

To: New Jersey Law Revision Commission
From: Benjamin Cooper
Re: Meaning of “necessary” in the Context of Eminent Domain and Condemnation
(*Borough of Glassboro v. Grossman*, 457 N.J. Super. 416 (2019)).
Date: September 04, 2020

MEMORANDUM

Executive Summary

In *Borough of Glassboro v. Glassman*, the Appellate Division considered the definition of the term “necessary” in the context of a municipal redevelopment plan.¹ In that case, a landowner within the redevelopment area contested the necessity of the condemnation. The Court considered whether the statute required the condemning authority to articulate a definitive need to acquire the parcel for an identified, specific redevelopment project.² The Court examined whether a governmental unit may “stockpile” real estate for future unspecified uses.³

Statute Considered

N.J.S. 40A:12A-8 provides, in pertinent part, that

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

* * *

c. Acquire, by condemnation, any land or building which is **necessary for the redevelopment project**, pursuant to the provisions of the “Eminent Domain Act of 1971” [N.J.S. 20:-1 to -50] provided that the land or building is located within (1) an area that was determined to be in need of redevelopment prior to the effective date of *P.L. 2013, c. 159*, or (2) a Condemnation Redevelopment Area. [Emphasis added.]

Background

In *Borough of Glassboro v. Grossman*, the property in question was a mostly vacant lot, consisting of .91 acres.⁴ The property was located about a block away from ongoing redevelopment activity in Glassboro that contained retail space, classroom space, student-housing, apartments,

¹ *Borough of Glassboro v. Grossman*, 457 N.J. Super. 416 (App. Div. 2019).

² *Id.* at 422.

³ *Id.*

⁴ *Id.* at 423.

and a park.⁵ Defendants hoped to develop the lot and nearby parcels in order to “erect mixed residential, commercial, [and] retail buildings to service the growing needs of the nearby Rowan University... to provide stimulus to the downtown.”⁶ Defendants acknowledged that their property was located within the redevelopment area that the Borough approved, pursuant to a redevelopment designation adopted by the Borough in a May 2000 ordinance.⁷

After the Borough established a redevelopment area by ordinance, it was amended in certain significant respects three separate times.⁸ Each time the ordinance was amended, during the period of 2003-2007, the defendants’ lot was within the intended redevelopment area.⁹

Eventually, the Borough decided to acquire the defendants’ property.¹⁰ On May 30, 2017, an appraiser it hired performed an inspection of the property and had discussions with defendants.¹¹ The appraiser valued the property at \$125,000, the same price that was paid pursuant to a September 2016 installment contract.¹² After the appraisal, the Borough offered defendants \$125,000 for the property.¹³ Defendants did not make a counteroffer before litigation, or present a competing appraisal.¹⁴ The Borough adopted an ordinance on December 28, 2017, authorizing the acquisition of the property, but the ordinance did not contain a particular reason for the property acquisition.¹⁵

In January 2018, the Borough filed a condemnation complaint against defendants in the Law Division. The Borough asserted that its intentions for the defendants’ property were “for the public purpose of [r]edevelopment pursuant to the Eminent Domain Act” and it explained that the land was to be used for “increasing the availability of public parking in the Borough of Glassboro.”¹⁶ The defendants argued that the Borough did not demonstrate a valid public purpose that made it “necessary” to acquire their property. The Borough’s Attorney acknowledged that public parking was only one possible use for the land, and that it might be used for some other purpose related to redevelopment.

The trial court concluded that the Borough made an adequate showing regarding the need for the property.¹⁷ The trial court rejected the Borough’s assertion that it could take any property within the redevelopment area at any time without having to provide a reason.¹⁸ In this case, however, the trial court concluded that the Borough had met its burden of showing that the taking

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ *Id.* at 424-425.

⁹ *Id.* at 425.

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.* at 425-426.

¹⁵ *Id.* at 426.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

of the property was “reasonable and necessary to effectuate the redevelopment plan.”¹⁹ The defendants filed an emergency application with the Appellate Division to stay the condemnation pending appeal.²⁰

Analysis

The Appellate Division considered the term “necessary” within the context of the condemnation of land or buildings by eminent domain. The Land Redevelopment and Housing Law (“LRHL”) sets forth the limitations of the State’s eminent domain power but does not define the term “necessary.” The Court recognized that “necessary” has a wide range of meanings in the context of the law,²¹ and that “the plain language of N.J.S. 40A:12A-8(c) requires municipalities and redevelopment agencies to take only land that is ‘necessary’ for a specific redevelopment project.”²² The Court noted that N.J.S. 40:12A-8 subsection n., provides broad powers to a municipality to “[d]o all things necessary or convenient to carry out its power,” but made clear that this provision should not be construed to make subsection c. of that same statute superfluous or meaningless.²³

Pursuant to N.J.S. 40A:12A-5 of the LRHL, a municipality is authorized to designate a “redevelopment area” if the area meets certain conditions and certain procedures are followed.²⁴ Once an area is designated as a “redevelopment area”, a municipality must adopt a “redevelopment plan” before proceeding.²⁵ The LRHL defines a “redevelopment plan” in N.J.S. 40A:12A-3 as:

[A] plan adopted by the governing body of a municipality for the redevelopment or rehabilitation of all or any part of a redevelopment area, or an area in need of redevelopment, which plan **shall be sufficiently complete to indicate its relationship to definite municipal objectives** as to appropriate land uses... and **to indicate proposed land uses and building requirements in the redevelopment area or area in need of rehabilitation, or both.** [Emphasis added.]²⁶

Once a redevelopment plan is adopted, the municipality may, among other things:

[a]cquire, by condemnation, any land or building which is **necessary for the redevelopment project** pursuant to... the “Eminent Domain Act of 1971,” [N.J.S. 20:3-1 to -50], with one of two required prongs met: one, an area that was determined to be in need of redevelopment prior to the effective date of *P.L.* 2013, c. 159, or two, a Condemnation Redevelopment Project.(emphasis added)²⁷

¹⁹ *Id.* at 426-427.

²⁰ *Id.* at 427.

²¹ *Id.* at 428.

²² *Id.* at 429.

²³ *Id.*

²⁴ *Id.* at 423-424.

²⁵ *Id.* at 424.

²⁶ *Id.*

²⁷ *Id.*

The Court indicated that it did not find any discussion of N.J.S. 40A:12A-8(c) within the legislative history that led to the enactment of the LRHL.²⁸ A 1987 study that resulted in the adoption of the LRHL emphasized that the law should “provide for local flexibility and control in the development, financing, and implementation of local redevelopment programs,”²⁹ and

[m]aintain and in some cases increase, the **public accountability of local entities** involved in the redevelopment process. At the local level, this means the continuation of appropriate public review and input with the respect to designation of areas in need of redevelopment and rehabilitation, the formulation of local redevelopment plans, and **the public acquisition of property in the redevelopment area.**³⁰

The Court distinguished two concepts: “the inherent ‘legislative’ nature of a determination of necessity when acquiring land under the LRHL; and the judicial deference that must be afforded to such determinations of necessity, so long as...the government’s determination is ‘reasonable.’”³¹ To balance the tension between public accountability and affording flexibility to governing bodies, the Court read “necessary” within N.J.S. 40A:12A-8(c) in a limited way.³² The Court explained that “ ‘Necessary’ under the statute means ‘reasonably necessary.’ No more than that is required.”³³

The Appellate Division reversed the trial court’s approval of the proposed acquisition, pointing to the Borough’s acknowledgment that it “may or may not need the parcel for future parking.”³⁴ The Borough’s reliance on a future need was also problematic because it impermissibly implicated acts such as land stockpiling.³⁵

Pending Legislation

To this date, no pending legislation seeks to update the “reasonably necessary” standard within N.J.S. 40A:12A-8(c).

Conclusion

At this time, Staff seeks authorization to conduct additional research and outreach to ascertain whether modifying N.J.S. 40A:12A-8(c) would clarify the requirements of the State’s LRHL statutes.

²⁸ *Id.* at 429.

²⁹ *Id.* citing Cty. & Mun. Gov’t Study Comm’n, Local Redevelopment in New Jersey: Structuring a New Partnership 53 (Jan. 1987).

³⁰ *Id.* at 430 (emphasis added).

³¹ *Id.*

³² *Id.* at 434.

³³ *Id.* at 432.

³⁴ *Id.* at 439.

³⁵ *Id.*