

NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION

DOCKET NO. A-0048-07T2
A-4415-07T2
A-4416-07T2

COTTAGE EMPORIUM, INC., t/a
RAINBOW LIQUORS, GOPAL PANDAY,
KAVITA PANDAY,¹ THE LIGHTHOUSE
INSTITUTE FOR EVANGELISM d/b/a
THE LIGHTHOUSE MISSION, REVEREND
KEVIN BROWN, CGR HOLDING CORP.,
L.L.C. and CARLOS RIVERA, M.D.,

Plaintiffs-Appellants,

v.

BROADWAY ARTS CENTER, L.L.C.,
a New Jersey Limited Liability
Company, CITY OF LONG BRANCH, a
Municipal Corporation of the
State of New Jersey, MAYOR AND
COUNCIL FOR THE CITY OF LONG
BRANCH, and STATE OF NEW JERSEY,

Defendants-Respondents.

¹ Cottage Emporium, Inc. t/a Rainbow Liquors, and its shareholders Gopal Panday and Kavita Panday, have resolved their dispute with the City and have submitted a stipulation that dismisses their claims in A-0048-07T2.

The claims of the remaining appellants are unaffected by this stipulation of dismissal.

CITY OF LONG BRANCH,

Plaintiff-Respondent,

v.

LIGHTHOUSE MISSION, INC., LIGHTHOUSE
INSTITUTE FOR EVANGELISM and
KEVIN BROWN, individually,

Defendants-Appellants,

and

CITY OF LONG BRANCH, MICHELE FARR DELISA,
ARLENE JEAN KEARLY, FIRST UNION
NATIONAL BANK, GERARDO ERKALINO,
MOORING TAXASSET GR, L.L.C.,
STATE OF NEW JERSEY, and LONG BRANCH
SEWERAGE AUTHORITY,

Defendants.

CITY OF LONG BRANCH,

Plaintiff-Respondent,

v.

GOPAL PANDAY, KAVITA PANDAY,
and COTTAGE EMPORIUM, INC.,²

Defendants-Appellants,

and

CITY OF LONG BRANCH and LONG
BRANCH SEWERAGE AUTHORITY,

Defendants.

² Cottage Emporium, Inc., Gopal Panday and Kavita Panday have dismissed their claims in A-4416-07T2 and consent to a remand for trial as to valuation of their property.

Argued March 15, 2010 - Decided April 16, 2010

Before Judges Lisa, Baxter and Alvarez.

On appeal from the Superior Court of New Jersey, Law Division, Monmouth County, Docket Nos. L-1786-06, L-4778-07 and L-0307-08.

Peter H. Wegener argued the cause for appellants in A-0048-07T2 and A-4415-07T2 (Bathgate, Wegener & Wolf, attorneys; Michael S. Kasanoff, on the brief).

Jessica Pyatt argued the cause for respondent Broadway Arts Center, LLC (Wilentz, Goldman & Spitzer, P.A., attorneys; Willard C. Shih, of counsel and on the brief).

Hussam Chater argued the cause for respondents City of Long Branch and Mayor and Council of the City of Long Branch (Ansell Zaro Grimm & Aaron, P.C., attorneys; James G. Aaron, of counsel; Mr. Chater, on the brief).

Julie Cavanagh, Deputy Attorney General, argued the cause for respondent State of New Jersey (Paula T. Dow, Attorney General, attorney; Lewis A. Scheindlin, Assistant Attorney General, of counsel; Daniel P. Reynolds, Senior Deputy Attorney General, on the brief).

PER CURIAM

Appellants are owners and tenants of commercial properties in the Broadway Corridor, which is a section of the City of Long Branch (the City) that, in 1996, the City's governing body (Council) declared to be in need of redevelopment. Later that year, the City adopted a redevelopment plan that included the

Broadway Corridor. The City took no further action toward redevelopment of the area until 2002, when it adopted a superseding ordinance, which again included the Broadway Corridor. In 2005, the City named defendant Broadway Arts Center (BAC) as the redeveloper.

After the Law Division upheld the validity of the blight designation and the redevelopment plan for the Broadway Corridor in 2007, the City filed condemnation actions against appellants' properties in 2008. The judge again upheld the validity of the blight designation and redevelopment plan and appointed condemnation commissioners.

Appellants argue that the trial court erred by (1) finding substantial evidence to support the City's determination that the area was in need of redevelopment; (2) finding that the condition of the zone in question (study area) satisfied the requirements of N.J.S.A. 40A:12A-5(a), (c), (d) and (e); (3) finding that appellants' challenges to the blight designation and redevelopment plan were time-barred; (4) denying their requests for pretrial discovery concerning the allegedly conflict-ridden relationship between the City and its chosen redeveloper, BAC; (5) failing to find a violation of appellant The Lighthouse Mission's rights under the Federal Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA); and (6)

failing to find that the inclusion of their properties in the redevelopment zone violated their civil rights and tortiously interfered with their contractual rights and prospective economic advantage.³

We conclude that the City's designation of the study area properties as in need of redevelopment does not satisfy the heightened standard made applicable to such determinations by the Supreme Court's decision in Gallenthin Realty Development, Inc. v. Borough of Paulsboro, 191 N.J. 344 (2007). Therefore, because the record does not contain substantial evidence to support the City's findings under any of the subsections upon which it relied, we reverse the judgment appointing condemnation commissioners and vacate the declarations of taking.

We recognize, as we will discuss in this opinion, that the redevelopment study on which the City relied in 1996 when it declared the area in question blighted was prepared long before Gallenthin was decided. Although we attribute to these cases pipeline retroactivity of the Gallenthin holding, we conclude that the City should be afforded the benefit of a remand to permit it to amplify the record in an effort to meet the

³ At appellate oral argument, appellants abandoned their additional claim that the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 to -49 (the LRHL), upon which the City had relied, is unconstitutional, as the Court had, in the interim, held to the contrary.

Gallenthin standard. Harrison Redev. Agency v. DeRose, 398 N.J. Super. 361, 420 (App. Div. 2008). As to appellants' remaining claims, we reject The Mission's contention that the trial court committed reversible error in its findings regarding RLUIPA. We decline to consider appellants' contentions regarding the denial of pretrial discovery and their claims of conflict of interest, tortious interference and violation of civil rights, as our disposition of this appeal renders such issues moot.

I.

The first group of appellants is the Lighthouse Institute for Evangelism, which is located at 162 Broadway, and which operates under the name of The Lighthouse Mission under the auspices of its minister, Reverend Kevin Brown, who resides on the premises. The second group of appellants consists of CGR Holding Corporation, L.L.C., which owns a property at 9 Memorial Parkway, just south of Broadway, in which appellant Carlos Rivera, M.D. operates his medical practice.

Appellants' properties are located in the portion of the redevelopment zone known as the Broadway Corridor. Spanning an area of eighty-six acres, and consisting of 134 commercial properties and 154 residential properties, the Broadway Corridor is dissected by Broadway, one of the City's principal commercial thoroughfares. Broadway runs in an east-west direction.

The Broadway Corridor is bordered on the east by Second Avenue and Long Branch Avenue, on the north in an irregular fashion in part by Lewis Alley, and then continuing in a westerly direction to Seventh Avenue and ending at the abandoned Conrail railroad tracks. The abandoned railway tracks are outside the Broadway Corridor, but are immediately adjacent to its westernmost edge. At its southern edge the Broadway Corridor's boundary is in an irregular shape and traverses Jane Street and Chelsea Avenue. At its eastern edge, the Broadway Corridor does not abut the shoreline, but is instead adjacent to areas designated Oceanfront North and Oceanfront South. We shall discuss the City's treatment of Oceanfront North and Oceanfront South later in this opinion.

On July 26, 1994, Council adopted a report prepared by the City's Planning Department, in which the Planning Department re-examined the City's Master Plan. The 1994 report noted that the 1988 Master Plan had established as a goal for the Central Business District (CBD), which included Broadway, the "removal of deterioration and overall upgrading of physical environment" by using a "combined public-private action program [that would] secure new stores in the CBD." The 1994 report observed that the stated need to remove deteriorated buildings from the business district, and to upgrade the overall physical

environment, was necessitated by the CBD's "unattractive and deteriorating physical condition," a "linear pattern of stores along Broadway with less than optimum clustering of compatible shops," and a "lack of stores with strong regional drawing power."

After Council completed its 1994 re-examination of the City's Master Plan, on August 8, 1995, the City adopted a resolution authorizing its Planning Board to conduct a preliminary investigation to determine whether all or part of the City's waterfront property should be designated as an area in need of redevelopment pursuant to N.J.S.A. 40A:12A-6(a). The study area included properties from Seven Presidents Park to South Takanassee Lake and Broadway.

In accordance with Council's resolution, the Planning Board directed the City's Planning Department to commence an investigation of the study area, in conjunction with the planning firm Thompson and Wood and an urban development consulting firm known as The Atlantic Group. Their resulting January 1996 report (1996 Report) divided the study area into three sections: (1) Oceanfront South; (2) Oceanfront North; and (3) The Broadway Corridor. The 1996 Report described the Broadway Corridor in the following terms:

This area suffers from its historic location near the blighting effects of the abandoned

Jersey Southern railroad right-of-way, the shift of traffic to Ocean Boulevard, the shift of shopping to Route 36 locations out-of-town and decades of public and private neglect and inadequate reinvestment. Similarly, the nearby industrial area, with obsolete buildings oriented to the abandoned rail right-of-way, deters residential development and discourages maintenance in nearby blocks.

The 1996 Report concluded that the Broadway Corridor satisfied the statutory criteria for "an area in need of redevelopment" and "should be designated as same." The 1996 Report also concluded that the "Oceanfront North" residential area met the statutory criteria for an area in need of redevelopment, while the "Oceanfront South" residential area did not.

Before analyzing each of the subsections of N.J.S.A. 40A:12A-5(a), (c), (d) and (e), the Planning Department and its consultants prepared a survey of the condition of the 237 parcels of land within the Broadway Corridor.⁴ To accomplish that task, the Planning Department used the city and state building codes to devise six assessment criteria:

- Broken windows
- Deteriorating paint
- Falling, rotten, exterior columns

⁴ Although there were 134 commercial buildings and 154 residential structures, which totals 289, due to common ownership and garden apartments, the actual number of parcels was only 237.

- Cracked, chipped masonry veneer
- Siding, walls, roof, stairs, porches, balconies and other structural parts showing evidence of deterioration
- Gutters, leaders, drains, window frames and doors showing evidence of apparent defects.

Based on visual inspection, which was conducted only from the exterior of the buildings, and which was recorded by a photographic inventory, the structures were assigned a condition of "good" if the building was free from all forms of deterioration listed above, "fair" if the building had no more than two deficiencies, or "poor" if the building had three or more.

Applying that rating system, forty-eight buildings in the Broadway Corridor (or 20%) were assigned a rating of "good"; seventy-four (or 31%) were found to be in "fair" condition; and sixty-eight (or 29%) were found to be in "poor" condition. The remaining forty-seven properties (or 20%) were vacant land. Of the 237 parcels in the Broadway Corridor, the City owned twenty-four, eight of which were vacant parcels. Many of the remaining sixteen were in poor condition.

Turning to the statutory criteria, the 1996 Report made findings to support its conclusion that subsections (a), (c), (d) and (e) of N.J.S.A. 40A:12A-5 were satisfied. In

particular, on the basis of the six assessment criteria and the photographic survey we have described, the 1996 Report concluded that the Broadway Corridor satisfied the subsection (a) redevelopment criterion that "[t]he generality of buildings" were in sufficiently "substandard" or "dilapidated" condition "as to be conducive to unwholesome living or working conditions." The Report justified that finding by pointing to the survey's conclusion that only twenty percent of the buildings in the Broadway Corridor were in "good condition."

In its analysis of subsection (c), the 1996 Report focused on "unimproved vacant land that has remained so for a period of ten years prior to the adoption of the resolution, and that by reason of its location, remoteness, lack of means of access to developed sections or portions of such municipality, or topography, or nature of the soil, is not likely to be developed through the instrumentality of private capital." The Report observed that land vacant for ten or more years in the Broadway Corridor totaled 12.79 acres, or fifteen percent of the total area. The Report observed that "[t]his large amount of long term vacant land in a moderate size city is a very clear and significant indicator" that private capital alone was unlikely to develop that land. The 1996 Report did not determine the reasons for the vacancy rate, such as remoteness, topography, or

soil conditions, nor did the Report distinguish between "vacant" properties that consisted merely of an undeveloped parcel of land and "vacant" properties that consisted of an empty building. The Report made no effort to address the requirement of subsection (c) that such vacancy be attributable to the specific causes mentioned there. Instead, the 1996 Report merely commented that:

Industrial properties which once were adequately served by the now abandoned Jersey Southern Railroad are today confined to use by trucks in a series of residential and commercial streets unsuited to today's standards for manufacturing and distribution facilities. Direct highway access is required to save time. Large trucks require abundant roadway to make turns. Special zoning to encourage this type of development was adopted several years ago and proved unsuccessful. The entire HTLI Zone is unsuitable for private development because of inadequate road access, i.e. "remoteness" and "lack of means of access."

For the N.J.S.A. 40A:12A-5(d) criterion of conditions that are "detrimental to the safety, health, morals, or welfare of the community," the 1996 Report noted the dilapidation of the buildings and the obsolete location of the Broadway Corridor. It described the obsolescence and dilapidation as follows:

The Broadway Corridor was an historic route to the oceanfront, the ferry piers, amusements and hotels. With the passage of time, public investments in Route 36 and Ocean Boulevard took vehicular traffic away from Broadway. Stores closed, buildings

were demolished, and the strength of the businesses remaining diminished, reducing Broadway's commercial strip as a destination. Moreover, many of the buildings with retail space are obsolete in terms of their physical arrangements, in contrast to the requirements of modern merchandising. Chain stores and strong independents want high traffic counts, which Broadway no longer has. Today's retail renters want stores with more window space, rather than the long narrow stores built 75 or more years ago.

The Report commented that the Broadway Corridor's notably poor showing in the photographic survey, also described as the "commercial area image analysis," reflected "major problems in terms of parking lots, facades, vacant lots and buildings, street trees [sic], sidewalk conditions, and graffiti." Those conditions kept the area from being "the kind of commercial environment that a prospective business operator will consider for running a profitable enterprise." The study declared that those conditions "have remained for more than five years, with the result that high vacancy rates and marginal enterprises predominate." The Report noted that "[l]ocal business operators believe that the negative image" of the study area tended to taint all of the City by association, in particular the other commercial areas.

The final statutory criterion that the 1996 Report analyzed was N.J.S.A. 40A:12A-5(e), namely, a "growing lack" or "total

lack" of proper land utilization due to "diverse ownership" or other conditions, with the result that land "potentially useful and valuable for contributing to and serving the public health, safety and welfare" is instead left "in a stagnant and unproductive condition." The Report declared the Broadway Corridor to be "very significantly under-productive" and "capable of improvement," as evidenced by average property taxes per square foot that were twenty percent lower than in Oceanfront North and more than four times lower than in Oceanfront South. The preponderance of small lots was "preventing the assemblage of land for development by private investors," as only two construction permits had been issued during the preceding six years in the proposed redevelopment area. The study cited no instance of an individual parcel with unclear title or otherwise problematic ownership.

On January 23, 1996, Council adopted a resolution in which it accepted the Planning Board's recommendation that Oceanfront North and the Broadway Corridor be deemed areas in need of redevelopment.

In April 1996, the Planning Department, along with Thompson and Wood, The Atlantic Group, and the City's redevelopment counsel, issued the "Oceanfront-Broadway Redevelopment Plan." The redevelopment plan's "overall goal [was] to bring about a

compact and integrated ensemble of public and private places that support year-round uses related to living, working, and recreation and visitation."

The plan's general redevelopment objectives included the encouragement of greater density, "in order to create a walkable environment and an enlarged base population to sustain a lively, year-round retail and residential core on Long Branch's Oceanfront." The vehicle for doing so, and for increasing the value of "land and enterprise for public and private interests," would be "high-yield projects that exploit ocean views from residential and commercial development and public spaces." Narrower goals included "[i]mprov[ing] the City's image by replacing vacant lots and poorly maintained buildings with new, carefully designed buildings, both commercial and residential." In sum, the redevelopment plan was designed to "improve the total living and working conditions of the City through improvement of a blighted area, removal of structures in poor condition and the provision of land for new commercial and residential development."

The redevelopment plan thus "encouraged" commercial and retail uses in the Broadway Corridor with "larger square footage requirements." It proposed closing North Broadway and making South Broadway "the gateway to downtown," with "a four-building

gateway complex that attracts daily commuters, shoppers, and residents."

The redevelopment plan noted the City's intention of directing its redeveloper to acquire necessary properties through negotiation with their owners, and the City's expectation that the need for relocation would be "moderate at most." However, the City reserved the right to exercise eminent domain for properties that "are judged essential to achieve objectives intended by the Plan," upon the redeveloper's request and "as a last resort after other means have been exhausted." The redevelopment plan did not specify or explain how the determination that a property was essential to the redevelopment project would be made.

On April 16, 1996, Council found "substantial evidence in support of a determination that the areas delineated as Oceanfront North and Broadway Corridor individually qualify as redevelopment areas and collectively also qualify as a redevelopment area." It accordingly passed a resolution that adopted the plan and declared Broadway Corridor, along with Oceanfront North, to be areas "in need of redevelopment pursuant to the statutory criteria set forth in" N.J.S.A. 40A:12A-5(a), (c), (d) and (e). On May 14, 1996, Council codified the plan as Ordinance 15-96.

Six years later, in October 2002, the Planning Department, along with the Thompson Design Group, issued the "Broadway Redevelopment Plan" (the Broadway Plan), which incorporated the 1996 redevelopment plan. The Broadway Plan identified the subject properties, including appellants', by block and lot. The Broadway Plan repeated prior representations that the need for relocation would be minor, and that the City intended the subject properties to be acquired by negotiation, while reserving the use of condemnation "as a last resort."

The Broadway Plan included detailed "Design Guidelines" that named permitted primary and secondary uses. "Any uses not specifically listed" were prohibited. On the blocks fronting Broadway, the primary uses included performance, exhibition, and instructional and workshop spaces for theater, cinema, dance, music, art, and fashion design. The secondary uses included restaurants, clubs, bars, specialty retail, and small professional offices. Churches were not listed even among the tertiary and conditional uses.

On October 22, 2002, Council adopted Ordinance 47-02, which approved the Broadway Plan and declared it to be the superseding ordinance and standard for land use regulation in the Broadway Corridor. On June 28, 2005, Council authorized the City to enter into a redevelopment agreement with BAC for a portion of

the Broadway Corridor. Thereafter, the Mission sought to be named as the redeveloper of its property. As we shall discuss further, the federal court upheld Council's rejection of The Mission's application on the ground that the Broadway Plan excluded church uses. See The Lighthouse Inst. for Evangelism, Inc. v. City of Long Branch, 510 F.3d 253, 259 (3d Cir. 2007), cert. denied, ___ U.S. ___, 128 S. Ct. 2503, 171 L. Ed. 2d 787 (2008). Specifically, the Third Circuit approved Council's finding that "'a storefront church would jeopardize' the development of" an area that was "envisioned as 'an entertainment/commercial zone with businesses that are for profit,'" and that a church would also "'destroy the ability of the block to be used as a high end entertainment and recreation area,'" due to the unavoidable operation of "a New Jersey statute which prohibits the issuance of liquor licenses within two hundred feet of a house of worship." Ibid.

On February 28, 2006, Council adopted Ordinance 5-06, which listed appellants' properties among those to be acquired and authorized the City to condemn them if necessary. Within weeks, Cottage Emporium, the Pandays, The Lighthouse Mission, and its minister, Reverend Kevin Brown, began the action denominated L-1786-06 by filing a complaint in lieu of prerogative writs against the City, the Mayor and Council of Long Branch and BAC.

They sought revocation of the 2006 ordinance that gave the City authority to condemn their properties for redevelopment (count one), a declaration that the ordinance was invalid (count two), and a declaration that the redevelopment statutes were unconstitutional (count three). They also claimed that the inclusion of their properties in the redevelopment zone violated their civil rights, violated defendants' fiduciary duties, and tortiously interfered with their contractual rights and prospective economic advantage (counts four through seven, nine, and ten). In addition, The Mission sought a declaration that condemnation would violate RLUIPA, 42 U.S.C.A. §§ 2000cc to 2000cc-5 (count thirteen).⁵ On September 12, 2006, an amended complaint in lieu of prerogative writs was filed that named CGR Holding Corporation and one of its commercial tenants, Carlos Rivera, M.D. as additional plaintiffs.

The City and Council moved for summary judgment, and BAC and the State joined the motion. On December 19, 2006, the court issued its opinion, and on January 22, 2007, entered a judgment that dismissed all counts against the State. As to the City, Council and BAC, the judgment partially granted the motion by denying dismissal of count one, while dismissing count two

⁵ There were no counts eight, eleven, or twelve.

without prejudice and dismissing the remaining counts with prejudice. Thus, portions of plaintiffs' complaint survived defendants' summary judgment motions.

On February 28 and July 28, 2007, the Law Division issued orders denying appellants' requests for discovery relating to the 1996 and 2002 ordinances, in which Council had found a need for redevelopment due to blight and adopted the redevelopment plan. The judge reasoned that appellants had not filed their challenge to the blight designation within the forty-five days prescribed by Rule 4:69-6(a), and there was no basis for granting the "interest of justice" exception to the Rule's forty-five day limitations period. In particular, the judge concluded that because he had already upheld the validity of the City's redevelopment plans in City of Long Branch v. Brower, Docket No. L-4987 (Law Div. June 12, 2006),⁶ there was "no reason to relax the forty-five day statute of limitations on bringing actions in lieu of prerogative writs." The judge held "that ship has sailed," and as such, he refused to entertain

⁶ The Brower litigation involved a residential section of the City which, like the Broadway Corridor, was part of the area the City deemed blighted and in need of redevelopment in 1996. We reversed the Law Division's June 12, 2006 order sub nom City of Long Branch v. Anzalone, Nos. A-0067-06, A-0191-06, A-0192-06, A-0195-06, A-0196-06, A-0197-06, A-0198-06 and A-0654-06 (App. Div. August 7, 2008), certif. denied, 199 N.J. 134 (2009).

appellants' challenge to the 1996 and 2002 redevelopment plan or blight designations and refused to permit pretrial discovery as to those ordinances.

The judge then turned to the 2006 ordinance, Ordinance No. 5-06, which listed appellants' properties among those to be acquired, and authorized the City to condemn them if necessary. The judge concluded that appellants' challenge to the 2006 ordinance was, in reality, a challenge to the 1996 and 2002 redevelopment plan, and "once again, that ship has sailed." For that reason, he declined to permit appellants to conduct discovery on the 2006 ordinance either. Addressing appellants' challenge to the 2006 ordinance, the judge again relied on his opinion in Brower as a basis for concluding that the redevelopment plan was valid and that appellants had not satisfied their heavy burden of proving the contrary. The judge therefore upheld the City's 2006 decision to authorize the use of eminent domain against appellants' properties. On August 1, 2007, the judge entered a confirming order dismissing L-1786-06 with prejudice. The August 1, 2007 order removed all remaining impediments to the City's ability to file condemnation actions against the properties located in the Broadway Corridor.

Consequently, in October 2007, the City filed a condemnation action against The Mission (L-4778-07); in January

2008, it filed a similar action against Cottage Emporium and the Pandays (L-307-08).⁷ On April 2, 2008, the Law Division issued an opinion, which we shall describe shortly, that upheld the City's authority in L-307-08 and L-4778-07 to condemn. On April 14, 2008, the judge entered confirming judgments appointing condemnation commissioners, after which the City filed declarations of taking. The Lighthouse and CGR Holdings filed separate appeals, which we have consolidated for purposes of disposition.

In his April 2, 2008 condemnation opinion, the judge found that the City's blight determination properly relied upon "an amalgamation of data outlined from various City agencies, including the Fire Marshal, Building Department, Code Enforcement, Tax Assessor, Tax Collector, Police Department, Health Department and Public Works." That data "included the vacancy rates of properties, the general conditions of all the individual properties located in the study area, and other information derived from on-site inspections and inspections of municipal records conducted by the Planning Department."

Specifically, the judge relied upon the site inspections conducted by the City's Fire Marshal and Planning Department to

⁷ As we have noted, Cottage Emporium and the Pandays subsequently submitted a stipulation of dismissal.

determine that only twenty percent of the buildings in the Broadway Corridor were in "good" condition, with the rest "fair" or "poor." In the judge's view, that assessment justified the finding of a need for redevelopment under the N.J.S.A. 40A:12A-5(a) criterion of a predominance of unwholesome conditions.

Turning to subsection (c) of N.J.S.A. 40A:12A-5, the judge found that the high proportion of land that was vacant for ten years, representing fifteen percent of the Broadway Corridor, satisfied the N.J.S.A. 40A:12A-5(c) criterion of vacant land that is unlikely to be developed privately "'by reason of its location, remoteness, [or] lack of means of access to developed sections or portions of the municipality.'" The court also noted that industrial properties formerly served by the railroad had become effectively remote because they lacked direct highway access.

The court then found that the unfavorable results of the commercial area image analysis, as contained in the photographic survey, established the commercial obsolescence and dilapidation needed to satisfy the requirements of N.J.S.A. 40A:12A-5(d), which requires a detriment to the community's safety or welfare due to dilapidated or obsolete conditions of the buildings, or to poor layout and land use. Finally, the conjunction of vacancies and low tax revenues compared to Oceanfront South

established the stagnancy of land, thereby satisfying N.J.S.A. 40A:12A-5(e).

On that basis the court ruled that all the findings of a need for redevelopment were supported by substantial evidence. The judge distinguished Gallenthin on the grounds that his finding under N.J.S.A. 40A:12A-5(e) was not simply that land use in the Broadway Corridor was less than fully optimal, but rather that the area had become affirmatively stagnant, and that no improvement could occur without redevelopment.

II.

We turn first to Point II, in which appellants argue that the court erred by upholding the blight findings and redevelopment plan⁸ affecting their properties. They argue that the blight findings were based solely on aesthetic concerns, with no evidence of additional elements that our case law requires, namely, structural dilapidation, degraded living conditions, or a threat to the health, safety, and welfare of neighboring areas.

⁸ As we have noted, the City's findings were made in 1996 and 2002, which led the Law Division to consider appellants' challenges time-barred. On appeal, the City concedes that appellants' challenges were timely under DeRose, supra, 398 N.J. Super. at 413, which had not yet been decided when the judge rendered his decision.

The statute upon which the City relied in declaring the Broadway Corridor blighted, and in need of redevelopment, is N.J.S.A. 40A:12A-5, which is a portion of the Local Housing and Redevelopment Law (LRHL), N.J.S.A. 40A:12A-1 to -49. N.J.S.A. 40A:12A-5 provides as follows:

A delineated area may be determined to be in need of redevelopment if, after investigation, notice and hearing as provided in [N.J.S.A. 40A:12A-6], the governing body of the municipality by resolution concludes that within the delineated area 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.

. . . .

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.

A city's decision that a particular area is "blighted" is "invested with a presumption of validity." Levin v. Twp. Comm. of Bridgewater, 57 N.J. 506, 537, appeal dismissed, 404 U.S. 803, 92 S. Ct. 58, 30 L. Ed. 2d 35 (1971). It "will be upheld where any state of facts may reasonably be conceived to justify the action." Vineland Constr. Co. v. Twp. of Pennsauken, 395 N.J. Super. 230, 255 (App. Div. 2007), appeal dismissed, 195 N.J. 513 (2008). Challengers have "the burden of overcoming that presumption and demonstrating that the blight determination was not supported by substantial evidence." Levin, supra, 57 N.J. at 537. Accord Gallenthin, supra, 191 N.J. at 372; Concerned Citizens of Princeton, Inc. v. Mayor of Princeton, 370 N.J. Super. 429, 452-53 (App. Div.) ("Redevelopment designations, like all municipal actions, are vested with a presumption of validity."), certif. denied, 182 N.J. 139 (2004).

The Legislature has codified the "substantial evidence" standard. ERETC, L.L.C. v. City of Perth Amboy, 381 N.J. Super. 268, 277-78 (App. Div. 2005).

However, our courts have cautioned that the "substantial evidence" standard requires "a record that contains more than a bland recitation of applicable statutory criteria and a declaration that those criteria are met." Gallenthin, supra, 191 N.J. at 373. That standard similarly prohibits a municipality from exercising eminent domain on findings that are "supported by only the net opinion of an expert." Ibid. Instead of simply describing the physical and financial status of the properties to be taken, the municipality or its expert must perform "an analysis of the statutory criteria as [they] applied to each of the properties in the designated" redevelopment area, and of how each property's condition reflected or contributed to the area's blight. ERETC, supra, 381 N.J. Super. at 279-80.

Furthermore, questions of law are reviewed de novo. Gallenthin, supra, 191 N.J. at 372; Manalapan Realty, L.P. v. Twp. Comm. of Manalapan, 140 N.J. 366, 378 (1995).

The New Jersey Constitution's general provision on eminent domain requires only a "public use" and "just compensation," N.J. Const. art. I, ¶ 20, plus adherence to due process.

Gallenthin, supra, 191 N.J. at 356. The provision that specifically addresses the taking of private property for redevelopment declares such takings to be a public purpose, and to be eligible for preferential tax treatment, as long as the property is "blighted":

The clearance, replanning, development or redevelopment of blighted areas shall be a public purpose and public use, for which private property may be taken or acquired. Municipal, public or private corporations may be authorized by law to undertake such clearance, replanning, development or redevelopment; and improvements made for these purposes and uses, or for any of them, may be exempted from taxation, in whole or in part, for a limited period of time during which the profits of and dividends payable by any private corporation enjoying such tax exemption shall be limited by law. The conditions of use, ownership, management and control of such improvements shall be regulated by law.

[N.J. Const. art. VIII, § 3, ¶ 1 ("the Blighted Areas Clause").]

Pursuant to the fundamental principle of giving effect to all constitutional provisions, State v. Muhammad, 145 N.J. 23, 75-76 (1996), "the general provisions of the Constitution must give way to its particular provisions." Kervick v. Bontempo, 29 N.J. 469, 479 (1959). Accord Behnke v. N.J. Highway Auth., 13 N.J. 14, 31 (1953). The Blighted Areas Clause thus controls when redevelopment is the sole public purpose for a taking.

Gallenthin, supra, 191 N.J. at 360, explained that the ordinary meaning of "blight" did not extend to an area in which the only negative condition was suboptimal land use. Instead, the word "blight," and thus the Blighted Areas Clause, required the area to be characterized by physical or social deterioration that threatened to become intractable. Ibid. The clause could not allow a property to be declared "blighted" for the sole reason that it was being "operated in a less than optimal manner," because if it did, "most property in the State would be eligible for redevelopment." Id. at 365. The Court further illustrated the meaning of "blight" with similar language that the sponsor of the Blighted Areas Clause had used, after which the delegates to the 1947 Constitutional Convention passed the amendment containing the clause as proposed. Id. at 360-61; Proceedings of the New Jersey Constitutional Convention of 1947, vol. I at 744-45. On that basis, it held that the Blighted Areas Clause was intended to cover only "deterioration or stagnation that negatively affects surrounding areas." Gallenthin, supra, 191 N.J. at 360.⁹

⁹ The sponsor's statement, which was delivered without challenge or criticism, included the following:

Certain sections of [the older cities
in the State] have fallen in value, and have
(continued)

The Blighted Areas Clause also had the related intent of ensuring the constitutionality of statutes that allowed local governments to use tax preferences as incentives for private companies to participate in redevelopment projects. Id. at 360-62; Proceedings, supra, vol. I at 743-44. In 1949, the Legislature substantially replaced those statutes with the Blighted Areas Act, which authorized local governments to find that an area was "blighted"; amendments to the Local Housing Authorities Law, authorizing local housing authorities to redevelop such areas; and the Redevelopment Agencies Law, which allowed local governments to create redevelopment authorities.

(continued)

[become] what [are] known as "blighted" or "depressed" areas. . . .

These depressed areas go steadily down hill. . . . It's impossible to keep the properties in good condition, the houses deteriorate more and more, and what was once a good section of the town is on the way to becoming a slum.

Naturally, this slump in value is not confined to the original area affected. It spreads to neighboring blocks. No one person . . . can counteract this spread, because no one can afford to sink money into a blighted area . . . because the improvement is so small that it cannot turn the tide of deterioration.

[Id. at 360-61 (quoting Proceedings, supra, vol. I at 742-43) (fourth and fifth alterations added).]

L. 1949, c. 187; L. 1949, c. 300; L. 1949, c. 306; Gallenthin, supra, 191 N.J. at 361-62.

In both the Local Housing Authorities Law and the Redevelopment Agencies Law, the Legislature set out five subsections that were nearly identical to what would later appear as the first five alternative criteria in the current redevelopment statute, N.J.S.A. 40A:12A-5. L. 1949, c. 300, § 2, and L. 1949, c. 306, § 3. In 1951, it inserted those five subsections into the Blighted Areas Act as well, and deleted the provisions that had addressed only the kinds of conditions currently treated in N.J.S.A. 40A:12A-5(a) and (d). L. 1951, c. 248, § 1; Gallenthin, supra, 191 N.J. at 369-70; Forbes v. Bd. of Trs., 312 N.J. Super. 519, 527 (App. Div.), certif. denied, 156 N.J. 411 (1998).

In 1992, the Legislature replaced the Blighted Areas Act and the other enactments with the LRHL. Gallenthin, supra, 191 N.J. at 369. The five subsections that previously defined "blight" were included in the LRHL as subsections (a) through (e) of N.J.S.A. 40A:12A-5.

In addition to the general change of replacing the word "blight" with the term "in need of redevelopment," the LRHL made two changes in the fifth subsection. The first was that improper land utilization may now be found to arise from a title

problem, diverse ownership, "or" other conditions, whereas previously it had to arise from a title problem or diverse ownership "and" other conditions. L. 1951, c. 248, § 1(e); N.J.S.A. 40A:12A-5(e). The second was that the result of such conditions only has to be "a stagnant or not fully productive condition" of the land, rather than "a stagnant and unproductive condition." Ibid. (emphasis added). However, "the definitional standards were not changed in any material respect," which meant that those two changes, along with lesser changes in the other subsections, were "cosmetic only." Forbes, supra, 312 N.J. Super. at 529, 526.

Indeed, the Legislature expressly recognized that findings under the LRHL that an area was "in need of redevelopment," just like findings under the prior statutes that an area was "blighted," would be made "pursuant to the authority of" the Blighted Areas Clause and "for the purposes of" satisfying its requirement of a "blighted area." N.J.S.A. 40A:12A-3, -6(c).

The municipality in Gallenthin, supra, 191 N.J. at 348, relied solely on N.J.S.A. 40A:12A-5(e) to find that an area including the plaintiffs' property was in need of redevelopment. The Court observed that the Legislature had intended that subsection's precursor to include more than just actual slum conditions, and then explained that the intention was

constitutional because the precursor's use of the term "blight" still "retain[ed] its essential characteristic: deterioration or stagnation that negatively affects surrounding properties." Id. at 363. Under the presumption that the Legislature intended N.J.S.A. 40A:12A-5(e) to remain constitutional, the Court held that the provision was "reasonably susceptible" of the only construction that would preserve its validity: that the named conditions do not establish blight by themselves, but are among the recognized paths for an area to reach the level of degradation that the Blighted Areas Clause requires. Id. at 365-70.

In short, the Legislature relied on the Blighted Areas Clause as the authority for all of the statutes in the prior acts that it would later incorporate in the LRHL, including the provisions that were reenacted with only "cosmetic" changes as N.J.S.A. 40A:12A-5(a) through (e). While those five provisions might not be equally evocative of decay, they nonetheless share the "essential characteristic" of naming kinds of deterioration or other conditions by which an area can reach a degree of degeneration that threatens to degrade other areas, and which are unlikely to be remedied by private investment. We believe the Court would have used the same analysis and applied the Blighted Areas Clause in the same manner if the municipality had

relied on N.J.S.A. 40A:12A-5(a), (b), (c), or (d) instead of (e).

This reading of Gallenthin, and thus of N.J.S.A. 40A:12A-5, requires a municipality to find that the physical condition of the properties at issue was contributing to social problems not only within the redevelopment area, but also in nearby areas. Even though redevelopment would be expected to result in higher property tax payments and more spending for local businesses, the difference between the actual level of economic activity in the redevelopment area and the level that might be achieved after its transformation does not amount to blight by itself. Eminent domain based solely on such a difference would instead amount to condemnation due to the area's perceived insufficiency of wealth, and it would exemplify the Court's fear that most property would be continuously subject to forced redevelopment if the threshold requirement were nothing more than the possibility of a more profitable use of the land. Gallenthin, supra, 191 N.J. at 365.

Focusing more specifically on the language in N.J.S.A. 40A:12A-5(e), the Court explained that the phrase "or not fully productive" could not justify a taking for redevelopment purposes because such a criterion by itself would not satisfy the constitutional requirement of actual blight. Id. at 367.

Furthermore, to respect the statutory construction principles of ejusdem generis and to "avoid rendering any part of a statute meaningless," the Court deemed the specific condition of "stagnant" to be "the operative criterion." Id. at 367-68. The placement of the more general phrase "or not fully productive" after "stagnant" meant that the phrase can serve to elaborate "stagnant," but not to expand its meaning. Id. at 368. For similar reasons, the undesirable condition of a "growing lack or total lack of proper utilization" must be caused by one of the specific problems named in the preceding clause, which are "the condition of the title" and the "diverse ownership of the real property"; the subsequent generalized phrase "or other conditions" cannot serve as a catch-all that allows unnamed causes of improper land utilization to be an independent basis for finding that an area is in need of redevelopment. Id. at 367.

With these considerations serving as the framework for our analysis, we proceed to a review of the quality of the evidence underlying the City's findings concerning N.J.S.A. 40A:12A-5(a), (c), (d) and (e). The 1996 redevelopment study based its subsection (a) finding on a survey of the 237 properties in the Broadway Corridor conducted by the City's Planning Department in conjunction with Thompson and Wood and the Atlantic Group. That

survey was based only on exterior observation. The criteria utilized, although purportedly drawn from city and state building codes, are of a nature that, in many instances, might well be deemed more cosmetic than substantial. In particular, the 1996 Report assigned a building a rating of "poor" condition if it presented deficiencies in three or more of the six assessment criteria the 1996 Report adopted. By that standard, a building could be tagged as in "poor" condition even if its deficiencies were entirely cosmetic and superficial in nature. For example, if a building had "broken windows," "deteriorating paint" and "cracked, chipped masonry veneer," those three cosmetic violations would result in a score of "poor." Additionally, only twenty-nine percent of the buildings in the Broadway Corridor were even in "poor" condition, which is not sufficient to satisfy subsection (a)'s standard of a "generality of buildings" (emphasis added).

Moreover, nothing in the City's evidence of claimed substandard and dilapidated buildings within the meaning of subsection (a) of N.J.S.A. 40A:12A-5 attempted, even in small part, to establish what Gallenthin requires, namely a degree of "deterioration or stagnation that negatively affects surrounding areas" by promoting conditions there that can develop into blight. Id. at 360. As we have noted, the survey of property

conditions was limited to a visual inspection of their exteriors, with no indication that it included interior or structural inspections. There is also no indication that the survey was based on investigations by local officials in response to complaints about health or structural violations; indeed, the record does not even contain information on whether the properties in the Broadway Corridor had ever been so investigated. In that regard, the survey failed to satisfy even the pre-Gallenthin test of showing how each property in the redevelopment area reflected or contributed to the kind of blight in question. ERETC, supra, 381 N.J. Super. at 279-80.

The survey did not resemble the one in Lyons v. City of Camden, 52 N.J. 89, 95 (1968), which was a series of "exterior and interior investigations" conducted "structure-by-structure" by three engineers and an architect, who then applied "extensive testing criteria . . . to the critical or intermediate deficiencies" that they found before they decided whether the property was indeed in "substandard condition." The survey also did not resemble the one in Hirth v. City of Hoboken, 337 N.J. Super. 149, 162-63 (App. Div. 2001), in which the findings about building conditions were accompanied by findings of "the nature and level of the economic activity being conducted there," which were particularized and not simply general inferences from the

vacancy rate or the decline in assessed value for the redevelopment zone as a whole.

The 1996 Report concluded with the net opinion that criterion (a) was satisfied because "[t]he generality of the buildings are substandard, unsafe, unsanitary, dilapidated or obsolescent, or possess any of such characteristics." This bland recitation of statutory criteria, with a net opinion that fails to explain its basis, was expressly disapproved in Gallenthin, supra, 191 N.J. at 373. Nowhere did the 1996 Report explain how the condition of the buildings contributed to the "unwholesome living or working conditions," as required by subsection (a). We thus conclude that the City's subsection (a) findings cannot survive constitutional scrutiny.

We turn to the City's findings under subsection (c), which requires not only a high proportion of land that was vacant for ten years, but also a finding that the impediment to a parcel's redevelopment by private capital was its remoteness or lack of access. The subsection (c) criterion was deemed satisfied based upon the vacancy of fifteen percent of the land area of the Broadway Corridor for at least ten years. The 1996 Report considered the vacancy rate to be the result of the Broadway Corridor being no longer suited "to today's standards for manufacturing and distribution facilities." This unsuitability

was caused by a lack of "[d]irect highway access," which the 1996 Report found was necessary "to save time," and by a high proportion of streets too narrow to permit "large trucks . . . to make turns." The City found that this "inadequate road access" made the entire Broadway Corridor "unsuitable for private development."

However, the only evidence of this described condition concerned the industrial zone along the railroad tracks, which was west of the Broadway Corridor rather than inside it. Unquestionably, subsection (c) requires more. It must be shown that because of certain conditions the land is not likely to be developed through the instrumentality of private capital. Those conditions are "location, remoteness, lack of means of access to developed sections or portions of the municipality, or topography, or nature of the soil." N.J.S.A. 40A:12A-5(c). No basis was provided to satisfy that condition as the 1996 Report's findings on remoteness of location all pertained to the area surrounding the abandoned railroad right-of-way, which is located outside of the Broadway Corridor.

The 1996 Report addressed subsection (d) by describing standard aesthetic conditions that created a "negative image" adversely affecting the other commercial areas in the City. This is insufficient. Subsection (d) also requires that such

dilapidation must be "detrimental to the safety, health, morals, or welfare of the community." N.J.S.A. 40A:12A-5(d). No basis was provided to satisfy that condition.

The evidence was also inadequate for subsection (e), a "stagnant or not fully productive condition of land." As Gallenthin explained, the land must be stagnant rather than simply at less than its highest possible use, and the stagnancy must be caused by either a problem with title or the "diverse ownership" of the parcels in question. Gallenthin, supra, 191 N.J. at 365, 367. There was no evidence that private redevelopment in the Broadway Corridor was being frustrated by diverse ownership of an individual property or other problems with its title. Thus the City's subsection (e) findings were also inadequate.

We thus agree with appellants' claim in Point II that the 1996 and 2002 redevelopment plans for the Broadway Corridor, upon which the 2006 ordinance was based, do not satisfy the substantial evidence standard that Gallenthin, Hirth, Lyons and ERETC require. Consequently, we invalidate the blight designation and the redevelopment plan for the Broadway Corridor, and reverse the August 1, 2007 order that upheld them.

The City based the 2006 ordinance authorizing the City to take appellants' properties by eminent domain on the same 1996

and 2002 ordinances that we have now invalidated. Therefore, our reversal of the August 1, 2007 order invalidates the predicate for the April 14, 2008 order that gave the City the authority to condemn. Consequently, we reverse the April 14, 2008 order and vacate the May 9, 2008 declarations of taking as to the remaining appellants.

We recognize that the 1996 Report upon which the City relied when it declared the Broadway Corridor blighted was prepared more than a decade before Gallenthin was decided. Appellants' appeal from the dismissal of their complaint in lieu of prerogative writs was pending at the time Gallenthin was decided. Consequently, we have afforded them the benefit of its holding. In fairness to the City, it should be afforded the opportunity for a remand to permit it to amplify the record in an effort to meet the Gallenthin standard. DeRose, supra, 398 N.J. Super. at 420. We thus remand to the Law Division for the entry of an order so providing.

III.

We turn next to The Mission's claim that the Law Division committed reversible error by rejecting its contention that the Broadway Plan violated the "equal terms" provision of RLUIPA. The Mission argues that the Broadway Plan discriminates against church uses by disfavoring "religious assemblies" while

encouraging non-religious assemblies. A divided panel of the Third Circuit Court of Appeals ruled against The Mission on this claim. Lighthouse Inst., supra, 510 F.3d at 275-76.

Nonetheless, The Mission argues that the Law Division should have rejected the Third Circuit majority's statutory interpretation and reasoning, and should have refrained from applying the doctrine of res judicata.

The failure to regulate religious uses of land on "equal terms" with non-religious uses violates a section of RLUIPA, namely 42 U.S.C.A. § 2000cc(b)(1). The Third Circuit held that RLUIPA is violated only when a religious use is able to identify a "better-treated secular comparator that is similarly situated in regard to the objectives of the challenged regulation." Lighthouse Inst., supra, 510 F.3d at 268.

A reviewing court considers only whether the regulation treats the religious use differently from the nonreligious use when both would have the same effect on what the regulation seeks to protect. Id. at 264-66. "Heightened scrutiny [is] warranted only when a principled distinction could not be made between the prohibited religious behavior and its secular comparator in terms of their effects on the regulatory objectives." Id. at 266. Because the comparison is limited to uses, it is irrelevant whether the person or entity with the

nonreligious uses resembles the party with the religious use in any other regard. Id. at 267.

The Third Circuit correctly observed that the Broadway Plan named theaters, restaurants, bars, and other nonreligious assemblies as permitted uses, while excluding churches. Id. at 270. It found that the "well documented" objective of the Broadway Plan was to make the Broadway Corridor the anchor of "a 'vibrant' and 'vital' downtown community centered on an entertainment and retail district." Ibid. It then observed that N.J.S.A. 33:1-76 prohibited the issuance of a new liquor license to any establishment within 200 feet of a church or nonprofit schoolhouse, and found that "[i]t would be very difficult for Long Branch to create the kind of entertainment area envisaged by the Plan – one full of restaurants, bars, and clubs – if sizeable areas of the Broadway Corridor were not available for the issuance of liquor licenses." Id. at 270-71. The court added that the Broadway Plan "exhibits internal consistency" by excluding nonprofit schools along with churches. Id. at 272. The judges therefore concluded that "churches are not similarly situated to the other allowed assemblies with respect to the aims of the Plan," which made the "equal terms" provision inapplicable. Id. at 270.

While the decisions of the United States District Courts and Courts of Appeal on questions of federal law are not binding "per se" on New Jersey courts, they should nonetheless receive the "due respect" of appropriate observance of "the principle of 'judicial comity.'" Dewey v. R.J. Reynolds Tobacco Co., 121 N.J. 69, 78-80 (1990). Comity includes res judicata and other doctrines of claim preclusion. Hinfey v. Matawan Reg'l Bd. of Educ., 77 N.J. 514, 532 (1978). We reject The Mission's contention that the Law Division's application of claim preclusion was error. The Third Circuit's decision was a final judgment on the merits; the City and The Mission, the only plaintiff with RLUIPA standing, were present in both the federal and state litigation; and the RLUIPA question was identical. See Watkins v. Resorts Int'l Hotel & Casino, 124 N.J. 398, 412 (1991).

We therefore affirm the Law Division's January 22, 2007 dismissal of the RLUIPA claim under the doctrine of res judicata.

IV.

In Point VI, appellants claim that the condemnation of their properties for redevelopment without sufficient evidence of blight violated their rights under federal and state civil rights statutes, tortiously interfered with their occupations,

and violated their rights under the United States Constitution and state antitrust law to participate in interstate commerce. In light of our determination that the 1996 and 2002 ordinances are invalid, and in light of the remand we have ordered, these claims are moot and need not be decided. See Hous. Auth. v. Suydam Investors, L.L.C., 177 N.J. 2, 28 (2003).

V.

Next, we analyze appellants' claim in Point I that the Law Division's July 20, 2007 order denying them the right to conduct discovery concerning the 1996 and 2002 ordinances was error. In light of our conclusion that the 1996 and 2002 ordinances cannot withstand the heightened scrutiny of Gallenthin and that a remand is required, the judge's denial of appellants' request for discovery as to the 1996 and 2002 ordinances has now become moot. Thus, we need not address the claim appellants have advanced in Point I concerning their right to discovery on those two ordinances.

Appellants also maintain that they were wrongly denied discovery to support their claim that the 2005 ordinance appointing BAC as the redeveloper was the result of political favoritism and not BAC's competence. They maintain that the Law Division wrongly held their challenge to the 2005 ordinance time-barred. In light of our conclusion that the 1996 and 2002

ordinances are invalid, the City will, on remand, be required to start anew if it chooses to redevelop the Broadway Corridor. If it does so, and again declares the area blighted, new ordinances will be needed to accomplish that result. Likewise, a new ordinance will be required to appoint a redeveloper.

If appellants file a challenge to such action by way of a complaint in lieu of prerogative writs, they will be entitled to discovery "in the same manner as other civil litigation." Hirth, supra, 337 N.J. Super. at 166. We therefore perceive no need to determine if the judge erred when he deemed appellants' discovery requests concerning BAC time-barred, as that issue too is now moot.

However, we note in passing that in DeRose, we vastly limited a municipality's ability to characterize as untimely a plaintiff's challenge to blight designation. Supra, 398 N.J. Super. at 413. DeRose had not yet been decided when, in 2007, the judge deemed appellants' challenges time-barred, and he therefore did not have the benefit of its reasoning when he rendered his decision.

VI.

Affirmed in part, reversed in part, and remanded.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.


CLERK OF THE APPELLATE DIVISION