

SUPERIOR COURT OF NEW JERSEY

CHRISTINE A. FARRINGTON
JUDGE



BERGEN COUNTY JUSTICE CENTER
10 MAIN STREET
COURTROOM 323
HACKENSACK, NJ 07601
Chambers: (201) 221-0700 x25545
Law Clerk: (201) 221-0700 x25548
Fax: (201) 221-0607

September 7, 2018

VIA eCOURTS

Alyssa A. Cimino, Esq.
Cimino Law LLC
376 Hollywood Avenue, Ste. 206
Fairfield, NJ 07004

John J. Lavin, Esq.
Lavin and Associates, PC
184 Main Street
Chester, NJ 07930

James M. Turteltaub, Esq.
Carlin & Ward
25A Vreeland Road
PO Box 751
Florham Park, NJ 07932

Jeffrey C. Mason, Esq.
155 Polifly Road
Hackensack, NJ 07601

**Re: 106 Somerset, LLC v. City of Garfield, et al
BER L 766 18**

**Zion Lutheran Church, et al. v. City of Garfield, et al
BER L 886 18**

Dear Counsel:

Consolidated plaintiffs filed an action in lieu of prerogative writs challenging the City of Garfield's classification and City Council's passage of Resolution 17-439, designating their properties as an area in need of redevelopment

and seek an injunction restraining the City from condemning their properties pursuant to actions taken by the City Council. A trial de novo was held on September 6, 2018 at which counsel for the respective parties appeared.

Plaintiff Zion Lutheran Church is the owner of property located at 60 Hepworth Place, designated as Block 31.02, Lot 25 and 5 Atlantic Avenue, designated as Block 31.02, Lot 31. The property is approximately 10,645 square feet, improved with a church and associated parking. The church shares its space with a Spanish Seventh Day Adventist congregation, holds weekly worship services and ministers to members of its congregation and the community. Plaintiff Zion alleges its property is in good condition and does not meet the standards of property as being in need of redevelopment. Zion further states defendants failed to establish that its property was necessary for effective redevelopment of the other properties.

Plaintiff 42 Hepworth Associates is a New Jersey Limited Liability company which owns property located at 42 Hepworth Place, designated as Block 31.01, Lot 9.01. The property is approximately 71,218 square feet improved with a 40,000 square foot warehouse and light industrial building and associated parking. In addition the property is alleged to contain a well maintained fenced in paved area. The 42 Hepworth property is used and has been so for over 45 years for the business known as

Royal Slide Sales, Co., which imports plastic bags, zippers and other fastener products. The rear of the property is adjacent to train tracks. 42 Hepworth alleges its property is in good condition and does not meet the standards of property as being in need of redevelopment. Plaintiff 42 Hepworth denies that it was notified of a spill on the property, nor is it responsible for same, alleging the spill was caused by PSE&G relative to a transformer and has since been remediated by PSE&G.

Plaintiff Regan Realty Inc. is a New Jersey Corporation and the owner of property located at 101-103 Somerset Street, designated as Block 31.02, Lot 26. The property is improved with a one and a two-story building occupied by a window treatment business. Plaintiff Regan Realty alleges its property is in good condition and does not meet the standards of property as being in need of redevelopment

Plaintiff Vasilich Realty Group LLC is a New Jersey limited liability company and the owner of property located at 79 Passaic Street, designated as Block 24.01, Lot 14. The property is improved with legal non-conforming uses: a two-story building with retail on the first floor and five apartment on the second floor. The building is 100% occupied and plaintiff Vasilich alleges all of the apartments were recently renovated. Vasilich alleges that the tenant who received most of the violations cited for this property was removed. Plaintiff Vasilich alleges

its property is in good condition and does not meet the standards of property as being in need of redevelopment

Plaintiff Sago Group, L.L.C. is a New Jersey limited liability company and the owner of 87 Passaic Street, Block 24.091, Lot 19. The property is improved with a three-story building with retail on the first floor and four apartments on the second and third floors. The property is 100% occupied and Sago Group states that all apartments were renovated in the last two to three years. Plaintiff Sago Group alleges its property is in good condition and does not meet the standards of property as being in need of redevelopment

Plaintiff 67-69 Passaic Street Associates, L.L.C. is a New Jersey limited liability company and the owner of property located at 67-69 Passaic Street, Block 24.01, Lot 5.01. The property is improved with a three-story building with retail on the first floor and eight apartments on the second and third floors. Plaintiff 67-69 Passaic Street alleges its property is in good condition and does not meet the standards of property as being in need of redevelopment

Plaintiff Dolores Capizzi is an individual and the owner of property located at 1 Atlantic Avenue, also known as 107 Midland Avenue, Block 31.02, Lot 33. The property is improved with a one story single family residence. Plaintiff Capizzi alleges her property is in good condition and does not meet the

standards of property as being in need of redevelopment.

Plaintiff, 106 Somerset LLC, is the owner of property designated as Block 24.02, Lot 27. The property is improved with a two-story 8,796 square foot building located in the B-1 retail business district.

In 2014, the City designated Greater Bergen Community Action, Inc., and DMR Construction Management Corp. as redevelopers of the First Ward Study area which at the time was designated as an area in need of rehabilitation pursuant to the Local Lands and Building Law, N.J.S.A. 40A:12A-1 et seq. (LRHL).

The First Ward Study Area includes all lots in Block 24.01, 24.02, 31.02, 34.02 and 48.02 along with Block 31.01, Lot 9.01 and 10; Block 34.01, Lot 10 and vacated portions of Hepworth Place and Commerce Street.

In or about July 28, 2015, the City Council adopted a Resolution requesting that the Planning Board investigate whether a certain area (referred to as the "First Ward Study Area" of the City qualified as a Condemnation area in need of redevelopment under the LRHL.

On August 11, 2015, the City of Garfield by Resolution No. 15-351 authorized and directed the Planning Board to perform a preliminary investigation to determine whether certain areas located within the First Ward of the City constituted an "area in need of redevelopment" under the condemnation provisions of

the New Jersey Local Redevelopment and Housing Law (LRHL). As a result of that resolution, the Planning Board or the City retained John Szabo, AICP, PP of Burgis Associates, Inc. to prepare a study which he did, dated May 2, 2017 together with an Addendum dated November 2, 2017.

Burgis prepared the Redevelopment Study with addendum. In preparing the study, Szabo made an exterior inspection of the properties in the First Ward Study Area. The Redevelopment Study concluded all the properties in the First Ward Study Area satisfied the conditions to be designated as a Condemnation area in need of redevelopment pursuant to the LRHL.

Plaintiffs allege that the designation of the First Ward Study Area was to facilitate the establishment of a transit oriented development and is based on flawed analysis and conclusions. Plaintiffs allege the properties do not satisfy the LRHL criteria for a Condemnation Area redevelopment and the Redevelopment Study relied upon police report data in the vicinity of each property which it did not correlated to the criteria set forth in N.J.S.A. 40A:12A-5. Plaintiffs further allege that the Redevelopment Study relied upon uncorrelated fire code, building code, zoning code and health code violations which pertained to minor correctable issues and further make no correlation to the violations and the criteria set forth in N.J.S.A. 40A:12A-5. Plaintiffs allege no interior inspections,

or structural analysis was performed on any of the properties in the Redevelopment Study, which also failed to review occupancy rates, employments, utilization. The plaintiffs argue that the City's belief that the First Ward Study Area may be amenable to a more desired type of development or the belief that the area is "prime" for commuter residences does not satisfy the criteria of the LRHL.

The Board held hearings on July 27, August 24, October 26, November 16 and December 19, 2017, and took testimony from John P. Szabo, AICP, PP; and Peter G. Steck for plaintiff Garofalo, as well as testimony from the public and received into evidence the Burgis Study entitled "Area in Need of Redevelopment Study Condemnation Redevelopment Area, First Ward Study Area" dated May 2, 2017 and Addendum dated November 2, 2017. Ultimately, the Planning Board concluded that plaintiffs' properties, together with eighteen other properties, which comprise the approximately 6.31 acres in the City's First Ward Study Area, as being a Condemnation Area in Need of Redevelopment.

Szabo testified that the area in issue had previously been classified as an area in need of rehabilitation and no action had been undertaken. He noted that the area was the site of an active rail line which he designated an underperforming asset. He testified that in the designated area there was obsolescence, high building and pavement coverage, high levels of non-

compliance with the City's zoning ordinances and no cohesive land use pattern with many small lots and diverse uses. Szabo testified that rail lines are perfect locations for mixed-use communities known as transit villages. Szabo testified that the City had been the site of manufacturing businesses starting in the early 1900s. Those uses were no longer viable and the buildings which housed the uses are empty, obsolete, structurally unsound and/or difficult to rehabilitate. He found service oriented businesses dominated currently, however the area remained zoned for manufacturing. Szabo testified that the Garfield train station was 31 minutes from Manhattan and connects to Rutherford, Secaucus and Hoboken. From the station, five New Jersey businesses can be accessed and eight major highways are within five miles. Szabo described the New Jersey Transit Village program. Szabo presented examples of other communities which had created transit villages and urged the community to consider the opportunity. Szabo testified in Ward 1 residential use constituted 26 percent of the use; commercial and light industrial 56 percent; public property 11 percent churches and charitable organizations 7 percent. Manufacturing and light industry was the largest land use by acreage at 62 percent. Szabo testified that the 2002 Master Plan contemplated River Road as restaurant row and Passaic Street as the primary business corridor, but the latter was inhibited by too many

small lots, narrow frontages, and development for non-residential purposes which were being abandoned. Szabo testified that the local redevelopment housing law permitted public-private partnerships with the ability to bond and create redevelopment agencies to foster development agreements and spur revitalization. Szabo testified that in preparing the report he located conditions which satisfied criteria A, D, E, H. He testified that 16 of 27 parcels, constituting 59 percent of the properties, satisfied criteria E. Szabo testified that by reducing impervious coverage and installation of sustainable technologies, flood and storm water management would be facilitated.

There were many objectors. There were complaints regarding errors in the draft study, questions regarding whether New Jersey Transit was contemplating closing the Garfield train station.

On August 24, objectors Garofalo Brothers, Garofalo Recycling owners of property on Atlantic Street, cross-examined Szabo through their attorney, Anthony Della Pelle. Mr. Della Pelle established that the only evidence presented by Mr. Szabo was contained in either his testimony at the July meeting or his study report dated May 2017. With regard to the Garofalo's property, it was established that all the evidence was relating to those properties contained on pages 99-102 of the report.

Mr. Szabo confirmed that part of the basis for his finding that the Garofalo property met the criteria of the LRHL were fire code, police complaints, zoning violations and health code complaints. Szabo also confirmed that he noted the site was a DEP contaminated site, but had not researched the details. Szabo confirmed he was not aware that remediation had been performed on the property nor that the DEP had issued a "no further action" letter. Szabo admitted with regard to the police complaints he did not review the police jackets and did not know whether any of the police activity concerned any dangerous condition. Szabo admitted the site was a licensed waste transfer facility and admitted he did not know how long the property had been licensed. Szabo admitted that the property, being licensed, would be included in the Bergen County Solid Waste Management plan. Szabo admitted his inspection was limited to the exterior. It was established that the Garofalo property had not been included in the earlier rehabilitation study.

Szabo further admitted that parcels which were adjacent to or sandwiched between properties in need of redevelopment, were included in the area to avoid gaps in the property, whether or not those properties met the statutory criteria. Eleven properties did not meet the blight criteria but were included in area in need of redevelopment. In addition, two parcels were

designated as vacant or abandoned and were in fact an active fire house.

At the October meeting objector Garofalo Brothers presented testimony of Peter G. Steck, PP and community planning consultant, who was accepted as an expert by the board. Mr. Steck opined that the board had not been presented with substantial credible evidence sufficient to find the designated area was blighted and in need of redevelopment. Steck testified that he reviewed the Burgis study and visited the area and properties, in particular, the Garofalo properties. Specifically with regard to the Garofalo property, Steck testified it is a fully operational waste transfer station. He observed it to be clean and the building well-maintained. All licenses and permits for its operations are current. Steck testified because the property was not residential, criteria "a" would go to working conditions which he found to be clean and safe. He noted that the Burgis report listed conditions of fair to poor but there was no basis in the report for that characterization. Steck indicated he reviewed the police activity items referenced in the Burgis report and found that the Burgis report gave weight to this factor, apparently based upon the number of calls (36) without analyzing the calls. Steck testified that because the property is listed as a contaminated site it is not an indication of blight, noting that

the New Jersey Performing Arts Center in Newark is on a contaminated site. Contamination, he testified, cannot be the sole basis for determining blight. With regard to the subject property, Steck said he determined that the remediation was complete but for the periodic monitoring of the wells.

At the November 16, 2017 meeting of the board, Szabo introduced "Area In Need of Redevelopment Addendum" dated November 2, 2017. The report was posted with the City Clerk's office ten days prior to the hearing, but no copy was provided to the objectors. On cross-examination it was established that the addendum changed the basis for the designation from the "e" criteria to the "b" criteria, which is discontinuing of the use of buildings previously used for commercial, manufacturing or industrial purposes. The objector questioned Szabo on whether the fire house was a commercial, manufacturing or industrial facility, to which his response was, "It is non-residential." He admitted that it was a public facility with the proviso that it was being offered for redevelopment. Upon further cross examination, he testified the city administrator had indicated the site of fire house would be offered for redevelopment and the fire house would be relocated. The objector questioned whether the offer by the City of the site was sufficient to support a redevelopment designation under the statute. On cross-examination, Szabo admitted that sixteen of the properties were

designated under Section 3 because they adjoin properties which qualify under the substantive designation. Szabo testified that the area could not be redeveloped without the Section 3 lots being included. Szabo also testified that in addition to the A criteria for the Garofalo property, he added the D criteria.

Based upon the report, addendum and testimony, the Planning Board unanimously recommended adoption of the study and declaration of the area to be a Condemnation Redevelopment Area, which recommendation the City accepted. A review of the transcript shows no member of the Planning Board asked a single substantial question of either testifying expert.

On December 19, 2017, the Mayor and City Council passed Resolution 17-439 which accepted and adopted the recommendations of the Planning Board.

The New Jersey Constitution grants municipalities the authority to revitalize decaying and disintegrating residential, commercial, and industrial areas. Our Constitution states that the "redevelopment of blighted areas" is a "public purpose" and that private property may be taken to achieve that end, N.J. Const. art. VIII, § 3, ¶ 1, provided that owners are awarded just compensation for their property, N.J. Const. art. I, ¶ 20. The evident goal of Article VIII, Section 3, Paragraph 1 (Blighted Areas Clause) is to give municipalities the means to improve the quality of life of their residents and to

spur business opportunity and job growth. To implement this constitutional mandate, the Legislature initially passed the Blighted Areas Act, L.1949, c. 187 (codified as amended at N.J.S.A. 40:55-21.1 to -21.14 (repealed 1992)), and later the Local Redevelopment and Housing Law (Redevelopment Law), L. [*135] 1992, c. 79 (codified as amended at N.J.S.A. 40A:12A-1 to -73). The Redevelopment Law defines when an area is blighted and therefore "in need of redevelopment." N.J.S.A. 40A:12A-5. 62-64 Main Street L.L.C. v. Mayor and Council of City of Hackensack, 221 N.J. 129 (2015) at p. 134.

The essential issue is whether the designation of plaintiffs' properties as part of an area in need of redevelopment, pursuant to N.J.S.A. 40A:12A-5(a), (b), and (d), conforms to the Blighted Areas Clause of the New Jersey Constitution.

The court must assess whether the Garfield Planning Board and the Mayor and Council properly designated plaintiffs' properties as part of an area in need of redevelopment. More particularly, the court must decide whether Garfield's blight determination, based on the statutory criteria in N.J.S.A. 40A:12A-5 is supported by substantial evidence in the record. The statutory criteria for blight includes buildings that are "substandard," "unsafe," "dilapidated," or "obsolescent," buildings no longer in use for commercial or industrial

purposes, abandoned buildings, and buildings that have fallen into so great a state of disrepair as to be tenantable; and areas with buildings or improvements which, by reason of ... faulty arrangement or design... are detrimental to the safety, health, morals, or welfare of the community. An area may be determined to be in need of redevelopment if any of the following conditions are found:

Pursuant to N.J.S.A. 40A:12A-5, the Board and later the governing body, must find that any of the following conditions are met:

- 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 tenantable.
- c. Land that is owned by the municipality, the county, a local housing authority, redevelopment entity, or unimproved vacant land that has remained so for a period of ten years prior to adoption of the resolution, and that by reason of its location, remoteness, lack of means of access to developed sections or portions of the municipality, or 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 facts, 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 properties therein or other similar conditions which impede land assemblage or discourage the undertaking of improvements, resulting in a stagnant and unproductive condition of land potentially useful and valuable for contributing to and serving the public health, safety and welfare, which condition is presumed to be having a negative social or economic impact or otherwise being detrimental to the safety, health, morals, or welfare of the surrounding area or the community in general.

f. Areas, in excess of five contiguous acres, whereon building or improvements have been destroyed, consumed by fire, demolished or altered by the 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, . . . (this section does not apply to the facts herein).

h. The designation of the delineated area is consistent with smart growth planning principles adopted pursuant to law or regulation.

The government's taking of private property is an extraordinary event. As our Supreme Court has cautioned, [t]he condemnation process involves the exercise of one of the most awesome powers of government. City of Atl. City v. Cynwyd Invs., 148 N.J. 55, 73 (1997). The immense authority that municipalities have to designate areas in need of redevelopment and ultimately take private property for that purpose can serve as "a valuable tool" to reverse the effects of economic deterioration. Gallenthin Realty Development, Inc. v. Borough of Paulsboro, 191 N.J. 344 (2007) at 365. "[B]ut that power, of course, can be abused. In either case, use of the government's authority has lasting, serious consequences for owners of private property- not all of whom have the means to challenge official actions and try to protect homes and businesses they have lived in and operated for years". 62-64 Main Street, supra, Dissenting, Rabner at 171-172.

Planning Boards and governing bodies have an obligation to

rigorously comply with the statutory criteria for determining whether an area is in need of redevelopment. "In general, a municipality must establish a record that contains more than a bland recitation of applicable statutory criteria and a declaration that those criteria are met." 62-64 Main Street, supra, 157. A resolution adopted by a planning board or governing body should clearly articulate the factual findings that support the statutory criteria for designating an area as in need of redevelopment. The court is mindful, however, "that after the municipal authorities have rendered a decision that an area is in need of redevelopment, that decision is invested with a presumption of validity." 62-64 Main Street, 158.

Judicial review of a blight determination" must be informed by an understanding "of the salutary social and economic policy" advanced by redevelopment statutes. Ibid. So long as the blight determination is supported by substantial evidence in the record, a court is bound to affirm that determination. Gallenthin, supra, 191 N.J. at 372-73, (citing N.J.S.A. 40A:12A-6(b)(5)). That said, the discretion exercised by municipal authorities "is not unfettered." Levin v. Tp. Committee of Tp. Of Bridewater, 57 N.J. 506 (1971) at 537. Judicial deference does not mean that a court is a rubber stamp. A blight determination based on a net opinion or insubstantial evidence cannot stand. Gallenthin, supra, 191 N.J. at 372-73.

In reviewing the validity of the blight declaration in this case, the issue is not whether one isolated lot might have some redeeming features, but whether an "area" is in need of redevelopment. Levin, supra, 57 N.J. at 539. For example, where an area in need of redevelopment encompasses a large residential or industrial/commercial area, a municipality may "draw within a blighted area certain houses or buildings which are in good condition" because, to do otherwise, "would be in some instances to defeat the overall legislative purpose, namely, the redevelopment of blighted areas." Wilson v. City of Long Branch, 27 N.J. 360 (1958) at 381; see also Gallenthin, supra, 191 N.J. at 372. ("[N]on-blighted parcels may be included in a redevelopment plan if necessary for rehabilitation of a larger blighted area."); Levin, supra, 57 N.J. at 539. ("The fact that single parcels in the area are useful and could not be declared blighted if considered in isolation is basis neither for excluding such parcels nor for invalidating the designation."). Nothing in the Blighted Areas Clause or the Redevelopment Law suggests that an area in need of redevelopment must meet some minimum size requirement. Maglies v. Planning Bd. of E. Brunswick, 173 N.J. Super. 419, 422, (App. Div. 1980) (finding blight "even though confined to a relatively small area"),

certif. denied, 84 N.J. 462(1980); see also Wilson, supra, 27 N.J. at 37 (noting that "courts will not interfere with the boundary lines adopted in the absence of palpable abuse of discretion").

The survey of properties set forth in the Burgis report and addendum is based only on exterior observation. The ratings of "fair" and "poor" appear to the court to relate to purely cosmetic issues as no interior or structural inspections were conducted. The court is aware of no objective standards by which the structures were rated good, fair or poor. Indeed, Mr. Szabo and Mr. Burgis, are planners, not engineers or architects. There was no assessment in the study of the nature and level of the economic activity being conducted at the various properties. With the single exception of the property known as 64 Palisade Avenue, which was deemed unfit for habitation on account of mold, the code violations appear to the court to be minor compliance issues, such as carbon monoxide and smoke detector issue. The conclusions of the report and the addendum thereto present the court with no evidence, but rather are a mere recitation of the statutory criteria. The court finds the opinions set forth in the report and the addendum to be net opinions. The City appears to have relied upon the conclusion that since its earlier effort at rehabilitation failed, the failure was proof that the diverse ownership of individual

property or other problems with title was the cause of that failure. There is no substantial evidence in the record to support that conclusion.

By way of example, as to the property commonly known as 67 Passaic Street, the condition of which, based upon exterior inspection was "fair" the report detailed 117 police calls between November 2008 and February 2016. Among those are 15 ambulance calls, 13 general disputes, 15 fire and burglar alarm related calls, several theft calls, shoplifting, suspicious incidents, domestic disputes, suspicious persons, emotionally disturbed person, motor vehicle, stolen motor vehicle. In addition, there were minor zoning violations, including failure to obtain construction permits, violation of sign in window ordinance, insufficient rubbish containers, leaking roof and violation of municipal ordinance regarding storage of motor vehicles.

The health code complaints were three: tenant found rodent droppings in kitchen and a customer of the barber shop complained of having contracted fungus from a haircut and unsanitary conditions which were corrected. The conclusion is, "The subject property has an extensive history of fire code violations dating back more than 10 years. In addition there has also been a history of zoning and health code violations. . . The existing conditions combined with conditions at the

property are consistent with the criteria noted: b) The generality of buildings are substandard, unsafe, unsanitary, dilapidated, or obsolescent, or possess any of such characteristic, or are so lacking in light, air, or space, as to be conducive to unwholesome living or working conditions; and e) 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".

It is not clear to the court, and the report does not explain, how the specific violations provide a basis for either criteria.

With regard to the Garofalo property, the criteria section notes, "In its current condition the exterior inspection of the subject property can be described as fair to poor. Although this development type is not uncommon in the area, the conditions and noted violations and activity at this location are beyond reported activities at other properties in the study area. The subject property has an extensive history of fire code, police and health code violations. Since 2008 there have been 36 police calls. There is also an active case on the NJDEP

Known Contaminated Site List." The report then concluded the property meets criteria "a". Of note, the Garofalo property is the only property housing a waste transfer operation in the First Ward. Also of note, of the thirty-six police calls between 2008 and December 2015, 2 were ambulance calls, 7 were a 911 misdials or abandoned 911 calls, 5 were motor vehicle crashes, 7 were smoke or fire alarms, 5 were fire calls. The 10 remaining were miscellaneous, including community policing, administrative duties and "posts". The health code violations concerned three reports of offensive odors on summer days. The NJDEP matter, as noted previously, was remediated and being monitored.

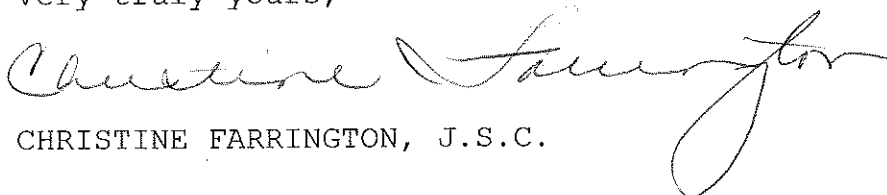
The court finds the City appears to be attempting to bootstrap a finding of a need for redevelopment with vigorous code enforcement and diligent law enforcement.

Finally, one of the criteria upon which the City's expert relies is "e," "A growing lack or total lack of proper utilization of areas caused by the condition of the title, diverse ownership of the real properties therein or other similar conditions which impede land assemblage or discourage the undertaking of improvements..." However, of the properties listed in the Szabo report, 16 do not meet the redevelopment criteria. Several others are questionable, including the fire house which was initially listed as abandoned when in fact it is

fully operational. Of the 16 admitted not to meet the criteria, they are deemed includable for the effective redevelopment of properties which do meet the criteria pursuant to Section 3. Properties found to meet the criteria by Szabo are nine. Szabo argued that although the ratio of properties meeting the criteria compared to those not meeting the criteria is 36:64, the board should consider the sizes of the properties which he found to meet the criteria. The court finds the relative sizes of lots cannot in this instance support the "e" criteria. By arguing lot size, particularly with regard to the Garofalo and Hepworth properties (approximately 1.23 acres and 1.04 acres, respectively), the City undermines its' argument for the "e" criteria which permits designation as in need of redevelopment because of diverse ownership. Ownership is no more diverse because of the size of individually owned properties.

For the reasons herein, the court vacates the designation of the First Ward Study Area as being a Condemnation Redevelopment Area under the LRHL. Counsel for plaintiffs shall submit an order pursuant to the five day rule which incorporates this decision by reference.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Christine Farrington". The signature is written in dark ink and is positioned above the typed name.

CHRISTINE FARRINGTON, J.S.C.