

# **Bond Case Briefs**

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## **New Jersey Uses Eminent Domain Against One of Its Own Beach Towns.**

A week after calling this well-heeled beach town “selfish” for refusing to give up land needed for the state’s dune project, Gov. Christie on Thursday moved to give Margate no choice.

The state said it had filed an eminent domain action against the City of Margate to gain access to city-owned beachfront easements needed for the project. The city’s opposition has caused the Army Corps of Engineers to abort plans for dunes for Ventnor, Margate, and Longport.

Prior to the filing, the state had offered Margate \$29,000 for nine beachfront easements, based on an appraisal, the city said. When that was rejected, the Christie administration took the action in Superior Court, saying it was seeking 87 municipally owned lots. Margate officials could not explain what 87 referred to. “I am aware of nine,” said Richard Deaney, city business administrator.

Margate voters have twice passed questions in referendums opposing dunes and authorizing their government to wage a legal battle against the state.

The state had been threatening to file eminent domain against Margate since January, when a federal judge in Camden told the state that eminent domain would be the proper, and perhaps only, way to get control of the easements. The state had attempted to take the land through an administrative order, which prompted Margate to file a lawsuit in U.S. District Court.

Thursday night, the city issued a response saying it was “prepared to defend in any court at any time the legal rights of the people of Margate to provide the best, safe and most effective storm protection.”

“The people of Margate know and love their community . . . and appreciate the need for the best protection against the storms,” the statement said. The city contends that its bulkhead system is sufficient and that dunes “eventually wash out to sea.”

“Margate’s opposition to the dunes is not based on a vain desire to preserve oceanfront views,” the statement said.

Deaney said the city had requested to negotiate the terms of the shore protection project in response to the \$29,000 offer, but that the state had filed for eminent domain as soon as a 14-day time required by law following an offer had passed.

“We sent them a letter saying we’d like to negotiate with them,” Deaney said. “They ignored it.”

Deaney said the city was not against shore protection but wanted a chance to discuss changes in the technicalities of how that is done. Residents argue that dunes will be a costly, unsightly, and ineffective way of protecting the town. Most of the flooding issues from past storms have been from the back bay.

The Army Corps of Engineers had to put aside its Absecon Island protection project last winter after Margate fought the state to essentially a stalemate in federal court. Longport voluntarily gave the state access to its easements following Hurricane Sandy, after opposing the dunes for years. Ventnor has long cooperated with the state and federal agencies, and has had dunes on most of its oceanfront for years.

The release, issued directly from the governor's office, tallies the amount of property at 87 lots owned by Margate, saying action "builds upon the ongoing work the Christie administration has been undertaking to secure easements necessary to construct these vital coastal protection projects." The filing covers easements "over all city-owned properties east of the Margate bulkhead, south of Ventnor and north of Longport."

Of 4,279 beachfront easements statewide, 366 are outstanding, owned by 239 property owners. Environmental Protection Commissioner Bob Martin said in the release that the state was "very disappointed" that Margate forced the state to go to court to protect its citizens and promised to "continue to be very aggressive in using eminent domain as a tool to obtain the easements."

Also holding out in Margate are 10 private owners with beachfront easements. Those properties are being appraised, the state said.

Margate has been represented by former U.S. Rep. Robert E. Andrews of the Dilworth Paxson law firm. The state had been reluctant to take the case to state court, where eminent domain fights can drag on. The state will argue that the project is necessary "to protect lives, homes, businesses, and infrastructure."

"We've never been happy with the design and proposal for shore protection," Deaney said of the city. "We're willing to negotiate the concept of shore protection. We have a lot of ideas as to how that can be accomplished. We don't believe in their single arbitrary project."

He called the \$29,000 offered for access to the easements "low" but said price was not the issue.

The state declined to comment beyond the news release. The release noted that property owners in other municipalities voluntarily provided easements to allow the Army Corps to erect dunes. It said Longport and Margate both suffered "significant overwash" of its beaches and "damage to its bulkhead" during Sandy, "which required Federal Emergency Management Agency funds for the cleanup."

The state's release also notes a New Jersey Supreme Court ruling in July 2013 in which the Borough of Harvey Cedars acquired an easement through eminent domain, but the parties could not agree on fair compensation. The court reversed a jury ruling valuing the easement at \$375,000, saying homeowners "were not entitled to a windfall" for a project they also benefit from. The couple subsequently settled for \$1 as compensation.

In addition to the Absecon Island project, beach and dune construction projects are stalled in Monmouth County and in northern Ocean County, where residents are also fighting the state's efforts to use their properties to construct dunes.

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