SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-5124-13T3
A-3132-14T3

ENZO MARINELLI, YOLA MARINELLI, JOHN JAMES and GENA JAMES,

Plaintiffs,

and

PRECAST MANUFACTURING COMPANY, L.L.C. and GPF LEASING, L.L.C.,

Plaintiffs/Intervenor-Appellants,

v.

TOWNSHIP OF LOPATCONG, TOWNSHIP OF LOPATCONG MAYOR and COUNCIL, and TOWNSHIP OF LOPATCONG PLANNING BOARD,

Defendants-Respondents.

ENZO MARINELLI, YOLA MARINELLI, JOHN JAMES and GENA JAMES,

Plaintiffs,

and

PRECAST MANUFACTURING COMPANY, L.L.C. and GPF LEASING, L.L.C.,

Plaintiffs/Intervenors-Appellants,

v.

TOWNSHIP OF LOPATCONG, TOWNSHIP OF LOPATCONG PLANNING BOARD and 189 STRYKERS ROAD ASSOCIATES, L.L.C.,

Defendants-Respondents.

CHRISTIE VICTOR, FRANCIS VICTOR, DAVID CORRADO, JAYNE CORRADO, JEFF WACHELKA, ARTUR KUSNIERCZAK, MALGORZATA KUSNIERCZAK, MARGUERITE PURCELLI, MARGARET TAYLOR and LISA ANN CORREA,

Plaintiffs-Appellants,

and

PRECAST MANUFACTURING COMPANY, LLC and GPF LEASING, L.L.C.,

Plaintiffs/Intervenors-Appellants,

v.

TOWNSHIP OF LOPATCONG PLANNING BOARD and 189 STRYKERS ROAD ASSOCIATES, L.L.C.,

Defendants-Respondents.

Argued March 28, 2017 – Decided April 18, 2017

Before Judges Yannotti, Fasciale and Gilson.

On appeal from Superior Court of New Jersey, Law Division, Warren County, Docket Nos. L-374-11, L-517-11, L-32-12 and L-290-12.

Ronald D. Cucchiaro argued the cause for appellants (Weiner Law Group, L.L.P.,

attorneys, Mr. Cucchiaro, on the briefs in A-5124-13 and A-3132-14; John P. Miller, on the brief in A-5124-13).

Lawrence P. Cohen and John F. Casey argued the cause for respondents (Lavery, Selvaggi, Abromitis & Cohen, P.C., attorneys for respondents Township of Lopatcong and Township of Lopatcong Mayor and Council in A-5124-13 and A-3132-14; Chiesa, Shahinian & Giantomasi and Law Offices of Robert S. Dowd, Jr., L.L.C., attorneys for respondent 189 Strykers Road Associates, L.L.C. in A-3132-14; Mr. Cohen, Mr. Casey, James F. Moscagiuri, and Robert S. Dowd, Jr., on the joint brief).

John M. Carbone argued the cause for respondent Township of Lopatcong Planning Board (Carbone and Faasse, attorneys, join in the brief of respondents Township of Lopatcong, Township of Lopatcong Mayor and Council, and 189 Strykers Road Associates, L.L.C. in A-5124-13; Mr. Carbone, on the brief in A-3132-14).

PER CURIAM

Precast Manufacturing Company, L.L.C. (Precast) and GPF Leasing (GPF) (intervenors) appeal from an order upholding defendant Township of Lopatcong's adoption of two zoning ordinances. Ordinances 11-07 and 2011-15 allowed asphalt manufacturing as a conditional use in the southern portion of the research, office, and manufacturing zone (ROM zone south); and designated solar photovoltaic facilities as a permitted use in the Township's research, office, and manufacturing zone (ROM zone),

and as an accessory use in the ROM zone and the highway business zone (HB zone).

For purposes of this opinion, we have consolidated intervenors' appeal and ten other plaintiffs' (the other plaintiffs) appeal from an order upholding defendant Township of Lopatcong Planning Board's approval of an application by defendant 189 Strykers Road Associates, L.L.C. (189 Strykers) seeking to construct and operate an asphalt manufacturing plant in Lopatcong.

We affirm both appeals.

I.

Lopatcong underwent sustained residential development for decades. As a result, it focused on developing its commercial and industrial areas. Its Planning Board renamed the industrial zone as a "ROM" zone, which it divided into three non-contiguous sections. The ROM zone south comprised the largest of these sections, and was most suitable for industrial development due to its proximity to Route 22 and I-78. Lopatcong then engaged in various improvement projects in the ROM zone south, including the area through which Strykers Road traveled.

Before 189 Strykers expressed an interest in developing an asphalt plant on 189 Strykers Road, Lopatcong considered an amendment to its zoning ordinances. It did so in response to legislation mandating renewable energy facilities (such as solar

and photovoltaic facilities) as permitted uses in industrial zones. As a result, Lopatcong reviewed proposed ordinance 11-07 to allow renewable energy facilities. The Council then passed ordinance 11-07.

Enzo and Yola Marinelli, and John and Gena James, Lopatcong residents (the individual plaintiffs), filed a complaint in lieu of prerogative writs against Lopatcong, its Mayor and Council, and Planning Board (defendants). They challenged ordinance 11-07 on several grounds. They argued primarily that defendants had violated the Municipal Land Use Law (MLUL), N.J.S.A. 40:55D-1 to -163; the ordinance amounted to spot zoning; and the ordinance adoption process was tainted by the Mayor's economic ties with an owner of 189 Strykers.

Lopatcong responded by considering proposed ordinance 2011-15. The Planning Board reviewed the proposed ordinance and issued minutes memorializing its comments. The Council considered the comments and sought additional input from the Planning Board. Thereafter, the Council adopted ordinance 2011-15. The individual plaintiffs then filed a complaint in lieu of prerogative writs challenging the adoption of ordinance 2011-15, in which the intervenors joined.

Meanwhile, 189 Strykers had filed an application with the Planning Board for preliminary and final site plan and subdivision

approval for its operation of an asphalt plant under ordinance 11-07. 189 Strykers also filed a substantially similar application after the Council adopted ordinance 2011-15. The Planning Board conducted seven public hearings, heard testimony from thirteen witnesses, including ten experts, and unanimously approved the application.

The individual plaintiffs then filed a complaint challenging the Planning Board's approval of 189 Stryker's site plan applications. The intervenors also intervened in that action, and the other plaintiffs filed a separate complaint challenging the Planning Board's site plan approvals. The court consolidated these two complaints pertaining to the site plan challenges, and then consolidated them with the other two complaints the individual plaintiffs had filed challenging the enactment of both ordinances.

A judge conducted a bench trial as to the validity of the ordinances. He then dismissed the allegations against the Mayor, and found that prior to the adoption of the ordinances, asphalt manufacturing was a permitted use in the ROM zone; the ordinances did not significantly change the ROM zone; the Township complied with the MLUL provisions; and the ordinance did not violate any MLUL requirements. In his 118-page written opinion, the judge rejected the contentions raised by the individual plaintiffs and

upheld the ordinances. Thereafter, the individual plaintiffs dismissed with prejudice their claims as to the ordinances.

A different judge then conducted a bench trial addressing allegations that the Planning Board arbitrarily approved the site plan applications. That judge also rendered a thorough opinion. After rejecting all contentions that the approvals were unreasonable, the judge dismissed the complaints as to the site plan approvals with prejudice.

On appeal from the order upholding Lopatcong's adoption of the zoning ordinances, intervenors argue the court erred by finding that (1) the operation of an asphalt plant was a pre-existing permitted use, and Lopatcong issued adequate notice to nearby property owners even though it was not obligated to do so; (2) Lopatcong complied with the MLUL public notice requirements; (3) the Planning Board correctly submitted a consistency report to the Council; (4) ordinance 2011-15 complied with the MLUL uniformity requirement; (5) ordinance 2011-15 furthered the goals and purposes of the MLUL; (6) ordinance 2011-15 did not constitute spot zoning; and (7) the Mayor did not have a conflict of interest with regard to the ordinances.

On the appeal from the order upholding the Planning Board's approval of an application by 189 Strykers, intervenors contend that the Planning Board failed to provide notice of the hearings

on the applications in accordance with the MLUL and the Open Public Meetings Act (OPMA), N.J.S.A. 10:4-6 to -21; imposed arbitrary limits on the public's participation in the application hearings; allowed 189 Strykers to revise its storm water management plan and private road design after the Planning Board approved the application; and delegated decision-making authority to its engineer. They further contend that the Mayor's alleged conflict of interest tainted the approvals, and that the court erred in ordering no remedial action for the claimed errors.

II.

We begin by addressing intervenors' appeal as to the enactment of the ordinances.

When reviewing a trial court's decision regarding the validity of a local board's determination, "we are bound by the same standards as was the trial court." Fallone Props., L.L.C. v. Bethlehem Twp. Planning Bd., 369 N.J. Super. 552, 562 (App. Div. 2004). Courts must give deference to the actions and factual findings of local boards and may not disturb such findings unless they were arbitrary, capricious, or unreasonable. Id. at 560. A board's actions must be based on substantial evidence. Cell S. of N.J., Inc. v. Zoning Bd. of Adjustment, 172 N.J. 75, 89 (2002). Courts review de novo local boards' determinations on questions

of law. Wilson v. Brick Twp. Zoning Bd. of Adjustment, 405 N.J. Super. 189, 197 (App. Div. 2009).

A.

There is substantial evidence in the record to support the judge's finding that the operation of an asphalt plant was a pre-existing permitted use in the ROM zone.

Chapter 243 of the Township zoning code regulated the ROM zone prior to the adoption of ordinances 11-07 and 2011-15. Section 243-75 of the code permitted in pertinent part "[f]abrication of products made of metal, wood, paper, cement or concrete"; business and professional offices; and "[s]cientific, engineering and/or research laboratories." Section 243-64.2 allowed accessory uses, such as outdoor bulk storage, which Section 243-64.2(a) defined as "the stockpiling or warehousing of vehicles, merchandise, materials and machinery outside the enclosed confines of a building, including but not limited to sand, gravel, dirt, asphalt, lumber, pipes, plumbing supplies, metal, concrete, insulation, construction equipment, construction vehicles, construction materials, storage trailers and containers."

At trial, Lopatcong's Planner George Ritter testified that he and the Planning Board had always considered asphalt manufacturing a permitted use under Section 243-75. He explained

that ordinances 11-07 and 2011-15 did not change this, but rather, allowed for additional regulations by changing asphalt manufacturing to a conditional use. While acknowledging that asphalt manufacturing was not included in the Section 243-75 list of permitted uses, Ritter said that the list was not intended to be exhaustive or exclusive. The judge found that Ritter's trial testimony was credible.

Ritter also testified that asphalt manufacturing was essentially the same as concrete manufacturing, the difference being the type of binding agent used. In the case of concrete, the binding agent was Portland cement, and in the case of asphalt, the binding agent was a petroleum product called bituminous. Ritter stressed that no one had disputed concrete manufacturing was a permitted use under Section 243-75. Indeed, Precast had been manufacturing concrete for years on property located across the street from 189 Strykers Road, and Lopatcong never required it to obtain a variance to do so.

According to the court, Lopatcong "rightly classified" asphalt manufacturing and photovoltaic facilities as "industrial uses," which were permissible in the ROM zone under the original zoning ordinance. For the twelve years that Ritter served as Lopatcong's Planner, he "always considered" asphalt and concrete manufacturing to be permitted uses within the ROM zone. The court

found that the only differences between concrete and asphalt were the binding agents and the temperature at which the two materials were created, and according to Ritter, these distinctions were immaterial for purposes of zoning. Although the court recognized that the ordinances said asphalt and concrete manufacturing had not been a permitted use in the Township, the judge accepted Ritter's testimony that his office erroneously included this language.

We reject intervenors' argument raised for the first time that the ordinances substantially changed the character of the ROM zone by permitting solar photovoltaic facilities and by allowing non-stop production of asphalt. The evidence established that asphalt manufacturing and solar photovoltaic facilities were industrial uses, which Lopatcong allowed in the ROM zone. Furthermore, the State had declared solar energy facilities inherently beneficial uses suitable for inclusion in industrial zones. See N.J.S.A. 40:55D-4 (identifying solar or photovoltaic energy facilities as inherently beneficial uses); N.J.S.A. 40:55D-66.11 (stating "[a] renewable energy facility on a parcel or parcels of land comprising 20 or more contiguous acres that are owned by the same person or entity shall be a permitted use within every industrial district of a municipality").

Thus, whether such facilities previously existed in the ROM

zone was insignificant; the Legislature had determined their suitability for industrial zones. Additionally, no evidence supported intervenors' contention that asphalt manufacturing changed the zone through its constant operations. As the court found, under the former version of the ordinance, nearby businesses operated throughout the night. Asphalt manufacturing was no different.

We conclude that intervenors' argument as to providing notice to nearby property owners is without sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E). We add that Lopatcong is not required to establish when boundary lines of certain nearby properties changed, or that the registered agents of the companies in fact shared the notices. Pursuant to N.J.S.A. 40:55D-12(b), service upon a company's agent was sufficient.

B.

Intervenors contend that the public notices of proposed ordinances 11-07 and 2011-15 were defective because they failed to summarize the nature of the changes proposed by the ordinances, as required by N.J.S.A. 40:49-2.1; and the ordinances' passages were defective because they did not contain a summary of the ordinances' purposes, but merely listed the ordinances by title. The court found that the public notices complied with the MLUL because the titles of the adopted ordinances sufficiently

described their "basic elements," including the permitted uses in their locations. We see no error here.

N.J.S.A. 40:49-2 sets forth the general rule as to notice of proposed and adopted land use ordinances. N.J.S.A. 40:49-2.1(a) provides an alternative form of notice for ordinances that are "in length, six or more octavo pages of ordinary print[.]" Accord Rockaway Shoprite Assocs., Inc. v. City of Linden, 424 N.J. Super. 337, 344 (App. Div. 2011), certif. denied, 209 N.J. 233 (2012). Both statutes require a municipality to provide public notice in a newspaper of a proposed ordinance. N.J.S.A. 40:49-2(a); N.J.S.A. 40:49-2.1. Under N.J.S.A. 40:49-2(a), the notice must include the full text of the proposed ordinance or include its title and a summary. N.J.S.A. 40:49-2.1(a) allows for "a brief summary of the main objectives or provisions of" the proposed ordinance in lieu of the entire text when the proposed ordinance is six or more pages in length.

Upon passage of an ordinance, N.J.S.A. 40:49-2(d) requires the "ordinance, or the title, or the title and a summary" to be published "at least once in a newspaper circulating in the municipality, if there be one, and if not, in a newspaper printed in the county and circulating in the municipality[.]" N.J.S.A. 40:49-2.1 has the same requirement for lengthy ordinances. "Upon passage of any such ordinance, notice of passage or approval shall

be published in accordance with subsection d. of [N.J.S.A.] 40:49-2." N.J.S.A. 40:49-2.1.

Lopatcong published notice of ordinance 11-07 in The Star-Gazette. The notice stated that Lopatcong adopted an ordinance amending Chapter 243 adding (1) asphalt and concrete manufacturing facilities as conditional uses in the ROM zone south of the Norfolk southern railroad; (2) solar photovoltaic facilities as a permitted principal use in the ROM zone; and (3) solar photovoltaic facilities as an accessory use in the ROM zone and in the HB zone south of the Norfolk southern railroad. The notice stated that the ordinance was available for inspection at the municipal clerk's office. Lopatcong published notice in The Express Times that it had adopted ordinance 2011-15. The notice provided the same information as the notice for ordinance 11-07.

These notices complied with N.J.S.A. 40:49-2(a), as they included titles of the ordinances. Upon their passage, Lopatcong published notice by title of the ordinances in accordance with N.J.S.A. 40:49-2(d), which does not require a summary in addition to the title.

C.

Intervenors contend that Lopatcong did not comply with the MLUL consistency report requirement and failed to follow the proper procedure for adopting an ordinance that was inconsistent with the

master plan.

The court found that Ritter's consistency report complied with the MLUL and detailed the ways in which ordinance 2011-15 was substantially consistent with the goals, policy, and uses set forth in the master plan. As Ritter explained, the master plan encouraged "greater flexibility in the type and size of industrial activities" within the ROM zone to encourage business development and offset the costs associated with residential development. Consistent with the master plan's goal to encourage attractive commercial development, the ordinance provided for setbacks and landscaping to "mitigate visual and noise impacts." Additionally, Ritter explained that the uses permitted by ordinance 2011-15 were consistent with existing uses in the ROM zone and would not change the character of the zone. The court underscored that professional planner Elizabeth McKenzie concurred with Ritter's conclusions.

The court also noted the Planning Board's contention that asphalt manufacturing was previously a permitted use in the ROM zone and that the Planning Board had always understood that use to be consistent with the master plan. Lopatcong enacted the ordinances to better control the use by changing its designation from a permitted to a conditional use. That the master plan did not specifically list asphalt manufacturing as an authorized use in the ROM zone was insignificant because the master plan did not

constitute an exhaustive list of specific uses. Similarly, as the court explained, the master plan's silence on solar photovoltaic facilities did not establish that they were inconsistent with the ROM zone. The Legislature had declared them inherently beneficial uses appropriate for industrial zones.

Because the ordinance was consistent with the master plan, the court found that the Council did not have to comply with the procedure set forth in N.J.S.A. 40:55D-64. However, the court found that even if that statute applied, the ordinances were valid because the Council adopted the ordinance by a majority vote and the preamble of the ordinance provided the rationale.

Pursuant to N.J.S.A. 40:55D-64, "[p]rior to the hearing on adoption of a zoning ordinance, or any amendments thereto, the governing body shall refer any such proposed ordinance or amendment thereto to the planning board" in accordance with N.J.S.A. 40:55D-26. N.J.S.A. 40:55D-26 requires the planning board to draft and transmit to the governing body a report on a proposed ordinance that identifies any provisions in the ordinance that are inconsistent with the municipality's master plan and include recommendations. Willoughby v. Planning Bd. of Twp. of Deptford, 326 N.J. Super. 158, 162 (App. Div. 1999). N.J.S.A. 40:55D-26 provides:

> Prior to the adoption of a development regulation, revision, or amendment thereto, the planning board shall make and transmit to the governing body, within 35 days after referral, a report including identification of any provisions in the proposed development regulation, revision or amendment 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 development regulation, revision or amendment thereto, shall review the report of the planning board and may 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 such recommendation.

N.J.S.A. 40:55D-62(a) authorizes a governing body to adopt an ordinance that is inconsistent with the master plan, so long as the majority of the governing body votes to approve the ordinance and the majority places its rationale in a resolution and on the record. Under N.J.S.A. 40:55D-62(a):

> The governing body may adopt or amend a zoning ordinance relating to the nature and extent of the uses of land and of buildings and structures thereon. Such ordinance shall be adopted after the planning board has adopted the land use plan element and the housing plan element of a master plan, and all of the provisions of such zoning ordinance or any amendment or revision thereto shall either be substantially consistent with the land use plan element and the housing plan element of the master plan or designed to effectuate such plan elements; provided that the governing body may adopt a zoning ordinance or amendment or revision thereto which in whole or part is

> inconsistent with or not designed to effectuate the land use plan element and the housing plan element, but only by affirmative vote of a majority of the full authorized membership of the governing body, with the reasons of the governing body for so acting set forth in a resolution and recorded in its minutes when adopting such a zoning ordinance[.]

Neither N.J.S.A. 40:55D-62(a), nor any other section of the MLUL, defines "substantially consistent." Manalapan Realty, L.P. v. Twp. Comm. of Manalapan, 140 N.J. 366, 383 (1995). Thus, one should apply the plain meaning of those terms. Id. at 384. As the Court explained in Manalapan Realty, L.P.:

> Substantial means "[h]aving substance; not imaginary, unreal, or apparent only; true, solid, real," The Compact Oxford English Dictionary 1947 (2d ed. 1993), or, "having real existence, not imaginary[;] firmly based, a substantial argument." The New Lexicon Webster's Dictionary of the English Language 987 (1987). Thus, the concept of "substantially consistent" permits some inconsistency, provided it does not substantially or materially undermine or distort the basic provisions and objectives of the Master Plan.
>
> [Ibid. (alterations in original).]

A planning board's finding that a proposed ordinance is consistent with a master plan "is entitled to deference and great weight." Id. at 383.

Intervenors argue that the evidence did not clearly establish that Ritter submitted a consistency report to the Planning Board

prior to its referral of ordinance 2011-15 to the Council. Further, they claim that although Ritter's report identified solar photovoltaic facilities as inconsistent uses, the Planning Board failed to recognize this.

The Planning Board minutes show it considered a consistency report drafted by Ritter, and then voted to refer the matter to the Council. The Board forwarded to the Council a consistency report that Ritter apparently updated in light of the hearing. In that report, Ritter detailed the ways in which the proposed ordinance was consistent with the master plan.

After the Council removed a Strykers Road requirement from the proposed ordinance, it referred the matter to the Planning Board, and at the Planning Board's request, Ritter updated his consistency report to reflect the change. Thus, even if the Board did not initially have a written report at one of the hearings, it had one at a later hearing at which it approved the ordinance.

Intervenors argue that because proposed ordinance 2011-15 was inconsistent with the master plan, Lopatcong had to comply with the procedure set forth in N.J.S.A. 40:55D-62 to lawfully adopt the ordinance. That statute, they claim, required the Council to adopt a resolution setting forth its rationale for approving the ordinance. They claim that ordinance 2011-15 is invalid because the Council failed to do this.

As the court found, the ordinance was consistent with the master plan, thus Lopatcong did not have to follow the procedure set forth in N.J.S.A. 40:55D-62.

D.

Intervenors contend that ordinance 2011-15 violated the MLUL uniformity standard because it authorized asphalt manufacturing in only one part of the ROM zone without a reasonable explanation for not allowing it in other parts of the ROM zone.

The court found that the ROM zone regulations, including ordinance 2011-15, did not offend the MLUL uniformity provision because the variations within the zone were rationally related to the characteristics of the land. In comparison to the northern and western ROM zones, the southern ROM zone was larger in size and was located near major highways. It also had newly constructed access to the highways through Strykers Road, which the Township had improved in order to attract industrial development in the area. Access to sewers was also limited. Thus, the court concluded that restricting asphalt and concrete manufacturing to the ROM zone south was justified by the characteristics of the area.

The court also noted that the MLUL's definition of conditional use recognized that "locational standards" for a particular property may vary within a zone. That definition defined

conditional use as

> a use permitted in a particular zoning district only upon a showing that such use in a specified location will comply with the conditions and standards for the location or operation of such use as contained in the zoning ordinance, and upon the issuance of an authorization therefor by the planning board.
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> [N.J.S.A. 40:55D-3.]

The MLUL uniformity provision provides:

> The zoning ordinance shall be drawn with reasonable consideration to the character of each district and its peculiar suitability for particular uses and to encourage the most appropriate use of land. The regulations in the zoning ordinance shall be uniform throughout each district for each class or kind of buildings or other structure or uses of land, including planned unit development, planned unit residential development and cluster development, but the regulations in one district may differ from those in other districts.
>
> [N.J.S.A. 40:55D-62(a).]

The uniformity provision is rooted in notions of due process and equal protection of law. Rumson Estates, Inc. v. Mayor & Council of Fair Haven, 177 N.J. 338, 357 (2003). It was intended to assure "potentially hostile landowners that all property which was similarly situated would be treated alike." Ibid. (quoting Robert M. Anderson, American Law of Zoning, § 5.22 at 333-34 (2d ed. 1977)).

The statute does not require complete uniformity within a

zone. Id. at 357-58. A municipality may make distinctions within a zone so long as the classifications are reasonable and not arbitrary or unduly discriminatory. Id. at 358. "Constitutional uniformity and equality requires that classification be founded in real and not feigned differences having to do with the purpose for which the classes are formed." Id. at 359 (quoting Roselle v. Wright, 21 N.J. 400, 410 (1956)).

To promote industrial development and generate tax revenue, Lopatcong authorized asphalt manufacturing in the southern portion of the ROM zone because that part of the zone was best suited for the use based on its characteristics. The court's findings were supported by the evidence and were not arbitrary or capricious. Riggs v. Long Beach, 109 N.J. 601, 610-11 (1988).

E.

Intervenors contend that the ordinances were invalid because they did not advance any of the MLUL purposes set forth in N.J.S.A. 40:55D-2. They argue that asphalt manufacturing is not related to solar photovoltaic facilities, which are an inherently beneficial use of land, and allege that Lopatcong included asphalt manufacturing in the ordinance to confuse or mislead the public.

The judge found that ordinance 2011-15 furthered the purposes of the MLUL because it improved Lopatcong's land use scheme and encouraged appropriate and responsible commercial and industrial

growth near roadways suitable for such development. This, in turn, promoted fiscal balance, a stable tax base and employment opportunities, which were all consistent with the MLUL goals. No credible evidence supported intervenors' claim that Lopatcong intended to mislead or confuse the public.

To be valid, a zoning ordinance must advance at least one of the MLUL purposes set forth in N.J.S.A. 40:55D-2. Manalapan Realty, L.P., supra, 140 N.J. at 380. At the time, those purposes were as follows:

> a. To encourage . . . the appropriate use or development of all lands . . . in a manner which will promote the public health, safety, morals, and general welfare;
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> b. To secure safety from fire, flood, panic and other natural and man-made disasters;
>
> c. To provide adequate light, air and open space;
>
> d. To ensure that the development . . . does not conflict with the development and general welfare of neighboring [lands];
>
> e. To promote the establishment of appropriate population densities and concentrations that will contribute to the well-being of persons, neighborhoods, communities and regions and preservation of the environment;
>
> f. To encourage the appropriate and efficient expenditure of public funds . . .;
>
> 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;

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;

i. To promote a desirable visual environment through creative development techniques and good civic design and arrangement;

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;

k. To encourage planned unit developments which incorporate the best features of design and relate the type, design and layout of residential, commercial, industrial and recreational development to the particular site;

l. To encourage senior citizen community housing construction;

m. To encourage coordination of the various public and private procedures and activities shaping land development with a view of lessening the cost of such development and to the more efficient use of land;

n. To promote utilization of renewable energy resources;

o. To promote the maximum practicable recovery and recycling of recyclable materials . . . through . . . planning practices designed to incorporate the State Recycling Plan goals and

> to complement municipal recycling programs; and
>
> p. To enable municipalities the flexibility to offer alternatives to traditional development, through the use of equitable and effective planning tools including clustering, transferring development rights, and lot-size averaging in order to concentrate development in areas where growth can best be accommodated and maximized while preserving agricultural lands, open space, and historic sites.
>
> [N.J.S.A. 40:55D-2.]

Here, ordinance 2011-15 promoted commercial and industrial growth near major roadways, encouraged fiscal balance, a stable tax base and job creation, and allowed for renewable energy resource centers, all of which were consistent with the purposes set forth in N.J.S.A. 40:55D-2(a), (g), (h), (i), (k), (m) and (n). No credible evidence established any basis to find an improper motive or bad faith on part of Lopatcong. Although it is true that solar photovoltaic facilities — an inherently beneficial land use — is generally different from asphalt manufacturing plants, the two uses were correctly characterized as industrial uses. Thus, they shared a common land use, which the ordinance addressed.

F.

The court correctly rejected intervenors' contention that the ordinance amounted to spot zoning. The term "spot zoning" refers

to a zoning ordinance that "benefit[s] 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). If, in assessing a spot-zoning challenge, a court finds that an ordinance "serves two purposes — one lawful and one unlawful — a court should not inquire into which purpose the municipality intended the ordinance to serve." Gallo v. Mayor & Twp. Council of Lawrence Twp., 328 N.J. Super. 117, 127 (App. Div. 2000). The lawful purpose will suffice to validate the ordinance. Ibid. Similarly, "[a]n ordinance enacted to advance the general welfare by means of a comprehensive plan is unobjectionable even if the ordinance was initially proposed by private parties and these parties are in fact its ultimate beneficiaries." Ibid. (alteration in original) (quoting Taxpayers Ass'n of Weymouth Twp., supra, 80 N.J. at 18).

The ordinance did not benefit one property owner, but rather, Lopatcong as a whole. Since at least 1989, Lopatcong had been encouraging development in the ROM zone, and the ordinance furthered that purpose. As the court found, at least six other parcels within the ROM zone south met the requirements for the conditional use of an asphalt or concrete facility. Thus, the ordinances did not single out one piece of property. Further,

because asphalt and concrete manufacturing had been permitted uses in the ROM zone prior to the ordinances' adoption, Lopatcong did not create the use to benefit one land owner.

G.

Intervenors contend that ordinance 2011-15 is invalid as tainted by the Mayor's alleged conflict of interest. They claim that the Mayor was a partner in a law firm with the brother of an owner of 189 Strykers, and that this at least created an appearance of impropriety that rendered the ordinance invalid.

A public official may not participate "in judicial or quasi-judicial proceedings in which the official has a conflicting interest that may interfere with the impartial performance of his [or her] duties as a member of the public body." Wyzykowski v. Rizas, 132 N.J. 509, 523 (1993) (quoting Scotch Plains-Fanwood Bd. of Educ. v. Syvertsen, 251 N.J. Super. 566, 568 (App. Div. 1991)). Whether a conflict existed depends on the facts of the situation. Ibid. "The question will always be whether the circumstances could reasonably be interpreted to show that they had the likely capacity to tempt the official to depart from his sworn public duty." Ibid. (quoting Van Itallie v. Franklin Lakes, 28 N.J. 258, 268 (1958)). As the Court explained in Wyzykowski:

> Local governments would be seriously handicapped if every possible interest, no matter how remote and speculative, would serve

> as a disqualification of an official. If this were so, it would discourage capable men and women from holding public office. Of course, courts should scrutinize the circumstances with great care and should condemn anything which indicates the likelihood of corruption or favoritism. But in doing so they must also be mindful that to abrogate a municipal action at the suggestion that some remote and nebulous interest is present, would be to unjustifiably deprive a municipality in many important instances of the services of its duly elected or appointed officials. The determinations of municipal officials should not be approached with a general feeling of suspicion, for as Justice Holmes has said, "Universal distrust creates universal incompetency." Graham v. United States, 231 U.S. 474, 480, 34 S. Ct. 148, 151, 58 L. Ed. 319, 324 (1913); [see also] Ward v. Scott (II), 16 N.J. 16 (1954).
>
> [Id. at 523-24 (quoting Van Itallie, supra, 28 N.J. at 269).]

The court rejected intervenors' conflict of interest challenge as unsupported by credible evidence. The judge stated emphatically that "[t]here is simply no evidence to support the [intervenors'] claims [of a conflict] other than surmise, shadow and speculation." Furthermore, the Mayor recused himself from voting on ordinance 2011-15.

We conclude that intervenors' remaining arguments are without sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).

III.

We now turn to the appeal pertaining to the Planning Board's approval of the site plans.

A.

We see no error as to the notice provided under the MLUL. Pursuant to N.J.S.A. 40:55D-10(a), a "municipal agency shall hold a hearing on each application for development[.]" Notice of the hearing

> shall state the date, time and place of the hearing, the nature of the matters to be considered and, in the case of notices pursuant to subsection 7.1 of this act, an identification of the property proposed for development by street address, if any, or by reference to lot and block numbers as shown on the current tax duplicate in the municipal tax assessor's office, and the location and times at which any maps and documents for which approval is sought are available pursuant to subsection 6b.
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> [N.J.S.A. 40:55D-11.]

To comply with N.J.S.A. 40:55D-11, the notice must "fairly apprise[]" those who may be affected by the development of the nature of the plan "so that they may make an informed determination as to whether they should participate in the hearing or, at the least, look more closely at the plans and other documents on file." Pond Run Watershed Ass'n v. Twp. of Hamilton Zoning Bd. of Adjustment, 397 N.J. Super. 335, 351 (App. Div. 2008) (emphasis omitted) (quoting Perlmart of Lacey, Inc. v. Lacey Twp. Planning

Bd., 295 N.J. Super. 234, 237-38 (App. Div. 1996)). The notice must "accurately identify[] the type of use or activity proposed by the [land use] applicant in laymen's terms, rather than the technical zoning term for that use . . . [.]" Id. at 352 (second and third alterations in original) (quoting Perlmart of Lacey, supra, 295 N.J. Super. at 239).

Proper notice is a jurisdictional requirement to a planning board's exercise of authority. Id. at 350. "A board's decision regarding a question of law, such as whether it has jurisdiction over a matter, is subject to de novo review by the courts and thus is afforded no deference." Ibid.

Intervenors contend that because 189 Strykers intended to use Lot 6.05 for storm water discharge, and because Lots 6.02 and 6.05 used a private driveway for access to Strykers Road, the notice of the hearings had to include those properties as part of the development. The final resolution granting site plan approvals, however, confirmed that the private road was, in fact, not a separate lot. The resolution granted "approval to subdivide the tract into two (2) parcels" with a "34 foot wide access road" that would service the parcels. It did not define the road as a separate parcel or lot.

Moreover, the court found that the storm water management plan made no significant change to the flow of water on the

property. No credible evidence established that storm water runoff was a significant concern for the property. The property was not located in a flood zone and had no protected wetlands, buffers, or wildlife. Thus, the likelihood that nearby property owners would be concerned with the construction, so as to require MLUL notice, was virtually nonexistent.

Finally, we see no merit in intervenors' contention that the notice should have included the resource recycling facility as a separate conditional use in the ROM zone. As the court found, the resource recycling facility was not separate from the asphalt manufacturing plant, but rather was part of the asphalt manufacturing process. The notice advised that the applicant sought site plan approval "to permit the construction and operation of an asphalt manufacturing facility." Thus, the notice adequately advised nearby property owners of the nature of the proceeding.

B.

We reject intervenors' contention that Lopatcong violated the OPMA, and that the court erred in ordering no action to remedy the alleged violations. They claim that the Planning Board failed to publish notice of its meetings in two New Jersey newspapers; used an out-of-state newspaper to effectuate notice; and did not include an agenda in the notices of hearings dated February 23, February 29, March 1 and March 5, 2012. They also argue that the court

erred in finding that the MLUL notice helped cure the purported OPMA errors, and in finding that the OPMA notice errors did not warrant remedial action.

The OPMA is premised on the right of New Jersey citizens to "have adequate advance notice of and the right to attend all meetings of public bodies at which any business affecting the public is discussed or acted upon." N.J.S.A. 10:4-7; see also Polillo v. Deane, 74 N.J. 562, 570-71 (1977) (explaining that the OPMA helps prevent corruption and furthers the ideal that the government is of and for the people). The statute makes exceptions to the rule "where otherwise the public interest would be clearly endangered or the personal privacy or guaranteed rights of individuals would be clearly in danger of unwarranted invasion." Polillo, supra, 74 N.J. at 572 (quoting N.J.S.A. 10:4-7). "[T]he statute should be 'liberally construed in order to accomplish its purpose and the public policy of this State.'" McGovern v. Rutgers, 211 N.J. 94, 99-100 (2012) (quoting N.J.S.A. 10:4-21); accord Burnett v. Gloucester Cty. Bd. of Chosen Freeholders, 409 N.J. Super. 219, 233 (App. Div. 2009) (holding that "the Act must be liberally construed in favor of openness").

The OPMA provides that "no public body shall hold a meeting unless adequate notice thereof has been provided to the public." N.J.S.A. 10:4-9(a). A "public body" includes any board, council,

or group of people authorized to "perform a public governmental function affecting the rights, duties, obligations, privileges, benefits, or other legal relations of any person[.]" N.J.S.A. 10:4-8(a). "Meeting" refers to "any gathering . . . attended by, or open to, all of the members of a public body, held with the intent . . . to discuss or act as a unit upon the specific public business of that body." N.J.S.A. 10:4-8(b). "Public business" refers to "all matters which relate in any way, directly or indirectly, to the performance of the public body's functions or the conduct of its business." N.J.S.A. 10:4-8(c).

The OPMA defines "adequate notice" as

> written advance notice of at least 48 hours, giving the time, date, location and, to the extent known, the agenda of any regular, special or rescheduled meeting, which notice shall accurately state whether formal action may or may not be taken and which shall be (1) prominently posted in at least one public place reserved for such or similar announcements, (2) mailed, telephoned, telegrammed, or hand delivered to at least two newspapers which newspapers shall be designated by the public body to receive such notices because they have the greatest likelihood of informing the public within the area of jurisdiction of the public body of such meetings, one of which shall be the official newspaper, where any such has been designated by the public body or if the public body has failed to so designate, where any has been designated by the governing body of the political subdivision whose geographic boundaries are coextensive with that of the

> public body and (3) filed with the clerk of the municipality . . . .
>
> [N.J.S.A. 10:4-8(d).]

N.J.S.A. 10:4-9(a) provides that "no public body shall hold a meeting unless adequate notice thereof has been provided to the public[,]" unless one of the exceptions in subsection (b) applies ~~y~~. Subsection (b) provides exceptions "[u]pon the affirmative vote of three quarters of the members present" if four conditions are met. Subsections (b)(1) and (2) require the matter is urgent and important and the meeting is limited to those matters of urgency and importance only. N.J.S.A. 10:4-9(b)(1) and (2). The provisions in subsection (b)(3) and (b)(4) require:

> (3) notice of such meeting is provided as soon as possible following the calling of such meeting by posting written notice of the same in the public place . . . and also by notifying the two newspapers . . . by telephone, telegram, or by delivering a written notice of same to such newspapers; and
>
> (4) either (a) the public body could not reasonably have foreseen the need for such meeting at a time when adequate notice could have been provided; or (b) although the public body could reasonably have foreseen the need for such meeting at a time when adequate notice could have been provided, it nevertheless failed to do so.
>
> [N.J.S.A. 10:4-9(b)(3) and (4).]

N.J.S.A. 10:4-15(a) provides that "[a]ny action taken by a public body at a meeting which does not conform with the provisions

of this act shall be voidable in a proceeding in lieu of prerogative writ in the Superior Court." The statute includes an exception where the governing body gave "advance published notice of at least 48 hours" in accordance with another law. N.J.S.A. 10:4-15(a).[1] "[S]trict adherence to the letter of the law is required in considering whether a violation of the Act has occurred." Polillo, supra, 74 N.J. at 578. However, not every violation of the OPMA requires reversal of the government action that resulted from an inadequately noticed meeting. Id. at 579.

In Liebeskind v. Mayor & Municipal Council of Bayonne, 265 N.J. Super. 389, 394-95 (App. Div. 1993), the court explained that

> invalidation of public action is an extreme remedy which should be reserved for violations of the basic purposes underlying the Act. AQN Assocs., Inc. v. Township of Florence, 248 N.J. Super. 597, 614-15 (App. Div.), certif. den[ied,] 126 N.J. 385 (1991). Polillo[, supra,] 74 N.J. 562 [], expressly permits discretion in the fashioning of remedies for technical violations of the Act which do not result from bad faith motives and which do not undermine the fundamental purposes of the [OPMA.]

Thus, while the OPMA requires strict compliance, whether a governing body substantially complied with the requirements "carries some weight on the question of remedy and relief." Polillo, supra, 74 N.J. at 579.

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[1] Intervenors refer to this as "the last proviso" clause.

In fixing a remedy, courts are afforded "maximum flexibility" based on "the nature, quality and effect of the noncompliance." Ibid. They should consider whether: the public had any notice of the meeting; members of the public attended the meeting; evidence was presented at the meeting; and any significant decision was made as a result of the meeting. Id. at 579-80. Where the court finds a lack of bad faith and only technical noncompliance with the OPMA, it may affirm the government action and order future compliance with the OPMA. Liebeskind, supra, 265 N.J. Super. at 394-95.

Here, the court found that Lopatcong failed to provide forty-eight-hours advance notice in two newspapers for the February 29, March 1, and March 5, 2012, meetings. Notice of these meetings appeared only in The Express Times. The court noted that Margaret Beth Dilts, the township clerk, custodian of records, and secretary on land use for the Planning Board, notified The Star Gazette of the hearings on the following dates: February 23 for the February 29 hearing; February 27 for the March 1 hearing; and March 2 for the March 5 hearing. However, the notifications were untimely for purposes of The Star Gazette's weekly publication deadlines.

The court found, however, that Lopatcong did not intentionally attempt to conceal the hearings from the public and underscored that the MLUL notice provided details on the nature

of the hearings. Based on the Polillo and Liebeskind decisions, the court concluded that the Township substantially complied with the OPMA, and that the lack of notice in two newspapers did not warrant invalidation of the Board's decisions. The press regularly reported on the contents of the hearings, and the public attendance at the hearings was high.

Further, notice of the meetings appeared in The Express Times, which the court found was widely distributed in the area, and numerous press articles show that the application and Board proceedings were not kept secret. As we stated in Liebeskind, "invalidation of public action is an extreme remedy which should be reserved for violations of the basic purposes underlying the Act." Supra, 265 N.J. Super. at 394. The violations in this case did not offend the basic purposes of the OPMA.

As to the out-of-state newspaper, the court found that publishing in The Express Times "ma[de] some sense" because it was the newspaper most likely to inform the public at large of the Township's actions. Thus, publication in that paper furthered the purpose of the OPMA. Even if the Township erred in publishing notice in an out-of-state paper, which it did not, the error would not be a basis to invalidate the Board's action because, as the court found, the Board did not act in bad faith and its actions furthered the purpose of the OPMA.

We likewise conclude there is no merit to intervenors' contention that remedial action was necessary as a result of Lopatcong's failure to include an agenda in the notices for the February 23, February 29, March 1, and March 5, 2012, hearings. Any such errors were insufficient to void the Planning Board's action. The judge stated, "[e]veryone knew what this hearing was going to be about." No evidence established a bad faith attempt to conceal the nature of the hearing, and the MLUL notice contained "so much" more detail than simply listing the application in the agenda.

Intervenors argue that the court erred in finding that the Board's MLUL notice fell within the "last proviso clause" of N.J.S.A. 10:4-15(a), which provides that an action taken in violation of the OPMA is voidable unless the governing body provided at least forty-eight hours' notice of the hearing in accordance with another law. As explained in County of Monmouth v. Snyder-Westerlind Corp., 156 N.J. Super. 188, 193 (App. Div.), certif. denied, 77 N.J. 473 (1978), "the purpose of the clause was to avoid duplication of notice in instances such as the adoption of ordinances which, by their own procedure, require published notice before consideration." We conclude that the judge correctly determined that any purported OPMA violations did not warrant invalidation of the Planning Board's decisions.

C.

Intervenors contend the Planning Board delegated approval power to its engineer by providing in the May 23, 2012 resolution that if the applicant was unable to obtain an easement to install the drainage pipe, it could draft an alternative storm water management plan, so long as the Planning Board's engineer approved the plan. They claim that the storm water management plan was an essential element of the development; thus, the change to it should have been presented to the Planning Board for a decision after a public hearing. Additionally, they maintain that the engineer decided that the driveway on 189 Strykers's property should be a private road.

The court found that the Planning Board, not the engineer, made the decision to have the driveway remain a private access road to avoid the cost of maintenance to Lopatcong. N.J.S.A. 40:55D-24 of the MLUL provides that in considering an application for subdivision or site plan approval, a planning board "may employ . . . experts, and other staff and services as it may deem necessary." N.J.S.A. 40:55D-24; see also Shakoor Supermarkets, Inc. v. Old Bridge Twp. Planning Bd., 420 N.J. Super. 193, 205 (App. Div.), certif. denied, 208 N.J. 598 (2011) (finding proper a board's decision to have its professional consultant review a revised plan to determine whether it complied with testimony given

at a hearing).

The Board agreed with its engineer that to save costs, 189 Strykers should maintain the road as private. The final decision was made by the Board. With respect to the storm water management plan, 189 Strykers submitted it to the Board for review by the Board and its professionals. At the hearings, 189 Strykers's engineer Kevin Smith testified to the nature of the plan, explaining that he was confident he could draft an alternative plan if 189 Strykers was unable to secure an easement to install the drainage pipe.

We conclude that intervenors' remaining arguments are without sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).

Affirmed.