

SAVE OLD YORK, a New Jersey  
non-profit entity,  
Appellant/Plaintiff,  
v.

THE TOWNSHIP OF  
CHESTERFIELD (BURLINGTON  
COUNTY) TOWNSHIP  
COMMITTEE OF THE  
TOWNSHIP OF  
CHESTERFIELD; TOWSHIP OF  
CHESTERFIELD PLANNING  
BOARD; JOHN DOES A-Z;  
CORPORATION A-Z,

Respondents/Defendants,

and

ACTIVE ACQUISITIONS OY, LLC,

Intervenor/Defendant.

**SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION**

**DOCKET NO. A-003167-22**

**Civil Action**

**On Appeal From:**

Superior Court of New Jersey, Law Division,  
Burlington County,  
Docket No. BUR-L-2322-22

**Sat Below:**

Honorable Jeanne T. Covert, A.J.S.C.

**Date Submitted:**

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**BRIEF ON BEHALF OF APPELLANT/PLAINTIFF, SAVE OLD YORK**

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## PRELIMINARY STATEMENT

A local government has a basic responsibility to enact ordinances and regulations that will further the interests of its citizens. Inherent in that responsibility is the duty to follow established procedures for passing ordinances in a transparent manner so the public is not 'in the dark.' None of this occurred in this case. The Chesterfield Township Committee approved an ordinance enacting a Redevelopment Plan that was shown to be completely inconsistent with the township's master plan. Upon realization of the inconsistency, the Committee chose to amend the redevelopment plan – based solely off its counsel's statements and without any evidence in the record. To make matters worse, in the second ordinance, purporting to amend the redevelopment plan, the Committee doubled down on the plan's consistency with the township's master plan. No finding of inconsistency was ever made by the Committee or its members. In fact, no findings at all were made by the Committee in the second ordinance in the ordinance's text or the meeting minutes. The Committee was statutorily required to make these findings on the record. The Committee's procedural failures contravene the public policy of the land use principles underpinning the Local Redevelopment and Housing Law.

For the reasons set forth in detail below, Plaintiff respectfully requests the Court remand and reverse the trial court and find that the adoption of Ordinance No. 2022-17 was arbitrary, capricious, and not supported by the evidence in the record.

## **STATEMENT OF FACTS AND PROCEDURAL HISTORY**<sup>1</sup>

On February 27, 2020, the Chesterfield Township Committee (the Committee) adopted Resolution 2020-2-6, directing the Township's Planning Board (Planning Board), to study the real property located at Block 701, Lot 2.01, commonly known as 228 Old York Rd, Chesterfield, NJ (the Property), to determine whether the Property constituted an "Area in Need of Rehabilitation" pursuant to the Local Housing Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 to -89 (LRHL). (Pa22).<sup>2</sup> The Property formerly operated as was a golf course and country club. (Pa22). The Planning Board subsequently recommended, and the Committee agreed, that the Property qualified as an "Area in Need of Rehabilitation."<sup>3</sup> (Pa22).

### **Ordinance No. 2022-15**

The Committee introduced Ordinance No. 2022-15 at a meeting of September 8, 2022. (1T4:9-12).<sup>4</sup> A Redevelopment Plan (the Plan) was

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<sup>1</sup> Because the facts and procedural history of this case are inextricably intertwined, they are combined to avoid repetition and for the Court's convenience.

<sup>2</sup> Citations to "Pa" refer to the Plaintiff/Appellant's Appendix.

<sup>3</sup> Appellant is not seeking to challenge the "Area in Need of Rehabilitation" designation in this appeal. Rather, Appellant is challenging the improper adoption of the Redevelopment Plan.

<sup>4</sup> Citations to "1T" refer to the transcript of the Committee meeting of September 20, 2022. Citations to "2T" refer to the transcript of the Committee meeting of October 27, 2022. Citations to "3T" refers to the transcript of the trial court's hearing on summary judgment, held on May 15, 2023.

introduced for the property to allow a redeveloper to build a warehouse on the Property. (Pa39). The Plan states "a warehouse facility is not inconsistent with the goals and objectives of the Master Plan." (Pa39). Nonetheless, the Plan acknowledged the Property was zoned as "AG Agricultural District." (Pa22).

After its introduction, the Plan was referred to the Planning Board to submit a recommendation to the Committee. See N.J.S.A. 40A:12A-7(e) ("Prior to the adoption of a redevelopment plan, . . . the planning board shall transmit to the governing body, within 45 days after referral, a report containing its recommendation concerning the redevelopment plan," which should "include an identification of any provisions in the proposed redevelopment plan which are inconsistent with the master plan . . ."). In a memo dated the following day, September 9, 2022, the Planning Board Planner, Christopher Dochney, wrote to the Planning Board transmitting his recommendation based on his review of Ordinance No. 2022-15 and the Plan. (Pa177-Pa180). Dochney noted the Township's Master Plan "does not specifically make any recommendations regarding this [P]roperty or development of industrial and warehouse uses in general." (Pa179). Further, he noted the Property had been historically used as a golf course and had no active farming operation. (Pa179). Regarding the traffic impact of a warehouse, Dochney concluded that because the Property was located at the southwestern edge of town, truck traffic to and from the warehouse

would have minimal impact on Chesterfield's roads. (Pa179).

On September 20, 2022, the Planning Board held a meeting at which Dochney reiterated the contents of his September 9, 2022 memo. (1T4:9-13:5). The Planning Board also heard from Plaintiff's expert, Carlos Rodrigues, a licensed professional planner, who opined the Plan was completely inconsistent with Chesterfield's Master Plan. (1T17:9-23). Rodrigues pointed out the property was zoned as agricultural in the Master Plan. (1T18:6-8). Moreover, the 2017 Master Plan Reexamination Report was devoid of any mention of warehousing or distribution facilities in the town. (1T18:13-19). He also rebutted the notion that a warehouse of this large size would not generate significant truck traffic in the area. (1T19:18-23). At the conclusion of the meeting, the Planning Board adopted a motion finding the Plan was not inconsistent with the Master Plan and referred the Plan back to the Committee. (1T56:9-57:20).

The Committee held another meeting on October 27, 2022, to vote on the adoption of Ordinance No. 2022-15. (2T). At the beginning of that meeting, Mr. John Gillespie, attorney for the Committee, noted the following documents could be found on the Township's website and were therefore "in the record" before the Committee:



- A September 22, 2022 memo from the Planning Board Secretary to the Committee advising the Planning Board did not find the Plan to be inconsistent with Chesterfield's Master Plan;
- the September 9, 2022 memo authored by Dochney;
- a seven-page written submission by Rodrigues;
- the May 26, 2022 Committee minutes;
- the Plan;
- a community impact statement, dated August 1, 2022;
- a document titled Old York County Club redevelopment initial info – 2021;
- "numerous traffic documents";
- a stream impacts memo dated July 13, 2022;
- a Department of Environmental Protection (DEP) flood hazard area verification letter, dated January 19, 2022;
- a deficiency letter from the DEP to Active Acquisitions; and
- a document titled OYCCFAQs.

(2T7:5-8:14).

The Committee also heard from Rodrigues, who, consistent with his statement before the Planning Board, reiterated his conclusion that the Plan was wholly inconsistent with the Township's Master Plan. (2T13:7-17:8).

Rodrigues noted: (1) the Plan had no rehabilitative component whatsoever, despite being designated as "an area in need of rehabilitation"; (2) the Plan appeared to be fiscal zoning; and (3) the Plan would allow a use unsupported by the Township's Master Plan. (2T13:7-17:8).

After Rodrigues concluded his statement, the Committee opened the meeting for public comment. (2T17:15-16). Approximately seventeen members of the public rendered comments regarding the Plan—most urging the Committee to reject the Plan. (2T17:20-55:22). At the close of public comment, Gillespie added that an October 21, 2022 traffic impact study review memo from Tom Sahol, Township Administrator, as well as an October 27, 2022 memo by Sahol titled "Data related to township land uses, PVD, and assessed value apportionment" were also part of the "record" in the matter. (2T59:1-6).

The Committee's Chair then raised two concerns he had with the Plan. (2T60:8-10). The Chair asked for stronger language to be inserted in the Plan to ensure Black House<sup>5</sup> was relocated and preserved, and for a stronger encouragement of the use of renewable energy on the Property. (2T60:11-20); (2T62:18-24). Thereafter, Gillespie also raised a few revisions to the Plan. (2T73:12-15). First, he suggested removing a sentence from the plan which stated there was a national trend of closing golf clubs in recent years. (2T73:22-

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<sup>5</sup> Black House is an existing historical structure located on the property. See (Pa41).

74:18). Second, Gillespie noted it was discussed at the meeting that the Property was near other commercial businesses on the Bordentown side. (2T77:12-78:1). Last, Gillespie proposed excluding parcel hub warehouses and fulfillment centers from permitted uses. (2T79:5-15). According to Gillespie, some of these revisions were substantive and some were not. (2T80:9-11). He therefore recommended the Committee either adopt the ordinance as is (i.e., without the proposed revisions the members had just agreed were needed) or adopt the ordinance and immediately move to amend it. (2T81:9-16). No Committee members spoke in favor or against Gillespie's recommendations.

Despite the various issues with the Plan raised earlier in the meeting, the Committee decided to adopt Ordinance No. 2022-15 and then immediately introduced Ordinance No. 2022-17, amending the Plan. (2T82:8-21).

**Ordinance No. 2022-17**

Ordinance No. 2022-17 was introduced to amend sections 1.1, 1.2, 2.2, 4.5. (2T82:8-83:24). In addition, Gillespie noted Rodrigues' report concluding the Plan was not consistent with the Township's Master Plan contrasted with the memo from the Planning Board concluding the Plan was consistent with the Master Plan. (2T84:22-25). Gillespie advised the Committee, pursuant to the LRHL, it "may adopt a redevelopment plan which is inconsistent with or not designed to effectuate the master plan by affirmative vote of a majority of its

full authorized membership with the reasons for so acting set forth in the redevelopment plan." (2T85:15-19). Accordingly, he advised the Committee to address the reasons for adopting the Plan in case a reviewing court found the Plan was inconsistent with the Master Plan. (2T85:20-24).

Rather than the Committee debating or discussing their reasons (or even stopping to discuss whether they wanted to put in their reasons for adopting the Plan despite an inconsistency), Gillespie launched into a monologue about the reasons the Plan should be adopted even if it was inconsistent with the Master Plan. (2T87:1-93:24).

- A. At the time the Township's Master Plan was adopted in 1997, its focus was on the preservation of farmland and promoting the Township's agricultural character through a then-newly crafted "Transfer of Development Rights" ("TDR") legislative program. Commercial and industrial development were not priorities.
- B. Chesterfield is the only municipality in the State of New Jersey to successfully implement TDR, and residential development in the "Receiving Area" is now more than eighty percent (80%) completed. The limited commercial area in the Receiving Area has now also been built, but suffers from vacancy concerns.
- C. Chesterfield's tax revenues are disproportionately derived from its residential development and farms. In fact, ninety-seven percent (97%) of Chesterfield's tax ratable base is farmland and residential: The Township Committee recognizes the fragility of such a reliance on residences and farms as the nearly sole source of tax revenue.
- D. There are very few areas in the municipality where nonresidential, non-agricultural pursuits can be achieved.

- 1. Of Chesterfield's 13,728 acres of land:

- a) 7,956.36 acres are preserved and 577.39 are unpreserved (but with TDR Credits assigned to them);
- b) 689.55 acres are State-owned land;
- c) 583 acres comprise the “Receiving Area”;
- d) 140 acres are recreation fields and/or open space outside the Receiving Area;
- e) Crosswicks and Recklesstown comprise 385 acres;
- f) Turnpike Roads comprise: 102.87 acres.

2. As a result, seventy-six percent (76%) of Chesterfield’s land mass has been dedicated to the purposes of the 1997 Master Plan, and subsequent Master Plan Re-Examination Reports, and/or is physically not developable.

E. However, no significant commercial or industrial initiatives have been undertaken since TDR was adopted in 1998.

F. The five (5) highest ratables in this community are:

1. Transco Generator: \$5,297,500.00
2. Colonial Pipeline: \$4,303,100.00
3. Old York Village Shops: \$3,180,000.00
4. Old York Country Club: \$3,000,000.00
5. Horse Track: \$2,523,000.00

G. The general welfare of the community is advanced when the municipality seeks industrial ratables to create a better economic balance for the community, vis-a-vis educational and governmental costs engendered by residential development. There is no question that the success of the TDR Program, and its resultant increase in school population and need for governmental services, has resulted

in greater governmental expenditures. The Township Committee deems it appropriate to seek an opportunity to increase commercial/industrial tax rates to mitigate increased municipal expenditures resulting from an increased residential population.

- H. The property in question, 156 +/- acres in size, is not a farm, and has not been a farm for years. The Township Committee has been informed that the costs and expenses a farmer would have to incur to return the property to tillable soil are prohibitive, such that it is unlikely to become farmland.
- I. However, the property, having been used commercially for decades, is appropriate for non-agricultural, non-residential, purposes. Its close proximity to Route 206 (1,900 +/- feet) makes it attractive for the uses identified as permitted and accessory uses in Sections 2.2 and 2.3 of this Plan. The Township Committee believes it is a good location for the uses identified in this Plan.
- J. In making its determination of the appropriateness of this area for these purposes, the Township has received the benefit of traffic reports, environmental reports, and a community impact statement, all of which have been posted to the Township's website for public consumption, and are made part of the record on this Ordinance. The Committee has also received an analysis of the traffic studies from the Township Planner's office, dated October 21, 2022; a memo from the Township Administrator, dated October 27, 2022, entitled "Data Related to Township Land uses, PVD, and Assessed Value Apportionment"; all of which documents are part of this legislative record and inform the Township Committee's decision.
- K. The Township Committee believes that this Plan advances the following purposes of the MLUL [(Municipal Land Use Law)]:
  - 1. N.J.S.A. 40:55D-2(a): To encourage municipal action to guide the appropriate use or development of all lands in this State, in a manner which will promote the public health, safety, morals, and general welfare. [See the foregoing statements]

2. N.J.S.A. 40:55D-2(c): To provide adequate light, air and open space [most of the property will remain undeveloped].
3. N.J.S.A. 40:55D-2(g): To provide sufficient space in appropriate locations for a variety of agricultural, residential, recreational, commercial and industrial uses and open space, both public and private, according to their respective environmental requirements in order to meet the needs of all New Jersey citizens. [See the foregoing statements]
4. N.J.S.A. 40:55D-2(h): To encourage the location and design of transportation routes which will promote the free flow of traffic while discouraging location of such facilities and routes which result in congestion or blight [truck traffic going to and from Route 206 only]
5. N.J.S.A. 40:55D-2(i): To promote a desirable visual environment through creative development techniques and good civic design and arrangement [setback distances and landscaping/berming regulations]
6. N.J.S.A. 40:55D-2(j): To promote the conservation of historic sites and districts, open space, energy resources and valuable natural resources in the State and to prevent urban sprawl and degradation of the environment through improper use of land [Black House, solar in Sec. 2.6.9; and electric vehicle/service equipment (EV/SE) at Sec. 2.5, page 10]

See (2T87:1-93:24).

Based on Gillespie's statements, the ordinance was introduced for a first reading. (2T98:17-18). The amended ordinance was then referred back to the Planning Board. (2T98:18-19). Notably, the ordinance does not amend Ordinance No. 2022-15 or contain any findings—much less a finding of inconsistency—regarding the Plan.

The Planning Board considered Ordinance No. 2022-17 at its November 22, 2022 meeting. (Pa435). However, no substantive discussion occurred there either. The ordinance was introduced, the period for public comment was opened and closed without any remarks, and a motion was made that the revisions were not inconsistent with the Master Plan. (Pa435). There was no reasoning provided by the Planning Board or discussion of the evidence introduced at the Committee's October 27 meeting.

Thus, the matter returned to the Committee for adoption on December 8, 2022. (Pa296). The Committee introduced the ordinance and opened the matter for public comment. (Pa296). The Committee heard from two members of the public, and then proceeded to vote on the ordinance. (Pa296). No discussion occurred as to the Planning Board's recommendation that the ordinance was not inconsistent with the Township's master plan. Ordinance No. 2022-17 was then adopted, without any discussions on the record regarding the amendments or any evidence in the record as to the amended Plan.

### **Trial Court Proceedings**

On December 12, 2022, Save Old York filed a Complaint in Lieu of Prerogative Writs seeking judgment declaring that: the Plan was invalid and void, that Ordinances Nos. 2022-15 and 2022-17 were arbitrary, capricious, and unreasonable, Ordinances Nos. 2022-15 and 2022-17 were void ab initio with



no legal effect, and for such other equitable and just relief. See (Pa1-Pa15). Shortly thereafter, Active Acquisitions OY LLC (Active), the contract purchaser for the Property, moved to intervene in the litigation. (Pa68-Pa69). Intervention was granted by the trial court on January 11, 2023. (Pa70).

On March 20, 2023 Save Old York moved for summary judgment. (Pa71-Pa72). Save Old York argued the Plan had no rehabilitative component despite the Property being designated as "an area in need of rehabilitation." (3T6:13-7:19). Specifically, it argued that once a property was designated as "in need of rehabilitation" a redevelopment plan adopted for the property, was limited by the definition of rehabilitation pursuant to N.J.S.A. 40A:12A-3. (3T7:10-19).

Regarding the two ordinances, Save Old York argued there was insufficient evidence in the record supporting either ordinance. (3T8:2-10).

The trial court first determined the redevelopment plan was not limited to a rehabilitative component where the Property was designated "an area in need of rehabilitation." (3T45:22-46:5). The court relied on N.J.S.A. 40A:12A-15, and found it provides that where a municipality enacts a redevelopment plan in an area in need of rehabilitation, it may use any of the powers set forth in N.J.S.A. 40A:12A-8. (3T46:13-18). Because N.J.S.A. 40A:12A-8 permits a redevelopment plan to include, *inter alia*, construction and redevelopment, the court held there was no distinction between a redevelopment plan adopted under

the area in need of rehabilitation versus one for an area in need of redevelopment. (3T46:18-47:7).

Second, the court found the public was appropriately notified of the municipality's plan to redevelop the Property. (3T47:11-21). The court noted the process to approve a redevelopment plan took two years from the time the Property was designated an area in need of rehabilitation. (3T47:12-16). During that time, the judge found the Committee had adequately answered the public's questions and given ample opportunity for discussion of the Plan. (3T47:16-21). Regarding the Planning Board, the court found it "evaluated reports by their own planning expert and the plaintiffs' planning expert to make the determination that the redevelopment plan was not inconsistent with the master plan." (3T47:24-48:3).

The trial judge also determined the Plan was not consistent with the Township's Master Plan, but that the adoption of Ordinance No. 2022-17 remedied any defect with Ordinance No. 2022-15. (3T48:18-23). Specifically, the court found the reasons supplied by the Committee for adopting Ordinance No. 2022-17 were sufficient to overcome any problems with Ordinance No. 2022-15. (3T60:21-61:1).

Plaintiffs filed the instant appeal on June 21, 2023. (Pa539)

## **STANDARD OF REVIEW**

An appellate court reviews a trial court's grant or denial of a motion for summary judgment under the same standard as the trial court. See Branch v. Cream-O-Land Dairy, 244 N.J. 567, 582 (2021). Pursuant to Rule 4:46-2(c), a motion for summary judgment may be granted "if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to a judgment or order as a matter of law." In other words, a reviewing court considers "whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party, are sufficient to permit a rational factfinder to resolve the alleged disputed issue in favor of the non-moving party." Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 540 (1995).

A municipal board's decision "enjoy[s] a presumption of validity, and a court may not substitute its judgment for that of the board unless there has been a clear abuse of discretion." Price v. Himeji, LLC, 214 N.J. 263, 284 (2013) (citing Cell S. of N.J., Inc. v. Zoning Bd. of Adjustment, 172 N.J. 75, 81 (2002)); see also Grabowsky v. Twp. of Montclair, 221 N.J. 536, 551 (2015) (noting a municipal ordinance will not be overturned unless the decision is "arbitrary, capricious or unreasonable"). Giving the appropriate due deference to the

decision of a board, the trial court must determine whether the board's resolution is supported by the "substantial evidence in the record" standard. Lang v. Zoning Bd. of Adjustment of N. Caldwell, 160 N.J. 41, 58 (1999); see also Malanga v. Twp. of W. Orange, 253 N.J. 291, 314 (2023) (noting the record must contain "sufficient credible evidence" that the requirements of the LRHL were satisfied). In addition, the resolution cannot merely recite conclusory findings but must include a reasoned explanation, supported by the evidence presented. Loscalzo v. Pini, 228 N.J. Super. 291, 305 (App. Div. 1988); see also Malanga, 253 N.J. at 314 ("'[M]ore than a bland recitation of applicable statutory criteria and a declaration that [they have been] met' is required." (Alteration in original)). A Board's legal determinations, however, are not presumed valid and are reviewed de novo. Jacoby v. Zoning Bd. of Adjustment of Borough of Englewood Cliffs, 442 N.J. Super. 450, 462 (App. Div. 2015).

### **LEGAL ARGUMENT**

#### **I. THE TRIAL COURT ERRED IN FINDING THE ADOPTION OF ORDINANCE NO. 2022-17 WAS NOT ARBITRARY AND CAPRICIOUS. (Pa2-3); (Pa632); (T9:6).**

The LRHL sets forth a detailed and specific procedure for a municipality to adopt and implement a redevelopment plan for the property at issue. See N.J.S.A. 40A:12A-1 to -89. Once a property has been designated as "an area in need of rehabilitation," the local government may adopt a redevelopment plan

under N.J.S.A. 40A:12A-7. The redevelopment plan must be consistent with the municipality's master plan, or if not, be approved by a majority of the municipality's governing body and set forth the governing body's reasons "in the redevelopment plan." N.J.S.A. 40A:12A-7(d). Further, N.J.S.A. 40A:12A-7(e) states:

Prior to the adoption of a redevelopment plan, or revision or amendment thereto, the planning board shall transmit to the governing body, within 45 days after referral, a report containing its recommendation concerning the redevelopment plan. This report shall include an identification of any provisions in the proposed redevelopment plan which are inconsistent with the master plan and recommendations concerning these inconsistencies and any other matters as the board deems appropriate. The governing body, when considering the adoption of a redevelopment plan or revision or amendment thereof, shall review the report of the planning board and may approve or disapprove or change any recommendation by a vote of a majority of its full authorized membership and shall record in its minutes the reasons for not following the recommendations.

**A. The Committee Never Made a Finding of Inconsistency. (Pa632); (T10:6-21).**

Pursuant to N.J.S.A. 40A:12A-7(e), a township is required to "identif[y] . . . any provisions in the proposed redevelopment plan which are inconsistent with the master plan." The record before the trial court was devoid of any finding of inconsistency either by the Committee or the Planning Board.

Here, the trial court correctly found the Plan was inconsistent with the master plan and as such, Ordinance No. 2022-15 was null and void. (T50:22-

51:3). Under N.J.S.A. 40A:12A-7(d), a municipality "may adopt a redevelopment plan which is inconsistent with or not designed to effectuate the master plan," but it must do so "by an affirmative vote of a majority of its full authorized membership with the reasons for so acting set forth in the redevelopment plan." It is undisputed that neither Ordinance No. 2022-15 nor the Plan contained any reason whatsoever for adopting the ordinance, despite its inconsistency with the master plan. See (Pa16-17); (Pa18-Pa45). Accordingly, the trial court correctly determined that the adoption of Ordinance No. 2022-15 was deficient.

However, the trial court incorrectly found that the Committee's adoption of Ordinance 2022-17 "cured any possible defect" with Ordinance 2022-15. (3T63:11-14). Although the trial court found the Plan was inconsistent with the Township's master plan, neither the Planning Board nor the Committee ever made such a finding. As noted above, N.J.S.A. 40A:12A-7(d) states a redevelopment plan "shall" be consistent with the master plan or, in the alternative, be approved by a majority vote "with the reasons for so acting set forth in the redevelopment plan."

N.J.S.A. 40A:12A-7(d) does not contemplate a scenario where a redevelopment plan can be both consistent **and** inconsistent with a municipality's master plan. Yet, that is exactly what Defendants did here. The

Plan explicitly states, "the development of the Rehabilitation Area with a warehouse facility is not inconsistent with the goals and objectives of the Master Plan," and "the adoption of this Redevelopment Plan [] does not conflict with the Township's planning objectives relative to farmland preservation, environmental protection, historic preservation and sustainability, and in this regard can be considered consistent with the Township's Master Plan." (Pa39). Ordinance No. 2022-17, purporting to amend the Plan instead states, "it has been suggested by some members of the public that this Redevelopment Plan is not consistent with the Township's Master Plan and/or is not designed to effectuate the Master Plan." (Pa47). The ordinance then goes on to list "reasons" for the adoption of the redevelopment plan.

The Committee's transcripts and minutes also do not reflect a finding of inconsistency. At the October 27, 2022 Committee meeting, Gillespie suggested the Committee amend Chapter 3.1.1 of the Plan "because there has been some suggestion . . . that the plan is not consistent with the master plan. I think you need to address that." (2T82:10-13). No Committee member spoke up in agreement or disagreement with Gillespie's statement. Nevertheless, the Committee voted to amend the Plan in the event it was found inconsistent with the master plan. (Pa46).

Notably, the Planning Board, despite being presented with the

Committee's October 27, 2022 hearing transcript, also did not issue a finding on inconsistency. See (Pa435). The Planning Board merely summarized the proposed amendments and voted. See (Pa435). A motion was then brought to find "that the amendment is not inconsistent with the Master Plan and refer it back to the Township Committee." (Pa435). Thus, despite being presented with Mr. Rodrigues' testimony and the Committee's proposed amendments to the Plan, the Planning Board chose to dig its heels in – without any discussion whatsoever – on the issue.

There is a distinction between adopting a redevelopment plan that is consistent with the township's Master Plan and adopting a plan that is inconsistent but providing reasons for doing so. To be clear, both options are available to a local government. What cannot be done, however, is to amend a redevelopment plan to say it is wholly consistent with the Master Plan but include a caveat that should anyone "suggest" the plan is inconsistent, then the Committee will adopt it as inconsistent, but a court should still approve it. It defies logic to say a municipality can "have it both ways" despite the clear statutory mandate that the municipality make a finding on consistency.

Any type of land use regulation should be based on solid planning testimony. This will ensure that the township is making the best use possible of the land available thereby benefitting the inhabitants of that town. Thus, it is



important to understand why a redevelopment plan is being adopted. It can be adopted because it is consistent with the master plan, which shows good planning. It can also be adopted if it is not consistent with the master plan provided there is a finding that the plan is inconsistent with the master plan but based on good planning reasons. Chesterfield is opting to state that it wants the ordinance adopted for any reason at all instead of using good planning testimony to determine why this plan should be adopted. Chesterfield must be required to make a call on consistency versus inconsistency. The failure to do so here should result in a remand to the Committee to follow the statutory procedure.

**B. Ordinance No. 2022-17 Is Not Supported by Sufficient Evidence. (Pa632); (T14:24-15:3).**

To the extent this Court finds Defendants complied with the requirements of the LRHL, the adoption of Ordinance No. 2022-17 was still arbitrary, capricious, and unreasonable. Although a municipality enjoys a presumption of validity for its acts, see Price, 214 N.J. at 284, the record must be supported by "substantial credible evidence" that the requirements of the LRHL were satisfied. See Lang, 160 N.J. at 58; Malanga, 253 N.J. at 314. A careful examination of the record shows there was little to no evidence supporting Ordinance No. 2022-17.

When the Committee decided to amend Ordinance No. 2022-15, it simply had Gillespie read out the revisions in a lengthy monologue. (2T87:1-93:24).

No evidence was introduced in support of Ordinance No. 2022-17 or the purported reasons the Committee was adopting the ordinance. Further, at the December 8, 2022, meeting at which the ordinance was adopted, no evidence was introduced in the record. (Pa296). At the very least the Committee could have introduced the same evidence it relied upon for the adoption of Ordinance No. 2022-15, but it did not do so.

More importantly, the record is devoid of any discussion by the Committee members regarding the reasons for the adoption of Ordinance No. 2022-17. Even *assuming arguendo*, this Court considers the evidence introduced in the record for Ordinance No. 2022-15 to also be part of the record for Ordinance No. 2022-17, there is no discussion of the evidence by the Committee members. Our courts have made clear that a mere recitation of the statutory criteria is insufficient to satisfy the municipality's obligations under the LRHL. See Malanga, 253 N.J. at 314. Additionally, remarks made by any one individual in passing at a hearing "are not a substitute" for statutorily required findings nor can they "be assumed to represent the findings of an entire Board," and as such "cannot be equated to deliberative findings of fact." See N.Y. SMSA, Ltd. P'ship v. Bd. of Adjustment of Tp. of Weehawken, 370 N.J. Super. 319, 333-34 (App. Div. 2004).

In the instant case, the Committee attempted to have Gillespie's statements

as a substitute for its own duty to deliberate on the ordinance and make findings. Contrary to the Committee's position that it did not have "to deliberate or discuss, or even say boo," (3T22:18-19) the LRHL is clear that at every step of the process, the municipality must be transparent with the public. Pursuant to N.J.S.A. 40A:12A-7, if the Committee adopts a redevelopment plan that was inconsistent with the Township's master plan, it is required to set forth its reasons for the adoption in the redevelopment plan. Moreover, before the Committee may adopt a revision to a redevelopment plan, it must refer the matter back to the Planning Board. N.J.S.A. 40A:12A-7(e). If the Committee does not agree with the Planning Board's assessment, it must "record in its minutes the reasons for not following" the Planning Board's recommendation. Ibid.

The Committee attempted to adopt a Plan that was inconsistent with the master plan under N.J.S.A. 40A:12A-7(d) and declined to follow the Planning Board's recommendation that the Plan was consistent with the master plan under N.J.S.A. 40A:12A-7(e). Accordingly, it was under a duty to state its reasons in the redevelopment plan and its meeting minutes, respectively. The Committee's December 8, 2022 minutes clearly lack such reasons. See (Pa296). As for the Plan, the only statements supporting Ordinance No. 2022-17 came from counsel—not the Committee members or testimony presented before the

Committee with regard to Ordinance No. 2022-17.

The failure by the Committee to set forth its reasons for adopting Ordinance No. 2022-17 means the public is "in the dark" about the process. The Committee provided no indication of evidence it found persuasive or unpersuasive, or what weight, if any, was given to any particular evidence. For all the public knows, the Committee members failed to read any of the documents listed by Gillespie when introducing Ordinance No. 2022-15. At the end of the day, the Committee must keep in mind its audience – the citizens of Chesterfield. The Committee's decision not to amend the Plan means a lay person must look at Ordinance No. 2022-15, then Ordinance No. 2022-17 and compare and contrast both with the text of the Plan. It should not be arduous for a citizen to understand the actions taken by their municipality and reasons for doing so.

For these reasons, Plaintiffs request this Court find there was not sufficient evidence in the record to support Defendants' adoption of Ordinance No. 2022-17.

**II. THE COMMITTEE DID NOT PROPERLY AMEND ORDINANCE NO. 2022-15. (Pa2); (Pa631); (T9:14-21).**

Although the Committee attempted to correct the deficiencies in Ordinance No. 2022-15 by adopting Ordinance No. 2022-17, a close reading of the ordinances reveals this did not happen. Ordinance No. 2022-17 states: "Section 1.1 of the

Redevelopment Plan, . . . is hereby amended to . . . ." (Pa46). Each subsequent section is further amended and language either added or deleted. See (Pa46-Pa51). On the other hand, Ordinance No. 2022-15 is styled differently. There, the sections begin with "WHEREAS" clauses where the Committee makes its findings. See (Pa16-Pa17). Conversely, Ordinance 2022-17 only alters the language in the Plan – there is no language (aside from the title) where the Committee claims to be amending Ordinance No. 2022-15.

The key distinction here is that amending the Plan and amending an ordinance are two different procedures. This is not a form over substance argument but rather, Plaintiffs ask the Court to hold the township accountable to following the proper procedures. For the public to understand the township's actions, it must be able to derive the township's reasons for so acting. The record in this case fails to provide any explanations for the township's conduct. There are no findings by the Committee, in the ordinance itself, stating why it was amending Ordinance 2022-15. Thus, Defendants have failed to satisfy their burden to demonstrate by "sufficient credible evidence" that the requirements of the LRHL have been satisfied.

**CONCLUSION**

For the foregoing reasons, Save Old York respectfully submits that the trial court's denial of summary judgment should be reversed.

Respectfully submitted,

STARK & STARK  
A Professional Corporation

By: Timothy P. Duggan, Esq.  
TIMOTHY P. DUGGAN, ESQ.

Dated: October 3, 2023

**SAVE OLD YORK, a New Jersey  
non-profit entity,**

**Plaintiff-Appellant,**

**v.**

**THE TOWNSHIP OF  
CHESTERFIELD  
(BURLINGTON COUNTY);  
TOWNSHIP COMMITTEE OF  
THE TOWNSHIP OF  
CHESTERFIELD; TOWNSHIP  
OF CHESTERFIELD PLANNING  
BOARD; JOHN DOES A-Z;  
CORPORATION A-Z; ACTIVE  
ACQUISITIONS OY, LLC,**

**Defendants-Respondents**

**SUPERIOR COURT OF NEW  
JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-003167-22 T04**

**CIVIL ACTION**

**ON APPEAL FROM ORDER  
DATED MAY 15, 2023**

**Docket No. BUR-L-002322-22**

**SAT BELOW:  
HON. JEANNE T. COVERT, A.J.S.C**

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**BRIEF OF DEFENDANT/INTERVENOR/RESPONDENT, ACTIVE  
ACQUISITIONS OY LLC**

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**PRELIMINARY STATEMENT**

In May 2020, the Township Committee of the Township Chesterfield (“Committee”) accepted the recommendation of the Township Planning Board (“Planning Board”) that the former site of the Old York Country Club (the “Property”) qualified as an “area in need of rehabilitation” pursuant to the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 et. seq. (the “Redevelopment Law”). The Committee formally designated the Property as “in need of rehabilitation,” and no appeal of that designation was ever filed.

At the time of the rehabilitation designation and since, Defendant/ Respondent Active Acquisitions OY LLC (“Active”) has been the contract purchaser of the Property. Active’s intention to develop the Property for warehouse/distribution uses has been publicly known since February 2020. Active has appeared as needed at public meetings and responded fully to all inquiries of the public, Committee, and Planning Board regarding Active’s development concept for the Property.

During the two-plus years following the rehabilitation designation, redevelopment of the Property was studied extensively and discussed and considered at approximately two dozen public meetings of the Committee, plus multiple meetings of the Planning Board. A substantial public record of the process was maintained and made available to the public on the Township’s

website. Representatives of Appellant Save Old York (“Appellant”) were regular attendees and commenters at the public meetings, and Appellant even presented the testimony of an expert planning consultant before both the the Planning Board and Committee.

This case involves Appellant’s challenge to a Redevelopment Plan (hereinafter defined) for the Property that was eventually adopted by the Committee in October 2022 and amended in December 2022. Appellant has argued in the Trial Court and again on appeal that the Township failed to adopt the Redevelopment Plan in a “transparent manner,” which resulted in the public being “in the dark.” Pb1. Appellant argues the “record” on which enactment of the Redevelopment Plan was based is comprised solely of the comments of Township Counsel, “without any evidence in the record.” Pb1.

Appellants arguments are not supported by the substantial legislative and factual record and are contrary to both the requirements of the Redevelopment Law and legal standards applicable to judicial review of municipal legislative enactments such as the Redevelopment Plan. Such enactments are entitled to a presumption of validity, and Appellant has failed to overcome that presumption. Nothing in Appellant’s Brief and/or citations to the record provides any basis for the Court to disturb either the Committee’s lawful adoption of the Redevelopment

Plan or the Trial Court's Order granting summary judgment and dismissing Appellant's Complaint in Lieu of Prerogative Writs.

### **COUNTERSTATEMENT OF FACTS**

In or about January 2020, the Property was home to deteriorating, vacant structures and failing wastewater treatment systems that were creating conditions of environmental contamination, including a potential impact to groundwater resources. Pa173-74. On February 27, 2020, the Committee adopted Resolution 2020-2-6, referring to the Planning Board the question of whether the Property qualified as "in need of rehabilitation" pursuant to N.J.S.A. 40A:12A-14. Pa164-65. At that same meeting, the Committee adopted Resolution 2020-2-5, authorizing a "Developer's Escrow Agreement" with Active for the Property. Pa163-64. The Escrow Agreement specifically stated Active is the prospective purchaser of the Property and "wishes to develop said Property, for warehouse/distribution purposes." Pa168.

In response to Resolution 2020-2-6 and in accordance with N.J.S.A. 40A:12A-14, the Planning Board concluded at its May 19, 2020 meeting that the Property qualified as an "area in need of rehabilitation" and made such recommendation to the Committee. Pa173-74. At its May 28, 2020 public meeting, the Committee adopted Resolution 2020-5-6, accepting the Planning

Board's recommendation that the Property be designated "in need of rehabilitation" pursuant to N.J.S.A. 40A:12A-14. Pa188-90.

The proposed rehabilitation designation of the Property was also reviewed and approved by the New Jersey Department of Community Affairs ("DCA") on April 27, 2021 pursuant to N.J.S.A. 40A:12A-6.b(5)(c), with the DCA noting the "deteriorating conditions of existing infrastructure" constituted a sufficient basis for the rehabilitation designation. Pa195. There was no challenge to either the Committee's adoption of Resolution 2020-5-6 designating the Property as in need of rehabilitation or the DCA's approval of that designation.

Following the rehabilitation designation of the Property, the Committee formed a subcommittee in July 2020 to undertake the process of developing a redevelopment plan for the Property. Pa321. Such a process continued over the course of the ensuing year-plus, during which period the Property and the status of a redevelopment plan were topics of discussion at more than fifteen (15) public meetings of the Committee. Pa319-436. Among the public meetings at which the Property was discussed was a 4-hour-long Special Meeting of the Committee on March 18, 2021 at which a team of nine (9) representatives of Active appeared and reviewed Active's proposal for development of the Property and responded to all questions posed by members of the Committee and public regarding the proposal. Pa349-54. Officers and/or directors and/or members of Appellant attended all of

the aforementioned public meetings and regularly commented on the proposed development of the Property.<sup>1</sup> Following the March 18, 2021 Special Meeting, the materials presented by Active during the March 18<sup>th</sup> meeting were made available for public review on the Township’s website and those materials remain available for public review. [See <https://www.chesterfieldtwpnj.gov/oycc-redevelopment>; see also <https://www.chesterfieldtwpnj.gov/oyccdocuments>.]

At its August 25, 2022 public meeting, the Committee indicated its support to move forward with a redevelopment plan for the Property.<sup>2</sup> Both the Committee and the Township Solicitor explained the process for introduction and adoption of a redevelopment plan. Pa394-96. Again, multiple representatives of Appellant were present at that meeting and offered comment. Pa394-96.

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<sup>1</sup> Save Old York was one of five Plaintiffs named in the Complaint filed in the Trial Court. Pa1. The Trial Court’s Order dismissed the claims of all five Plaintiffs with prejudice. Pa537-38. Save Old York was named the only Appellant in its original June 21, 2023 Notice of Appeal. The Notice of Appeal was then amended on July 13, 2023, to include plaintiffs Brett Anderson, Dawn Mason, Stacey Verdino, and April Sette as additional Appellants. (Pa539-Pa541). However, the lone appellate brief states that it is filed on behalf of only Save Old York. Similarly, the caption appearing on Save Old York’s brief and appendix lists only Save Old York as being the “Appellant/Plaintiff.” No brief was filed on behalf of Brett Anderson, Dawn Mason, Stacey Verdino, or April Sette and, thus, such plaintiffs below have abandoned any appeal. Accordingly, throughout this Brief, Active refers to a singular “Appellant,” as opposed to a plural “Appellants.”

<sup>2</sup> Despite the Property being declared as “an area in of rehabilitation,” the redevelopment Law required the adoption of a *redevelopment* plan for such a rehabilitation area. See N.J.S.A. 40A:12A-7.a



At its public meeting on September 8, 2022, the Committee introduced Ordinance 2022-15 entitled “Ordinance of the Township of Chesterfield, County of Burlington, State of New Jersey Adopting the ‘Old York Redevelopment Plan’ For Certain Property Known as Block 701, Lot 2.01, the Former Old York Country Club” (hereinafter the “Ordinance 2022-15”). Pa398-402. Appended to proposed Ordinance 2022-15 is the “Redevelopment Plan” for the Property prepared by the Township Planner (hereinafter “Redevelopment Plan”). Pa403-32. The Committee also established a public hearing date of October 27, 2022 for the Redevelopment Plan, which public hearing would follow a referral of the Redevelopment Plan to the Planning Board for a “master plan consistency determination.” Pa398.

Regarding the issue of consistency with the Township’s Master Plan (hereinafter “Master Plan”), the Redevelopment Plan contains the Planner’s conclusion that the Redevelopment Plan is consistent with the Master Plan:

3.1. The closure of the Old York Country Club was not anticipated at the time of the most recent Master Plan reexamination report in 2017. As a result, the Master Plan does not provide any specific recommendations regarding the potential redevelopment of the property. However, the development of the rehabilitation area with the warehouse facility is not inconsistent with the goals and objectives of the Master Plan. The primary goals of the Township’s Master Plan are the preservation of the agricultural industry, and the protection of the rural character of the community.

This Redevelopment Plan does not remove any active farmland from productive use, nor is this property targeted for agricultural use or preservation. Additionally, the setbacks and buffering required shall serve to maintain a rural aesthetic on Old York Road and Bordentown-Georgetown Road. The Township finds that the rehabilitation area is an appropriate location for warehouse development as illustrated in Figure 4 for several reasons, including the property's accessibility to the New Jersey Turnpike and Interstate 295 via Route 206. Based on the access restrictions imposed by this Redevelopment Plan, the operations of such a facility will generate minimal truck traffic impacts on local roadways in Chesterfield. Similarly, the size and shape of the property allow for substantial setbacks and buffering of the facility to minimize visual impacts to the character of the community. The requirements of the Redevelopment Plan will ensure that sensitive environmental features of the property will be protected. In addition, the Township's sustainability and renewable energy objectives will be advanced by the renewable energy requirements of this Plan. Furthermore, the redevelopment of the rehabilitation area encourages the preservation and adaptive reuse of an existing historic structure (See, Section 4.5). Thus, the adoption of this Redevelopment Plan does not conflict with the Township's planning objectives relative to farmland preservation, environmental protection, historic preservation and sustainability, and in this regard can be considered consistent with the Township's Master Plan."

Pa426, Redevelopment Plan, Sec. 3.1 at p. 17 (emphasis added).

At its meeting of September 20, 2022, the Planning Board reviewed the Redevelopment Plan for consistency with the Master Plan pursuant to N.J.S.A.

40A:12A-7.e. 1T1-57. Although not required to, the Planning Board heard public comments prior to making its Master Plan consistency determination. 1T13-50. During that public comment period, Appellant's attorney presented the testimony of Carlos Rodrigues, PP, Appellant's planning consultant. 1T15-25. Mr. Rodrigues opined that the Redevelopment Plan was *inconsistent* with the Master Plan. 1T15-25. In addition to providing professional planning testimony, multiple representatives of Appellant offered comments to the Planning Board. 1T25-50. At the conclusion of the public comment period and on the strength of the testimony and report of the Planning Board's Planner, Mr. Dochney, the Planning Board made the determination pursuant to N.J.S.A. 40A:12A-7.e that the Redevelopment Plan was *not inconsistent* with the Township Master Plan. 1T56-57.

At its October 27, 2022 public meeting, the Committee voted to adopt Ordinance 2022-15 and the Redevelopment Plan. 2T81-82. The basis for the Committee's decision was informed by all materials comprising the legislative record, which documents and information were made available for public review and inspection on the Township website and at the Township Municipal Building. Pa196-235. See also <https://www.chesterfieldtwpnj.gov/oycc-redevelopment>; and <https://www.chesterfieldtwpnj.gov/oyccddocuments>.]

Also at the October 27, 2022 public hearing, the Committee introduced a second ordinance intended to implement certain amendments to the Redevelopment Plan in response to comments received by the Committee. 2T81-94. The supplemental ordinance, Ordinance 2022-17, was entitled “Ordinance to Amend Ordinance 2022-15 which Adopted the Old York Redevelopment Plan for Certain Property Known as Block 701 Lot 2.01 the Former Old York Country Club.” Pa151-57. Among other things, Ordinance 2022-17 evidenced the Committee’s intent to proceed with enacting the Redevelopment Plan even if it was later determined that the Redevelopment Plan was deemed to be inconsistent with the Master Plan. Thus, Ordinance 2022-17 articulated the Committee’s “reasons” for enacting the Redevelopment Plan, which endowed the Redevelopment Plan with all attributes necessary to override the Master Plan pursuant to N.J.S.A. 40A:12A-7.e. With the introduction of Ordinance 2022-17, the Committee made clear its intention to proceed with the adoption of the Redevelopment Plan whether or not the Plan was consistent with the Master Plan.

Ordinance 2022-17 was thereafter referred to the Planning Board and at its public meeting of November 22, 2022, the Planning Board determined pursuant to N.J.S.A. 40A:12A-7.e, that the Redevelopment Plan as amended by Ordinance 2022-17 was not inconsistent with the Master Plan. Pa435.

On December 8, 2022, the Township Committee conducted a public hearing regarding the enactment of Ordinance 2022-17. At the conclusion of that public hearing, the Township Committee voted to adopt Ordinance 2022-17. Pa296. No commenter refuted or challenged the validity of the “reasons” for adopting the Redevelopment Plan that the Committee had articulated in Ordinance 2022-17. Pa296. With the enactment of Ordinance 2022-17, the Redevelopment Plan was amended to its current form. Appellant’s Complaint in Lieu of Prerogative Writs challenging the adoption of the Redevelopment Plan for the Property was then filed on December 12, 2022. On May 15, 2023, after briefing by all Parties, the Trial Court issued its opinion rejecting Appellants’ arguments and dismissing Appellants Complaint. 3T, *generally*. The dismissal of Appellant’s Complaint was memorialized by Order dated May 15, 2023. Pa535. This appeal followed.

## **LEGAL ARGUMENT**

### **A. Standard of Review**

#### **1. Municipal legislative enactments are entitled to a presumption of validity.**

An appellate court reviews the Trial Court's grant of summary judgment *de novo* under the same standard as the trial court. Memorial Props., LLC v. Zurich Am. Ins. Co., 210 N.J. 512, 524 (2012). That standard mandates that summary judgment be granted “if the pleadings, depositions, answers to interrogatories and

admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to a judgment or order as a matter of law.” R. 4:46-2(c).

A reviewing court must “presume the validity and reasonableness of a municipal ordinance.” First Peoples Bank v. Medford, 126 N.J. 413, 418 (1991). A party challenging a municipal enactment bears a heavy burden in proving the ordinance is arbitrary or unreasonable. Id. The presumption of validity may only be overcome “by proofs that preclude the possibility that there could have been any set of facts known to the legislative body or which could reasonably be assumed to have been known which would rationally support a conclusion that the enactment is in the public interest.” Hutton Park Gardens v. Town Council of W. Orange, 68 N.J. 543, 565 (1975), emphasis added. When an ordinance is challenged, the reviewing Court’s role is not to evaluate the weight of the evidence for and against the ordinance nor review the wisdom of any determination of policy which the legislative body might have made. Id. The Court must sustain an ordinance if it is supported by any rational basis. First Peoples Bank, 126 N.J. at 418-19, emphasis added.

The presumption of validity applies equally to a governing body’s enactment of a redevelopment plan. Downtown Residents for Sane Dev. v. City of Hoboken, 242 N.J. Super. 329, 332 (App. Div. 1990). To provide a basis to set aside a

questioned redevelopment plan, a challenger must establish the governing body's legislative decisions are more than merely debatable, they must be shown to be arbitrary or capricious, contrary to law, or unconstitutional. Id. Here, Appellant fails woefully to meet that standard as the Committee's rationale for proceeding with the adoption of the Redevelopment Plan was supported by over a year of public debate and discourse and the production of numerous studies and reports that evaluated all aspects of the proposed redevelopment of the Property for a warehouse use. Pa319-436; pa349-54; see also <https://www.chesterfieldtwpnj.gov/oycc-redevelopment>; and <https://www.chesterfieldtwpnj.gov/oyccdocuments>.]

While the Appellant has made clear that it disagrees with the Committee's legislative decision to move forward with the Redevelopment Plan, for Appellants to ignore the substantial factual record that underlaid that Committee decision is disingenuous. New Jersey law requires a court to determine whether there is "any set of facts known to the legislative body or which could reasonably be assumed to have been known which would rationally support a conclusion that the enactment is in the public interest." Hutton Park Gardens, *supra*, 68 N.J. at 565. Here, as properly recognized by the Trial Court, the Committee made clear its rationale for the decision to adopt (and later amend) the Redevelopment Plan. That legislative

decision, while debatable from Appellant's perspective, was certainly not arbitrary, capricious or unreasonable.

**2. Appellant exclusively cites judicial decisions that do not involve or apply the standards of review applicable to legislative enactments.**

In its Brief, Appellant repeatedly cites judicial decisions that have no application to this matter. This appeal calls for review of the enactment by ordinance of a redevelopment plan. The adoption of a redevelopment plan is “a legislative function of a municipal government, akin to adoption of a master plan or zoning ordinance.” Milford Mill 128, LLC v. Borough of Milford, 400 N.J. Super. 96, 110 (App. Div. 2008). Yet, Appellant exclusively cites and relies upon the more stringent standard(s) of review applicable to quasi-judicial administrative determinations of municipal boards. Pb15-16, Pb21-22. However, this matter does not arise from a challenge to a planning or zoning board's denial of a land use application. No quasi-judicial determination of a municipal board is at issue in this appeal and, therefore, the standards for reviewing such determinations are irrelevant here. Nowhere in its Brief has Appellant cited the appropriate, applicable standards. When relying on the correct legal standards, as the Trial Court did, it is clear that Appellant's procedural challenges to the adoption and amendment of the Redevelopment Plan must fail.



**B. The Committee Was Justified in Relying on the Opinion of the Township's Planner and Its Adoption of Ordinance 2022-15 Was Proper and Entitled to Substantial Deference.**

**1. The Planning Board made the required determination as to whether the Redevelopment Plan was inconsistent with the Township's Master Plan.**

Appellant argues the Committee's "failure" to make a determination that the Redevelopment Plan was inconsistent with the Township's Master Plan was an error requiring invalidation of the Redevelopment Plan. Pb17, Pb19. However, under the Redevelopment Law, the master plan consistency determination is required to be made by the planning board, not the governing body. N.J.S.A. 40A:12A-7.e. The governing body is merely required to refer the consistency determination to the Planning Board and consider the Planning Board's determination. N.J.S.A. 40A:12A-7.e.

Here, the Planning Board made the determination required by N.J.S.A. 40A:12A-7.e. Shortly after Ordinance 2022-15 was introduced by the Committee, the Planning Board considered the Redevelopment Plan at its regularly scheduled September 20, 2022 public meeting. The Township's Planner, Mr. Dochney, made a presentation providing analysis and comments to the Planning Board members. 1T4-13. Although the Planning Board was not required to conduct a public hearing, the Planning Board heard public comments at the September 20, 2022 meeting, including those of Appellant's counsel and expert professional planner,

Mr. Rodrigues. 1T13-50. Mr. Dochney opined the Redevelopment Plan was not inconsistent with the Master Plan, while Appellant's expert, Mr. Rodrigues, opined it was inconsistent. At the conclusion of the public comments and on the strength of the comments and report from Mr. Dochney, the Planning Board determined by a vote of 7-2 that the Redevelopment Plan was not inconsistent with the Master Plan. 1T56-57.

Appellant certainly takes issue with the expert conclusion of Mr. Dochney. However, that disagreement does not vitiate the Planning Board's entitlement to rely on the expert opinion of its own professionals as it was clearly within the discretion of the Planning Board to determine which expert's opinion it would accept. See Klug v. Bridgewater Planning Bd., 407 N.J. Super. 1, 13 (App. Div. 2009). Here, the Planning Board acted properly in relying on the opinion of its expert and concluding that Ordinance 2022-15 was not inconsistent with the Master Plan, as required by N.J.S.A. 40A:12A-7.e. With that determination by the Planning Board, the Committee was not required to articulate its "reasons for not following the [Planning Board] recommendations" as the Planning Board made no recommendations at odds with Ordinance 2022-15 as it was proposed. The Appellant's attempt to argue otherwise is plainly contrary to the record below.

**2. Appellant’s arguments that Committee’s adoption of Ordinance 2022-15 was improper or should be deemed “null and void” are incorrect and should be rejected by the Court.**

Appellant’s assertion that the record contained “no reason[s] whatsoever” supporting adoption of Ordinance 2022-15 is incorrect and a disingenuous omission of the Committee’s years long discussion on the redevelopment of the Property. Pb18. The Township Planner testified before the Committee and the Planning Board had determined the Redevelopment Plan was not inconsistent with the Master Plan. Such determinations regarding issues distinctly within the realm of “planning” are those for which planning boards are granted “wide latitude in the exercise of [their] delegated discretion” due to their “peculiar knowledge of local conditions.” Fallone Props., LLC v. Bethlehem Twp. Planning Bd., 369 N.J. Super. 552, 651 (App. Div. 2004) (quoting Burbridge v. Mine Hill Twp., 117 N.J. 376, 385 (1990)). Moreover, the Committee also considered a Community Impact Statement, traffic studies, a memorandum addressing various issues prepared by the Township Administrator, Dochney’s testimony and reports, public comments, and other information. Pa196-235. The Committee’s action in adopting Ordinance 2022-15 rested on a rational basis in the legislative record and, thus, was presumptively valid and entitled to great deference. Hutton Park Gardens v. West Orange Twn. Council, 68 N.J. 543, 564-65 (1975). That Appellant’s expert held a differing view on the issue of consistency with the Master Plan does not mean

there were “no reasons” for adopting the Redevelopment Plan. While Appellant disagrees with such reasons, that does not render the Committee’s actions improper or unlawful.

Appellant repeatedly and inaccurately states in its Brief that the Trial Court found Ordinance 2022-15 to be invalid due to it being “inconsistent” with the Master Plan. Pb14, Pb17-18. Nowhere in the Trial Court’s remarks nor in the Order did the Trial Court rule Ordinance 2022-15 was invalid or “null and void.” A charitable reading of the comments cited by Appellant shows the Trial Judge merely stated there were “some inconsistencies with the [Master Plan]” (3T50:22-51:3) and/or that the Redevelopment Plan was “in part” inconsistent. 3T63:9-11. Immediately after making those comments, however, the Trial Judge clarified the Committee nevertheless had the authority to adopt the Redevelopment Plan by majority vote.

To that point, it should be noted that the manner in which this matter was brought before the Trial Court was on cross-motions for summary judgment. Given that, the Trial Court was simply applying the summary judgment standard,<sup>3</sup> see 3T44, and citing non-dispositive inferences that could be drawn in favor of Appellant’s inconsistency arguments. Certainly, the Trial Court did not *rule*

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<sup>3</sup> Brill v. Guardian Life Ins. Co. of America, 142 N.J. 520, 540 (1995).

Ordinance 2022-15 was invalid.<sup>4</sup> Moreover, because Ordinance 2022-15 adopted the Redevelopment Plan and Ordinance 2022-17 simply adopted certain amendments to the plan, the Trial Court’s Order makes no sense if interpreted to mean enactment of the Redevelopment Plan was “null and void” but enactment of amendments to the plan was valid.

In fact, because the Committee was faced with two differing expert opinions as to whether the Redevelopment Plan was consistent with the Master Plan, the Committee’s decision to accept one over the other is entitled to great deference. It would have been inappropriate for the Trial Court to substitute its judgment for the judgment of the Committee on that issue. Hutton Park Gardens, *supra*, 68 N.J. at 565 (holding that Courts must not evaluate the weight of the evidence for and against the legislative body’s enactment nor review the wisdom of any determination of policy which the body might have made); Downtown Residents, *supra*, 242 N.J. Super. at 338-39 (holding a claim about the merits of the governing body’s choice between two actions “really goes to the question of the wisdom of

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<sup>4</sup> Active submits the Trial Court’s statement that most accurately and succinctly evidences the Trial Court’s ruling is the following:

Even if the redevelopment plan is not consistent with the master plan, the adoption of Ordinance 2022-17 that supplied reasons and which was voted upon by a majority of the governing body, and which was supported by the record remedied this defect.

3T48:13-17.

the [choice] when balanced against conflicting planning considerations,” which is a judgment courts may not make). Here, the Trial Court’s deference to the legislative prerogative of the Committee was in line with established New Jersey precedent.

**C. Whether Or Not The Redevelopment Plan Was Consistent With The Township’s Master Plan, The Committee’s Adoption Of The Redevelopment Plan Was Nonetheless Proper And Lawful Under The Redevelopment Law**

The Redevelopment Law does not require that a redevelopment plan be consistent with the master plan. N.J.S.A. 40A:12A-7.d. In fact, a governing body is authorized to reject a master plan altogether in adopting a redevelopment plan.

Id. All that is required of the governing body in the face of a potential inconsistency with the master plan is a majority vote in favor of adoption and the governing body’s “reasons” for so acting being set forth in the redevelopment plan. N.J.S.A. 40A:12A-7.d.

Appellant’s arguments in both the Trial Court and on appeal are premised on Appellant’s contention that the Redevelopment Plan was inconsistent with the Township’s Master Plan and, therefore, Ordinance 2022-15 was invalid because the Committee did not articulate the required reasons for why the Committee was determining to proceed in light of that inconsistency. Appellant’s claims are woefully flawed. First and foremost, the Planning Board, the body that is the author of the Township Master Plan, did not conclude that Ordinance 2022-15 was

inconsistent with the Township Master Plan. So what Appellant is actually arguing is that the Committee should have: (i) rejected the findings and recommendations of its Planning Board (which was supported by expert testimony); (ii) independently concluded that Ordinance 2022-15 was inconsistent with the Township Master (despite the Redevelopment Law vesting that function with the Planning Board); and (iii) articulated the reasons for proceeding in the face of inconsistencies (which were not actually identified by the Planning Board). Of course, the Appellant points to no case law to establish such a process or requirement, as Appellant's argument is baseless.

Yet despite not being statutorily required to set forth its reasons for proceeding with the adoption of the Redevelopment Plan, upon the Appellant's objection to Ordinance 2022-15, it became clear that Appellant would likely challenge Ordinance 2022-15 and, as a basis for such a challenge, claim that the Redevelopment Plan was inconsistent with the Master Plan. So as to make clear to both the Appellant and the public that it was intent on proceeding with adoption of the Redevelopment Plan, the Committee introduced and adopted Ordinance 2022-17 which both incorporated certain amendments to the Redevelopment Plan, and also set forth the Committee's "reasons" for adopting the plan. In doing so, the Committee had endowed the Redevelopment Plan with the attributes necessary to override any determination of inconsistency with the Master Plan per the

requirements of N.J.S.A. 40A:12A-7.d. In so acting, the Committee left no doubt as to its commitment to the Redevelopment Plan and left Appellant with no academic claim that the Committee failed to set forth a rationale for adopting the Redevelopment Plan. In other words, the Committee had done what the Appellant had requested.

Incredibly, the Appellant then argues that the Committee was prohibited from providing such reasons because the Committee had previously failed to do so (even though the Committee was not required to) with the adoption of Ordinance 2022-15. Specifically, Appellant claims that the Committee was attempting to make a finding of both consistency and inconsistency and that such an alternative-type approach is not contemplated by N.J.S.A. 40A:12A-7.d. Db18. Like nearly all other arguments it has advanced, Appellant directs this Court to no support for its novel/frivolous claim. In sum, Appellant would have this Court invalidate the actions of the Committee because the Committee was being *too* detailed and *too* proactive in explaining to the Appellant and the public why the Committee was proceeding with the adoption of the Redevelopment Plan, irrespective of whether or not it may have been later determined to have been inconsistent with the Master Plan. Clearly, Appellant's position cannot stand.

The Redevelopment Law gives the governing body the authority to adopt a redevelopment plan irrespective of whether the plan is consistent with the master



plan. Nothing in the Redevelopment Law prohibits the governing body from incorporating the “reasons” into a redevelopment plan that the planning board believes is “not inconsistent” with the master plan. Similarly, nothing in the Redevelopment Law limits the governing body to acting only in accordance with the planning board’s master plan consistency determination.

As described above, Ordinance 2022-17 is comprised of amendments to the Redevelopment Plan as that Plan was initially adopted by Ordinance 2022-15. Ordinance 2022-17 was introduced at the Committee’s October 27, 2022 meeting, the same meeting at which the Committee voted to adopt Ordinance 2022-15. Mr. Rodrigues again testified at the October 27, 2022 Committee meeting. Thus, the Committee was well aware of opposing viewpoints, that Appellant considered the Redevelopment Plan to be inconsistent with the Master Plan, and of the possibility that Appellant would commence a legal challenge on that basis. Accordingly, among the amendments included in Ordinance 2022-17 are the Committee’s “reasons” for adoption of the Redevelopment Plan even if a subsequent court should conclude that an inconsistency existed:

E. Section 3, “Plan Consistency”, is hereby amended to add the following new Section 3.1.1:

3.1.1. Notwithstanding the foregoing Section 3.1, it has been suggested by some members of the public that this Redevelopment Plan is not consistent with the Township's Master Plan and/or is not designed to effectuate the Master Plan. To the extent such suggestion

has credibility, the Township Committee, pursuant to N.J.S.A. 40A: 12A-7(d), herewith sets forth its reasons for adopting this Redevelopment Plan.

A. At the time the Township's Master Plan was adopted in 1997, its focus was on the preservation of farmland and promoting the Township's agricultural character through a then-newly crafted "Transfer of Development Rights" ("TOR") legislative program. Commercial and industrial development were not priorities.

B. Chesterfield is the only municipality in the State of New Jersey to successfully implement TOR, and residential development in the "Receiving Area" is now more than eighty percent (80%) completed. The limited commercial area in the Receiving Area has now also been built, but suffers from vacancy concerns.

C. Chesterfield's tax revenues are disproportionately derived from its residential development and farms. In fact, ninety-seven percent (97%) of Chesterfield's tax ratable base is farmland and residential. The Township Committee recognizes the fragility of such a reliance on residences and farms as the nearly sole source of tax revenue.

D. There are very few areas in the municipality where non-residential, non-agricultural pursuits can be achieved.

1. Of Chesterfield's 13,728 acres of land:

(a) 7,956.36 acres are preserved and 577.39 are unpreserved (but with TDR Credits assigned to them);

(b) 689.55 acres are State-owned land;

(c) 583 acres comprise the "Receiving Area";

(d) 140 acres are recreation fields and/or open space outside the Receiving Area;

(e) Crosswicks and Recklesstown comprise 385 acres;

(f) Turnpike Roads comprise: 102.87 acres.

2. As a result, seventy-six percent (76%) of Chesterfield's land mass has been dedicated to the purposes of the 1997 Master Plan, and subsequent Master Plan Re-Examination Reports, and/or is physically not developable.

E. However, no significant commercial or industrial initiatives have been undertaken since TDR was adopted in 1998.

F. The five (5) highest ratables in this community are:

|                             |                |
|-----------------------------|----------------|
| (1) Transco Generator:      | \$5,297,500.00 |
| (2) Colonial Pipeline:      | \$4,303,100.00 |
| (3) Old York Village Shops: | \$3,180,000.00 |
| (4) Old York Country Club:  | \$3,000,000.00 |
| (5) Horse Track:            | \$2,523,000.00 |

G. The general welfare of the community is advanced when the municipality seeks industrial ratables to create a better economic balance for the community, vis-a-vis educational and governmental costs engendered by residential development. There is no question that the success of the TDR Program, and its resultant increase in school population and need for governmental services, has resulted in greater governmental expenditures. The Township Committee deems it appropriate to seek an opportunity to increase commercial/industrial tax ratables

to mitigate increased municipal expenditures resulting from an increased residential population.

H. The property in question, 156 +/- acres in size, is not a farm, and has not been a farm for years. The Township Committee has been informed that the costs and expenses a farmer would have to incur to return the property to tillable soil are prohibitive, such that it is unlikely to become farmland.

I. However, the property, having been used commercially for decades, is appropriate for non-agricultural, non-residential, purposes. Its close proximity to Route 206 (1,900 +/- feet) makes it attractive for the uses identified as permitted and accessory uses in Sections 2.2 and 2.3 of this Plan. The Township Committee believes it is a good location for the uses identified in this Plan.

J. In making its determination of the appropriateness of this area for these purposes, the Township has received the benefit of traffic reports, environmental reports, and a community impact statement, all of which have been posted to the Township's website for public consumption, and are made part of the record on this Ordinance. The Committee has also received an analysis of the traffic studies from the Township Planner's office, dated October 21, 2022; a memo from the Township Administrator, dated October 27, 2022, entitled "Data Related to Township Land uses, PVD, and Assessed Value Apportionment"; all of which documents are part of this legislative record and inform the Township Committee's decision.

K. The Township Committee believes that this Plan advances the following purposes of the MLUL:

N.J.S.A. 40:55D-2(a): To encourage municipal action to guide the appropriate use or development of all lands in this State, in a manner which will

promote the public health, safety, morals, and general welfare. [See the foregoing statements]

N.J.S.A. 40:55D-2(c): To provide adequate light, air and open space [ most of the property will remain undeveloped].

N.J.S.A. 40:55D-2(g): To provide sufficient space in appropriate locations for a variety of agricultural, residential, recreational, commercial and industrial uses and open space, both public and private, according to their respective environmental requirements in order to meet the needs of all New Jersey citizens. [See the foregoing statements]

N.J.S.A. 40:55D-2(h): To encourage the location and design of transportation routes which will promote the free flow of traffic while discouraging location of such facilities and routes which result in congestion or blight [truck traffic going to and from Route 206 only]

N.J.S.A. 40:55D-2(i): To promote a desirable visual environment through creative development techniques and good civic design and arrangement [setback distances and landscaping/berming regulations]

N.J.S.A. 40:55D-2(j): To promote the conservation of historic sites and districts, open space, energy resources and valuable natural resources in the State and to prevent urban sprawl and degradation of the environment through improper use of land [Black House, solar in Sec. 2.6.9; and electric vehicle/service equipment (EV/SE) at Sec. 2.5, page 10]

While the Township Committee believes that the Redevelopment Plan is consistent with the Master Plan,

as stated in Section 3 .1 of the Plan, for purposes of completeness of the record, and should it be determined by a reviewing Court that the Redevelopment Plan is not consistent with the Master Plan, or is not designed to effectuate the Master Plan, the Township Committee adopts the foregoing as its reasons for adopting this Plan despite any such concerns.

Pa047-Pa050 (emphasis supplied).

The Planning Board’s conclusion that the Redevelopment Plan was not inconsistent with the Master Plan did not preclude the Committee’s inclusion of detailed “reasons” in the Plan. The Committee was not required to await the outcome of a litigated challenge to Ordinance 2022-15 before doing what the Redevelopment Law indisputably gave it the authority to do, *i.e.*, include its “reasons” in the Redevelopment Plan. Appellant is effectively arguing that the Township should be punished for its Committee’s proactive, time- and resource-saving approach to adopting the Redevelopment Plan. Such an argument was properly rejected by the Trial Court and should likewise be rejected by this Court.

**D. The Legislative Record More Than Adequately Supported The Committee’s Vote To Adopt The Redevelopment Plan Amendments**

Although the governing body’s “reasons” for adopting an inconsistent redevelopment plan must be “adequately supported by the record,” they need not be supported by “substantial evidence.” Powerhouse Arts Dist. Neighborhood Ass’n v. City Council of City of Jersey City, 413 N.J. Super. 322, 331-333 (App. Div. 2010). Thus, the procedural requirements for building an adequate record are

“decidedly less burdensome” than for a redevelopment area designation, where the “substantial evidence” standard is applicable. Id. at 333 (fn. 5).

Appellant argues without factual support that there was insufficient evidence in the record to support the Committee’s adoption of Ordinance 2022-17. In making this argument, Appellant misstates the applicable law. Citing Malanga v. Township of West Orange, 253 N.J. 291 (2023), Appellant argues that the enactment of the Redevelopment Plan was required to be supported by “substantial credible evidence” in the record. Pb21. However, Malanga involved the quantum of evidence necessary to designate a property as being in need of redevelopment in accordance with N.J.S.A. 40A:12A-5, not the standard necessary to support adoption of a redevelopment plan in accordance with N.J.S.A. 40A:12A-7. The “substantial credible evidence” standard does not apply to judicial review of either the adoption of or the “reasons” for adopting a redevelopment plan. See Powerhouse Arts District, 413 N.J. Super. at 331-33. Rather, as described previously, a court reviewing a redevelopment plan applies the more deferential standard that there be “adequate support” in the legislative record for the governing body’s “reasons” for adopting the plan. Id. Thus, Malanga has no application to

this case<sup>5</sup> and Appellant has neither cited nor distinguished the cases discussing the standard of review applicable to the Committee's adoption of Ordinance 2022-17.

Appellant complains that the Township's attorney simply read the "reasons" into the record in a "lengthy monolog." Pb21. Appellant argues counsel's so-called "monolog" violated the Committee's "duty to deliberate on the ordinance and make findings." Pb22. In support of this argument, Appellant cites New York SMSA, Ltd. P'ship v. Board of Adj. of Twp. of Weehawken, 370 N.J. Super. 319 (App. Div. 2004) for the proposition that remarks made by any one person, in this case the Township's counsel, are not a substitute for "statutorily required findings" and "cannot be equated with deliberative findings of fact." Pb22.

Appellant's argument regarding the alleged impropriety of the so-called monolog is based on yet another misstatement of applicable law. The Committee had no "duty to deliberate on the ordinance and make findings." Pb22. There is no requirement that evidence be presented or findings of fact be made at a hearing before the governing body concerning the proposed enactment of an ordinance. Hirth v. City of Hoboken, 337 N.J. Super. 149, 166 (App. Div. 2001). The New York SMSA case cited by Appellant concerns the hearing procedure required for a *municipal board's* consideration of a variance application, a quasi-judicial

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<sup>5</sup> The Committee's initial designation of the Property as being in need of rehabilitation was never contested or challenged.



proceeding specifically governed by N.J.S.A. 40:55D-10g. New York SMSA, supra, 370 N.J. Super. at 332-33. Such statute has no application whatsoever to this case. When a quasi-judicial hearing is held before a municipal agency, the statute requires the agency to include written findings of fact and conclusions of law in each decision on an application for development. N.J.S.A. 40:55D-10g. However, the governing body is not a “municipal agency” and neither the statute (i.e., N.J.S.A. 40:55D-10g) nor any other law or regulation requires the governing body to deliberate and make or reduce to writing formal findings when enacting an ordinance.

The Committee’s adoption of Ordinance 2022-15 and Ordinance 2022-17 were discretionary legislative acts entitled to the presumption of validity. Downtown Residents, 242 N.J. Super. at 332. A municipal governing body enacting legislation is presumed to act on the basis of adequate factual support, and the presumption is overcome only by a showing that the record could not rationally support a conclusion that the enactment is in the public interest. Id. at 338-39.

The legislative record and the substance of Ordinance 2022-17 contain more than adequate support for the enactment’s adoption. Section 3.1.1 of Ordinance 2022-17 sets forth the Committee’s “reasons,” which are derived from studies, reports and findings that were made part of the legislative record. See, e.g., Pa196-235; see also <https://www.chesterfieldtwpnj.gov/oycc-redevelopment>; see also

<https://www.chesterfieldtwpnj.gov/oyccddocuments.>] The legislative record is more than sufficient to establish an adequate factual foundation for the Committee's action in adopting the Redevelopment Plan under N.J.S.A. 40A:12A-7.d. Powerhouse Arts, 413 N.J. Super. at 331-333. The validity of and/or factual support for the Committee's "reasons" has never been questioned or challenged by Appellant, either at the December 8, 2022 meeting at which the Committee voted to adopt Ordinance 2022-17, in the Trial Court proceedings, or in Appellant's Brief in support of this appeal. Similarly, Appellant has presented no evidence or argument that enactment of the Redevelopment Plan was not in the public interest.

In sum, Appellant has inaccurately characterized the legislative record as being non-existent and the governing body's "reasons" as "a monolog by the Township attorney." Pb21. Such criticism is unsupported and inaccurate, as redevelopment of the Property had been discussed at approximately two dozen Committee and Planning Board meetings over a two-year period (Pa161-195, Pa319-436), the "reasons" were derived from the legislative record, and it was the Committee, and not the Township attorney, that adopted Ordinance 2022-17. As stated in Section 3.1.1, the "reasons" were expressly incorporated into the Redevelopment Plan and adopted by majority vote of the Committee should it ever "be determined by a reviewing Court that the Redevelopment Plan is not consistent with the Master Plan, or is not designed to effectuate the Master Plan." Pa50.

Accordingly, the Redevelopment Plan satisfies the requirements of N.J.S.A. 40A:12A-7.d and Appellant failed to rebut the presumption of the enactments' validity.

**E. The Committee Was Not Required To State Its “Reasons” In The Meeting Minutes and Did Not Err in the Manner it Amended the Redevelopment Plan**

As a final set of procedural claims, Appellant argues the Committee violated a “duty” to state its “reasons” in both the Redevelopment Plan and its meeting minutes. Pa23. Appellant again misstates the applicable law. The “reasons” *are* set forth in the Redevelopment Plan, as amended by Ordinance 2022-17, and were also read into the record at the October 27, 2022 meeting. 2T87-93. “Reasons” are required to be recorded in the meeting minutes only when the governing body has decided *not* to follow the recommendation of the Planning Board. N.J.S.A. 40A:12-7.e. Here, the Committee followed the Planning Board’s recommendation. The “reasons” were not included in the Redevelopment Plan based on any rejection of or disagreement with the Planning Board’s recommendation. Accordingly, the Committee had no duty to also state the “reasons” in the meeting minutes.

Appellant also maintains that the Committee failed to properly amend Ordinance 2022-15 because Ordinance 2022-17 differed in the manner in which changes to the Redevelopment Plan were implemented. While Appellant maintains that such an argument “is not form over substance,” that is precisely what

Appellant's argument is. Pb25. Appellant offers no statutory or judicial authority for its claim in that regard as there is none. Further, Appellant's argument as to the form of ordinances is pure makeweight as the record was clear that the purpose of Ordinance 2022-17 was to amend the Redevelopment Plan that was initially adopted via Ordinance 2022-15. For the Appellant to maintain that "the record in this case fails to provide any explanation for the township's conduct" is a plain misstatement of the record. Pb25. The findings and rationale for the Committee's actions relative to the adoption and subsequent amendment of the Redevelopment Plan went well beyond the requirements of New Jersey law. Any argument to the contrary is ignorant of the applicable legal standards and established record in this matter.

### **CONCLUSION**

For the foregoing reasons, Appellant has failed to overcome the presumption of validity that attaches to the Committee's adoption of Ordinance 2022-15 and Ordinance 2022-17. Appellant's argument that the Redevelopment Plan cannot stand on the basis of alleged inconsistency with the Master Plan is not supported by the factual record and, even if it was, the Committee was statutorily authorized to reject the Master Plan. As adopted, the Redevelopment Plan sets forth the Committee's "reasons" for adopting the plan. Such reasons are derived from the legislative record and the validity of the "reasons" has not been questioned or

challenged by Appellant or anyone else. Because the Township's actions are in accord with the Redevelopment Law, Appellant's challenge was properly rejected by the Trial Court and no basis for reversal of the Trial Court has been presented on appeal.

**BISGAIER HOFF, LLC**  
Attorneys for Defendant/Intervenor,  
Active Acquisitions OY LLC



By \_\_\_\_\_  
Richard J. Hoff, Jr., Esquire

Dated: November 21, 2023

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# Superior Court of New Jersey

## Appellate Division

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Docket No. A-003167-22

|   |   |                          |
|---|---|--------------------------|
| SAVE OLD YORK, a New Jersey<br>non-profit entity, | : | CIVIL ACTION             |
|   | : |                          |
| <i>Plaintiff-Appellant,</i>                       | : | ON APPEAL FROM THE       |
|   | : | FINAL ORDER OF THE       |
| vs.   | : | SUPERIOR COURT           |
|   | : | OF NEW JERSEY,           |
| THE TOWNSHIP OF                                   | : | LAW DIVISION,            |
| CHESTERFIELD (BURLINGTON                          | : | BURLINGTON COUNTY        |
| COUNTY) TOWNSHIP                                  | : |                          |
| COMMITTEE OF THE                                  | : |                          |
| TOWNSHIP OF CHESTERFIELD;                         | : | DOCKET NO. BUR-L-2322-22 |
| TOWSHIP OF CHESTERFIELD                           | : |                          |
| PLANNING BOARD; JOHN DOES                         | : | Sat Below:               |
| A-Z; CORPORATION A-Z,                             | : |                          |
|   | : | HON. JEANNE T. COVERT,   |
| <i>Defendants-Respondents,</i>                    | : | A.J.S.C.                 |
| – and –   | : |                          |
| ACTIVE ACQUISITIONS OY,<br>LLC,                   | : |                          |
|   | : |                          |
| <i>Defendant-Intervenor.</i>                      | : |                          |

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### BRIEF AND APPENDIX ON BEHALF OF DEFENDANT-RESPONDENT TOWNSHIP OF CHESTERFIELD PLANNING BOARD

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Date Submitted: November 22, 2023

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**BRIEF ON BEHALF OF RESPONDENT-DEFENDANT TOWNSHIP  
OF CHESTERFIELD PLANNING BOARD**

**PRELIMINARY STATEMENT**

Defendant-Respondent, Township of Chesterfield Planning Board (hereinafter “Board”) is a planning board for the Township of Chesterfield, a duly incorporated municipality of the State of New Jersey. This appeal stems from Plaintiff-Appellant’s challenge to the validity of the Township of Chesterfield’s Ordinance 2022-15 and Ordinance 2022-17, which adopted the Redevelopment Plan for the former Old York Country Club.

Pursuant to the Cross Motions for Summary Judgment filed by Defendant-Respondent, Township of Chesterfield Planning Board, Defendant-Respondent, Township of Chesterfield and Defendant-Intervenor, Active Acquisitions OY LLC, the Honorable Jeanne T. Covert, A.J.S.C. dismissed Plaintiff-Appellant’s Complaint in Lieu of Prerogative Writs.

Appellant’s Brief addresses Judge Covert’s ruling in favor of the Township of Chesterfield Planning Board, the Township of Chesterfield Committee and Active Acquisitions OY LLC, which is supported by the record below. Defendant-Respondent, Board, submits that the Trial Court’s ruling with regarding to the Redevelopment Plan and adoption of Ordinance 2022-15 and Ordinance 2022-17 was correct and should be affirmed.

## **PROCEDURAL HISTORY**

On December 12, 2022 Plaintiff-Appellant filed a Complaint in Lieu of Prerogative Writs (Pa1) requesting the Court find Chesterfield Ordinance 2022-15 (Pa16) and Ordinance 2022-17 (Pa46) to be arbitrary, capricious and unreasonable, to invalidate Ordinance 2022-15 (Pa16) and Ordinance 2022-17 (Pa46), and invalidate the Redevelopment Plan of Old York County Club.

On December 21, 2022, Active Acquisitions OY LLC (hereinafter “Active”) filed a Motion to Intervene which the Trial Court granted in an Order dated January 11, 2023. (Pa68-Pa70).

On December 30, 2022, Defendant-Respondent Township of Chesterfield and Township Committee of the Township of Chesterfield filed their Answer to the Complaint in Lieu of Prerogative Writs. (Da1). On January 12, 2023 Defendant-Intervenor Active filed its Answer to the Complaint in Lieu of Prerogative Writs. (Da13). On January 24, 2023, the Board filed its Answer to the Complaint in Lieu of Prerogative Writs. (Da23).

On March 20, 2023, Plaintiff-Appellant filed a Motion for Summary Judgment seeking judgment in its favor. (Pa71). On April 14, 2023, Defendant-Intervenor Active filed its opposition Plaintiff-Appellant’s Motion for Summary Judgment and a cross-motion for summary judgment seeking

judgment in their favor and dismissing Plaintiff-Appellant's Complaint. (Da32).

On May 15, 2023, the Court entered an Order granting Defendant-Intervenor Active's cross motion for summary judgment, denying Plaintiff-Appellant's Motion for Summary Judgment and dismissing Plaintiff-Appellant's Complaint in Lieu of Prerogative Writ with prejudice. (Pa636). On that same date, the Court placed its decision on the record.

Plaintiff-Appellant filed a notice to appeal to the Superior Court, Appellate Division, on June 21, 2020. (Pa535).

### **STATEMENT OF FACTS**

On February 27, 2020, the Chesterfield Township Committee (hereinafter the "Committee") adopted Resolution 2020-2-6, directing the Chesterfield Township Planning Board (hereinafter the "Board") to conduct a preliminary investigation to determine whether Block 701, Lot 2.01, known as the former Old York Country Club (the "Property"), is an area in need of rehabilitation within the meaning of N.J.S.A. 40A-12A-1 et seq. (Pa22). On that same date, the Committee adopted Resolution 2020-2-5, authorizing execution of developer's escrow agreement.

On May 19, 2020, at a public meeting, the Board responded to Resolution 2020-2-6, and determined that the Property qualified as an "Area in

Need of Rehabilitation.” (Pa174). The Board opened the discussion up to public comment, despite not being required to do so under the law; however, no member of the public spoke as to the potential designation. (Pa174).

On May 28, 2020, at the public meeting, the Committee accepted the recommendation of the Board and designated the Property as an “Area in Need of Rehabilitation” pursuant to N.J.S.A. 40A-12A-14. (Pa188). On April 27, 2021, the New Jersey Department of Community Affairs reviewed and approved of the designation pursuant to N.J.S.A. 40 A:12A-14(a). (Pa195). At that time there was no challenge to the Board’s findings, the Committee’s adoption of Resolution 2020-2-6 or the DCA’s approval of the designation.

On September 8, 2022, at its public meeting the Committee introduced Ordinance 2022-15, the “Old York Redevelopment Plan” for Block 701, Lot 2.01, and referred the matter to the Board pursuant to N.J.S.A. 40A:12A-7. (Pa16).

On September 9, 2022, the Board’s Professional Planner, Chris Dochney, PP, AICP, issued a letter setting forth the following planning analysis and conclusions:

**Planning Comments**

- a. As required by the Local Redevelopment and Housing Law, all redevelopment plans are required to be reviewed by the Planning Board to identify any inconsistencies with the Master Plan.

b. The primary goal and focus of the master plan and its subsequent reexamination reports has been the preservation of agriculture as a viable business within the Township, and the protection of the rural and agricultural character of the community. Any potential new zoning regulations or land use regulations must then be viewed from this perspective of its potential impacts on these overarching goals.

c. As the master plan does not specifically make any recommendations regarding this property or development of industrial and warehouse uses in general, this Redevelopment Plan does not directly implement any specific recommendations of the Master Plan.

d. As the property has historically been used as a country club and golf course, changing the use of the site to an industrial facility would not be directly impacting the viability of farming in Chesterfield. The property is not called out for agricultural preservation, or noted to have soils suitable for farming. No active farms would be impacted by a potential development at this location.

e. In terms of preservation of the rural character of the community, the Redevelopment Plan does require substantial setbacks from both Old York Road and Bordentown-Georgetown Road of 1,000 feet and 1,900 feet respectively, as well as landscape buffering requirements that would ensure that any new development would have a minimal visual impact on these roadways. The frontages of each road would be composed of dense landscaping, and not industrial buildings and parking lots.

f. With the location of the property being on the very southwestern edge of the Township, and access to highways primarily going to the southwest to Route 206 and not through any of the historic villages, truck traffic should also have a minimal impact on the Township's roadways.

g. With the proposed Redevelopment Plan calling for light industrial or warehouse development on a former golf course generally having no significant impacts on the goals and objectives of the master plan, the Redevelopment Plan is not inconsistent with the master plan.

(Pa177-180).

On September 20, 2022, the Board held a public meeting, wherein Christopher Dochney, Planning Board Planner, provided his report and findings concerning the Redevelopment Plan for the Property. (1T pg. 4-13). Though not required by law, the Board heard testimony from the public, including Appellant-Plaintiff's expert, Carlos Rodrigues. (1T pg. 15). The Board adopted a motion finding the Plan was not inconsistent with the Master Plan and referred the matter back to the Committee. (1T pg. 57). The Board memorialized their findings in Planning Board Resolution 2022-11. (Da34).

The Board sent a memorandum, dated September 21, 2022, to the Committee, stating “[t]he board reviewed and discussed the Ordinance and found it to be not inconsistent with the Master Plan,” along with Christopher Dochney, Planning Board Planner's September 9, 2022 report. (Pa176).

The Committee held a public meeting on October 27, 2022, wherein the Committee adopted Ordinance 2022-15. (Pa16). At that same October 27, 2022 meeting, the Committee introduced Ordinance 2022-17, amending Ordinance 2022-15, and specifically providing reasoning as to why the Committee intended to move forward with the Redevelopment Plan whether or not the Redevelopment Plan was consistent with the Master Plan. (Pa51). Ordinance 2022-17 was then referred to the Board. (2T 98:18-98:19).

On November 11, 2022, Board Planner, Christopher Dochney, PP, AICP provided his report with the following planning analysis and conclusions concerning the amended Redevelopment Plan:

**Planning Comments**

a. As required by the Local Redevelopment and Housing Law, all redevelopment plans are to be reviewed by the Planning Board to identify any inconsistencies with the Master Plan, and to provide recommendations to the Governing Body prior to full adoption of the ordinance.

b. The proposed amendments to the Old York Country Club redevelopment plan are relatively minor amendments, and are generally not substantive in the sense that the list of permitted uses, and the bulk requirements would remain intact.

c. Sections 1.1 and 1.22 are not regulator sections of the redevelopment plan, and the proposed amendments to these sections would not have any impact on any future redevelopment project. These changes are only revisions to the description of the existing conditions of the area.

d. The changes to the list of permitted uses does not actually change the permitted uses of the plan, but only further clarifies that “parcel hub” and “fulfillment center” type warehouses and distribution centers are not what is contemplated by this plan. This specific clause was already listed for warehouses, and this change only includes the same clause for a distribution center.

f. The added discussion on the Master Plan consistency in Section 3.1.1 is being included as an explanation to the Committee’s reasoning for adopting this development plan. The purpose for doing so is because a redevelopment plan is required by the Local Redevelopment and Housing Law at N.J.S.A. 40A:12A-8 to be substantially consistent with the municipal Master Plan, or designed to effectuate the Master Plan. The governing body may adopt a redevelopment plan which is inconsistent with the Master



Plan or not designed to effectuate the Master Plan, if the reasons for adopting the Master Plan are set forth in the redevelopment plan. The role of the Planning Board in reviewing a redevelopment plan is to identify any inconsistencies with the Master Plan. The previous review of the redevelopment plan by the Planning Board found that there were no inconsistencies with the Master Plan, but did not necessarily find that the redevelopment plan is substantially consistent with the Master Plan. The statements are being included within the amended plan since the redevelopment plan is neither substantially consistent nor inconsistent with the Master Plan, and is not directly implementing a recommendation of the Master Plan. In doing so, the Committee is satisfying the requirements of the LRHL to the extent that it may be necessary to do so.

g. These changes do not have any material impacts on the redevelopment plan's consistency with the Township Master Plan, and should not change the Board's previous finding that the plan is not inconsistent with the Township Master Plan. With the only substantive amendment being the stronger protections for the historic Black Horse, the plan is not somewhat more consistent with the goals of the Master Plan.

(Da38-39). At the November 22, 2022 public meeting of the Board, the Board considered Ordinance 2022-17. (Pa435). Despite allowing for public comment, no comments were made. (Pa435). The Board passed a motion finding that Ordinance 2022-17 was not inconsistent with the Master Plan and referred the matter back to the Township Committee. (Pa435). The Board memorialized their findings in Planning Board Resolution 2022-15. (Da41).

The Board sent a memorandum, dated November 23, 2022, along with Christopher Dochney's November 11<sup>th</sup> report to the Committee. (Da43). On

December 8, 2022, at a public meeting, the Committee opened Ordinance 2022-17 to public hearing and then voted to adopt Ordinance 2022-17. (Pa46).

On December 12, 2022 Plaintiff-Appellant filed a Complaint in Lieu of Prerogative Writs (Pa1) requesting the Court find Chesterfield Ordinance 2022-15 (Pa16) and Ordinance 2022-17 (Pa46) to be arbitrary, capricious and unreasonable, invalidate Ordinance 2022-15 (Pa16) and Ordinance 2022-17 (Pa46), and invalidate the Old York Redevelopment Plan. On May 15, 2023, the Court granted Summary Judgment in favor of Defendants and dismissed Plaintiff-Appellant's Complaint in Lieu of Prerogative Writ with prejudice. (Pa537).

### **LEGAL ARGUMENTS**

#### **I. THE BOARD'S ACTION HEREIN WAS NOT ARBITRARY, CAPRICIOUS AND UNREASONABLE, AND AS SUCH THE TRIAL COURTS HOLDING SHOULD BE UPHELD.**

As an initial matter, while Plaintiff-Appellant's Complaint in Lieu of Prerogative Writ names the Board as a Defendant, the Complaint contains no specific allegations of a breached standard in the action undertaken by the Board herein, nor does Plaintiff-Appellant seek any specific relief against the Board. Even searching Plaintiff-Appellant's Brief "in-depth and with liberality" as required under Printing Mart v. Sharp Electronics, 116 N.J. 739

(1989), there is no specific allegation against the Board that it breached any standard, or even what that standard is under the law.

Further, Appellant's Appellate Brief makes no specific claims as to the Board's actions nor does Appellant request any form of relief against the Board. The Board defers to the Township Committee on its defense of the subject ordinances. To the extent the Board's actions are implicated in Plaintiff-Appellant's Brief, the Board will address its actions.

Appellant's Brief does not directly address the claim that the Board's actions in respect to Ordinance 2022-17 were arbitrary, capricious and unreasonable; however, it may be read to implicate the Board's actions in regard to Ordinance 2022-17. More specifically, Plaintiff-Appellant alleges that the Board never made a finding of inconsistency in regard to Ordinance 2022-17, amending the Redevelopment Plan. Therefore, in an abundance of caution, Defendant-Respondent Board, will address the claim that the Board's actions were arbitrary, capricious, unreasonable.

The Board's role in the redevelopment plan adoption process is narrow in scope under the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1, et seq. Specifically, N.J.S.A. 40A:12A-7.e provides:

Prior to the adoption of a redevelopment plan, or revision or amendment thereto, the planning board shall transmit to the governing body, within 45 days after referral, a report containing its recommendation concerning the redevelopment plan. This

report shall include an identification of any provisions in the proposed redevelopment plan which are inconsistent with the master plan and recommendations concerning these inconsistencies and any other matters as the board deems appropriate. The governing body, when considering the adoption of a redevelopment plan or revision or amendment thereof, shall review the report of the planning board and may approve or disapprove or change any recommendation by a vote of a majority of its full authorized membership and shall record in its minutes the reasons for not following the recommendations. Failure of the planning board to transmit its report within the required 45 days shall relieve the governing body from the requirements of this subsection with regard to the pertinent proposed redevelopment plan or revision or amendment thereof. Nothing in this subsection shall diminish the applicability of the provisions of subsection d. of this section with respect to any redevelopment plan or revision or amendment thereof.

Ordinance 2022-15, adopting the challenged Redevelopment Plan in question was introduced on September 8, 2022. The Board met on September 20, 2022, well within the 45-day timeline and at a regularly scheduled Board meeting. Additionally, Ordinance 2022-17, adopting the amendments to the Redevelopment Plan in question was introduced on October 27, 2022. The Board met on November 22, 2022, again within the 45-day timeline required under N.J.S.A. 40A:12A-7.e.

In anticipation of the Board's meeting and to advise the Board, the Board's Professional Planner, Chris Dochney, PP, AICP, issued a letter dated November 11, 2022. Mr. Dochney's report sets forth the following planning analysis and conclusions:

## Planning Comments

a. As required by the Local Redevelopment and Housing Law, all redevelopment plans are to be reviewed by the Planning Board to identify any inconsistencies with the Master Plan, and to provide recommendations to the Governing Body prior to full adoption of the ordinance.

b. The proposed amendments to the Old York Country Club redevelopment plan are relatively minor amendments, and are generally not substantive in the sense that the list of permitted uses, and the bulk requirements would remain intact.

c. Sections 1.1 and 1.22 are not regulator sections of the redevelopment plan, and the proposed amendments to these sections would not have any impact on any future redevelopment project. These changes are only revisions to the description of the existing conditions of the area.

d. The changes to the list of permitted uses does not actually change the permitted uses of the plan, but only further clarifies that “parcel hub” and “fulfillment center” type warehouses and distribution centers are not what is contemplated by this plan. This specific clause was already listed for warehouses, and this change only includes the same clause for a distribution center.

f. The added discussion on the Master Plan consistency in Section 3.1.1 is being included as an explanation to the Committee’s reasoning for adopting this development plan. The purpose for doing so is because a redevelopment plan is required by the Local Redevelopment and Housing Law at N.J.S.A. 40A:12A-8 to be substantially consistent with the municipal Master Plan, or designed to effectuate the Master Plan. The governing body may adopt a redevelopment plan which is inconsistent with the Master Plan or not designed to effectuate the Master Plan, if the reasons for adopting the Master Plan are set forth in the redevelopment plan. The role of the Planning Board in reviewing a redevelopment plan is to identify any inconsistencies with the Master Plan. The previous review of the redevelopment plan by the Planning Board found that there were no inconsistencies with the Master Plan, but

did not necessarily find that the redevelopment plan is substantially consistent with the Master Plan. The statements are being included within the amended plan since the redevelopment plan is neither substantially consistent nor inconsistent with the Master Plan, and is not directly implementing a recommendation of the Master Plan. In doing so, the Committee is satisfying the requirements of the LRHL to the extent that is may be necessary to do so.

g. These changes do not have any material impacts on the redevelopment plan's consistency with the Township Master Plan, and should not change the Board's previous finding that the plan is not inconsistent with the Township Master Plan. With the only substantive amendment being the stronger protections for the historic Black Horse, the plan is not somewhat more consistent with the goals of the Master Plan.

On November 22, 2022 the Board held a public meeting, wherein Ordinance 2022-17 was addressed, and Christopher Dochney provided his report and findings concerning the amendments to the Redevelopment Plan for the Property. At this meeting, the Board opened the discussion of Ordinance 2022-17 to the public. However, no members of the public made comment on Ordinance 2022-17, not even Plaintiff-Appellant.

Notably, the Board is not required to hold a public hearing at the time of its consideration of a Redevelopment Plan referral under the law. Despite that, the Board did allow public comment. However, there were no public comments and, based on the Amendment to the Redevelopment Plan, and the letter and testimony of Christopher Dochney, the Board found that the

Amendment to the Redevelopment Plan was not inconsistent with the Master Plan.

Further, after the hearing, the Board Administrator sent a report dated November 23, 2022 to advise the governing body of its determination. That report incorporated the Planner's November 11<sup>th</sup> letter referenced above.

The action of the Board herein can only be attacked under an "arbitrary, capricious and unreasonable" standard, and the burden is on Plaintiff. Dunbar Homes, Inc. v. Franklin Twp. Zoning Bd., 233 N.J. 546 (2018). As held in Yousefian v Wayne Twp., 152 N.J. Super. 111 (Law Div. 1977):

A local zoning determination will be set aside only when it is arbitrary, capricious or unreasonable. Even when doubt is entertained as to the wisdom of the action, or as to some part of it, there can be no judicial declaration of invalidity in the absence of a clear abuse of discretion by the public agencies involved. (citing Kramer v. Sea Girt Bd. of Adj., 45 N.J. 268 (1965)).

As further stated in Wilson v. Brick Tp. Zoning Bd., 405 N.J. Super. 189 (App. Div. 2009):

In reviewing a decision to grant a variance, courts typically recognize that municipal bodies, "because of their peculiar knowledge of local conditions, must be allowed wide latitude in the exercise of their delegated discretion." Booth v. Bd. of Adjustment of Rockaway Tp., 50 N.J. 302, 306, 234 A.2d 681 (1967).

The standard of deference should be even greater where the Board is undertaking a purely planning function, as it was herein. See, *Fallone Prop. V. Bethlehem Plan. Bd.*, 369 N.J. Super 552, 561 (App. Div. 2004).

As the Trial Court noted “The Committee went through the proper procedure for sending the redevelopment plan to the Planning Board for referral and recommendations. The Planning Board evaluated reports by their own planning expert and plaintiffs’ planning expert to make the determination that the redevelopment plan was not inconsistent with the master plan.” (3T47:22-48:3). The Board’s action was amply supported by the Planner’s November 11<sup>th</sup> letter as well as his testimony on November 22, 2022. As such, the Board’s action cannot be said to have been arbitrary, capricious and unreasonable. The Trial Court agreed in finding the adoption of the redevelopment plan was adequately supported by the record, and that plaintiff failed to provide sufficient evidence that the defendants’ actions were arbitrary, capricious, or unreasonable. (3T63:1-9).

Accordingly, the Trial Court correctly determined that Appellants did not meet their burden to challenge the subject ordinances.



**II. THE LOWER COURT WAS CORRECT IN ITS DECISION THAT THE GOVERNING BODY'S SUBSEQUENT ACTIONS WERE CURATIVE.**

Plaintiff-Appellant's Complaint alleges that the Committee's adoption of Ordinance 2022-17 was arbitrary, capricious, and unreasonable because the record was not supported by sufficient evidence. Further, Plaintiff-Appellant contends that the Trial Court erred in finding the adoption of Ordinance 2022-17 was not arbitrary, capricious, and unreasonable.

After the governing body enacted Ordinance 2022-15 to adopt the Redevelopment Plan, it introduced and adopted an amendment by way of Ordinance 2022-17. Despite the Board's prior findings that the Redevelopment Plan was not inconsistent with the Master Plan, the governing body went an extra step and amended the Redevelopment Plan to address reasons for its adoption of same citing N.J.S.A. 40A:12A-7.d.

The Board defers to the Township Committee on its defense of Ordinance 2022-17. However, as the Trial Court correctly noted, "the adoption of Ordinance 2022-17 is akin to a "reasons resolution" process under the Municipal Land Use Law", N.J.S.A. 40:55D-62.a. Subsection 7.d. of the Redevelopment Law states:

All provisions of the redevelopment plan shall be either substantially consistent with the municipal master plan or designed to effectuate the master plan; but the municipal governing body may adopt a redevelopment plan which is inconsistent with or not

designed to effectuate the master plan by affirmative vote of a majority of its full authorized membership with the reasons for so acting set forth in the redevelopment plan.

N.J.S.A. § 40A:12A-7. While arguably not required given the Board's prior findings, Ordinance 2022-17 does precisely that. By doing so, the governing body's reasons were curative, even if the Board found that the redevelopment plan was inconsistent with the Master Plan. Although, the Trial Court did find that the redevelopment plan is, in part, inconsistent with the master plan, the Trail Court determined:

Even if the redevelopment plan is not consistent with the master plan, the adoption of Ordinance 2022-17 that supplied reasons and which was voted upon by a majority of the governing body, and which was supported by the record remedied this defect.

(3T48:18-22).

In dismissing Plaintiff-Appellant's claim that the adoption of Ordinance 2022-17 was arbitrary, capricious, and unreasonable the Trial Court found that "there was the adoption of an amendment to the redevelopment plan with reasons, voted upon by a majority of the governing body, and that those reasons were supported by the record." (3T50:11-15). Judge Covert also noted "plaintiffs were given the opportunity at the public hearing, on December 8, 2022, to challenge the Township Committee's finding, that the purpose of the MLUL are advanced by this redevelopment plan, which reasons

are set further in subparagraph K, and they did not do so.” (3T61:1-6). As such, there can be no allegation against the Board’s action herein, as the adoption of Ordinance 2022-17 essentially rendered the Board’s findings moot. This is very similar to the way that a “reasons resolution” renders a Board’s findings moot in the adoption of a zoning ordinance amendment under the Municipal Land Use Law at Section 62.a.

Additionally, Judge Covert held “[t]he Court finds no fault with the substance of the Township’s action simply because they chose to act by adoption of 2022-17, rather than some amendment process that is being suggested on the redevelopment plan.” (3T51:18-22). The Trial Court reasoned, “the Township acted through an ordinance. They stated their reasons. They did so in public, and the Court finds that all substance has been satisfied.” (3T51:23-52:3). While Plaintiff-Appellant may have preferred an alternative process to amend the Redevelopment Plan, Plaintiff-Appellant’s preference does not render the adoption of Ordinance 2022-17 arbitrary, capricious, and unreasonable.

The record supports the Trial Court’s decision to grant summary judgment in favor of the of the Defendants, and to dismiss Plaintiff-Appellant’s Complaint in Lieu of Prerogative Writs. Accordingly, Appellant’s

argument that Ordinance 2022-17 was arbitrary, capricious, and unreasonable must be rejected, and the Trial Court's ruling should be upheld herein.

**CONCLUSION**

For all of the foregoing reasons, it is respectfully requested that this Court affirm the Trial Court's decision granting summary judgment in favor of Defendant-Respondents herein.

Respectfully submitted,

/s/ Douglas L. Heinold  
DOUGLAS L. HEINOLD, ESQUIRE

/s/ Crosley L. Gagnon  
CROSLEY L. GAGNON, ESQUIRE

Dated: November 22, 2023

**SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-003167-22 T04**

**SAVE OLD YORK, a New Jersey  
non-profit entity; BRETT  
ANDERSON; DAWN MASON;  
STACEY VERDINO; AND  
APRIL SETTE,**

**Plaintiffs-Appellants,**

**v.**

**THE TOWNSHIP OF  
CHESTERFIELD  
(BURLINGTON COUNTY);  
TOWNSHIP COMMITTEE OF  
THE TOWNSHIP OF  
CHESTERFIELD; TOWNSHIP  
OF CHESTERFIELD PLANNING  
BOARD; JOHN DOES A-Z;  
CORPORATION A-Z; ACTIVE  
ACQUISITIONS OY, LLC,**

**Defendants-Respondents.**

**CIVIL ACTION**

**ON APPEAL FROM ORDER  
DATED MAY 15, 2023**

**Docket No. BUR-L-002322-22**

**SAT BELOW:  
HON. JEANNE T. COVERT, A.J.S.C**

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**AMENDED BRIEF ON BEHALF OF DEFENDANTS-  
RESPONDENTS, THE TOWNSHIP OF CHESTERFIELD  
(BURLINGTON COUNTY); TOWNSHIP COMMITTEE OF THE  
TOWNSHIP OF CHESTERFIELD**

---

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ON THE BRIEF**

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## **PRELIMINARY STATEMENT**

This matter involves a challenge to a Redevelopment Plan, and amendments to same, adopted two and a half years after the subject property was designated as an “area in need of rehabilitation.” As they did before the trial court, Plaintiffs imagine a municipal legislative process shrouded in secrecy. The portrayal is pure invention. As found by the trial court, and as evidenced in the record, the redevelopment of the former Old York Country Club was a matter of community interest for over two (2) years, and discussed at no less than twenty-four meetings of the Defendant Township Committee, as well as three Planning Board meetings. These include three (3) special meetings scheduled solely for discussion of the proposed Redevelopment: March 18, 2021, August 3, 2022, and September 8, 2022. (See, Pa247, List of Meetings where warehouse Redevelopment at former Old York Country Club was discussed. The Minutes can be viewed on the Township’s website at: <https://www.chesterfieldtwpnj.gov>; however, the relevant portions of the March 18, 2021, August 3, 2022 and September 8, 2022, Minutes are included at Pa249-Pa266. The individual Plaintiffs appeared, and spoke, at the majority of those Township Committee meetings. They expressed not only their misgivings about the potential re-use of the site, but their utter disappointment (and disbelief) that the

majority of the governing body could hold a different opinion. Their submissions to the courts reflect same: because the record clearly supports the municipal action, Plaintiffs resort to rhetoric, invective, innuendo, and misstatements to advance their fiction. It is respectfully suggested that such efforts be recognized for what they are, and that the order of the trial court be affirmed.

### **PROCEDURAL HISTORY**

On December 12, 2022, Plaintiffs filed a Complaint in Lieu of Prerogative Writs challenging the October 27, 2022 adoption of Ordinance 2022-15, stating that it improperly, incorrectly, arbitrarily, and capriciously adopted and approved the redevelopment plan called the “Old York Redevelopment Plan.” (Pa01-Pa15). Plaintiffs also challenged the December 8, 2022 adoption of Ordinance 2022-17, which amended the Redevelopment Plan, stating it, too, was erroneously amended, for the same reasons. (Pa01-Pa15). Defendant Active Acquisitions OY, LLC (“Active”), moved to intervene on December 21, 2022. (Pa68-Pa69). The trial court granted its motion on January 11, 2023. (Pa70).

Plaintiffs moved for Summary Judgment on March 20, 2023. (Pa71-Pa75). Defendants Township of Chesterfield, Township Committee of the Township of Chesterfield, and the Planning Board filed Opposition to

Plaintiffs' Motion on April 13, 2023, and sought dismissal of Plaintiffs' Complaint. (Pa158-Pa160). Intervenor/Defendant Active filed an Opposition to Plaintiffs' Motion, as well as its own Cross-Motion for Summary Judgment, on April 14, 2023 (Pa302-Pa303). Plaintiffs replied on April 28, 2023. (Pa530-Pa533). On May 15, 2023, the Court heard oral argument (See Transcript 3T<sup>1</sup>), following which, in an oral opinion (3T.39:1-25 through 64:1-9), the Honorable Jeanne T. Covert, A.J.S.C., dismissed Plaintiffs' Complaint with prejudice. (Pa537-Pa538).

On June 21, 2023, Plaintiffs filed their initial Notice of Appeal in this Court. (Da01-Da11).

Plaintiffs identified three (3) points on their Civil Case Information Statement as "proposed issues to be raised on appeal" in their original Notice of Appeal<sup>2</sup> (Da08):

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<sup>1</sup> For the sake of uniformity, Defendants adopt the same transcript citation format that Plaintiffs use in their brief: Transcript of September 20, 2022 Chesterfield Township Planning Board Meeting is referenced as "1T"; Transcript of October 27, 2022 Chesterfield Township Committee Meeting is referenced as "2T"; and Transcript of May 15, 2023 Hearing on Motions for Summary Judgment is referenced as "3T."

<sup>2</sup> Plaintiffs failed to include their original Notice of Appeal, filed June 21, 2023 in their Amended Appendix. It is included here as "Da01-Da11." Citations to "Pa" refer to the Plaintiffs/Appellants' Amended Appendix. Citations to Defendants/Respondents' Appendix, attached hereto, are designated as "Da."

“Point 1: Did the trial court err in finding the adoption of Ordinance No. 2022-17 was not arbitrary and capricious?”

“Point 2: Was there sufficient credible evidence in the record to support Ordinance No. 2011-17 (sic)?”

“Point 3: Did the trial court err in finding a redevelopment plan for an area in need of rehabilitation does not need to contain a rehabilitative component?”

Plaintiffs did not change these in their Amended Notice of Appeal filed July 10, 2023. (Pa539-Pa544).

As to Point 3, Plaintiffs do not mention, at any point in their brief, the trial court’s findings as to that claim. They do not argument the issue. As such, regardless of its mention in their Notice of Appeal, Plaintiffs have abandoned their appeal of this claim and it is deemed dismissed. See Woodlands Cmty. Ass'n v. Mitchell, 450 N.J. Super. 310, 319 (App. Div. 2017) (quoting Sklodowsky v. Lushis, 417 N.J. Super. 648, 657 (App. Div. 2011)) (“An issue not briefed on appeal is deemed waived.”). Moreover, based on both of their Notices of Appeal, Plaintiffs have also abandoned any challenge to the adoption of Ordinance 2022-15, which actually adopted the Old York Redevelopment Plan. It is not mentioned in their Notice, their Civil

Case Information Statement, or in any of their proposed point headings in their brief. Their brief does, however, reference it in their arguments against the adoption of the Redevelopment Plan. Out of caution, Defendants also respond to those references.

### **STATEMENT OF FACTS**

On February 27, 2020, the Chesterfield Township Committee adopted Resolution 2020-2-6, authorizing the Chesterfield Township Planning Board (“Planning Board”) to conduct a preliminary investigation of the Property located at Block 701, Lot 2.01 (“Property”), commonly known as the former Old York Country Club, to determine whether the Property qualified as an “area in need of rehabilitation,” pursuant to New Jersey Local Redevelopment and Housing Law (LRHL), N.J.S.A. 40A:12A-1 to -49. (Pa164-Pa165). On the same evening, the Township Committee also adopted Resolution 2020-2-5, authorizing a “Developer’s Escrow Agreement” for the Property with Defendant Active Acquisitions. (Pa163-Pa164). The Escrow Agreement specifically states that Active “wishes to develop said Property for warehouse/distribution purposes.” (Pa168).

On May 15, 2020, the Planning Board’s Professional Planner, Christopher Dochney, PP, AICP, of CME Associates (the “Planner”) issued a Rehabilitation Investigation Report for the Property, titled “Area in Need

of Rehabilitation Preliminary Investigation Report – Old York Country Club.” (Pa182). At the May 19, 2020 Planning Board hearing, the Board considered the Rehabilitation Report, and collectively recommended to the Township Committee that the Property qualified as an “area in need of rehabilitation.” (Pa173-Pa174). The Planning Board later memorialized this decision in its adoption of Resolution 2020-07 on June 16, 2020. (Pa182-Pa185). On May 28, 2020, following the Planning Board’s referral, the Township Committee accepted the factual findings in the Planner’s Report, and adopted Resolution 2020-5-6 designating the former Old York Country Club as “an area in need of rehabilitation” under N.J.S.A. 40A:12A-14(a). (Pa191-Pa193). No challenges to the designation have ever been filed.

Pursuant to the LRHL, the rehabilitation designation was also transmitted to the State Commissioner of the Department of Community Affairs (DCA), N.J.S.A. 40A:12A-14(a), who reviewed and acknowledged the rehabilitation designation in a letter dated April 27, 2021. (Pa195). Thereafter, the Township Committee considered public comment on the proposed redevelopment of the Property at almost two dozen meetings. (Pa248).

At its September 8, 2022 meeting, after more than two years of public discussion, the Township Committee introduced Ordinance 2022-15 (the



Redevelopment Plan) to enact the Old York Redevelopment Plan, and referred the plan to the Planning Board for a “master plan consistency” review pursuant to N.J.S.A. 40A:12A-7(e). (Pa398-Pa399).

(Notwithstanding its designation as an “area in need of rehabilitation,” and not an “area in need of redevelopment,” the Plan for the re-use of the Property is nevertheless referred to as a Redevelopment Plan. N.J.S.A. 40A:12A-15.) The Planning Board conducted a meeting on September 20, 2022 concerning the Plan, where members of the public had an opportunity to pose questions and submit concerns. See Transcript 1T. With seven (7) of nine (9) members voting in the affirmative, the Planning Board concluded the Ordinance was not inconsistent with the Township Master Plan, and referred it back to the Township Committee. (1T.55:13-25 through 57:1-20).

Thereafter, on October 27, 2022, following a public hearing, the Committee adopted Ordinance 2022-15, establishing a Redevelopment Plan for the Property. (Pa278-Pa283; Pa403-Pa404). Plaintiffs had opposed the adoption of the Plan. (Again, while their Notice of Appeal, and proposed point headings make no mention of Ordinance No. 2022-15, (Da08), they weave criticism of same into their arguments against Ordinance No. 2022-17). They urged that it was inconsistent with the Township Master Plan.

(Pa106-Pa112; 1T.15:13-25; 17:9-25 through 24:1-3). That same evening, the Township Committee introduced Ordinance 2022-17 to amend the Plan adopted by 2022-15. (Pa283). Among the five sections of the Plan amended by Ordinance 2022-17, new Section 3.1.1 sets forth the Township Committee's reasons for adopting the Redevelopment Plan, regardless of master plan consistency. (Pa47-Pa50). After voting to introduce Ordinance 2022-17, and following required public notice, the Committee held a public hearing on December 8, 2022. (Pa295-Pa297). At this hearing, Ordinance 2022-17 was adopted by a majority of the Committee. (Pa296).

## **ARGUMENT**

### **I. STANDARD OF REVIEW**

An appellate court reviews a trial court's grant of summary judgment under the same standard as the trial court. Templo Fuente De Vida Corp. v. Nat'l Union Fire Ins. Co. of Pittsburgh, 224 N.J. 189, 199 (2016). Summary judgment must be granted if "the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to judgment or order as a matter of law." R. 4:46-2(c). The court must "consider whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party,

permit a rational fact finder to resolve the alleged dispute in favor of the non-moving party.” Brill v. Guardian Life Ins. Co. of America, 142 N.J. 520, 540 (1995). “[T]he court must accept as true all the evidence which supports the position of the party defending against the motion and must accord [that party] the benefit of all legitimate inferences which can be deduced therefrom[.]” Id. at 535.

A presumption of validity and constitutionality attends every legislative decision, including the adoption of a redevelopment plan. Downtown Residents for Sane Dev. v. City of Hoboken, 242 N.J. Super. 329, 332 (App. Div. 1990). Therefore, a party challenging the validity of the adoption of a plan bears a heavy burden. Vineland Constr. Co., Inc. v. Twp. of Pennsauken, 395 N.J. Super. 230, 256 (App. Div. 2007) (quoting Bryant v. City of Atl. City, 309 N.J. Super. 596, 610 (App. Div. 1998)). To prevail in setting aside the questioned plan, the legislative decisions must be shown to be arbitrary and capricious, contrary to law, or unconstitutional. Downtown Residents, 242 N.J. Super at 332. It is not enough to show that the legislative determinations were debatable. Id. at 333. Here, the trial court correctly ruled in favor of the municipality’s actions.

**II. PLAINTIFF CONFLATES THE APPROPRIATE STANDARD OF REVIEW FOR THIS COURT; THE “SUBSTANTIAL EVIDENCE” STANDARD DOES NOT APPLY IN A REVIEW OF A MUNICIPALITY’S REDEVELOPMENT PLAN**

**(RAISED BELOW: 3T.45:1-20; 60:15-20; 63:6-9)**

The adoption of a redevelopment plan, like all municipal actions, is vested with a presumption of validity. Downtown Residents, 242 N.J. Super at 332. Plaintiffs acknowledge this “presumption of validity” early in their brief (Pb15); but then waste no time conflating the standard of review of a redevelopment plan adopted by municipal ordinance with that of a blight determination, and of land use board quasi-judicial decisions. (Pb15-Pb16). This confusion undermines their argument for several reasons—the most obvious being that this action arises from land use legislation, not a blight designation or a land use board decision. Plaintiffs write on pages 15 and 16:

“A municipal board’s decision ‘enjoy[s] a presumption of validity, and a court may not substitute its judgment for that of the board unless there has been a clear abuse of discretion.’ Price v. Himeji, LLC, 214 N.J. 263, 284 (2013) (citing Cell S. of N.J., Inc. v. Zoning Bd. Of Adjustment, 172 N.J. 75, 81 (2002)); see also Grabowsky v. Twp. Of Montclair, 221 N.J. 536, 551 (2015) (noting a municipal ordinance will not be overturned unless the decision is “arbitrary, capricious or unreasonable”). Giving the appropriate due deference to the decision of a board, the trial court must determine whether the board’s resolution is supported by the ‘substantial evidence in

the record’ standard. Lang v. Zoning Bd. of Adjustment of N. Caldwell, 160 N.J. 41, 58 (1999); see also Malanga v. Twp. Of W. Orange, 253 N.J. 291, 314 (2023) (noting the record must contain ‘sufficient credible evidence’ that the requirements of the LRHL were satisfied). In addition, the resolution cannot merely recite conclusory findings but must include a reasoned explanation, supported by the evidence presented. Loscalzo v. Pini, 228 N.J. Super. 291, 305 (App. Div. 1988); see also Malanga, 253 N.J. at 314 (‘[M]ore than a bland recitation of applicable statutory criteria and a declaration that [they have been] met’ is required.” A board’s legal determinations, however, are not presumed valid and are reviewed de novo. Jacoby v. Zoning Bd. of Adjustment of Borough of Englewood Cliffs, 442 N.J. Super. 450, 462 (App. Div. 2015). (emphasis supplied).

All but two of the above cited cases involve land use board quasi-judicial decisions. Grabowsky’s quoted language relates to an ordinance challenge based upon an alleged conflict of interest of two governing body members; and Malanga involved a challenge to a governing body’s designation of an area as “in need of redevelopment.” See Grabowsky, 221 N.J. at 536; Malanga, 253 N.J. 291. None of these cases involved a substantive legislative challenge. As they did before the trial court, Plaintiffs mistakenly apply the standards of review for blight designations and land use board resolutions to those for a legislative ordinance by a municipal governing body; and again misstate the level of support found in the record for the adoption of the Old York Redevelopment Plan Ordinances. They also invent an argument that the amendments to the

Redevelopment Plan were not properly adopted—presumably (since no other reason or explanation is given) because “there was no discussion of the evidence by the Committee members” (Pb22); “no debating or discussing their reasons” (Pb8); and “no discussion occurred as to the Planning Board’s recommendation” at the December 8, 2022 meeting. (Pb12).<sup>3</sup>

Plaintiffs repeatedly assert that the Township’s Redevelopment Plan, and amendments to same, must be based on “substantial evidence in the record” (Pb16), and/or “sufficient credible evidence.” (Pb16, Pb21, Pb25). However, these standards do not apply. Plaintiffs are equally wrong that the Committee’s action was arbitrary and capricious. Plaintiffs disingenuously make that argument by completely ignoring the record. Indeed, they actually claim no record existed. (Pb22).

Most local government bodies perform two delegated functions: they have the power to make rules that can have the effect of laws—a legislative role—and the power to adjudicate individual cases—a quasi-judicial role.

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<sup>3</sup> Plaintiffs also criticize the Planning Board for its lack of discussion during its consideration of the Plan and its amendments at its meetings of 9/20/22 and 11/22/22. (Pb4, Pb11-Pb12, Pb20) (“Pb4,” e.g. refers to Plaintiffs’ Amended Brief, filed October 3, 2023). However, despite naming the Planning Board in the caption of their Complaint, no claim was made against the Planning Board, nor was any prayer for relief sought against it. (Pa1-Pa14.)

See In re Attorney Gen. Law Enf't Directive Nos. 2020-5 & 2020-6, 246 N.J. 462, 490 (2021). “The line between the two functions, however ‘is not always a clear one.’” Id. In the event a decision is challenged, distinguishing these two functions is consequential because it can “affect[t] how the standard of appellate review is applied.” Id.

The Supreme Court illustrates these two standards:

. . . In [quasi-judicial] matters, a robust record naturally invites focused attention on the test's second prong -- "whether the record contains substantial evidence to support the findings on which the agency based its action." In re Quest Acad., 216 N.J. at 385, 80 A.3d 1120 (quoting Mazza, 143 N.J. at 25, 667 A.2d 1052). But for more policy-driven, legislative acts, the record may be less extensive. An agency's action must still rest on a reasonable factual basis, but its choice between two supportable, yet distinct, courses of action "will not be deemed arbitrary or capricious as long as it was reached 'honestly and upon due consideration.'" In re Adoption of Amends. & New Regs. at N.J.A.C. 7:27-27.1, 392 N.J. Super. 117, 135-36, 920 A.2d 111 (App. Div. 2007) (quoting Worthington v. Fauver, 88 N.J. 183, 204-05, 440 A.2d 1128 (1982)). (Id. at 491).

A municipality’s adoption of a redevelopment plan, like any adoption of an ordinance, is a legislative action which invites the “less extensive” standard. It is a recognized tenet of municipal law that the term “ordinance” encompasses matters legislative in character. Albigese v. Jersey City, 129 N.J. Super. 567, 569-70 (App. Div. 1974) (quoting McLaughlin v. Millville, 110 N.J. Super. 200 (Law Div. 1970)). This Court has also recognized this,

acknowledging, as prescribed in the LRHL, that the adoption of a redevelopment plan is “...a legislative function of a municipal government, akin to the adoption of a master plan or zoning ordinance.” Milford Mill 128, LLC v. Borough of Milford, 400 N.J. Super. 96, 110 (App. Div. 2008).

Conversely, a zoning board’s findings on an application for a variance, or a governing body’s blight designation, invites a review limited to whether that decision is grounded in “sufficient” or “substantial evidence.” The validity of a redevelopment area designation is conditioned under the LRHL on whether it is “supported by substantial evidence.” N.J.S.A. 40A:12A-6(b)(5)(c). (Interestingly, the “substantial evidence” language is not found in N.J.S.A. 40A:12A-14 governing rehabilitation designations. The designation at issue here is not an “area in need of redevelopment,” but an “area in need of rehabilitation.”) Plaintiffs mistakenly invite this Court’s attention to the “substantial evidence” standard through their heavy reliance upon land use decisions of a quasi-judicial nature. (Pb15-Pb16; see also pp. 10-13, supra).

Plaintiffs do not challenge, and never have challenged, the designation of the property as being in need of rehabilitation. (Pb2). Instead, Plaintiffs challenge the Ordinance amending the Ordinance which adopted the Redevelopment Plan (2022-17). As such, judicial review of the adoption of



the amendment to Redevelopment Plan—and not the designation itself—establishes this Court’s standard of review.

Where a determination in question is legislative, a reviewing court considers a record that “may be less extensive,” because this type of decision does not “require any formal findings of fact, or consequently, the presentation of evidence...providing a factual foundation for the ordinance.” Powerhouse Arts Dist. Neighborhood Ass'n v. City Council of City of Jersey City, 413 N.J. Super. 322, 332 (App. Div. 2010). A court upholds an exercise of legislative discretion, such as a municipality’s adoption of a redevelopment plan, unless “arbitrary or capricious, contrary to the law, or unconstitutional.” Downtown Residents, 242 N.J. Super at 332. “A determination predicated on unsupported findings is the essence of arbitrary and capricious action.” Bryant, 309 N.J. Super. at 610.

This standard of review is well-settled by this Court. Municipal ordinances, like other legislative enactments, “carry a presumption of validity” and will be upheld where “any state of facts may reasonably be conceived to justify [them].” Quick Check Food Stores v. Springfield, 83 N.J. 438, 447 (1980); Hutton Park Gardens v. Town Council of Town of W. Orange, 68 N.J. 543, 565 (1975). This standard arises from an understanding that “the underlying policy and wisdom” of the ordinance is

left to the governing body, not the courts. Quick Check Food Stores, 83 N.J. at 447. Notwithstanding this “less extensive record” standard applicable to legislative enactments, including redevelopment plans, the record in this matter, supporting these Ordinances, is quite extensive.

Because municipal actions are presumed proper, any challenge to their validity is a “heavy burden” to overcome. Bryant v. City of Atl. City, 309 N.J. Super. 596, 610 (App. Div. 1998). Only a showing of “clear and compelling evidence demonstrating the [action’s] unreasonableness” may overcome this presumption. Dock Watch Hollow Quarry Pit v. Twp. of Warren, 142 N.J. Super. 103, 116 (App. Div. 1976), aff’d, 74 N.J. 312 (1977). Here, where the lower court correctly enunciated the legal standard of review and consistently applied that standard in its thorough review of the record, Plaintiffs have not met their burden to reverse the trial court.

**III. THE TRIAL COURT CORRECTLY FOUND THAT THE ADOPTION OF REDEVELOPMENT ORDINANCES 2022-15 AND 2022-17 WAS PROPER, AND NOT THE RESULT OF ARBITRARY OR CAPRICIOUS CONDUCT**

**(RAISED BELOW: 3T.39:15-25 through 63:1-19)**

Plaintiffs’ Notice of Appeal asks: “1. Did the trial court err in finding the adoption of Ordinance No. 2022-17 was not arbitrary and capricious? 2. Was there sufficient credible evidence in the record to support Ordinance

2011-17 (sic)?” (Da08). This challenge is predicated on Plaintiffs’ false claim that “the record shows there was little to no evidence supporting Ordinance 2022-17,” (Pb21) and its continued erroneous legal argument that the Local Redevelopment and Housing Law (“LRHL”) requires that record to “be supported by ‘substantial credible evidence.’” (Id.) The claim misstates the law; more importantly, it ignores the record. It also fails to recognize that the Township Committee enjoys considerable discretion in its adoption of redevelopment legislation. Here, as the trial court concluded, the Committee’s adoption of the Redevelopment ordinances was not arbitrary or capricious, and there was more than adequate support in the record.

**A. THE COMMITTEE’S DECISION TO ADOPT THE REDEVELOPMENT ORDINANCES WAS PREDICATED ON SUPPORTED FINDINGS**

**(RAISED BELOW: 3T.39:15-25 through 63:1-19)**

Plaintiffs argue the adoption of Ordinance 2022-17 is invalid because it is not consistent with the Township Master Plan, and the Planning Board and Committee failed to state their reasons for this departure. (Pb17-Pb21). They urge that the Committee therefore failed to follow “the statutory procedure” as proscribed under LRHL (Pb21); and thus, the Committee’s adoption of the Ordinance 2022-17 was arbitrary and capricious. To the

contrary, the Township Committee acted properly and relied upon a substantial record in ultimately adopting the Redevelopment Plan amendment found in Ordinance 2022-17.

First, Defendants did not approve a Redevelopment Plan that was “completely inconsistent with the Township’s Master Plan.” (Pb1). When the Redevelopment Plan was first introduced by ordinance on September 8, 2022, it included the language prepared by the Township Planner quoted below (p. 20) to wit: that the Plan, “in this regard, can be considered consistent with the Master Plan.” Upon referral, the Planning Board determined that the Plan was not inconsistent with the Master Plan, and relied not just on the language in the Plan itself, but the Planner’s September 9, 2022 memorandum to the Planning Board:

g. With the proposed Redevelopment Plan calling for light industrial or warehouse development on a former golf course generally having no significant impacts on the goals and objectives of the master plan, the Redevelopment Plan is not inconsistent with the master plan. (Pa179, Sec. G at p. 3). (emphasis added).

Therefore, at the time it adopted the Redevelopment Plan on October 27, 2022, the Committee had before it both the Planning Board’s recommendation, and the language provided by the Township Planner within the Plan itself. There was no departure from the Master Plan, and

therefore no need to state reasons. The Planner stated that the Plan was consistent with the municipal Master Plan.

3.1. The closure of the Old York Country Club was not anticipated at the time of the most recent Master Plan reexamination report in 2017. As a result, the Master Plan does not provide any specific recommendations regarding the potential redevelopment of the property. However, the development of the rehabilitation area with the warehouse facility is not inconsistent with the goals and objectives of the Master Plan. The primary goals of the Township's Master Plan are the preservation of the agricultural industry, and the protection of the rural character of the community. This Redevelopment Plan does not remove any active farmland from productive use, nor is this property targeted for agricultural use or preservation. Additionally, the setbacks and buffering required shall serve to maintain a rural aesthetic on Old York Road and Bordentown-Georgetown Road. The Township finds that the rehabilitation area is an appropriate location for warehouse development as illustrated in Figure 4 for several reasons, including the property's accessibility to the New Jersey Turnpike and Interstate 295 via Route 206. Based on the access restrictions imposed by this Redevelopment Plan, the operations of such a facility will generate minimal truck traffic impacts on local roadways in Chesterfield. Similarly, the size and shape of the property allow for substantial setbacks and buffering of the facility to minimize visual impacts to the character of the community. The requirements of the Redevelopment Plan will ensure that sensitive environmental features of the property will be protected. In addition, the Township's sustainability and renewable energy objectives will be advanced by the renewable energy requirements

of this Plan. Furthermore, the redevelopment of the rehabilitation area encourages the preservation and adaptive reuse of an existing historic structure (See, Section 4.5). Thus, the adoption of this Redevelopment Plan does not conflict with the Township's planning objectives relative to farmland preservation, environmental protection, historic preservation and sustainability, and in this regard can be considered consistent with the Township's Master Plan." (Pa98, Redevelopment Plan, Sec. 3.1 at p. 17). (emphasis added).

During the public hearing on Ordinance 2022-15, and the Plan, the Committee heard testimony from Save Old York's professional planner, Carlos Rodriguez. He opined that the Redevelopment Plan was inconsistent with the Township Master Plan. (1T.17:9-25 through 23:1-2). His opinion, therefore, was different from that held by the Township Planner. Following the public hearing, the Committee approved the Redevelopment Plan by adopting Ordinance 2022-15 with a majority vote. (Pa278-Pa283). Accordingly, nothing about the adoption of 2022-15 was "deficient." (Pb18). The Township Committee followed both N.J.S.A. 40:49-2 and N.J.S.A. 40A:12A-7 in adopting the legislation.

The Township Committee nevertheless determined that the differences in the opinions offered by the two planners regarding Master Plan consistency should be addressed. Accordingly, it introduced Ordinance 2022-17 to amend the Redevelopment Plan at the same October 27, 2022

meeting. (Pa283). Contrary to Plaintiffs' false statement that Ordinance 2022-15 was amended with "no purported reasons" having been stated for doing so (Pb22), the Committee introduced 2022-17 for purposes of completeness of the record, and to ensure that, should a reviewing court conclude that the Plan was not consistent with the Master Plan, that its reasoning for adopting the Redevelopment Plan anyway was fully articulated. Thus, it added new Section 3.1.1 to the Redevelopment Plan:

"...it has been suggested by some members of the public that this Redevelopment Plan is not consistent with the Township's Master Plan and/or is not designed to effectuate the Master Plan. To the extent such suggestion has credibility, the Township Committee, pursuant to N.J.S.A. 40A:12A-7(d), herewith sets forth its reasons for adopting this Redevelopment Plan.

- A. At the time the Township's Master Plan was adopted in 1997, its focus was on the preservation of farmland and promoting the Township's agricultural character through a then-newly crafted "Transfer of Development Rights" ("TDR") legislative program. Commercial and industrial development were not priorities.
- B. Chesterfield is the only municipality in the State of New Jersey to successfully implement TDR, and residential development in the "Receiving Area" is now more than eighty percent (80%) completed. The limited commercial area in the Receiving Area has now also been built, but suffers from vacancy concerns.

C. Chesterfield's tax revenues are disproportionately derived from its residential development and farms. In fact, ninety-seven percent (97%) of Chesterfield's tax ratable base is farmland and residential. The Township Committee recognizes the fragility of such a reliance on residences and farms as the nearly sole source of tax revenue.

D. There are very few areas in the municipality where non-residential, non-agricultural pursuits can be achieved.

1. Of Chesterfield's 13,728 acres of land:

(a) 7,956.36 acres are preserved and 577.39 are unpreserved (but with TDR Credits assigned to them);

(b) 689.55 acres are State-owned land;

(c) 583 acres comprise the "Receiving Area";

(d) 140 acres are recreation fields and/or open space outside the Receiving Area;

(e) Crosswicks and Recklesstown comprise 385 acres;

(f) Turnpike Roads comprise: 102.87 acres.

2. As a result, seventy-six percent (76%) of Chesterfield's land mass has been dedicated to the purposes of the 1997 Master Plan, and subsequent Master Plan Re-Examination Reports, and/or is physically not developable.

E. However, no significant commercial or industrial initiatives have been undertaken since TDR was adopted in 1998.

F. The five (5) highest ratables in this community are:



|                            |                |
|----------------------------|----------------|
| (1)Transco Generator:      | \$5,297,500.00 |
| (2)Colonial Pipeline:      | \$4,303,100.00 |
| (3)Old York Village Shops: | \$3,180,000.00 |
| (4)Old York Country Club:  | \$3,000,000.00 |
| (5)Horse Track:            | \$2,523,000.00 |

G. The general welfare of the community is advanced when the municipality seeks industrial ratables to create a better economic balance for the community, vis-à-vis educational and governmental costs engendered by residential development. There is no question that the success of the TDR Program, and its resultant increase in school population and need for governmental services, has resulted in greater governmental expenditures. The Township Committee deems it appropriate to seek an opportunity to increase commercial/industrial tax ratables to mitigate increased municipal expenditures resulting from an increased residential population.

H. The property in question, 156 +/- acres in size, is not a farm, and has not been a farm for years. The Township Committee has been informed that the costs and expenses a farmer would have to incur to return the property to tillable soil are prohibitive, such that it is unlikely to become farmland.

I. However, the property, having been used commercially for decades, is appropriate for non-agricultural, non-residential, purposes. Its close proximity to Route 206 (1,900 +/- feet) makes it attractive for the uses identified as permitted and accessory uses in Sections 2.2 and 2.3 of this Plan. The Township Committee believes it is a good location for the uses identified in this Plan.

J. In making its determination of the appropriateness of this area for these purposes, the Township has received the benefit of traffic reports, environmental reports, and a community impact statement, all of which have been posted to the Township's website for public consumption, and are made part of the record on this Ordinance. The Committee has also received an analysis of the traffic studies from the Township Planner's office, dated October 21, 2022; a memo from the Township Administrator, dated October 27, 2022, entitled "Data Related to Township Land uses, PVD, and Assessed Value Apportionment"; all of which documents are part of this legislative record and inform the Township Committee's decision.

K. The Township Committee believes that this Plan advances the following purposes of the MLUL:

N.J.S.A. 40:55D-2(a): To encourage municipal action to guide the appropriate use or development of all lands in this State, in a manner which will promote the public health, safety, morals, and general welfare. [See the foregoing statements]

N.J.S.A. 40:55D-2(c): To provide adequate light, air and open space [most of the property will remain undeveloped].

N.J.S.A. 40:55D-2(g): To provide sufficient space in appropriate locations for a variety of agricultural, residential, recreational, commercial and industrial uses and open space, both public and private, according to their respective environmental requirements in order to meet the needs of all New Jersey citizens. [See the foregoing statements]

N.J.S.A. 40:55D-2(h): To encourage the location and design of transportation routes

which will promote the free flow of traffic while discouraging location of such facilities and routes which result in congestion or blight [truck traffic going to and from Route 206 only]

N.J.S.A. 40:55D-2(i): To promote a desirable visual environment through creative development techniques and good civic design and arrangement [setback distances and landscaping/berming regulations]

N.J.S.A. 40:55D-2(j): To promote the conservation of historic sites and districts, open space, energy resources and valuable natural resources in the State and to prevent urban sprawl and degradation of the environment through improper use of land [Black House, solar in Sec. 2.6.9; and electric vehicle/service equipment (EV/SE) at Sec. 2.5, page 10]” (Pa47-Pa50).<sup>4</sup>

This extensive reasoning, as well as the inclusion of five other amendments to Ordinance 2022-15, were approved by the requisite majority of the Township Committee on December 8, 2022. (Pa46-Pa50; Pa296). Plaintiffs take great issue with this action, arguing that the Township Committee failed to “identify . . . any provisions in the proposed redevelopment plan which are inconsistent with the master plan” before the Plan’s adoption (Pb17), and that its failure to do so invalidates the

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<sup>4</sup> The factual bases for these findings were also identified during the introduction of the Ordinance (2T.7:5-25 through 8:1-14); and those documents/materials can be found at Pa196-Pa235.

Ordinance. However, Plaintiffs' reliance upon N.J.S.A. 40A:12A-7(e) is misplaced; their analysis is fatally flawed. N.J.S.A. 40A:12A-7(e) does not require this of governing bodies. That requirement to identify inconsistencies falls on the Planning Board:

Prior to the adoption of a redevelopment plan, or revision or amendment thereto, the planning board shall transmit to the governing body, within 45 days after referral, a report containing its recommendation concerning the redevelopment plan. This report shall include an identification of any provisions in the proposed redevelopment plan which are inconsistent with the master plan and recommendations concerning these inconsistencies and any other matters as the board deems appropriate. N.J.S.A. § 40A:12A-7(e). (emphasis added).

The crucial and undisputed fact, ignored by Plaintiffs, is that the Planning Board report is required to identify these inconsistencies—if they are found to exist—not the Township Committee. Accordingly, the Planning Board and the Committee did not fail to make a “finding of inconsistency” for two reasons: (1) the Planning Board report found the Redevelopment Plan to not be inconsistent with the Master Plan (1T.12:10-25 through 13:1-2); and (2) the Township Committee itself decided, in the event of a challenge, to establish why it was adopting the Plan, even if inconsistencies existed. It did so because the Committee “...may adopt a redevelopment plan which is inconsistent with, or not designed to effectuate

the master plan by an affirmative vote of a majority of its full, authorized membership with the reasons for so acting set forth in the redevelopment plan.” N.J.S.A. 40A:12A-7(d). The Defendant Township Committee did just this. It had no obligation “to make a call on consistency versus inconsistency.” (Pb21).

Plaintiffs further argue that the manner in which the Committee adopted Ordinance 2022-17 defies statutory logic:

N.J.S.A. 40A:12A-7(d) does not contemplate a scenario where a redevelopment plan can be both consistent and inconsistent with a municipality’s master plan. Yet, that is exactly what Defendants did here. (Pb18). . . [t]here is a distinction between adopting a redevelopment plan that is consistent with the township’s Master Plan and adopting a plan that is inconsistent but providing reasons for doing so. To be clear, both options are available to a local government. What cannot be done, however, is to amend a redevelopment plan to say it is wholly consistent with the Master Plan but include a caveat that should anyone “suggest” the plan is inconsistent, then the Committee will adopt it as inconsistent, but a court should still approve it. (Pb20). (emphasis omitted).

As previously stated, relying upon both the language in the Plan itself (written by the Township Planner), and the Board’s recommendations (1T.55:13-25 through 57:1-20), the Committee concluded that the Redevelopment Plan was not inconsistent with the goals and objectives of the Township Master Plan. As a precaution, following that public hearing, and giving due consideration to opposing views, the Committee chose to

amend Ordinance 2022-15 to set forth its reasons for adopting the Plan, even if it would ultimately be determined to be inconsistent with the Master Plan by a reviewing court. (Pa47-Pa50); N.J.S.A. 40A:12A-7(f). Several documents that were included in the legislative record (Pa196-Pa235; 2T.7:5-25 through 8:1-14) were considered by the Committee in formulating the statements contained in Ordinance 2022-17, Section 3.1.1. These factual findings were found both credible and evidentially supported by the trial court. (3T.53:18-25 through 54:1-12; 54:23-25 through 55:1-12; 57:13-25 through 58:1-3).

Moreover, as N.J.S.A. 40A:12A-7(d) shows, a redevelopment plan need not be “wholly consistent” with the Master Plan so long as it is “substantially consistent” with the same. N.J.S.A. 40A:12A-(7)d. Indeed, even if parts of the Redevelopment Plan have been determined to be inconsistent with the Master Plan, such a finding does not invalidate the adoption of the Redevelopment Plan so long as the governing body, by a majority of its members, sets forth “the reasons for so acting in the Redevelopment Plan.” Id. That is exactly what the amendment achieved.

Lastly, Plaintiffs declare three times that the trial court found the Redevelopment Plan to be inconsistent with the Township’s Master Plan. (Pb14; Pb17-Pb18). The statement is misleading. After a thorough review

of the Township Committee’s reasoning for amending Ordinance 2022-15, Judge Covert stated “there is, at a minimum, a finding that the redevelopment plan is, in part, inconsistent with the master plan.” (3T.63:9-11; emphasis added). She recognized, however, the parameters of N.J.S.A. 40A:12A-7(d), by stating “... upon a majority vote of the [Committee members] and with the articulated and supported reasons,” the adoption of Ordinance 2022-17 “cured any possible defect [in the Redevelopment Plan].” (Id.:63:11-14). Relying upon the LRHL, the trial court acknowledged the Committee’s right to adopt a redevelopment plan, or an amendment to the redevelopment plan, that is not consistent with the Master Plan, but only by an “affirmative vote of a majority of its full authorized membership with the reasons for so acting set forth in the redevelopment plan.” N.J.S.A. 40A:12A-7(d).

Plaintiffs/Appellants contend in their brief that the Committee did not properly amend Ordinance 2022-15 (Pb24), but (setting aside for a moment that this claim has been waived), nowhere in N.J.S.A. 40A:12A-7(f) does it state a prescribed manner in which a governing body must prepare an amendment or revision to a redevelopment plan. It must only do so “by an affirmative vote of the majority of its full authorized membership and shall record in its minutes the reasons for each amendment or revision,” (Id.)

which this Committee did at its October 27, 2022 and December 8, 2022 public hearings. (2T.86:16-25 through 93:1-13; Pa296).

Because the Township set forth in its amending Ordinance 2022-17 the reasons for adopting the Redevelopment Plan despite potential Master Plan inconsistency, the statutory requirements under N.J.S.A. 40A:12A-7(d) were satisfied. Its adoption of Ordinance 2022-17 was not arbitrary or capricious, but well-reasoned and grounded in the record. Contrary to Plaintiffs assertions, neither of the Redevelopment Ordinances (2022-15 and 2022-17) can be found to be “null or void.” (Pb17).

**B. THE TOWNSHIP COMMITTEE ACTS AS ONE BODY AND ANY DISCUSSION OR ANALYSIS BY ITS MEMBERS IS NOT REQUIRED**

**(RAISED BELOW: 3T:49:25 through 50:1-7; 51:23-25 through 52:1-7)**

To discredit the trial court’s findings, Plaintiffs also argue the adoption of Ordinance 2022-17 is not supported by “substantial evidence” (Pb21) because the record is “devoid of any discussion by the Committee members regarding the reasons for the adoption” of the ordinance. (Pb22). In other words, Plaintiffs object to the lack of discussion and debate by the Committee Members before voting on the amending Ordinance (2022-17) at the October 27, 2022 Township Committee meeting. This assertion is also flawed for several reasons.



First, nothing in the statute requires that the municipal ordinance adoption procedure be accompanied by discussion by every, or even any, governing body member on the merits of the ordinance. N.J.S.A. 40:49-2. Nothing in the LRHL requires such discussion. N.J.S.A. 40A:12A-7(d); N.J.S.A. 40A:12A-7(e). Even the actions of a quasi-judicial body under the Municipal Land Use Law (MLUL) require no discussion.

In Scully-Bozarth, the plaintiff argued that each planning board member must verbally “express his or her findings of fact and conclusions” in making a motion to approve or deny a land use application, and then all members must “debate the matter.” Scully-Bozarth Post # 1817 of Veterans of Foreign Wars of U.S. v. Planning Bd. of City of Burlington, 362 N.J. Super. 296, 311 (App. Div. 2003). This Court disagreed and held that Plaintiffs’

...rationale is flawed because the next sentence of N.J.S.A. 40:55D:10g provides that “The municipal agency shall provide the findings and conclusions through: ... (2) A memorializing resolution...” Read together, these provisions establish that it is the resolution that “provides” the required findings of fact and conclusions. *There is no mandatory two-step procedure. We do not mean to suggest that discussion among board members is inappropriate. They are public officials, entrusted with the responsibility of deciding issues affecting the public. Discussion by board members in the public forum is beneficial. We do not deem it mandatory. Individual members do not act. The board acts as a body.* The resolution provides the body's findings and conclusions, expressed by those who vote to adopt the resolution. This rationale is conditioned, of course, on the

premise that those who vote to adopt have read the resolution, understand it and agree with its contents. Every presumption should be indulged that those conditions have been met. The burden is on the opponent to show otherwise. (Id. at 311-12.) (emphasis added).

The same analysis applies here; and of course there has been no allegation that Committee members did not read the Plan amendments between October 27<sup>th</sup> and December 8<sup>th</sup> when they voted on it. Id. Again, neither N.J.S.A. 40:49-2, nor the LRHL, requires discussion among governing body members when introducing, or adopting, an ordinance creating a redevelopment plan. The Open Public Meetings Act (“OPMA”), N.J.S.A. 10:4-6 et seq., makes no such demand. “[T]he robustness of a debate on a particular item discussed in public session is not a topic addressed in the OPMA.” Kean Fed'n of Teachers v. Morell, 233 N.J. 566, 588 (2018). The statutes governing adoption of ordinances and redevelopment plans do not require discussion or debate among the voting members, robust or otherwise. Nor should the Court.

Plaintiffs also argue that the Committee had a duty to state its reasons for adopting the ordinance in the meeting minutes pursuant to discussion at the hearing. (Pa23). However, nowhere in N.J.S.A. 40A:12A-7 does it include the word “discuss” or “discussion,” nor does it require that each governing body member declare their individual “thought process.” The

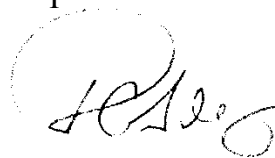
statute requires instead one statement of the “reasons” for the governing body’s actions, which must be memorialized in the redevelopment plan. N.J.S.A. 40A:12A-7(d). Here, these “reasons,” are articulated in new Section 3.1.1 of Ordinance 2022-17. (Pa47-Pa50). The Township Committee fully complied with the statutory requirements for adopting, and amending, the ordinances establishing the Old York Redevelopment Plan.

**CONCLUSION**

Plaintiffs have failed to overcome the presumption of validity that attaches to the Committee's action in adopting the Old York Redevelopment Plan through Ordinances 2022-15 and 2022-17. Nothing they have offered supports the proposition that these Ordinances were arbitrary and capricious, or that they were adopted in some illegal or irregular fashion.

The Township Committee acted properly and relied upon clearly established reasons in adopting the Redevelopment Plan through the amendment found in Ordinance 2022-17. For the foregoing reasons, the Township of Chesterfield and the Township Committee of the Township of Chesterfield respectfully urge this Court to affirm the trial court's Order dismissing Plaintiffs' Complaint with prejudice.

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The Township of Chesterfield (Burlington  
County) and Township Committee of the  
Township of Chesterfield



BY: \_\_\_\_\_  
JOHN C. GILLESPIE, ESQUIRE

Dated: November 27, 2023  
4854-6046-2995, v. 1

SAVE OLD YORK, a New Jersey  
non-profit entity,  
Appellant/Plaintiff,  
v.

THE TOWNSHIP OF  
CHESTERFIELD  
(BURLINGTON COUNTY)  
TOWNSHIP COMMITTEE OF  
THE TOWNSHIP OF  
CHESTERFIELD; TOWSHIP OF  
CHESTERFIELD PLANNING  
BOARD; JOHN DOES A-Z;  
CORPORATION A-Z,

Respondents/Defendants,

and

ACTIVE ACQUISITIONS OY, LLC,

Intervenor/Defendant.

**SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION**

**DOCKET NO. A-003167-22**

**Civil Action**

**On Appeal From:**

Superior Court of New Jersey, Law Division,  
Burlington County,  
Docket No. BUR-L-2322-22

**Sat Below:**

Honorable Jeanne T. Covert, A.J.S.C.

**Date Submitted:** December 11, 2023

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**REPLY BRIEF ON BEHALF OF APPELLANT/PLAINTIFF,  
SAVE OLD YORK**

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**PRELIMINARY STATEMENT**

Defendants' primary argument on appeal is essentially that "there is nothing to see here." They also mischaracterize Plaintiffs' arguments as a mere "disagreement" with the Township Committee of Chesterfield's (Township) decision to adopt Ordinances No. 2022-15 and No. 2022-17. This could not be further from the truth. Plaintiff's agreement with the Township and the Planning Board's decision is neither here nor there. Plaintiffs' contention is that Defendants violated both the spirit and clear mandate of the Local Housing Redevelopment and Housing Law (LRHL).

There are clear requirements in the LRHL that evidence the goal of the legislature to ensure municipalities adopt sound land use policies and, at the same time, provide the public with clear reasoning as to why certain ordinances were adopted. While a municipality has discretion in the ordinances it adopts and the reasons for doing so, that discretion is not unfettered. In addition, that discretion does not shield a municipality from complying with the clear statutory mandates of the LRHL. Here, the municipality did not follow the requirements of the LRHL and for that reason, Plaintiff respectfully requests this Court remand and reverse the trial court's grant of summary judgment in favor of Defendants.



## STANDARD OF REVIEW

As stated in Plaintiff's merits brief, an ordinance enjoys "a presumption of validity, which may be overcome by a showing that the ordinance is 'clearly arbitrary, capricious or unreasonable, or plainly contrary to fundamental principles of zoning or the [zoning] statute.'" Riggs v. Long Beach, 109 N.J. 601, 610-11 (1988) (quoting Bow & Arrow Manor v. Town of W. Orange, 63 N.J. 335, 343 (1973)). An ordinance that does not comport with statutory requirements cannot be upheld. See Riggs, 109 N.J. at 611. It is also well-established that a municipality's decision regarding a redevelopment plan must be supported by the evidence in the record. See Powerhouse Arts Dist. Neighborhood Ass'n v. City Council of City of Jersey City, 413 N.J. Super. 322, 332 (App. Div. 2010).

Plaintiff's argument here is simple: the Township's decision is not supported by the evidence in the record and thus is arbitrary, capricious, and unreasonable. Moreover, the "record" developed by the Township is filled with contradictions and does not comply with the LRHL.

## LEGAL ARGUMENT

### **I. THE COMMITTEE'S ADOPTION OF ORDINANCE NO. 2022-15 WAS ARBITRARY AND CAPRICIOUS. (3T13:24-15:2).**

Defendants continue to claim the Township properly adopted Ordinance No. 2022-15. That argument then begs the question if Ordinance No. 2022-15

was wholly proper and complied with the requirements of the LRHL, then why was it amended the mere minutes after it was adopted? Moreover, if the Township Committee was not trying to push through an ordinance that it knew was opposed by the residents, why not defer voting on Ordinance No. 2022-15 until the Redevelopment Plan (the Plan) was properly amended? The logical answer to both questions is that the Committee knew the Plan had glaring inconsistencies that had to be addressed before Ordinance No. 2022-15 could be adopted, and yet, they also knew the end of the year was approaching and thus, their window to push through the Plan was quickly closing. The Committee knowingly passed a defective ordinance which it implicitly acknowledged by amending Ordinance 2022-15 minutes after passing it.

"[A] zoning ordinance must conform to MLUL [Municipal Land Use Law] requirements and further MLUL goals." Gripenburg v. Twp. of Ocean, 220 N.J. 239, 253 (2015) (citing Rumson Ests. Inc. v. Mayor & Council of Fair Haven, 177 N.J. 338, 351 (2003)). Those goals are to "regulate land development 'in a manner which will promote the public health, safety, morals and general welfare' using uniform and efficient procedures." Id. (quoting Rumson, 177 N.J. at 349)); see also N.J.S.A. 40:55D-2 (setting forth the intent and purpose of the MLUL). Further, the ordinance must be consistent with the township's master plan and "be adopted in accordance with statutory and

municipal procedural requirements." Riggs, 109 N.J. at 611-12.

N.J.S.A. 40A:12A-7(d) requires a redevelopment plan to be "substantially consistent with the municipal master plan." The local government, however, may "adopt a redevelopment plan which is inconsistent with . . . the master plan by affirmative vote of a majority of its full authorized membership with the reasons for so acting set forth in the redevelopment plan." N.J.S.A. 40A:12A-7(d).

Ordinance No. 2022-15 is not consistent with the Township of Chesterfield's master plan. The Committee acknowledged this when it raised several "concern[s]" regarding the Plan as it was written on October 27, 2022. See (2T60:22-61:3);<sup>1</sup> (74:19-23). These concerns, together with the testimony and public comment raised at the October 27 meeting led the Committee to amend the Plan minutes after adopting Ordinance No. 2022-15. See (2T81:2-82:21). The fact is that the Committee knew Ordinance No. 2022-15 was inconsistent with the Township's master plan and needed to be amended. The trial court below recognized that the Plan did not "promote agricultural or open spaces." (3T50:22-25). Thus, the Committee could adopt the Plan, but was required to include its reasons for its decision in the redevelopment plan. See N.J.S.A. 40A:12A-7(d). Because the Committee did not do this, they were forced to immediately introduce Ordinance

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<sup>1</sup> Plaintiff incorporates the citations and abbreviations from its merits brief.

No. 2022-17 to amend the Plan.

**II. THE COMMITTEE DID NOT FOLLOW THE STATUTORY PROCEDURES IN ADOPTING ORDINANCE NO. 2022-17. (3T9:14-12:25.**

Defendants also claim that regardless of any issues with Ordinance No. 2022-15, those issues were cured by the adoption of Ordinance No. 2022-17. While Plaintiff agrees that the Township is within its rights to adopt an ordinance that is inconsistent with the master plan, it must follow the statutory requirements of the LRHL.

N.J.S.A. 40A:12A-7(e) clearly states that if a municipality decides to amend a redevelopment plan, it must first obtain a report from the planning board. The board's report must "include an identification of any provisions in the proposed redevelopment plan which are inconsistent with the master plan and recommendations concerning these inconsistencies and any other matters as the board deems appropriate." N.J.S.A. 40A:12A-7(e). Here, the Committee decided to amend the Plan and sent the proposed changes to the Planning Board. (2T98:17-20); (Pa435). However, rather than identify any inconsistencies, the Planning Board once again incorrectly found the Plan was consistent with the master plan. See (Pa435).

Once a governing body receives the planning board's report, it "may approve or disapprove or change any recommendation by a vote of a majority of its full

authorized membership and shall record in its minutes the reasons for not following the recommendations." N.J.S.A. 40A:12A-7(e) (emphasis added). Accordingly, if the Committee disagreed with the Planning Board's consistency finding, it should have recorded in its meeting minutes the reasons for not following the recommendation. The Committee did not do so. See (Pa296-Pa297). The December 8, 2022 Committee minutes are devoid of any reasoning whatsoever for the Committee's decision to not follow the Planning Board's recommendation. Instead, the Committee decided to go ahead use Ordinance No. 2022-17 as the amendment to the Plan – rather than amending the text of the Plan to include the Committee's revisions. (Pa46-Pa51). The Committee then included language in the ordinance that purported to adopt the ordinance because it was consistent with the master plan and because it was inconsistent with the master plan. (Pa46-Pa50).

The Committee's course of action contradicts both the explicit requirement of N.J.S.A. 40A:12A-7(e) and its intent. The statute allows a municipality to adopt a redevelopment plan that is inconsistent with its master plan. However, the text of the statute also goes to great pains to require a municipality's planning board and governing body to make a call on whether the redevelopment plan is consistent or inconsistent with the master plan. Here, the Committee skirted its responsibility to do so by claiming it was being "overly cautious." It was not being overly cautious; it was being duplicitous by trying to get this Plan passed by any means necessary.

**III. THE COURT SHOULD REMAND THIS MATTER BACK TO THE COMMITTEE. (3T37:4-9).**

Plaintiff once again emphasizes that the Committee has the discretion to adopt a redevelopment plan that is not consistent with Chesterfield's master plan. However, it must still follow the statutory requirements to do so. Here, the Committee did not do so. The government has a duty to behave with integrity and transparency when dealing with the public. See F.M.C. Stores Co. v. Borough of Morris Plains, 100 N.J. 418, 426 (1985) ("In dealing with the public, government must 'turn square corners.'"); Auto-Rite Supply Co. v. Mayor & Twp. Committeemen of Woodbridge, 25 N.J. 188, 196 (1957) ("Municipalities are bound to act in good faith in the pursuance of the common good and welfare of their citizens."). The Committee failed to abide by these principles in this case.

First, the Committee adopted Ordinance No. 2022-15 despite acknowledging that the Plan was inconsistent with the Township's master plan. Then, it purported to amend the Plan – only to instead draft an amended ordinance without in fact incorporating its changes into the Plan. The Planning Board then issued another report finding the changes were consistent with the master plan. The Committee adopted the new ordinance setting forth that the new Plan was inconsistent with the master plan but without failing to include its reasons in the meeting minutes. At every step of the way, Defendants attempted to rush through a slapdash Plan without following the statutory procedure of the LRHL. The residents of Chesterfield

Township are entitled to a local government that follows the rules. This Court should remand this matter to the Committee and require Defendants follow the statutory requirements.

On the other hand, if this matter is not remanded back to the Township to comply with the requirements of the LRHL, how will it ever be clear how an ordinance could be overturned? If the Court adopts the Defendants' views, a municipality could insulate their redevelopment plans from judicial review by finding the plan both consistent and inconsistent with the municipality's master plan. A township would be able to decide it wants a specific result and work backwards to try and incorporate planning principles rather than beginning its inquiry with sound planning considerations. The Committee has every right to adopt a redevelopment plan that is inconsistent with the township's master plan so long as it follows the requirements of the LRHL and sets forth its reasons for so acting. That was not done here. Thus, Plaintiff respectfully requests the Court remand this matter back to the Committee.

**CONCLUSION**

For the foregoing reasons, Save Old York respectfully submits that the trial court's denial of summary judgment should be reversed, and the matter remanded to the Committee of the Township of Chesterfield.

Respectfully submitted,

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