

March 24, 2015

Re: New Jersey Supreme Court Decision Issued Yesterday Clarifying Municipal Redevelopment Powers

Dear Mayor,

Yesterday the New Jersey Supreme Court issued its decision in 62-64 Main Street, L.L.C. and 59-61 Moore Street, L.L.C. v. Mayor and Council of the City of Hackensack.

At particular issue in this case was whether or not N.J.S.A. 40A:12A-5 (a), (b), and (d), provisions that grant municipalities the authority to deem areas as in need of redevelopment, conformed to the blighted area clause of the New Jersey Constitution. N.J. Const. art. VIII, § 3, ¶ 1.

A similar issue was decided by the Court in Gallenthin Realty Development, Inc. v. Borough of Paulsboro. 191 N.J. 344 (2007). To a certain extent, the Court's decision in 62-64 Main Street clarifies that previous holding. In Gallenthin, the Court evaluated the constitutionality of section (e) of N.J.S.A. 40A:12A-5, a provision which granted municipalities the authority to deem an area in need of redevelopment if it "were stagnant or not fully productive." The Court held that this provision did not conform to the blighted area clause and was unconstitutional because if "such an all-encompassing definition of blight were adopted, most property in the state would be eligible for redevelopment." Id. at 365.

In this case plaintiff-landowners argued that Gallenthin, beyond invalidating section (e), superimposed a constitutional blight standard on the sections (a), (b), and (d) of N.J.S.A. 40A:12A-5 which states:

A delineated area may be determined to be in need of redevelopment if, after investigation, notice and hearing as provided in section 6 of P.L.1992, c. 79 (C.40A:12A-6), the governing body of the municipality by resolution concludes that within the delineated area any of the following conditions is found:

a. The generality of buildings are substandard, unsafe, unsanitary, dilapidated, or obsolescent, or possess any of such characteristics, or are so lacking in light, air, or space, as to be conducive to unwholesome living or working conditions.

b. The discontinuance of the use of buildings previously used for commercial, manufacturing, or industrial purposes; the abandonment of such buildings; or the same being allowed to fall into so great a state of disrepair as to be untenable.

....

d. Areas with buildings or improvements which, by reason of dilapidation, obsolescence, overcrowding, faulty arrangement or design, lack of ventilation, light and sanitary facilities,

excessive land coverage, deleterious land use or obsolete layout, or any combination of these or other factors, are detrimental to the safety, health, morals, or welfare of the community.

The Court rejected this argument, holding that Gallenthin merely invalidated section (e) of this portion of the Redevelopment Law and that sections (a), (b), and (d) were constitutional.

In sum, today's decision, written by Justice Albin, preserved the broad statutory authority of municipalities to engage in redevelopment.

A copy of the decision can be found here-

http://www.judiciary.state.nj.us/opinions/supreme/A19136264MainStreetvHackensack.pdf?utm_medium=twitter&utm_source=twitterfeed

If there are any questions regarding this decision please contact Ed Purcell Esq. at (609) 6953481 x. 137.

Very Truly Yours,

William G. Dressel, Jr.
Executive Director