

New Jersey Law Journal

VOL. CXC- NO.7 - INDEX 614

NOVEMBER 12, 2007

ESTABLISHED 1878

Environmental Law

A Narrower Definition of Blight

Courts will be taking a harder look at evidence in support of a blight designation

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The issue of municipal blight designations has taken center stage within the last few years. Cases like *Kelo v. City of New London*, 545 U.S. 469 (2005), and *City of Long Branch v. Brower*, 2006 WL 1746120 (N.J. Super. L.D. June 22, 2006), have left municipalities with a wide range of tools to redevelop portions of land within their boundaries. While not all courts were willing to rubber-stamp designations of blight, most municipalities found that they were afforded wide deference by the courts. The climate of blight designations recently shifted, however, when the Supreme Court of New Jersey issued its opinion in *Gallenthin Realty Dev., Inc. v. Borough of Paulsboro*, 191 N.J. 344 (2007). The implications of *Gallenthin* are expected to be wide ranging, bringing into question not only whether municipalities across the state have properly designated local areas “in need of redevelopment,” but how such designations will

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be handled going forward.

Pursuant to the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 - 49, 5 (1992) (LRHL), a municipality may designate an area as blighted or in need of redevelopment if it determines that the area exhibits one of the conditions set forth in subsections (a) through (g). Specifically, subsection (e) includes areas that demonstrate a lack of proper utilization caused by the condition of the title, diverse ownership, or other conditions. Blight designations were traditionally employed to prevent corrosive sections of older cities from economically devastating surrounding properties. The meaning of the term blight, however, has progressed over time. In *Wilson v. City of Long Branch*, 27 N.J. 360, 370 (1958), the Supreme Court upheld a more expansive definition of “blight” that essentially mirrors N.J.S.A. 40A:12A-5(e), finding that “community development is a modern facet of municipal government.” In 1971, it held that the purpose of the local redevelopment laws is not confined to the elimination of “perceptually offensive slums,” but extends to the redevelopment of urban, suburban or rural areas that may qualify as blighted. *Levin v. Twp. Comm. of Bridgewater*, 57 N.J. 506, 511-12, 537-38 (1971).

The liberalization of the term “blight” encouraged municipalities to use the power of eminent domain to take individual and commercial proper-

ties and replace them with more “productive” uses that would generate higher tax revenues. At the federal level, the Supreme Court in *Kelo* approved the City of New London’s taking of privately owned homes for the purpose of replacing them with restaurants, shopping areas, new residences, a park, a manufacturing facility, parking and a marina. In New Jersey, the trial court in *City of Long Branch v. Brower*, 2006 WL 1746120 (N.J. Super. L.D. June 22, 2006), approved the designation that an area of the city containing mostly single-family homes was in need of redevelopment because some buildings exhibited deterioration, portions of the area were vacant, and the area produced low tax revenue.

Cases such as these created legal and public policy debates concerning the need for stricter limitations on a municipality’s ability to designate areas in need of redevelopment. Although legislators have proposed a variety of bills to address these concerns, no meaningful legislation has been passed to date. The Supreme Court, however, recently clarified the constitutional requirements of declaring an area in need of redevelopment in *Gallenthin*.

Gallenthin Realty Development, Inc. owned a parcel of largely vacant wetlands that was designated as an area in need of redevelopment pursuant to N.J.S.A. 40A:12A-5(e) because Paulsboro found that the property was unproductive, vacant, and lacking improvements and that it could otherwise be put to better use for the community. On review, the Supreme Court

outlined the evolution of the term blight, and noted that although the meaning of blight has evolved over-time, the term retains its essential negative connotation. In clarifying the current meaning of the term, the Court stated that:

We need not examine every shade of gray coloring a concept as elusive as “blight” to conclude that the term’s meaning cannot extend as far as Paulsboro contends. At its core, “blight” includes deterioration or stagnation that has a decedent effect on surrounding property ... Paulsboro’s interpretation ... which would equate “blighted areas” to areas that are not operated in an optimal manner, cannot be reconciled with the New Jersey Constitution.

With regard to N.J.S.A. 40A:12A-5(e), the Court held that “[t]he phrase ‘other conditions’ is not a universal catch-all that refers to any eventuality.” Rather, subsection (e) applies only in areas that are not susceptible to unified development because of diversity of ownership or conditions of title issues. Finally, the Court explained that municipalities “must establish a record that contains more than a bland recitation of applicable statutory criteria and a declaration that those criteria are met,” and the net opinion of a single expert is not enough upon which a designation can stand.

After *Gallenthin* was handed down, lower courts struck down a number of municipal blight designations. These decisions not only impacted the municipalities involved, but also the developers who had invested in the designated areas. The following is a discussion of the implications of *Gallenthin* on municipalities and developers going forward.

The primary impact of *Gallenthin* is that municipalities may no longer declare an area blighted pursuant to

N.J.S.A. 40A:12A-5(e) because the area is not fully productive. That provision only applies to areas that are not susceptible to unified development because of diversity of ownership or conditions of title issues.

Gallenthin also stressed that municipalities must support their blight designations with substantial evidence. Although this has long been a statutory requirement, the inference is that the courts will be taking a harder look at the evidence a municipality presents in support of a designation. The Court clarified that a municipality’s record must contain “more than a bland recitation of applicable statutory criteria and a declaration that those criteria are met.” The Court also emphasized that if a municipality is going to include a nonblighted property within a designated area in need of redevelopment, the record must contain evidence that the property is integral and necessary to the larger redevelopment plan or area.

To meet the standard of substantial evidence, municipalities must undertake such tasks as examining building permits, code violations, variance applications, private market transactions, tax arrears, occupancy rates and the presence of criminal complaints. *Mulberry St. Area Prop. Owner’s Group v. City of Newark*, No. ESX-L-9916-04 (Law Div. July 19, 2007) (slip op. at 64). They may also need to inspect the interior of buildings and study the revenue of municipal taxes generated in the area. Once a municipality gathers this information, it must then analyze whether the data supports a determination of blight. In addition to these tasks, *Gallenthin* suggests that a municipality may also need to consider the environmental benefits a property offers. There, the Court criticized Paulsboro for failing to consider the benefits of the wetlands located on the property and the harvesting of phragmites that occurred on the property. A municipality may need to balance the detrimental elements of the property against the environmental benefits contained therein.

Gallenthin may also impact the

timing within which a municipality may be required to defend its designation. In *Evans v. Township of Maplewood*, No. ESX-L-6910-06 (Law Div. July 27, 2007) (slip op. at 3), the township opposed an action in lieu of prerogative writ on the grounds of ripeness and standing because although there was a designation of blight, no development plan was in place. In finding that the plaintiffs did have standing, the court noted that “*Gallenthin* is itself evidence that a designation as an area in need of redevelopment is justiciable and that an attack on it is not premature.”

In addition to municipalities and property owners, developers are another faction that might be affected by the *Gallenthin* decision. Developers, for example, may be dissuaded from participating in municipal redevelopment projects because, in the aftermath of *Gallenthin*, courts have disapproved designations of blight, and in doing so, pulled the plug on redevelopment projects already underway.

Those developers who continue to participate in redevelopment projects will likely attempt to ensure that municipalities follow proper procedures in declaring an area in need of redevelopment. Most significantly, the developer will presumably take a more active role to ensure that municipalities conduct thorough investigations of an area prior to designating it blighted. A proper investigation will include such tasks as delineated above, including examining permits and occupancy rates, inspecting buildings, determining tax revenue and considering environmental benefits.

Without question, *Gallenthin* is viewed as a set-back to municipal redevelopment projects. The decision, however, did not overturn the LRHL or restrict the ability of municipalities to declare an area in need of redevelopment pursuant to subsections (a), (b), (c), (d), (f), or (g) of N.J.S.A. 40A:12A-5. Under subsection (e), a property may be declared blighted if it exhibits disjointed development as a result of diversity of ownership or conditions of title issues. As municipalities conduct more

thorough investigations prior to declaring an area in need of redevelopment, consistent with N.J.S.A. 40A:12A-6, it should arguably result in more substantive due process rights and certainty to all parties involved.

After maintaining a liberal connotation of “blight” for many years, the Supreme Court’s *Gallenthin* decision has narrowed the interpretation and

meaning of the term. One of the primary implications of the Court’s decision is that an area may no longer be declared blighted — or in need of redevelopment — merely because it is not fully productive; moreover, municipalities must now undertake more complete and thorough investigations prior to designating an area in need of redevelopment, and develop-

ers will likely play a greater role in attempting to create an appropriate record to support any such decision. It remains to be seen whether the Legislature will still step in to further define the meaning of blight, but, without question, future local redevelopment, public policy debate and case law will continue to shape the topic for some time to come. ■