

**To: New Jersey Law Revision Commission**  
**From: Rachael Segal, Legislative Law Clerk**  
**Re: Special Improvement Districts under N.J.S. 40:56–65 to –89 (*Friends of Rahway Business LLC v. Rahway Municipal Council*)**  
**Date: October 8, 2018**

## MEMORANDUM

### Executive Summary

In *Friends of Rahway Business, LLC, v. Rahway Municipal Council*,<sup>1</sup> the Appellate Division considered whether the creation of a municipality-wide Special Improvement District (SID) was permitted under N.J.S. 40:56–65 to –89. The trial court found that it was not, and the Appellate Division reversed and vacated certain provisions of the trial court’s order, affirmed the denial of counsel fees, and remanded the case for further proceedings.

### Background

The issue in the case was whether the creation of a municipality-wide Special Improvement District (SID) was permitted under *N.J.S. 40:56–65 to –89*.<sup>2</sup>

In 2014, Rahway enacted Ordinance No. 0–42–14 to expand the existing SID<sup>3</sup> “to include all non-residential and non-public properties in the city, and residential properties with more than four units.”<sup>4</sup> Affected property owners created Friends of Rahway Business, LLC, to challenge the ordinance, and that entity filed a complaint in the Law Division.<sup>5</sup> The Plaintiff LLC argued that the town had not used money from the SID since 1993, that “the expansion of the SID was only to collect additional assessments,” that affected property owners did not have sufficient notice, that the scope of the new SID was unprecedented, and the new SID amounted to a constitutional violation entitling them to counsel fees.<sup>6</sup> Rahway argued that “the statute does not prohibit a citywide SID,” that all “statutory notice requirements were satisfied, and the Ordinance is subject to a presumption of validity.”<sup>7</sup>

The Trial Court determined that the Legislature had not intended a SID to encompass a

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<sup>1</sup> *Friends of Rahway Business, LLC, v. Rahway Municipal Council*, 2017 WL 2854427 (App. Div. 2017).

<sup>2</sup> *Id.* at \*1.

<sup>3</sup> The ordinance allowed the city to collect special assessments on affected properties.

<sup>4</sup> *Rahway*, 2017 WL at \*1. (“Rahway sent letters to affected property owners providing notice of a December 8, 2014 public hearing. Some affected property owners claim they only received the notices on December 5, 2014, but at least twenty-five members of the public attended.”)

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

whole city, and denied Plaintiff counsel fees. Defendants appealed, Plaintiff cross-appealed the denial of counsel fees, and four amicus briefs were submitted.<sup>8</sup>

Rahway argued “the trial judge should have yielded to the Ordinance’s required presumption of validity.”<sup>9</sup> Rahway also challenged the trial judge’s findings that the SID statute “does not allow: 1) a municipal-wide SID; 2) SIDs containing non-contiguous properties; 3) SIDs in an area of a municipality other than a traditional ‘downtown’ area; and 4) SIDs containing non-commercial use, such as industrial and certain multi-family apartment properties.”<sup>10</sup>

Though considering municipal ordinances’ presumption of validity,<sup>11</sup> the Court considered the Ordinance “an improper exercise of the authority delegated to the City Council under the SID statutes,” and ordered it invalidated.<sup>12</sup>

The Appellate Division examined language of the statute to determine its ordinary meaning.<sup>13</sup> The statute defines a SID as “as an area within a municipality designated by municipal ordinance as ‘an area in which a special assessment<sup>14</sup> on property within the district shall be imposed for the purposes of promoting the economic and general welfare of the district and the municipality.’”<sup>15</sup> A SID can be adopted if the municipality finds:

- (1) that an area within the municipality . . . would benefit from being designated as a special improvement district;
- (2) that a district management corporation would provide administrative and other services to benefit the businesses, employees, residents and consumers in the [SID];
- (3) that a special assessment shall be imposed and collected ...;
- and (4) that it is in the best

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<sup>8</sup> *Rahway*, 2017 WL at \*1.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Id.* at \*2 (citing *Lake Valley Assocs., LLC v. Twp. of Pemberton*, 411 N.J. Super. 501, 505 (App. Div. 2010); and see N.J.S. 40:56–65(b)(3) (“The SID statute provides “municipalities should be given the broadest possible discretion in establishing by local ordinance the self-help programs most consistent with their local needs, goals, and objectives.”); and see *Fanelli v. City of Trenton*, 135 N.J. 582, 591 (1994) (citations omitted) (“In determining whether [an] ordinance is authorized by the SID statute, we do not pass on the wisdom of the City’s plan. We need decide only whether the ordinance represents a reasonable exercise of the Legislature’s delegation of authority to municipalities in enacting the SID statute. Furthermore, we interpret those delegated powers broadly.”).

<sup>12</sup> *Id.*; and see *Id.* (finding the judge determined “[c]ontrary to being presumptively valid, the court finds [the Ordinance], expanding the SID, to be irreconcilable with the enabling statutes and the legislative intent behind the states’ enactment.”).

<sup>13</sup> *Id.*; see generally *State v. Perry*, 439 N.J. Super. 514, 523 (App. Div. 2015) (quoting *State v. Gandhi*, 201 N.J. 161, 176 (2010)).

<sup>14</sup> See *2nd Roc–Hersey Assocs. v. Town of Morristown*, 158 N.J. 581, 592–96 (1999) (“Our Supreme Court has held a special assessment is different from a tax, and such assessments reimburse the town for improvements made to SID properties”).

<sup>15</sup> N.J.S. 40:56–66(b).

interests of the municipality and the public to create a [SID.]<sup>16</sup>

“[R]esidential properties, residential portions of mixed use properties, parcels with any number of residential units, or vacant properties located within the district from special assessment” may be exempted.<sup>17</sup>

The statute allows a governing body to “authorize the commencement of studies and the development of preliminary plans and specifications relating to the creation and maintenance of a pedestrian mall facility or [SID], including, whenever possible, estimates of construction and maintenance, and costs and estimates of potential gross benefit assessment.”<sup>18</sup> The statute also allows the designation of downtown business improvement zones,<sup>19</sup> which is defined as “a zone designated by a municipality, by ordinance, pursuant to section 2 of P.L.1998, c.115 in order to promote the economic revitalization of the municipality through the encouragement of business improvements within the downtown area.”<sup>20</sup>

The trial judge had found that “the legislature’s intent in enacting the statute was for SIDs to be considered specific regions within the larger municipality.”<sup>21</sup> On appeal, Rahway asserted that the size and boundaries of the SID are not the relevant inquiry<sup>22</sup> and framed the issue as “whether the municipality’s governing body could find the area, no matter where it is located, would benefit from being designated as a SID.”<sup>23</sup>

The Appellate Division found that “the SID statute does not specifically prohibit a citywide SID; the language of the pertinent statutory provisions merely suggests a SID could be a small, designated area within a municipality.”<sup>24</sup> Since the SID statutes and the New Jersey Constitution granted municipalities broad discretion,<sup>25</sup> the Appellate Division called “into question the trial court’s narrower reading of the statutes.”<sup>26</sup>

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<sup>16</sup> N.J.S. 40:56–68(b)

<sup>17</sup> N.J.S. 40:56–66(b).

<sup>18</sup> *Rahway*, 2017 WL at \*3 (citing *N.J.S.* 40:56–70).

<sup>19</sup> N.J.S. 40:56–71.2 (“Any municipality which has adopted or adopts an ordinance authorizing the establishment of a [SID] pursuant to section 7 of P.L. 1972, c. 134 [*N.J.S.A.* 40:56–71] may, by ordinance, designate all or any portion of that district which contains primarily businesses providing retail goods and services as a ‘downtown business improvement zone,’ notwithstanding that the designated zone is located within an urban enterprise zone.”)

<sup>20</sup> N.J.S. 40:56–71.1.

<sup>21</sup> *Rahway*, 2017 WL at \*3; and see *Id.* (“No words or phrases in *N.J.S.A.* 40:56–66 indicate that the legislature intended the statute to be construed to mean that an entire municipality was envisaged as a potential SID.”); and see *Id.* at \*4 (“The judge further found ‘[i]t is improbable that the legislature intended that an entire [c]ity could be considered a SID’”).

<sup>22</sup> *Id.* at \*4.

<sup>23</sup> *Id.*; and see *id.* (“However, the governor’s press release indicated the legislation would allow ‘municipalities to create [SIDs] to promote economic growth and employment in downtown business districts,’ and the legislature’s statement accompanying the enactment of the 1984 amendment stated the statute ‘would permit municipalities to establish [SIDs] to promote economic growth and employment in downtown business districts’”).

<sup>24</sup> *Id.*

<sup>25</sup> See N.J.S. 40:56–65(b)(3); and see N.J. Const. art. IV, § VII, ¶ 11.

<sup>26</sup> *Rahway*, 2017 WL at \*4.

The Appellate Division noted that though there is no prohibition against a citywide SID, there was no evidence before the court that Rahway met the requirements for SIDs.<sup>27</sup> Therefore, the court remanded the case for consideration of the merits of the Ordinance.<sup>28</sup>

The Appellate Division also found the trial court's contention that the statute did not allow for a noncontiguous SID erroneous because "the statute specifically provides for exemptions of some properties within a SID, as the Ordinance did here."<sup>29</sup> The Court also found that "the trial court erroneously found the SID statute only permits SIDs in downtown business districts," because if this were so, "the legislature would not have separately allowed for a 'downtown business improvement zone' within a SID."<sup>30</sup> The Court further found that "[h]aving the discretion to exclude residential properties does not require a municipality to exclude residential properties from SIDs."<sup>31</sup>

### **Conclusion**

Staff seeks authorization to conduct additional research and outreach regarding this issue in order to determine whether modifying N.J.S. 40:56 in some way would aid in interpreting the provisions moving forward.

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<sup>27</sup> *Rahway*, 2017 WL at \*4 ("[P]rovided a municipality can support such a SID with the specific findings necessary to adopt a SID ordinance, as set forth at *N.J.S.A.* 40:56–68. This standard requires a municipality to support its determination an area would benefit from being a SID and services would be provided to benefit individuals within the SID").

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> *Id.* at \*5.