens contains a highly concentrated minority population, more than any other area of Mt. Holly. Consequently, Dr. Beveridge opines that the redevelopment of the Gardens effectively and significantly reduces the minority population in Mt. Holly. Plaintiffs contend that this violates the FHA.

Second, plaintiffs argue that the redevelopment plan has a disparate impact on minorities because the plan is targeted at an area that is populated by mostly minorities. Plaintiffs live in the Gardens because for families with limited income, the Gardens represented an attractive affordable housing opportunity. Demolishing the Gardens and replacing the current housing with higher-priced homes, and only a few low-income units, effectively causes the targeted reduction of Mt. Holly's minority population. This, too, plaintiffs argue is a violation of the FHA.

The statistical repercussions of redevelopment do not provide evidence that the Township implemented the plan to intentionally or effectively drive out the minority population of Mt. Holly. Indeed, even though plaintiffs have pointed out that the redevelopment of the Gardens has reduced the minority population of Mt. Holly, they have not accounted for how many minorities will move into the new housing. Furthermore, and more importantly for the plaintiffs' FHA claim of disparate impact, the redevelopment plan does not apply differently to minorities than non-minorities. Several plaintiffs classify themselves as "white," yet the plan affects them in the exact same way as their minority neighbors.

The real effect of the Gardens redevelopment is that there will be less lower-income housing in Mt. Holly. Although the Township may have some obligation with regard to providing a certain number of lowincome housing pursuant to other law, the reduction of low-income housing is not a violation of the FHA. The FHA prohibits the Township from making unavailable a dwelling to any person because of race—it does not speak to income. Redevelopment of blighted, low-income housing is not, without more, a violation of the FHA. Here, where fourteen homes are occupied by African-American plaintiffs, thirteen homes are occupied by Hispanic plaintiffs, and six homes are occupied by "white" plaintiffs, and all are affected in the same way by the redevelopment, the Court cannot find, on the current record at this preliminary injunction stage, that plaintiffs will succeed on their disparate impact FHA claim.

Even if plaintiffs were able to establish their prima facie case, they have not rebutted the Township's legitimate interest in the redevelopment, and they have not shown how an alternative course of action would have a lesser impact. These points also speak to the three other elements plaintiffs must prove for a preliminary injunction—irreparable harm, public interest and equities—and these elements are discussed in depth below. For the purposes of

establishing an FHA claim, however, it is important to note that redevelopment of the community to remove blight conditions is a bona fide interest of the State. In 1958, the New Jersey Supreme Court commented, "Community redevelopment is a modern facet of municipal government. Soundly planned redevelopment can make the difference between continued stagnation and decline and a resurgence of healthy growth. It provides the means of removing the decadent effect of slums and blight on neighboring property values, of opening up new areas for residence and industry." Wilson v. City of Long Branch, 142 A.2d 837, 842 (N.J. 1958). More specifically with regard to the Gardens redevelopment, the New Jersey Appellate Division found that "[t]he dilapidated, overcrowded, poorly designed community, in addition to the high level of crime in the area, is clearly detrimental to the safety, health, morals and welfare of the community." Citizens In Action v. Township Of Mt. Holly, 2007 WL 1930457, 13 (N.J. Super. Ct. App. Div. July 5, 2007). It is clear that the Township has a legitimate interest in the redevelopment of the Gardens.

B. Irreparable Harm, Public Interest & Balance of Equities

Plaintiffs have also failed, at this preliminary injunction stage, to demonstrate that they will suffer irreparable harm, or that it would be in the public's best interest to halt the redevelopment of the Gardens. To date, the majority of the Gardens has been vacated, with these vacated homes either being boarded up or demolished. Plaintiffs are still living in the Gardens, but they claim that the demolition and vacancies have created even more blight and unsafe living conditions. Both sides agree that the vacant homes have created fire hazards, crime, squatters, graffiti, roaches and

mold. They request, however, that the Court enjoin the Township from acquiring the remaining occupied homes through eminent domain, forcibly evicting tenants and homeowners, and otherwise pressuring residents to move out.² Plaintiff contend that this relief is necessary to maintain the status quo while their claims are being litigated against the Township.

Effectively, plaintiffs are seeking to remain living in the blighted and unsafe conditions until they are awarded money damages for their claims and sufficient compensation to secure housing in the local housing market. Although couched at times like an effort to have the development go up around them, like a highway built around a protected tree, or to have their units rehabilitated, this makes little if no practical sense after years of litigation, approved redevelopment plans, and the expenditure of significant public resources. At this late stage, the only real practical remedy is for plaintiffs to receive the fair value for their home as well as proper and non-discriminatory relocation procedures and benefits.³

On a motion for preliminary injunction, the Third Circuit has emphasized that "the injury must be of a peculiar nature, so that compensation in money cannot atone for it." *Morton v. Beyer*, 822 F.2d 364, 372 (3d Cir. 1987) (citation omitted). It could be argued that not being properly compensated so that plaintiffs are rendered homeless or forced to live in an

² Plaintiffs state that their request for an injunction does not seek to stall the first phase of redevelopment construction, which is the building of a 200-unit apartment building and 70 townhouses on a vacant 62-acre site.

³ The relief they are seeking is inconsistent with proving the fourth element of their FHA claim--namely, that an alternative course of action to eminent domain and relocation is viable.

undesirable location is a special type of injury for preliminary injunction purposes. Plaintiffs, however, have provided no evidence to demonstrate this will occur. Instead, plaintiffs rely on their statistician, who states that plaintiffs will not be able to afford to live in the newly constructed housing⁴ and that they most likely will not find comparably-priced housing within Mt. Holly, which is evidenced by the fact that only 19 of 62 families relocated by defendant Triad found housing within the Township. Plaintiffs do not provide any evidence the redevelopment will render them homeless--they only argue that the redevelopment will render them unable to remain in the Gardens area specifically, or in the Township generally.⁵

This claim of harm is speculative. We simply do not know at this stage where the remaining Garden residents will find alternative housing. We do know that there is substantial evidence former residents have been successfully relocated both within and outside the Township, that these efforts are ongoing, that some current residents may yet find housing in the redevelopment, and that these efforts are or will

⁴ Fifty-six low income housing units are planned for the new development. Defendants represent that under New Jersey law these low income homes cannot be promised specifically to the current Garden residents, but rather the homes must be disseminated pursuant to a lottery system.

⁵ The evidence on the record shows that other Garden residents whose homes have been acquired by the Township and have been relocated are pleased with both their compensation and place of relocation. In fact, the evidence demonstrates that many residents now have significantly improved living conditions and are in better circumstances financially. Additionally, the defendants represent, and plaintiffs do not dispute, that none of the people who have been relocated and wanted to remain in Mt. Holly were unable to do so.

be funded, at least in part, by the defendants. Failure to demonstrate that the harm plaintiff is suffering will not be compensated through money damages standing alone defeats plaintiff's application. 6 See Morton v. Beyer, 822 F.2d at 367 ("To obtain a preliminary injunction, the moving party must demonstrate both a likelihood of success on the merits and the probability of irreparable harm if relief is not granted, [and] we cannot sustain a preliminary injunction ordered by the district court where either or both of these prerequisites are absent."). Stated differently, even if plaintiffs had demonstrated a successful FHA claim for preliminary injunction purposes, of primary significance is that monetary compensation will redress their FHA claim, as well as all their other claims. Thus, even if plaintiffs leave their homes and end up in an undesirable location, if they are successful on any of their claims and are awarded their requested relief—money damages—they can use that compensation to obtain the housing they are entitled to by a judgment in their favor.

Similarly, for the purposes of a preliminary injunction, plaintiffs have not shown how their interests outweigh the public interest nor have demonstrated how the Township should proceed in a different manner. As mentioned above, both sides agree that before the redevelopment began, the Gardens was a

⁶ The Court recognizes the line of cases that suggests that the loss of one's home, a unique and special piece of real estate having significant personal meaning, can be irreparable harm. That argument, however, proves too much. Taken to its logical extreme, such a rule would perforce preclude redevelopment projects whenever residential real estate is impacted. That is not the law. What the law requires is that parties from protected groups be fairly treated and adequately compensated for their loss.

blighted neighborhood in need of major improvement. Now that the redevelopment has been underway for several years, the conditions of the Gardens has become even more of a hazard—to the people still living there, to the workers, and to the community at large. Every level of the New Jersey state courts has agreed and permitted the redevelopment to proceed, despite plaintiffs' continued challenges. Plaintiffs have not demonstrated any viable alternative to the continuance of the redevelopment plan, and to halt the process at this point as plaintiffs request would be to subject everyone to crime, disease and injury.

The Court recognizes that being forced from one's home with the fear of not being able to afford a comparable living situation, all in the name of redevelopment and the creation of houses one cannot afford, is a difficult prospect and an emotional issue. It is compounded by the fact that redevelopment directly affects low-income families who lack the resources for self-help. This is evident in the report issued by the Public Advocate, which uses the Gardens redevelopment as an example of why New Jersey's redevelopment laws should be reformed. This Court, however,

⁷ The Court notes that the certification of Marcia Holt, an employee of defendant Keating who has been responsible for the acquisition of property in the Gardens and for the management of Township owned property within the Gardens for the past two years, evidences that the defendants have gone to great lengths to assist Garden residents with their relocation, and all attendant issues that arise from relocation. The assistance provided to the Gardens residents includes clearing of property titles, credit counseling, rental assistance, assistance with school, legal, and educational issues, wellness checks for the elderly, transportation services, and general counseling. Ms. Holt has even purchased items—such as toilet paper, garbage bags, a child's car seat—with her own money to assist residents. Ms. Holt has also detailed the stories of dozens of families she and others have

cannot legislate from the bench, and it is required to follow the law as it currently exists. Plaintiffs' request for preliminary injunction is based on their FHA claim. Because the Court finds that plaintiffs have not shown that they are likely to succeed on such a claim or suffer irreparable injuries, and because the public interest and balance of equities are in defendants' favor, the Court is precluded from issuing an injunction.⁸

CONCLUSION

For the reasons expressed above, plaintiffs' request for preliminary injunction must be denied. An appropriate Order will be entered.

Date: <u>February 13, 2009</u> At Camden, New Jersey

> s/ Noel L. Hilman NOEL L. HILLMAN, U.S.D.J.

helped in improving their living and financial conditions. Plaintiffs have not provided any evidence that any of these people have been dissatisfied with their relocation compensation and location.

As a corollary issue, defendants have moved to have Ms. Holt's certification filed under seal. This issue was addressed at the hearing held on December 5, 2008. Because the certification contains sensitive personal information of non-parties to this action, plaintiffs do not contest the filing of Ms. Holt's certification under seal, no party has intervened to contest the filing of this document under seal, and a redacted version has been filed on the public docket, the Court will grant defendants' motion to seal. See Local Rule 5.3(c).

⁸ Aside from their request for injunctive relief, all of plaintiffs' claims, including their FHA claim, may proceed in due course. As noted above, however, plaintiffs' claims are currently subject to pending motions to dismiss by defendants.

UNITED STATES DISTRICT COURT DISTRICT OF NEW JERSEY CAMDEN VICINAGE

Case No.: 1:08-cv-02584 Hon. Noell. Hillman

Mt. Holly Gardens Citizens In Action, Inc., et al., *Plaintiffs*,

vs.

TOWNSHIP OF MOUNT HOLLY, ET AL., Defendants.

DECLARATION OF ANDREW A. BEVERIDGE, PH.D., IN OPPOSITION TO MOTION FOR SUMMARY JUDGMENT

- I, Andrew A. Beveridge, Ph.D., of full age, hereby certify as follows:
- 1. I, Andrew A. Beveridge, am Professor of Sociology at Queens College and the Graduate Center, City University of New York.
- 2. South Jersey Legal Service, Inc., the AARP Litigation Foundation, and Potter & Dickson, cocounsel for plaintiffs in this matter, have retained me to analyze the impact of the West Rancocas Redevelopment Project on the availability of affordable housing in Mt. Holly Township and Burlington County and specifically, any disparate impact that the removal of affordable housing will have and is having on the

African-American and Hispanic population in Mt Holly Township and Burlington County, New Jersey.

- 3. I previously submitted a Declaration dated July 8, 2008, in support of plaintiffs' application for a preliminary injunction ("Declaration") in which I discussed the impact of the West Rancocas Redevelopment Project. That Declaration, incorporated here by reference together with all exhibits to that Declaration, sets forth my experience and qualifications, and lists all documents and materials reviewed for purposes of my analysis.
- 4. I include an updated curriculum vitae with this declaration as Exhibit "A."
- 5. Since I submitted my previous Declaration, I have reviewed the following additional documents:
 - a. The Revised West Rancocas Redevelopment Plan (Revised WR Redevelopment Plan), dated September 8, 2008, available on Mt. Holly Township website.
 - b. Ordinance adopting Revised WR Redevelopment Plan.
 - c. Press release of Township, dated September 9, 2008, available on Mt. Holly Township website.
 - d. General Development Plan rendering, available on Mt. Holly Township website.
 - e. Planning Board hearing minutes, dated October 14, 2008,
 - f. Planning Board agenda for meeting held on November 30, 2009.
 - g. Sample Resolutions authorizing Township purchases of Gardens properties and Minutes

- and Agendas of Township Council meetings at which Resolutions authorizing Township purchases of Gardens properties were adopted.
- h. Certification of Marcia Holt, filed August 19, 2008
- Supplemental Certification of Marcia Holt, dated December 4, 2008.
- J. Declaration of Gray Smith in Opposition to Motion for Summary Judgment dated December 21, 2009.
- 6. I have reviewed the Declaration I previously submitted and find that it is complete and accurate and its conclusions still hold true. I am providing this additional Declaration to discuss events that have transpired since the time I submitted the Declaration and to provide further explanation of a few issues raised in the first Declaration, as well as update that Declaration with more recently released data.
- 7. In my earlier Declaration, I discussed the West Rancocas Redevelopment Plan, dated February, 2005 and a "Concept Plan." (Declaration, 17-19). Since that time, Mt. Holly Township has adopted revisions to the Plan. This new Revised WR Redevelopment Plan contains the same provisions for market rate and affordable housing as did the Concept Plan it calls for 520 total units, with 56 of the units (23 rental and 23 homeowner) to be affordable based upon New Jersey Affordability Standards. Therefore, all of my conclusions regarding the loss of affordable housing resulting from implementation of the Project hold true for the Revised WR Redevelopment Plan.
- 8. My conclusions set forth in the Declaration regarding the severe disparate impact of African-

American and Hispanic residents in the Gardens, in Mt. Holly Township, and in Burlington County similarly still hold true after the adoption of the Revised WR Redevelopment Plan. (Declaration, 25-38)

- 9. Since my earlier Declaration, the Census Bureau has released two more sets of data from the American Community Survey. These data were used to update the materials presented in Exhibit H2 in my earlier declaration. Exhibits B1 and B2 to this Declaration report the results of my disparate impact analysis.
- 10. The destruction of housing units in the Gardens and the forced relocation of the occupants (both owners and renters) has a disparate impact on African-American and Hispanic communities in Mt. Holly and Burlington County, New Jersey.
- 11. First, the Gardens had a high concentration of African-American and Hispanic residents as noted in my original Declaration. As I had explained (Declaration, ¶¶ 25-38) the destruction has a severe disparate impact on African Americans and Hispanics: "Indeed, while only 2.73 percent of the non-Hispanic White households in living in Mount Holly in 2000 are or will be affected by the Gardens' demolition, some 22.54 percent of the African-American households and 32.31 percent of the Hispanic households are or will be affected. Put simply, the African-Americans are more than 8 times more likely to be negatively affected, and the Hispanics are more than 11 times more likely to be negatively affected, than are non-Hispanic Whites. (Declaration ¶¶ 35)."
- 12. Second, given the fact that African Americans and Hispanics in Burlington County generally have lower incomes than do non-Hispanic whites, the destruction of such housing will have a disparate

impact on African Americans and Hispanic generally. As explained in my original Declaration (¶¶ 37-38): "The destruction of the affordable housing in the Gardens and its replacement with market rate housing, will not only greatly negatively impact African-American and Hispanic households in the Gardens Mount Holly, but will also have a severe disparate impact on the African-Americans and Hispanics in Burlington County. While the WR Redevelopment Project will destroy 5.21 percent of all of the affordable housing stock in Burlington County inhabited by all households in 2000, who made less than 50 percent of the area median, only 1.62 percent of such housing lived in by non-Hispanic White households will be lost. However, 16.44 percent of similar affordable housing inhabited by African-Americans will be lost, as well 33.49 percent of such housing inhabited by Hispanics. There are similar results when one considers the housing loss for all the low income residents, including those that make up to 80 percent of the HAMFI. All these figures are in Exhibit Bl.

- 13. Exhibit 82 presents similar figures based upon the 2008 American Community Survey data and the 2008 income limits. It is provided to indicate that the need for affordable housing had increased. Due to the limited sample size in the 2008 ACS, the results should be seen as indicating that the same pattern of results found in 2000 hold for 2008. A number of units in the Gardens are already vacant or demolished, so the percent affected for each group takes into account all of the units, and not just those that remain.
- 14. These results mean that the housing is lost to low-income residents, who are disproportionately African-American and Hispanic. Furthermore, it is plain from the CHAS data, from Realty.com data, and

from every other indication that finding replacement lower cost housing is difficult.

- 15. While Keating employee Marcia Holt, in her certification, provides some anecdotes regarding relocations of a few residents, she gives no information about the vast number of residents—nearly 200 households—who have left the Gardens since Mt. Holly Township began redevelopment activities. Furthermore, she does not give any information regarding the terms and conditions of the new mortgages that former residents have entered into, nor any financial data showing comparative housing cost burdens of former residents before and after leaving the Gardens. In addition, Ms. Holt has not discussed the situation of those who have yet to leave and their prospects for purchasing replacement homes. A large number of older residents with paid up mortgages who are older and on fixed incomes do not have the extra resources that it apparently takes to find housing outside the Gardens.
- 16. I reviewed my conclusions regarding whether the alternatives outlined by Gray Smith, AICP, AIA would lessen the discriminatory adverse impact of the West Rancocas Redevelopment Project upon African-American and Hispanic families in the region. (Declaration, 45). I believe my conclusions are still correct.
- 17. Beyond the 56 units of affordable housing in the revised WR Redevelopment Plan—of which only 28 are designated for homeowners—there is no possibility that the current residents could afford moving into the new housing without substantial additional resources.
- 18. Further, since the new homes in the revised WR Redevelopment Plan are expected to cost between

\$200,000 to \$275,000 to buy and at least \$1,230 per month to rent, only those households with incomes above 80 percent of area median income will be able afford to move to the redeveloped community. Based on relevant census data for the region, approximately only 21% of African-American and Hispanic households would be able to afford the new market rate housing, compared to approximately 79% non-Hispanic White households who would be able to afford the new housing. Thus, the redeveloped area will be mostly non-Hispanic White and will have drastically less African-Americans and Hispanic residents than before redevelopment.

- 19. In short, as shown in Exhibit B1 (and corroborated in B2), the destruction of housing in the Gardens is reducing the supply of housing affordable to low income residents, who are disproportionately African-American or Hispanic.
- 20. I also presented evidence in my previous Declaration that the relocation assistance provided for in Mt. Holly's Township's WRAP does little to mitigate the severe disparate impact on African-American and Hispanic residents. Those conclusions also are still applicable. (Declaration, ¶¶ 39-44).
- 21. I see from my review of selected Township Council documents that the Township is still continuing to pay \$32,000 for one bedroom units, \$39,000 for two bedroom units, and \$49,000 for three bedroom units it is purchasing in the Gardens.
- 22. To prepare my earlier Declaration, I visited www.realtor.com on June 25, 2008, and reviewed listings in Mt. Holly Township and its environs. (Declaration, ¶¶ 41-42). I again visited www.realtor.com and noted that using the same search criteria, there

are currently (12/20/2009) three houses listed below \$84,000, which is the amount that one could spend and not incur added costs for a three bedroom apartment. This is three out of over 400 listings in the Mt. Holly area. (See Exhibit D). This is consistent with my findings in my earlier Declaration as to the scarcity of affordable housing options for displaced Gardens residents in the Mt. Holly area.

- 23. In her Certification, Marcia Holt stated that contrary to my conclusions, she found numerous listings for homes under \$84,000 and that 30-40% of the listings are affordable to Gardens residents. The main reason for the difference between my findings and hers is that she used a much wider geographical radius encompassing a wide range of housing markets, including lower income neighborhoods in Philadelphia, PA, where one is likely to find lower priced housing. I instead concentrated on Mt. Holly Township and its immediate surrounding area because I was trying to determine whether Gardens residents would be able to stay in the same or comparable neighborhood and their location of choice, or whether they would be forcibly displaced from the community.
- 24. I repeated the search that Ms. Holt did and found about 235 listings under \$84,000 out of 7,218 total listings are available in this wider area—only 3.3 percent of the total listings (see Exhibit "D"). Upon review, a large number of these units are in Arborwood in Lindenwold, a complex located in an area that the municipality has declared blighted and that is targeted for redevelopment. The complex has deteriorated since it was designated, as the article shows.

¹ In addition, it appears that the number that Ms. Holt reported in 2008 is the total number of listings available--not the total number available less than \$84,000.

(See Exhibit "E."). In addition, since there are only 3 listings under \$84,000 are in the immediate and nearby surrounding Mt. Holly market, current Gardens homeowners seeking to buy lower-cost replacement housing would be forced to move away from the entire Mt. Holly area, and most likely out of New Jersey completely into Philadelphia. Moreover, using the wider geographical area selected by Ms. Holt would mean that Gardens residents would have to compete with many more lower-income households seeking relatively few lower-priced units. Thus, nothing that Ms. Holt has presented in her certifications contradicts my findings that Mount Holly Township's implementation of the WR Redevelopment project will significantly disproportionately displace African-American and Hispanic residents out of Mount Holly and the surrounding community. On the contrary, Ms. Holt's submissions support and reinforce my findings of a severe disparate impact on African-American and Hispanic households.

25. The foregoing statistical analysis is based upon my experience and qualifications as a social science and statistical data analysis utilizing data from the sources indicated.

I declare under penalty of perjury that the aforementioned is true and correct to the best of my knowledge.

/s/ Andrew Beveridge, Ph.D Andrew Beveridge, Ph.D Yonkers, NY (Bronxville, P.O.) December 21, 2009

UNITED STATES DISTRICT COURT DISTRICT OF NEW JERSEY CAMDEN VICINAGE

Case No.: 1:08-cv-02584 HON. NOEL L. HILLMAN

Mt. Holly Gardens Citizens In Action, Inc., et al Plaintiffs,

vs.

Township of Mount Holly, et al. Defendants.

DECLARATION OF GRAY SMITH IN OPPOSITION TO MOTION FOR SUMMARY JUDGMENT

- I, Gray Smith, AIA, AICP, of full age, hereby certify as follows:
- 1. I am an architect, licensed in New Jersey, Pennsylvania, and Delaware. I am also certified by the American Institute of Certified Planners.
- 2. I have been retained by the Plaintiffs in this litigation to provide opinion regarding the effects of actions taken by the Township of Mt. Holly (Township) to implement the West Rancocas Redevelopment Plan, which I have reviewed, and regarding alternative approaches to revitalization of The Gardens neighborhood.
- 3. I previously submitted a Declaration, Declaration of Gray Smith in support of Motion for a Preliminary Injunction dated July 2, 2008, ("First PI Declaration") in which I discussed my observations regarding the implementation of the Township's redevelopment

project in the Gardens and the existence of viable alternatives to the approach selected by the Township for redeveloping that neighborhood. That Declaration, incorporated here by reference, sets forth my experience and qualifications, and lists all documents and materials reviewed for purposes of my analysis.

- 4. I also submitted a Declaration, Second Declaration of Gray Smith in support of Motion for a Preliminary Injunction dated August 26, 2008, ("Second PI Declaration") in support of Plaintiffs' application for preliminary injunction and in reply to Defendant Township's submissions That Second Declaration is also incorporated here by reference.
- 5. Previously, I had prepared other Reports and Certifications for use by Plaintiffs. One of these reports my Second Supplemental Report dated October 11, 2007 ("Second Supplemental Report"), was submitted in support of Plaintiffs' Application for Temporary Restraining Order filed in November, 2008. It is also incorporated here by reference.
- 6. Since I submitted those Declarations, I have reviewed the following additional documents:
 - a) Background/historical documents regarding The Gardens
 - i. Undated Mt Holly Gardens Fact Sheet
 - ii. Undated property acquisition memo.
 - iii. Undated memo identified as "From Joan".
 - iv. The Mount Holly Gardens Acquisition and Development Plan by Joseph Biber Associates, in 1989.
 - v. Mt Holly Twp. Total UCR stars (graph) 1996-2006

- vi. Mt. Holly Twp. Violent Non-Violent Crime Index Chart (graph) 1996-2006
- vii. Letter from Steven Martin, Mt. Holly Police to Mr. Liston, dated May 21, 2003 with chart showing 2002 CDS arrests in Gardens
- viii. Undated Memo entitled "Making the Mount Gardens Drug Free"
- ix. Memo entitled "Safe and Secure Communities June 2000"
- x. Memo entitled: "Operation Safe Summer, June 1, 1999 to August 31, 1999"
- xi. Certification in Opposition to Motion for Injunctive Relief of Arthur M. Liston, Township Manager, dated May 19, 2004.
- b) The Revised West Rancocas Redevelopment Plan (Revised WR Redevelopment Plan), dated September 8, 2008, available on Mt. Holly Township website.
- c) Ordinance adopting Revised WR Redevelopment Plan.
- d) Press release of Township, dated September
 9, 2008, available on Mt. Holly Township website.
- e) General Development Plan rendering, available on Mt. Holly Township website.
- f) Planning Board hearing minutes, dated October 14, 2008.
- g) Planning Board agenda for meeting held on November 30, 2009.

- h) Declaration of Rev. Kent R. Pipes in Opposition to Motion for Summary Judgment, dated Dec. 21, 2009
- 7. I also visited the Gardens again on February 19, 2009.
- 8. I have reviewed the Declarations and Second Supplemental Report I previously submitted and find that my observations, opinions, and conclusions generally still hold true even though certain events have transpired since that time.
- 9. I am providing this additional Declaration to update my statements, discuss events that have occurred since the tune I submitted the prior Declarations, and provide further explanation of a few issues.
- 10. In my First PI Declaration, I noted that the Township, Keating/Pennrose, and Triad Associates were aggressively acquiring properties, vacating houses and relocating residents out of the Gardens. (First Declaration, ¶ 11). That process has continued.
- 11. In my First PI Declaration, I discussed the West Rancocas Redevelopment Plan, dated February, 2005 (First PI Declaration, ¶¶ 10, 12-14, 18, 21-22, 27-29). I noted that there were substantial differences between the officially adopted Redevelopment Plan and statements made by the Township's agents as to numbers of units to be built, as well as with the provisions of the WRAP. (First PI Declaration, ¶ 13). Since that time, the Township has formally revised the Redevelopment Plan to incorporate the redevelopers' proposal to demolish all existing homes and build 520 new units. Therefore, there is no longer the inconsistency between the various Township documents as to numbers and types of units to be constructed.

- 12. I also noted in my First Declaration that there is inconsistency between the provisions in the Redevelopment Plan and WRAP regarding potential retention of current residents, and conversely, the total relocation of residents out of the community, which has created uncertainty for the residents. (First PI Declaration, ¶ 14) My conclusions regarding this uncertainty that residents face regarding their future still hold true.
- 13. In my First PI Declaration, I described the general physical conditions I observed at the Gardens at the time of my site visits on June 11, 2007 and May 19, 2008, which included the following:
 - Well-maintained occupied homeowner houses and yards and well to poorly maintained occupied rental housing units;
 - Unmaintained vacant boarded-up houses and vacant lots owned by the Township;
 - Deteriorated public sidewalks, damaged or missing street curbs, unmaintained and flooding sewers, unmaintained and non-functioning street lighting, and unmaintained, overgrown trees;
 - Loss of all recreation facilities and community center;
 - Dire warnings of "No Trespassing" signs, without any public posting of any indication of a positive future for neighborhood;
 - Loss of former housing units through demolitions
- 14. These physical conditions existed at the time of my most recent site visit on February 19, 2009; in fact,

neighborhood conditions were continuing to deteriorate and there was no indication that the Township and Redevelopers had taken any action to correct the conditions.

15. With regard to demolition activity, in my prior Declarations I observed houses slated for demolition that appeared from exterior inspection to be structurally sound, not constituting an immediate health or safety hazard, and suitable for rehabilitation (First PI Declaration, ¶ 17). I inspected exterior and interior inspections of 9 properties slated for demolition, and bound that within reasonable architectural and urban planning certainty, and based on my education, knowledge, experience, research, and analysis, that the houses were structurally sound and were not a threat to health and safety, that the extent of unsafe conditions was solely a function of carelessness of illegal trespassers and Township's failure to secure and protect the houses against trespass, and because of the value of existing, in-place structural components and the high costs of demolition, removal, recycling, disposal, and replacement of similar structural components of less quality, the houses were economically feasible to rehabilitate. (First PI Declaration, ¶ 24; See also Second Supplemental Report). I later saw that these houses I had inspected had been demolished (First PI Declaration, ¶ 25). I also observed that vacant lots resulting from demolitions were characterized by poor grading, muddy conditions, and erosion of soil onto streets, alleys, and adjacent properties, and that the demolition required removal of public sidewalks, creating unsafe pathways between the remaining sidewalks, and the elimination of walkway accessibility for disabled residents and visitors. I also opined that the woodchips being used to maintain sidewalks are inadequate and in violation of Township

Ordinances and Standards and in violation of the Federal Americans with Disabilities Act (ADA). (Second PI Declaration, 23).

- 16. On my subsequent and most recent visit to the Gardens, I observed that the Township has been demolishing a significant number of houses in the Gardens. I noted the following:
 - While in the past, when the Township completed demolitions, it permanently sealed the exterior walls of the adjoining houses with stucco or similar material that protects the against air and moisture intrusion, that practice had been stopped. Beginning with the more recent demolitions conducted in the fall of 2008, the contractors, after demolition was completed, painted a bituminous, tar-like coating on the newly exposed exterior wall of the adjoining house without installing any insulation. The newly exposed party walls that are exposed to the weather allow for substantial heat loss.
 - The bituminous coating does not extend below grade, and as a result, moisture from the newly created soil adjacent to the sub-grade party wall will penetrate into the crawl spaces of the houses and could accelerate mold growth, creating a health hazard.
 - Demolition of shared roofing resulted in openings at roof joist level at some properties and was patched with plywood, which is insufficient to prevent water penetration.
 - The demolition work left exposed surfaces in poor and visually unacceptable manner, including conditions such as hanging wires

- and telephone boxes, ragged brick corners, open masonry joints, rough surfaces, unmatching, irregular plywood patches at roof level, and damaged porches, floors, and railings.
- During this more recent demolition activity, the contractors continued to remove and/or damaged concrete sidewalks, creating unsafe pathways and eliminating accessibility for disabled persons.
- 17. I conclude, therefore, that the Township and/or Redevelopers have continued to create increasingly blighted and unsafe conditions by continuing and accelerating demolition of structures that were structurally sound and capable of rehabilitation.
- 18. I also conclude that the Township has not complied with or enforced Building Codes and related standards, as required by the NJ Uniform Construction Code, by the manner in which it undertook demolition activities, altered site conditions, treated newly exposed party walls, roof edges and foundations, and administered the demolition process, by directly violating the following Codes and Standards provisions.
 - NJ Uniform Construction Code (UCC):
 - 5:23-2.2(b): mandatory compliance with the Codes.
 - 5:23-2.2(e): prohibits local ordinance in conflict with UCC.
 - 5:23-2.4(a): requires compliance with the *UCC Rehabilitation Subcode* (5:23-6).
 - 5:23-2.14(a): Building Permits required for each property.

- 5:23-2.15(a), (b), (c), (d) & (f): detailed information required in Permit Applications.
- 5:23-2.16: specific procedures for Permit Applications and Approvals.
- 5:23-2.34(a): must protect adjoining properties.
- 5:23-2.34(b): requires Notice to adjoining property owners.
- 5:23-2.34 (c): requires Consent of adjoining property owners.
- 5:23-2.34(d): requires detailed information on safeguard measures to be provided to adjoining property owners.
- 5:23-3.3: requires enforcement of the Codes by local Codes Officials.
- 5:23-6.6(e)15: requires insulation on or in walls newly exposed to exterior.
- International Building Code/2006:
 - 1403.4: requires fire resistant materials when applied to exterior walls.
 - 1405.3: requires flashing at the roof edges for moisture prevention.
 - 3302.2: prohibits damage to, or requires repair to, public rights-of-way (including sidewalks).
 - 3303.5: prohibits work resulting in water accumulation on newly vacant lots.
- International Energy Conservation Code/2006:
 - Chapter 4: requirements for residential energy efficiency in exterior walls.

- ASHRAE Standard 90.1:
 - Chapter 5: technical requirements for energy efficiency in exterior walls.
- Mount Holly Property Management Code Ordinance No. 2003-54:
 - 3-87: requires Township Housing Inspector to assure compliance with Standards of good housing and to prevent blight or deteriorated housing.
- BOCA National Property Maintenance Code / 1996:
 - PM-105.0: regarding duties and powers of the local Code Officials.
 - PM-110.4: requires demolition materials to be salvaged.

19. In my prior Declarations, I noted other significant adverse impacts of the Township and Redeveloper's approach to redevelopment and method of implementation of the redevelopment Plan, such as threat of geographically distant relocations, without choice or convenience, and resulting anxiety and loss of long-term friends and neighbors, lost value of privately owned property, lost tax revenue, lost economic benefits, loss of entry level labor pool, and destruction of livable, affordable housing stock. I also noted that there is a growing reluctance of private owners to maintain, invest, or improve property, while at the same time these owners face an inability to secure tenants, obtain financing, secure insurance at reasonable rates, or to sell the property at a fair price. all which is a direct result of increasingly blighted conditions created by the Township's actions and the seeming inevitability that the community will be completely demolished, (First Declaration, ¶¶ 17, 19, 20).

- 20. It is my opinion, based on my most recent observations and my review of Township documents, that these same adverse impacts are continuing and in fact, becoming more severe as more residents are relocated out of the community without provision for replacement housing in the community.
- 21. In my First PI Declaration, I stated that in my opinion, within reasonable architectural and urban planning certainty, and based on my education, knowledge, experience, research, and analysis, the Township had in 2002 and continues to have today various options for rehabilitating and improving the Gardens neighborhood and eliminating or reducing the blighted conditions, without wholesale acquisition and demolition of all existing houses and relocation of all residents. I explained that existing houses could be rehabilitated, combined, and improved, and that the Township could have combined selective demolition and new construction with rehabilitation. (First Declaration, ¶ 26). I discussed the importance of preserving and creating affordable housing and recommended that the redevelopment plan include a mix of affordable and market rate housing units along with commercial uses and open space. (First PI Declaration, ¶ 29). I also stated that problems such as crime or lack of amenities could have been addressed through other measures such as crime prevention, code enforcement, and finding for community improvements and services. (First PI Declaration, ¶ 27). I set forth some concepts for such a rehabilitation approach. (First PI Declaration, ¶ 31-32).

Finally, I noted that a rehabilitation approach would be less costly and create less hardship to residents. (First PI Declaration, 28-29, 33)

- 22. In my Second PI Declaration, I opined that based on the evidence submitted by the Township in opposition to plaintiffs' motion for a preliminary injunction and other evidence I reviewed, it is apparent that the Township and its planners never seriously considered or analyzed the concept of housing rehabilitation. (Second PI Declaration, ¶ 7). I pointed out that no professional analysis was undertaken by the Township to understand the various types of housing rehabilitation and only a minimal focus on "gut rehab." (Second PI Declaration, ¶ 7). I stated that the Township's conclusions that a rehabilitation plan is not feasible and that total demolition and relocation and new construction is less costly without a feasibility study and a comparative cost analysis is unacceptable. (Second PI Declaration, ¶ 7).
- 23. In my Second PI Declaration, I further pointed out that the persons submitting evidence on behalf of the Township, Michael Sencindiver, Kathleen Hoffman, and Marcia Holt are not expert architects or planners, that Mr. Sencindiver's Certification discusses only vacant homes, that he quotes HUD publications inaccurately and out of context, that the evidence submitted by the Township regarding estimated costs for a gut rehab is unsubstantiated, based upon evaluation of one of the most defective properties, and contradicted by the Township's own experience in rehabilitating Gardens homes, and that the Township's conclusions regarding economics of rehabilitation are also unsupported and fail to consider the true costs of the Township's total demolition approach. (Second PI Declaration, ¶¶ 10-13,

- 16-18). Finally, I provided examples of developers engaged in rehabilitation projects (Second PI Declaration, ¶ 19-22).
- 24. Based upon all of the information and evidence I have reviewed to date, I believe that my earlier opinions, analysis, and conclusions regarding the availability of alternative courses of action for rehabilitation/redevelopment for the Gardens Neighborhood set forth in my First and Second Declaration remain true and accurate.
 - 25. In specific, I note the following:
 - Residential properties in The Gardens were technically proven to be physically and economically capable of rehabilitation
 - The evidence submitted by the Township regarding demolition vs. rehabilitation is technically flawed, contradictory, unsubstantiated, and dishonest, provided by persons substantially unqualified to offer expert opinions on these issues.
 - Virtually all of the adverse conditions in The Gardens neighborhood were caused directly by the Township's actions, inaction, and negligence, and not by the Gardens residents.
 - An even cursory review would conclude that the Township's total demolition and all new construction approach to redevelopment would require public expenditures at millions of dollars more than would a project
 - involving rehabilitation of existing housing and infrastructure, particularly in light of the current depressed economy, and a national

policy emphasis on recycling and reuse of buildings and facilities.

- 26. In brief, an alternative course of action in favor of rehabilitation and enhancement of the remaining Gardens neighborhood and elimination of blighted conditions would include the following:
 - Repair and restoration of existing streets and utilities infrastructure (a substantial cost savings over an all new reconfiguration)
 - New ADA-compliant sidewalks, walkways, and landscaping.
 - Grants and loans to remaining homeowners for repair, rehabilitation, and small additions to existing properties (cost savings over demolition and relocation), temporary relocation if needed.
 - Acquisition and disposition of vacant and absentee-owned houses to a developer (nonprofit or for-profit) for subsidized and taxcredit rehabilitation and additions, and sales to low and moderate income homebuyers (cost saving over demolition and new housing unit construction)
 - Construction of new market-rate and subsidized rental housing in garden-type apartment buildings and/or townhouses
 - Construction of market-rate, single, duplex houses and townhouses for sales
 - Increase in population of families of mixed incomes
 - Construction of a community recreation and social services center with playground and

- sports field, including a 24-hour staffed Police Mini-Station
- Set-aside of property for development of neighborhood commercial space, religious facilities, child day care and rental office space
- Designation of inclusion of The Gardens in state and municipal services districts, including fire Department, Code enforcement, recreation, schools, social services, and jobs training and development, appropriate application of such services within the neighborhood;
- Improved public transportation access to and from the neighborhood for all age groups;
- Relocation of previous Gardens residents back in the redeveloped Gardens, where preferred by previous residents;
- Recognition of a Gardens civic association (Citizens in Action) as representative of neighborhood interests on a continuing basis.
- 27. This alternative course of action would require commitment and approvals of the Township and the State, development of a professional plan by architects, planners, engineers, and housing developers skilled in neighborhood rehabilitation planning and implementation, organized participation by neighborhood residents in the planning and implementation process, identification of funding sources and aggressive pursuit of the funds, and an ongoing social services program to assist neighborhood residents throughout the planning and implementation process and after completion of the redevelopment effort.
- 28. It is further my opinion that a responsible and reasonable Township planning process, in accordance

with sound, comprehensive, professional and ethical planning principles, would have included a serious review and analysis of several "alternative courses of action" for the redevelopment of The Gardens, including one involving rehabilitation of all or most of the existing housing units. Such an approach would have avoided expenditure of significant public resources, delays, the dislocation and disruption of the lives of many families and individuals, and the overall physical devastation of The Gardens community by the Township's actions.

- 29. A reasonable alternative to the wholesale demolition proposal of the Township was available in 1989, within the Mount Holly Gardens Acquisition and Development Plan prepared by Joseph Biber, a professional Housing Development Consultant, in which substantial rehabilitation of existing housing was the primary feature. That Plan was based on extensive supportive statistical, economic and technical data, and had significant community support.
- 30. It is my opinion, based upon my review of Township officials' statements and other documents and my observations of the Gardens, as well as my professional experience, that the Township failed to include such an "alternative course of action" in its planning and approvals, and did not give consideration to the practicality of rehabilitation, retrofitting, and repair of existing houses and infrastructure. I base this conclusion on the fact that: (1) the Township essentially ignored the extensive analysis and logical proposal in the 1989 Biber Plan for housing rehabilitation; (2) the Township provided no financial support for the Mount Holly 2000 Plan for homeowner rehabilitation; (3) the Township has continuously expressed an aversion to housing subsidy programs whereby rehabilitated

houses can be made "affordable" to low-and-moderate income families by selling them for less than market price and for less than the costs to rehabilitate them; (4) whereas several initial professional plans for The Gardens called for a substantial amount of housing rehabilitation, the Township ignored the recommendations; (5) since 2003, the Township has never attempted to engage housing developers in The Gardens redevelopment that have an interest in and capacity for housing rehabilitation; and (6) the Township has never undertaken a professional study to determine the feasibility of the several rehabilitation options.

31. Regarding the Township's argument that demolition of The Gardens neighborhood was necessary due to a high crime rate over several years, there is no clear justification, in that: (1) events in the late 1980's have no bearing on conditions in 2003, when the first redevelopment plan was adopted, nor to present conditions; (2) the Township's policing policies up until mid-1999 were the antithesis of more appropriate, nationally-recognized "Community Policing" methods; (3) when policing policy changed to the "Safe he Secure Communities" approach locally, in cooperation with neighborhood leaders, crime was reduced by a substantial 25%; (4) "Community Policing" methods were, however, abandoned by the Township after 2002; (5) the Township frequently reduced public services to the neighborhood giving a signal that police services would also be reduced; and (6) the increase or predominance of crime can be as much a failure from police action, as it would be from a predominance of perpetrators from or visiting a neighborhood. Moreover, a substantial neighborhood rehabilitation approach to The Gardens, including all of the necessary community facilities, public services, and social programs, would, in fact, improve crime statistics in the neighborhood and the Township — as much, if not more, than a wholesale demolition and new construction approach.

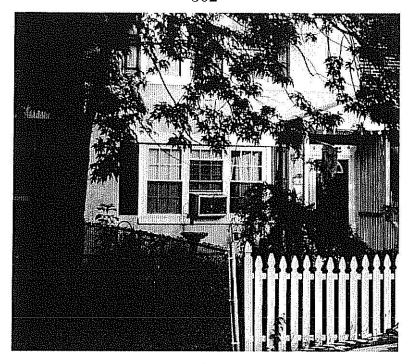
- 32. In my professional opinion, the Township had available rehabilitation alternatives: in 1989, with the Biber Plan; in 2000 with the Mount Holly 2000 program; in 2002, when it first designated The Gardens as a redevelopment area; in 2006, when it began to effectuate its redevelopment plan; and even now. Approximately 100 families and their houses still remain in The Gardens neighborhood. Land is cleared where houses were demolished, and the original streets and utilities are intact. The potential is still there for a viable community with the same healthy spirit it had before the Township's destructive and disruptive actions.
- 33. In my professional opinion, regardless of the current extent of demolition and vacancy in The Gardens neighborhood caused by Township actions, an alternative plan is feasible that preserves the remaining housing stock for existing and future homeowners and renters, and provides new infill housing, recreational and community service facilities, rehabilitated infrastructure, new commercial uses, and appropriate public services.
- 34. In my professional opinion, even if the Township proceeds with 100% demolition of the existing housing and 100% relocation of existing residents, it is a feasible alternative to construct a new residential community with the necessary amenities and services, and provide a mix of housing types and housing costs (including affordable housing) and incomes, if performed within a sequential plan that allows for new units to be built without disturbing the existing

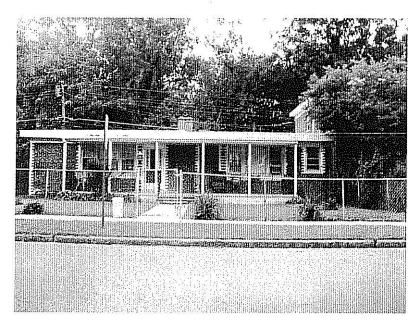
residential community. Such a sequential plan could compensate past relocatees sufficiently to allow past residents of The Gardens to return, and allows current residents to relocate therein without ever leaving The Gardens neighborhood.

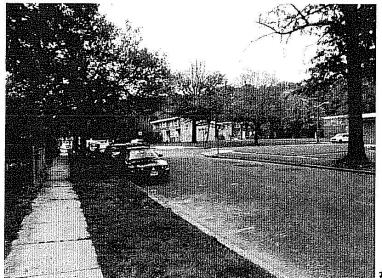
- 35. In fact, I note that the Township and Redevelopers are implementing the redevelopment project in phases, with the first phase encompassing vacant land to the north of The Gardens, consistent with the approach suggested above. Nevertheless, they made every effort to dismantle the existing community before even beginning construction of the new units.
- 36. Attached as Exhibit A are photographs I took on June 11, 2007, September 27, 2007 and February 19, 2009, while visiting the Gardens. Photographs 1-20 depict the exteriors, interiors, and yards of occupied homes. Photographs 21-60 show the appearance and condition of vacant homes acquired by the Township, and the aftermath of demolitions, noting conditions of the adjoining occupied homes, the vacant lots, and the missing or damaged sidewalks.

I declare under penalty of perjury that the aforementioned is true and correct to the best of my knowledge.

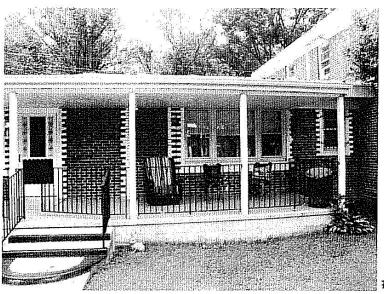
/s/ Gray Smith Gray Smith, AIA AICP December 21. 2009



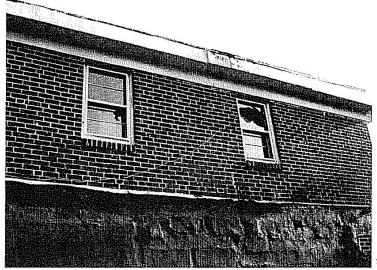




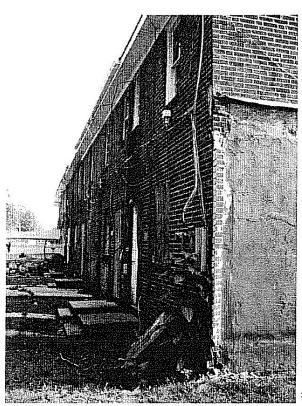
#7



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