



ATTORNEYS AT LAW

A PROFESSIONAL CORPORATION

Appellate Court Limits Scope of Redevelopment Takings

by Michael J. Ash, Esq., CRE

On January 7, 2019, the appellate division reversed a taking for redevelopment purposes and limited the scope of what constitutes a valid public purpose in a redevelopment context. In the published decision of *Borough of Glassboro v. Grossman, et al* (N.J. Super., App.Div. 2019), the court declined to find a taking for the potential of a “future parking” project a lawful taking under the *Local Redevelopment and Housing Law*, N.J.S.A. 40A:12A-1 et seq. Such a finding limits “impermissible objective of ‘stockpiling’ or ‘land assemblage’” that does not satisfy the criteria of “necessity” in a redevelopment designation.

The Borough of Glassboro engaged in a program of redevelopment in accordance with N.J.S.A. 40A:12A-7 through the designation of a “redevelopment area” and adoption of a “redevelopment plan” in the year 2000. The redevelopment plan, as amended, included the 0.91 acre vacant parcel of land acquired by Glassboro through condemnation. Glassboro asserted in its condemnation complaint that the acquisition of the subject property was “necessary” for “the specific purpose of increasing the availability of public parking in the Borough of Glassboro”. While there was no specific parking project identified or contemplated at the time of the taking, Glassboro’s attorney acknowledged that assemblage of parcels may be necessary to accomplish the overall plan.

In overturning the taking, the Court focused on the specific legislative directive in the Local Redevelopment and Housing Law that provides for condemnation of a parcel of land or building “which is necessary for the development project”. N.J.S.A. 40A:12A-8(c). In addition to the taking being necessary, it must be “reasonable” – signifying that “a municipality or redevelopment agency cannot take a parcel arbitrarily or capriciously, or based on fraudulent conduct or bad faith motives.” *Glassboro*, citing *Township of West Orange v. 769 Associates*, 172 N.J. 564, 571 (2002). The court combined the language of the statute and the holdings in prior case law to interpret the standard of a taking to be “reasonably necessary.” Accordingly, for a taking to be “reasonably necessary” a record of evidence must underpin the purpose of the taking. A mere proclamation by the municipality or redevelopment entity that a taking is “necessary” does not meet the standard of “reasonably necessary.” In this case, the court found that “land-banking” or “stock-piling” parcels for future redevelopment is not a reasonably necessary public purpose for the exercise of eminent domain.

Going forward, municipalities and redevelopment entities will be required to create a record of substantial evidence before exercising eminent domain in a redevelopment context. This case also highlights the need to create a record at the trial level.

The team of attorneys at Carlin & Ward, P.C. have successfully defended property owners and property rights subject to the redevelopment process throughout New Jersey, overturning “blight” designations and opposing redevelopment takings.

For further information, contact Michael J. Ash, Esq., CRE at

Carlin & Ward, P.C.

P.O. Box 751

Florham Park, New Jersey 07932

Telephone 973-377-3350

Website <https://carlinward.com>

