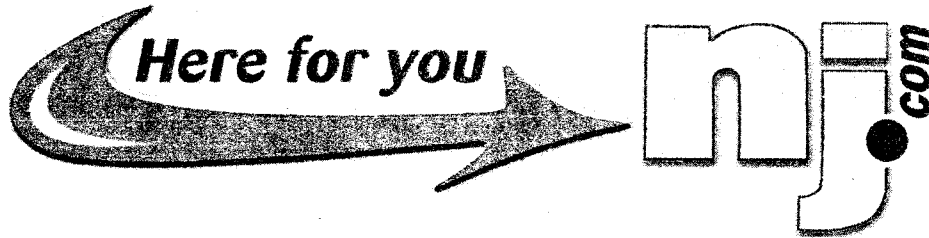


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## Legality of Hamilton land plan questioned

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HAMILTON - For a municipality that desires to transform its unsightly, dilapidated corners into more vibrant neighborhoods, the designation of a "redevelopment area" can be a powerful tool, enabling a town to rehabilitate buildings, provide tax breaks to developers, or even take properties by eminent domain.

Hamilton has one such area that twists from its New Jersey Transit station through an industrial district near its Trenton border. The area includes nearly 200 properties, some of which officials might someday want to see put to better use.

Yet in the opinion of one local expert in rede-

velopment law, the township's redevelopment area is standing on shaky legal grounds and ought to be repealed before it is overturned in court.

The area, established in early 2004, includes not only some stagnated, closed businesses, but also some properties that would hardly meet the qualifications under state law for a "blighted" section of the town:

Local jewel Grounds for Sculpture and its upscale Rats restaurant, for example, are part of the area designated "in need of redevelopment."

The rules governing the redevelopment process in New Jersey have also evolved since the township established the redevelopment area in early 2004, possibly leaving Hamilton's

actions open to challenge.

According to William Potter, a Princeton Borough-based attorney whose firm, Potter and Dickson, won a key 2007 state Supreme Court decision on redevelopment law, Hamilton's redevelopment area designation "could be challenged quite easily, and it would be readily overturned."

The redevelopment area in Hamilton encompasses a vast swath of properties along Sloan Avenue, Nottingham Way, East State Street Extension, Sculptor's Way and Whitehead Road.

So far, the town has focused on the area around the train station, the only spot

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where a "redevelopment plan" (the next step in the redevelopment process after creating a redevelopment area) has been produced.

Hamilton agreed, for example, to a controversial PILOT (payment in lieu of taxes) with the developer of the American Metro office complex on the southbound side of the tracks.

A mixed-use "transit village" at

the station was also planned with dense housing nearby, but only the housing development has been approved.

Meanwhile, the town's leadership has changed since the redevelopment area was created.

Mayor John Bencivengo's administration, which took power in 2008, has supported the transit village idea but resisted what it views as excessive housing near the station.

The mayor favors a revitalization of the town's industrial district by promoting "arts and culture" in the area, perhaps through

a zoning overlay to encourage theaters, studios, and other uses.

Officials insist none of those plans include exercising the township's redevelopment powers.

"We're against eminent domain," said Bencivengo, a Republican. The GOP-controlled township council echoed that sentiment.

### ON NOTICE

Still, Potter emphasized the power of the "redevelopment area" designation, even if it is not part of the town's current agenda.

"If this council has no plans, there's nothing to say that a newly elected majority" might not act differently, Potter said.

Many property owners may be unaware, he told the council at a recent meeting, that they are included in the redevelopment zone.

Potter also argued that redevelopment areas, which can carry the stigma of being in a "blighted" part of a town, devalue properties and create a disincentive for owners to maintain them.

"When there's an unlawful designation of an area as blighted,

that helps to create blight," Potter said. "It becomes very hard to sell the property. It becomes very hard to redevelop your own property because it is subject to being taken at any time."

While it is unclear how many property owners in Hamilton's redevelopment area are aware of the designation, at least one said he was not.

"I've been around since 1968. I'm not aware that we were notified," Kip Coleman, co-owner of Hamilton Building Supply Co. on Klockner Road, said in a phone interview. "It's possible, we get a

lot of mail through here."

Coleman said any redevelopment area designation had not impacted the upkeep of his property.

But even if Coleman did receive a letter about the possibility of being included in a "redevelopment area," a recent court decision suggests the town's notification did not spell out necessary details.

In a 2008 case involving an eminent domain action in Harrison, a state appellate court ruled the township's notice to property owners about the establishment of a redevelopment area was "constitutionally inadequate."

Among other things, Harrison's notice did not spell out clearly the implications of the "redevelopment area" designation.

Hamilton's one page notice, mailed to property owners prior to a December 2003 planning board meeting and obtained by The Times via an Open Public Records Act request, reads very similarly to the one issued by Harrison.

The letter says only that the hearing is to determine whether part of town "qualifies as a redevelopment area according to the criteria set forth" in state law and makes no mention of eminent domain.

Whether or not Hamilton's notice was unconstitutional might not be known for sure without a judge's ruling, but a deficient notice could put the town's whole redevelopment area in legal limbo.

"An invalid notice can undo everything that's being done," said Arnold Lakin of Szaferman Lakin, an attorney with experience in redevelopment law.

Like the notice issue, the question of whether or not the inclusion of those properties makes Hamilton's redevelopment area unconstitutional might not ultimately be decided without a court ruling.

Members of Hamilton's council, however, acknowledged that the designation appeared to be flawed.

"I would like to start over. ... The whole thing should be reviewed and looked at because not every (part of the redevelopment area) is bad," said council Vice President Tom Goodwin.

"Redevelopment in the wrong hands could cause a lot of problems. ... I think it should be revisited so that we can remove most if not all of the properties in the redevelopment zone," said Councilman Dave Kenny.

Although several council members said they would favor reassessing or completely repealing the designation, they put the task of reassessing the redevelopment area on the back burner compared to other priorities.

However, Potter encouraged action sooner rather than later.

"By the time you find out that it's hurting you, it will then take a long time to remedy the injury," Potter said, referring to a "blighted" designation.

"The Hamilton council should not wait for when someone is suing the township."

#### "UNCONSTITUTIONAL"

Potter also argued that Hamilton's redevelopment area designation "is clearly unconstitutional, there's no question about it."

The state constitution allows for redevelopment only of "blighted" areas. In its decision on a 2007 case (Gallenthin Realty Development, Inc. v. Boro of Paulsboro) won by Potter's firm, the state Supreme Court said blighted properties must be more than simply "operated in a less than optimal manner."

"(Blight) retains its essential characteristic: deterioration or stagnation that negatively affects surrounding properties," the court wrote.

Documents reviewed by The Times show several properties in Hamilton's redevelopment area may not meet the court's criteria.

The most conspicuous of these is Grounds for Sculpture, the 35-acre park and arts hub founded by sculptor J. Seward Johnson.

In a less obvious example, the town's 2003 redevelopment study deemed an Exxon gas station at Klockner Road and Nottingham Way "adverse by reason of potential environmental contamination associated with the operation of a gas station facility."

The study's only negative comment about other properties were that they did not comply with township zoning rules.

Well-known businesses such as Hamilton Building Supply, Trane, and Congoleum Corp. also operate in the redevelopment area.

"There's a lot of viable businesses over there. They employ an awful lot of people. I wouldn't want to mess with that in any way, shape or form," said Councilman Dennis Pone.