Main Street v. Hackensack: A Signal of a Possible Revival of Urban Redevelopment in New Jersey?

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In 2007, after the New Jersey Supreme Court’s landmark decision in Gallenthin Realty Development v. Paulsboro, 924 A. 2d 447 (N.J. 2007), local redevelopment in New Jersey slowed, and many municipalities and property developers were left uncertain as to the scope of Gallenthin's limitation on a municipality’s authority to exercise eminent domain powers for redevelopment purposes. The fact that it curtailed some aspects of the municipality’s authority to exercise eminent domain powers for redevelopment purposes made Gallenthin a powerful decision for property owners in New Jersey. The Gallenthin court declared that designation of an area “in need of redevelopment” under subsection (e) pursuant to N.J.S.A. 40A:12A-5 of the Local Redevelopment and Housing Law (LRHL) was unconstitutional, and to overcome the constitutional muster, municipalities must provide additional evidence that the condition in the area resulted in “deterioration or stagnation that negatively affects surrounding areas.”

Last year, the New Jersey Supreme Court decided 62-64 Main Street, LLC v. Hackensack, 110 A.3d 877 (N.J. 2015), which effectively clarified the parameters of Gallenthin and offered some much needed clarity on the issue of eminent domain authority. The City of Hackensack designated a two-block area that included plaintiffs’ property as “in need of redevelopment” under subsections (a), (b) and (d) under N.J.S.A. 40A:12A-5. Within the city’s designated area, the plaintiffs owned five contiguous lots consisting of two dilapidated buildings and several poorly maintained parking lots. In light of various factors that rendered the properties substandard, unsafe, and debilitating, the city justified its determination that the properties satisfied subsections (a), (b), and (d) as an area in need of redevelopment pursuant to
the LRHL. The plaintiffs argued that the city must show additional evidence of “deterioration or stagnation that negatively affects surrounding areas” as prescribed by Gallenthin.

The trial court disagreed with plaintiffs’ argument, reasoning that Gallenthin applied only to redevelopment designations determined under subsection (e), which applies to “underutilized” properties, and not subsections (a), (b), and (d). However, on appeal, the Appellate Division reversed the trial court and concluded that the required constitutional standard for blight expressed in Gallenthin applied to every subsection of N.J.S.A. 40A:12A-5.

In Hackensack, with a 3–2 majority decision, the New Jersey Supreme Court overturned the Appellate Division and rejected the notion that Gallenthin established a blight standard to be superimposed onto every subsection of N.J.S.A. 40A:12A-5. The Hackensack court distinguished subsection (e) from subsections (a), (b), and (d), in that the former underwent “a significant change with passage of the Redevelopment Law in 1992,” and this change “empowered a municipality’s governing body to declare property blighted in a way never authorized before—merely because the property was not put to its optimal use.” The Hackensack court made it explicitly clear that subsections (a), (b), and (d) did not suffer the same constitutional infirmities and that, accordingly, the Gallenthin holding was limited to subsection (e).

Chief Justice Stuart Rabner issued a blistering dissent, indicating that “none of the subsections expressly satisfies the constitutional standard,” and thus “the majority had taken a step backward from Gallenthin.” Justice Rabner suggested that “[t]he majority’s narrow reading of Gallenthin . . . leaves open the possibility of countless future challenges.” He also cautioned that “officials of governing bodies will be empowered to proceed down the road toward taking private property on less than a meaningful showing of actual blight.”

Less than a decade after the court’s unanimous decision in Gallenthin, the Hackensack decision may make fighting a redevelopment designation more difficult for property owners. Redevelopment activity was sluggish in the aftermath of the Gallenthin, a trend exacerbated by the economic recession. The Hackensack court’s decision, however, may help reverse that trend as municipalities and developers will no longer have to second-guess the scope of Gallenthin. Time will tell whether a more lenient legal standard, together with an improving urban development market, will yield more local redevelopment activity in the coming years in New Jersey and any other states that choose to follow the lead of the Hackensack decision.
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