NEW JERSEY LAWYER

Print Page

SATURDAY APRIL 28, 2007 Last modified: Friday, April 27, 2007 3:21 PM EDT

Definition of blight goes before the high court

By Robert G. Seidenstein

Vacant land, depending on the circumstances, can be considered blighted for purposes of a redevelopment plan, a lawyer for a municipality told the New Jersey Supreme Court last week in a crucial case that could lead to a redefinition of government's power to turn land over to private parties for redevelopment.

M. James Maley Jr. of Maley & Associates in Collingswood, representing Paulsboro in the major eminent-domain showdown, also told the justices that municipalities do not generally have their plans for redevelopment nailed down at the time land is declared blighted.

His comments prompted Justice Barry T. Albin to question why municipal officials should not at least have "to clearly articulate how the piece of property fits into the total picture … in terms of making out a case for blight."

What constitutes blight and how far the municipality must go in proving it is at the heart of *Gallenthin Realty Development, Inc. v. Borough of Paulsboro*.

At issue are the town's powers under the Local Redevelopment and Housing Law and whether the legislature has exceeded the state constitution in enacting the statute.

The state constitution says "blighted areas" held in private hands may be taken for redevelopment.

Paulsboro is seeking to redevelop its Delaware River waterfront as a port facility, but the owner of what essentially is vacant land claims the property simply doesn't qualify as blighted.

'Skimpy' record

Peter D. Dickson of Potter & Dickson in Princeton, representing the owner, also said the town's redevelopment plan could proceed without the property, a 63-acre parcel comprised mostly of wetlands. He said the town had developed a "skimpy" record in support of deeming the land blighted.

He told the court the definition of blight requires land to have "a very serious impact on the surrounding community."

But Albin suggested the property owned by Dickson's client "cannot be divorced from the larger picture."

In questioning Dickson, the justice said even if the property "standing alone" could not meet the condition of blighted, why should that stop it from still being viewed as part of the "larger scheme" needed for redevelopment?

Dickson conceded the statute allows property that is not blighted to be included in a redevelopment area.

But, he said, the town did not even look at its own master plan, which had concluded his client's land was "probably undevelopable wetlands" and therefore of little value in the overall redevelopment scheme.

When it was Maley's turn to argue, Justice Roberto A. Rivera-Soto suggested the town was "seeking *carte blanche*."

Maley responded, "I can tell you, today, in 2007 what we plan to do with the property." But he said such plans are not required at the

time property is declared blighted.

'Wildcard'

Public Advocate Ronald K. Chen, who argued on behalf of limiting what government could do regarding taking private land for redevelopment, decried what he called the "wildcard definition of blight" that, he said, seems to cover any plans a municipality might have.

Dickson contended the municipal redevelopment law "must remain faithful to its constitutional source and that source is the word 'blighted.'

"Blighted is not a legislative judgment. Blighted is a statement of current and historical fact" about a particular piece of property. It is, he added, a "strongly negative word."

Private-property advocates and municipalities statewide are keenly interested in the case, which is offering the justices their first look at the 1992 statute. Towns want the law and the constitution read broadly to maximize powers they view as benefiting the public. But property rights advocates say the towns are going too far in paving the way for private redevelopment at landowners' expense.