

NOT FOR PUBLICATION UNLESS APPROVED BY
THE COMMITTEE ON OPINIONS

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: ESSEX COUNTY
DOCKET NO. ESX-L-9916-04

MULBERRY STREET AREA
PROPERTY OWNER'S GROUP, an
unincorporated association,

Plaintiff,

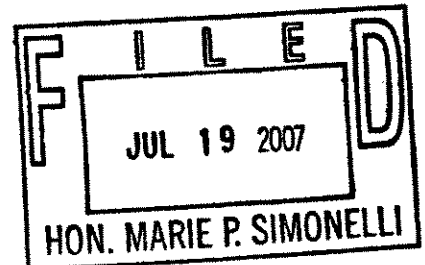
v.

CIVIL ACTION

CITY OF NEWARK, through
its Mayor and Council, a
municipal corporation of
the State of New Jersey,

OPINION

Defendant.



Decided: July 19, 2007

Appearances: John H. Buonocore, Esq., for plaintiff
(McKirdy & Riskin, P.A., attorneys)

David A. Clark, Esq., for defendant
(GluckWalrath, LLP, attorneys)

M.P. SIMONELLI, J.S.C.

BACKGROUND

This is an action in lieu of prerogative writs in which plaintiff, Mulberry Street Area Property Owner's Group, challenges the declaration of the Municipal Council

of defendant, City of Newark (hereinafter collectively referred to as "the City"), that nine Blocks (containing one hundred and sixty six Lots) located along Mulberry Street constitute an area in need of redevelopment under N.J.S.A. 40A:12A-5 (the "Mulberry Street Area").

FACTS

The Court read and considered the Briefs, supplemental Letter Briefs and the Exhibits marked into evidence. The court also heard and considered the arguments of counsel. Based upon the foregoing, the court makes the following findings of fact:

The Mulberry Street Area

Plaintiff is a group of homeowners, tenants and business owners in the Mulberry Street Area. The Mulberry Street Area is comprised mostly of single and multi-family homes, restaurants, offices, retail stores, commercial businesses and private and for-pay parking lots serving the public. It consists of approximately fourteen acres of land located on either side of Mulberry Street in the southeast portion of the Central Business District. It is

bounded on the north by Green Street, on the south by Oliver and Scott Streets, on the east by McCarter Highway, and on the west by Orchard Street. To the immediate west is the Federal Post Office and Courthouse and City Hall Complex, several blocks north are the New Jersey Performing Arts Center, the Gateway Complex and Newark Penn Station, and one block north is the new sports arena, which is presently under construction.

The Mulberry Street Redevelopment Project

Emile Farina (Mr. Farina") and Bruce Wishnia (Mr. Wishnia") are principals of a developer known as Newark Redevelopment Corp. ("NRC"). Mr. Farina is a former aide to Newark Council Member Bessie Walker ("Council Member Walker") and was chairperson of a fund-raiser for Council Member Hector Corchado ("Council Member Corchado"). NRC, Mr. Farina, Mr. Wishnia and/or their family members also made numerous political contributions to former Mayor Sharpe James and/or Council Members Walker, Corchado, Gayle Chaneyfield-Jenkins ("Council Member Chaneyfield-Jenkins"), Augusto Amador ("Council Member Amador") and Donald Bradley ("Council Member Bradley").

On April 18, 2002, NRC entered into an Agreement of Sale with Scott-Martin, Inc. ("Scott-Martin") and S.H.L. Organization ("S.H.L.") to purchase properties located in the Mulberry Street Area and designated as Block 878, parts of Lots 1 to 3, 5, 48, 49 and 50 (a/k/a 298-308 Mulberry Street) and possibly Block 879, Lot 8 (a/k/a 296 Mulberry Street). These properties are operated as for-pay public parking lots. Steven Lenter ("Mr. Lenter") is the President of Scott-Martin and S.H.L.¹

On April 18, 2002, NRC also entered in an Option Agreement with Scott-Martin, S.H.L., Mr. Lenter, Ell and Ell Corp., Phylee Corp., Newark Parking Corp., Orchard Parking Corp., and A.J.L. Holding Corp. Mr. Lenter is also the President of these other entities. The Option Agreement granted NRC the option to purchase the following additional properties located in the Mulberry Street Area:

Block 877: Lots 1 to 10 (a/k/a 270-
 286 Mulberry Street and
 70 Walnut Street);

Blocks 878: Lots 17, 18, 45, 46, 47,
 48, 49 (a/k/a rear of
 296 Mulberry Street);

¹ Mr. Lenter also made numerous political contributions.

Block 879: parts of Lots 10, 13, 15
and 17 (a/k/a rear of
Mulberry Street);

Block 881: Lots 6 to 23 (a/k/a 299-
309 Mulberry Street);

Block 882: in its entirety (a/k/a
13-27 Orchard Street).²

Except for two Lots, all of these properties are operated as for-pay public parking lots.

Sometime in late 2002, NRC and City officials discussed a proposal to develop the Mulberry Street Area into 2,000 market rate condominiums, commercial establishments, off-street parking and a variety of open space ("the Mulberry Street Redevelopment Project").

In a Memorandum, dated October 8, 2002, from NRC to the City's Business Administrator, Richard Monteilh ("Mr. Monteilh"), Mr. Farina, Mr. Wishnia and Dean Geibel ("Mr. Geibel"); a principal of another developer known as Metro Homes, confirmed the following agreement reached by the parties as a result of discussions:

² Block 882 is not involved in this case.

As discussed, here is a list of points needed to fast track the Mulberry Street Redevelopment [Project]:

1. Confirm that the City is agreeable to a redevelopment plan as opposed to a Master plan/zone change or use variance;
2. We need (sic) to enter into a Memorandum of Understanding written by Brach Eichler that accomplishes, among other things, the following:
 - a. The City Council will need to pass a resolution engaging a planner to prepare a report establishing that the subject area is in need of redevelopment.
 - b. [NRC] would be appointed the designated redeveloper when the subject are (sic) is declared in need of redevelopment.
3. The Municipal Council will need to pass a resolution authorizing our Planner to prepare the report establishing that the subject area is in need of redevelopment. Such a resolution and the Memorandum of Understanding should be passed by the City Council at the same meeting. In order for us to expedite the start of development we would recommend that the forgoing be scheduled for the next municipal council agenda.
4. It is extremely important that the City and Newark Development negotiate for the buyers/future resident's tax abatement, and or a

tax incentive deal for this project.

5. After the planning report is complete, we will need the City's cooperation in facilitating an orderly and time sensitive dead line.
6. Also critical to this plan, we need to have a distinctive direction for our planners, engineers, & architects on whether Mulberry Street will be affected by a 15 foot widening or not be touched at all as our planners are recommending in conjunction with the State department of transportation that also agreed that Mulberry Street should not be widened.

On about November 14, 2002, Mr. Farina and Mr. Wishnia met with the Director of the City's Department of Economic and Housing Development, Dr. Nathan Allen ("Dr. Allen"), to discuss Dr. Allen's recommendation that the Mulberry Street Redevelopment Project could be best accomplished through an expanded use of the redevelopment concept. In a confirming letter to Dr. Allen, dated December 6, 2002, NRC proposed that the redevelopment area be expanded to include Blocks 877, 878, 879, 881 and 887 in their entirety and a portion of Blocks 872, 876 and 884. In that letter, NRC also proposed as follows, in pertinent part:

We would propose that the City take the steps to declare the entire Area as an "area in need of redevelopment" in accordance with our meeting. NRC would be prepared to retain a professional planner to assist the City in assembling the information required for such investigation.

Once the declaration is complete, NRC proposes that the City adopt a redevelopment plan (the "Plan") that would anticipate the use of the Area for housing in the densities and configuration that we discussed at our meeting. The Plan would also recognize the dedication of the additional land needed for rights-of-way. As we discussed, NRC's planner will work with your office to prepare the report which will provide the basis for the declaration. NRC's planner will also assist in the preparation of the Redevelopment Plan and will assist the City at the hearings.

NRC (or an urban renewal corporation affiliated with NRC) anticipates designation as the redeveloper for the entire Area, subject to the following terms and conditions:

NRC then explained in the letter how it intended to proceed on the Mulberry Street Redevelopment Project in six phases. Phase A would begin immediately and would include all of the land within Blocks 878, 879 and 887. For the next five phases, NRC would acquire property through negotiation with the owner. If those negotiations were unsuccessful, NRC would:

[ask] the City to utilize its condemnation powers to acquire those properties. NRC would provide the City with the funds necessary for acquisition and relocation at the time that it requests the City's assistance on that phase.

Except for Mr. Lenter and his entities, there is no evidence that NRC negotiated with any of the property owners in the Mulberry Street Area to purchase their property.

The City's Other Dealings With NRC

NRC was involved in another redevelopment project known as the Newark Redevelopment Scattered Sites Project. On March 17, 2004, the City passed Resolution No. 7RJ, which authorized the Mayor to enter into a contract to sell twelve City-owned properties to NRC for the below market-price of \$4.00 per square foot. Resolution No. 7RJ passed by a vote of 9-0, with Council Members Amador, Corchado, Chaneyfield-Jenkins, Walker and Bradley voting in favor of it.

On September 1, 2004, the City passed Resolution No. 7RBY, which amended Resolution 7RJ to reflect the correct

listing for one of the Blocks. Resolution No. 7RBY passed by a vote of 8-0. Council Member Amador abstained and Council Members Corchado, Chaneyfield-Jenkins, Walker and Bradley voted in favor of it.

The City's First Attempt To Declare The Mulberry Street Area As An Area In Need Of Redevelopment

On December 19, 2002, the City passed Resolution No. 7RCN, which authorized the Central Planning Board of the City of Newark (the "Planning Board") to make an investigation and hold a public hearing to determine whether the Mulberry Street Area should be declared an area in need of redevelopment under N.J.S.A. 40A:12A-1, et seq. (the "First Resolution"). The First Resolution passed by a vote of 7-0. Council Members Corchado and Chaneyfield-Jenkins abstained and Council Members Amador, Walker and Bradley voted in favor of it.

The First Resolution included the following properties:

Block 872: Lots 1, 4, 30, 31, 33,
 34, 35, 36, 37, 40, 41,
 42, 44, 48, 50, 51, 52,
 54 and 56 (a/k/a 65-79

Green Street, 1-15 Elm Street and 216-252 Mulberry Street);

Block 876: Lots 1, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 51, 53, 56 and 57 (a/k/a 2-16 Elm Street, 53-77 Walnut Street and 256-268 Mulberry Street);

Block 877: in its entirety (a/k/a 62-96 Walnut Street, 1-35 Cottage Street, 270-286 Mulberry Street and 623-637 McCarter Highway);

Blocks 878 & 879: in their entirety (a/k/a 2-34 Cottage Street, 66-90 East Kinney Street, 290-320 Mulberry Street and 593-621 McCarter Highway);

Block 881: in its entirety (a/k/a 1-29 Beach Street, 32-64 East Kinney Street, 299-323 Mulberry Street and 32-56 Orchard Street);

Block 884: Lots 11, 12, 13, 15, 16, 17, 18, 19, 20, 22, 24, 25, 26 and 27 (a/k/a 49-61 East Kinney Street, 17-31 Scott Street and 327-339 Mulberry Street); and

Block 887: in its entirety (a/k/a 63-93 East Kinney Street, 2-18 Oliver Street, 326-338 Mulberry Street and 577-591 McCarter Highway).

On March 8, 2003, the Planning Board held a hearing on the First Resolution. By letter, dated March 24, 2003, plaintiff's attorney notified the City and the Planning Board that plaintiff objected to any determination that the Mulberry Street Area was an area in need of redevelopment and would appear at the next hearing on March 31, 2002. The hearing continued on March 31, 2003. Plaintiff and its attorney appeared and raised objections.

On May 21, 2003, City passed Resolution No. 7REE, which rescinded the First Resolution. This Resolution passed by a vote of 7-2. Council Member Walker did not vote and Council Members Amador, Corchado, Chaneyfield-Jenkins and Bradley voted in favor of it. Plaintiff claims that the City rescinded the First Resolution because its planning expert's testimony showed serious deficiencies in his determination that the Mulberry Street Area was an area in need of redevelopment. Plaintiff also claims that after the rescission, political contributions increased twenty-five percent.³

³ Plaintiff claims that political contributions through April 2006 totaled \$67,475.00.

The City claims that it rescinded the First Resolution because the Council Member who represented the Ward in which the Mulberry Street Area is located wanted to meet with his constituents who had expressed opposition, including plaintiff, and NRC.

Efforts To Gain The Community's Support For The Mulberry Street Redevelopment Project

After the rescission of the First Resolution, NRC and Metro Homes made known their intention to proceed with the Mulberry Street Redevelopment Project. They invited all Mulberry Street Area owners and occupants to a presentation on December 15, 2003, regarding the plan for the Mulberry Street Redevelopment Project. Mr. Monteilh appeared at the presentation and expressed the City administration's position on the project. He stated, among other things, that the City administration would like to see the Mulberry Street Redevelopment Project happen. In addition, several newspaper articles appeared in the Star Ledger, which show widespread public dissemination and general public knowledge of the reported attitude of the City administration's desire to designate the Mulberry Street Area as an area in need of redevelopment so that it could

move forward with the Mulberry Street Redevelopment Project. In other words, it was no secret that the City wanted to blight the Mulberry Street Area so that the Mulberry Street Redevelopment Project could be accomplished and NRC and Metro Homes would accomplish it.

The City's Second Attempt To Declare The Mulberry Street Area As An Area In Need Of Redevelopment

On January 5, 2004, the City called a special meeting and public hearing to discuss a new Resolution regarding the Mulberry Street Area. That same day, the City passed Resolution No. 7RA, which authorized the Planning Board to make an investigation and hold public hearings to determine whether the same properties set forth in the First Resolution, plus a portion of Block 873, Lot 1, should be declared an area in need of redevelopment (the "Second Resolution"). The Second Resolution passed by a vote of 5-2. Council Member Amador did not vote, Council Members Corchado, Walker and Bradley voted in favor, and Council Member Chaneyfield-Jenkins voted against it.

By letter, dated May 7, 2004, plaintiff's attorney notified the City and Planning Board that plaintiff

objected to declaring the area in the Second Resolution as an area in need of redevelopment and would appear at the hearing. The hearing was held on July 19 and 22, August 5 and September 27, 2004.

The Planners' Opinions

Plaintiff's planner, Peter Steck ("Mr. Steck"), and the City's planner, David Roberts ("Mr. Roberts"), from the firm of Schoor DePalma, Inc., agree that, to declare an area in need of redevelopment, a municipal governing body must find one or more of eight statutory criteria set forth in N.J.S.A. 40A:12A-5(a) through (h). The criteria mentioned by Mr. Roberts are:

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 untenable.

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 factors, 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 property therein or other conditions, resulting in a stagnant or not fully productive condition of land potentially useful and valuable for contributing to and serving the public health, safety and welfare.

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

The City retained Mr. Roberts' firm to prepare an investigation report regarding the Mulberry Street Area. Mr. Roberts issued a preliminary Redevelopment Report on April 21, 2004 and a revised Report on June 30, 2004, which included comments from the City's Planning Department (the "Roberts Report"). In compiling the Roberts Report, Mr. Roberts relied upon Sanborn maps from 1892, external

inspections of the properties, aerial photographs and photographs of each Lot.

Mr. Roberts also testified at the hearing on July 19 and 22 and August 5, 2004. He classified entire the Mulberry Street Area as an area in need of redevelopment under the "other condition" provision of N.J.S.A. 40A:12A-5(e). As to N.J.S.A. 40A:12A-5(a), he testified that only four individual Lots qualified for redevelopment under this criteria and the Mulberry Street Area as a whole did not. As to N.J.S.A. 40A:12A-5(b), he testified that only two individual Lots qualified under this criteria and it did not apply to the entire Mulberry Street Area. As to N.J.S.A. 40A:12A-5(d), he testified that only twenty-four individual Lots met this criteria and it did not qualify the entire Mulberry Street Area as an area in need of redevelopment. He also testified that N.J.S.A. 40A:12A-5(c), (f) and (g) do not apply to the Mulberry Street Area and N.J.S.A. 40A:12A-5(h) did not apply if N.J.S.A. 40A:12A-5(e) was not met.⁴

⁴ Although Mr. Roberts also classified two Lots under N.J.S.A. 40A:12A-5(a) (Block 877, Lots 23 and 25) and four Lots under N.J.S.A. 40A:12A-5(d) (Block 877, Lots 23, 24, 25 and 41), the City subsequently excluded those Lots from the Mulberry Street Area.

Mr. Roberts admitted that he recommended that the City declare the Mulberry Street Area an area in need of redevelopment entirely under N.J.S.A. 40A:12A-5(e) because they consist primarily of parking lots, storage yards and vacant land that exhibit "a growing lack of proper utilization resulting in a stagnant and not fully productive condition of land" and "consumes land that could otherwise be available for much more productive uses" He testified that he classified any Lot where the land value exceeded the value of taxable improvements under N.J.S.A. 40A:12A-5(e).

Mr. Roberts also admitted that the application of N.J.S.A. 40A:12A-5(e) is not based on the condition of title or on the diversity of ownership of the parking lots, which are under common ownership. As to the storage yards and vacant lots, he admitted that he did not research their ownership. He also did not investigate building permits, building code violations, tax arrears, occupancy rates or number of people employed in the Mulberry Street Area. He also did not inspect the interior of any buildings, speak to the parking lot owners or customers about the use or occupancy of parking spaces, inquire about the revenue generated by municipal parking taxes or present any data to

support his opinion that redevelopment would increase tax revenues generated by the existing surface parking lots.

Plaintiff's planner, Mr. Steck, opined that the Roberts Report was flawed in many respects and concluded that there is no substantial evidence which would satisfy any criteria for classifying the Mulberry Street Area as an area in need of redevelopment.

Block 872

The Mulberry Street Area includes all nineteen Lots in Block 872. The Lots contain the following:

Lots 1 & 4:	parking lot on Green Street associated with Lots 48, 50, 51 and 52;
Lots 30 to 36:	three-story brick multi-family residential buildings on Elm Street;
Lot 37:	one-story building on Mulberry Street occupied by QXT Nightclub;
Lots 40 & 41:	mixed use buildings on Mulberry Street with City Café and Popeye's Restaurant on the first

floor and apartments on the second and third floors;

Lot 42: two-story commercial building on Mulberry Street occupied by the Lawyer's Diary and Manual;

Lot 44: two-story commercial building on Mulberry Street occupied by the New Jersey Law Journal;

Lots 48, 50
51 & 52: commercial parking lots on Mulberry Street used for the federal building;

Lot 54: three-story mixed use building on Mulberry Street with a convenience store on the ground floor and apartments above; and

Lot 56: three-story mixed use building on Mulberry Street with the recently rehabilitated Caverna Bar and Restaurant on the ground floor and apartments above.

Mr. Roberts classified Block 872 in need of redevelopment under N.J.S.A. 40A:12A-5(e). He specifically found that Lots 1, 4 and 48 through 54 are parking lots, which are in a stagnant and less than fully productive condition for an otherwise valuable downtown property that

could provide housing, jobs, or goods and services contributing to the public health, safety and welfare.

Mr. Steck stated that Mr. Roberts' finding as to Lot 54 is inaccurate because it is not a parking lot and contains a three-story building with an apartment over a convenience store that contributes to the pedestrian activity in the area and represents a scale that comports with other development in the area.⁵ He also stated that Mr. Roberts' "not fully productive" finding as to Lots 1, 4 and 48 through 52 was not linked with a "condition of title, diverse ownership of the real property therein or other conditions", otherwise every parking lot in Newark could be automatically claimed as eligible for an area in need of redevelopment designation.⁶ He further stated that:

This automatic conclusion regarding any surface parking lot in the area does not make sense especially acknowledging the presence of surface parking lots in the already "redeveloped" Gateway Urban Renewal Area and the NJPAC Renewal Area and the lack of adequate parking for the federal and city buildings adjacent to [the Mulberry Street Area].

⁵ It is also inaccurate because there is no Lot 53 in Block 872.

⁶ N.J.S.A. 40A:12A-5(e).

Mr. Steck concluded that Lots 1 and 4 are not in need of redevelopment because the parking lot is fenced, paved and in good condition, a new owner recently purchased, repaved and re-striped it, and it is a very active parking facility that contributes to real estate and parking tax revenue to the City. As to Lot 48 to 52, he concluded that they are not in need of redevelopment because the commercial parking lot provides parking for the federal buildings, it is fenced and the pavement is in good condition. It was also recently purchased by a new owner and repaved and re-striped, and it is a very active parking facility that contributes real estate and parking tax revenue to the City.

As to all other Lots in Block 872, Mr. Roberts found that they contain a mixture of residential and commercial uses which were occupied for the most part and in fair condition although most would benefit from rehabilitation and/or restoration efforts. For example, as to Lots 30 to 36 (multi-family buildings), Lot 37 (QXT Nightclub building), Lots 40, 41, 42 (Lawyer's Diary building), 44 (Law Journal building) and Lot 56 (mixed use building with apartments and Caverna Bar and Restaurant), he found that they appear to be occupied and, except for Lot 37, do not

appear to exhibit conditions in the statutory criteria describing a redevelopment area. He concluded, however, that the Planning Board could determine that they are necessary for inclusion in the redevelopment area because they are bounded on three sides by portions of Blocks 872, 873 and 873 that exhibit conditions of various redevelopment criteria. As to Lots 42 and 44, he concluded that they might possibly serve as the anchors around which an effective redevelopment plan can be formulated to address the problems on the surrounding properties, making the alignment of the redevelopment area boundary with the rear lot line of Lots 42 and 44 an appropriate determination by the Planning Board.

Mr. Steck stated that Mr. Roberts made the generic finding that all other Lots would benefit from rehabilitation and/or restoration efforts without making an assessment on a property-to-property basis to verify the validity of this finding. He also stated that this speculation does not relate to any of the statutory criteria for declaring an area in need of redevelopment. He further stated that Mr. Roberts gave no definitive conclusion as to the need to include Lots 30 to 37, 40 to 42 and 56 and hypothesized that Lots 42 and 44 might

possibly serve as an anchor to a future redevelopment plan. He further stated that Mr. Roberts gives an option to the Planning Board to choose whether or not to include these Lots in the redevelopment area, which essentially is evidence that they are not needed for effective redevelopment of the area.

Mr. Steck concluded that Lots 30 to 36 should not be included in the redevelopment area because the buildings exhibit no significant signs of deterioration and are sound, they are part of an abutting residential neighborhood, their removal will compromise the integrity of that neighborhood, which is outside the Mulberry Street Area, and they are not needed for redevelopment of the properties within the Mulberry Street Area. As to Lots 40 and 41, he concluded that they should not be included because the buildings exhibit no significant signs of deterioration, and they contribute to an active pedestrian environment and have a positive influence in the area. As to Lots 42 and 44, he concluded that they should not be included because the buildings exhibit no significant sign of deterioration and the speculation that they may be justification for the depth of a future redevelopment

project does not comport with the statutory criteria for an area in need of redevelopment.

As to Lot 54 (three-story mixed-use building occupied by a convenience store and apartments) and Lot 56 (three-story mixed use building occupied Caverna Bar and Restaurant and apartments), Mr. Roberts concluded that they were two relatively small Lots that could be incorporated to create a parcel of land of sufficient size (one acre) and dimension (196 feet on Mulberry Street and 202 feet on Green Street) to enable an orderly arrangement of new land uses at this "gateway" corner and, thus, were necessary for the effective redevelopment of the area.

Mr. Steck stated that this conclusion has no basis in planning and runs counter to the myriad of smaller redevelopment areas, which have already been designated by the City. He also stated that it appeared that this conclusion is biased by the release of a specific plan for the area (the Mulberry Street Redevelopment Project) developed by a private developer (NRC) and already promoted by the City. He further stated that Mr. Roberts calls these Lots a "gateway" parcel without making a reference to

what the "gateway" leads to or what relevance this statement has to the statutory criteria.

Mr. Steck concluded that Lot 54 is not in need of redevelopment because the building exhibits no significant deterioration, contributes to the pedestrian activity in the area and represents a scale that comports with other development in the area. As to Lot 56, he concluded that it is not in need of redevelopment because improvements were made to the exterior and interior of the building, renovation is currently proceeding, the building exhibits no significant sign of deterioration and it represents a scale that comports with other development in the area.

Block 873

The City Hall Complex is located on Block 873, Lot 1. The Mulberry Street Area includes only that portion of Lot 1 containing a parking lot for municipal employees and a small two-story industrial building used by the Department of Public Works as a carpentry shop. Mr. Roberts classified Lot 1 in need of redevelopment under N.J.S.A. 40A:12A-5(e) because the industrial building is

underutilized and portions of it appeared to be in substandard condition.

Mr. Steck stated that Mr. Roberts failed to recognize that the City Hall building located on Lot 1 has historic significance. He concluded that it is not in need of redevelopment because it exhibits no significant evidence of deterioration, the industrial building is occupied by the Department of Public Works and appears structurally sound, but in need of rehabilitation, the parking lot is fenced, in good condition and actively used, the building area is actively used and the Lot is not needed for the development of lands on the east side of Mulberry Street.

Block 876

The Mulberry Street Area includes all fourteen Lots in Block 876. The Lots contain the following:

Lot 1: two-story mixed use
masonry building on
Mulberry Street occupied
by Colonial Restaurant
and a photo store on the
ground floor and
apartments above;

Lots 3,
 4 & 5: gravel lots on Mulberry
 Street;

Lot 6: open shell of a former
 one-story brick
 commercial building on
 Mulberry Street;

Lot 7: four-story building on
 Mulberry Street occupied
 by James Park Healthcare
 on the ground floor and
 apartments above;

Lot 8: three-story multi-family
 residential building on
 Elm Street;

Lot 9: parking lot on Elm
 Street;

Lots 10
 & 11: two-story wood-frame
 multi-family residential
 buildings on Elm Street;

Lot 12: three-story wood-frame
 multi-family residential
 building on Elm Street;

Lots 51
 & 53: three-story brick multi-
 family apartment
 building on Walnut
 Street with fenced and
 paved parking lot;

Lot 56: one-story masonry
 commercial building on
 Walnut Street; and

Lot 57: parking area on Walnut
 Street next to Lot 1.

Mr. Roberts classified Block 876 in need of redevelopment under N.J.S.A. 40A:12A-5(e). He also classified Lot 1 (mixed-use building occupied by Colonial Restaurant and apartments) in need of redevelopment under N.J.S.A. 40A:12A-5(a) because the building shows signs of deterioration with cracks in the walls and spalling concrete, and there were substandard conditions in the parking area next to it (Lot 57), such as storage of two possibly disabled trucks, a deteriorating fence and trash and debris, which are deleterious land use.

Mr. Steck stated that Mr. Roberts made no attempt to link the alleged defects in the building with public health, safety and welfare. He concluded that Lot 1 is not in need of redevelopment because although the building has several cracks in the exterior façade, there was no interior inspection showing that such items are more than cosmetic. As to Lot 57, he concluded that the two trucks located on it are licensed and there is no evidence that they are disabled.

As to Lots 3, 4 and 5 (gravel lots), Mr. Roberts also classified them in need of redevelopment under N.J.S.A. 40A:12A-5(d) because they are underutilized with no taxable

improvements, may have once been used for a parking lot for QXT Nightclub, and the fence around them is in a deteriorated condition and draped with a tarp, which presents a deleterious land use.

Mr. Steck concluded that Lots 3, 4 and 5 are not in need of redevelopment because they continue to be actively used for parking by QXT Nightclub, and the fence is structurally sound and not deteriorated, as Mr. Roberts alleged.

As to Lot 6 (open shell of a former commercial building), Mr. Roberts also classified it in need of redevelopment under N.J.S.A. 40A:15A-5(a) and (b) because the building is untenable in its current condition.

Mr. Steck concluded that Lot 6 is not in need of redevelopment because the Board of Adjustment recently granted a variance for a mixed-use development of that Lot consisting of a restaurant on the first floor and four apartments above.

As to Lot 7 (mixed-use building occupied by James Park Healthcare and apartments) and Lot 8 (three-story

residential building), Mr. Roberts concluded that, although they were exceptions, their inclusion in the redevelopment area will create a more viable redevelopment parcel by completing the parcel's corner frontage. He later also classified Lot 7 in need of redevelopment under N.J.S.A. 40A:12A-5(d).

Mr. Steck concluded that Lot 7 is not in need of redevelopment because the building was recently renovated and exhibits no significant signs of deterioration, James Park Healthcare occupies the first floor and Mr. Roberts' use of the template of a parking deck to determine whether land is needed for effective redevelopment is an unfounded basis for determining compliance with the statute. As to Lot 8, he concluded that it is not in need of redevelopment because the building exhibits no significant sign of deterioration, was painted since March 2003 and Mr. Roberts' use of the template of a parking deck to determine whether land is needed for effective redevelopment is an unfounded basis for determining compliance with the statute.

As to Lot 9 (parking lot), Mr. Roberts also classified it in need of redevelopment under N.J.S.A. 40A:12A-5(d).

Mr. Steck opined that Lot 9 is not in need of redevelopment because new fencing material was installed since March 2003, the commercial building on Lot 56 is served by it and the building is currently being renovated for a new tenant.

Mr. Roberts found that the residential buildings on Lots 10, 11, and 12 were in fair to good condition, Lots 51 and 53 contained a more modern garden apartment style building with accessory surface parking, both of which appear to be in good condition, the buildings on all of these Lots appeared to be fully occupied and properly utilized and the Lots are not in need of redevelopment under any statutory criteria. He concluded, however, that the Planning Board may determine that exclusion of these Lots would result in an irregular redevelopment area that would make effective redevelopment planning much more difficult. He based his determination on the following example:

For example, the ability to incorporate structured parking solutions into the redevelopment plan to address the existing land consumption by surface parking lots and to support substantially more valuable mixed-use development would be restricted. The section of Block 876 that meets the criteria (182 feet along Mulberry

Street by 150 feet deep) is barely large enough to accommodate even a minimum sized parking structure (180 feet by 120 feet), much less a structure that is large enough to incorporate desirable retail or residential space (a minimum footprint of 280 feet by 180 feet is required).

Mr. Steck concluded that Lot 10, 11, 12 are not in need of redevelopment because the buildings exhibit no significant signs of deterioration and Mr. Roberts' use of the template of a parking deck to determine whether land is needed for effective redevelopment is an unfounded basis for determining compliance with the redevelopment statute where the buildings do not in themselves qualify as being blighted. As to Lots 51 and 53, he concluded that they are not in need of redevelopment because the apartment building and parking area exhibit no significant signs of deterioration. Mr. Steck also concluded that the option given the Planning Board whether or not to include these Lots supports the conclusion that they are not needed for effective redevelopment of the area.

As to Lot 56 (one-story commercial building), Mr. Roberts classified it in need of redevelopment under N.J.S.A. 40A:12A-5(e) because the building had an

undetermined occupancy with minimal taxable improvements and inadequate parking and loading facilities, a garage door at the rear of the building is accessed through a paved lot on Elm Street that constitutes an intrusion into a residential block-front, there were no signs on the front of the building to indicate its current use, and the windows and doors were shuttered.

Mr. Steck concluded that Lot 56 is not in need of redevelopment because the building has been occupied since 2003 by the Little Gospel Theater, it shows no signs of deterioration and Mr. Roberts failed to note the recent renovations to the interior and exterior of the building, which were made to accommodate the new tenant.

Block 877

The Mulberry Street Area includes only seventeen of the thirty Lots in Block 877.⁷ The Lots contain the following:

⁷ In a Resolution, dated November 3, 2004, the City excluded Lots 15, 17, 19, 21, 23, 24, 25, 26, 41, 44, 45, 47 and 48.

NRC had an agreement or option to purchase nine Lots in Block 877 (Lots 1 to 9).

- Lots 1 to 10: parking lots on Mulberry Street;
- Lot 11: three-story multi-family residential building on Walnut Street;
- Lot 12: two-story masonry building on Walnut Street with apartments over the Universal Church and Kingdom of God;
- Lot 13: parking lot on Walnut Street;
- Lots 49 & 50: three-story wood-frame multi-family residential building on Lot 50 Cottage Street with fenced parking area on Lot 49;
- Lot 52: three-story brick multi-family residential building on Cottage Street; and
- Lot 53: two-family wood frame residential building on Cottage Street.

Mr. Roberts classified Block 877 in need of redevelopment under N.J.S.A. 40A:12A-5(e). As to Lots 1 to 10, he classified them in need of redevelopment under N.J.S.A. 40A:12A-5(e) because they are parking lots whose use constitutes a gross under-utilization of this

relatively large and strategically located parcel (one-half acre) that could contribute significant housing, employment or service opportunities to the area.

Mr. Steck stated that Mr. Roberts made no reference to occupancy levels or other indices of parking activity for Lots 1 to 10, and it appears that, regardless of the intensity of use, all surface parking lots in the Mulberry Street Area are eligible for classification under N.J.S.A. 40A:12A-5(e). He concluded these Lots are not in need of redevelopment because they are actively used and well-maintained parking lots that provide needed parking for the federal building and contribute real estate and parking tax revenue to the City.

Mr. Roberts gave no specific conclusion in the Roberts Report as to Lots 11 (residential building), Lot 12 (occupied by the Universal Church and Kingdom of Good and apartments) and Lot 13 (parking lot). Mr. Steck concluded that Lots 11, 12 and 13 are not in need of redevelopment because the building on Lot 11 exhibits no significant signs of deterioration and represents sound housing that reinforces other sound housing on Walnut Street outside the Mulberry Street Area, the building on Lot 12 exhibits no

significant signs of deterioration and is sound and of the same scale as nearby sound residential buildings and the parking lot on Lot 13 is well maintained and contributes open space to the neighboring properties.

As to Lot 49 (fenced parking area for Lot 50), Mr. Roberts classified it in need of redevelopment under N.J.S.A. 40A:12A-5(d) because it is a paved storage yard with a pile of debris in the rear, which is a deleterious condition.

Mr. Steck concluded that Lot 49 is not in need of redevelopment because there was only a small pile of building materials on it that does not appear to result in any deleterious condition.

As to Lots 50, 52 and 53 (two- and three-story residential buildings), Mr. Roberts found that the buildings are in fair to good condition, appear to be fully occupied and properly utilized and do not meet any redevelopment criteria. He concluded, however, that the Planning Board may decide to include them in the redevelopment area because: (1) they are bounded on three sides by portions of Blocks 877 and 878 that exhibit

conditions of various redevelopment criteria; and (2) their exclusion would result in an irregular redevelopment are that would make effective redevelopment planning much more difficult.⁶

Mr. Steck stated that the fact that the Planning Board was given the option to include Lots 50, 52 and 53 supports the conclusion that they are not needed for redevelopment. He also stated that the test used by Mr. Roberts that exclusion would make effective redevelopment planning more difficult is different from the statutory requirements in the Local Redevelopment and Housing Law, which requires that properties be "found necessary with or without a change in their condition, for the effective redevelopment of the area of which they are a part." He concluded that Lot 50 is not in need of redevelopment because the building exhibits no significant signs of deterioration and it is extremely well-maintained and Lots 52 and 53 are not in need of redevelopment because the buildings exhibit no signs of deterioration and represent sound housing that reinforces other sound housing on Cottage Street.

⁶ Mr. Roberts qualified Lot 49 for redevelopment under N.J.S.A. 40A:12A-5(d). However, this Lot is a parking lot for Lot 50.

Blocks 878 & 879

The Mulberry Street Area includes all thirty-one Lots in Block 878.⁹ The Lots contain the following:

- Lots 1 to
3, 5 & 45
to 51: parking lots on Mulberry Street;
- Lot 7: storage yard on Mulberry
Street for brickwork
contractor;
- Lot 9: two-story commercial
building on Mulberry
Street occupied by a
coffee distributor;
- Lot 10: three-story vacant mixed
use building on Mulberry
Street with residential
space over the first
floor commercial space;
- Lots 12
to 15: storage yards and sheds
on Cottage Street for
Classic Construction;
- Lots 17 &
18: contractor storage yard
on Cottage Street;
- Lots 19
& 21: storage yard on Lot 19
with three-story brick
multi-family residential
building on Lot 21
Cottage Street;

⁹ NRC had an agreement or option to purchase thirteen of the Lots in Block 878 (Lots 1 to 3, 5, 17, 18, and 45 to 51).

Lot 23: storage yard and garage on Cottage Street;

Lot 25: two-story wood-frame multi-family residential building on Cottage Street;

Lots 27 to 29: gas station on Cottage Street and McCarter Highway;

Lots 40, 43 & 44: one-story masonry commercial building on McCarter Highway occupied by a truck/auto parts shop with associated parking lot; and

Lot 53: two-story vacant industrial building on McCarter Highway with open storage yard to the left.

The Mulberry Street Area includes all fifteen Lots in Block 879.¹⁰ The Lots contain the following:

Lots 1 to 4 & 10: parking lots on Mulberry and E. Kinney Streets used for inventory of Enterprise Rent-a-Car;

¹⁰ NRC had an agreement or option to purchase five Lots in Block 879 (Lots 8, 10, 13, 15 and 17).

Lots 8, 13,
15, 17 &
part of 10: commercial parking lots
on Mulberry Street used
in conjunction with
property in Block 878;

Lots 19
to 23: one-story commercial
building on McCarter
Highway occupied by
Market Body Works; and

Lots 30 to
32: parking area on McCarter
Highway and E. Kinney
Street used in
combination with Lots 8,
13, 15, 17 and part of
10.

Mr. Roberts classified Blocks 878 and 879 in need of redevelopment under N.J.S.A. 40A:12A-5(e). He found that Blocks 878 and 879 are connected and have overlapping land uses and ownership and the Lots in those Blocks are predominately used as parking lots (Block 878, Lots 1 to 3, 5 and 45 to 51; Block 879, Lots 1 to 4, 8, 10, 13, 15, 17, and 30 to 32) and storage yards (Block 878, Lots 7, 12 to 19 and 23). He concluded that the Lots had minimal or no taxable improvements and in a stagnant and less than fully productive condition for an otherwise valuable downtown property that could provide housing, jobs, or goods and

services contributing to the public health, safety and welfare.

Mr. Roberts also classified Block 878, Lots 7, 12 to 19 and 23 (storage yards) in need of redevelopment under N.J.S.A. 40A:12A-5(d) and Block 878, Lot 10 (three-story mixed-use building) in need of redevelopment under N.J.S.A. 40A:12A-5(a) and (d) because the building was vacant and in a substandard condition with rotted window frames, boarded windows, rotted cornice and severely deteriorated sidewalk and a large tarp could be seen on the roof indicating possible damage to it.

Mr. Steck concluded that Block 878, Lot 10 is not in need of redevelopment because the building is secured and structurally sound and some rehabilitation work started but ceased pending the outcome of the present case.

As to Block 878, Lot 53 (two-story industrial building), Mr. Roberts also classified it in need of redevelopment under N.J.S.A. 40A:12A-5(a), (b) and (d) because the building was vacant and in a substandard condition with signs of deterioration including cracks in the walls, spalling concrete and crumbling foundation and

there was an open storage yard to the left of the building that contained some type of mechanical components.

Mr. Steck concluded that Block 878, Lot 53 is not in need of redevelopment because, as Mr. Roberts failed to note, the building is structurally sound and two floors are currently being rented and occupied by a photographic studio. He found that there is no credible evidence that the cited deficiencies are any more than cosmetic and the alleged possible widening of McCarter Highway has no bearing on the application of criteria for its designation as an area in need of redevelopment.

As to Block 878, Lots 21 (three-story residential building) (and the storage lot on Lot 19) and 25 (two-story residential building), Mr. Roberts found that the buildings must be considered marginal in light of the fact that the remainder of the Lots on Cottage Street are storage yards. He classified Lots 19 and 25 in need of redevelopment under N.J.S.A. 40A:12A-5(e), but also classified Lot 19 under N.J.S.A. 40A:12A-5(d).

Mr. Steck stated that Mr. Roberts failed to explain how the fact that the buildings on Block 878, Lots 21 and

25 may be "marginal" fits with the criteria in N.J.S.A. 40A:12A-5(e). He concluded that Lot 19 is not in need of redevelopment because there is new fencing material since March 2003, the storage yard is orderly, and Lots 21 and 25 are not in need of redevelopment because the buildings exhibit no significant signs of deterioration.

As to Block 878, Lots 27 to 29 (gas station), Mr. Roberts also classified them in need of redevelopment under N.J.S.A. 40A:12A-5(d) because the gas station was closed for at least a year and this would indicate discontinued use.

Mr. Steck concluded that Block 878, Lots 27 to 29 are not in need of redevelopment because, as Mr. Roberts fails to note, the gas station was operational in 2003, it is under contract to be sold and is to be reopened as a gas station.

As to Block 878, Lots 40, 43 and 44 (commercial building occupied by truck/auto parts shop) and Block 879, Lots 19 to 23 (occupied by Market Body Works), Mr. Roberts concluded that given their strategic frontage on McCarter Highway, their inclusion in the redevelopment area is

necessary to the effective redevelopment of the area. He also concluded that all Lots in Blocks 878 and 879 that have frontage on McCarter Highway are expected to be impacted by the future widening of McCarter Highway by the NJDOT.

Mr. Steck concluded that Block 878, Lots 40, 43 and 44 are cited as needed for effective redevelopment of the area despite Mr. Roberts' claim that they may be needed for the future widening of McCarter Highway. In addition, Mr. Roberts does not mention the 280 foot by 180 foot land areas or other rationales for why these properties are needed for effective redevelopment of the area. Mr. Steck also concluded that Block 878, Lots 40, 43 and 44 are not in need of redevelopment because the buildings exhibit no significant signs of deterioration and the alleged widening of McCarter Highway has no bearing on the application of criteria for their designation as an area in need of redevelopment. As to Block 879, Lots 19 to 23, he concluded that they are not in need of redevelopment because the exterior of the building was recently renovated, the frontage on McCarter Highway does not justify inclusion in the redevelopment area and the potential acquisition for highway widening purposes does

not respond to the statutory findings for declaring an area in need of redevelopment.

Block 881

The Mulberry Street Area includes all thirty-three Lots in Block 881.¹¹ The Lots contain the following:

Lots 1, 3
to 6, 15, 16,
18, 19, 21,
23, 25, 26,
36, 37, 39,
40, 42, 53
to 55, 57,
59, 61 & 62: parking lots on Orchard,
Beech and Mulberry
Streets;

Lots 28
to 30: vacant lots on Mulberry
Street owned by the
City;

Lot 32 &
33: two-story wood-frame
residential building on
Lot 32 on E. Kinney
Street with adjacent
parking area on Lot 33;

Lots 34
& 35: three-story brick
residential building on
Lot 35 on E. Kinney

¹¹ NRC had an agreement or option to purchase seven of the Lots in Block 881 (Lots 6, 15, 16, 18, 19, 21 and 23).

Street with parking lot
and yard on Lot 34; and

Lot 38: three-story residential
building; on E. Kinney
Street;

Mr. Roberts concluded that, with the exception of Lots 32 and 33, 34 and 35 and 38, Block 881 is completely covered by parking lots and vacant lots and the taxable improvements on the entire Block account for only eleven percent of its entire assessed value. He, therefore, classified Block 881 in need of redevelopment under N.J.S.A. 40A:12A-5(e) due to its long-term stagnant and unproductive condition.

Mr. Steck stated that that Mr. Roberts failed to note that the only unused Lots in Block 881 are those owned by the City (Lots 28 to 30), which the City has declined to offer for auction or sale. He concluded that the parking lots on Lots 1 to 26, 36, 37 and 39 to 62 are not in need of redevelopment because they are fenced, commercial surface parking lots that are actively used for parking associated with the federal building and contribute real estate tax and parking tax revenues to the City. As to Lots 32 and 33 (two-story residential building and adjacent

parking lot), he concluded that they are not in need of redevelopment because the building exhibits no significant signs of deterioration and was recently resided. As to Lots 34 and 35 (three-story residential building with parking lot and yard), he opined that they are not in need of redevelopment because the building exhibits no significant sign of deterioration and was recently repainted. As to Lot 38 (three-story residential building), he concluded that it is not in need of redevelopment because the building exhibits no significant signs of deterioration.

Block 884

The Mulberry Street Area includes only thirteen of the fourteen Lots in Block 884.¹² The Lots contain the following:

Lot 12:	three-story brick multi-family residential building on E. Kinney Street;
Lots 13 & 15:	one-story commercial garage on E. Kinney

¹² The City excluded Lot 11 in the Resolution, dated November 3, 2004.

Street occupied by a construction company;

Lot 16: three-story mixed-use building on Mulberry Street with Criado Liquor and Grocery Store on the ground floor and apartments above;

Lot 17: one-story masonry building on Mulberry Street occupied by a Laundromat;

Lot 18: vacant lot on Mulberry Street owned by the City;

Lot 19: one-story masonry commercial building on Mulberry Street occupied by Ambiance Night Club; and

Lots 20 to 27: vacant dirt lots on Scott Street owned by the City.

Mr. Roberts classified Block 884 in need of redevelopment under N.J.S.A. 40A:12A-5(e) because it represents a mixture of vacant land, residential properties and small retail and commercial uses that lack cohesion. He also classified Lots 13 and 15 (one-story commercial garage), in need of redevelopment under N.J.S.A. 40A:12A-5(d) because the garage, which is occupied by a construction company, represents an obsolete and faulty

arrangement and design by virtue of its one hundred percent coverage of the Lots, proximity to residential uses and lack of parking and loading facilities and they would be a detriment to a new residential construction on the Block. He noted that the loading bays open onto the sidewalk making it likely that trucks would block the sidewalk when loading and unloading.

Mr. Steck stated that Mr. Roberts failed to note that parking and loading on Lots 13 and 15 are done inside the building accessed by an overhead door. He concluded that these Lots are not in need of redevelopment because the building was recently renovated and exhibits no significant signs of deterioration.

As to Lot 16 (three-story mixed-use building), Lot 17 (one-story building occupied by a Laundromat) and Lot 19 (one-story commercial building occupied by Ambiance Night Club), Mr. Roberts concluded that their addition into the redevelopment area would simultaneously square off and increase the Mulberry Street frontage of the larger parcel allowing for a more effective redevelopment project.

Mr. Steck concluded Lots 16, 17 and 19 are not in need of redevelopment because the exterior of the building on Lot 16 was recently renovated and the buildings on Lot 16, 17 and 19 exhibit no significant signs of deterioration.

Block 887

The Mulberry Street Area includes all six Lot in Block 887. The Lots contain the following:

- Lot 1: two-story residential building on E. Kinney Street;
- Lot 6: one-story commercial building on E. Kinney Street occupied by Enterprise Rent-a-Car and Market Body Works;
- Lot 23: vacant lot on E. Kinney Street adjacent to loading area for Miller Manufacturing building facing Oliver Street and three-story industrial and office building on McCarter Highway and Oliver Street occupied by NRC, F.W. Consulting and B.J.W. Development
- Lot 34: vacant lot on Oliver and Mulberry Streets; and

Lots 35
& 36: three-story brick
residential building on
Mulberry and E. Kinney
Streets with the two
upper floors containing
apartments.

Mr. Roberts classified Block 887 in need of redevelopment under N.J.S.A. 40A:12A-5(e). He found that Lot 6 (one-story commercial building occupied by Enterprise Rent-a-Car and Market Body Works) appeared to be occupied, active and in good condition and Lot 1 (two-story residential building), Lots 35 and 36 (three-story residential building) are fully or mostly occupied and do not otherwise qualify individually under any statutory criteria. He concluded, however, that these Lots are separated by a portion of Lot 23 that creates a void and that this gap prevents the development of a cohesive neighborhood with the rest of Blocks 887, 881 and 884. As such, he recommended that they be included in the redevelopment area to enable the effective redevelopment of the area as a whole. He also concluded that Lots 6 and 23 are expected to be impacted by the future widening of McCarter Highway, which should be factored into any redevelopment planning for the Mulberry Street Area.

As to Lots 23 (vacant lot and industrial and office building occupied by NRC, F.W. Consulting and B.J.W. Development) and Lot 34 (vacant lot), Mr. Roberts found that they are under common ownership, but a portion of Lot 23 fronting on E. Kinney Street contains a deteriorating industrial building with peeling paint and rotted cornice and a portion containing a three-story industrial building is partially vacant but undergoing renovations for what appears to be office and small commercial uses. He also found that Lot 34 is kept relatively free of debris. He concluded, however, that the overall condition of Lot 23 combined with Lot 34 contributes to the overall economic stagnation of the Mulberry Street Area caused by a not fully productive use of land otherwise valuable for contributing to jobs and tax revenues to the City. He also classified Lots 23 and 34 in need of redevelopment under N.J.S.A. 40A:12A-5(e) and Lot 23 under N.J.S.A. 40A:12A-5(d).

Mr. Steck concluded that Block 887 is not in need of redevelopment because the building on Lot 1 exhibits no significant signs of deterioration and was recently repainted; the building on Lot 6 exhibits no significant signs of deterioration, the exterior was recently

renovated, and the potential for widening McCarter Highway is not a relevant factor in determining whether it qualifies as in need of redevelopment; the building on Lot 23 was renovated with new windows and interior modifications not acknowledged by Mr. Roberts; Lot 34 is fenced with occasional parking and use by Miller Manufacturing; and Lots 35 and 36 exhibits no significant signs of deterioration, and the storefront windows were minimized to convert to residential use.

The City's Admissions

With respect to Mr. Roberts' findings, the City admitted that he:

1. alleged that of the one hundred and sixty-six Lots, fifty-four (or approximately thirty-three percent of the Mulberry Street Area) do not qualify as in need of redevelopment under any of the statutory criteria set forth in N.J.S.A. 40A:12A-5;
2. did not analyze whether there were any code violations issued against properties or property owners within the Mulberry Street Area;
3. did not research the scope or extent of variance applications

occurring within the Mulberry Street Area;

4. did not investigate the scope or extent of private market real estate transactions occurring within the Mulberry Street Area;
5. did not inquire into the parking needs for the federal or municipal buildings adjacent to the Mulberry Street Area;
7. did not determine whether parking lots were permitted by the zoning ordinance;
8. did not examine whether variances were granted for parking lots in the Mulberry Street Area;
9. did not inquire whether it was feasible for the City to build a structured parking lot within the Mulberry Street Area;
10. testified that current uses within the Mulberry Street Area led to greater crime, but he did not investigate the scope or extent of criminal complaints occurring within the Mulberry Street Area;
11. did not interview property owners in the Mulberry Street Area;
12. did not determine the scope and extent of code violations, if any, within the Mulberry Street Area; and
13. did not examine title to properties within the Mulberry Street Area.

The City also admitted that:

1. there is not a diversity of ownership with regard to the large surface parking lots within the Mulberry Street Area;
2. Mr. Lenter has an interest in parking lots within the Mulberry Street Area;
3. large surface parking lots represent greater than fifty percent of the Mulberry Street Area;
4. seventy percent of Block 887 is owned by one entity;
5. Block 873, Lot 1 is owned by the City;
6. the Planning Board removed Block 877, Lots 23, 24, 25 and 41 from the Mulberry Street Area because they did not meet the statutory criteria;
7. the Roberts' Report and Mr. Roberts' testimony primarily relied on N.J.S.A. 40A:12A-5(e) in concluding that the Mulberry Street Area was in need of redevelopment; and
8. Block 887, Lot 23 is improved with a building occupied by NRC.

**The City's Declaration That The Mulberry Street Area Is An
Area In Need Of Redevelopment**

On October 14, 2004, the Planning Board passed a Resolution recommending to the City that it declare the Mulberry Street Area as an area in need of redevelopment as follows:

- Block 872: Lots 1, 4, 30, 31, 33, 34, 35, 36, 37, 40, 41, 42, 44, 48, 50, 51, 52, 54 and 56;
- Block 873: eastern portion of Lot 1;
- Block 876: Lots 1, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 51, 56 and 57;
- Block 877: in its entirety, except Lots 15, 17, 19, 21, 23, 24, 25, 26, 41, 44, 45, 47 and 48;
- Block 878: in its entirety;
- Block 879: in its entirety;
- Block 881: in its entirety;
- Block 884: in its entirety, except Lot 11; and
- Block 887: in its entirety.

The Planning Board determined that a substantial portion, if not all, of the Mulberry Street Area qualifies as an area in need of redevelopment "primarily and specifically under N.J.S.A. 40A:12A-5(e)".

On November 3, 2004, the City passed Resolution No. 7RR, which adopted the Planning Board's determination that the Mulberry Street Area is an area in need of redevelopment "primarily and specifically under N.J.S.A. 40A:12A-5(e)" because, inter alia, it:

[is] stagnant and currently exists in a less than fully productive condition for properties closely located to the downtown center of the City of Newark, which properties could provide increased housing, jobs, goods and services that would contribute to the public health, safety and welfare of the City of Newark.

The City also adopted the Planning Board's determination that:

[The Mulberry Street Area] is not fully productive, failing to contribute to the revitalization of the City of Newark by virtue of a failure to promote economic growth, protect the environment, provide public facilities, provide meaningful job opportunities

and generate sufficient tax revenue for the City of Newark and does not adequately support the adjacent uses of the downtown area of the City of Newark.

The Final Resolution passed by a vote of 5-3. Council Members Corchado, Walker and Bradley voted in favor and Council Members Amador and Chaneyfield-Jenkins voted against it.

DISCUSSION AND CONCLUSION

The court agrees that the City should be entitled to utilize the tools of redevelopment to allow it to once again take its place as the State's most important and prominent City. However, it cannot do so in the manner in which it has done here. A unanimous New Jersey Supreme Court recently held in Gallenthin Realty Development, Inc. v. Borough of Paulsboro, ___ N.J. ___ (2007), that the constitutional requirement of blight is not met where the sole basis for the redevelopment is that the property is "not fully productive". Slip Op. at 3. The Supreme Court carved out no exceptions to this holding. Thus, regardless of whether the property is located in a small municipality, such as Paulsboro, or a large municipality, such as Newark,

or whether it is vacant or unimproved or a parking lot, gravel lot or storage yard, a municipality cannot take property for redevelopment solely under N.J.S.A. 40A:12A-5(e) merely because it believes that the land is not fully productive and can be used for something more beneficial to the general welfare. Slip Op. at 29.

The evidence in the present case shows clearly that the City declared all of the Blocks in the Mulberry Street Area in need of redevelopment under N.J.S.A. 40A:12A-5(e) based upon Mr. Roberts' finding that majority of the area, (consisting of parking lots, vacant lots and storage yards) is not properly utilized and fully productive and can be put to better use. In fact, Mr. Roberts classified all of Blocks 872, 873, 879 and 884 in need of redevelopment solely under N.J.S.A. 40A:12A-5(e). Of the fourteen Lots in Block 876, he only classified seven under other criteria; of the thirty-one Lots in Block 878, he only classified fourteen under other criteria; and of the fourteen Lots in Block 884, he only classified two under other criteria. However, as he admitted, the Mulberry Street Area is not classified as an area in need of redevelopment under any of these other criteria.

It is clear that Mr. Roberts' secondary classification of a small number of individual Lots under criteria other than N.J.S.A. 40A:12A-5(e) does not and cannot support a finding that the entire Mulberry Street Area is an area in need of redevelopment under those criteria. The court finds, therefore, that the City declared the entire Mulberry Street Area as an area in need of redevelopment solely under N.J.S.A. 40A:12A-5(e) because it is not properly utilized and fully productive. Under the Gallenthin holding, this declaration does not meet the constitutional requirement of blight and must be invalidated and set aside.

N.J.S.A. 40A:12A-5(e) also applies only to property that has become stagnant and unproductive because of defects in title, diversity of ownership or other conditions of the same kind. Slip Op. at 37, 42. "The phrase 'other conditions' is not a universal catch-all that refers to any eventuality. Rather, it refers to circumstances of the same or like piece as conditions of title or diverse ownership." Slip Op. at 30, 37.

The evidence in the present case shows that the City's declaration of the Mulberry Street Area as an area in need

of redevelopment under N.J.S.A. 40A:12A-5(e) is not based upon defects in title. The declaration also is not based upon defects in the diversity of ownership of the parking lots because they are under common ownership. As to all other properties, there is no evidence of their ownership. Thus, there is no evidence that they have a defect in the diversity of ownership. As such, N.J.S.A. 40A:12A-5(e) does not apply to any of the Mulberry Street Area because there are no issues of title, diversity of ownership or other conditions of the same kind. N.J.S.A. 40A:12A-5(h) also does not apply because Mr. Roberts admitted that it only applies if N.J.S.A. 40A:12A-5(e) applied.

Furthermore, although non-blighted parcels may be included in a redevelopment plan, there must be evidence that they are necessary for rehabilitation of a larger blighted area. Slip Op. at 39. In the present case, there is no evidence that the Mulberry Street Area is connected to a larger blighted area or that any of the Blocks are necessary for rehabilitation of a larger blighted area.

Finally, to be declared an area in need of redevelopment under N.J.S.A. 40A:12A-5(e), there must be substantial evidence that the area has reached a stage of

deterioration or stagnation that negatively affects surrounding areas, such as deteriorated and dilapidated homes and buildings, which are obviously beyond restoration. Slip Op. at 26-7, citing Levin v. Twp. Comm. Of Bridgewater, 57 N.J. 506, 512, 538 (1971) and Wilson v. City of Long Branch, 27 N.J. 360, 394 (1958), cert. denied, 358 U.S. 873, 79 S. Ct. 113, 3 L. Ed. 2d 104 (1958). It does not include "areas that are not operated in an optimal manner". Slip Op. at 29.

There is no bright line rule as to what type or amount of evidence rises to the level of "substantial" for the purposes of N.J.S.A. 40A:12A-5(e). The court must make a case-by-case evaluation. Other courts have held that substantial evidence includes the review or consideration of: (1) applications for building permits to determine substandard, unsafe, unsanitary or dilapidated conditions, (2) occupancy rates and number of employees of existing buildings to determine under-utilization; (3) usage of public transportation to determine under-utilization of parking lots; (4) physical inspections of structures to determine whether they are substandard; (5) economic activity and productivity; (6) maps detailing land uses, the extent of blighting factors and tax delinquencies; and

(7) block-by-block findings. Lyons v. Camden, 52 N.J. 89 (1968); Wilson, 27 N.J. at 390; ERECT, LLC V. City of Perth Amboy, 381 N.J. Super. 268, 280 (App. Div. 2005); Hirth v. City of Hoboken, 337 N.J. Super. 149, 162-3 (App. Div. 2001).

In the present case, there is no evidence that Mr. Roberts and the City considered the above factors. There is no dispute that Mr. Roberts did not investigate building permits, code violations, variance applications, variances that were granted, the scope or extent of private market real estate transactions, tax arrears, occupancy rates, the number of people employed in the Mulberry Street Area and the scope or extent of criminal complaints; inspect the interior of any buildings; speak to any parking lot owners or customers about the use or occupancy of parking spaces; inquire into the parking needs for the adjacent federal and municipal buildings; inquire into revenue generated by municipal parking taxes; or present any data to support his opinion that redevelopment would increase tax revenues generated by the existing surface parking lots.

Although Mr. Roberts looked at Sanborn maps from 1892, none showed lack of productivity, specific blighting

factors or tax delinquencies. Although he made block-by-block findings, he did not physically inspect the interior of the buildings or consider the nature and level of their occupancy rates, number of employees, economic activity or renovation status. Although he relied on tax records in analyzing the acreage and the value of improvements as a percentage of the total assessed property values, this does not show lack of economic productivity. His efforts fall far short of the substantial evidence requirement.

Despite these glaring deficiencies, the City relies on Concerned Citizens of Princeton, Inc. v. Mayor of Princeton, 370 N.J. Super. 429 (App. Div. 2004), certif. denied, 182 N.J. 139 (2004) to support its contention that it has met the substantial evidence standard. In Concerned Citizens, the Appellate Division specifically considered the "not fully productive" language application of N.J.S.A. 40A:12A-5(e) to a surface parking lot. The only property under evaluation was a single surface parking lot, which was owned by the Borough of Princeton and generated no real estate taxes. The Borough sought to use the property for a multi-level parking facility in the downtown Princeton area. The Borough declared the surface parking lot an area in need of redevelopment under N.J.S.A. 40A:12A-5 (e) and

(d), based upon a finding that it represented an obsolete land use that was exacerbated by a faulty design essentially proving to be detrimental to the welfare of the community, was harmful to the welfare of the community since it was not fully productive and brought in no tax revenue and did not adequately support adjacent uses. Id. at 440, 458.

There is a clear distinction between the facts in Concerned Citizens and those in the present case. First, the present case involves much more than one surface parking lot. It involves one hundred and sixty-six Lots, all but seven of which are owned by private individuals or business entities and generate real estate taxes and/or municipal parking taxes. Second, the City declared the Mulberry Street Area as an area in need of redevelopment solely under N.J.S.A. 40A:12A-5(e). More importantly, there is no evidence that the Mulberry Street Area is obsolete or does not support adjacent uses. For these reasons, the court finds the holding in Concerned Citizens inapplicable to the present case.

The City also relies on Forbes v. Board of Trustees of South Orange Village, 213 N.J. Super. 519 (App. Div. 1998),

certif. denied, 156 N.J. 411 (1998). Forbes involved the Village's central business district, which included unproductive and inaccessible rear areas of commercial properties fronting on the main streets, functionally obsolescent structures, and non-conforming residential uses. The Village declared the entire central business district as an area in need of redevelopment under N.J.S.A. 40A:12A-5(e) and (d), upon finding that as a whole it was becoming stagnant, deteriorated and obsolete and its economic vitality was seriously declining. Id. at 530.

The court finds the holding in Forbes inapplicable to the present case. In the present case, the City declared the Mulberry Street Area as an area in need of redevelopment solely under N.J.S.A. 40A:12A-5(e). More importantly, there is no evidence that the Mulberry Street Area is deteriorated or obsolete or that its economic vitality is seriously declining.

It is clear to the court that there is no substantial evidence in the present case that the Mulberry Street Area has reached a stage of deterioration or stagnation that negatively affects surrounding areas. There also is no evidence to support the City's contention that the Mulberry

Street Area is an area in need of redevelopment because it fails to contribute to the revitalization of the City by failing to promote economic growth, protect the environment, provide public facilities, provide meaningful

Rather, the evidence shows the contrary. The majority of the parking lots are fenced, paved, in good condition, well-maintained and actively-used, and the for-pay parking lots contribute to the City's real estate and parking tax revenue and provide parking for the federal building and City Hall Complex. The majority of the storage yards and gravel lots are actively used and in good condition. Of the seven vacant Lots, six are owned by the City and one has a renovated building on it occupied by NRC and Block 873 is entirely owned by the City.

The evidence also shows that the majority of the residential, mixed-use, commercial and industrial buildings are not deteriorated, dilapidated, abandoned or obviously beyond restoration. Rather, they are structurally sound, fully occupied, properly utilized, well-maintained and in good to fair condition or undergoing renovations or rehabilitation. Mr. Roberts even admitted that many of them are not in need of redevelopment under any statutory

criteria. There also is no evidence of any tax liens or foreclosures, illegal nonconforming uses, title problems, code violations or criminal complaints.

Based upon the foregoing, the court finds that the City's declaration of the Mulberry Street Area as an area in need of redevelopment under N.J.S.A. 40A:12A-5(e) is not supported by substantial evidence.

The court will address one final issue raised by plaintiff - the issue of the alleged "sordid, pre-arranged land-grab in behalf of a politically-favored redeveloper" and "abuse of the redevelopment power, with coordinate corruption". Plaintiff alleges that the City and NRC schemed to designate the Mulberry Street Area as an area in need of redevelopment so that NRC could acquire it under the guise of eminent domain.

There is evidence in the present case that the Mulberry Street Redevelopment Project and NRC's role as its developer was "a done deal", a *fait accompli*, before the required statutory redevelopment process began. By April 2002, NRC already acquired the right to purchase a substantial part of the Mulberry Street Area. By October

2002, NRC and City officials got together and discussed what NRC needed to "fast track" the Mulberry Street Redevelopment Project. NRC instructed those City officials that it needed, among other things, a confirmation that the City agreed to a redevelopment plan as opposed to a master plan, zone change or use variance, a resolution authorizing NRC's planner to prepare a report establishing the Mulberry Street Area as an area in need of redevelopment and the appointment of NRC as the redeveloper when the Mulberry Street Area was so declared.

By November 2002, NRC and City officials again got together and NRC later confirmed its proposal that the redevelopment area be expanded to include certain Blocks and Lots, for which it had not acquired a right to purchase, and that the entire Mulberry Street Area be declared an area in need of redevelopment. NRC also advised the City that it would retain a professional planner to assist the City in assembling the information required for investigating whether to declare the Mulberry Street Area an area in need of redevelopment. NRC also confirmed that if it could not purchase the properties, it would ask the City to utilize its condemnation powers to acquire them. Less than two weeks later, the City passed

the First Resolution. Thus, it appears that, one way or another, NRC was going to acquire the Mulberry Street Area and redevelop it.

There is also evidence of thousands of dollars in political contributions by NRC, Mr. Farina, Mr. Wishnia and/or their family members to former Mayor James and certain Council Members who voted in favor of the First, Second Resolution and Final Resolutions. And let us not forget the evidence of below-market sales of City-owned land to NRC.

This evidence certainly provides cause to question the results and validity of the redevelopment investigation. However, the court mentions it for historical purposes only and makes no determination of the merits of plaintiff's corruption claim. It appears that such a determination may be made in the recently initiated criminal proceedings involving former Mayor James.

For all of these reasons, the court invalidates and sets aside the Final Resolution declaring the Mulberry Street Area as an area in need of redevelopment.

July 19, 2007
DATE



MARIE P. SIMONELLI, J.S.C.