

'Not Fully Productive, Without More, is not "Blighted" and Subjected to Redevelopment'

Gallenthin Realty Development, Inc. v. Borough of Paulsboro (A-51-2006)

June 15, 2007

This is the first redevelopment case heard by the New Jersey Supreme Court in 35 years and it is an important one for municipalities and developers because it sustains redevelopment.

In a unanimous decision written by Justice Zazzali, the court ruled that the Borough of Paulsboro in Gloucester County improperly designated a vacant parcel of land as an area in need of redevelopment. The NJ Constitution permits government to redevelop only "blighted" areas; the Legislature did not intend N.J.S.A. 401A:12A-5(e) to apply in circumstances where the sole basis for redevelopment of the property is that it is "not fully productive." The court said that subsection 5(e) applies only to areas that, as a whole, are stagnant and unproductive because of issues of title, diversity of ownership, or other similar conditions.

The holdings in Gallenthin are summarized as follows:

- The decision sustains the constitutionality of redevelopment;
- The Supreme Court maintains the presumption of validity (meaning, government action is presumed valid) of the designation of a redevelopment area;
- The Court reaffirms the decisions of Levin v. Bridgewater and Forbes v. Village of South Orange Township;
- The Court continues the principle that properties not in and of themselves blighted may be included in a redevelopment plan as necessary for redevelopment of a larger blighted area;
- The Court has clarified that not fully productive is not a stand alone basis for determining an area in need of redevelopment. Thus, a Motel 6 cannot automatically become a Ritz Carlton, however, if the Motel 6 is in a state of disrepair, is not well maintained, is vacant and otherwise adversely affecting a neighborhood, then the Motel 6 can be redeveloped but it cannot be redeveloped solely because it is not fully productive in that it may be a more productive use;
- The Court has required something more than net expert opinion that merely cites redevelopment criteria conditions without any real substantive analysis.

The arguments before the Supreme Court took place on Thursday, April 26, 2007. Greenbaum partner, **Robert Goldsmith**, Chair of the firm's Redevelopment Practice Group, argued as amicus curiae in favor of redevelopment policy, opposing any major judicial changes to the Local Redevelopment and Housing Law

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and defending against constitutional challenges to the Law, on behalf of New Jersey State League Of Municipalities, Downtown New Jersey, Inc. and New Jersey Chapter-American Planning Association, for which the firm also filed an amicus brief written by Greenbaum attorney, **Robert Beckelman**.

Amicus briefs were also filed by The New Jersey Public Advocate and the New Jersey Conservation Foundation and New Jersey Audubon Society, raising constitutional challenges to the Local Redevelopment and Housing Law and legal and policy arguments concerning Wetlands and open space preservation. The New Jersey Builder's Association also filed an amicus brief opposing any changes to the Local Redevelopment and Housing Law.

Greenbaum, Rowe, Smith & Davis LLP operates with over 100 attorneys in four practice groups: Litigation, Real Estate, Corporate and Tax, Trusts and Estates and has offices located in Woodbridge and Roseland, New Jersey. For more information on this decision, contact Robert Goldsmith at 732-549-5600, rgoldsmith@greenbaumlaw.com, or Robert Beckelman at 732-549-5600, rbeckelman@greenbaumlaw.com. For more general information, contact Erin Faltin at 732-549-5600, efaltin@greenbaumlaw.com, or visit the firm's web site at www.greenbaumlaw.com.

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