

CHAPTER 159

AN ACT concerning procedures and powers under the “Local Redevelopment and Housing Law” and amending P.L.1992, c.79.

WHEREAS, Article VIII, Section III, paragraph 1 of the New Jersey Constitution empowers the Legislature to authorize municipalities to clear, replan, develop, and redevelop blighted areas; and

WHEREAS, The Legislature has authorized municipalities to undertake programs to redevelop blighted areas; and

WHEREAS, Municipalities have used these programs to arrest and reverse blighted conditions to promote sound planning, revitalize tax bases, and improve the public safety, health, and welfare of their communities; and

WHEREAS, In exercising their responsibilities and implementing redevelopment programs municipalities have exercised the power of eminent domain; and

WHEREAS, The 2005 United States Supreme Court decision in *Kelo v. City of New London*, 545 U.S. 469 (2005), heightened public concern with the use of eminent domain to implement municipal redevelopment activities; and

WHEREAS, The New Jersey Supreme Court in *Gallenthin Realty Development, Inc. v. Borough of Paulsboro*, 191 N.J. 344 (2007), clarified one of the criterion for designating redevelopment areas in New Jersey and emphasized that the use of eminent domain cannot be justified to acquire property unless it is blighted, rather than merely not being put to its optimal use; and

WHEREAS, The Appellate Division of the Superior Court in *Harrison Redevelopment Agency v. DeRose*, 398 N.J. Super. 361 (App. Div. 2008) addressed a due process concern with the notice provision under the Local Redevelopment and Housing Law, in cases where eminent domain was used long after the property sought to be acquired was designated as blighted and property owners were precluded from challenging such designation in defense of the condemnation of their properties; and

WHEREAS, The "Local Redevelopment and Housing Law" should appropriately be amended to be consistent with these judicial holdings and to address some of the concerns raised with respect to the use of eminent domain in the implementation of redevelopment programs; and

WHEREAS, Redevelopment remains a valid and important public purpose and the implementation of redevelopment programs continues to be a vital tool for municipal officials that must be maintained to allow them to continue to meet their governmental responsibilities to prevent, arrest, and reverse deleterious property conditions within their municipal borders; and

WHEREAS, The State of New Jersey is experiencing the deepest economic recession since the Great Depression; and

WHEREAS, Municipalities should be encouraged to engage in economic development initiatives by promoting and facilitating such efforts to create local economic stimulus and job creation through the tools and incentives available under the “Local Redevelopment and Housing Law;” and

WHEREAS, Municipalities should be provided the opportunity to pursue such programs without the use of eminent domain; and

WHEREAS, It is in the public interest to establish certainty and repose with respect to the designation of redevelopment areas, the power of eminent domain, and challenges thereto; now, therefore,

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

1. Section 5 of P.L.1992, c.79 (C.40A:12A-5) is amended to read as follows:

C.40A:12A-5 Determination of need for redevelopment.

5. A delineated area may be determined to be in need of redevelopment if, after investigation, notice and hearing as provided in section 6 of P.L.1992, c.79 (C.40A:12A-6), the governing body of the municipality by resolution concludes that within the delineated area any of the following conditions is found:

- 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.

- c. Land that is owned by the municipality, the county, a local housing authority, redevelopment agency or 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 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 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 buildings 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," P.L.1983, c.303 (C.52:27H-60 et seq.) the execution of the actions prescribed in that act for the adoption by the municipality and approval by the New Jersey Urban Enterprise Zone Authority of the zone development plan for the area of the enterprise zone shall be considered sufficient for the determination that the area is in need of redevelopment pursuant to sections 5 and 6 of P.L.1992, c.79 (C.40A:12A-5 and 40A:12A-6) for the purpose of granting tax exemptions within the enterprise zone district pursuant to the provisions of P.L.1991, c.431 (C.40A:20-1 et seq.) or the adoption of a tax abatement and exemption ordinance pursuant to the provisions of P.L.1991, c.441 (C.40A:21-1 et seq.). The municipality shall not utilize any other redevelopment powers within the urban enterprise zone unless the municipal governing body and planning board have also taken the actions and fulfilled the requirements prescribed in P.L.1992, c.79 (C.40A:12A-1 et al.) for determining that the area is in need of redevelopment or an area in

need of rehabilitation and the municipal governing body has adopted a redevelopment plan ordinance including the area of the enterprise zone.

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

2. Section 6 of P.L.1992, c.79 (C.40A:12A-6) is amended to read as follows:

C.40A:12A-6 Investigation for determination as redevelopment area, public hearing, notice.

6. a. No area of a municipality shall be determined a redevelopment area unless the governing body of the municipality shall, by resolution, authorize the planning board to undertake a preliminary investigation to determine whether the proposed area is a redevelopment area according to the criteria set forth in section 5 of P.L.1992, c.79 (C.40A:12A-5). Such determination shall be made after public notice and public hearing as provided in subsection b. of this section. The governing body of a municipality shall assign the conduct of the investigation and hearing to the planning board of the municipality. The resolution authorizing the planning board to undertake a preliminary investigation shall state whether the redevelopment area determination shall authorize the municipality to use all those powers provided by the Legislature for use in a redevelopment area other than the use of eminent domain (hereinafter referred to as a "Non-Condensation Redevelopment Area") or whether the redevelopment area determination shall authorize the municipality to use all those powers provided by the Legislature for use in a redevelopment area, including the power of eminent domain (hereinafter referred to as a "Condensation Redevelopment Area").

b. (1) Before proceeding to a public hearing on the matter, the planning board shall prepare a map showing the boundaries of the proposed redevelopment area and the location of the various parcels of property included therein. There shall be appended to the map a statement setting forth the basis for the investigation.

(2) The planning board shall specify a date for and give notice of a hearing for the purpose of hearing persons who are interested in or would be affected by a determination that the delineated area is a redevelopment area.

(3) (a) The hearing notice shall set forth the general boundaries of the area to be investigated and state that a map has been prepared and can be inspected at the office of the municipal clerk.

(b) If the governing body resolution assigning the investigation to the planning board, pursuant to subsection a. of this section, stated that the redevelopment determination shall establish a Non-Condensation Redevelopment Area, the notice of the hearing shall specifically state that a redevelopment area determination shall not authorize the municipality to exercise the power of eminent domain to acquire any property in the delineated area.

(c) If the resolution assigning the investigation to the planning board, pursuant to subsection a. of this section, stated that the redevelopment determination shall establish a Condensation Redevelopment Area, the notice of the hearing shall specifically state that a redevelopment area determination shall authorize the municipality to exercise the power of eminent domain to acquire property in the delineated area.

(d) A copy of the notice shall be published in a newspaper of general circulation in the municipality once each week for two consecutive weeks, and the last publication shall be not less than ten days prior to the date set for the hearing. A copy of the notice shall be mailed at least ten days prior to the date set for the hearing to the last owner, if any, of each parcel of

property within the area according to the assessment records of the municipality. A notice shall also be sent to all persons at their last known address, if any, whose names are noted on the assessment records as claimants of an interest in any such parcel. The assessor of the municipality shall make a notation upon the records when requested to do so by any person claiming to have an interest in any parcel of property in the municipality. The notice shall be published and mailed by the municipal clerk, or by such clerk or official as the planning board shall otherwise designate. Failure to mail any such notice shall not invalidate the investigation or determination thereon.

(4) At the hearing, which may be adjourned from time to time, the planning board shall hear all persons who are interested in or would be affected by a determination that the delineated area is a redevelopment area. All objections to such a determination and evidence in support of those objections, given orally or in writing, shall be received and considered and made part of the public record.

(5) (a) After completing its hearing on this matter, the planning board shall recommend that the delineated area, or any part thereof, be determined, or not be determined, by the municipal governing body to be a redevelopment area.

(b) After receiving the recommendation of the planning board, the municipal governing body may adopt a resolution determining that the delineated area, or any part thereof, is a redevelopment area.

(c) Upon the adoption of a resolution, the clerk of the municipality shall, forthwith, transmit a copy of the resolution to the Commissioner of Community Affairs for review. If the area in need of redevelopment is not situated in an area in which development or redevelopment is to be encouraged pursuant to any State law or regulation promulgated pursuant thereto, the determination shall not take effect without first receiving the review and the approval of the commissioner. If the commissioner does not issue an approval or disapproval within 30 calendar days of transmittal by the clerk, the determination shall be deemed to be approved. If the area in need of redevelopment is situated in an area in which development or redevelopment is to be encouraged pursuant to any State law or regulation promulgated pursuant thereto, then the determination shall take effect after the clerk has transmitted a copy of the resolution to the commissioner. The determination, if supported by substantial evidence and, if required, approved by the commissioner, shall be binding and conclusive upon all persons affected by the determination.

(d) Notice of the determination shall be served, within 10 days after the determination, upon all record owners of property located within the delineated area, those whose names are listed on the tax assessor's records, and upon each person who filed a written objection thereto and stated, in or upon the written submission, an address to which notice of determination may be sent.

(e) If the governing body resolution assigning the investigation to the planning board, pursuant to subsection a. of this section, stated that the redevelopment determination shall establish a Condemnation Redevelopment Area, the notice of the determination required pursuant to subparagraph (d) of this paragraph shall indicate that:

(i) the determination operates as a finding of public purpose and authorizes the municipality to exercise the power of eminent domain to acquire property in the redevelopment area, and

(ii) legal action to challenge the determination must be commenced within 45 days of receipt of notice and that failure to do so shall preclude an owner from later raising such challenge.

(f) No municipality or redevelopment entity shall exercise the power of eminent domain to acquire property for redevelopment purposes within a Non-Condensation Redevelopment Area.

(g) If a municipal governing body has determined an area to be a Non-Condensation Redevelopment Area and is unable to acquire property that is necessary for the redevelopment project, the municipality may initiate and follow the process set forth in this section to determine whether the area or property is a Condensation Redevelopment Area. Such determination shall be based upon the then-existing conditions and not based upon the condition of the area or property at the time of the prior Non-Condensation Redevelopment Area determination.

(h) A property owner who has received notice pursuant to this section who does not file a legal challenge to the redevelopment determination affecting his or her property within 45 days of receipt of such notice shall thereafter be barred from filing such a challenge and, in the case of a Condensation Redevelopment Area and upon compliance with the notice provisions of subparagraph (e) of this paragraph, shall further be barred from asserting a challenge to the redevelopment determination as a defense in any condemnation proceeding to acquire the property unless the municipality and the property owner agree otherwise.

(6) The municipality shall, for 45 days next following its determination, take no further action to acquire any property by condemnation within the redevelopment area.

(7) If any person shall, within 45 days after the adoption by the municipality of the determination, apply to the Superior Court, the court may grant further review of the determination by procedure in lieu of prerogative writ; and in any such action the court may make any incidental order that it deems proper.

c. An area determined to be in need of redevelopment pursuant to this section shall be deemed to be a "blighted area" for the purposes of Article VIII, Section III, paragraph 1 of the Constitution. If an area is determined to be a redevelopment area and a redevelopment plan is adopted for that area in accordance with the provisions of this act, the municipality is authorized to utilize all those powers provided in section 8 of P.L.1992, c.79 (C.40A:12A-8), except that a municipality may not acquire any land or building by condemnation pursuant to subsection c. of that section unless the land or building is located within (1) an area that was determined to be in need of redevelopment prior to the effective date of P.L.2013, c.159, or (2) a Condensation Redevelopment Area for which the municipality has complied with the provisions of subparagraph (e) of paragraph (5) of subsection b. of this section.

3. Section 8 of P.L.1992, c.79 (C.40A:12A-8) is amended to read as follows:

C.40A:12A-8 Effectuation of development plan.

8. Upon the adoption of a redevelopment plan pursuant to section 7 of P.L.1992, c.79 (C.40A:12A-7), the municipality or redevelopment entity designated by the governing body may proceed with the clearance, replanning, development and redevelopment of the area designated in that plan. In order to carry out and effectuate the purposes of this act and the terms of the redevelopment plan, the municipality or designated redevelopment entity may:

a. Undertake redevelopment projects, and for this purpose issue bonds in accordance with the provisions of section 29 of P.L.1992, c.79 (C.40A:12A-29).

b. Acquire property pursuant to subsection i. of section 22 of P.L.1992, c.79 (C.40A:12A-22).

c. Acquire, by condemnation, any land or building which is necessary for the redevelopment project, pursuant to the provisions of the "Eminent Domain Act of 1971,"

P.L.1971, c.361 (C.20:3-1 et seq.), provided that the land or building is located within (1) an area that was determined to be in need of redevelopment prior to the effective date of P.L.2013, c.159, or (2) a Condemnation Redevelopment Area.

d. Clear any area owned or acquired and install, construct or reconstruct streets, facilities, utilities, and site improvements essential to the preparation of sites for use in accordance with the redevelopment plan.

e. Prepare or arrange by contract for the provision of professional services and the preparation of plans by registered architects, licensed professional engineers or planners, or other consultants for the carrying out of redevelopment projects.

f. Arrange or contract with public agencies or redevelopers for the planning, replanning, construction, or undertaking of any project or redevelopment work, or any part thereof; negotiate and collect revenue from a redeveloper to defray the costs of the redevelopment entity, including where applicable the costs incurred in conjunction with bonds, notes or other obligations issued by the redevelopment entity, and to secure payment of such revenue; as part of any such arrangement or contract, provide for extension of credit, or making of loans, to redevelopers to finance any project or redevelopment work, or upon a finding that the project or redevelopment work would not be undertaken but for the provision of financial assistance, or would not be undertaken in its intended scope without the provision of financial assistance, provide as part of an arrangement or contract for capital grants to redevelopers; and arrange or contract with public agencies or redevelopers for the opening, grading or closing of streets, roads, roadways, alleys, or other places or for the furnishing of facilities or for the acquisition by such agency of property options or property rights or for the furnishing of property or services in connection with a redevelopment area.

g. Except with regard to property subject to the requirements of P.L.2008, c.65 (C.40A:5-14.2 et al.), lease or convey property or improvements to any other party pursuant to this section, without public bidding and at such prices and upon such terms as it deems reasonable, provided that the lease or conveyance is made in conjunction with a redevelopment plan, notwithstanding the provisions of any law, rule, or regulation to the contrary.

h. Enter upon any building or property in any redevelopment area in order to conduct investigations or make surveys, sounding or test borings necessary to carry out the purposes of this act.

i. Arrange or contract with a public agency for the relocation, pursuant to the "Relocation Assistance Law of 1967," P.L.1967, c.79 (C.52:31B-1 et seq.) and the "Relocation Assistance Act," P.L.1971, c.362 (C.20:4-1 et seq.), of residents, industry or commerce displaced from a redevelopment area.

j. Make, consistent with the redevelopment plan: (1) plans for carrying out a program of voluntary repair and rehabilitation of buildings and improvements; and (2) plans for the enforcement of laws, codes, and regulations relating to the use and occupancy of buildings and improvements, and to the compulsory repair, rehabilitation, demolition, or removal of buildings and improvements.

k. Request that the planning board recommend and governing body designate particular areas as being in need of redevelopment or rehabilitation in accordance with the provisions of this act and make recommendations for the redevelopment or rehabilitation of such areas.

l. Study the recommendations of the planning board or governing body for redevelopment of the area.

m. Publish and disseminate information concerning any redevelopment area, plan or project.

n. Do all things necessary or convenient to carry out its powers.

4. Section 14 of P.L.1992, c.79 (C.40A:12A-14) is amended to read as follows:

C.40A:12A-14 Conditions for determination of need for rehabilitation.

14. a. A delineated area may be determined to be in need of rehabilitation if the governing body of the municipality determines by resolution that a program of rehabilitation, as defined in section 3 of P.L.1992, c.79 (C.40A:12A-3), may be expected to prevent further deterioration and promote the overall development of the community; and that there exist in that area any of the following conditions such that (1) a significant portion of structures therein are in a deteriorated or substandard condition; (2) more than half of the housing stock in the delineated area is at least 50 years old; (3) there is a pattern of vacancy, abandonment or underutilization of properties in the area; (4) there is a persistent arrearage of property tax payments on properties in the area; (5) environmental contamination is discouraging improvements and investment in properties in the area; or (6) a majority of the water and sewer infrastructure in the delineated area is at least 50 years old and is in need of repair or substantial maintenance. Where warranted by consideration of the overall conditions and requirements of the community, a finding of need for rehabilitation may extend to the entire area of a municipality. Prior to adoption of the resolution, the governing body shall submit it to the municipal planning board for its review. Within 45 days of its receipt of the proposed resolution, the municipal planning board shall submit its recommendations regarding the proposed resolution, including any modifications which it may recommend, to the governing body for its consideration. Thereafter, or after the expiration of the 45 days if the municipal planning board does not submit recommendations, the governing body may adopt the resolution, with or without modification. The resolution shall not become effective without the approval of the commissioner pursuant to section 6 of P.L.1992, c.79 (C.40A:12A-6), if otherwise required pursuant to that section.

b. A delineated area shall be deemed to have been determined to be an area in need of rehabilitation in accordance with the provisions of this act if it has heretofore been determined to be an area in need of rehabilitation pursuant to P.L.1975, c.104 (C.54:4-3.72 et seq.), P.L.1977, c.12 (C.54:4-3.95 et seq.) or P.L.1979, c.233 (C.54:4-3.121 et al.).

c. (1) A municipality may adopt an ordinance declaring a renovation housing project to be an area in need of rehabilitation for the purposes of Article VIII, Section I, paragraph 6 of the New Jersey Constitution if the need for renovation resulted from conflagration.

(2) For the purposes of this subsection, "renovation housing project" means any work or undertaking to provide a decent, safe, and sanitary dwelling, to exclusively benefit a specific household, by the renovation, reconstruction, or replacement of the household's home on the same lot by either a charitable entity organized to perform home renovations or by a for-profit builder using 75% or more volunteer labor-hours to accomplish the construction for the project. The undertaking may include any buildings; demolition, clearance, or removal of buildings from land; equipment; facilities; or other personal properties or interests therein which are necessary, convenient, or desirable appurtenances of the undertaking.

d. (1) A municipality may adopt an ordinance declaring a renovation housing project to be an area in need of rehabilitation for the purposes of Article VIII, Section I, paragraph 6 of the New Jersey Constitution if at least half of the number of people occupying the dwelling as their primary residence qualify for a federal income tax credit pursuant to 26 U.S.C. s.22 as a result of being permanently and totally disabled and the improvements to be made to the dwelling are made substantially to accommodate those disabilities.

(2) For the purposes of this subsection, "renovation housing project" means any work or undertaking to provide a decent, safe, and sanitary single-family dwelling, to exclusively benefit at least half of the number of people occupying a dwelling as their primary residence, by the renovation, reconstruction, or replacement of that dwelling on the same lot by either a charitable entity organized to perform home renovations or by a for-profit builder using 75% or more volunteer labor-hours to accomplish the construction for the project. The undertaking may include any buildings; demolition, clearance, or removal of buildings from land; equipment; facilities; or other personal properties or interests therein which are necessary, convenient, or desirable appurtenances of the undertaking.

5. Section 15 of P.L.1992, c.79 (C.40A:12A-15) is amended to read as follows:

C.40A:12A-15 Implementation of redevelopment plan.

15. In accordance with the provisions of a redevelopment plan adopted pursuant to section 7 of P.L.1992, c.79 (C.40A:12A-7), a municipality or redevelopment entity may proceed with clearance, replanning, conservation, development, redevelopment and rehabilitation of an area in need of rehabilitation. With respect to a redevelopment project in an area in need of rehabilitation, the municipality or redevelopment entity, upon the adoption of a redevelopment plan for the area, may perform any of the actions set forth in section 8 of P.L.1992, c.79 (C.40A:12A-8), except that with respect to such a project the municipality shall not have the power to take or acquire private property by condemnation in furtherance of a redevelopment plan, unless: a. the area is within (1) an area determined to be in need of redevelopment prior to the effective date of P.L.2013, c.159, or (2) a Condemnation Redevelopment Area and the municipality has complied with the notice requirements under subparagraph (e) of paragraph (5) of subsection b. of section 6 of P.L.1992, c.79 (C.40A:12A-6); or b. exercise of that power is authorized under any other law of this State.

6. This act shall take effect immediately, however, the provisions of section 2 shall not apply to an area determined to be a redevelopment area by any resolution that is adopted pursuant to section 6 of P.L.1992, c.79 (C.40A:12A-6) on or before the 90th day next following the date of enactment.

Approved September 6, 2013.