SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1218-15T2
A-3014-15T2

MARK and KATHERINE SMITH,

Plaintiffs-Appellants,

v.

SOUTH BRUNSWICK TOWNSHIP, PUBLIC SERVICE ELECTRIC & GAS COMPANY, and TRUSTEES OF PRINCETON UNIVERSITY,

Defendants-Respondents.

MARK and KATHERINE SMITH,

Plaintiffs-Respondents/ Cross-Appellants,

v.

SOUTH BRUNSWICK PLANNING BOARD,

Defendant,

and

PUBLIC SERVICE ELECTRIC & GAS COMPANY,

Defendant-Appellant/ Cross-Respondent.

Argued May 8, 2017 – Decided May 18, 2017

Before Judges Sabatino, Haas and Geiger.

On appeal from Superior Court of New Jersey, Law Division, Middlesex County, Docket Nos. L-906-15 and L-907-15.

Bruce I. Afran argued the cause for Mark and Katherine Smith, appellants in A-1218-15 and respondents/cross-appellants in A-3014-15.

David L. Cook argued the cause for Public Service Electric and Gas Company, respondent in A-1218-15 and appellant/cross-respondent in A-3014-15 (Sills Cummis & Gross, attorneys; Mr. Cook and Steven Siegel, on the briefs).

Richard S. Goldman argued the cause for Trustees of Princeton University, respondent in A-1218-15 (Drinker Biddle & Reath, LLP, attorneys; Mr. Goldman, Karen A. Denys and Nicole S. Bayman, on the brief).

Donald J. Sears argued the cause for South Brunswick Township, respondent in A-1218-15 and joins in the brief of respondent Trustees of Princeton University.

PER CURIAM

These back-to-back appeals, which we now consolidate for purposes of this opinion, arise from defendant South Brunswick Township's ("Township's") adoption of two land use ordinances in 2003, and defendant Public Service Electric & Gas Company's ("PSE&G's") application in 2014 for planning board approval to construct an electrical substation in the Township on land that

PSE&G purchased from defendant Trustees of Princeton University ("the University") in the zone covered by the ordinances.

In Docket No. A-1218-15, plaintiffs Mark and Katherine Smith appeal from the Law Division's October 13, 2015 order granting the University's motion for summary judgment and the Township's motion to dismiss plaintiffs' complaint challenging the ordinances.[1] The trial court found that plaintiffs' complaint was untimely because they had waited almost twelve years after the adoption of the ordinances to file it and, in any event, the arguments plaintiffs raised lacked merit.

In Docket No. A-3014-15, PSE&G appeals from the Law Division's February 10, 2016 order reversing the South Brunswick Planning Board's ("Planning Board's") approval of its application for a variance permitting the substation project to extend into a 200-foot residential buffer between the substation and a property owned by a resident who did not object to PSE&G's application. PSE&G also challenges the court's decision to decline to consider the Planning Board's approval of the minor subdivision involved in the project. In its cross-appeal from the February 10, 2016 order, plaintiffs challenge the court's rejection of all of the

[1] PSE&G joined in these motions.

other arguments they raised against the Planning Board's approval of the project.

Having reviewed the parties' respective claims in light of the record and applicable law, we affirm the October 13, 2015 order dismissing plaintiffs' challenge to the two ordinances. We reverse the portion of the trial court's February 10, 2016 order that overturned the Planning Board's decision to grant PSE&G a variance concerning the 200-foot residential buffer, and we reinstate the Planning Board's approval of that variance. In addition, we reverse the trial court's denial of PSE&G's minor subdivision application and remand that matter to the trial court with the direction that it consider PSE&G's application for that part of its project. Finally, we affirm the trial court's rejection of all of plaintiffs' remaining arguments.

I.

In 2003, the University sought general development plan ("GDP") approval from the Planning Board to develop 1,800,000 square feet of property it owned, known as the Princeton Nurseries site. The path to approval occurred in stages, beginning with the rezoning of Princeton Nurseries, as detailed in a developer's agreement between the University and the Township. As part of the agreement, the Township amended and supplemented its municipal code by adopting two ordinances that are now at issue in this

matter: Ordinance 15-03 and Ordinance 17-03.

Ordinance 15-03, introduced and passed on first reading by the Township Council ("Council") on March 4, 2003, created a new zoning category known as the Office/Corporate (OC) Zone District. On March 13, 2003, a published notice advised that Ordinance 15-03 would be considered at a public meeting on April 1, 2003. The notice further advised that free copies of the ordinance could be obtained from the municipal clerk. On April 1, 2003, the Council adopted Ordinance 15-03, and notice of the adoption was published on April 10, 2003.

Ordinance 15-03 states that the purpose and intent of the OC Zone District

> is to permit the development of executive and corporate offices, high-technology research facilities and full service hotel and conference activities in comprehensively planned facilities, with accessory activities provided through a plan which shall be consistent with any historic land use and character of the surrounding area.

Among the other land uses permitted in the OC zone under Ordinance 15-03 are "government and public utility facilities," a term that is not specifically defined in the ordinance. The ordinance also contains regulations pertaining to building sizes, lot sizes, and buffer areas required between the OC Zone District and privately-owned residential property in the area.

Ordinance 17-03, which rezoned Princeton Nurseries from an OR Office/Research/Conference District, R-1 Single-Family/Cluster District and R-4 Village Residential District to an OC Zone District, was also introduced by the Council on March 4, 2003. On March 12, 2003, the Planning Board reviewed it and recommended its approval.

On March 13, 2003, a published notice advised that Ordinance 17-03 would be considered at a public meeting on April 1, 2003. Personal notices and copies of Ordinance 17-03 were mailed to those individuals and firms that owned property within 200 feet of the Princeton Nurseries site, including plaintiffs. Plaintiff Mark Smith received and signed for this written notice on March 19, 2003.

Following the public meeting on April 1, 2003, the Council announced that Ordinance 17-03 would be tabled and considered on April 15, 2003. On April 10, 2003, another notice was published advising the public of the upcoming April 15, 2003 meeting. On April 15, 2003, the Council adopted Ordinance 17-03 as presented, and notice of its adoption was published on April 24, 2003.

With the two ordinances in place, the University filed its GDP application on August 1, 2003. The University's GDP application contained a general land use plan, which provided:

> 6.1 General Land Use Plan. The General Land Use Plan indicates the tract areas and the limits of the land uses within the tract. The land uses are
>
> - Office/Corporate District Uses
> - Open Space Preserve.
>
> Among the uses permitted within the OC District, as described in the South Brunswick Land Use Ordinance are: executive and corporate offices; scientific or high technology laboratories devoted to research, design, experimentation or production; assembly of high technology and electronic equipment; health maintenance organization; and full service hotels/conference center.

Section 7.1.5 of the GDP references the 200-foot residential buffer zone requirement at issue here:

> Finally, the General Land Use Plan shows the required buffer area between any OC District and the boundary line of any privately owned residential property of two hundred (200) feet, in accordance with Section 175-93B(4)(f).

On October 24, 2003, a published notice advised that a public hearing would be held on November 3, 2003, to consider the GDP. The notice provided a detailed synopsis of the GDP and the University's requests for relief. Personal notices were mailed to owners of property within 200 feet of the site, including plaintiffs. On December 10, 2003, the Planning Board approved the GDP. The University and the Planning Board executed a GDP Developers' Agreement, which provided that approximately 150 acres

of Princeton Nurseries "is now zoned the OC District" and the majority of the remaining acreage would be preserved as open space. The Developers' Agreement also stated that "no additional . . . environmental . . . studies" would be required for future development of the property.

After securing the necessary approvals, the University expended approximately $4 million in developing the site in the ten-year period between 2004 and 2014. According to two uncontradicted certifications submitted by Curt Emmich,[2] the vice-president of the real estate consulting company retained by the University to develop the Princeton Forrestal Campus, the University undertook "significant development and incurred significant costs" between 2004 and 2015, "all in reliance on the 2003 OC Zoning Ordinance" and GDP approval, including, among other things, donating property it owned for open space purposes, installing water and sewer lines, and ensuring the historic preservation of nearby residences.

Notice of this activity was provided to residents, including plaintiffs. For example, in 2004, the University obtained the Planning Board's approval for a retention basin on the site, and

[2] Emmich certified that both of his certifications were based upon his personal knowledge after reviewing "the relevant development files, permits, agreements, maps, site plans and documents related to the property at issue in this case."

notice of those proceedings was published. In 2008, the University obtained the Planning Board's approval to construct a roadway and detention basins on the site.

In 2014, PSE&G sought approval for a subdivision of a portion of Princeton Nurseries, zoned as OC and consisting of a 7.369 acre lot, for construction of a 6019 square foot electrical substation. When it submitted this application, PSE&G was the contract purchaser of the proposed subdivision, and it later completed the purchase and acquired title to the property on May 29, 2015. PSE&G's substation would be located on the north-central portion of the subdivision, along with a 1150 square-foot control building erected on the southeast portion of the site.

Although PSE&G requested several variances, of particular relevance to this appeal is the "(c)(2)" dimensional variance it sought under N.J.S.A. 40:55D-70(c)(2) to permit the project to extend into the 200-foot residential buffer zone located between the subdivision and Block 99, Lot 11.04, a residential property located north-east of the project.[3] The owner of Lot 11.04 did not file any objection to PSE&G's variance application. The buildings on Lot 11.04 were located in the northern most portion of the lot and were well beyond the 200-foot buffer.

[3] PSE&G also requested a variance from the requirement that its subdivision contain at least 300 feet of street frontage.

Plaintiffs own Block 99, Lot 8.031, a parcel of land in the R-1 zone that is well to the west of PSE&G's subdivision, and well outside the 200-foot buffer. Indeed, the parties agreed at oral argument on appeal that there was at least 500 feet of buffer between the PSE&G project and plaintiffs' property line. Therefore, PSE&G's application for a variance of the 200-foot buffer requirement did not involve an encroachment upon plaintiffs' property.

The Planning Board held a four-day public hearing at which ten experts testified, as well as several members of the public. Joseph Barton, a PSE&G consultant, explained that PSE&G's application was necessitated by a finding made by Pennsylvania-Jersey-Maryland Interconnection, LLC ("PJM"), a regional independent power transmission organization that operates under the Federal Energy Regulatory Control Commission ("FERC").[4] According to Barton, PJM conducted a study that concluded that "if a [substation] project was not executed, there would be voltage violations in the region." If proper voltage was not sustained, then "rolling brownouts" could result, which would involve "tak[ing] customers out of service." Additionally, PSE&G would

[4] PJM oversees and coordinates power transmission in thirteen states, operates transmission assets owned by its member companies, including PSE&G, and performs reliability studies.

face "fines and penalties" from FERC if it did not build a new substation to service the area and its customers.

To address PJM's concerns, PSE&G proposed a two-phase project. Barton explained that during the first phase, construction of the new substation would link together two existing New Jersey substations. Through that linkage, voltage reliability in the area would improve for 62,000 current customers. In the second phase of the project, additional transformers and switch gears would be installed to distribute power to 25,000 new customers.

According to Barton, the substation would be gated and fenced, with "an elaborate landscape plan around the property" designed to hide it from view. While the substation would typically be unmanned, a PSE&G certified traveling operator would inspect it once per week. Electricity would travel out of the substation underground, rather than through overhead wires held by poles.

M.D. Sakib, PSE&G's principal system planning engineer, testified that based upon PJM's simulations and studies, as corroborated by PSE&G, the anticipated voltage violation was expected to occur in 2015. According to Sakib, there was "a very high possibility" of future brownouts occurring if the proposed substation was not built. Sakib further explained that while phase one of the project would support voltage in the area by

increasing power availability and creating "another hub" for the South Brunswick area, phase two would add more power capacity to accommodate new homes and businesses. Because Penns Neck, an existing substation serving the Township, had minimal capacity for growth and enlargement, Sakib testified that the better solution was construction of a new substation as proposed by PSE&G.

Christopher Light, PSE&G's senior project manager, testified that although other sites were considered, the proposed location for the substation was "the perfect site" to tie all of the lines together, as required by PJM. Light explained that the site's location would enable two substations, located to the north and south, to be linked as required by PJM.

Light testified that if the station was moved west on the property, then it would not encroach upon the 200-foot residential buffer of Lot 11.04. However, that orientation would "move[] the station more into the view shed of some of the residents on Ridge Road" and "extend[] the length of [the] underground feeds that go into the station increasing exposure of those circuits a little bit." Moving the project to the west would also bring it closer to plaintiffs' property line.

Light testified that it was possible that PSE&G "could install a new technology that is called GIS" (gas-insulated switch gear) that might partially reduce the substation's footprint in one

specific area of the project. However, Light explained that implementing this technology would not "help . . . in reducing the overall size of the station." In addition, using GIS technology would cost ratepayers an additional $8 million, or approximately an extra 25% of the total project cost, and Light explained that PSE&G prefers air, rather than gas, insulated equipment.

Art Bernard, a professional planner, testified on behalf of PSE&G that the project would promote the Township's general master plan goals, including economic development, and would benefit the public through the provision of "more reliable power." Bernard further stated that the project advanced the purpose of the Municipal Land Use Law ("MLUL"), N.J.S.A. 40:55D-1 to -112, by encouraging appropriate use of the land for projects designed to serve and protect the public.

Bernard found "no substantial negative impact" related to the residential buffer variance, as the substation's placement would "have a minimal impact on adjacent properties." He explained that the sole affected property, Lot 11.04, was "a very long residential lot, and [the resident's] home is something like 1,000 feet from that corner" of the site that would encroach upon the buffer zone.[5] Bernard further testified that PSE&G "provided a very generous

[5] As previously noted, plaintiffs' property has at least a 500-foot buffer from PSE&G's project.

landscaping plan . . . that will screen the facility and the basin from the homes." Finally, Bernard testified that all the lines feeding into the substation will be underground, and "the ambient sounds along Ridge Road would be such that people will not hear the facility in their homes."

Although the subdivision did not have any street frontage, Bernard likewise found "no negative impact" with regard to that requested variance, because the site was "not going to generate any traffic to speak of" and would be accessible to employees and emergency personnel through an access road. Bernard further testified that the public would benefit from the site's lack of street frontage, because it made the facility more secure.

Edward Clark, an acoustical consultant and licensed professional engineer, completed a sound study for the project. He described the two kinds of noise produced by substation transformers: a "hum" and a "broadband noise associated with cooling fans." He testified that none of the sound frequencies generated by the transformer would exceed any of the maximum levels set in the Township's code. Moreover, Clark concluded that it would be "difficult to hear the substation at points offsite" given other ambient noise in the area, such as vehicle traffic on Route One.

In support of their opposition to the project, plaintiffs

presented the testimony of Russell Smith, a professional engineer. Smith testified that the project did not comply with the residential buffer on the east side near Lot 11.04 and would extend into the 200-foot wide buffer for that property by as much as 160 feet. Smith further testified that the proposed access road would not provide adequate access for emergency vehicles, particularly since it was located in an area which floods "periodically during storms." Smith opined that the proposed width of the access road, twenty feet, was "substandard" and would "make it difficult for two vehicles to pass" through, thereby hampering emergency vehicle access.

Carlos Rodriguez, a professional engineer and planner, testified that "there is nothing unique about this site . . . that would mandate the proposed subdivision and site layout as specifically proposed." He opined that the (c)(2) variance "cannot be granted without detriment to the public good or integrity to the neighborhood" as the facility would "dramatically undermine the character of the neighborhood" and decrease property value. He further testified that since the 200-foot residential buffer zone is clearly noted in the GDP, any intrusion "represents a violation of the GDP and can only be sanctioned by way of an amendment to that same document."

As a better alternative, Smith and Rodriguez proposed moving

the site out of the residential buffer zone altogether and eliminating the need for a variance. Rodriguez added that any constraints or hardships asserted by PSE&G, such as the greater expense of GIS technology, or the inability to acquire more land from the University, were "self-imposed."

Regarding PSE&G's request to waive submission of an environmental impact statement ("EIS"), Rodriguez testified that the Planning Board violated the Township code because it failed to seek advice from the Township Environmental Commission before granting the waiver. Rodriguez also testified that to the extent PSE&G was relying on environmental documentation submitted with the 2003 GDP, a proper EIS was not completed at that time.

Later colloquy among Planning Board members explained that every application is sent to the Environmental Commission for review. On the next hearing date, one Planning Board member, who also sat on the Environmental Commission, clarified that the Commission reviewed and reported on the application, but never received a request for advice from the Planning Board regarding the waiver.

Sonya Thorpe, an acoustical consultant, reviewed Clark's report but did not submit a report of her own. Thorpe testified that Clark's report was deficient and incomplete because it did not describe the "octave band numbers." However, she later

conceded that Clark's report indicated that an octave band analysis had been performed. When questioned by a Planning Board member, Thorpe also admitted that Clark conducted a sound test of the proposed facility that complied with the governing State regulations.[6]

On December 17, 2014, the Planning Board voted to approve PSE&G's application and grant it all necessary variance relief, including relief from the 200-foot buffer in terms of Lot 11.04. The Planning Board's seventeen-page resolution summarized all of the relevant witness testimony and set forth detailed findings of fact and conclusions of law in support of its decision.[7]

On February 17, 2015, plaintiffs filed two complaints in lieu of prerogative writs challenging PSE&G's right to proceed with its project. In one complaint,[8] plaintiffs asserted that Ordinance 15-03 and Ordinance 17-03, which had been adopted almost twelve

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[6] Another pair of objectors, Gang Qian and Xiaodan Zhang, presented testimony from Joseph Mazotas, a real estate appraiser. Mazotas testified that a substation would be visible from the Qian/Zhang property, and that it would significantly affect their home's property value (by five or ten percent, or more) and marketability. However, Mazotas admitted that he had not done any comparability studies, nor was he familiar with the landscaping plan intended to cover the project from view. These two objectors are not parties to the present appeals.

[7] We address the Planning Board's decision in greater detail in Section III of this opinion.

[8] Docket No. MID-L-00907-15.

years previously, were nevertheless void due to lack of adequate notice to them; unconstitutionally vague because it was allegedly not clear that a "substation" was a "public utility facilit[y]" permitted in the OC zone; and constituted illegal "spot zoning." As noted above, defendants moved for summary judgment and a dismissal of plaintiffs' complaint.

On October 13, 2015, the trial judge issued an order, supported by a detailed written decision, granting defendants' motions and dismissing plaintiffs' complaint. The judge found that plaintiffs' complaint in lieu of prerogative writs was untimely under Rule 4:69-6 because they waited almost twelve years to file a challenge to the 2003 ordinances. In addition, the judge considered plaintiffs' challenges to the ordinances and found that they lacked merit.

In the second complaint they filed on February 17, 2015,[9] plaintiffs sought to reverse the Planning Board's approval of PSE&G's application for variance relief and minor subdivision approval. Following a two-day hearing on the record developed before the Planning Board and the parties' oral argument, the trial judge[10] entered a judgment and written decision. The judge

[9] Docket No. MID-L-00906-15.

[10] The same trial judge presided over both proceedings involved in these appeals.

reversed the Planning Board's grant of a (c)(2) residential buffer variance to PSE&G. In so ruling, the judge found that PSE&G did not show that "its plan is a better zoning alternative" for the property. The judge also stated that "[t]he Board made no findings as to the reasonableness of not being able to build a gas insulated switch (GIS) gear facility, nor . . . relative to the reasonableness of PSE&G's inability to acquire (or [the University's] unwillingness to sell) additional lands" that would eliminate the need for the 200-foot residential buffer variance. Thus, the judge concluded that the Planning Board's grant of the variance was "not supported by the record."

Because PSE&G would not be able to construct its project as it was then configured without the residential buffer variance for Lot 11.04, the trial judge also determined that the Planning Board's grant of the minor subdivision to PSE&G could not stand. In all other respects, the judge found that plaintiffs' objections to the Planning Board's decision lacked merit.

These appeals and cross-appeal followed.

II.

We first address plaintiffs' contention in Docket No. A-1218-15 that the trial judge erred in granting summary judgment to defendants and dismissing their challenge to the validity of the two 2003 ordinances. Plaintiffs contend that although they

captioned their pleading as a complaint in lieu of prerogative writs, their claims were actually cognizable under the Uniform Declaratory Judgments Law, N.J.S.A. 2A:16-50 to -62, because they sought a declaration that the ordinances were unconstitutional and unlawful. Therefore, plaintiffs allege that even though they waited almost twelve years after the adoption of the ordinances to file their complaint, they are not subject to the forty-five day filing deadline for actions in lieu of prerogative writs established by Rule 4:69-6.

Our review of a ruling on summary judgment is de novo, applying the same legal standard as the trial court. Nicholas v. Mynster, 213 N.J. 463, 477-78 (2013). Summary judgment is appropriate where "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).

Applying these principles, we discern no basis for disturbing the trial judge's decision to dismiss plaintiffs' complaint, although we reach this conclusion for a slightly different reason

than that expressed by the judge.[11] Whether plaintiffs' complaint was an action in lieu of prerogative writs subject to the time limitations of Rule 4:69-6 or a declaratory judgment action not subject to a specific statute of limitations, (see Bell v. Township of Stafford, 110 N.J. 384, 390 (1988)), is not the critical issue here because, no matter what nomenclature is used to identify their action, plaintiffs' complaint was properly dismissed under the doctrines of laches and equitable estoppel.

The doctrine of laches is an equitable defense which may be interposed even in the absence of a specific statute of limitations. Lavin v. Bd. of Ed., 90 N.J. 145, 151 (1982). Laches "precludes relief when there is an 'unexplainable and inexcusable delay' in exercising a right, which results in prejudice to another party." Fox v. Millman, 210 N.J. 401, 417 (2012). "The time constraints of laches, unlike the periods prescribed by the statute of limitations, are not fixed but are characteristically flexible." Lavin, supra, 90 N.J. at 151.

The doctrine of laches has been described as:

> [N]ot an arbitrary or technical doctrine. Where it would be practically unjust to give a remedy, either because the party has, by his [or her] conduct, done that which might fairly

[11] See State v. Heisler, 422 N.J. Super. 399, 416 (App. Div. 2011) (stating an appellate court is "free to affirm the trial court's decision on grounds different from those relied upon by the trial court").

> be regarded as equivalent to a waiver of it, or where by his [or her] conduct and neglect he [or she] has, though perhaps not waiving that remedy, yet put the other party in a situation in which it would not be reasonable to place him [or her] if the remedy were afterwards to be asserted, in either of these cases, lapse of time and delay are most material.
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> [Id. at 152 (quoting Hall v. Otterson, 52 N.J. Eq. 522, 535 (Ch. 1894)).]

The length of and reasons for the delay, and changing conditions of either party, are the most important factors. Ibid. (citing Pavlicka v. Pavlicka, 84 N.J. Super. 357, 368-69 (App. Div. 1964)). "The length of the delay alone or in conjunction with the other elements may result in laches." Ibid. (citing Obert v. Obert, 12 N.J. Eq. 423, 428-30 (E. & A. 1858)).

Equitable estoppel is a similar doctrine.

> Equitable estoppel is the effect of the voluntary conduct of a party whereby he [or she] is absolutely precluded, both at law and in equity, from asserting rights which might perhaps have otherwise existed, either of property, of contract, or of remedy, as against another person, who has in good faith relied upon such conduct, and has been led thereby to change his [or her] position for the worse, and who on his [or her] part acquires some corresponding right, either of property, of contract, or of remedy.
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> [Highway Trailer Co. v. Donna Motor Lines, Inc., 46 N.J. 442, 449 (1966) (citing Pomeroy Equity Jurisprudence, § 804 (5th Ed. 1941)).]

Here, plaintiffs' complaint was clearly barred by the doctrines of laches and equitable estoppel. As detailed above, the Township Clerk provided published notice on March 13, 2003 of its proposed adoption of Ordinance 15-03 and, on that same date, sent personal notice to plaintiffs of the proposed adoption of Ordinance 17-03, together with a copy of the ordinance itself. Plaintiffs received that personal notice on March 19, 2003. The Township adopted both ordinances in April 2003.

Between April 2003 and February 2015 when plaintiffs filed their complaint challenging the ordinances, the University made significant investments in, and improvements on, the property in reliance on the ordinances and the lack of a timely challenge to their validity. Among other things, the University expended nearly $1 million in applying for and complying with the 2003 GDP approval; spent $150,000 developing and implementing an Open Space Initiative/Donation Agreement to Green Acres; donated land by creating the Mapleton Preserve in the Township; contributed $300,000 to the rehabilitation of historic structures in the Mapleton Preserve; subjected residences owned by the University to deed restrictions for historic preservation; spent $200,000 on environmental studies; and expended $100,000 on the installation of a twelve-inch waterline along Ridge Road and an additional $150,000 for storm water basin piping adjacent to Greenwood Avenue.

These are funds which can obviously not be recouped and, just as significantly, the disposition of the University's property for other purposes cannot be undone.[12]

We reject plaintiffs' contention that the trial court was obligated to allow them to pursue discovery to attempt to contest these facts, a process that would have only prolonged this extremely belated litigation and which could have imposed significant additional burdens on the parties. We also reject plaintiff's argument that such discovery was necessary to determine which expenditures related to property on the South Brunswick side of the project and which was related to the Plainsboro Township side, a breakdown that would be of no or scant relevance.

Plaintiffs' failure to challenge the adoption of the ordinances for almost twelve years is inexcusable under any reasonable assessment of the idiosyncratic circumstances of this case, especially in light of the University's obvious detrimental reliance upon their non-action. On this record, plaintiffs are barred by the doctrines of laches and equitable estoppel from prosecuting an action challenging the 2003 ordinances at this late

[12] For its part, PSE&G undertook years of planning and also expended substantial sums in preparing its electrical substation project on land it ultimately purchased from the University.

date. Therefore, the trial judge properly dismissed plaintiffs' complaint as untimely.

However, even if plaintiffs' complaint were not barred by these doctrines, we are satisfied that the trial judge also properly dismissed plaintiffs' allegations concerning the propriety of the ordinances on their merits.

Plaintiffs argued that Ordinance 17-03 constituted illegal "spot zoning" in that it "violate[d] equal protection by conveying privileges to [the University] next door while failing to convey similar privileges to others," including themselves. In rejecting this contention, the trial judge found that plaintiffs failed to provide sufficient proof "that Ordinance 17-03 [wa]s inconsistent with the Township's Master plan" or "that the rezoning was not pursuant to a comprehensive plan." We agree with the judge's cogent analysis.

"Spot zoning is the antithesis of . . . planned zoning." Palisades Props., Inc. v. Brunetti, 44 N.J. 117, 134 (1965). Our Supreme Court has defined "spot zoning" as "the use of the zoning power to benefit particular private interests rather than the collective interests of the community." Taxpayers Ass'n of Weymouth Twp. v. Weymouth Township, 80 N.J. 6, 18 (1976), cert. denied, 430 U.S. 977, 97 S. Ct. 1672, 52 L. Ed. 2d 373 (1977). Spot zoning transpires "when a municipality seeks to relieve a

particular property of the burden imposed by its zoning classification so as to benefit the lot owner or permit an incompatible use." Jennings v. Borough of Highlands, 418 N.J. Super. 405, 425-26 (App. Div. 2011). "[T]he test for spot zoning is whether the particular provision of the zoning ordinance is made with the purpose or effect of furthering a comprehensive scheme or whether it is designed merely to relieve a lot or lots from the burden of a general regulation." Id. at 426 (alteration in original) (quoting Palisades, supra, 44 N.J. at 134).

Here, plaintiffs failed to allege that the effect of the ordinance was inconsistent or incompatible with the Township's comprehensive zoning plan, as required by Jennings, supra, 418 N.J. Super. at 426. Moreover, the fact that the University was initially the only landowner in the OC Zone District is simply not prima facie proof of spot zoning. Palisades, supra, 44 N.J. at 135. Indeed, it is well established that an otherwise valid ordinance is "unobjectionable even if . . . initially proposed by private parties [who] are . . . its ultimate beneficiaries." Taxpayers Ass'n, supra, 80 N.J. at 18. Because nothing in the record supports a finding that Ordinance 17-03 was inconsistent with the Township's comprehensive zoning plan, the trial judge correctly determined that plaintiffs' spot zoning claim lacked merit.

Plaintiffs next argued that the published notices for Ordinance 15-03 and Ordinance 17-03 were defective because they did not contain a "brief summary of the main objectives or provisions of the ordinance." They also asserted that the personal, mailed notice they admittedly received for Ordinance 17-03 did not contain "the nature of the matter to be considered" or "street names, common names or other identifiable landmarks" to identify the affected zoning district.

The trial judge rejected these contentions. The judge found that the Township's published notice for Ordinance 15-03 complied with N.J.S.A. 40:49-2.1(a), which requires "citing such proposed ordinance by title, giving a brief summary of the main objectives or provisions" plus a statement that copies are on file for public examination, and notice of the time and place for further consideration of the proposal. The judge also found that N.J.S.A. 40:55D-62.1 did not require the Township to send personal notice of Ordinance 15-03 to plaintiffs because that ordinance "created a classification that did not previously exist" and "was neither a change in classification within a district, nor a boundary change to a district." At the time of its adoption, the newly created zone "had no impact upon any property owner." As to Ordinance 17-03, the judge found that the Township's published notice comported with N.J.S.A. 40:49-2.1(a), and that the personal notice satisfied

N.J.S.A. 40:55D-62.1. For the reasons that follow, we agree with the judge that the notices met the requirements of N.J.S.A. 40:49-2.1(a) and N.J.S.A. 40:55D-62.1.

At a minimum, municipalities must substantially comply with statutory published notice requirements. Wolf v. Shrewsbury, 182 N.J. Super. 289, 295 (App. Div. 1981), certif. denied, 89 N.J. 440 (1982). "Failure to substantially comply with the requirements of a statute requiring publication renders the ordinance invalid." Ibid. "A notice of a proposed change in the zoning laws must be reasonably sufficient and adequate to inform the public of the essence and scope of the proposed changes." Id. at 296.

In support of their contentions, plaintiffs primarily rely upon our decision in Rockaway Shoprite Assocs. v. City of Linden, 424 N.J. Super. 337 (App. Div. 2011), certif. denied, 209 N.J. 233 (2012), which stressed the importance of N.J.S.A. 40:49-2.1(a)'s "brief summary" requirement. There, we found that a published notice regarding rezoning of the former GM Linden Assembly Plant site was non-compliant with N.J.S.A. 40:49-2.1(a) because it provided no indication of what new zones were being created, or what new uses would be permitted on the site. Id. at 343. We reasoned:

> While the published notice at most alerted the public that some type of zoning amendment was being considered regarding the GM site,

> nothing therein informed interested persons of the nature or extent of the change or whether it was consequential enough to warrant their attendance at, and participation in, the ensuing public hearing.
>
> [Id. at 349-50.]

Thus, we held that "New Jersey requires at a minimum that published notice of a zoning ordinance creating new zones and uses applicable to an area identify and briefly describe those new zones and uses." Id. at 346.

The published notice for Ordinance 15-03 contains a one-sentence "brief summary" which states: "This ordinance amends and supplements Chapter 175 of the South Brunswick Code by the addition of Section 175-93, Office/Corporate District." The notice further provides the ordinance's full title, gives the time and place of the upcoming public meeting, and explains that copies of the ordinance can be obtained without charge.

While the summary is brief, and does not list any of the permitted uses within the newly-created OC Zone District, it nevertheless adequately conveys the ordinance's main objective as required by N.J.S.A. 40:49-2.1(a), i.e., the "addition of an Office/Corporate District." Unlike in Rockaway, where the ordinance rezoned a large, existing property, Ordinance 15-03 created a new zoning district not yet applicable to any area. Under these unique circumstances, we are satisfied that the 2003

published notice was "reasonably sufficient," as it bore no effect upon plaintiffs' property, or any other property. Wolf, supra, 182 N.J. Super. at 296.

In addition, copies of the ordinance were available for review, and interested parties could have attended the public meeting to learn more. Finally, personal notice was not required in connection with Ordinance 15-03 because N.J.S.A. 40:55D-62.1 applies only "to two events—classification changes and boundary changes." Mahwah Realty Assocs. v. Township of Mahwah, 430 N.J. Super. 247, 257 (App Div. 2013). Ordinance 15-03 effectuated neither a classification change nor a boundary change.

Turning to the required notice for Ordinance 17-03, both N.J.S.A. 40:49-2.1(a) and N.J.S.A. 40:55D-62.1 are applicable. The published notice's "brief summary" for this ordinance provided: "This ordinance amends the zoning map of the Township of South Brunswick by re-zoning certain property along southbound Route 1 from OR, R-1 and R-4 to OC." It also stated the ordinance's title, the time and location for the upcoming public meeting, and advised that copies of the ordinance were available free of charge.

Thus, the Township's published notice substantially complied with the requirements of N.J.S.A. 40:49-2.1(a). It was clear from the notice that the ordinance's main objective was the rezoning of property to an OC classification. Therefore, the published

notice was "sufficient to alert a reasonably intelligent reader as to the nature and import of the . . . changes in the zone plan." Wolf, supra, 182 N.J. Super. at 296.

The Township also duly provided personal notice of the ordinance to plaintiffs, and this notice included a copy of the ordinance and the proposed zoning map identifying the exact location of the property to be re-zoned. Thus, the personal notice substantially complied with N.J.S.A. 40:55D-62.1 by providing the nature of the matter to be considered, street names, and identifiable landmarks in order to identify the affected zoning district. Therefore, the trial judge committed no error when he held that the Township substantially complied with the statutory notice requirements for both ordinances.

Finally, like the trial judge, we also reject plaintiffs' contention that the term "public utility facilities" in Ordinance 15-03 was unconstitutionally vague and, therefore, they and other members of the public would not have been able to determine that an electrical substation might be built in the OC zone.

"The established rules of statutory construction govern the interpretation of a municipal ordinance." Township of Pennsauken v. Schad, 160 N.J. 156, 170 (1999). On appeal, we review a trial judge's statutory interpretation de novo." Commerce Bancorp, Inc. v. InterArch, Inc., 417 N.J. Super. 329, 334 (App. Div. 2010)

(citing State v. Gandhi, 201 N.J. 161, 176 (2010)), certif. denied, 205 N.J. 519 (2011).

"Our analysis of a statute begins with its plain language, giving the words their ordinary meaning and significance." In re Estate of Fisher, 443 N.J. Super. 180, 190 (App. Div. 2015) (citing State v. Olivero, 221 N.J. 632, 639 (2015)), certif. denied, 224 N.J. 528 (2016). "It is a basic rule of statutory construction to ascribe to plain language its ordinary meaning. When that language 'clearly reveals the meaning of the statute, the court's sole function is to enforce the statute in accordance with those terms.'" Ibid. (citations omitted).

As noted above, Ordinance 15-03 specifically states that "public utility facilities" are one of the uses permitted in the OC zone. In N.J.S.A. 40:55D-6, the MLUL defines a "public utility" as "any public utility regulated by the" Board of Public Utilities ("BPU"). Here, the proposed substation facility will be owned and maintained by PSE&G, which is the State's largest regulated public utility and, as such, is subject to the BPU's jurisdiction and regulation. See In re Pub. Serv. Elec. & Gas Co.'s Rate Unbundling, 167 N.J. 377, 382 (2001) (noting that PSE&G is one of the State's "existing four [electric utility monopolies]" regulated by the BPU).

Thus, the "public utility" in the term "public utility

facilities" referenced in Ordinance 15-03 obviously includes PSE&G. Just as obviously, the remaining word in that term, "facilities" would include an electrical substation operated by the public utility. In this regard, the ordinary definition of a "facility" is "something (such as a building or large piece of equipment) that is built for a specific purpose." Merriam-Webster Online Dictionary, http://www.merriam-webster.com (last visited May 12, 2017) (emphasis added). A "substation" is generally defined as "a place where the strength of electricity is changed as the electricity passes through on its way from the power plant to homes and businesses." Ibid. The fact that PSE&G's substation includes both a building and equipment clearly brings it within the common definition of "facility" as used in Ordinance 15-03. We need not address hypothetical scenarios not present in this case testing the breadth of the term.

Moreover, Joseph Barton, who served as PSE&G's expert consultant, testified that a substation is a critical component of a public utility's electrical transmission system. Without it, the other components of an electrical system, such as conduits, cables, wires, towers, and poles, referenced in other statutes

describing public utility facilities,[13] would be useless. Thus, contrary to plaintiffs' contention, the plain language of Ordinance 15-03 creating the OC Office/Corporate District provided clear and explicit notice that "public utility facilities" were permitted in the newly created OC zone.

In sum, we affirm the trial judge's October 13, 2015 order granting defendants' motion for summary judgment and dismissing plaintiffs' complaint challenging the Township's adoption of Ordinance 15-03 and Ordinance 17-03.

III.

We now turn to PSE&G's contentions in its appeal in Docket No. A-3014-15. PSE&G argues that the Planning Board's decision to grant the residential buffer variance was not arbitrary, capricious, or unreasonable, and that the trial judge mistakenly failed to defer to the Planning Board's findings of fact and conclusions of law, which were supported by substantial credible

[13] See, e.g., N.J.S.A. 40:11A-7.1 (defining "public utility facility" to include "any tracks, pipes, mains, conduits, cables, wires, towers, poles and other equipment and appliances . . . of any public utility"). That definition is repeated within other chapters of Title 40, and in other Titles. See N.J.S.A. 40:14A-20, N.J.S.A. 40:37D-7, N.J.S.A. 40:68A-54 (utilizing same definition). See also N.J.S.A. 58:22-14, N.J.S.A. 52:27I-36, N.J.S.A. 52:9Q-22, N.J.S.A. 40A:12A-10, N.J.S.A. 40A:26A-8, N.J.S.A. 40A:31-8, N.J.S.A. 34:1B-8, N.J.S.A. 27:23-6, N.J.S.A. 58:1B-8, N.J.S.A. 12:11A-7, and N.J.S.A. 5:10-8 (also utilizing same definition).

evidence in the record. We agree.

"[W]hen reviewing the decision of a trial court that has reviewed municipal action, we are bound by the same standards as was the trial court." Fallone Props., L.L.C. v. Bethlehem Twp. Plan. Bd., 369 N.J. Super. 552, 562 (App. Div. 2004). Thus, our review of the Board's action is limited. See Bressman v. Gash, 131 N.J. 517, 529 (1993) (holding that appellate courts are bound by the same scope of review as the Law Division and should defer to the local land-use agency's broad discretion).

In reviewing a municipal zoning board's decision, courts must be mindful that the Legislature vested these boards with the discretion to make decisions that reflect the character and level of development within their municipality. Booth v. Bd. of Adjustment of Rockaway, 50 N.J. 302, 306 (1967). A planning board's discretionary decisions carry a rebuttable presumption of validity. Harvard Enters., Inc. v. Bd. of Adjustment of Madison, 56 N.J. 362, 368 (1970).

It is well-established that "a decision of a zoning board may be set aside only when it is 'arbitrary, capricious or unreasonable.'" Cell South of N.J., Inc. v. Zoning Bd. of Adjustment of W. Windsor, 172 N.J. 75, 81 (2002) (quoting Medici v. BPR Co., 107 N.J. 1, 15 (1987)). "[P]ublic bodies, because of their peculiar knowledge of local conditions, must be allowed wide

latitude in their delegated discretion." Jock v. Zoning Bd. of Adjustment of Wall, 184 N.J. 562, 597 (2005). Therefore, "[t]he proper scope of judicial review is not to suggest a decision that may be better than the one made by the board, but to determine whether the board could reasonably have reached its decision on the record." Ibid.

The burden is on the challenging party to overcome this highly deferential standard of review. Smart SMR of N.Y., Inc. v. Borough of Fair Lawn Bd. of Adjustment, 152 N.J. 309, 327 (1998). A court must not substitute its own judgment for that of the local board unless there is a clear abuse of discretion. See Cell South, supra, 172 N.J. at 82. As we stated in CBS Outdoor, Inc. v. Borough of Lebanon Planning Bd., 414 N.J. Super. 563, 577 (App. Div. 2010), "[e]ven were we to harbor reservations as to the good judgment of a local land use agency's decision, 'there can be no judicial declaration of invalidity in the absence of clear abuse of discretion by the public agencies involved.'" (quoting Kramer v. Bd. of Adjustment, Sea Girt, 45 N.J. 268, 296-97 (1965).

N.J.S.A. 40:55D-70 authorizes local zoning and planning boards to grant variances from zoning ordinances. N.J.S.A. 40:55D-70(c) defines two categories of variances: N.J.S.A. 40:55D-70(c)(1), known as the "hardship variance," and N.J.S.A. 40:55D-70(c)(2), known as the "flexible or bulk variance." PSE&G sought

a (c)(2) variance from the 200-foot residential buffer requirement.

The Supreme Court succinctly described the test for granting a (c)(2) variance as follows:

> N.J.S.A. 40:55D-70(c)(2) permits a variance for specific property, if the deviation from bulk or dimensional provisions of a zoning ordinance would advance the purposes of the zoning plan and if the benefit derived from the deviation would substantially outweigh any detriment. The applicant bears the burden of proving both the positive and negative criteria.
>
> [Ten Stary Dom P'ship v. Mauro, 216 N.J. 16, 30 (2013).]

Satisfaction of the positive criteria requires "proof that the characteristics of the property present an opportunity to put [it] more in conformity with the development plans and advance the purposes of zoning." Ibid. The purposes of zoning include promoting "public health and safety" and a "desirable visual environment"; providing "adequate light, air and open space"; securing "safety from fire, flood, [and] panic"; and providing "sufficient space in appropriate locations for a variety of . . . uses . . . in order to meet the needs of all New Jersey citizens." N.J.S.A. 40:55D-2. As to the negative criteria, the applicant must prove "that the variance would not result in substantial detriment to the public good or substantially impair

the purpose of the zone plan." Ten Stary Dom, supra, 216 N.J. at 30.

Significantly, under this "more flexible test," an applicant for a (c)(2) variance need not demonstrate hardship. Price v. Himeji, LLC, 214 N.J. 263, 297 (2013) (citing Lang v. Zoning Bd. of Adjustment, 160 N.J. 41, 57 (1999)); Jacoby v. Zoning Bd. of Adjustment, 442 N.J. Super. 450, 470 (App. Div. 2015). In addition, "the magnitude of the deviation from the . . . dimensional requirements of the zoning ordinance and the impact on the zoning plan are often a matter of degree" and, as such, "a board's consideration of a variance should recognize that fact." Ten Stary Dom, supra, 216 N.J. at 32.

As our Supreme Court explained almost twenty-nine years ago:

> By definition . . . no (c)(2) variance should be granted when merely the purposes of the owner will be advanced. The grant of approval must actually benefit the community in that it represents a better zoning alternative for the property. The focus of a (c)(2) case, then, will not be on the characteristics of the land that, in light of current zoning requirements, create a "hardship" on the owner warranting a relaxation of standards, but on the characteristics of the land that present an opportunity for improved zoning and planning that will benefit the community.
>
> [Kaufmann v. Planning Bd. for Twp. of Warren, 110 N.J. 551, 563 (1988) (emphasis added).]

In short, the granting of a "(c)(2) variance will stand if,

after adequate proofs are presented, the Board concludes that the 'harms, if any, are substantially outweighed by the benefits.'" Jacoby, supra, 442 N.J. Super. at 471 (quoting Kaufmann, supra, 110 N.J. at 565).

Applying these standards, we are constrained to conclude that the trial judge mistakenly overrode the Planning Board's decision to grant a variance of the 200-foot residential buffer to PSE&G so that it could construct an electrical substation on its property. The evidence adduced during the Planning Board's four-day hearing overwhelmingly supported its decision to permit a variance that affected only one property, Lot 11.04, whose owner raised no objection to the application. The record also plainly demonstrated that the grant of this decidedly minor variation in the overall zoning scheme would enable PSE&G to comply with PJM and FERC requirements and ensure that thousands of property owners in the area, including plaintiffs, were supplied with safe and efficient electrical power in the face of growing energy demands in the region. Under these circumstances, the Planning Board's decision clearly represented a "better zoning alternative for the property" and, therefore, the Planning Board's decision should have been affirmed.

The trial judge's conclusion that the planning board did not provide an adequate explanation of its decision is not supported

by our review of that decision. The Planning Board specifically found that "the proposed use [of the land] [wa]s a permitted use" that "promotes the safe and efficient flow of electricity to the community-at-large" by increasing power reliability and adding new capacity for up to 25,000 future customers. It further found that "the existing network structure . . . is close to capacity" and "if the proposed substation is not built within a short period of time, it is reasonably foreseeable that brown outs are at greater risk to occur in the area." As detailed in Section I of this opinion, these findings are firmly grounded in the record.

As to the location chosen for PSE&G's project, the Planning Board found that the undeveloped property, located in an OC zone, was "an excellent location for the substation" in order "to link . . . two . . . other substations located to the north and south of the site" and was "adjacent to existing PSE&G property that [would] facilitate the construction of the underground outlets required."

The Planning Board found that Lot 11.04 was the only one affected by the (c)(2) variance. While acknowledging the "significant amount of testimony presented by objectors . . . that the site was not suitable for the use because it require[d] a [residential buffer] variance," the Planning Board found that Lot 11.04, whose owner has not objected to a variance that affects

only his property, was "a long and narrow lot" and that its "structures . . . [were] in the northern most portion of the lot, furthest away from the site and well beyond the [200-foot] buffer."

Regarding the potential negative impact on surrounding residential properties, the Planning Board found that "Lot 11.14, a Township-owned dedicated open space lot, runs between [PSE&G's] property and Lot 11.04" and "buffers the negative impact the substation will have" upon that lot. The Planning Board also concluded that any negative visual impact from the substation would be minimized because much of the equipment would be underground, and "significant landscaping" provided by PSE&G would further "buffer and practically shield the [thirteen-foot control] building from the adjacent residential properties."

The Planning Board carefully balanced concerns that the substation might affect residential property values with the project's potential to advance the zoning plan. The Planning Board stated:

> As to [Mazotas's] valuation testimony, the proposed use is a permitted use so the testimony was arguably not relevant. Furthermore, the testimony provided was not well researched and was not based on any meaningful data. The Board provides little weight to this testimony especially in light of the fact that the GDP for this area allows for a significant amount of commercial development. The Board finds that the expert testimony on valuation failed to distinguish

> the impact the substation would have on the value of the residential properties in the area as compared to the impact of more than . . . 1,800,000 square feet of commercial space would have on the value of the nearby residential properties. Thus, the Board finds credible the testimony of [PSE&G's] planner that the detrimental impact the substation will have on the public good and the intent and purpose of the Master Plan and Zone Plan will be minimal.

Concerning noise levels, the Planning Board determined that noise on the site "will not exceed state or local noise standards." It accepted Clark's testimony as credible, and found Thorpe's testimony less credible because she "failed to state that the manner and methods used by [Clark] deviated from acceptable standards in the industry." Clark testified that he performed various simulation tests and concluded that it would be "difficult to hear the substation at points offsite" given the ambient noise level in the area. Although Thorpe criticized Clark's methodology and conclusions, she did not complete a study of her own and admitted that Clark's study complied with applicable testing requirements.

The record also does not support the trial judge's finding that the Planning Board did not adequately address Light's testimony concerning the possibility that PSE&G could use GIS technology to reduce the overall size of the project and thereby lessen or eliminate the need for it to deviate from the 200-foot

buffer for Lot 11.04. In making this finding, the judge only focused on Light's testimony that implementing GIS technology at a cost of an additional $8 million to ratepayers might reduce the size of one component of the project. However, the judge did not consider Light's clarifying testimony that in terms of reducing "the overall size of the station[,]" GIS technology "doesn't really help you[.]"

Finally, the judge found that the Planning Board did not make any findings as to the reasonableness of PSE&G's asserted inability to acquire additional lands from the University that would have enabled PSEG to construct the substation while preserving the 200-foot buffer. Thus, the judge concluded that any "hardship" suffered by PSE&G was "a self-created one."

We disagree with the trial judge's assessment. First, because this was an application for a (c)(2) variance, PSE&G was not required to establish a hardship in order to justify its need for the residential buffer variance. Price, supra, 214 N.J. at 297. As we recently noted in Jacoby, "[a] (c)(2) variance contemplates that even absent proof of a hardship, a bulk or dimensional variance that advances the purposes of the MLUL may be granted if the benefits of the deviation outweigh the detriment." Supra, 442 N.J. Super. at 470. As discussed above, that is clearly the case here.

Contrary to the trial judge's finding, any hardship upon PSE&G as the result of the University's refusal to sell it additional land was obviously not a "self-imposed" one. The University and PSE&G are clearly separate entities and the University was under no obligation to sell PSE&G any more property than it chose to convey. Finally on this point, PSE&G's acquisition of additional land from the University in the manner suggested by plaintiffs as a means of keeping the project within the buffer in terms of Lot 11.04 would appear to move the substation closer to plaintiffs' property.

In sum, the Planning Board properly concluded on the record before it that "the benefits in granting the variance . . . substantially outweigh[ed] the detriments" and that the variance could "be granted without causing substantial detriment to the public good." Because the Planning Board's determination to grant the residential buffer variance was well-supported by substantial credible evidence in the record and was neither arbitrary, capricious, or unreasonable, the trial judge erred by substituting his judgment for that of the Planning Board. Therefore, we reverse the judge's determination and reinstate the Planning Board's approval of PSE&G's application for a residential buffer variance.

IV.

The trial judge also reversed the Planning Board's decision granting PSE&G's request for minor subdivision approval. In explaining this aspect of his decision, the judge stated:

> Because the geometry of the proposed subdivision is at the core of the variance request, it is incumbent upon this court to also reverse the decision of the Board granting PSE&G's application for subdivision. To allow the subdivision grant to stand without an approved site plan upon which it is based is contradictory to common sense.

As a result, the judge declined to decide whether the Planning Board's grant of the subdivision variance for lack of street frontage was reasonable and, solely on that basis, he reversed the Planning Board's decision.

In light of our decision that the Planning Board's approval of the residential buffer variance was appropriate and must be reinstated, the trial judge may now address plaintiffs' challenge to the minor subdivision approval. Therefore, we reverse the judge's denial of the Planning Board's approval of PSE&G's subdivision application and remand so that the judge may promptly consider the matter. We further direct that the remand proceedings be completed within ninety days. Any party or parties aggrieved by the court's ruling on the issue may file a timely new appeal with this court under a new docket number.

V.

Finally, we briefly address the arguments raised by plaintiffs in their cross-appeal in Docket No. A-3014-15. Plaintiffs contend that: (1) an electrical substation is not a permitted use under the University's GDP; (2) the Planning Board "illegally waived" the required EIS; (3) the Planning Board "approved the site plan without the acoustic testing required by local and state law"; and (4) the Planning Board's findings "were not substantiated" or "adequately supported by the record or are contrary to the record."[14]

We have reviewed plaintiffs' contentions on these points in light of the record and the applicable law and conclude that they are without sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E). Nevertheless, we provide the following comments.

Contrary to plaintiffs' assertion, the installation of an electrical substation was clearly consistent with the University's GDP. As the Planning Board noted in its decision approving PSE&G's variance application, the resolution approving the GDP plainly "states that the approval is for '1,800,000 [square feet] of office

[14] Plaintiffs also contend that the term "public utility facilities" does not apply to electrical substations. As discussed in Section II above, this contention lacks merit and, therefore, we need not address it further here.

corporate space and other uses permitted in the OC zone.'" As noted above, "public utility facilities," like the substation at issue here, are expressly permitted in the OC zone under Ordinance 15-03. Therefore, we reject plaintiffs' contention on this point.

Plaintiffs' argument that the Planning Board "illegally waived" the requirement that an EIS be submitted ignores several key facts. First, the GDP between the University and the Township, which was approved by the Planning Board, "stated that an [EIS] would not have to be submitted for development of any portion of the property contained within the GDP." Thus, the Planning Board properly determined that it was not necessary for PSE&G to submit an EIS.

In addition, the Planning Board found, based upon the colloquy between its members on this issue, that the Township's "Environmental Commission reviewed the application and did not request that the applicant submit an" EIS. Moreover, to the extent that an EIS might be required, the Planning Board granted PSE&G's request for a waiver of this requirement as it was permitted to do under the governing ordinance. Under these circumstances, we discern no basis for disturbing the trial judge's determination that plaintiffs' argument on this issue lacked merit.

Plaintiffs next argue that the trial judge incorrectly rejected their contention that the acoustic testing performed by

Clark, who was PSE&G's expert, was flawed. We disagree.

The Planning Board made the following findings with regard to Clark's testimony and the testimony of plaintiffs' expert, Thorpe:

> The applicant presented expert testimony regarding the noise that will be generated from the facility. The testimony presented [from Clark] was that based on the studies performed, the site will not exceed state or local noise standards . . . . As to the issue of acoustics/noise, expert testimony [from Thorpe] was provided in opposition to the application. [Thorpe] testified that she would have performed the noise study in a different manner . . . . In her opinion, her suggested method would have been more thorough than the method used by [Clark]. However, [Thorpe] failed to state that the manner and methods used by [Clark] deviated from acceptable standards in the industry as to how acoustical/noise studies are to be performed. Thus [Thorpe] testified to a preference as to how the applicant's noise study could have been performed rather than raising genuine irregularities or deviations from accepted standards in how the study was performed.

The Planning Board considered the potential negative impact on "the quality of life mainly due to noise generated from the substation," but concluded that "[t]he detrimental impacts are limited to those property owners immediately adjacent to the project site and are mitigated through many factors" including "the significant landscape buffer." Moreover, as a condition of its approval, the Planning Board required PSE&G, "within six months

of the substation operating . . . [to] perform [an] acoustical/noise test to insure the substation generates noise that does not exceed State or local standards."

The trial judge affirmed the Planning Board's determination, noting that while Thorpe criticized certain aspects of Clark's report, she conceded that Clark's study complied with State and local regulations, and that she did not perform her own study. The judge's decision on this point is well supported by the record and, therefore, there is no basis for overturning it.

Finally, plaintiffs argue generally that the Planning Board's decision was not adequately supported by the record. However, as discussed in detail in Section III of this opinion, this is clearly not the case.[15]

VI.

In sum, we affirm the October 13, 2015 order dismissing plaintiffs' challenge to Ordinance 15-03 and Ordinance 17-03. We reverse the portion of the February 10, 2016 order that overturned the Planning Board's approval of PSE&G's residential buffer variance, and we reinstate the Planning Board's approval of that

[15] For completeness purposes, we note that any issues raised by plaintiffs in their appeal in Docket No. A-1218-15 and their cross-appeal in Docket No. A-3014-15 that are not specifically addressed in this opinion lack sufficient merit to warrant discussion. R. 2:11-3(e)(1)(E).

application. We also reverse the trial court's denial of the minor subdivision approval PSE&G received from the Planning Board, and remand to the trial court for consideration of that issue consistent with this opinion. These remand proceedings must be completed within ninety days. In all other respects, the February 10, 2016 order is affirmed.

Affirmed in part; reversed in part; and remanded. We do not retain jurisdiction.