January 4, 2018

Appellate Division Reverses Trial Court to Reinstate Designation of Area in Need of Redevelopment

In a decision that could affect redevelopment determinations throughout New Jersey, the New Jersey Appellate Division has ruled that a municipality had sufficient evidence to classify property as an area in need of redevelopment under the Local Redevelopment and Housing Law (LRHL).

The December 2017 Appellate Division decision in *Larry Price v. City of Union City* reversed a trial court decision. It addressed whether a Planning Board had sufficient evidence to determine that a property was an area in need of redevelopment under the Local Redevelopment and Housing Law (LRHL).

At issue in *Larry Price v. City of Union City* was whether the governing body had sufficient evidence when it determined that a property was an area in need of redevelopment. The governing body adopted a resolution authorizing the Planning Board to conduct a preliminary investigation into whether six contiguous lots constituted an area in need of redevelopment. Four of the lots contained a parking lot and two contained a rectory. The municipality's professional planning consultant conducted a study for the Planning Board, produced a report, and concluded that the area was in need of redevelopment under the statutory criteria found at N.J.S.A. 40A:12-5(d) (the area contains dilapidated buildings or improvements that are detrimental to the safety, health, morals or welfare of the community), (e) (the area is not properly utilized due to diversity of title) and (h) (a redevelopment plan would be consistent with smart growth planning principles). To support the conclusion under criteria (d), the report stated that the rectory's basement was flooding, which could affect the electrical system; there was lead paint present; and the foundation of the structure was cracked. The report further posited, in support of the satisfaction of criteria (h), that the municipality is located in a Planning Area of the State's Development and Redevelopment Plan, which promotes smart growth. The planning consultant testified in support of his conclusion at the Planning Board hearing on the redevelopment designation. Two lay witnesses also testified that the parking lot and rectory were in deteriorating condition. The plaintiff, a nearby property owner, did not dispute the facts presented by the planning consultant and two lay witnesses, but testified that the condition of the building was not a detriment to the community.

According to the Appellate Division decision, the Planning Board adopted a resolution declaring the area in need of redevelopment. In accordance with the LRHL, the Planning Board's proper role was to make a recommendation to the governing body, which the statute empowers to declare the area in need of redevelopment. Subsequently, the governing body held a hearing to consider the Planning Board's recommendation, and also adopted a resolution designating the area a noncondemnation redevelopment area. The governing body then adopted a redevelopment plan.

The plaintiff filed two complaints in lieu of prerogative writs, which were consolidated, challenging the designation of the property as an area in need of redevelopment. The trial court agreed with the challenge, and held that (1) the mere inclusion of the property in a Planning Area of the State Development and Redevelopment Plan is not by itself grounds for finding an area in need of redevelopment under criteria (h), and (2) the rectory did not cause a detrimental economic, social, or aesthetic impact to the community. The judge concluded that there was insufficient evidence to satisfy the redevelopment criteria necessary to designate an area in need of redevelopment and that the redevelopment report was merely conclusory.

On appeal, the Appellate Division reversed the trial court's decision, holding that the report and the hearing record provided substantial evidence supporting the Planning Board's recommendation that the property be designated as an area in need of redevelopment.

The Appellate Division noted that the court's role in reviewing municipal actions is limited to determining whether such actions are supported by substantial credible evidence, because municipal actions, including redevelopment designations, come with a presumption of validity. The court further reasoned that although a municipality must establish a record that contains more than a bald recitation of applicable statutory criteria and a declaration that the criteria were met, the planning consultant's report, coupled with his unrebutted expert testimony, provided the required substantial evidence to support the Planning Board's recommendation. The report and testimony enumerated specific factors, including the deterioration of the building and the presence of lead paint, which satisfied criteria (d). The Appellate Division did not address the evidence necessary to support the satisfaction of criteria (e), because the city did not appeal the trial court's decision that criteria (e) could not be satisfied because the church owned the property free and clear.

The Appellate Division decision reversing the trial court provides redevelopment stakeholders with some comfort as to the quality of evidence necessary for planning boards to make a redevelopment recommendation. It also represents a continuing, encouraging trend whereby municipal redevelopment actions and designations are upheld by the courts. It remains to be seen whether the plaintiffs will appeal to the New Jersey Supreme Court.

Should you have any questions concerning this decision or land use matters in general, please contact Peter J. Wolfson, Luke Pontier or any of the Day Pitney real estate team.

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