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Commentary

Narrowing the Scope of Redevelopment Law

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It is clear that the state Supreme Court's ruling in *Gallenthin Realty Development Inc. v. Borough of Paulsboro* has not sounded the death knell for redevelopment.

However, the June 13 decision does more than hold that municipalities need to make stronger factual cases to support redevelopment area designations. It significantly narrows the availability of N.J.S.A. 40A:12A-5(e) of the Local Redevelopment and Housing Law as a basis to designate properties in need of redevelopment. That section provides that a property can be designated in need of redevelopment if it exhibits "a growing lack or total lack of proper utilization . . . caused by the condition of the title, diverse ownership of the real property . . . or other conditions, resulting in a stagnant or not fully productive condition of land potentially useful and valuable for contributing to and serving the public health, safety and welfare."

The *Gallenthin* decision does more than hold that Paulsboro failed to provide sufficient proof to satisfy the requirements of the statute. It holds the language of (e) unconstitutional and rewrites it in order to comply with the "Blighted Areas Clause" of the New Jersey Constitution, N. J. Const., Art. VIII, Sec. III, Para. 1.

This clause only authorizes government redevelopment of blighted areas. The Court thus had to ascertain the constitutional meaning of "blighted" to determine whether a literal reading of the language of (e) was within

the scope of that term. The Court held that although the meaning of "blight" had evolved, at "its core 'blight' includes deterioration or stagnation that has a decadent effect on surrounding property," and thus concluded that a literal reading of (e) could not be reconciled with the constitution.

The Court next determined that (e) was "reasonably susceptible to an alternative interpretation that conforms to the Blighted Areas Clause" and that "give[s] effect to the Legislature's intent." The justices concluded that while "generally a statute's plain language is the most reliable indicium of that intent," they presumed that the Legislature "intended the [statute] to function in a constitutional manner."

Following the principle that it could interpret (e) to avoid a constitutional defect, the Court held that the "other conditions" language of criterion "e" must be interpreted to refer to conditions "of the same or [a] like piece as conditions of title or diverse ownership." The Court indicated that such conditions include unsuitable lot layouts, outmoded and undeveloped street patterns, and the need for the vacation of many outmoded paper streets. The Court asserted that "other conditions" is "not a universal catch-all that refers to any eventuality." The Court further held that reading the "stagnant or not fully productive" language of (e) as creating two alternative criteria for designating a property in need of redevelopment violates the constitutional meaning of blight.

The *Gallenthin* decision may also affect

criterion (c) of N.J.S.A. 40A:12A-5. That section provides that properties that are government-owned or vacant for 10 years, and unlikely to be developed through private capital because of their location, remoteness, topography, soil conditions or lack of access, can be designated in need of redevelopment. The *Gallenthin* constitutional definition of blight could be interpreted to require that such properties also exhibit some degree of deterioration and have some discernible negative affect on their surrounding area.

The *Gallenthin* Court focused on the Blighted Areas Clause as a check on municipal condemnation power. However, the clause's blight standard is also the Constitutional limitation on the grant of long-term tax exemptions and by practical extension, redevelopment area bond financing.

In light of this, the Court could explore a more expansive definition of blight in the future where condemnation is not involved. Such an approach could be implemented judicially by allowing a more liberal interpretation of blight for general redevelopment area designations, while applying the *Gallenthin* blight definition when the validity of a redevelopment designation is raised as a defense to a condemnation action, and by always allowing this defense in such actions. Moreover, such an interpretation would permit the Legislature to amend the Local Redevelopment and Housing Law to create alternative redevelopment area designation standards when condemnation is not involved. ■