

New Jersey Appellate Division Vacates Rehabilitation Area Designation Of Former Industrial Complex in Hoboken

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September 2014

On September 23, 2014, the New Jersey Superior Court Appellate Division issued a decision approved for publication in *R. Neumann & Co. v. City of Hoboken*, in which plaintiff Neumann challenged the Hoboken City Council's 2011 designation of its landmark Observer Highway former industrial buildings, presently rented to artists, artisans, and musicians, as within an "area in need of rehabilitation."

The ruling acknowledged that a municipal action to designate a rehabilitation area is entitled to a presumption of regularity, that the designation must be supported by substantial evidence, that a court is not to substitute its judgment even when the municipal determination is debatable, and that such designation is a matter of practical judgment, common sense and sound discretion.

Notwithstanding the foregoing, however, the Appellate Division vacated, without prejudice, Hoboken's resolution designating the rehabilitation area. The statutory criterion on which Hoboken relied for the rehabilitation area designation – set forth in New Jersey's Local Redevelopment and Housing Law (LRHL) – provides "a majority of the water and sewer infrastructure in the delineated area is at least [fifty] years old **and** it is in need of repair or substantial maintenance." The City of Hoboken's resolution, however, provided ". . . the water and sewer lines are at least [fifty] years old **or** are in need of substantial maintenance."

The Appellate Division's opinion is a reminder that the difference between "and" and "or" can be significant. Observing that the City Council's resolution "misstates the statutory standard upon which the City Council relied," the Court concluded that the municipal designation was supported by substantial evidence, and therefore vacated the resolution, without prejudice, in order to allow the municipality to reconsider whether the area should be designated a rehabilitation area based on the proper statutory standard.

In its opinion, the Court also pointed out that a rehabilitation area designation does not trigger the power of eminent domain as does the designation of a redevelopment area, and that a municipality must adopt a redevelopment plan in order to exercise its statutory powers of rehabilitation.

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