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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-4309-15T3

DUMONT BOARD OF EDUCATION,

Plaintiff-Appellant,

v.

BOROUGH OF DUMONT,

Defendant-Respondent.

Submitted September 28, 2017 – Decided October 11, 2017

Before Judges Simonelli, Haas and Gooden
Brown.

On appeal from Superior Court of New Jersey,
Law Division, Bergen County, Docket No. L-
2099-16.

Plosia Cohen, LLC, attorneys for appellant
(James L. Plosia, Jr. and Jonathan F. Cohen,
of counsel and on the brief; Gordon N. Litwin
and Andrew J. Provence, on the briefs).

Gregg F. Paster & Associates, attorneys for
respondent (Gregg F. Paster, of counsel and
on the brief; Alfred A. Egenhofer, on the
brief).

PER CURIAM

Plaintiff Dumont Board of Education appeals from a May 24, 2016 Law Division order dismissing its complaint against defendant Borough of Dumont seeking, among other things, the reversion of a parcel of land (the Property) to the Board. We dismiss the appeal as moot.

In 1962, the Board conveyed the Property to the Borough. Pursuant to the parties' contract of sale, the Borough agreed to use the Property, which included a schoolhouse, for a borough hall and other allied "municipal purposes[.]" The contract also contained a reverter clause that stated:

[I]n the event the Mayor and Council of the Borough of Dumont shall, at some future date, adopt a resolution declaring that it is no longer in the public interest of the Borough . . . to continue to use the premises in question, then before the Mayor and Council . . . shall have the legal right either to sell or to transfer and convey the premises in question to any third party, the . . . Mayor and Council . . . shall first offer to convey, transfer and give the premises in question, together with all improvements which may then be situated on said premises, to the Board of Education . . . and said transfer and conveyance to be made without any consideration to be paid for same.

The Borough used the Property as a borough hall and to house its police department until 2014, when the county health department determined that the building was uninhabitable due to problems with mold. Although the former schoolhouse had to be closed, the

Borough brought trailers to the Property for police department use.

During the period between 2014 and 2016, the Borough engaged in settlement discussions with a builder that had commenced litigation seeking to construct affordable housing in the municipality. As a result of these negotiations, the Borough and the builder began to consider using the Property as a site for at least some of this housing.

In February 2016, the Borough adopted a resolution designating the Property as "an 'area in need of redevelopment pursuant' to the criteria contained in N.J.S.A. 40A:12A-6[.]" The next month, the Borough passed a resolution approving a settlement it had reached with the builder. Under the terms of the settlement, the builder had the option to construct affordable housing units on one of two separate locations. Under one option, the builder would construct units on the Property as well as on a nearby former farm. Under this option, the builder would also construct new office space on the Property for municipal use. Under the second option, the builder would build all of the units on the site of the former farm and the Property would not be a part of the project.

Upon learning of the settlement, the Board filed its complaint, arguing that the settlement triggered the right of

first refusal provision of the parties' 1962 agreement and the Property should now revert to the Board. Following oral argument, the trial judge rendered a detailed written decision dismissing the Board's complaint.

The judge found that because the Borough would continue to use the Property for municipal offices, and the affordable housing on the site would also serve a municipal purpose, the reverter provision of the 1962 agreement had not been triggered. The judge also rejected the Board's argument that the redevelopment designation for the Property was flawed and that the settlement "violate[d] local redevelopment and housing law."

On June 10, 2016, the Board filed its notice of appeal. On November 1, 2016, however, the Borough and the builder decided that all of the affordable housing units would be constructed on the site of the former farm, rather than on the Property. Thus, the Borough is continuing to use the Property for its police department and it has no current plans to sell, transfer, or convey the Property to any other party.

With this development, the issues presented in this appeal are now clearly moot. "A case is moot if the disputed issue has been resolved, at least with respect to the parties who instituted the litigation." Caput Mortuum, L.L.C. v. S&S Crown Servs., Ltd., 366 N.J. Super. 323, 330 (App. Div. 2004). "[C]ontroversies which

have become moot or academic prior to judicial resolution ordinarily will be dismissed." Cinque v. N.J. Dep't of Corr., 261 N.J. Super. 242, 243 (App. Div. 1993). Dismissal for mootness is appropriate where "a judgment cannot grant effective relief, or there is no concrete adversity of interest between the parties." Caput Mortuum, supra, 366 N.J. Super. at 330. A court may consider events that occur subsequent to the filing of an appeal in determining that an appeal is moot. Ibid. (holding that the appeal was moot after the court was advised at oral argument that the controversy had been resolved subsequent to the filing of the appeal).


Here, the Board's concern about the possible conveyance of the property to the builder for the construction of affordable housing has been resolved by the Borough and the builder's agreement that the housing project will be limited to the site of the former farm. Therefore, this appeal is now moot.

The Board asserts that "the over-arching issue in this appeal is to determine what actions by [the Borough] trigger [the Board's] reversionary rights" and, therefore, it asks that we issue an advisory opinion delineating the parties' future rights and responsibilities under the 1962 agreement. However, "[t]he notion that a court of appeals willy-nilly can decide issues unnecessary to the outcome of the case results in the wholesale issuance of

advisory opinions, a practice our judicial decision-making system categorically rejects." State v. Rose, 206 N.J. 141, 189 (2011). We are not persuaded that this is a matter of significant public importance warranting our determination of abstract legal issues where there is no longer a controversy between the parties. See Zirger v. Gen. Accident Ins. Co., 144 N.J. 327, 330 (1996) (noting that "[o]rdinarily, our interest in preserving judicial resources dictates that we not attempt to resolve legal issues in the abstract").

Dismissed.

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


CLERK OF THE APPELLATE DIVISION