

Is a redevelopment designation forever?

By **Howard D. Geneslaw**
and **Jason R. Tuvel**

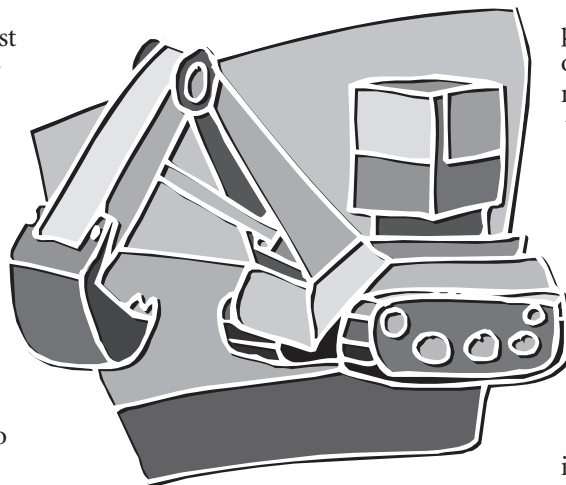
In New Jersey, a municipality has statutory authority under the Local Redevelopment and Housing Law (N.J.S.A. 40A:12A-1 *et. seq.*) to designate a parcel of real property as an “area in need of redevelopment” — the statutory term which replaces a “blight” designation. If so designated, a municipality is authorized to condemn the properties to effectuate an adopted redevelopment plan. The legislative intent behind these powers is based on the fact that

“[t]here exist, have existed and persist in various communities of this State conditions of deterioration in housing, commercial and industrial installations, public services and facilities and other physical components and supports of community life, and improper, or lack of proper, development which result from forces which are amenable to correction and amelioration by concerted effort of responsible public bodies, and without this public effort are not likely to be corrected or ameliorated by private effort.” N.J.S.A. 40A:12A-2.

Planning board investigation

The legislature has enacted specific standards which must be followed in order for properties to be designated as areas in need of redevelopment. These guidelines call for interplay between a municipality’s governing body and planning board. When deciding whether an area is in need of redevelopment, the governing body must, by resolution, authorize the planning

board to undertake a preliminary investigation to determine whether the proposed area is a redevelopment area according to the criteria set forth in N.J.S.A. 40A:12A-5. Thereafter, the planning board conducts a hearing to investigate each property proposed to be included in the redevelopment area. All property owners affected by the designation are required to be given actual notice of the hearing and may appear to present a case as to why their property should not be designated as



in need of redevelopment. Upon the conclusion of the planning board’s investigation, it may issue a recommendation to the municipality that the properties examined be designated areas in need of redevelopment.

Redevelopment plan

If a municipality votes as such after receiving the results of the planning board’s investigation, the next step is for the municipality to adopt a redevelopment plan. Pursuant to N.J.S.A. 40A:12A-7, such a plan must include an

outline for the planning, development, redevelopment or rehabilitation of the area designated as in need of redevelopment. A redevelopment plan is considered at an open public meeting held pursuant to the New Jersey Open Public Meetings Act (OPMA), N.J.S.A. 10:4-6 *et. seq.*, where members of the public can comment on the proposed redevelopment plan.

Appointment of redeveloper

The final step in the redevelopment process is appointment of a redeveloper. Under N.J.S.A. 40A:12A-8f, a municipality may “arrange or contract with public agencies or redevelopers for the planning, replanning, construction, or undertaking of any project or redevelopment work.”

However, what if a municipality designates an area or properties as needing redevelopment but does not undertake any action, such as adopting a redevelopment plan or appointing a redeveloper? Does the redevelopment designation continue in perpetuity? Does the municipality forever retain its power of eminent domain over the properties? These questions appear to be unsettled under New Jersey law.

Case law:

Downtown Residents

In *Downtown Residents for Sane Development v. City of Hoboken*, 242 N.J. Super. 329 (App. Div. 1990), defendant city of Hoboken relied on a 1972 blight designation of certain properties at the south end of the city to adopt a redevelopment plan in 1987. The plan

expressly stated the 1972 blight designation was still in effect and that the plan would address an urgent need for affordable housing units on the properties encompassed within the plan. The city further appointed a redeveloper to effectuate the plan.

Plaintiff residents challenged the blight designation on the basis it was more than 15 years old and that properties originally designated as blighted in 1972 had improved and no longer fit the criteria. The trial court granted the city's motion for summary judgment; plaintiffs appealed.

On appeal, plaintiff residents maintained their argument regarding the continuation of the blight designation and also asserted that the trial judge's indication that a declaration of blight continues in perpetuity could not stand and was an inequitable conclusion.

On the issue of whether a blight designation continues in perpetuity, the Appellate Division stated, "Residents take issue with what they perceive to be an indication by the trial judge that a declaration of blight necessarily continues in perpetuity. We do not think that this was the intent of his (the trial judge's) opinion. To the extent it may so be read, we disagree. The appropriate legislative authority may reconsider such declaration."

Thus, the Appellate Division recognized that although at the time a blight designation is made it may be appropriate, the blight designation should not last in perpetuity as circumstances can change over time. This is not to say a municipality should be rushed into effectuating a redevelopment plan. As clearly noted in *Downtown Residents*, "Rome was not built in a day." Neither could it be rebuilt in a day. Mere passage of time does not erase validity of a blighted area designation."

Although *Downtown Residents* does not provide a specific measurement of time as to the expiration of a blight designation, the Appellate Division cited the Ohio case, *Eighth & Walnut Corp. v. Public Library of Cincinnati*, 57 Ohio App. 2d 137 (1977) which held:

"A plan of urban renewal must address the problem of correcting urban blight. Thus, where there was evidence which, if believed, would establish that discretion in adoption

of an urban renewal plan was not done in aid of its purpose to eliminate slums and blight but rather to accommodate the desire of a library to expand its facilities, grant of summary judgment was set."

Plan must address original blight

The Appellate Division's adoption of the language from *Eighth & Walnut Corp.* infers a municipality cannot designate an area as blighted and then years later use the same designation as the means to implement a redevelopment plan not aimed at curing the original blight issues (if they still exist) affecting the properties in the redevelopment area.

The Appellate Division upheld the trial court's decision to grant the municipality's motion for summary judgment. The reasoning: the actions of the municipality 15 years later validated the need to maintain the designation and move forward with the new plan. The actions of the municipality validating continuation of the blight designation consisted of: (1) conducting public meetings where extensive public comment was entertained from affected property owners, and (2) a thorough review by the planning board with respect to the adoption of the plan. Furthermore, the plan "expressed a purpose, not merely to continue the blight remediation program, but also to address an urgent need for affordable housing in the City."

The issue of whether a redevelopment designation can last in perpetuity was briefly revisited in 2006 in *D & M Asbury Realty, LLC v. City of Asbury Park*, 2006 WL 3693210. There, the Appellate Division echoed the sentiments first enunciated in *Downtown Residents* by emphasizing redevelopment plans need to be examined and supported by the circumstances at the time the redevelopment plan is adopted. In furtherance of this statement, the Appellate Division in *D & M* cited language in *Downtown Residents* highlighting a "declaration of blight does not necessarily continue in perpetuity."

The conclusion drawn in *Downtown Residents* and *D & M* that a redevelopment designation does not last in perpetuity is pragmatic, considering the alternative.

Cloud on title and value

First, the Local Redevelopment and Housing Law does not require the redevelopment designation be recorded in the property's chain of title — though it can be argued the redevelopment designation constitutes an

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encumbrance on real property. A *bona fide* subsequent purchaser of real property would not have notice of the designation by way of a title search. The only way to obtain this information would be for purchasers of real property to file an open public records request with the municipal clerk's office of the municipality where the property is located.

Must a *bona fide* purchaser rely on the municipal clerk's office to obtain all the necessary information on a redevelopment designation? Should subsequent purchasers of real property have to run searches as to whether the property they seek to purchase has been designated as in need of redevelopment?

Moreover, if known, a redevelopment designation acts as a restriction on alienability of property and a cloud on title. Once a property is designated, the ability to sell it and its value can be significantly decreased. Example: Property is designated as needing redevelopment in 2007 but the municipality does not adopt a redevelopment plan for the next 10 years. Should a property owner be stuck with the designation and the ensuing practical limitations on sale?

Investment disincentives

Another dilemma with redevelopment designations lasting in perpetuity

is they remove any owner incentives to invest significant amounts of money in rehabilitating the properties; at any given moment the municipality can decide to exercise its taking power. In theory, a property could be designated as in need of redevelopment for 20 years with the owners deciding not to upgrade it in fear of a possible taking. This result is in direct contravention with the legislative purpose behind the Local Redevelopment and Housing Law to ameliorate the conditions that justify the redevelopment designation.

Until the legislature caps a time period on redevelopment designations or lays out a framework a municipality must follow to keep the designation alive, owners of such properties will be caught in limbo and left with an encumbrance on their property for an undefined

period. Unlike other encumbrances that can be removed, an owner of designated property has no recourse to reverse the designation once the applicable appeal periods have terminated other than to become designated the redeveloper and undertake a redevelopment project consistent with the adopted redevelopment plan.

Therefore, even if a property owner makes substantial upgrades to their property and a municipality does nothing to move forward with its redevelopment plan, the municipality may at any time — as long as the designation remains in place — exercise its taking power.

Although theoretically a property owner should recover its investment by way of just compensation should the power of eminent domain be exercised,

in reality that may not prove true — as where the date of valuation reflects a decrease in market value at a time when the property owner otherwise would not have sold the property.

Accordingly, New Jersey property owners should proceed with caution and realize their ability to fully recognize and recover the value of their investment may be uncertain.

Although case law has intimated a redevelopment designation should not last in perpetuity, one thing is certain: When perpetuity is reached remains an unknown. ©

Howard D. Geneslaw is a director and Jason R. Tuvel an associate in the Real Property and Environmental Department at Gibbons in Newark.