REDEVELOPMENT- A REMEDY FOR THE SCARCITY OF DEVELOPABLE LAND

By Kurt G. Senesky

Recent events and governmental action have dramatically reduced the amount and quality of land that is available for development in New Jersey. Not the least among them is the Highlands legislation which promises to make hundreds of thousands of acres largely un-developable. In addition, the concept of suburban sprawl has more and more come to be seen as anathema to state planners. Environmentalists loudly and forcefully argue for the preservation of woodlands and farmlands and the need to reduce gases which emit ozone through the increased use of public transportation. At the same time, everyone recognizes that growth is essential to a sound and thriving economy. As these developments and concerns are discussed, it has become very apparent that an existing tool – redevelopment - may prove quite useful in harmonizing the conflicting voices both in urban and suburban areas.

Redevelopment is a coordinated comprehensive process of taking blighted, underutilized or improperly utilized lands and structures and turning them into revitalized areas which blend into and energize the planning visions of a municipality. Its end result can be residential, commercial or industrial. It has been extolled as "one of the best ways of addressing some of the more compelling challenges facing our state…"[1]

In truth, redevelopment has been available to towns and cities for a number of years, but has largely lain dormant until recently, when the lack of easily developable land has become increasingly apparent.

Under the public laws of 1929, cities and towns were permitted to use their powers of condemnation on behalf of insurance companies who were in turn permitted to invest a portion of their assets in low income housing and reimburse the municipalities for the condemnation costs.[2]

Thereafter, in 1949, the Redevelopment Agency's Law and Blighted Areas Act authorized municipalities to create local redevelopment agencies which would have the power of administering redevelopment projects.

Our present statute – the Local Redevelopment and Housing Law (LRHL) was enacted in 1992 as a means of providing a coordinated process to enable municipalities to accomplish both redevelopment and rehabilitation. As will be made apparent, it provides towns and cities with a great deal of flexibility and frees them from many existing constraints.

The statutory scheme envisions a two-step process consisting of a planning aspect followed by the preparation of the redevelopment plan. The planning aspect itself consists of three elements:

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[1] Hawkins, *Renewing Our Cities to Save Our State*; The Star Ledger p. 15, February 21, 2007.
[2] Gruel and Heyer, *Redevelopment: It's Not Just for Cities*; NJPO; © 1998.

- A determination that an area is in need of redevelopment or rehabilitation under criteria set forth in the LRHL.

- A preliminary investigation of the area in question.
- A public hearing.

In making the determination of need for redevelopment, the governing body is required to instruct the planning board to undertake a preliminary investigation to determine whether a particular area is in need of redevelopment. Normally, the governing body will reference the area in question by tax lot and block and/or a depiction of the property through the use of its tax map.

The preliminary investigation is one which requires the expertise of a professional planner, attorney, and others on the planning board with a knowledge of the properties involved and their history.

The area in question must meet one or more of the following criteria as articulated in the LRHL. (N.J.S. 40A:12A-1)

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 untenantable.

C. Land that is owned by the municipality, the county, a local housing authority, redevelopment agency or redevelopment entity, or unimproved vacant land that has remained so for a period of ten years prior to the adoption of the resolution, and that by reason of its location, remoteness, lack of means of access to developed sections or portions of such municipality, topography, or nature of the soil, is not likely to be developed through the instrumentality of private capital.

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.

E. A growing lack or total lack of proper utilization of areas caused by the condition of the title, diverse ownership of the real property therein or other conditions, resulting in a stagnant or not fully productive condition of land potentially useful and valuable for contributing to and serving the public health, safety and welfare.

F. Areas in excess of five continuous acres, whereon buildings or improvements have been destroyed, consumed by fire, demolished or altered by action of storm, fire, cyclone, tornado, earthquake, or other casualty in such a way that the aggregate assessed value of the area has been materially depreciated.

G. In any municipality in which an enterprise zone has been designated pursuant to the "New Jersey Urban Enterprise Zones Act," the execution of the actions prescribed in that Act for the adoption by the municipality and approval by the New Jersey Urban Enterprise Zone Authority of the zone development plan for the area of the enterprise zone shall be considered sufficient for the determination that the area is in need of redevelopment pursuant to sections 5 and 6 of P.L. 1992, c. 79 (40A:12A-5 and 40A:12A-6) for the purpose of granting tax exemptions within the enterprise zone district pursuant to the provisions of P.L. 1991, c. 431 (40A:20-1 et seq.) or the adoption of a tax abatement and exemption ordinance pursuant to the provisions of P.L. 1941, c. 441 (40A:21 et seq.). The municipality shall not utilize any other redevelopment powers within the urban enterprise zone unless the municipal governing body and planning board have also taken the actions and fulfilled the requirements prescribed in P.L. 1992, c. 79 (40A:12A-1 et al.) for determining that the area is in need of redevelopment or an area in need of rehabilitation and a municipal governing body has adopted a redevelopment plan ordinance including the area of the enterprise zone.

H. The designation of the delineated area is consistent with smart growth planning principles adopted pursuant to law or regulation. N.J.S. 40A:12A-5.

The smart growth criteria (h above) was added to the statute in 2003 and represents an enormous boost to smart growth development in permitting a municipality to not only zone for smart growth development, but also to directly involve itself in that development.

As can be seen, the various criteria provide a substantial array of both possibilities and issues in determining whether redevelopment is appropriate. Moreover, it is apparent that the criteria are equally applicable to large cities, suburban towns, and small villages. It is also interesting to note that the statute does not require that each individual lot in the total area under consideration be substandard, abandoned, underutilized, etc. so as to be detrimental to the public health, safety or welfare. It is enough if the lot is found "necessary with or without change in [its] condition, for the effective redevelopment of the area of which they are a part." As was stated in Lyons v. City of Camden, "The statutory authorization is to attack the problem of blight on an area, rather than a structure-by-structure basis."[3] And in Glynis Forbes v. Board of Trustees of the Village of South Orange[4], the court underscored the global approach when it stated that "the issue is whether the area as a whole qualifies for the designation."

When the governing body has completed its map and the planning board has completed its preliminary investigation, the board is required to conduct a public hearing. Notice requirements are comprehensive. Specifically, a public notice must be published in a newspaper or general circulation once each week for two consecutive weeks at least ten

[3] 52 N.J. 89 – (1968)
[4] 312 N.J. Super. 519 (App. Div. 1998)

days prior to the hearing. Further, the owners of each parcel included in the redevelopment area, and anyone claiming an interest in any of the parcels, is entitled to ten days written notice. As can be seen, the notice requirements are more comprehensive than those required for a variance or a subdivision application, and our Courts can be expected in the future to find that notice requirements be liberally construed to afford anyone interest in the matter an opportunity to be heard.

Upon completion of the hearing, the planning board is required to recommend to the governing body either that the area in question should or should not "be determined to be a redevelopment area." Thereafter, the governing body may adopt a resolution stating that the area in question is a redevelopment area.

Objections to this designation are permitted within forty-five days of the adoption of the resolution by the governing body. The filing of an objection will have the effect of prohibiting the governing body from exercising condemnation of any of the parcels, one of its most important and powerful tools.

The procedure involved in the planning board and governing body functions are detailed and comprehensive. A municipality considering redevelopment (and for that matter a property owner seeking to contest redevelopment) should choose its attorney and other professionals carefully.

If an area is designated by the governing body as a redevelopment area, the redevelopment plan must be prepared. The plan is required to articulate the following with regard to the area in question:

A. Its relationship to definitive local objectives as to appropriate land uses, density of population and improved traffic and public transportation, public utilities, recreational and community facilities and other public improvements.

B. Proposed land uses and building requirements in the project area.

C. Adequate provision for the temporary and permanent relocation, as necessary, of residents in the project area, including an estimate of the extent to which decent, safe and sanitary dwelling units affordable to displaced residents will be available to them in the existing local housing market.

D. An identification of any property within the development area which is proposed to be acquired in accordance with the redevelopment plan.

E. Any significant relationship of the redevelopment plan to (a) the master plans of contiguous municipalities; (b) the master plans of the county in which the municipality is located; and (c) the State Development and Redevelopment Plan adopted pursuant to the State Planning Act.

The statute therefore envisions that the redevelopment area must be made part of the zoning scheme of the municipality. This can be accomplished by way of an overlay zone district or an outright superceding by the plan of the town's local development regulations. If the superceding alternative is chosen by the municipality, the plan must specifically assert that it amends the zoning map. The LHRL echoes the Municipal Land Use Law requirement that the redevelopment plan be substantially consistent with the master plan or that it be designed to effectuate the master plan. The statute is careful to further require that "any provisions in the proposed redevelopment plan which are inconsistent with the master plan" must be pointed out and that where it is inconsistent, the planning board must make appropriate recommendations. Such requirements necessitate the expertise of both professional planners and attorneys. Those opposing the implementation of a redevelopment plan require the same expertise.

The planning board report is due forty-five days after referral to it by the governing body. Thereafter, the governing body is required to make a determination to adopt or not adopt the development area determination. The plan itself is thereafter prepared by either the planning board or a redevelopment agency specifically set up for that purpose. In any event, the planning board must review the plan.

The adoption of the redevelopment plan sets in motion a variety of options which were not previously available to the municipality and which are remarkably broad in scope. Specifically, the municipality may:

- "Acquire property by condemnation if necessary.

- Clear any area owned or acquired and install, construct or reconstruct public infrastructure essential to the preparation of sites for use in accordance with the redevelopment plan.

- Contract for professional services.

- Contract with public agencies or redevelopers for the undertaking of any project or redevelopment work.

- Negotiate and collect revenues from a redeveloper to defray the costs of the redevelopment entity.

- Make loans to redevelopers to finance any redevelopment work.

- Lease or convey property or improvements to any other party without public bidding."[5]

While a town may perform the tasks "in house," it is not unusual for it to create a separate agency (with the approval of the State Local Finance Board) to do so. This permits

[5] Gruel and Heyer, supra, page 7.

the appointment of individuals and consultants who have the appropriate expertise and allows the governing body to get back to governing the town and blending the redevelopment plan into its ordinances.

The redevelopment plan should detail the manner in which it is to be implemented. Any plan to involve outside entities by way of Requests For Proposals must be included in the plan. The control provided to the municipality in this regard is demonstrated by the fact that any agreement with a redeveloper prohibits the redeveloper from transferring the project without the consent of the municipality.

It is apparent that any redevelopment project requires a global approach and one which will call upon the expertise of developers, attorneys, planners, realtors, engineers, and lenders working in conjunction with municipal officials. Schenck, Price Smith & King LLP invites any inquiries in connection with this subject.