

**THE NEW LOCAL REDEVELOPMENT AND HOUSING LAW:
ENHANCED REDEVELOPMENT OPPORTUNITIES -- NOT JUST
FOR URBAN MUNICIPALITIES**

By [Anne S. Babineau, Esq.](#)

Does your municipality include an area or areas that need to be improved or better utilized? Could you be collecting more in municipal taxes from a well-located piece of property which now contains an obsolete use? Perhaps an area within your municipality has an obsolete street layout which is deterring private investment. These are examples of some of the problems that could prompt your municipality to consider using the new Local Redevelopment and Housing Law to improve conditions on that property for the social and economic benefit of the whole municipality.

The new Local Redevelopment and Housing Law streamlines the process of redevelopment by eliminating many overlapping and sometimes conflicting statutes, and replacing them with one coordinated source of legislative authority which expands municipal powers to act to improve areas in need of redevelopment. Resolving some of the problems inherent in the many statutes that it repealed, the new law is designed to allow the legal mechanisms for local redevelopment to be more efficiently employed in municipalities throughout New Jersey.

Municipalities, developers, planners, engineers and others familiar with the old statutes, which have been used primarily in urban areas, will need to review the new statute to determine how the former statutory scheme has been modified. The new, easier-to-use statute may also attract others, in urban and nonurban areas, to consider redevelopment as a new means to promote social and economic development in their municipalities.

The State Plan encourages the reuse of property in the more developed portions of the State which are served by mass transportation, roads and infrastructure. The Local Redevelopment and Housing Law provides tools to fulfill the goals of rebuilding abandoned and/or underutilized properties, increasing tax ratables, improving the local economy, and improving the appearance of the community.

How Do You Recognize A Redevelopment Opportunity?

Recognizing a redevelopment opportunity usually begins by recognizing that there is an area or areas within the municipality that, for one or more reasons, is not being used to its full potential. One non-traditional example of a redevelopment area is a site in Bridgewater Township bounded by Routes 202 and 206 on the west, Route 287 on the north and Route 22 on the south. It was designated for redevelopment under the repealed statutes. The vast majority of the site was undeveloped due to, among other things, the condition of title, diversity of ownership and obsolete street layout. It is now the site of the Bridgewater Commons Mall.

The governing body of the municipality is the entity that is charged with the responsibility of assessing the conditions of an area to determine whether the area should be designated an "area in need of redevelopment." The language of the repealed statutes was broad. It did not merely describe an area that would commonly be considered a slum or blighted area. However, the new statute further broadens the definition. The area may be determined to be "in need of redevelopment" if 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 property therein or other conditions, resulting in a stagnant or not fully productive condition of land potentially useful and valuable for contributing to and serving the public health, safety and welfare.

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."

The words underlined in the quoted language do not appear in the repealed statutes. Subparagraph (a), as it existed in the repealed statutes, applied only to buildings used as dwellings.

Contrary to popular belief, an "area in need of redevelopment" need not be limited to large areas which appear to be dilapidated, in disrepair, and/or empty or abandoned. There is no minimum size for an area in need of redevelopment. The definition of an "area in need of redevelopment" is also broad enough to include areas where, for example, certain kinds of land are "not likely to be developed through the instrumentality of private capital," or where underutilization of property exists "resulting in a stagnant or not fully productive condition of land potentially useful and valuable for contributing to and serving the public health, safety and welfare."

The new statute calls for the area to be designated "an area in need of redevelopment," rather than the former, often derogatory designation of "blighted area" or "renewal area." As in the case of the repealed statutes, the area in need of redevelopment "may include lands, buildings or improvements which of themselves are not detrimental to the public health, safety or welfare, but the inclusion of which is found necessary, with or without change in their condition, for the effective redevelopment of the area of which they are a part."

What Legal Powers Does The New Law Provide For An Area In Need of Redevelopment?

Like the repealed statutes, the new law authorizes municipalities or redevelopment entities to undertake redevelopment projects in ways that they are not authorized to do outside an area in need of redevelopment. Because of the public interest to be served by improving a municipality through redevelopment, municipalities and redevelopment entities are authorized to assist redevelopment by:

- acquiring property (including by exercise of eminent domain);
- clearing an area, install, construct or reconstruct streets, facilities, utilities and site improvements;
- negotiating and entering into contracts with private redevelopers or public agencies for the undertaking of any project or redevelopment work;
- making loans to redevelopers to finance any project or redevelopment work;
- entering buildings or property to conduct investigations or make surveys;
- contracting with public agencies for relocation of residents, industry or commerce;
- making plans for voluntary repair or rehabilitation of buildings;
- enforcing laws, codes and regulations relating to use and occupancy; repairing, rehabilitating, demolishing or removing buildings;
- as well as exercising other powers, including the power to do "all things necessary or convenient to carry out its powers."

The new statute, unlike the repealed ones, authorizes the municipality or redevelopment entity to make capital grants to redevelopers upon a finding that the redevelopment "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 . . ." It also authorizes leasing or conveying property or improvements "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 the redevelopment plan . . ." This language provides greater flexibility as to price determination than that afforded under certain of the repealed statutes. Municipalities or redevelopment entities are now also authorized to collect revenue from a redeveloper to defray the costs of the redevelopment entity.

Other "powers" are granted to a municipality or redevelopment entity under the general corporate powers section and the bonding provisions. In the context of a redevelopment project, a municipality is given broader bonding powers to assist in projects. For example, municipalities seeking to provide financial assistance to redevelopment agencies which is to be funded through municipal bonding do not need to include a downpayment in the ordinances they adopt to authorize such assistance. This frees up monies which would have had to be used for the downpayment for other municipal purposes.

Any "public body" is also authorized to aid and cooperate in housing or redevelopment projects within the areas in which it is authorized to act by providing property, certain public improvements, rezoning and other specifically enumerated types of assistance. That provision of the statute, like the repealed statutes, authorizes "any grant, sale, conveyance, lease or agreement provided for in this section . . . [to be] made . . . without appraisal, public notice, advertisement or bidding."

Who Is Authorized To Undertake Redevelopment?

One major way that the new statute differs from those repealed is that it makes it clear that the municipal governing body is the source of all power with regard to redevelopment. The governing body has the power to (1) cause a preliminary investigation of an area to be made; (2) determine whether it is an area in need of redevelopment; (3) adopt a redevelopment plan; (4) determine that an area is in need of rehabilitation, instead of redevelopment; and (5) take various steps to implement redevelopment plans and carry out redevelopment projects. It can exercise this last source of powers directly, or through a municipal redevelopment agency, a housing authority or a county improvement authority, each of which is referred to as a "redevelopment entity."

The planning board is authorized to: (1) conduct a preliminary investigation and hearing with regard to an area that is under consideration for designation as an area in need of redevelopment, when authorized to do so by the municipal governing body; (2) make recommendations concerning a redevelopment plan; and (3) make recommendations concerning the determination of an area in need of rehabilitation. In conjunction with any periodic master plan reexamination, the new statute also requires that the planning board make recommendations concerning the

incorporation of redevelopment plans into the land use plan element of the master plan.

How Does The Municipal Governing Body Proceed To Determine Whether An Area Is In Need Of Redevelopment?

The procedure, which is substantially similar to the procedure under the repealed statutes, usually begins with a resolution by the governing body directing the planning board to undertake a preliminary investigation to determine whether the area is in need of redevelopment. After publication of the required notice and preparation of a map and statement setting forth the basis for the investigation, a hearing is held at which "all persons who are interested in or would be affected by a determination . . ." will be heard and afforded an opportunity to express their objections and have them considered and made part of the public record. After completing the hearing, the planning board makes recommendations to the governing body. The governing body can adopt a resolution determining that the area, or any part thereof, is a redevelopment area.

If objections were filed in connection with the planning board hearing, the municipality may "take no further action to acquire any property by condemnation within the redevelopment area" for 45 days. Under the repealed statutes, the waiting period was limited to 30 days, but during that 30-day period ". . . no further proceedings [were permitted to be] taken by the governing body of the municipality upon such determination . . ." In addition, under the repealed statute, if a suit were to have been filed, "no further proceedings" were permitted to be taken by the governing body "upon such determination during the pendency of such action." That automatic stay of the governing body's proceedings has now been replaced under the new statute by a provision which leaves it up to the Superior Court to issue "any incidental order that it deems proper" upon application by an objector.

Once An Area In Need Of Redevelopment Has Been Designated, How Does The Governing Body Decide What Redevelopment Should Take Place Within That Area?

The new statute, like those repealed, authorizes a municipal governing body to adopt a redevelopment plan, by ordinance. The redevelopment plan must include "an outline for the planning, development, redevelopment, or rehabilitation of the project area sufficient to indicate:

- (1) Its relationship to definite local objectives as to appropriate land uses, density of population, and improved traffic and public transportation, public utilities, recreational and community facilities and other public improvements.
- (2) Proposed land uses and building requirements in the project area.
- (3) Adequate provision for the temporary and permanent relocation, as necessary, of residents in the project area, including an estimate of the extent to which decent, safe and sanitary dwelling units affordable to displaced residents will be available to them in the existing local housing market.
- (4) An identification of any property within the redevelopment area which is proposed to be acquired in accordance with the redevelopment plan.
- (5) Any significant relationship of the redevelopment plan to (a) the master plans of contiguous municipalities, (b) the master plan of the county in which the municipality is located, and (c) the State Development and Redevelopment Plan adopted pursuant to the "State Planning Act," P.L. 1985, c. 398 (C.52:18A-196 et al.)."

The words underlined in the quoted language do not appear in the repealed statutes.

The new statute allows, but does not require, the municipality to include within the redevelopment plan "the provision of affordable housing in accordance with the 'Fair Housing Act' [citation omitted] and the housing element of the municipal master plan."

The new statute requires the redevelopment plan to describe its relationship to previous zoning. A redevelopment plan may supersede local zoning or constitute an overlay district within the redevelopment area. Like the repealed statutes, the new law also requires that the redevelopment plan be consistent with the municipal master plan or designed to effectuate the master plan; but the governing body is authorized to adopt a redevelopment plan which is inconsistent with the master plan "by affirmative vote of a majority of its full authorized membership with the reasons for so acting set forth in the redevelopment plan." The requirement of an "affirmative vote of a majority of its full authorized membership" is new language in the new statute. Prior to the adoption of the redevelopment plan by the council, the planning board is given 45 days under the new statute to transmit to the governing body "a report containing its recommendation concerning the redevelopment plan."

How Is A "Redevelopment Entity" Created?

A municipality can create a redevelopment agency, by ordinance of the governing body, to serve as a redevelopment entity. All seven of the commissioners of a redevelopment agency are to be appointed by the governing body, whereas under the former statutes, the mayor and State Department of Community Affairs each appointed one of the commissioners. Under the new statute, two of the seven commissioners may be officers or employees of the municipality. Four of the commissioners constitute a quorum. Under N.J.S.A. 40:55C-7 (repealed 1992), "[a] majority of all members appointed and qualified" had constituted a quorum.

The new statute also authorizes the governing body of a municipality, by ordinance, to create a housing authority. Out of the seven members, five are to be appointed by the governing body, one by the mayor, and one by the Commissioner of Community Affairs. No more than one member of the housing authority may be an officer or employee of the municipality. Four members shall constitute a quorum. A municipality may authorize its municipal housing authority to act as a redevelopment entity.

A county improvement authority is created pursuant to N.J.S.A. 40:37A-44 et seq.

Educational requirements are imposed upon the members and executive directors of local housing authorities and municipal redevelopment agencies.

Are Redevelopment Projects Also Authorized

In "Areas In Need Of Rehabilitation"?

The new statute, like the repealed statutes, authorizes a municipality or redevelopment entity to proceed with clearance, replanning, conservation, development, redevelopment and rehabilitation of an area in need of rehabilitation. The term "rehabilitation" is defined as "an undertaking, by means of extensive repair, reconstruction or renovation of existing structures, with or without the introduction of new construction or the enlargement of existing structures, in any area that has been determined to be in need of rehabilitation or redevelopment, to eliminate substandard structural or housing conditions and arrest the deterioration of that area." The municipality or redevelopment entity is authorized to perform any of the actions set forth in N.J.S.A. 40A:12A-8 in an area in need of rehabilitation, "except that with respect to such a project the municipality shall not have the power to take or acquire private property by condemnation . . ." These powers to act within an area in need of rehabilitation are similar to those available under the repealed statutes.

One major difference between the repealed and the new statutes regarding "an area in need of rehabilitation" is the definition of the term. Under the repealed statutes, the definition was extremely broad. For example, N.J.S.A. 40:55C-17 (repealed 1992) provided:

"No agency shall proceed with a redevelopment plan unless: (a) the municipality has first determined that the area to which said plan refers is blighted . . . or is an area in need of rehabilitation so as to prevent the existence of blighted conditions, which determination may take into consideration the existence of blighted areas elsewhere in the municipality, deterioration of housing stock, age of housing stock, supply of and demand for housing in the municipality, and arrearage in real property taxes due on residential properties"

In order for an area to be determined "in need of rehabilitation" under the new statute, the governing body must determine by resolution that there exists

". . . conditions such that (1) a significant portion of structures therein are in a deteriorated or substandard condition, (2) there is a continuing pattern of vacancy, abandonment or underutilization of properties in the area, with a persistent arrearage of property tax payments thereon, and (3) a program of rehabilitation [citation omitted] may be expected to prevent further deterioration and promote the overall development of the community."

All three findings must be made by the municipality before an area can be declared in need of rehabilitation. These requirements could substantially lessen the number of areas that can be declared in need of rehabilitation under the new statute. In addition, the new statute requires that prior to adoption of the resolution, the governing body shall submit the redevelopment plan to the municipal planning board for its review. These hurdles could lessen the utility of the Five Year Exemption and Abatement Law, N.J.S.A. 40A:21-1 et seq., which authorizes that form of tax relief to be given in areas in need of rehabilitation. Areas already declared "areas in need of rehabilitation" under the repealed statutes are, however, grandfathered.

Does The New Statute Also Give Powers To Develop And Operate Housing?

Like the repealed statutes, the new statute authorizes a municipality, county or housing authority to exercise certain enumerated powers in order to carry out the housing purposes of the act, which include the power to construct and operate housing projects. The new statute specifically requires that "[a]ll housing projects, programs and actions undertaken pursuant to this act shall accord with the housing element of the master plan of the municipality within which undertaken, and with any fair share housing plan filed by the municipality with the Council on Affordable Housing . . ." The powers of the housing authority, including the power to establish rent levels and to be responsible for tenant selection, are also set forth in the new statute.

Does the New Law Authorize Tax Abatement and Exemption?

The Local Redevelopment and Housing Law, and its companion statutes N.J.S.A. 40A:20-1 et seq. and 40A:21-1 et seq., authorize tax abatement and exemption to encourage private parties to proceed with implementation of redevelopment plans. The Long Term Tax Exemption Statute was the subject of a separate article in the June 1992 issue of New Jersey Municipalities. It is anticipated that the Five Year Exemption and Abatement Law will be the subject of a future article in this magazine.

Conclusion

Even if all that the new statute accomplished were consolidation and reorganization, it would have been a worthwhile

legislative effort. However, the new law also provides new sources of authority to spur redevelopment by, for example, broadening the definition of an area in need of redevelopment, allowing capital grants to be made to redevelopers, and by affording greater flexibility in setting the price for property to be transferred to a redeveloper. Problems which had existed because of some of the former statutory language are resolved. For example, the stay which could be used to delay the process of designating an area in need of redevelopment is no longer automatic. Clarification of procedures is now provided by the new statutory language which, among other things, requires that the municipality indicate whether the redevelopment plan supercedes local zoning. It also makes clear that the municipal governing bodies can undertake redevelopment projects without needing to establish a redevelopment entity in order to do so. Overall, the new law is a major step in the right direction for redevelopment in New Jersey.

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Notes:

1. Public Law 1992, c. 79, most sections have been codified at N.J.S.A. 40A:12A-1 et seq. The new law was signed by the Governor on August 5, 1992.
2. N.J.S.A. 40A:12A-2(d).
3. The Interim State Development and Redevelopment Plan, as adopted pursuant to the New Jersey State Planning Act (P.L. 1985, c. 398), N.J.S.A. 52:18A-196 et seq.
4. N.J.S.A. 40A:12A-5.
5. N.J.S.A. 40A:12A-5. Section 5(g), which is not set forth in this article, also includes, within the definition of an "area in need of redevelopment," any area which has been declared an Urban Enterprise Zone.
6. See, for example, N.J.S.A. 40:55-21.1(a) (repealed 1992).
7. See paragraphs 5(c) and 5(e) quoted above.
8. The new definition also includes language in subsection 5(c) which allows publicly owned land, under certain circumstances, to be declared to be in need of redevelopment.
9. An area in need of redevelopment is deemed to be a "blighted area" for the purposes of the New Jersey constitutional provision which authorizes a municipality to utilize redevelopment powers in such areas. N.J.S.A. 40A:12A-6(c). The repealed statutes used the terms "blighted area," N.J.S.A. 40:55-21.1 (repealed 1992), or "renewal area," N.J.S.A. 1:1-2(b).
10. N.J.S.A. 40A:12A-3, definition of "redevelopment area."
11. N.J.S.A. 40A:12A-8.
12. N.J.S.A. 40A:12A-8(f).
13. N.J.S.A. 40A:12A-8(g). Provisions that were repealed in some of the earlier redevelopment statutes required the finding of "use value" or described in other language the consideration that was required in the case of a lease or conveyance of a property by a governmental entity, i.e., N.J.S.A. 40:55C-87, 55:14A-41 (both repealed 1992).
14. N.J.S.A. 40A:12A-8(f).
15. N.J.S.A. 40A:12A-22.
16. N.J.S.A. 40A:12A-29 through 37.
17. N.J.S.A. 40A:12A-39.
18. N.J.S.A. 40A:12A-39.

19. N.J.S.A. 40A:12A-4(a).
20. N.J.S.A. 40A:12A-4(c) and 8. Under the new statute, as with the old, the budget of a redevelopment agency or housing authority is controlled by a municipality. See N.J.S.A. 40A:12A-25 and 26; N.J.S.A. 40:55C-11 and N.J.S.A. 55:14A-37 (both repealed 1992).
21. N.J.S.A. 40A:12A-4(b).
22. N.J.S.A. 40A:12A-50(e).
23. N.J.S.A. 40A:12A-7(f) authorizes the municipal governing body to direct the planning board to prepare a redevelopment plan and to transmit it to the governing body for its adoption. In such a case, no additional referral to the planning board is required.
24. N.J.S.A. 40A:12A-6(b)(1) through (4).
25. N.J.S.A. 40A:12A-6(b)(5).
26. N.J.S.A. 40A:12A-6(b)(6).
27. N.J.S.A. 40:55-21.8 (repealed 1992).
28. N.J.S.A. 40:55-21.8 (repealed 1992).
29. N.J.S.A. 40A:12A-6(b)(7).
30. N.J.S.A. 40A:12A-7.
31. This concept had been included in N.J.S.A. 40:55C-32 (repealed 1992).
32. N.J.S.A. 40A:12A-7(a).
33. N.J.S.A. 40A:12A-7(b).
34. N.J.S.A. 40A:12A-7(c).
35. N.J.S.A. 40A:12A-7(d).
36. See N.J.S.A. 40:55-21.10 (repealed 1992).
37. N.J.S.A. 40A:12A-7(e).
38. N.J.S.A. 40A:12A-11.
39. N.J.S.A. 40A:12A-11; and N.J.S.A. 40:55C-6 (repealed 1992).
40. N.J.S.A. 40A:12A-11.
41. N.J.S.A. 40A:12A-17(a).
42. N.J.S.A. 40A:12A-17(d).
43. N.J.S.A. 40A:12A-17(d); this is the same quorum requirement as under N.J.S.A. 55:14A-6 (repealed 1992).
44. N.J.S.A. 40A:12A-21.
45. N.J.S.A. 40A:12A-12, 18, 45 and 46.
46. N.J.S.A. 40A:12A-15.
47. N.J.S.A. 40A:12A-3.
48. N.J.S.A. 40A:12A-15.
49. See, for example, N.J.S.A. 40:55C-15.
50. N.J.S.A. 40A:12A-14(a) (emphasis added).
51. N.J.S.A. 40A:12A-14(2).
52. N.J.S.A. 40A:12A-14(b).
53. N.J.S.A. 40A:12A-16(b).
54. N.J.S.A. 40A:12A-19.

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