

## **Insights on Redevelopment: Opportunities and Pitfalls**

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- **PRINCETON BOROUGH DOWNTOWN REDEVELOPMENT PROJECT**

- **PowerPoint Presentation**
- **Scope of Development**

The **Princeton Borough Downtown Redevelopment Project** is being developed in three (3) phases. The total acreage of the Redevelopment Area is ±2.1 acres.

**Phase 1** consists of a 5½ level Parking Garage, a portion of which will be below grade containing approximately 500 parking spaces and approximately 1300 square feet of retail/office space on the first floor on the Spring Street side of the Parking Garage, a 15,000 square foot Park Plaza and associated walkways, an entrance and exit driveway located on the PSE&G lot to service, inter alia, the Parking Garage, and a 5 story mixed use building, approximately 42,544 square feet in size, including approximately 5,820 square feet of retail space on the first floor, 24 multi-family residential units on the upper floors and approximately 1,936 sq. ft. of basement storage space. The Parking Garage, Park Plaza and entrance and exit driveway are being constructed with public funds. The Phase I mixed use building is being constructed by NHKT at its own cost and expense. Construction of the Parking Garage is

complete and in use, the Park Plaza will be completed this Spring and the mixed-use building will be ready for occupancy on May 1, 2005.

**Phase 2** consists of a five-story building, approximately 75,660 square feet in size, including approximately 9,300 square feet of retail space and 3 residential units on the first floor, 50 residential units on the upper floors, and 8,952 square foot courtyard and pedestrian walkways area. The Phase 2 mixed use building will be constructed by NHKT at its own cost and expense.

The **Phase 3** plan will be designed at a later date by NHKT, with the consent and approval of the Borough and the Planning Board. In the interim, the Phase 3 area shall remain a public parking lot, with appropriate service access to and from private lands to the south.

- **The Process\***

Defined in most dictionaries as a series of actions or operations leading to an end. As defined by the Local Redevelopment and Housing Law, the redevelopment planning process is a series of actions required to designate an area in need of redevelopment, adopt a redevelopment plan, and select a redeveloper to implement the plan. So

rather than leading to an end, the redevelopment planning process can in fact lead to a new beginning.

Once a municipality chooses to redevelop a targeted area, it must follow the statutorily defined process as set forth in the Local Redevelopment and Housing law (LRHL). While the redevelopment process may at first appear complicated, it actually is a relatively straightforward, step-by-step process that includes the following key steps:

Step 1. The municipal governing body directs the planning board to undertake a preliminary investigation to determine whether or not an identified area is in need of redevelopment.

Step 2. The planning board conducts an investigation and holds a public hearing on the proposed redevelopment-area designation.

Step 3. Based on the planning board's recommendation, the governing body may designate all or a portion of the area as an area in need of redevelopment.

Step 4. The governing body prepares a redevelopment plan for the area or directs the planning board to prepare the redevelopment plan.

Step 5. The governing body adopts the redevelopment plan.

Step 6. The governing body or another public agency or authority designated by the governing body as the "redevelopment entity" oversees the implementation of the redevelopment plan.

Step 7. The redevelopment entity selects a redeveloper to undertake the redevelopment project or projects that implement the plan.

\*The Redevelopment Handbook, A Guide to Rebuilding New Jersey's Communities by Stan Slachetka and David G. Roberts. Copy can be obtained at [www.njapa.org](http://www.njapa.org).

- **Concerned Citizens Litigation**

Princeton's designation of the two-acre site in downtown Princeton (i.e., municipal parking lot) as a blighted area in need of redevelopment was challenged in Concerned Citizens of Princeton, Inc. v. Mayor and Council of The Borough of Princeton, 370 N.J. Super 429 (App. Div. 2004), certif. den. 182 N.J. 139 (2004). The matter was before the Appellate Division following the trial court's granting of summary judgment in favor of defendant. On June 30, 2004 the Appellate Division delivered its opinion. The following is a general overview of this decision.

The crux of plaintiff's argument was that since the two-acre site was municipally owned, the only applicable criteria for designation of the site as one in need of redevelopment are those set forth in N.J.S.A. 40A:12A-5(c). Princeton had made its determination pursuant to the criteria set forth in subsections (d) and (e).

The court disagreed with the plaintiff, concluding that subsection (c) does not preclude a municipality from

designating public land for redevelopment under any of the other subsections. Rather, the governing body of a municipality may consider whether any of the criteria set for in N.J.S.A. 40A:12A-5 have been established by substantial credible evidence. The site in question clearly fit within the criteria set forth in subsections (d) and (e) as an area having a “faulty arrangement or design” or with a “deleterious land use or obsolete layout” or “not fully productive.”

Underlying plaintiff’s challenge to the redevelopment designation was their contention that property located in Princeton Borough could not be “blighted,” because of the Borough’s relative affluence. The court noted that there is nothing in the statute itself, its legislative history, or the case law to suggest that redevelopment designations in affluent areas are inappropriate. The court concluded that the intent of the Legislature is that the LRHL “encompass a broad range of circumstances that a municipality could take into account in determining whether an area is in need of redevelopment,” without any consideration of relative affluence, as long as “any” of the seven “conditions” enumerated in N.J.S.A. 40A:12A-5 are found.

Finally, plaintiff also challenged the Planning Board’s reliance on the report of a redevelopment consultant as

arbitrary or inappropriate. The court found that N.J.S.A. 40A:12A-4 authorizes a planning board to “cause a preliminary investigation” and nothing in that section suggests that a planning board may not rely on a redevelopment consultant in conducting its investigation.

- The Trial Court's 72 page opinion in Concerned Citizens is available on Sterns & Weinroth's website.

The issues the Trial Court analyzed are:

- (1) The Borough applied the wrong section of the LRHC.
  - (2) The Planning Board failed to provide adequate notice of its consideration of the area designated as in need of redevelopment.
  - (3) The Planning Board's decision is not supported by the record.
  - (4) Must an area be found to be "blighted" before being designated as in need of redevelopment.
- Brnicevic, et al. v. Borough of Bound Brook, et al., (App. Div. March 7, 2003). Redevelopment Plan upheld. Copy attached.

- **THE POWER TO CONDEMN: NOT WITHOUT LIMITATIONS**

- Kapur and Kroclic, New Jersey Courts Hold The Line Against Bad Faith Condemnation. New Jersey Lawyer/October 2004.

- "When the exercise of eminent domain results in substantial benefit to specific and identifiable private parties, 'a court must inspect with heightened scrutiny a claim that the public interest is the predominant interest being advanced.'" Township of West Orange v. 769 Associates, 172 N.J. 564, 577 (2002).
- Quagliariello v. Township of Edison, No. L-2922-02 (L. Div. March 31, 2004). Copy attached.

The Plaintiff owned property located across the street from a parcel on which a Walgreen's Pharmacy was to be constructed. Intense public objections halted development. The Township looked for alternative sites and chose Plaintiff's parcel. The Planning Board found it to be an "an area in need of redevelopment" under the Local Redevelopment and Housing Law and the Township Council agreed. The Council then designated a redeveloper who proposed a construct a Walgreen's Pharmacy on Plaintiff's property. The following are excerpts from Judge Hurley's opinion:

"The issue here is whether the Township's decision to declare the [Plaintiff's property] an area in need of redevelopment was arbitrary, capricious, or unreasonable. This court finds that it was, as the Township failed to present substantial evidence to support their

declaration of ...an area in need of redevelopment." [The Ordinances adopting the Redevelopment Plan and authorizing the acquisition of Plaintiff's property were set aside and deemed null and void.]

\* \* \*

"This court finds that there is simply no basis on which anyone could conclude that redevelopment is necessary other than for a desire to construct a Walgreen's Pharmacy. There is absolutely no suggestion of Plaintiffs' intent to abandon the Subject Properties or the businesses...the totality of the Township's complaints essentially amount to a pothole in the pavement, two boarded up windows, a few cracks, and a gutter that needed to be cleaned...the Subject Properties are certainly not deteriorated, nor are they violating any laws, regulations or ordinances...the adoption of the Redevelopment Plan did not serve any legitimate public purpose and, in fact, has the effect of closing down a lawful, functioning business. If allowed, the Township's action would result in a public taking for a private purpose... ."

- Kelo v. City of New London, 843 A.2d 500 (Conn. 2004).

The Kelo case is currently pending in the U.S. Supreme Court. The Plaintiff lives in an area called Fort Trumbull. It is a well-kept middle class area. The City's Economic Development Corporation attempted to purchase 70 homes in this area so that a luxury hotel, condominiums and office space could be constructed. The homeowners said no and the City condemned. The City defended its

actions by arguing that new development would create jobs, boost tax revenue, improve the City's infrastructure and provide public access to the river, all of which benefits the entire community. The City did not act pursuant to a Redevelopment Plan or a blight determination.

In an amicus brief filed with the U.S. Supreme Court by the South Jersey Legal Services, Inc., counsel to The Hispanic Alliance, Citizens in Action in the Cramer Hill Residents' Association, the issue was framed as follows:

"In this case, "public use" has been defined so broadly that eminent domain authority has no practical limits. The Connecticut Supreme Court held that the use of eminent domain to transfer property from one private party to another purely because the transfer is likely to lead to greater "economic development" satisfies the public use requirement. *Kelo v. City of New London*, 843 A.2d 500, 509 (Conn. 2004). To hold that the public use requirement is satisfied wherever there are potential economic benefits to be realized is to render the public use requirement meaningless. Allowing a taking simply because the party to whom the state wishes to transfer the property has a greater ability to maximize the value of that property fails to account for the rights of the individual property owners and would systematically sanction transfers from those with less resources at their disposal to those with more.

Moreover, expanding the scope of "public use" to include "potential for economic development that may ultimately benefit the public" would arguably include virtually any use and thus render meaningless the judicial review of takings cases. Such a rule would

leave this important fundamental right [to own and use private property] subject to the unrestrained will of the majority.

- **Pending Lawsuits: Beyond Bad Faith/Anti Eminent Domain Movement**

- (a) Bergen Lanning Residents, et al., v. City of Camden, et al.
- (b) South Camden Citizens in Action, et al., v. City of Camden, et al.
- (c) Citizens in Action, et al., v. Township of Mount Holly, et al.
- (d) Living Faith Ministries, et al., v. Camden County Improvement Authority, et al. (Pennsauken)
- (e) Cramer Hill Residents Assoc., et al. v. City of Camden, et al.

The following is a brief synopsis of the arguments being made in actions filed on behalf of citizens challenging a redevelopment plan and/or the use of eminent domain by municipalities to implement redevelopment plans.

The Complaints generally allege some or all of the following:

The redevelopment plans were improperly adopted in violation of the Municipal Rehabilitation and Economic Recovery Act (“**MRERA**”) N.J.S.A. 52:27BBB-1 et seq., based on procedural deficiencies.

The designation of certain neighborhoods as areas in need of development did not satisfy the requirements of the

applicable elements of the Local Redevelopment and Housing Law (“**LRHL**”), N.J.S.A. 40A:12A-5.

The redevelopment plans constitute unlawful takings.

The redevelopment plans “violate the New Jersey Constitution, Art I., Par. 1, and Art. VIII, Section 3, Par. 1, by failing to ensure that the regulation and use of land be made in such manner as to promote the public health, safety, and general welfare of people of all incomes and economic status within Camden.”

The redevelopment plans violate state laws against discrimination and contravene the federal Fair Housing Act by destroying existing affordable housing and forcibly displacing low-income residents and by failing to replace lost affordable housing.

The redevelopment plans violate 42 U.S.C. §1983 and the equal protection provisions of the federal and state constitutions by discriminating against plaintiffs based on race and ethnic origin by creating adverse environmental impacts, loss of affordable housing and constructive eviction affecting a predominantly African-American and Hispanic neighborhood.

The redevelopment plans violate the federal and state constitution and the Religious Land Use and Institutionalized

Persons Act of 2000 by depriving plaintiffs of free exercise of religion, by impinging on the freedom of association, by imposing substantial burdens on the exercise of religion, by treating religious entities on less than equal terms and by placing unreasonable limitations on the exercise of religion.

- See also Hispanic Alliance of Atlantic County v. City of Ventnor and Richard Gober v. City of Ventnor, pending in the Superior Court.
  - **Market-Rate Housing for Camden**, April 3, 2005 NY Times.
- **Procedural Requirements of the MLUL do not apply to Redevelopment Agencies.**

In Deegan v. Perth Amboy Redevelopment Agency, 374 N.J. Super. 80 (App. Div. 2005), the Appellate Division found that a redevelopment agency's decision to enter into a redevelopment agreement is governed solely by the provisions of the Local Redevelopment and Housing Law and Open Public Meetings which do not require a public hearing. In reaching this conclusion, the court noted that a hearing before a Planning Board on a land use application is a quasi-judicial proceeding for which the MLUL requires a public hearing conducted in accordance with the procedural requirements of the MLUL, whereas a redevelopment agency's decision to approve a developer's proposed project

and enter into a redevelopment agreement is administrative rather than quasi-judicial in nature.

Interesting comment relating to members of redevelopment agency who didn't listen to the tapes but who were familiar with the redeveloper's plan:

"Consequently, even if a requirement comparable to N.J.S.A. 40:55D-10.2 applied to a vote by redevelopment agency member who was absent from a meeting regarding a redevelopment project, the two new members of PARA would have substantially complied with this requirement." Id. at 88. (Emphasis added.)

- **Variances from Bulk and Use Standards of a Redevelopment Plan.**

The Redevelopment and Housing Law does not set forth a procedure for seeking a variance from the bulk and use standards of a redevelopment plan. This issue has, however, been addressed by the courts. In Carrington v. Lambiase, A-2961-99T1 (App. Div. 2001) the Appellate Division in effect ruled that the development standards in a redevelopment ordinance become zoning standards for the redevelopment area and a planning board or zoning board may entertain applications for variances [as would be the case for de minimis exceptions from RSIS]. Copy attached.