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The Redevelopment Statute: A Powerful Tool for Municipalities

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Municipalities have been emphasizing economic development in recent years. Older cities and towns often begin from behind, however, due to the age and condition of properties there. The Local Housing and Redevelopment Law, N.J.S.A. 40A:12A-1 et seq., offers these communities a tool to facilitate redevelopment in areas needing rehabilitation. The exercise of that power, however, is not always welcomed by all citizens. Two recent decisions of the Appellate Division under the Redevelopment Law illustrate this, and illustrate the difficulty of challenging municipal actions under that statute.

The Redevelopment Law

The Redevelopment Law is a successor statute to the Blighted Area Act, N.J.S.A. 40:55-21.1, which was first adopted in 1949. *Forbes v. South Orange Village Bd. of Trustees*, 312 N.J. Super. 519, 523 (App. Div. 1998). Both statutes were authorized by Art. VIII, Sec. 3, Para. 1, of the 1947 New Jersey Constitution. That provision declares that "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. Municipal, public or private corporations may be authorized by law to undertake such clearance, replanning, development or redevelopment ..."

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Under the Redevelopment Law, the municipal governing body has the authority to determine whether areas within its jurisdiction are "areas in need of redevelopment." *Bryant v. City of Atlantic City*, 309 N.J. Super. 596, 603 (App. Div. 1998). The term "blighted area," which appears in the constitutional provision that is the basis for the statute, was superseded. See N.J.S.A. 40A:12A-6(c). Objectors to a municipal redevelopment plan made that language change a central issue in *Forbes*.

The first step under the Redevelopment Law is for the municipal governing body to authorize the planning board to undertake a preliminary investigation to determine whether an area is a redevelopment area under the statute. N.J.S.A. 40A:12A-6(a). That decision is to be guided by N.J.S.A. 40A:12A-5, which lists external factors that, if present anywhere in the proposed area, can justify a finding that the area is in need of redevelopment. These include substandard or abandoned buildings, land that has long been vacant and is unlikely to be developed with private capital, areas with buildings or improvements whose condition is detrimental to the safety, health or welfare of the community, and the like.

The planning board must prepare a map showing the boundaries of the proposed redevelopment area and the location of the various parcels of property included in it. N.J.S.A. 40A:12A-6(b). The definition of "area in need of redevelopment" permits inclusion of property that is not itself detrimental to the public health, safety or welfare, but whose inclusion is necessary for the effective redevelopment of the area of which it is a part. N.J.S.A. 40A:12A-3. The board must also attach a statement stating the basis for its investigation. N.J.S.A. 40A:12A-6(b). The board is required to conduct public

hearings on the proposal, at which all interested parties may be heard orally or in writing, and then recommend that the delineated area, or part of it, be or not be designated as a redevelopment area. N.J.S.A. 40A:12A-6(b)(2)-(5).

The governing body must then adopt a redevelopment plan for a specifically delineated project area. N.J.S.A. 40A:12A-7. That section sets forth a number of factors to be addressed in such plans, but requires that only "an outline" addressing those matters be included. N.J.S.A. 40A:12A-8 gives the municipality or its designated redevelopment agency broad power to effectuate a redevelopment plan. Among other things, the power of acquiring or condemning property is made available, and the right to lease or convey property or improvements to any party, including a private developer, without public bidding and at prices and on terms deemed reasonable, is conferred by that section. N.J.S.A. 40A:12A-9, however, contains covenants to be contained in agreements, deeds, leases or other instruments between a municipality or its redevelopment entity and a developer.

There is a separate, though similar, scheme for "areas in need of rehabilitation." See N.J.S.A. 40A:12A-14. "Rehabilitation" is distinct from "redevelopment" because the former emphasizes repair, reconstruction or renovation of existing structures, with or without new construction or enlargement of existing structures, while the latter may be far more extensive. This is revealed by the definitions of the two terms contained in N.J.S.A. 40A:12A-3. Significantly, an area in need of rehabilitation may include an entire city. N.J.S.A. 40A:12A-14; *Bryant*, 309 N.J. Super. at 603, 615.

Bryant v. City of Atlantic City

This seemingly uncomplicated statutory scheme, in which the concept of redevelopment flows from the governing body to the planning board for a recommendation, to the governing body for adoption of an ordinance and creation of a redevelopment plan, to effectuation of that plan, gave rise to numerous substantive and procedural challenges in *Bryant*. That case arose out of

Atlantic City's interest in developing a moribund 178-acre area of its marina section known as Huron North. Unlike the boardwalk area — which has seen considerable casino development since casino gambling was legalized in Atlantic City — Huron North housed only a few municipal facilities and casino employee parking. When the city tried to auction 48 acres of the site in 1987, no bids were offered, perhaps due to Huron North's lack of direct access from the Atlantic City Expressway.

Atlantic City went through the Redevelopment Law process and designated the entire city as an area in need of rehabilitation under N.J.S.A. 40A:12A-14(a). The city then directed the planning board to prepare a redevelopment plan for Huron North. The board did so. Its plan provided for conveyance of the city-owned land in Huron North to a private developer. The city passed an ordinance approving the redevelopment plan.

Having done that, the city issued a request for qualifications from potential redevelopers. A redevelopment committee evaluated the two proposals received, and recommended Mirage Resorts Inc. (MRI), which proposed to construct a resort project, as the redeveloper. The city then entered into a memorandum of understanding with MRI, which listed various issues that needed to be addressed before a redeveloper's agreement could be signed. Once those issues were resolved, the city adopted an ordinance that permitted it to sign a redeveloper's agreement with MRI.

That redeveloper's agreement conveyed the property in Huron North to MRI for no cash consideration. MRI was obligated, however, to bear the costs of investigating and cleaning up the pre-existing landfill, relocating the city facilities from Huron North, paying millions of dollars associated with the construction of the Westside Bypass, a proposed road approved by and to be funded by the state, that would give access to Huron North from the Atlantic City Expressway, and paying other sums as well. 309 N.J. Super. at 613. The agreement conditioned MRI's obligation to proceed with redevelopment on approval of the Westside Bypass. However, because the Westside Bypass would require destruction of homes on Horace Bryant Drive, an African-American residential neighborhood not located in Huron North, opposition to the proposed redevelopment arose from that feature of it.

Objectors to the redevelopment plan sued the city and MRI, asserting numerous substantive and procedural defects in the redevelopment plan approval process and the redeveloper's agreement. Judge L. Anthony Gibson granted summary judgment for the city and MRI. The Appellate Division, in a unanimous opinion by Judge Thomas Shebell Jr., affirmed.

First, the objectors claimed that the conveyance of city land to MRI for no cash consideration was an unconstitutional donation

of public land for a private purpose. See N.J. Const., Art. VIII, Sec. 3, Para. 2, 3. The Appellate Division noted that the transfer was not in fact without consideration, and cited the millions of dollars that MRI was obligated to pay for the landfill cleanup, the relocation of city facilities and the other aspects. 309 N.J. Super. at 612-13. Judge Shebell observed that the sums that MRI was obligated to expend might exceed the assessed value of the land. *Id.* Moreover, the court stated that the development of an unproductive area such as Huron North was a public purpose, given its relationship to such things as relieving unemployment, providing recreational facilities for the public, increasing the tax base, and economically and environmentally rehabilitating the area. *Id.* at 613-14.

The court then rejected a series of challenges to the contents of the ordinances and resolutions that formed the chain of authority for the redevelopment plan. The findings of fact justifying the designation of Huron North as an area in need of rehabilitation were found to be sufficient, as were the ordinance approving the redevelopment plan and the plan itself. *Id.* at 614-20. Judge Shebell concluded that the ordinance approving the plan did not have to contain every element that later appeared in the plan itself or in the actual project, including the Westside Bypass, the potential displacement of persons from Horace Bryant Drive, and the consideration for the conveyance of the property. *Id.* at 616-17. Similarly, he determined that the plan was sufficiently detailed in its discussion of the factors listed in N.J.S.A. 40A:12A-7(a)(1)-(5). That section requires only "an outline" addressing those issues. *Id.*

The court also rejected the idea that the redevelopment plan had failed to provide for the relocation of residents "in the project area," as required by N.J.S.A. 40:12A-7(a)(3). Horace Bryant Drive was not in the "project area" of Huron North. Moreover, the need for relocation was brought about not by the redevelopment, but by the state's approval and funding of the Westside Bypass. Thus, the redevelopment plan did not have to address that issue. 309 N.J. Super. at 625-26.

The Appellate Division rejected several other arguments made by the objectors. On all grounds, the court viewed the city's actions liberally, in light of the public purposes to be served, and given the generality of the Redevelopment Law's directives.

Forbes v. South Orange Board of Trustees

Two months after *Bryant*, a different panel of the Appellate Division decided *Forbes*, 312 N.J. Super. 519 (1998). In this case, the plaintiffs challenged a redevelopment plan that had designated the central business district as the area

to be redeveloped. The primary basis for the objection was that there was no basis to support the idea that the area to be redeveloped was a "blighted area," as required by the New Jersey Constitution. In an opinion by Judge Sylvia Pressler, the court traced the Redevelopment Law back to its roots in the Blighted Areas Act, N.J.S.A. 40:55-21.1.

The court concluded that "the fundamental differences between them are cosmetic only." 312 N.J. Super. at 526. More specifically, Judge Pressler stated that "the word 'blight' may have been left out of the [Redevelopment Law] but the concept and long-standing definition of blight remain firmly fixed therein" *Id.* at 529. The Redevelopment Law thus did not violate the constitutional requirement of blight merely because of "euphemistic" statutory changes from "blight" to "area in need of development." *Id.*

As in *Bryant*, *Forbes* went on to reject several challenges to the merits of the redevelopment decision. The court stated in strong terms that the central business district had clearly deteriorated, and that the finding that redevelopment was required was adequately supported by substantial evidence. 312 N.J. Super. at 530-31. In reaching that conclusion, the panel may have been aided by a visit that it paid to the area, on notice to counsel. See *id.* at 523 n.1.

The court also dismissed the plaintiffs' claim that the village's planning consultant, who inspected the proposed redevelopment area, should have gone inside the buildings before concluding that redevelopment was appropriate under the statutory standards. Judge Pressler noted that the conditions leading to a determination of redevelopment "are, by and large, externally observable." *Id.* at 531. Finally, the fact that some residential units in the redevelopment area were not substandard did not affect the court's decision. Judge Pressler stated that "not every property within the redevelopment area must be shown to be itself substandard. ... The issue is whether the area as a whole qualifies for the designation." *Id.* at 531-32 (citing *Lyons v. City of Camden*, 52 N.J. 89, 97 (1968)).

Summary

Both *Bryant* and *Forbes* applied a combination of (1) the philosophy that economic redevelopment is in the interest of the general public, (2) the very general parameters for municipal action, at every step of the process, contained in the Redevelopment Law, and (3) a standard of review of municipal action that, in keeping with normal land use principles, is quite deferential to local decision-makers. That combination gives municipalities broad power to act in the area of redevelopment, and makes objections difficult. Parties who advocate or oppose redevelopment will find many lessons for future matters in this recent pair of cases. ■