March 24, 2023

NJ Supreme Court Issues Important Guidance on 'Area in Need of Redevelopment' Designations

This month, the New Jersey Supreme Court reversed the Appellate Division in a case involving the West Orange Public Library and its designation as an "area in need of redevelopment."

At issue in *Malanga v. Township of West Orange, Township of West Orange Planning Board and Township of West Orange Township Council*, decided March 13, was whether the Township of West Orange improperly designated the site of its library as an "area in need of redevelopment" under the Local Redevelopment and Housing Law (LRHL), N.J.S.A. 40A:12A-1 to -49.

Under the LRHL, a municipality can find that a property qualifies as an area in need of redevelopment, and such designation is a powerful tool used to effectuate redevelopment. Some benefits of the designation include allowing the municipality and redeveloper to contract in a public-private partnership as to the redevelopment, permitting the implementation of site-specific flexible zoning, and allowing financial incentive programs such as a long-term tax exemption (PILOT agreement) or the issuance of redevelopment area bonds. To qualify as an area in need of redevelopment, a property must meet one of criteria a through h of N.J.S.A. 40A:12A-5.

In *Malanga*, West Orange designated its library as an area in need of redevelopment relying on criterion d of N.J.S.A. 40A:12A-5. Criterion d states that the following areas can be determined to be in need of redevelopment:

> 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 township argued that the library, while functioning, was in need of updates to address physical deficiencies that hindered its ability to adequately supply services and therefore was properly designated as an area in need of redevelopment. The Supreme Court, however, found that the library, while in need of updates, did not qualify pursuant to criterion d, stating:

> Like many older buildings, the library needed improvements in a number of areas. But the record did not establish that it suffered from obsolescence, faulty arrangement, or obsolete layout in a way that harmed the welfare of the community. To designate property for redevelopment under the LRHL, a municipality must demonstrate that certain specified problems exist and that they cause actual detriment or harm. There is insufficient evidence in the record to meet that standard. The designation of the library as an area in need of redevelopment is invalid.

The Supreme Court held that to satisfy criterion d, two things are required: (1) sufficient proof that areas with buildings or improvements suffer from one or more specified conditions and (2) sufficient proof that, as a result of the particular condition or conditions, the areas "are detrimental to the safety, health, morals, or welfare of the community." In reaching this holding, the court noted that the building itself was still functioning and attracted more than 150,000 visitors a year.

The decision in *Malanga* provides important guidance on a key factor used to designate a property under criterion d of the LRHL as an area in need of redevelopment. Should you have any questions concerning this decision or real estate matters in general, please contact Katharine A. Coffey, Peter J. Wolfson, Amanda M. Curley or any member of the Day Pitney real estate team.

Authors



Katharine A. Coffey
Partner

Parsippany, NJ | (973) 966-8323

kcoffey@daypitney.com



Peter J. Wolfson
Partner

Parsippany, NJ | (973) 966-8298

pwolfson@daypitney.com



Amanda M. Curley
Counsel

Parsippany, NJ | (973) 966-8063

acurley@daypitney.com



Thomas J. Malman
Partner

Parsippany, NJ | (973) 966-8179

tmalman@daypitney.com



Craig M. Gianetti
Partner

Parsippany, NJ | (973) 966-8053

cgianetti@daypitney.com



Nicole M. Magdziak
Partner

Parsippany, NJ | (973) 966-8027

nmagdziak@daypitney.com