

# Navigating a Changing Redevelopment Environment

Triad Associates

Almost all municipalities, particularly older or urban communities, have areas in need of redevelopment. The redevelopment process can be a lengthy and time consuming one. It requires local government to define precisely its redevelopment goals and objectives and to work with a private redeveloper to implement these goals. Where eminent domain is used as a necessary component of the redevelopment process, the process becomes even more complex.

But, it is also a necessary step to meeting many municipal goals and objectives involving job creation, new housing opportunities, economic development and “smart growth.” The redevelopment process can also enhance the local municipality by promoting improvements that focus on the rebirth of a community within the broad context of the “public good.”

Generally, the local planning board acts at the request of the municipal government to investigate potential redevelopment areas, and must hold public hearings before reporting back to the governing body on their recommendations for a potential redevelopment site. Following a resolution to designate the area as a redevelopment site, the local government must then adopt a redevelopment plan and ordinance to provide guidance on the future redevelopment of the subject site.

Redevelopment has long been a hot topic for municipalities in the State of New Jersey, and it just got hotter. Both the New Jersey Courts and the U.S. Supreme Court have rendered decisions that have raised serious questions about the redevelopment process. In addition, there are more than 30 Bills in the New Jersey Legislature that are on the table to adopt, amend or supplement the statutory laws of New Jersey regarding redevelopment.

Recent New Jersey court cases, including *Gallenthin Realty Development v. Borough of Paulsboro*, have ruled in favor of the land owner and have seemingly placed a greater burden on local government to document the need for redevelopment. So what are the important steps that municipalities must consider in moving forward with a redevelopment proposal?

- 1. First Steps.** Be sure to get the advice of legal counsel (expert in the area of redevelopment law) who can advise the community of how to steer clear of the recent pitfalls highlighted by New Jersey and federal court decisions.
- 2. Defining the Redevelopment Area.** Be precise in your definition of the redevelopment area, and be certain that the delineation can be tied to a documented need for redevelopment in that area.
- 3. The Redevelopment Plan.** The redevelopment plan should have well defined goals and objectives that are supported substantially by data and that lead to

outcomes and remedies that address the need for redevelopment. The plan also must ensure that various possible alternatives to redevelopment (particularly where eminent domain is utilized) have been examined and the recommended course of action is well documented as the best or preferred option.

- 4. Documentation.** As in any complex process, documenting the various steps of the redevelopment effort is critical. Keeping thorough records that define the process, documenting municipal due diligence, outlining opportunities for comment, recording public comment and ensuring that the appropriate actions by relevant public bodies have occurred is absolutely essential in order to meet any challenge or action that may be brought against the municipality as a result of the redevelopment effort. A clean and clear title to the property being proposed for redevelopment is also a necessary outcome in order to proceed with any redevelopment project.

New Jersey law allows for the taking of private property for public use by the process of condemnation under the powers of eminent domain. Moving forward in what is likely to be a very fluid redevelopment environment, the roles of land use attorneys, consultant, and vendors representing towns, private landowners and the redevelopers are increasingly important in order to keep a municipality's plans moving smoothly and on track.

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