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This opinion shall not "constitute precedent or be binding upon any court."
Although it is posted on the internet, this opinion is binding only on the
parties in the case and its use in other cases is limited. R. 1:36-3.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0227-16T3

514 MILLBURN AVENUE, LLC,
VINCENT URSO, and PERRY URSO
d/b/a ENZZOS TRATTORIA
RESTAURANT,

Plaintiffs-Appellants,

v.

PLANNING BOARD OF THE TOWNSHIP
OF MILLBURN,

Defendant-Respondent,

and

RESTAURANT CONCEPT CONSULTANTS,
LLC and INVESTORS HOLDING FUND,
LLC,

Defendants.

Argued October 31, 2017 - Decided November 21, 2017

Before Judges Reisner and Mayer.

On appeal from Superior Court of New Jersey,
Law Division, Essex County, Docket No. L-8136-
15.

Ronald S. Gasiorowski argued the cause for
appellants (Gasiorowski & Holobinko,
attorneys; Mr. Gasiorowski, on the briefs).

Edward J. Buzak argued the cause for respondent (The Buzak Law Group, LLC, attorneys; R. Scott Eveland and Susan L. Crawford, on the brief).

PER CURIAM

Plaintiffs 514 Millburn Avenue, LLC, Vincent Urso, and Perry Urso d/b/a Enzzos Trattoria Restaurant appeal from an August 22, 2016 order dismissing their complaint in lieu of prerogative writs against defendants Planning Board of the Township of Millburn (Board), Restaurant Concept Consultants, LLC (RCC) and Investors Holding Fund, LLC.¹ We affirm.

On April 29, 2015, RCC applied to the Board for conditional use approval, preliminary and final site plan approval, and certain variances and waivers to convert a fast food restaurant to a restaurant/bar. Public hearings on RCC's application were held on July 15, 2015 and September 2, 2015. RCC presented expert testimony. Plaintiffs' counsel opposed the application. The Board also heard from the public on RCC's application, including comments from residents in Millburn and Springfield, the municipality adjacent to the proposed development.

Plaintiffs own and operate a competitor restaurant near RCC's proposed development. RCC's project straddled the boundary line between Millburn and Springfield. A majority of RCC's proposed

¹ The trial court issued an amended order dated October 12, 2016.

project was located in Millburn. Plaintiffs objected to RCC's application arguing before the Board that RCC failed to obtain review and approval from neighboring Springfield. Plaintiffs maintained that RCC's project had to be approved by Springfield in addition to any approvals granted by the Board.

The Board granted RCC's application on September 2, 2015. A memorializing resolution was adopted on October 21, 2015. The Board declined to consider RCC's application as it related to Springfield's ordinances, but considered the proposed development's impact on the neighborhoods in adjacent Springfield.

The Board's resolution approved RCC's application conditioned on the following:

1. The Applicant shall comply with all applicable municipal ordinances and regulations, as well as all County, State and Federal Laws applicable to this development application.
2. The foregoing is subject to review of, approval by, and requirements imposed by such other Federal, State, County, and local bodies that shall have jurisdiction over the development.

Plaintiffs filed an action in lieu of prerogative writs seeking to reverse the Board's resolution. On June 29 and August 22, 2016, Judge Vicki A. Citrino issued orders, with accompanying written decisions, dismissing plaintiffs' complaint.

On appeal, plaintiffs present the following arguments:²

POINT ONE

THE TRIAL COURT ERRED IN NOT FINDING THE BOARD WAS REQUIRED TO MAKE ZONING APPROVAL BY THE TOWNSHIP OF SPRINGFIELD AS A CONDITION/REQUIREMENT OF ITS APPROVAL PURSUANT TO N.J.S.A. 40:55D-22(b) ESPECIALLY WHERE 60% OF THE PARKING FOR THE PROJECT IS LOCATED IN SPRINGFIELD AND THE USE PROPOSED IS NOT PERMITTED IN SPRINGFIELD.

POINT TWO

THE PLANNING BOARD FAILED TO PROPERLY HEAR AND CONSIDER THE SPRINGFIELD ZONING LIMITATIONS THAT EFFECT [SIC] AND GOVERN A SIGNIFICANT PORTION OF THE DEVELOPMENT SITE.

POINT THREE

IN THE ALTERNATIVE, THE TRIAL COURT SHOULD HAVE DIRECTED THE DEFENDANT APPLICANT TO PROCEED WITH AN APPROPRIATE ZONING APPLICATION IN SPRINGFIELD, AND STAY THIS SUIT AND ANY OPENING/USE OF THE RESTAURANT/BAR UNTIL SPRINGFIELD MAKES ITS DETERMINATION ON THE PROPOSED DEVELOPMENT/USE.

Plaintiffs presented these arguments to Judge Citrino who considered and rejected them in thorough and well-written decisions dated June 29, 2016 and August 22, 2016. After reviewing

² On appeal, plaintiffs rely on facts that were not presented to the trial court. Our scope of review is limited to whether the trial court's decision is supported by the record presented at the time of trial. R. 2:5-4; see also Middle Dep't Inspection Agency v. Home Ins. Co., 154 N.J. Super. 49, 56 (App. Div. 1977) (refusing to consider evidence improperly submitted at the appellate level), certif. denied, 76 N.J. 234 (1978).

the record, including the hearing transcripts and exhibits, we affirm for the reasons stated by Judge Citrino. We add only the following comments.

The Board's resolution was sufficient, and its credibility determinations are worthy of our deference. See Klug v. Bridgewater Twp. Planning Bd., 407 N.J. Super. 1, 12-13 (App. Div. 2009). There is substantial credible evidence to support the Board's findings, and the decision to grant the application was not arbitrary or capricious. Id. at 13-14; see also Kramer v. Bd. of Adjustment, Sea Girt, 45 N.J. 268, 296 (1965).

While a local planning board should consider the impact of a development application upon a neighboring municipality, the local board need not abdicate its own zoning ordinances and master plan. See Ferraro v. Zoning Bd. of Adjustment, 119 N.J. 61, 72-74 (1990). In the memorializing resolution approving RCC's application, Millburn expressly considered the proposed development's impact on neighboring Springfield. Millburn has no obligation to impose Springfield's zoning ordinances and master plan within its own municipal border, and plaintiffs cite no legal authority imposing such an obligation on a municipality. Plaintiffs never claimed there was insufficient support in the record for the Board's approval of RCC's application in Millburn. That RCC may ultimately

need approval from Springfield does not render the Board's decision arbitrary, unreasonable or capricious.

Affirmed.

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



CLERK OF THE APPELLATE DIVISION