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PRELIMINARY STATEMENT

The Casino Reinvestment Development Authority (“CRDA”), appearing as amicus curiae, urges this Court to uphold a condemnation authorized by an ordinance that identified no public use whatsoever, on the theory that flexibility must be allowed in planning and a condemnor should not be “constrained by the precise public purpose” identified at the very beginning of a condemnation action. This argument is totally misplaced.

New Jersey Courts have allowed wide latitude as to what constitutes a public use and ordinarily will not substitute its judgment for a legislative judgment as to what constitutes a public use. But here, there has never been any legislative determination as to any use for which the property was to be acquired.

This case is not about whether a condemning authority must remain forever bound to a single, precisely articulated use. It is about whether the State Legislature permitted condemnation without *any* legislatively adopted use at all. It did not. Under N.J.S.A. 40A:12-5(a), condemnation of private property may be authorized only by the governing body itself, acting by ordinance. Here, the Borough Council made no determination of use; instead, the mayor and Borough counsel wrongfully attempted to supply one post fact.

STATEMENT OF FACTS AND PROCEDURAL HISTORY

Petitioner relies upon the Statement of Facts and Procedural History as set forth in the Petition and Appellate Briefs previously submitted.

LEGAL ARGUMENT

N.J.S.A. 40A:12-5(a) Requires a Legislative Determination of Public Use by the Governing Body, Not Post-Hoc Executive Designation

The Local Lands and Buildings Law vests condemnation authority in the governing body, here the municipality, exercisable only “by ordinance.”

N.J.S.A.40A:12-5 states:

(a) Any county, by resolution, or any municipality, by ordinance, may provide for the acquisition of any real property, capital improvement, or personal property...

(b) [installment purchase] not relevant.

(c) Any county or municipality having acquired any real property, capital improvements or personal property or any real estate or interest therein, which acquisition or estate or interest shall have become unsuited or inconvenient for the use for which it was acquired, may, at any time convert a portion or the whole thereof to any other public use unless otherwise provided by law or by the terms of acquisition.

(d) Whenever the governing body of any county or municipality to which there has been conveyed any real property, capital improvement, or personal property subject to such lawful conditions, restrictions or limitations shall by ordinance, in the case of a municipality, and by resolution, in the case of a county,

determine that said real property, capital improvements or personal property can no longer be used advantageously for the purposes of which the same were acquired by the county or municipality, said county or municipality may, by ordinance or resolution, authorize the sale or exchange pursuant to section 13 of this act of the interest of the county or municipality in said real property, capital improvement or personal property.

Whenever the county or municipality, by resolution or ordinance., as the case may be, determines that property, which has been acquired by purchase, gift, devise, lease, exchange or otherwise for a nominal or no consideration for a specific purpose, or subject to lawful conditions, restrictions or limitations as to its use, can no longer be used for the purposes for which acquired, it may offer or reconvey said property to the original grantor or his heirs for a similar or no consideration., prior to other disposition pursuant to section 13 of this act.

An ordinance is a legislative act, adopted with notice, hearing, and vote. *See Inganamort v. Borough of Fort Lee*, 72 N.J. 412, 417 (1977). It is the exclusive mechanism by which a municipality may determine that a taking is for a public use.

The Borough's ordinance did not identify a parking facility, electric-vehicle infrastructure, a municipal well, or *any* other concrete public use. It merely stated that the acquisition was "in furtherance of a public use and purpose." *See* Ordinance 2022-08. (Da20). The mayor's later certification and

counsel's pleadings cannot substitute for a legislative determination. *See* Mayor's Cert.; Second Verified Complaint ¶ 4.(Da13)

CRDA's assertion that "no statute requires" identification of public use in the ordinance (CRDA Br. at 4-5) ignores the statute's structure. The ordinance is the source of authority. If the governing body does not determine the use, then the municipality is not "acting pursuant to law" when it files a condemnation action as required by N.J.S.A.20:3-6. *See Hillsborough Twp. v. Robertson*, 260 N.J. Super. 37, 41 (Law Div. 1992). Consistent with that principle, the Appellate Division recently held that where no ordinance sets forth the actual proposed public purpose, the defect is jurisdictional and not subject to post hoc cure or remand to the municipality. *Township of Jackson v. Getzel Bee LLC*, 480 N.J. Super. 592, 603 (App. Div. 2025) also before this court on Certification.

In order to be "acting pursuant to law" as required by N.J.S.A.20:3-6, the condemnor may only take private property for a public purpose. N.J. Const. Art. 1 ¶20. The determination of a use that is a public use is a legislative action. Accordingly, the ordinance providing legislative authorization to condemn private property must set forth a use that the legislators (Borough Council) deem to be a "public use."

The Statute Allows Changes *from* an Identified Public Use; It Does Not Permit Condemnation Without One

CRDA argues that condemning authorities must be afforded flexibility because development plans may evolve. (CRDA Br. at 6-8). That argument addresses a completely different scenario from the one at hand.

New Jersey law recognizes that, after a public use “for which the property is being acquired” has been legislatively identified, subsequent changes may occur due to changed circumstances. But that principle presupposes an initial, lawful designation of use by the governing body. One cannot change from nothing. Indeed, subsections (c) and (d) of N.J.S.A. 40A:12-5 expressly permit disposition or repurposing only where property “can no longer be used for the purposes for which it was acquired”, confirming that the statute presupposes an original, legislatively declared public use. A statute permitting a change *from* an original use necessarily implies that an original use exists.

Here, there was no such baseline. The Borough Council, without deciding upon any particular use, condemned first and the mayor and attorney attempted to justify later, advancing shifting and speculative uses during litigation, including, at various points, parking, electric-vehicle infrastructure on beachfront property clearly understood to be a flood zone, and later, as a drinking-water well. Whether any such use might be “sound” in the abstract is

beside the point. The statute assigns that determination to the Borough Council, not to the mayor or municipal attorney, and it assigns it as part of the anticipation to condemn by eminent domain. It is legislative function, not ministerial.

CRDA's Policy Argument Impermissibly Nullifies Statutory and Constitutional Safeguards

CRDA concludes that public entities “should not be constrained by the precise public purpose that they are able to identify at the very beginning of a condemnation action.” (CRDA Br. at 8). That framing mischaracterizes both Shree Jyoti's position and the statute at hand.

Shree Jyoti does not argue for inflexibility; it argues for legislative accountability. The constraint imposed by N.J.S.A. 40A:12-5(a) is that the governing body itself must decide *why* private property is being taken, so that the public may be heard and courts may review compliance with both the New Jersey and the United States Constitution.

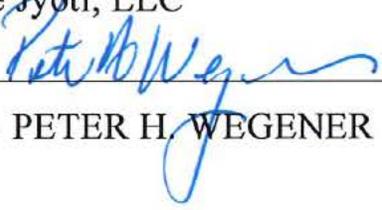
Accepting CRDA's position would eliminate meaningful public participation at the ordinance stage, collapse legislative authorization into executive discretion, and render judicial review of “public use” illusory. Such a position is both legally flawed and would lead to the wrong policy result.

CONCLUSION

This appeal does not seek to freeze municipalities into immutable development plans. It seeks to enforce the Legislature's threshold requirement that condemnation be authorized by the governing body itself, based on an identified public use, before the power of eminent domain may be exercised. Because the Borough's ordinance identified none, the taking is invalid.

Respectfully Submitted,
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Dated: January 8, 2026

By: 
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