NOT FOR PUBLICATION
WITHOUT THE APPROVAL OF THE COMMITTEE ON OPINIONS

BENJAMIN MOORE & CO.,	:	SUPERIOR COURT OF NEW JERSEY LAW DIVISION
Plaintiff,	:	
v.	:	ESSEX COUNTY DOCKET NO.:L-1208-18
	:	**OPINION**
CITY OF NEWARK, NEWARK CITY COUNCIL, CENTRAL PLANNING BOARD OF THE CITY OF NEWARK And MORRIS LISTER AVENUE ASSOCIATES II, LLC	:	
Defendants.	:	

Decided: August 16, 2019

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By: The Honorable Thomas R. Vena, J.S.C.

Preliminary Statement

This matter is before the Court on Plaintiff Benjamin Moore & Co.'s ("Benjamin Moore") motion for summary judgment. Defendant Morris Lister Avenue Associates II, LLC ("Morris Lister") and Defendants City of Newark, the Council for the City of Newark and the City of Newark Planning Board (collectively "the Newark Defendants") oppose.

Statement of Facts

This cause of action arises out of an action in lieu of prerogative writ stemming from a hearing and subsequent resolution adopted by the Newark City Council, the City of Newark, and the Newark Planning Board in 1963 which determined that a specific Designated Area near Newark's industrial river area was "blighted" pursuant to the Blight Areas Act, N.J.S.A. 40:55-21.1. This Designated Area includes property owned Benjamin Moore, who has operated a paint manufacturing facility on the subject property since 1925. In 1963, Plaintiff constructed a 14,000 square foot addition for its research and development department. In 1984, Plaintiff constructed another addition totaling 32,000 square feet for its warehousing and distribution.

On July 24, 1963, the Newark City Council ("Council") adopted Resolution No. 7RD, later amended by Resolution 7RBA, which authorized the Planning Board for the City of Newark ("Planning Board") to investigate whether a Designated Area was blighted under the now repealed Blight Areas Act, as codified in N.J.S.A. 40:55-21.1 ("BAA"), later replaced by the Local Redevelopment and Housing Law ("LRHL"), as codified in N.J.S.A. 40A:12A-1.

The first public hearing regarding the blight determination was held on September 16, 1963 and the agenda reflects that the Newark Housing Authority presented its case in favor of a blight determination based on studies it had conducted in the area. According to the Official Record of the Vote of the Planning Board, the hearing continued on October 14 and October 21

of 1963. Further, the hearing held on October 14 was a special meeting during which the determination of blight was to be made so it could be submitted to the City Council.

On October 21, 1963, the Planning Board adopted a resolution (hereafter referred to as the "Planning Board Resolution") that announced its determination that the Designated Area was blighted under the BAA. The Planning Board Resolution included some substantive reasons the Designated Area was determined to be blighted which included, in relevant part…

- "Ample evidence of a growing or total lack of proper utilization of areas…caused by the condition of the title, diverse ownership of the real property and other conditions, resulting in a stagnant and unproductive condition of land potentially useful and valuable"
- "Ample evidence of unimproved vacant land, which has remained so for a period of more than ten years prior to the public hearing…which…by reason of its location and remoteness from developed portions of the City has a lack of means of access to other parts of the project area"
- "Ample evidence of the substandard nature of the soil condition of a major portion of the project area"
- "Ample evidence that all of these factors lead to the conclusion that this area is not suitable at its present condition for development and it is not likely to be developed through the instrumentality of private capital"

The Planning Board Resolution notes that the Planning Board "made a personal inspection" of the Designated Area and "determine[d] that the entire area under investigation and described in Resolution 7RBA…is a blighted area as defined in said Chapter 187 of the Laws of 1949." The

Planning Board submitted a certified copy of this resolution to the City Business Administrator the following day.

The Resolution was approved by the City Council in early November of 1963 and was adopted by way of Resolution No. 7Rf, based on its finding that the Designated Area satisfied both subsections (c) and (e) of the BAA, later replaced by the LRHL, as defined in N.J.S.A. 40A:12A-5(c) and (e).

Under N.J.S.A. 40A:12A-5(c) an area may be permissibly determined to be blighted and in need of redevelopment if it is comprised of…

> "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."
> N.J.S.A. 40A:12A-5(c)

Pursuant to N.J.S.A. 40A:12A-5(e), a municipality may designate an area as blighted and in need of redevelopment if the evidence shows…

> "A growing …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 result 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."
> N.J.S.A. 40A:12A-5(e).

In June of 1964, the Newark Planning Board passed another resolution that approved the Urban Renewal Plan Industrial River Project NJ R-121 (hereafter referred to as "the Redevelopment Plan"), which was later approved and adopted by the City Council and the Newark Housing Authority. The Redevelopment Plan has been amended 15 times since its adoption. The Redevelopment Plan categorized the properties within the Designated Area as either "to be acquired" by condemnation or as "not to be acquired." Properties designated as "to

be acquired" were blighted areas and set to be redeveloped whereas properties that were "not to be acquired" had substantial improvements or were in otherwise good condition.

In April of 1969, the City Council amended the Redevelopment Plan for the third time via Resolution 7Rz, which changed the category of Benjamin Moore's property in Lot 62 from "to be acquired" to "not to be acquired." Presently, the entirety of Benjamin Moore's property within the Designated Area remains "not to be acquired."

Almost 55 years after the Designated Area was determined to be blighted, on May 23, 2017, the City passed Resolution No. 7R2E which designated Morris Lister Avenue Associates, II, LLC (hereafter "Morris Lister") as the redeveloper for the Designated Area and allowed the City to enter into a redevelopment contract with Morris Lister. That Redevelopment Agreement was entered into and dated June 21, 2017, and officially made Morris Lister the redeveloper for 13 properties that fell within the Designated Area, including Plaintiff's property, comprised of Lots 34 and 40. Although these lots were originally listed as "not to be acquired," under the May 23, 2017 Resolution, they were included in those properties that were to be condemned and subsequently redeveloped by Morris Lister. In January of 2018, Benjamin Moore was notified that Morris Lister was the redeveloper for the Designated Area and, for the first time, notified that its property was included in the blighted area to be redeveloped.

Legal Arguments

I. Plaintiff's Arguments

Benjamin Moore first argues that it is entitled to summary judgment because there are no genuine issues of material fact that would otherwise preclude it. Benjamin Moore states that it is undisputed that its due process rights were violated by a lack of adequate notice regarding the

initial hearing determining blight in the 1960's, there is no evidence to support such a blight designation and lastly, that Plaintiff's property is not, nor was it ever, blighted.

Next, Benjamin Moore argues that foundational principles of due process required notice and a reasonable opportunity to be heard regarding a potential designation of blight. Benjamin Moore repeats that it was never provided with any kind of notice of the public hearing in September of 1963. However, even assuming that the Newark Defendants published a notice of the hearing in two newspapers, it would have been wholly inadequate and accordingly, deprived Benjamin Moore of a fair opportunity to oppose the blight designation.

Benjamin Moore argues that the designation of blight was arbitrary, capricious, and unreasonable, as well as totally unsupported by substantial evidence as is legally required. Courts have long recognized that a designation of blight "carries serious implications for property owners" which is the motive for the requirement that such determinations be supported by substantial evidence. Benjamin Moore highlights that none of the resolutions, transcripts, or agendas make any mention of evaluations or studies done on the area and instead merely references a personal inspection conducted by the Planning Board. Accordingly, Benjamin Moore argues that the blight determination was wholly unsupported by any evidence outside of the cursory visual inspection by the Planning Board and therefore, it should be invalidated as arbitrary, capricious and unreasonable. Further, Benjamin Moore argues extensively regarding why its property did not meet either subsection (c) or (e) of the BAA.

Lastly, Benjamin Moore argues that the blight designation, which is nearly 60 years old, is stale. Relying on two unpublished cases as well as Downtown Residents for Sane Development v. City of Hoboken, Benjamin Moore submits that designations of blight are not perpetual in length and that New Jersey courts have acknowledged that the proper authority may reconsider

such a determination. 242 N.J. Super. 329(App. Div. 1990). Benjamin Moore argues that the blight determination at issue was made in 1963, which was more than 50 years ago. This fact, combined with substantial changes within the Designated Area support a finding that the blight designation has become stale.

II. Defendant Morris Lister's Arguments

Morris Lister contends first that summary judgment is inappropriate for a variety of reasons. First, Morris Lister argues that New Jersey Court Rule 4:69-2 permits the filing of summary judgment motions in actions in lieu of prerogative writs only "if the complaint demands the performance of a ministerial act or duty." Odabash v. Mayor and Council of Dumont, 65 N.J. 115, 121, n.4 (1974). As Benjamin Moore's complaint is not based on performance of a ministerial act, Morris Lister argues that summary judgment is inappropriate.

Morris Lister highlights the importance of a complete factual record in actions in lieu of prerogative writs. A complete record is essential because these actions are premised on the judicial review of the actions and decisions of a municipality. Ideally, a reviewing court should have a complete record to examine so that it can accurately determine whether the municipality's actions were arbitrary, capricious or unreasonable. Morris Lister argues that the only proper remedy in this case is to reconstruct the record and possibly, to remand this action to the Planning Board. This argument is founded on the fact that the record presently does not have any transcripts or minutes nor copies of documents that the Planning Board reviewed during the hearing that led to its determination of blight. Morris Lister contends that the fact that important minutes and documents are missing from the record supports reconstruction of the record, not the invalidation of a 55 year old blight determination.

Morris Lister also argues that summary judgment is inappropriate because Benjamin Moore's claims are not ripe. Benjamin Moore's property is presently categorized as "not to be acquired." This means that before the property could be acquired by condemnation, the Planning Board and Council would have to designate the property as "to be acquired." As this has not happened yet, Morris Lister contends that any judicial decisions based on the record as it stands now would constitute an impermissible advisory opinion. Additionally, Morris Lister notes that the only action challenged is the blight determination and cites Washington Market Enterprises v. City of Trenton for the proposition that a mere determination of blight, alone, does not constitute a taking of private property for public use. 68 N.J. 105, 115 (1975). Morris Lister acknowledges that the Washington Court did not foreclose the possibility that a property owner might be able to establish a taking via a blight designation if he could demonstrate that there was a substantial reduction in the value of the property and that the blight designation was a substantial factor in causing that loss in value. Id. at 118. However, Morris Lister emphasizes that Benjamin Moore has not even alleged a loss of value in the property and therefore, has no basis to challenge the blight designation.

Morris Lister rejects any suggestion that notice of the September 1963 public hearing was constitutionally insufficient and states that notice was published in both the Newark Evening News and the Newark Star Ledger. Further, over 1,000 individual notices were mailed to the property owners at the time notifying them of the blight hearing. To the extent that the notice provided in 1963 was insufficient, it does not render the blight determination invalid but rather preserves a property owner's right to challenge a blight determination in the event that a municipality ever attempts to acquire the property by condemnation.

Further, Morris Lister argues that the 1963 blight determination is supported by ample evidence, including two studies prepared by the Planning Board. The first study, entitled "First Interim Report" was assembled pursuant to urban renewal efforts of the federal government. The second study, entitled "re:new Newark," contains specific information regarding conditions in the Meadowlands in the industrial river area of Newark such as poor soil condition and the need for land stabilization. Additionally, Benjamin Moore's argument that the blight determination was not supported by substantial evidence actually supports Morris Lister's argument that the incomplete record in this case demands remand to the Planning Board to be reconstructed and supplemented.

Lastly, Morris Lister contends that the 1963 blight determination is not stale because the passage of time does not invalidate such a finding. Relying on Downtown Residents for Sane Development v. City of Hoboken, Morris Lister highlights that the passage of time alone is not enough to invalidate a blight designation, so the fact that the determination of blight was made more than 50 years ago is practically irrelevant. 242 N.J. Super. 329, 340 (App. Div. 1990).

III. The Newark Defendants' Arguments

The Newark Defendants argue first that a summary judgment motion is inappropriate in this action as it is an action in lieu of prerogative writ, which requires judicial review of a municipal decision based on the record relating to that decision. As the record is incomplete, the Newark Defendants argue that summary judgment must be denied and this matter should be remanded to the Planning Board for another hearing regarding the blight designation.

Further, the Newark Defendants submit that, in light of the "more than adequate evidence" that Plaintiff was notified of the September 1963 public hearing, Plaintiff's motion for summary judgment should be denied as this action was commenced more than 45 days after the

termination of the hearing pursuant to New Jersey Court Rule 4:69-6(a). With respect to Benjamin Moore's argument in favor of invalidation of the blight determination based on the Newark Defendants failure to produce evidence of notice, the Newark Defendants contend that they were only required to retain such documents for three years. Accordingly, the Newark Defendants argue that their failure to produce evidence that show that Plaintiff was notified nearly 55 years ago cannot be considered proof that the notice was never sent. To the extent that Benjamin Moore prevails on its argument that notice was insufficient, the Newark Defendants argue that this supports remand to the Planning Board, not invalidation of the designation.

The Newark Defendants strongly oppose Benjamin Moore's suggestion that the blight determination was not supported by substantial evidence. The Newark Defendants note the two studies of the Planning Board for the Redevelopment Plan as evidence of such. Again, the Newark Defendants argue that even if it is determined that the blight designation was not supported by substantial evidence, the proper remedy is remand to the Planning Board, not invalidation of the blight designation.

Lastly, the Newark Defendants reject Benjamin Moore's contention that the blight determination is stale and highlight, as Morris Lister did, that the mere passage of time does not render a blight determination invalid.

Legal Analysis

I. New Jersey Court Rule 4:69-1, Actions in Lieu of Prerogative Writs

In order to challenge a decision made by an administrative municipal authority, a plaintiff must file an action in lieu of a prerogative writs as provided for in New Jersey Court Rule 4:69-1. Rule 4:69-1 states in relevant part that "review, hearing and relief heretofore available by

prerogative writs … shall be afforded by an action in the Law Division, Civil Part, of the Superior Court." N.J. Ct. R. 4:69-1. Further, Rule 4:69-2 allows for the filing of a summary judgment motion by the plaintiff at any time after the complaint has been filed, provided the complaint "demands the performance of a ministerial act or duty." N.J. Ct. R. 4:69-2. Generally, motions for summary judgment are inappropriate in "prerogative writ actions which challenge quasi-judicial decisions of local agencies" in that such actions require judicial review of a complete administrative record to determine whether the decision was arbitrary, capricious or unreasonable or, conversely, supported by substantial evidence. Willoughby v. Planning Bd. of Tp. of Deptford, 306 N.J. Super. 266, 274 (App. Div. 1997). Instead, such an action is commonly heard through a non-jury plenary trial and the record is supplemented as necessary. Odabash v. Mayor and Coun. Dumont, 65 N.J. 115, 121, fn. 4 (1974). However, if this plenary non-jury trial is based on "the record below" without such supplemental testimony, it would represent the practical equivalent of a summary judgment motion.

Presently, both Morris Lister and the Newark Defendants argue fervently that summary judgment is inappropriate in this case because the record is incomplete, which would prevent this Court from determining whether the blight determination was arbitrary, capricious, or unreasonable. However, these arguments grossly mischaracterize the state of the present record. The record, as it stands, is not "incomplete" but rather "imperfect." There is no evidence that has yet to be developed or something that has not been completed. Instead, the record contains everything the parties could possibly locate to illuminate a blight determination that was made more than 50 years ago. Remanding this action to the Planning Board will not result in a reconstruction or completion of the record and therefore, Benjamin Moore's summary judgment motion in this action is entirely appropriate.

Furthermore, a court should grant summary judgment when "the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to a judgment or order as a matter of law." Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 528-529 (1995).

A genuine issue of material fact is present when the evidence on the motion record, considered in light of the applicable burden of persuasion at trial and in a manner most favorable to the non-movant, would allow a fact-finder to resolve the dispute in favor of the non-movant. Id. at 540. In order to ensure that the evidence on motion is viewed in a manner most favorable to the non-movant, the Court is compelled to accept the non-movant's version of the facts as true and grant the non-movant "[t]he benefit of all inferences that those facts support." Baird v. Am. Med. Optics, 155 N.J. 54, 58 (1998).

At the same time, the non-moving party "cannot defeat a motion for summary judgment merely by pointing to any fact in dispute." Brill, 142 N.J. 520 at 529. In other words, while "genuine" issues of material fact preclude the granting of summary judgment, facts which are "of an insubstantial nature" will not prevent courts from granting the same. Id. at 530. Thus, the relevant inquiry is "whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law." Id. at 533, citing Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 251-252 (1986).

II. Designations of Blight for Redevelopment

Article VIII, Section 3, Paragraph 1 of the New Jersey Constitution, the Blighted Areas Clause, authorizes the Legislature to "take or acquire" properties falling within blighted areas for the purpose of redevelopment. Gallenthin Realty Development, Inc. v. Borough of Paulsboro,

191 N.J. 344, 356-57 (2007) quoting the New Jersey Constitution Article VIII, Section 3, Paragraph 1. Pursuant to the Blighted Areas Clause, the Legislature enacted the Blighted Areas Act, later repealed and replaced by the Local Redevelopment and Housing Law ("LRHL"), which allows a municipality to designate property as blighted and in need of redevelopment, thereby placing that property within the State's power of eminent domain. Id. A designation of blight "carries serious implications for property owners" and therefore, a municipality "must establish a record that contains more than a bland recitation of applicable statutory criteria and a declaration that those criteria are met." Id. at 373. A reviewing court should defer to the decision and related factual findings made by a local planning board. Jacoby v. Zoning Bd. of Adjustment of Borough of Englewood Cliffs, 442 N.J. Super. 450, 462 (App. Div. 2015). In light of that deference, a determination of blight may only be disturbed if the municipality's decision is determined to have been "arbitrary, capricious, or unreasonable." Id. citing Fallone Props., L.L.C. v. Bethlehem Twp. Planning Bd., 369 N.J. Super. 552, 560 (App. Div. 2004).

Moreover, a municipal authority's determination of blight is "invested with a presumption of validity." Levin v. Township Committee of Bridgewater, 57 N.J. 506, 537 (1971). However, while a municipal authority is permitted to encourage community redevelopment through the use of blight designations, that power "is not unfettered." Gallenthin at 373. It follows then that "a resolution adopted by a planning board or governing body should clearly articulate the factual findings that support the statutory criteria for designating an area as in need of redevelopment. 62-64 Main Street, L.L.C. v. Mayor and Council of City of Hackensack, 221 N.J. 129, 157 (2015). Further, "in an action in lieu of prerogative writs challenging a blight determination, the trial court must decide whether the determination is supported by substantial evidence." Hirth v. City of Hoboken, 337 N.J. Super. 149, 157 (App. Div. 2001) citing N.J.S.A. 40A:12A-6b(5).

Additionally, it is true that the "mere passage of time does not erase [the] validity" of a blight determination, but that does not mean that such a designation "necessarily continues in perpetuity." Downtown Residents for Sane Development v. City of Hoboken, 242 N.J. Super. 329, 339-40 (App. Div. 1990). There is nothing that forecloses review from the "appropriate legislative authority" who is free to "reconsider such [a blight] declaration." Id. The Downtown Court emphasized that while time alone is an insufficient reason to invalidate a blight determination, that such a decision could be revisited if circumstances had changed sufficiently. Id.

Benjamin Moore submits that the blight determination at issue is stale because it was made in 1963 and more than 55 years have passed between that designation and the Newark Defendant's redevelopment agreement with Morris Lister. Noting that Newark has experienced significant changes in those 55 years, Benjamin Moore contends that it is "nearly impossible" for properties within the 1963 Designated Area to be in the same condition today and yet, that designation is precisely what the Newark Defendants and Morris Lister rely on.

III. Challenges to A Blight Designation and Constitutional Notice Requirements

N.J.S.A. § 40A:12A-6 (h) allows a property owner, who received sufficient notice and whose property is affected by a determination of blight, to file a legal challenge "within 45 days of receipt of such notice." N.J.S.A. § 40A:12A-6 (h). A legal challenge filed outside of the 45-day window by a property owner who received proper notice is barred and in the event the property is the subject of a redevelopment condemnation action, the property owner cannot challenge the blight designation as a defense in the condemnation proceeding. N.J.S.A. § 40A:12A-6 (h).

New Jersey courts "have long recognized that no person shall be deprived of his or her property without due process of law." Harrison Redevelopment Agency v. DeRose, 398 N.J.

Super. 361, 402 (App. Div. 2008) citing Twp. of W. Orange v. 769 Assocs., 172 N.J. 564, 572 (2002). Notably, "the power to condemn property involves the exercise of one of the most awesome powers of government" and therefore, it "must always be exercised in the public interest." Id. at 403 citing City of Atlantic City v. Cynwood Invs., 148 N.J. 55, 73 (1997). Central to the notion of constitutional due process under both the Federal and New Jersey State Constitutions is the requirement of "adequate notice and an opportunity to be heard." Id. Accordingly, in Harrison the Appellate Division set forth a three part test to determine whether the notice of a potential blight designation was constitutionally sufficient. A municipality must "provide the property owner with contemporaneous written notice that fairly alerts the owner that…

> (1) his or her property has been designated for redevelopment,
> (2) the designation operates as a finding of public purpose and authorizes the municipality to acquire the property against the owner's will, and
> (3) informs the owner of the time limits within which the owner may take legal action to challenge that designation.
> Harrison at 367-68.

If the notice provided falls short of this three-part test, "an owner constitutionally preserves the right to contest the designation, by way of affirmative defense to an ensuing condemnation action… beyond forty-five days after the designation is adopted." Id. at 368.

Both the Newark Defendants and Morris Lister argue that there is "ample" evidence to establish that Benjamin Moore received sufficient notice of the September 1963 public hearing regarding the blight determination. Morris Lister highlights that notice was published in both the Newark Evening News and the Newark Star Ledger and "approximately 1,200 notices were prepared for mailing and transmitted to the Planning Board Secretary." Morris Lister conveniently omits from its argument that the letter it attached to its opposition states that the letters were to be delayed and there is no additional evidence provided by Morris Lister or the

Newark Defendants that even suggests that such individual notices were ever mailed to property owners prior to the public hearing.

In addition, the Newark Defendants argue that Benjamin Moore is sorely incorrect in its argument in favor of invalidating the blight designation based on the lack of evidence of notice because the New Jersey Municipal Planning and Zoning Boards of Adjustment Records Retention and Disposition Schedule only requires that such documents be preserved and retained for three years. Therefore, the Newark Defendants submit that Benjamin Moore cannot argue that the lack of evidence of proper notice is tantamount to evidence that the notice was never sent. The Newark Defendants rely on the fact that their obligation was only to retain such documents for three years and that they have not produced any evidence that indicates the notices were actually sent does not mean it did not occur.

The letter both Morris Lister and the Newark Defendants rely on to support their claims that sufficient notice was sent for the public hearing is attached as Exhibit H to the opposition certification of Morris Lister. This letter is dated August 19, 1963 and was written by A.J. Kelly to Ms. Larrie Stalks, who was the Executive Secretary for the Newark Central Planning Board at that time. The letter instructs that the mailing of the individual notices "should be delayed" until the Newark City Council acted on the resolution for the Redevelopment Project. It is clear to this Court that there has been no evidence submitted that indicates that Benjamin Moore, or any other property owner for that matter, was ever notified of the public hearing regarding the blight hearing by those individual notices. In fact, the content of the letter seems to suggest the opposite: that the letters were never actually mailed to the property owners.

However, this Court need not belabor the issue of whether the notices were actually mailed because based on their content alone, they fall far short of the requirements Harrison set

forth in its three-part test. The notice that was allegedly sent to property owners contains no mention of the legal time limit to challenge the blight designation, which is the third element of the test as set forth in Harrison. Accordingly, the notice allegedly provided, if any, was constitutionally deficient and therefore, Benjamin Moore may permissibly challenge the 1963 blight designation beyond the 45-day time limit.

Conclusion

The Blighted Areas Clause of the New Jersey Constitution, as contained in Article VIII, Section 3, Paragraph 1, allows the Legislature to acquire those properties it determines are blighted and therefore, are in need of redevelopment. Gallenthin Realty Development, Inc. v. Borough of Paulsboro, 191 N.J. 344, 356-57 (2007) quoting the New Jersey Constitution Article VIII, Section 3, Paragraph 1. The Blighted Areas Act, which was repealed and replaced by the Local Redevelopment and Housing Law, was enacted to allow a municipality to designate a property as blighted, which indicated it was in need of redevelopment, thereby placing that property within the State's power of eminent domain. Id. Reviewing courts should defer to the factual findings and decision of a municipality regarding blight as such a decision is "invested with a presumption of validity" Levin v. Township Committee of Bridgewater, 57 N.J. 506, 537 (1971). Accordingly, a designation of blight may only be disturbed if the municipality's decision is determined to have been "arbitrary, capricious, or unreasonable." Jacoby v. Zoning Bd. of Adjustment of Borough of Englewood Cliffs, 442 N.J. Super. 450, 462 (App. Div. 2015).citing Fallone Props., L.L.C. v. Bethlehem Twp. Planning Bd., 369 N.J. Super. 552, 560 (App. Div. 2004).

It is well established that a determination of blight "carries serious implications for property owners" and therefore, a municipality "must establish a record that contains more than a bland

recitation of applicable statutory criteria and a declaration that those criteria are met." Gallenthin Realty Development, Inc. v. Borough of Paulsboro, 191 N.J. 344, 373 (2007). A resolution designating a property as blighted and in need of redevelopment "should clearly articulate the factual findings that support the statutory criteria for designating an area as in need of redevelopment." 62-64 Main Street, L.L.C. v. Mayor and Council of City of Hackensack, 221 N.J. 129, 157 (2015). Additionally, while it is true that the "mere passage of time does not erase [the] validity" of a blight determination, that does not mean that such a designation "necessarily continues in perpetuity." Downtown Residents for Sane Development v. City of Hoboken, 242 N.J. Super. 329, 339-40 (App. Div. 1990). There is nothing that forecloses review from the "appropriate legislative authority" who is free to "reconsider such [a blight] declaration." Id.

The Planning Board Resolution that forms the basis of this action does not clearly cite facts that support its determination of blight based on the applicable statutory provisions. Notably, the Planning Board Resolution does exactly what was proscribed in Gallenthin Realty Development in that it recites the requirements a property must meet under subsections (c) and (e) but fails to support these decisions with anything more than conclusory statements. Curiously, the Planning Board Resolution relies partially on N.J.S.A. 40A:12A-5(c), which concerns land that is vacant and unimproved for ten years prior to being designated as blighted. Furthermore, N.J.S.A. 40A:12A-5(e) requires "a growing or total lack of proper utilization" arising from the condition of title, diverse ownership, and other conditions which result in "a stagnant and unproductive condition of land" that is potentially valuable and useful. It is obvious that reliance on N.J.S.A. 40A:12A-5(c) is clearly misplaced as it applies to Benjamin Moore's property as evidenced by the paint manufacturing facility that had been continuously operated since 1925. Further, there is nothing in the Planning Board Resolution that supports a finding that the property was "stagnant"

or "unproductive." The Planning Board Resolution does not cite to any section of the BAA, nor does it explain which properties within the Designated Area satisfy which portions of the BAA to authorize a designation of blight. Further, the Planning Board Resolution does not reference any studies, data, reports, or surveys it relied on while investigating a potential blight designation. The only "evidence" the Planning Board Resolution refers to is the Planning Board's own "personal inspection." While it seems more obvious than not that the Planning Board's Resolution was woefully deficient in explaining how it arrived as its blight determination, this Court does not rely on this conclusion alone.

Additionally, a property owner who was correctly notified of a hearing regarding a potential blight designation may challenge the same within 45 days of his receipt of notice pursuant to N.J.S.A. § 40A:12A-6 (h). A legal challenge filed outside of this 45 day window is barred in its entirety. N.J.S.A. § 40A:12A-6 (h). However the Appellate Division in Harrison recognized the importance of constitutionally adequate notice and set forth a three part test to determine whether notice was consistent with fundamental principles of due process. The notice provided by a municipality to a property owner who may be affected by a blight designation must "fairly alert the owner that: (1) his or her property has been designated for redevelopment; (2) the designation operates as a finding of public purpose and authorizes the municipality to acquire the property against the owner's will, and (3) informs the owner of the time limits within which the owner may take legal action to challenge that designation." Harrison Redevelopment Agency v. DeRose, 398 N.J. Super. 361, 367-68 (App. Div. 2008). If the notice provided does not satisfy this test, a property owner "constitutionally preserves the right to contest the designation…beyond forty-five days after the designation is adopted." Id. at 368.

The evidence produced in this action is the culmination of extensive work by the parties in trying to locate records from a municipal hearing that occurred more than 50 years ago. The record that resulted is everything that could be found regarding the September 1963 public hearing and subsequent resolutions. Accordingly, there is nothing to be completed and the record will not be reconstructed by remanding this matter to the Planning Board. The record, as it stands, is as complete as it could possibly be. Further, the record is notably devoid of any indication that individual notices of the blight hearing were ever sent to any of the property owners who could have been affected. Morris Lister and the Newark Defendants reliance on the single letter from August of 1963 is misplaced. The only evidence that letter provides is that the individual notices that Defendants so passionately argue were sent, were to be delayed in mailing until the City acted on the resolution. There has been nothing submitted by any of the Defendants that indicates the notices were ever sent. Additionally, the notices that were purportedly sent make no mention of the 45-day window a property owner has to challenge a blight designation. Therefore, whether the individual notices were actually sent is irrelevant as the substance of the notice was constitutionally deficient. Accordingly, Benjamin Moore could appropriately bring this action more than 45 days after the blight designation.

More than 50 years has elapsed from the time Benjamin Moore's property was designated as blighted and in need of redevelopment. The city of Newark, both inside and outside of the Designated Area, has experienced tremendous change in that period of time. The change in the character of the Designated Area over more than 50 years, combined with the fact that the Planning Board Resolution lacks a number of essential features for a proper blight determination and the constitutionally insufficient notice all support this Court's decision that the Planning Board Resolution which originally designated Benjamin Moore's property as blighted is hereby

INVALIDATED at to Plaintiff, as is the City Council's resolution of approval of it. This Court is not remanding this action to the Planning Board for a reconstruction of the record as it is clear that the present record is as complete as it could possibly get.

For all of the foregoing reasons, on the basis of the authority cited herein and the argument of counsel, Plaintiff Benjamin Moore & Co.'s motion for summary judgment is **GRANTED** and the Planning Board Resolution dated October 21, 1963 is hereby **INVALIDATED as to Plaintiff.**