

Legal Memorandum:
Equitable Redevelopment of Newark's
City-Owned Property

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Equitable Redevelopment of Newark’s City-Owned Property

As the New Jersey Supreme Court recently noted in Malanga v. Township of West Orange, municipalities can sell or improve upon public property in a number of ways.¹ However, a redevelopment designation appears to be the best way for a municipality to maintain the greatest degree of control over the future of a given parcel, in terms of retaining ownership, choosing a developer and deciding the use to which the parcel will be put. Without such a designation, in order to facilitate non-publicly funded development of city-owned property, a city would have to auction property off to the highest bidder at an open public auction, a risky process over which the city could easily lose control.² Furthermore, though a municipality can impose conditions on the sale and restrictions on the use of property sold at auction,³ it cannot convey property for nominal consideration without a redevelopment designation, unless the property is conveyed to a very narrow set of noncommercial entities.⁴

Municipalities can sell or lease property to a private developer “when acting in accordance” with the Local Redevelopment and Housing Law (“LRHL” or “Act”).⁵ The power to redevelop property is of tremendous value to municipalities. It is an awesome power and, importantly, is limited by both the state and federal Constitutions and state law.⁶ The same standards for redevelopment apply to private and public property.⁷

As CLiME has shown, the City of Newark owns hundreds of parcels by way of tax foreclosure and abandonment.⁸ Nearly three-quarters of these properties fall into the category of City-owned property without a current municipal use, and almost all lie outside of existing redevelopment areas.⁹ Most of these parcels are vacant or undersized lots in residential zones, but some lie within commercial and industrial zoning districts.¹⁰ This paper considers the benefits of a City-created Redevelopment Agency, pursuant to the LRHL, to facilitating equitable redevelopment of such parcels in a manner beneficial to Newarkers. Specifically, it aims to answer the question of how the creation of

¹ Malanga v. Township of West Orange, 253 N.J. 291, 308 (2023).

² See N.J.S.A. §40A:12-13(a).

³ *Id.*

⁴ See N.J.S.A. §40A:12-21. Importantly, however, one of the limited entities enumerated in this statute is an urban renewal corporation, “organized for the purpose of constructing housing for low or moderate income persons or families or persons with disabilities...” A few of the other entities included in this statute are duly incorporated fire companies, nonprofit hospitals, animal shelters, or nonprofit organizations whose principal purposes include the provision of education, medical, or social services to the general public.

⁵ N.J.S.A. 40A:12-13(c).

⁶ The scope and sweep of this power has evolved in New Jersey over time, as the pendulum has swung from constructing the law in favor of broader redevelopment powers to more forcefully defending the rights of real property holders. See generally, Local Redevelopment and Housing Law (“LRHL”), N.J.S.A. 40A:12A-1 et seq.; Levin v. Bridgewater, 57 N.J. 506 (1971); Forbes v. Bd. of Trustees of South Orange, 312 N.J. Super. 519 (App. Div. 1998); Concerned Citizens of Princeton, Inc. v. Borough of Princeton, 370 N.J. Super. 429 (App. Div. 2004); Gallenthin Realty Dev., Inc. v. Borough of Paulsboro, 191 N.J. 344 (2007); 62-64 Main St. v. Hackensack, 221 N.J. 129 (2015); Malanga, 253 N.J. 291 (2023).

⁷ Malanga, 253 N.J. at 309 (citing N.J.S.A. 40A:12A-5).

⁸ Elana Simon and David Troutt, *Putting Public Land to Public Use: Simulating New Housing, Economic Development and Greenspace Policy with Newark’s City-Owned Property Inventory*, RUTGERS CENTER ON LAW, INEQUALITY AND METROPOLITAN EQUITY (CLiME).

⁹ *Id.*

¹⁰ *Id.*



an entity like a Redevelopment Agency can facilitate Newark’s equitable goals of affordable housing, and mixed-use commercial and industrial development on City-owned property. Several other modes of equitable redevelopment are also considered.

Local Redevelopment and Housing Law

The LRHL was enacted in 1992, with the intent of simplifying prior local redevelopment law “to the end that the legal mechanisms for such improvement may be more efficiently employed.”¹¹ Under the Act, “redeveloper” means any “person, firm, corporation or **public body** that shall enter into or propose to enter into a contract with a municipality or other redevelopment entity” for the purpose of redeveloping an area in need of redevelopment or rehabilitation (emphasis added).¹² Likewise, “redevelopment entity” is defined under the Act as a “municipality or entity authorized by the governing body...to implement plans and carry out redevelopment projects in an area in need of redevelopment.”¹³ Lastly, a “redevelopment agency” means an agency created pursuant to Section 11 of the Act, “which has been permitted...to continue to exercise its redevelopment functions and powers.”¹⁴

In the exercise of its redevelopment functions, the municipality has the power to initiate an investigation as to whether an area is in need of redevelopment or rehabilitation, determine that the area is indeed of such redevelopment or rehabilitation, and adopt a plan pursuant to the same.¹⁵ The municipality may execute the adopted plan directly, or it may delegate this responsibility to a redevelopment agency or a municipal housing authority authorized to exercise redevelopment powers pursuant to Section 21 of the Act.¹⁶ Importantly, there can only be one redevelopment entity responsible for each redevelopment project.¹⁷ The municipality may, additionally, change or rescind the designation of the redevelopment entity responsible for implementing an individual redevelopment plan and may assume this responsibility itself.¹⁸

There are several steps in the process before the powers of a redevelopment entity, such as a Redevelopment Agency, are unlocked under the Act. First, a preliminary investigation must be conducted into whether the area in question meets any of the criteria of an “area in need of redevelopment” or “rehabilitation,” pursuant to criteria set forth in Sections 5 and 14 of the Act.¹⁹ Such

¹¹ 40A:12A-2(d).

¹² 40A:12A-3.

¹³ *Id.*

¹⁴ *Id.* See also Section 11 of the Act, stating that a municipality may create by ordinance a body known as a Redevelopment Agency, which shall be an instrumentality of the municipality creating it. The Agency shall consist of seven commissioners, appointed by the governing body in a manner there described. Commissioners are disallowed from owning an interest in any redevelopment project or property over which the Agency has any power or, in the alternative, are disallowed from participating in an Agency action over such a project in which they may have an interest.

¹⁵ 40A:12A-4(a).

¹⁶ *Id.* at § 4(c).

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ See N.J.S.A. §§ 40A:12A-6, 5, & 12. There are several relevant criteria for finding an area in need of redevelopment, each of which is sufficient. The first is under subsection 5(a), where the “generality of the buildings are substandard, unsafe, unsanitary, dilapidated, or obsolescent...as to be conducive to unwholesome living conditions.” Under subsection 5(b), an area can be found to



a determination can only be made after public notice and hearing.²⁰ Moreover, once the governing body of the municipality indeed makes the determination, it must also approve a redevelopment plan before a project can be undertaken.²¹ The plan must include, among other things, the provision of affordable housing in accordance with the “Fair Housing Act” and the housing element of the municipal master plan.²²

While this is certainly a painstaking and time-consuming process, once the plan has been adopted, the redevelopment entity tasked with servicing the specific project is then endowed with sweeping powers to proceed. These powers include eminent domain, which is obviously not necessary to effectuate redevelopment of City-owned property, but awesome, nonetheless. Some of the many other enumerated powers under this section include: the power to issue bonds; to acquire property; to clear any area owned or acquired and construct site improvements essential to the plan; to prepare or arrange by contract for the provision of professional services, such as those furnished by architects, engineers or planners; to arrange or contract with public agencies or redevelopers for the planning and construction of any project or redevelopment work, or for the **acquisition by such agency or entity of property options or property rights** or for the furnishing of property in connection with a redevelopment area.²³ Furthermore, the redevelopment entity or agency has the power to “**lease or convey property or improvements** to any other party...**without public bidding and at such prices and upon such terms as it deems reasonable**, provided that the lease or conveyance is made in conjunction with a redevelopment plan” (emphasis added).²⁴ The agency retains the power to enter upon any building or property in any redevelopment area “in order to conduct investigations,” and, crucially, to “[d]o all things **necessary or convenient** to carry out its powers” (emphasis added).²⁵ With respect to areas determined to be in need of *rehabilitation*, upon the adoption of a

be in need of redevelopment where there is a “discontinuance of the use of a building or buildings previously used for commercial, retail, shopping malls or plazas, office parks, manufacturing, or industrial purposes; the abandonment of such buildings; significant vacancies of such building or buildings for at least two consecutive years; or the same being allowed to fall into so great a state of disrepair as to be untenable” (emphasis added). Subsection 5(c) includes 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.” Moreover, subsection 5(d) makes eligible “[a]reas 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.” An area may be found, under subsection 12(a) to be in need of *rehabilitation*, if the municipality finds that “(1) a significant portion of structures therein are in a deteriorated or substandard condition; (2) more than half of the housing stock in the delineated area is at least 50 years old; (3) there is a pattern of vacancy, abandonment or underutilization of properties in the area...(5) environmental contamination is discouraging improvements and investment in properties in the area; or (6) a majority of the water and sewer infrastructure in the delineated area is at least 50 years old and is in need of repair or substantial maintenance” (emphasis added).

²⁰ See *id.* at § 6. See also *Harrison Redevelopment Agency v. DeRose*, 398 N.J. Super. 361 (App. Div. 2008).

²¹ *Id.* at § 7(a).

²² *Id.* at § 7(b).

²³ *Id.* at § 8(a)-(e).

²⁴ *Id.* at § 8(g).

²⁵ *Id.* at §§ 8(h) & (n).



redevelopment plan, the municipality or redevelopment entity may perform any of the enumerated powers in Section 8 of the Act, except to take or acquire property by condemnation.²⁶

The LRHL allows the municipality or redevelopment entity/agency to contract with redevelopers on exceptionally favorable terms. Section 9 of the Act provides:

All agreements, leases, deeds and other instruments from or between a municipality or redevelopment entity and to or with a redeveloper shall contain a covenant running with the land requiring that the owner shall construct only the uses established in the current redevelopment plan; a provision requiring the redeveloper to begin the building of the improvements for those uses within a period of time which the municipality or redevelopment entity fixes as reasonable; a provision that the redeveloper shall be without power to sell, lease, or otherwise transfer the redevelopment area or project, or any part thereof, without the written consent of the municipality or redevelopment entity...and any other covenants, provisions and continuing controls as may deemed necessary to effectuate the purposes of this act.²⁷

Furthermore, a lease to a redeveloper “may provide that all improvements shall become the property of the municipality or redevelopment entity.”²⁸

A potential Newark Redevelopment Agency would have the power to act as redeveloper itself, in addition to contracting to lease or sell property to private developers or other third parties. The Agency would have the power to acquire from the City property designated as in need of redevelopment or rehabilitation once a redevelopment plan is adopted by resolution. Perhaps most importantly to potential redevelopment of these City-owned parcels, the Agency would then have the power to lease or convey property, fixtures, or improvements **without public bidding and at such prices it deems reasonable**. This is imperative, of course, because conveying property interests at a nominal fee or below-market rate amounts to a substantial subsidy for a would-be developer. It has the potential, if done prudently, to incentivize and spur growth. Furthermore, interested parties will be put on notice of available City-owned lots, as the redevelopment process is necessarily public. How to strike the correct balance of conveyance price with restrictive terms that ensure the project is equitable, while still rendering the project economically feasible for a developer, is outside the scope of this paper. But it is clear that a Redevelopment Agency could function as an efficient mechanism for the redevelopment of the City-owned properties identified by CLiME, as it would centralize governance of these parcels, have the power to contract with professionals and developers, and convey property at reasonable prices while still retaining a property interest.

Moreover, the City of Newark already has a Housing Authority and Land Bank. Under the LRHL, a municipality may authorize its municipal housing authority or land bank to act as a

²⁶ *Id.* at § 15.

²⁷ *Id.* at § 9(a).

²⁸ *Id.* at § 9(b).



redevelopment entity.²⁹ If not already authorized to act as such, the Housing Authority would be subject to review and approval pursuant to the Local Authorities Fiscal Control Law.³⁰ The Housing Authority, acting as a redevelopment entity, would serve as an instrumentality of the municipal government in acquiring property and undertaking redevelopment projects.³¹ The Authority would have all the powers enumerated above under Section 8 of the Act. It would have the power to take title to and convey property, to make and execute contracts and other instruments necessary and convenient to the exercise of its powers.³² In conjunction with the creation of the Newark Redevelopment Agency, such an authorization, if not already executed, would allow the Housing Authority to, if deemed proper by the Council, take title to certain City-owned property for the purposes of facilitating redevelopment. The Newark Land Bank could also serve this same purpose, as it is endowed with the same powers as that of the Housing Authority or hypothetical Redevelopment Agency.³³ Perhaps bifurcating the missions between these two already-existing entities—e.g., the Housing Authority deals solely with development of affordable housing, while the Land Bank deals with all commercial and industrial redevelopment—would preclude the need to create a new entity. Again, as long as there is only one redevelopment entity that handles a given parcel, this would be entirely within the scope of the Act. Or perhaps the creation of one centralized, Redevelopment Agency that deals with all the City-owned property would be more efficient.

Relevant LHRL Case Law

I will now consider two Appellate Division cases that address the relevant LHRL provisions, the first of which is *Bryant v. City of Atlantic City*, 309 N.J. Super. 596 (App. Div. 1998). There, the Atlantic City Council adopted a plan to convey the City-owned land within Huron North, a largely vacant area near the marina found to be in need of rehabilitation, to a redeveloper, for no consideration other than promises to remediate the area and expend significant sums in the redevelopment.³⁴ No public acquisition of private parcels was required to effectuate the plan.³⁵ The City issued a request for qualifications (RFQ), seeking responses from qualified redevelopers, and otherwise followed all the procedural rules required by the LRHL.³⁶ Plaintiffs, residents and taxpayers, filed a complaint alleging that improper actions were taken by the City, and it acted arbitrarily and capriciously with respect to the steps that led to the redevelopment agreement and unconstitutionally donated the land.³⁷

The Appellate Court held that while the City may have received less monetary consideration than the market value of the land, the redeveloper agreed to expend considerable sums to improve the land, and the conveyance did not violate the Constitution or any statute, given the “public purposes

²⁹ *Id.* at § 21.

³⁰ *Id.* See also 40A:5A-1 et seq.

³¹ *Id.*

³² *Id.* at § 22.

³³ *Id.*

³⁴ *Bryant v. City of Atlantic City*, 309 N.J. Super. 596, 605 (App. Div. 1998).

³⁵ *Id.*

³⁶ *Id.* at 607-08.

³⁷ *Id.* at 602, 609.



and long-term goals the City had of developing the area.”³⁸ The court found that the conveyance of the property in exchange for the promise to redevelop the site was in furtherance of policy set forth in the LRHL, as development of an “unproductive area like Huron North constitutes a public purpose which benefits the City as a whole.”³⁹ The development, held the court, directly furthered several government functions, such as the relief of unemployment, the increase of the City’s tax base, economically rehabilitating an unproductive area, and remediating pre-existing landfill at the site.⁴⁰ Furthermore, the court found that the agreement imposed sufficient controls to insure that the stated goals and purposes would be met and, if not, the land would revert back to the City.⁴¹

The plaintiffs in the second case, *Vineland Construction Company v. Township of Pennsauken*, N.J. Super. 230 (App. Div. 2007), challenged the Township’s designation of a certain master redeveloper to carry out the redevelopment plan of a large area along the Delaware River.⁴² The court ruled that the Township had a right to contract with a private developer if “necessary or convenient” to carry out a redevelopment plan, and the determination of necessity is a legislative, not judicial decision.⁴³ The court further held that such a determination, if **reasonable**, should not be judicially disturbed.⁴⁴ Additionally, the court held that “necessity” does not govern the City’s selection of a *specific* redeveloper, that “there are no statutory or constitutional limitations on a municipality’s selection of a private developer to carry out a redevelopment plan.”⁴⁵ The discretion to contract with any one redeveloper, pursuant to N.J.S.A. § 40A-12A-8(f), is part of the City’s broad authority in carrying out its powers under the LRHL.⁴⁶

Jersey City Project—An Illustration

A recent redevelopment project in Jersey City serves as an example of how this process could work with City-owned land in Newark. Jersey City has both a Planning Board and a Redevelopment Agency. Under its Master Plan, Jersey City shares a number of the same long-term goals as Newark; namely, to promote development of a diversified economy, prioritizing reinvestment in socially vulnerable communities, and mitigating the impacts of climate change.⁴⁷ In addition to commercial redevelopment, the Plan contemplates the reuse of underutilized or vacated industrial areas with new warehousing and other light industrial uses, as such industries are increasingly priced out of Brooklyn

³⁸ *Id.* at 613.

³⁹ *Id.* The “public purpose” here is not that contemplated by the Takings Clause, as the property in question was already owned by the City. The court applied the two-part test to determine if the expenditure of public funds constituted a prohibited donation, fashioned in *Roe v. Kervick*, 42 N.J. 191, 212 (1964). The test asks (1) whether the provision of financial aid is for a public purpose, and (2) whether the means to accomplish it are consonant with that purpose.

⁴⁰ *Id.* at 613-14.

⁴¹ *Id.* at 614.

⁴² See *Vineland Constr. Co. v. Township of Pennsauken*, N.J. Super. 230, 233 (App. Div. 2007).

⁴³ *Id.* at 252.

⁴⁴ *Id.*

⁴⁵ *Id.* at 254.

⁴⁶ *Id.*

⁴⁷ Jersey City Planning, *Our Jersey City Master Plan Vision*, DIVISION OF CITY PLANNING: DEP’T OF HOUSING, ECONOMIC DEVELOPMENT, AND COMMERCE, 2021, at 40.



and Queens.⁴⁸ Additionally, pointing to the 71% of Jersey City housing units that are renter-occupied, the Plan places a heavy emphasis on advancing the goals of affordable housing.⁴⁹

In 2016, the Jersey City Council adopted a resolution authorizing the Planning Board to conduct a preliminary study of a parcel at 174 Newark Avenue to see if it met the criteria for an area in need of redevelopment or rehabilitation.⁵⁰ The study found that the parcel in question was approximately .29 acres of City-owned land, only half of which was used as a surface parking lot.⁵¹ The report also found that the parcel met the criteria for an area of need of rehabilitation under N.J.S.A. 40A:12-14(a)(6), which says that “a majority of the water and sewer infrastructure in the delineated area is at least 50 years and is in need of repair or substantial maintenance” and such rehabilitation may be “expected to prevent further deterioration and promote the overall development of the community.”⁵² The report relied on a letter from the Jersey City Municipal Utilities Authority that the majority of the infrastructure was indeed 50 years old.⁵³

The Council then, by resolution, adopted the findings of the Planning Board and declared the area in need of rehabilitation.⁵⁴ Following this designation, a Redevelopment Plan was drawn up and adopted by the Council. The Plan enumerated several objectives, including to promote redevelopment of the parcel with an economically viable mixed-use commercial building, the diversification of commercial uses within the building, and a mandatory 15% on-site affordable housing set aside required in any redevelopment agreement.⁵⁵ The Plan was adopted by an ordinance on September 9, 2022, and the property was transferred to the Jersey City Redevelopment Agency.⁵⁶ The Jersey City Redevelopment Agency adopted a resolution which executed a Redevelopment Agreement with Haus Companies LLC to redevelop the property.⁵⁷ The Agency conveyed the parcel according to an Agreement that tracked the Plan, and for consideration of \$1,365,200.00.

Relevance for Newark

The Jersey City example is so illustrative for Newark because the former used the “area in need of rehabilitation” criteria to facilitate redevelopment of property it already owned. Once such a designation was made, the Planning Board and Agency had unlocked all the powers under the LRHL, save for those of condemnation. But this is the point: Newark obviously does not need to condemn and take properties it already owns, and the criteria for designating a lot “an area in need of

⁴⁸ *Id.* at 53.

⁴⁹ *Id.* at 60.

⁵⁰ City of Jersey City, Res. 16-589, Sept. 14, 2016.

⁵¹ City of Jersey City, Division of Planning, *Report Concerning the Determination of the Block 11401 Study Area as an “Area in Need of Rehabilitation,”* March 25, 2019, at 3.

⁵² *Id.* at 5.

⁵³ *Id.* at Exhibit A. Several other subsections of Section 14 of the Act are also relevant for purposes of this paper, including 14(a)(3), which criteria is “there is a pattern of vacancy, abandonment or underutilization of properties in the area.”

⁵⁴ City of Jersey City, Res. 19-374, April 24, 2019.

⁵⁵ City of Jersey City, Division of Planning, *174 Newark Avenue (Block 11401 Study Area – Lots 13.02) Redevelopment Plan*, June 28, 2022, at 1, 5.

⁵⁶ City of Jersey City, Ord. 22-068, Sept. 9, 2022.

⁵⁷ Board of Commissioners of the Jersey City Redevelopment Agency, Res. 23-10-3, Oct. 17, 2023.



rehabilitation” are slightly easier to meet than those of “an area in need of redevelopment.” In addition to the 50 year old infrastructure referenced above, among others, one of the criteria for determining if a delineated area is in need of rehabilitation is if “there is a pattern of vacancy, abandonment, or underutilization...”⁵⁸ Once the City-owned parcels are designated as in need of rehabilitation, the City of Newark, through a newly-created Newark Redevelopment Agency, the Newark Land Bank, or the Newark Housing Authority would then have all the powers granted by the LRHL to facilitate redevelopment of the parcels. And, of course, Newark has the power and authority under the Act to convey property at reasonable prices, and create redevelopment plans that are far more equitable in nature than in other municipalities.

In addition to the above criteria, there are several other ways of designating Newark’s City-owned property as in need of redevelopment under the LRHL. Subsection 5(c) is perhaps the most directly relevant. It reads that a “delineated area may be determined to be in need of redevelopment” where the land is owned by a municipality and, “by reason of its location, remoteness, lack of means of access to developed sections or portions of the municipality,” the land is “not likely to be developed through the instrumentality of private capital.”⁵⁹ Section 5 enumerates several other criteria.

Lastly, the New Jersey Urban Enterprise Zones Act provides that any area shall be eligible for designation as an “urban enterprise zone” if the area has been qualified as an “area in need of rehabilitation” and meets certain other criteria established by the Urban Enterprise Zones Authority.⁶⁰ Qualified businesses within such designated zones are eligible for certain aid, such as tax exemptions and tax credits.⁶¹ The synthesis of these two statutes presents a unique opportunity: designating the City-owned property as in need of redevelopment under the LRHL enables the City to act in all the ways detailed above. Subsequently, once a property has been conveyed (or prior to), a designation of that property as within an urban enterprise zone further empowers the City to incentivize commercial development and growth. There is nothing in the statutes that precludes such dual designation.

⁵⁸ N.J.S.A. § 40A:12A-14(a)(3).

⁵⁹ *Id.* at § 5(c).

⁶⁰ N.J.S.A. 52:27H-69.

⁶¹ *Id.* at 74-79.

