

Two Appellate Division Rulings Impact New Jersey Redevelopment Law

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Greenbaum, Rowe, Smith & Davis LLP 2019 Real Estate Update: Trending Issues & Topics of Interest

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As more and more redevelopment projects are undertaken each year - not surprising given New Jersey's status as the most densely-populated state in the country - it follows that the state's courts would be busier than usual dealing with cases involving redevelopment. Over the past year, the Appellate Division of the New Jersey Superior Court handed down two important decisions that will have an impact on redevelopment projects going forward. This article provides an update on those cases.

Applied Monroe Lender, LLC v. Hoboken Planning Board

This case dealt with whether a municipality could deny a property owner the ability to seek planning board approvals if the property was located in an area in need of redevelopment and the property owner was not designated as the redeveloper of the property, even if the redevelopment plan does not impose such a requirement.

In *Applied Monroe*, the developer purchased the subject property at a bankruptcy sale. The prior owner of the property was designated as a redeveloper and had executed a redevelopment agreement with the City of Hoboken. Applied Monroe, however, was never designated by the City as the redeveloper of the property and no redevelopment agreement with Applied Monroe was ever executed. After its purchase, Applied Monroe sought approvals from the City's Planning Board. The Planning Board denied Applied Monroe's application because the property was located in an area in need of redevelopment and Applied Monroe was not the designated redeveloper.

Applied Monroe appealed the denial, which was affirmed at the trial court level. On further appeal, the Appellate Division found for the City, holding that properties located in areas in need of redevelopment must first, as a

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technical requirement, the property owner must be designated by the governing body as a redeveloper pursuant to the provisions of the Local Redevelopment and Housing Law (LRHL). While such a requirement is not uncommon in redevelopment plans, this case holds that such requirement need not be in a redevelopment plan for municipalities to enforce it. Presumably, this holding would apply for all types of land use approvals, including subdivision approval.

Borough of Glassboro v. Grossman, et al.

The Borough of Glassboro sought to condemn a mostly vacant lot located within an area in need of redevelopment. The property was approximately a block away from an ongoing mixed-use redevelopment at Rowan University consisting of retail space, classroom space, 1,870 student-housing beds, 109 apartments and a 1.75 acre park with an estimated value of \$450 million.

Pursuant to the LRHL and the Eminent Domain Act, the Borough obtained an appraisal of \$125,000 for the property. After unsuccessfully negotiating with the property owners to acquire the property, the Borough commenced condemnation proceedings, which were challenged by the property owners. The Borough provided that their intended use for the property was for "increasing availability of public parking..." and, during a trial court hearing, the Borough's attorney stated that "public parking is only a possible use, and that the property might be used for some other purpose related to redevelopment."

The Appellate Division held that under the LRHL, a "local government can only acquire, through its condemnation powers, a land or building 'which is necessary for the redevelopment project'." The Court held that the acquisition of property for redevelopment must be "reasonably necessary" and established a two-prong test for determining whether a municipality's proposed use for a property to be condemned was "reasonably necessary." The test requires the municipality to (1) articulate the purpose tied to a specific redevelopment project and (2) present evidence to substantiate that purpose. The Court emphasized that such showing would only be necessary should the condemnation be challenged. If challenged, and upon submission by the municipality of such evidence, the burden would remain on the property owner to disprove the municipality's evidence of necessity by a preponderance of the evidence.

Here, the Court held that the Borough did not pass the test articulated above and, as such, the proposed condemnation was found to not be reasonably necessary. Municipalities, and redevelopers working with municipalities on redevelopment projects requiring the condemnation of property, should be aware of the test created in this case and should be prepared to demonstrate a necessity for the acquisition of any property prior to commencing condemnation proceedings.

Redevelopers and municipalities alike should work with experienced redevelopment attorneys to ensure that their redevelopment projects comply with the holdings in these and other applicable cases.