

NJ Supreme Court to Consider Whether Finding of Constitutional Blight Is Required In Addition to Statutory Criteria for Redevelopment Area Designation

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On October 3, 2013, the New Jersey Supreme Court granted certification in *62-64 Main Street LLC v. Hackensack*. The Court will consider whether a municipal redevelopment area designation must not only satisfy at least one of the criteria set forth in N.J.S.A. 40A:12A-5 of the Local Redevelopment and Housing Law (LRHL), but must also expressly find the property is “blighted” under the New Jersey Constitution, as construed in the Court’s 2007 decision in *Gallenthin Realty Development Inc. v. Borough of Paulsboro*.

In *62-64 Main Street*, the trial court affirmed the municipal redevelopment area designation, concluding that at least one of the statutory criteria in the LRHL had been met. The Appellate Division reversed and concluded that the “in need of redevelopment” designation must not only satisfy the statutory criteria of the LRHL, but must also expressly find that the property is “blighted” within the meaning of the Constitution.

The “Blighted Areas” Clause of the Constitution provides, in part, that “The clearance, replanning, development or redevelopment of blighted areas shall be a public purpose and public use, for which private property may be taken or acquired.”

In *Gallenthin*, the Supreme Court stated that the Constitution authorizes government redevelopment of only “blighted areas” and construed the meaning of “blighted” as “deterioration or stagnation that negatively affects surrounding properties.” The *Gallenthin* Court specifically construed statutory criterion N.J.S.A. 40A:12A-5(e) to apply only to property that has been stagnant because of issues of title, diversity of ownership or other similar conditions, and not because the property was not used in an optimal manner. After invalidating the designation of the property as in need of redevelopment under subsection (e), the *Gallenthin* Court stated that its holding did not prejudice another inquiry for redevelopment based on some other legitimate grounds. The statutory criteria upon which the trial court relied in *62-64 Main Street* did not involve criterion (e), but other criteria.

The Supreme Court will now decide whether it agrees with the Appellate Division that *Gallenthin* requires a municipality to find that a property meets the constitutional meaning of “blighted” in addition to the statutory criteria for a redevelopment area designation. The Court might instead conclude that a municipality, in designating a redevelopment area, need only satisfy at least one of the statutory criteria, which are presumed to be constitutional and consistent with the constitutional meaning of “blight” – in

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which event the redevelopment area designation in *62-64 Main Street* should have been affirmed, with no requirement for a specific additional “blighted” finding under the Constitution.