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A Lawyer's Perspective

Redevelopment area debate

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Two weeks ago I discussed Mrs. Kelo's opposition to the taking of her family homestead and the major shift her case created in how redevelopment projects are viewed. As a result, the judiciary, from Supreme Court Justice Clarence Thomas to New Jersey's Supreme Court, has called for how redevelopment areas are determined. The bar for that determination has now been raised even higher as a result of a recent decision by a three-judge New Jersey Superior Court Appellate Division panel.

Make no mistake. The debate on determination of a redevelopment area will not go away because such a determination is not a partisan, or even a moral, issue. Even after the most technically astute planning study, reasonable people can, and should, vigorously debate their positions in a reasonable manner. That's the motivation behind the men and women fighting in Iraq, Afghanistan and of the flight crews that we pray will return safely from the Tbilisi airlift.

Back in New Jersey, an Appellate Division panel has held that the New Jersey Supreme Court's 2007 decision in *Gallenthin Realty Development, Inc. v. Borough of Paulsboro* applies not only to the "underutilization" criteria under the Local Housing and Redevelopment Law. The Appellate Division panel extended *Gallenthin* to cover four of the five other criteria for designating "A delineated area ... determined to be in need of redevelopment...." The panel then remanded *City of Long Branch v. Anzalone* back to the trial court for an evidentiary hearing based on that decision. The City has until Aug. 28th to appeal. Unless the Appellate decision is overturned by the New Jersey Supreme Court, it will have a significant effect on the determination of redevelopment areas in New Jersey.

Redevelopment is an important legal and real estate issue in New Jersey. Large sections of the state's urban areas were built around

the time that European immigrants like my grandfather set foot on Elis Island in 1904. Now some neighborhoods look like the European cities my father marched into after an Allied bombardment in 1945.

When I was the housing planner for Atlantic City, I read studies that sounded like redevelopment was going to transform Atlantic City into a combination of Scottsdale and Laguna Beach. Shortly after *Kelo*, the *Star Ledger* ran an article listing the "most egregious abuses of eminent domain" in New Jersey, based partially on redevelopment area issues but primarily on allegations of "pay-to-play." The Assembly passed a bill to reform the redevelopment process but the bill got bottled up in the Senate. The redevelopment of modest beach-front bungalows for Miami Beach-like high-rise condos in Long Branch brought the state's Public Advocate into the battle for property owners. National property rights advocates jumped into the fray. Now, the state's judiciary has made it clear that a municipality's determination of a redevelopment area must follow specific technical requirements.

Before discussing those requirements, let's talk about how a court determines blight because the criteria for a redevelopment area is based on these standards for determining blight. The *Anzalone* and *Gallenthin* courts held that in New Jersey a blighted area is defined by the proceedings of the 1947 constitutional convention as "deterioration or stagnation that negatively affects surrounding areas."

Once a municipality designates a redevelopment area, the courts will generally uphold that determination of blight, unless it is overcome by substantial evidence, i.e. evidence that is competent, credible and/or reasonable. The *Anzalone* panel pointed out that this evidence can not merely be an expert's "net opinion," but must be backed up by research and analysis of each of the Redevelopment Law's statutory criteria.

In addressing the "underutilization" issue, the *Gallenthin* Court held that the Redevelopment Law only permits a redevelopment area designation where a property is affected by title issues, with diverse ownership and stagnant development conditions throughout the redevelopment area. "Underutilization" does not create a basis for a redevelopment area where those conditions merely result in sub-optimal operation. A municipality's designation of a redevelopment area must be "supported by substantial evidence on the record."

The *Anzalone* panel followed the *Gallenthin* holding on "underutilization" and extended it to a municipality's determination regarding redevelopment area criteria for sub-standard buildings, undeveloped municipally-owned land and improvements "detrimental to the safety, health, morals, or welfare of the community." The panel did not include the statutory provision for abandoned buildings in its decision, but every trial judge in the state has seen Camden, so count on that provision being treated in the same manner.

No matter how technical the criteria or how thick the study, this is an issue that requires a balance of law and common sense. Everyone involved in a redevelopment area should do what my Realtor father told me to do after I "followed the book" when performing my first appraisal assignment. Public officials, planners and property owners should go sit on the curb across the street from the property. Then, come back and tell us that what you are doing makes good sense.

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