

POTTER AND DICKSON

ATTORNEYS AT LAW
194 NASSAU STREET

PRINCETON, NEW JERSEY 08542

(609) 921-9555

TELECOPIER
(609) 921-2181

R. WILLIAM POTTER
MEMBER N.J. AND CA. BARS

PETER D. DICKSON
MEMBER N.J. AND D.C. BARS

April 28, 2008

The Honorable J. Randy Bishop, Mayor of the Township of Neptune
and
The Honorable James W. Manning, Jr.,
The Honorable Dr. Michael Brantley
The Honorable Thomas J. Catley
The Honorable Mary Beth Jahn
Members of the Township Committee

Dear Mayor Bishop and Committee Members:

Please accept this letter opinion regarding the efforts by the Old Corlies Avenue Protection Association ("OCAPA") to protect the historic 1019 Corlies Avenue property against improper development for a car wash / quick lube and to preserve the site and area for historic purposes and public use. Put bluntly, this is a classic example of when eminent domain should be used to protect the public interest.

By way of introduction, this law firm frequently represents property owners and even entire communities against eminent domain abuse ("EDA") which is defined generally as the use of municipal condemnation powers in order to take unblighted private property from its owner and transfer it to a developer who has obtained an exclusive "redeveloper" contract with the municipality. In fact, a few years ago, I personally organized what has become the

"Stop Eminent Domain Abuse Coalition of New Jersey," which is active statewide in opposing EDA.

In my professional opinion, this request to acquire the 1019 property is *not* eminent domain abuse. Instead it is a totally proper acquisition of property that may otherwise be improperly developed — to the detriment of the neighborhood and the entire community — for the purpose eof preserving the historic character of the property and the neighborhood.

The New Jersey Supreme Court has recently handed down two important cases on both the proper uses of eminent domain and the abuse of it. As to the proper use, the court in Mt. Laurel v. MiPro Homes, 188 N.J. 531 (2006), cert. den. 128 SCt 46, upheld that township's use of eminent domain to acquire open space that was threatened with massive development, for the express purpose of creating a public park. This is an example of acquisition for a traditional "public *use*." By way of contrast, eminent domain *abuse* typically occurs when a municipality seeks to condemn private property because it is deemed to be "under utilized" and not as "productive" as it could be if the property was turned over to a designated "redeveloper." That is the essence of the holding of the Supreme Court in a case argued (successfully) by this law firm. Gallenthin v. Borough of Paulsboro, 191 N.J. 344 (June 12, 2007).

In short, just to sum up: It is entirely proper for government to use eminent domain to preserve property for the express public use of that property, paying just compensation, of course, for that privilege. But it is very often the essence of abuse of the powers of

eminent domain to condemn private property that is not causing harm to anyone for the express purpose of transferring ownership to another private property "redeveloper," simply because the latter has promised to increase tax ratables or add employment. That is a so called "public *purpose*" that has proved to be a "slippery slope" leading to sweetheart deals to benefit politically well connected builders who benefit from eminent domain to subsidize their future profits.

Accordingly, what OCAPA is proposing is anything but *abuse* of the power of eminent domain; it is the proper and historic use of this essential government power to acquire property to preserve it, to prevent improper development, to protect the character of a residential neighborhood, and to use the land as a public historic space.

Respectfully submitted,

POTTER AND DICKSON

A handwritten signature in black ink that reads "R. William Potter". The signature is written in a cursive style with a large initial "R" and a stylized "Potter".

By R. William Potter