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Land Use and Development Law Advisory

Paulsboro's Redevelopment Area Designation Invalidated

In *Gallenthin Realty Development, Inc. v. Borough of Paulsboro* (A-51-2006), the New Jersey Supreme Court dramatically narrowed the definition of blight under Article VIII, Section 3 of the New Jersey Constitution, substantially limited the scope of criterion “e” of N.J.S.A. 40A:12A-5 and made other statements that likely could have the effect of substantially limiting the scope of all of the major redevelopment criteria of N.J.S.A. 40A:12A-5. In so doing, despite artful attempts to distinguish prior court decisions and the legislative history of the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 et seq. (“LRHL”), the Court appears to have initiated a reversal of the course of over 40 years of New Jersey decisional law and legislative enactments, as well as national and international theories and policies on effective redevelopment.

By way of background, if a municipality determines, based on substantial credible evidence, that a parcel of land meets any one of the nine criteria of N.J.S.A. 40A:12A-5 of the LRHL, then the municipality can declare that parcel an “area in need of redevelopment.” The courts have determined that an “area in need of redevelopment” is the same as a “blighted area” for the purposes of satisfying the New Jersey Constitution’s requirement that municipality can only exercise its redevelopment powers in a blighted area. These powers include the ability to acquire property by eminent domain and to grant long term tax exemptions.

Over the years, the New Jersey courts, the legislature and the professional planning community have moved away from the traditional definition of a blighted area—as being virtually identical to a slum—to a far more expansive definition. Gallenthin pulls back on this expansive trend and holds “[a]t its

core, ‘blight’ includes deterioration or stagnation that has a decadent effect on surrounding property.” Based on this narrower and less progressive Constitutional definition of blight, the Court concluded that it had to reinterpret the literal language criterion “e” of N.J.S.A. 40A:12A-5 in order for it to pass Constitutional muster. Thus, under Gallenthin, in order for a property to meet criterion “e,” it must be stagnant and totally unproductive, rather than stagnant or not fully unproductive. Additionally, this stagnant and totally unproductive condition must have a negative effect on surrounding properties, and such condition can only be caused by title defects, diverse ownership or similar conditions.

Thus, the Court has severely limited the availability of criterion “e” as a basis to find a property in need of redevelopment. The Court essentially adopted all of the arguments and reasoning of State Public Advocate Ronald Chen.

It is our opinion that the potential scope of the Gallenthin decision goes beyond criterion “e.” With today’s decision, the Court has now ruled that “blight” Constitutionally requires “deterioration or stagnation that has a decadent effect on surrounding property.” Thus, this requirement will likely have to be read into all of the other criteria of N.J.S.A. 40A:12A-5, limiting their scope. While the Gallenthin decision does not go so far as to say that a property must be a slum in order to meet the Constitutional requirement of blight, subsequent court decisions will be required to further refine what now constitutes blight. In any event, it is clear that the definition of blight is less expansive today than it was when we arrived at the office this morning.

Absent some sort of Constitutionally-sound intervention by the State Legislature, it is

likely that the tools of the LRHL and the other redevelopment statutes will be available in significantly fewer areas as a result of this decision. The Court seemed focused on Constitutionally limiting eminent domain powers. However, the power of a municipality to grant long term tax exemptions is also circumscribed by the Constitutional blight requirement. Thus, Gallenthin may also likely have the affect of limiting the availability of long term tax exemptions and of redevelopment area bond financing, which depends largely on PILOT payments for meeting debt service.

This decision also creates another area of potential concern. Property owners, with property in an existing redevelopment area that had been designated as such under criterion “e” before the Gallenthin decision, will, because of Gallenthin’s Constitutional dimension, likely be able to use the narrow Gallenthin interpretation of criterion “e” as a more potent defense to an eminent domain action arising out of a redevelopment designation. Thus, redevelopers will have to engage in enhanced due diligence before they undertake any redevelopment projects or accept redeveloper designations.

In conclusion, Gallenthin is a landmark redevelopment decision, which appears to represent a major shift in New Jersey’s redevelopment jurisprudence. We will not know the full extent of its impact until there are further court decisions clarifying its scope.

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