SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NOS. A-0836-19
A-1213-19

BENJAMIN MOORE & CO.,

Plaintiff-Respondent,

v.

CITY OF NEWARK, NEWARK CITY COUNCIL, and CENTRAL PLANNING BOARD OF THE CITY OF NEWARK,

Defendants-Respondents,

and

MORRIS LISTER AVENUE ASSOCIATES, II, LLC,

Defendant-Appellant.

BENJAMIN MOORE & CO.,

Plaintiff-Respondent,

v.

CITY OF NEWARK, NEWARK

CITY COUNCIL, and CENTRAL
PLANNING BOARD OF THE
CITY OF NEWARK,

Defendants-Appellants,

and

MORRIS LISTER AVENUE
ASSOCIATES, II, LLC,

Defendant-Respondent.

Argued February 14, 2022 – Decided April 18, 2023

Before Judges Messano, Accurso and Enright.

On appeal from the Superior Court of New Jersey, Law Division, Essex County, Docket No. L-1208-18.

Richard J. Byrnes argued the cause for Morris Lister Avenue Associates, II, LLC, as appellant in A-0836-19 and as respondent in A-1213-19 (Wilentz, Goldman & Spitzer PA, attorneys; Steven J. Tripp and Richard J. Byrnes, of counsel and on the briefs).

Louis N. Rainone argued the cause for City of Newark, Newark City Council and Central Planning Board of the City of Newark as respondents in A-0836-19 and as appellants in A-1213-19 (Rainone Coughlin Minchello, LLC, attorneys; Louis N. Rainone and Matthew R. Tavares, of counsel and on the brief; join in the briefs of Morris Lister Avenue Associates, II, LLC, in A-0836-19 and A-1213-19).

Victor J. Herlinsky, Jr., argued the cause for respondent Benjamin Moore & Co. (Sills Cummis & Gross PC,

attorneys; Victor J. Herlinsky, Jr., and Joseph B. Shumofsky, of counsel; Kenneth F. Oettle and Adam J. Faiella, on the brief).

The opinion of the court was delivered by

ACCURSO, J.A.D.

In this unusual prerogative writs matter, defendants City of Newark and its designated redeveloper, Morris Lister Avenue Associates, II, LLC, appeal from a 2019 summary judgment in favor of Benjamin Moore & Co. invalidating the City's blight designation of Benjamin Moore's Lister Avenue property based on lack of proper service and an insufficient record to support the designation.[1] The case is unusual because the City designated the area blighted in 1963. And the City's redevelopment plan for the Industrial River Project Area where the property is located, initially adopted in June 1964, has designated the Benjamin Moore property as "not to be acquired" since 1969.

The City and Morris Lister concede Benjamin Moore retains the ability to challenge Newark's blight designation if and when the City attempts to acquire Benjamin Moore's property by eminent domain, see Harrison Redevelopment Agency v. DeRose, 398 N.J. Super. 361 (App. Div. 2008), but

[1] We consolidated the separate appeals filed by Morris Lister and the City for argument and disposition on the City's motion.

argue in the absence of a condemnation action there was no basis for the court to have extended the company's forty-five-day period to challenge the City's 1963 resolution ratifying the redevelopment designation by more than fifty-five years. We agree and thus reverse summary judgment to Benjamin Moore invalidating the City Council's November 6, 1963 resolution as it relates to the company's Lister Avenue property.

Benjamin Moore filed its complaint in lieu of prerogative writs in February 2018, asserting its challenge to the City's 1963 blight designation was timely, although filed fifty-five years after the City made it, because the company "never received any notice" of "the public hearing allegedly held by the Planning Board" to determine whether the Industrial River Project Area, where Benjamin Moore has operated a paint manufacturing facility on the three lots it's owned on Lister Avenue since 1925, was blighted and in need of redevelopment.[2]

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[2] There is now no dispute that the Planning Board conducted the meeting noticed for September 16, 1963, as well as two additional meetings, to determine whether the Industrial River Project Area was blighted. In addition to the meeting notices, the City presented in opposition to summary judgment a copy of the meeting agenda for the September 16 blight hearing, which called for the Secretary to read the Blighted Areas Act, N.J.S.A. 40:55-21.1, into the record, as well as the "appropriate Resolutions," the Newark Housing Authority to "present[] the case for declaration of blight," and permitted time

The company, however, failed to offer evidence in support of that allegation. Its only "proof" on the issue was the certification of Kenneth Marino, Vice President of Manufacturing for Benjamin Moore offered in support of its motion for summary judgment, averring the company didn't have a copy of any such notice from 1963 in its records. Leaving aside the obvious fact that the absence of a copy of the 1963 notice in the company's records is not proof the notice was not sent, Marino did not address the extent of the company's records nor the extent of his search.

The City, on the other hand, while unable to establish on summary judgment in 2019 that it sent Benjamin Moore notice of "the public hearing allegedly held by the Planning Board" on September 16, 1963, was able to marshal significant evidence that it provided notice of the meeting to all property owners in the Industrial River Project Area, bounded by the Passaic

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for speakers to be "called before the Board to testify." The City also produced the record of the vote, which was unanimous in favor of declaring "the Industrial River Urban Renewal Project Area Project N.J. R-121, is a blighted area," which referenced an additional "Special Meeting" conducted on October 14, and continued on October 21, 1963, the date of the vote and the Resolution. The copy of the agenda for the October 14 special meeting produced by the City also had an attached note that "[t]ranscripts of the Special Meeting held on October 14, 1963 have been prepared by Winard & Winard, Certified Shorthand Reporters." The transcripts of that meeting as well as the two others have apparently been lost to time.

River to the North and East, Doremus Avenue and Newark Bay to the East, the Lehigh Valley Railroad Line, later extended to Port Street, to the South, and Routes 1 and 9 to the West, encompassing 1,671 acres.

First, the October 21, 1963 resolution adopted by the Planning Board determining that "the Industrial River Urban Renewal Project Area" was a "blighted area" as defined under the Blighted Areas Act, L. 1949, c. 187 (codified as amended at N.J.S.A. 40:55-21.1 to -21.14 (repealed by L. 1992, c. 79)), expressly stated the Planning Board gave:

> due notice of a public hearing by publishing the notice of hearing in the Newark Evening News and in the Newark Star Ledger; and in addition thereto, did mail a notice of the hearing at least ten days prior to the date set for the hearing to the owner, according to the assessment records of the City of Newark, of each parcel of property within the area to be investigated.

In addition, the City was able to locate a letter dated August 19, 1963, from counsel for the City's Housing Authority to the Executive Secretary to the Planning Board regarding "Project N.J. R-121 Industrial River Urban Renewal Project Blight Hearing." The letter stated "[i]n keeping with arrangements made at our last discussion, we are forwarding approximately 1,000 public notices folded and approximately 200 that have not been folded," and asked the Secretary to "[p]lease delay mailing out this notice until after the Council

has acted on the amended resolution [extending the Project Area to Port Street] for this Project." The letter advised that "[i]t is anticipated that action will be taken on the amended resolution on Wednesday night. If such is the case, we will arrange for the public advertisement in the local papers on Monday, August 26, and on Wednesday, September 4, 1963."

The City produced a copy of a resolution approved by City Council on Wednesday, August 21, 1963, extending the Industrial River Project Area South to Port Street, and letters dated the following day to the Newark Evening News and the Newark Star Ledger from counsel for the Housing Authority requesting the papers print in their August 26 and September 4 editions the enclosed public notice, the same one sent to the Planning Board Secretary for mailing, advising the Planning Board would hold a public hearing on September 16, 1963, at 7:00 p.m. to determine whether the area described in the notice, known as the Industrial River Urban Renewal Project, was a blighted area as defined in the Blighted Areas Act.

The notice also advised a map of the area "and the location of the various parcels of property included therein" could be inspected at City Hall in the office of the City Clerk. Finally, the notice advised the public hearing was "required by law in connection with the contemplated urban renewal of the

area described, all or any part of which may thereafter be acquired for such purposes pursuant to Chapter 300 of the New Jersey Laws of 1949, as amended" and that "any person or organization desiring to be heard will be afforded an opportunity to be heard" at the meeting.

Presented with that record on summary judgment, the trial judge concluded the City and Morris Lister failed to produce any evidence "that even suggests" the approximately 1,200 notices provided by counsel for the Housing Authority, the City's designated redevelopment agency, to the Planning Board Secretary "were ever mailed to property owners prior to the public hearing." The court found it "clear" there had 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 [that the mailing of the notices 'should be delayed'] seems to suggest the opposite: that the letters were never actually mailed to the property owners."

The court found whether the notices were actually sent was ultimately irrelevant because they fell "far short" of what we determined the constitution required in our 2008 opinion in Harrison. Specifically, the trial court found the notice "allegedly sent to property owners contains no mention of the legal

time to challenge the blight designation" as required in Harrison. The court thus concluded the notice the City "allegedly provided" Benjamin Moore, "if any, was constitutionally deficient" thereby permitting the company to challenge the City's 1963 blight designation in this prerogative writs case fifty-five years "beyond the 45-day time limit." We do not agree.

We approach our analysis of this appeal mindful of our Supreme Court's frequent admonition that "'[j]udicial review of a blight determination' must be informed by an understanding 'of the salutary social and economic policy' advanced by redevelopment statutes." 62-64 Main St., L.L.C. v. Mayor & Council of City of Hackensack, 221 N.J. 129, 157 (2015) (quoting Levin v. Twp. Comm. of Bridgewater, 57 N.J. 506, 537 (1971)). The Court has instructed we are "to interpret the powers granted to the local planning board liberally and to accept its exercise of the powers so long as a necessarily indulgent judicial eye finds a reasonable basis, i.e., substantial evidence, to support the action taken." Levin, 57 N.J. at 537. We review summary judgment using the same standard that guided the trial court. Branch v. Cream-O-Land Dairy, 244 N.J. 567, 582 (2021).

We begin by noting the trial court seems to have lost sight of which party bore the burden of proof as to lack of notice. That party was

indisputably Benjamin Moore. See N.J. Citizens United Reciprocal Exch. v. Am. Int'l Ins. Co. of N.J., 389 N.J. Super. 474, 478 (App. Div. 2006) (explaining "the burden to prove a fact generally rests on the party relying on that fact as an element in establishing his or her cause of action or defense"). And the only proof it offered on the issue was that it could not locate in 2019, at the time of the summary judgment motion, a copy of the 1963 notice in its records. Accepting the averment as true, it is obviously inadequate to establish lack of receipt, especially in light of the Planning Board's October 21, 1963 resolution stating the notices were sent at least ten days prior to the date of the blight hearing to the owner of each parcel in the Industrial River Project Area at the address listed in the City tax assessment records.

The Planning Board's 1963 resolution is, of course, entitled to a presumption of validity. See Levin, 57 N.J. at 537 (noting "[t]he decision of the municipal authorities that the area in question is blighted came to the Law Division invested with a presumption of validity. To succeed, plaintiffs had the burden of overcoming that presumption"). The City didn't need to prove on the summary judgment motion that the Board Secretary mailed the 1,200 individual notices provided by the Housing Authority, because the resolution established it in the absence of any competent proof to the contrary, of which

there was none. In re Blake's Will, 21 N.J. 50, 58 (1956) (explaining a presumption of law compels the particular conclusion in the absence of contrary evidence). The City's internal correspondence documenting its preparation of notice to individual property owners in the Industrial River Project Area only buttressed the content of the resolution by supplying contemporaneous support for the statements in the resolution concerning notice.

As we have observed in other redevelopment matters, "[t]he underlying purpose of the [forty-five-day] time limitation is . . . to 'give an essential measure of repose to actions taken against public bodies.'" Concerned Citizens of Princeton, Inc. v. Mayor & Council of Borough of Princeton, 370 N.J. Super. 429, 446 (App. Div. 2004) (quoting Washington Twp. Zoning Bd. of Adjustment v. Washington Twp. Plan. Bd., 217 N.J. Super. 215, 225 (App. Div. 1987)). Leaving aside that the former Blighted Areas Act expressly provided the failure to mail notice of the hearing would not invalidate a blight designation, N.J.S.A. 40:55-21.5; Griggs v. Princeton, 33 N.J. 207, 224-25 (1960), it is plain to see the mischief that could be worked by permitting a property owner, such as Benjamin Moore, to challenge a blight designation in a prerogative writs action decades after the designation.

First, anyone with personal knowledge of the proceedings in the Planning Board and before the City Council is likely long since retired or no longer living. Even more important, the Law Division's review of the municipal record to determine whether the decision was supported by "substantial evidence" or was instead "arbitrary, capricious and unreasonable," Willoughby v. Plan. Bd. of Twp. of Deptford, 306 N.J. Super. 266, 273-74 (App. Div. 1997) (quoting Kramer v. Bd. of Adjustment, Sea Girt, 45 N.J. 268, 296 (1965)), could likely be made impossible, as it was here, because transcripts and minutes of meetings, as well as copies of reports and other evidence considered by the Planning Board over three hearing dates have been lost to the passage of time.[3] In addition, as the City and Morris Lister argue, the City has amended the redevelopment plan it approved for the Industrial River Project Area in 1964 fifteen times since then, spent millions of dollars and taken innumerable actions over many decades, as have many others, in reliance on the 1963 blight designation for the Industrial River Project Area,

[3] The trial court rejected the City and Morris Lister's argument the record before the Planning Board and City Council was incomplete, finding it "grossly mischaracterize[d]" the state of the record. The judge found the record was "not 'incomplete' but rather 'imperfect,'" containing "everything the parties could possibly locate to illuminate a blight determination that was made more than 50 years ago" — which "imperfect" record the court deemed inadequate to sustain the designation.

all of which are put at risk by the trial court's finding that the City cannot now prove it sent notice to any of the 1,200 affected property owners of the 1963 blight hearing, and that the parts of the record it managed to locate of the proceedings before the Planning Board and City Council fifty-five years ago are not adequate to sustain the designation.[4]

The court further erred because even if Benjamin Moore proved it wasn't provided notice of the 1963 blight hearing, which it has not done, its remedy would not lie in a prerogative writs proceeding to review the Planning Board's fifty-five-year-old blight designation. As Judge Sabatino made clear in Harrison, the remedy for inadequate notice of a blight designation is not

[4] Indeed, the order the trial court initially entered on summary judgment stated "[t]he resolution of the Central Planning Board of the City of Newark, dated October 21, 1963, determining that the real properties located in [the Industrial River Project Area] were blighted and in need of redevelopment, be and hereby is invalidated," as is the November 6, 1963 resolution of the City Council "approving the Central Planning Board['s] . . . recommendation to designate the real properties" in the Industrial River Project Area "as blighted," and "[a]ll subsequent resolutions" passed by either the Planning Board or City Council "that rely upon the aforementioned blight designation." Although invalidation of the subsequent resolutions was limited to Benjamin Moore, none of the other enumerated provisions of the order was so limited. Morris Lister moved for reconsideration, arguing the court's order was overbroad in that it affected the blight determination for all properties in the Industrial River Project Area. Although the court denied the motion for reconsideration, it revised the order to limit its provisions to Benjamin Moore's Lister Avenue parcels.

invalidation of the designation or a belated prerogative writs challenge, but preservation of the property owner's "right to contest the designation, by way of affirmative defense to an ensuing condemnation action." Harrison, 398 N.J. Super. at 368. The City and Morris Lister concede Benjamin Moore retains that remedy here.[5]

It is undisputed, however, that the City has never taken steps to file a condemnation action to acquire Benjamin Moore's Lister Avenue parcels in the fifty-five years since the City designated the Industrial River Project Area a blighted area. Further, both the City and Morris Lister represent the City has no plans to do so now, and indeed, could not take steps to do so without the Planning Board and City Counsel amending the redevelopment plan, which

[5] Their concession spares us the analysis that would support applying the test announced in Harrison for adequacy of a blight designation notice to a notice issued forty-five years before the decision was written. See Harrison, 398 N.J. Super. 361, 419-20 (App. Div. 2008) (discussing whether the Court's decision in Gallenthin Realty Development, Inc. v. Borough of Paulsboro, 191 N.J. 344, 372-73 (2007), as to the substantial evidence required to entitle a municipal redevelopment designation to deference should apply to a designation issued ten years before that decision).

designates the company's parcels as "not to be acquired," which would necessarily require notice to Benjamin Moore and a right to be heard.[6]

Benjamin Moore does not accept the City has no plans to condemn its Lister Avenue property, pointing to a 2017 redevelopment agreement between the City and Morris Lister for redevelopment of a twenty-three-acre site in the Industrial River Project Area encompassing all three of Benjamin Moore's parcels on Lister Avenue, for a 497,997 square foot warehouse/distribution facility. The company represents it was the discovery of that agreement which prompted this action.

The agreement, which is in the record, requires Morris Lister to attempt to acquire all properties making up the twenty-three-acre site within one year. If Morris Lister is unsuccessful in doing so, the agreement requires the City to "expeditiously" acquire the properties by eminent domain. The City and

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[6] In its reply brief, Morris Lister acknowledges that Benjamin Moore's parcels having been designated as "not to be acquired" for the last fifty-four years may entitle the company to "more extensive notices and hearings, akin to those involved in changing the designation of an area from a 'Non-Condemnation Redevelopment Area' to a 'Condemnation Redevelopment Area,'" see N.J.S.A. 40A:12A-6(g), should the City determine to acquire it by eminent domain. A municipality's determination to re-designate a redevelopment area "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-Condemnation Redevelopment Area determination." Ibid.

Morris Lister acknowledge their redevelopment agreement contemplates acquisition of Benjamin Moore's Lister Avenue parcels, but reiterate those parcels are designated as "not to be acquired" in the Industrial River Project Area redevelopment plan, and thus the City cannot acquire the property via condemnation without further action by the Planning Board and City Council, notwithstanding their redevelopment agreement.

The trial court, focused as it was on the lack of substantial evidence in the existing record to support the Planning Board's 1963 resolution designating the Industrial River Project Area as blighted,[7] "the constitutionally insufficient

[7] The City and Morris Lister included in the summary judgment record several reports and studies undertaken by the City in the five years leading up to the Planning Board's blight designation. There is no dispute the City entered into a contract in June 1958 with the United States Housing and Home Finance Agency, Urban Renewal Administration, for an Urban Renewal Demonstration Grant, which was designed "to enable Newark to undertake a comprehensive study of deterioration in the city and prepare a ten-year renewal plan and program." In April 1959, the Planning Board documented its efforts in its First Interim Report of the Newark Urban Renewal Plan: A Demonstration Grant Project. (A digitized version of this report is available online at https://rucore.libraries.rutgers.edu/rutgers-lib/40193/PDF/1/play/ (last visited Apr. 5, 2023)). In a table appended to the report, the "Meadowlands Port and Industrial District" is described as spanning 5,585 acres or "approximately one-third of the city's land area," and the map immediately following the table reflects the Meadowlands Port and Industrial District includes Lister Avenue, the road on which the company's three parcels are located.

In 1961, the Board issued another report, entitled Re:new Newark. (A digitized version of this report is available at https://rucore.libraries.rutgers.edu/rutgers-lib/40903/PDF/1/play/ (last visited Apr. 4, 2023)). In its findings, the Re:new Newark report states that the City's "[t]wo main approaches towards industrial development and renewal . . . indicated by this Demonstration Study . . . involve[] the clearance of industrial blight and deterioration . . . in a number of areas of the City," including the Passaic River industrial district, as well as "industrial construction on vacant land, mainly in the Meadowlands." The report asserted "[i]ndustrial development problems of a wholly different nature face the City of Newark in the Meadowlands area," which it described as "approximately 2,500 acres" of "largely vacant, marshy area . . . . in the midst of one of the finest transportation complexes in the world . . . . at the heart of one of the nation's major industrial markets." The "impediments to the Meadowlands development," according to studies promulgated by the Newark Economic Development Committee and referenced in the report included the absence of long-range planning control; poor soil condition and the need for land stabilization prior to any industrial development; existing piecemeal development and speculation in land; faulty and irregular lot sizes which do not lend themselves to proper industrial development; diversified land ownership; and inadequate public utilities and other necessary facilities.

The City and Morris Lister also referenced a letter to City Council from the City Clerk in July 1963 advising the federal government had approved a $699,850 advance loan for surveys and planning of the Industrial River Urban Renewal Project, and that the Housing Authority was "presently conducting an enumeration study of this project with the $25,000.00 advanced by the Council in order to expedite a blight hearing." The letter also noted a federal grant of nearly $8 million dollars had been "earmarked" for the project and estimated that the City's cost would be about $3.8 million.

None of that evidence was mentioned by the trial court in its decision, presumably because the Planning Board did not describe the evidence it considered over its three hearing dates in concluding there was presented "ample evidence of unimproved vacant land, which . . . land by reason of its location and remoteness from developed sections and portions of the City has a

notice" the City failed to prove it mailed to Benjamin Moore and the "tremendous change" in the City since the blight designation "both inside and outside" the Project Area, made no finding as to the City's plans for the company's Lister Avenue parcels.

Benjamin Moore contends on appeal "the threat of condemnation is real," and "because the blight designation itself carries significant consequences," is a "cloud on title," and "harms property," the trial court "properly deemed the action timely and the matter ripe for adjudication." Again, we do not agree.

The trial court determined the action was timely due to lack of notice, for which, as we have already noted, there is no support in the record. It made no finding as to how real the threat of condemnation, and indeed could not likely do so on summary judgment given the parties' dispute on the point. We are obviously in no position to decide that issue. Although it is certainly true

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lack of means of access to other parts of the project area," as well as "ample evidence of the substandard nature of the soil condition in a major portion of the project area and . . . ample evidence that all of these factors lead to the conclusion that this area is not suitable in its present condition for development and is not likely to be developed through the instrumentality of private capital." The court noted the resolution did "not reference any studies, data, reports, or surveys" the Board relied on in making its blight designation, and that the "only 'evidence'" referred to was the Board's "own 'personal inspection.'"

that several older cases state "a declaration of blight ordinarily adversely affects the market value of property involved," Wash. Mkt. Enters., Inc. v. Trenton, 68 N.J. 107, 113 (1975) (quoting Lyons v. Camden, 52 N.J. 89, 99 (1968)), more recent cases point to the attractiveness of the designation for the planning approvals, tax treatment and financing benefits it provides a developer, see, e.g., Winters v. Twp. of Voorhees, 320 N.J. Super. 150, 152 (Law Div. 1998) (explaining how a redevelopment designation "enable[s] the developer to obtain favorable financing for the acquisition of the property and be eligible for certain long term tax abatement programs").

Whatever the general effect a blight designation might today have on a property located in a redevelopment area in a city like Newark, it's clear Benjamin Moore's Lister Avenue parcels have not been harmed by the blight designation in the fifty-five years it has been in place. As the company notes in its brief, Benjamin Moore in 1963, the same year as the blight designation, "constructed an additional 14,000 sq. ft. of usable space at the properties and transferred its entire research and development department there." The company "constructed an additional 32,000 sq. ft. of high bay space for warehousing and distribution" in 1984, spent $40 million repairing the plant after Superstorm Sandy in 2012, and contends it wasn't even aware of the

designation until 2018, when it learned from a third party that the Lister Avenue parcels were subject to a redevelopment plan. Given those circumstances, it would not appear alleged harm to the property by the blight designation could support a challenge to the designation by way of this prerogative writs action.

Ultimately, the plainest reason for not entertaining this prerogative writs challenge to the City's 1963 blight designation is its untimeliness, resulting in the woefully inadequate record that deprived the trial court of any ability to fairly judge the municipal actions taken over half a century ago.[8] Preserving Benjamin Moore's right to contest the blight designation by way of an affirmative defense in any condemnation action is not only the legally appropriate course, Harrison, 398 N.J. Super. at 368, it is the only practical relief that can be afforded the company at this point.

[8] We note Benjamin Moore addressed only the condition of its own property in challenging the City's blight designation, notwithstanding Wilson v. Long Branch, 27 N.J. 360, 395 (1958), and the many cases since holding community redevelopment "cannot be accomplished by means of individual selection of property. It must proceed in terms of redevelopment of areas. Such improvements will inevitably envelop some property or properties which, standing alone, cannot be so described." Benjamin Moore did not undertake any effort in the trial court to establish the Industrial River Project Area, as opposed to its own three parcels, was not blighted and in need of redevelopment in 1963.

We reverse the summary judgment to Benjamin Moore and remand to permit the City and Morris Lister to move for summary judgment on the ground that the company's challenge to the 1963 blight designation is not cognizable in this prerogative writs action, and for such other proceedings not inconsistent with this opinion. We express no view as to whether "more extensive notices and hearings, akin to those involved in changing the designation of an area from a 'Non-Condemnation Redevelopment Area' to a 'Condemnation Redevelopment Area,'" see N.J.S.A. 40A:12A-6(g), are due Benjamin Moore should the City determine to acquire the company's Lister Avenue parcels by eminent domain. See footnote 6 supra. As conceded by both the City and Morris Lister, Benjamin Moore retains the right afforded it in Harrison to challenge the City's blight determination by way of affirmative defense in any subsequent condemnation action.

Reversed and remanded. We do not retain jurisdiction.