
# Main Street v. Hackensack: A Cure in the Redevelopment Area Process . . . but Still in Need of an Ounce of Prevention

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Until the recent Supreme Court decision in *62-64 Main Street, L.L.C. v. Hackensack, 221 N.J. 129 (2015)* ("*Hackensack*"), many municipalities and developers of redevelopment projects were concerned that if an existing area in need designation was attacked, a court might invalidate the designation applying a broad interpretation of *Gallenthin Realty Development, Inc. v. Paulsboro, 191 N.J. 344 (2007)* ("*Gallenthin*").[1] The argument that had been advanced was that the holding in *Gallenthin* had superimposed additional constitutionally-based requirements onto all of the criteria under *N.J.S.A. 40A:12A-5 ("Redevelopment Area Criteria")*. For example, redevelopment area opponents took the position that, in addition to showing substantial evidence that the *Redevelopment Area Criteria* were met, there would need to be a separate showing that the area was "blighted" and/or that the condition in the area resulted in "deterioration or stagnation that negatively affects surrounding areas." *Hackensack* now gives municipalities and developers of redevelopment projects the legal basis to more readily rely on designations. However, is there still cause to be concerned about possible challenges?

The majority decision in *Hackensack* does provide a strong legal basis on which to sustain designations of redevelopment areas. Most notably, it clearly rejected the argument that *Gallenthin* imposed a requirement for a separate showing that the condition in the area resulted in "deterioration or stagnation that negatively affects surrounding areas." The majority decision also clearly confirmed that the holding in *Gallenthin* involved an interpretation of subsection (e) of the *Redevelopment Area Criteria* and that the constitutionality of subsections (a) (b) and (d) were never at issue in the case.

Reiterating that the *Redevelopment Area Criteria* provide a "progressive definition of blight," the Court said "[t]he drafters of the 1947 Constitution understood the enormous benefits afforded by redevelopment…" (*Id*. at 155). Citing earlier New Jersey Supreme Court decisions, it said "we cannot forget that the [law that sets forth the *Redevelopment Area Criteria*] enabled municipalities to intervene, stop further economic degradation, and provide incentives for private investment…" (*Id*. at 163), noting "the salutary social and economic policy advanced by redevelopment." (*Id*. at 157). The Court also reiterated that the focus in a redevelopment area investigation is whether an "area" is in need of redevelopment, and that single parcels -- that could not be declared blighted if considered in isolation -- could be included in a redevelopment area.

With regard to the facts before it, the Court upheld the designation based on exterior observations of the buildings, noting that the buildings showed "prominent signs of structural deterioration and were evidently in a dangerous condition, leading [the Planner] to conclude that the buildings were "a detriment to the safety, health and welfare of the community" (*Id*. at 159). The Court also upheld the designation based in part on record evidence involving two parking lots. In the case of one parking lot, where a building had been demolished, it relied on record evidence that what remained was

[1] *Harrison v. DeRose*, 398 N.J. Super 361 (App Div, 2008) also gave property owners the right to make such challenges to redevelopment areas years after the appeal time had run on the municipal action designating the area in need.

a lot with "no markings for individual parking spaces, no lighting, and no landscaping … pavement … crumbling and in disrepair…[and where] the lack of any visible separation between the parking lot and the sidewalk created a public safety hazard … [noting that] the lot's unsightliness and its inefficient use … contributed to a greater demand for on-street parking, thereby having 'a negative impact on surrounding properties'". *Id*. at 160. In the case of a second parking lot, the Court upheld a finding that the lot was as an "integral part of the property" on which a "derelict" building existed.

However, the majority opinion cannot be read as license for municipalities to approve unwarranted redevelopment designations. Further and most significant, there was a considerable dissenting opinion in *Hackensack*, and as the decision was voiced by a slim three to two majority. So before hailing *Hackensack* and dismissing *Gallenthin* altogether, it is appropriate to spend a little more time analyzing the recent case. By so doing, municipalities will guard against a future change in the composition of the Court, and will adhere to the long tradition of redevelopment in New Jersey being based on the desire to improve areas that exhibit negative conditions, not just to generate economic development as was the primary motivation in the famous United States Supreme Court case involving an area in Connecticut (*Kelo v New London, 125 S.Ct. 2566 (2005)*).

Despite the differences between the majority and dissenting opinions, both do seem to agree that a thorough review of the record designating the area in need is crucial. The determination of whether the properties were properly designated as part of the area in need of development was, in both opinions, centered on whether the determination is supported by substantial evidence in the record (*Id*. at 156, *Id*. at 185). The majority opinion emphasized that a municipality "must establish a record that contains more than a bland recitation of applicable statutory criteria …" *Id*. at 157. A resolution should "clearly articulate the factual findings" and the Court cautioned that a poorly crafted resolution could "jeopardize" the process. *Id*. at 157. Both the majority and the dissent cautioned that redevelopment area designations must be supported by more than net opinions ("we remind planning boards and governing bodies that they have an obligation to rigorously comply with the statutory criteria for determining whether an area is in need of redevelopment") *Id*. at 156; ("A reviewing court evaluates the propriety of a resolution based on particular evidence …") *Id*. at 186. Both the majority and dissent also said that the courts will continue to protect individual rights of landowners (*Id*. at 155 and 172), and cautioned against "invoking the redevelopment laws to declare property blighted solely because the property… is not put to its optimal use." *Id*. at 162, [The "sort of conclusion [that the property is not used in an optimal manner] cannot support a finding"…] *Id*. at 188. The dissenting opinion clearly concerns itself with the "sparse" findings and "passing references" in its review of resolutions in *Hackensack*. Not only should the redevelopment studies support the criteria, but the dissent would require that both the planning board and applicable governing body address the substantiated findings they make in their respective resolutions.

While the majority decision in *Hackensack* certainly appears to be a pro-redevelopment interpretation of *Gallenthin*, even it mentions in passing that although "deterioration or stagnation that negatively affects surrounding areas" does not describe every form of possible blight, such a conclusion could be drawn with respect to "perhaps most cases of blight."

Most importantly, municipalities should do all they can to ensure that the designation of the area in need has substantial evidence in the record to support its findings, and developers and their counsel must be diligent in assessing whether the record evidence presented in support of a designation contain detailed and substantiated observations on which municipal bodies can rely. A well drafted resolution that sets forth the findings, and the evidence on which the findings are based, will help to provide substantial support in the defense of an area in need of redevelopment designation.