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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-5294-15T4

LARRY PRICE,

Plaintiff-Respondent,

v.

CITY OF UNION CITY,

Defendant-Appellant.

Argued November 9, 2017 – Decided December 21, 2017

Before Judges Koblitiz, Manahan and Suter.

On appeal from Superior Court of New Jersey,
Law Division, Hudson County, Docket No. L-
2584-15.

R. Scott Fahrney argued the cause for
appellant (Kaufman, Semeraro & Leibman, LLP,
attorneys; Mark Semeraro and R. Scott Fahrney,
on the briefs).

Larry Price, respondent, argued the cause pro
se.

PER CURIAM

In this action in lieu of prerogative writs, defendant City
of Union City (City) appeals from an order declaring that the

Board of Commissioners' (Commissioners) May 5, 2015 resolution and June 30, 2015 redevelopment plan are null and void. We reverse.

In August 2014, the Commissioners adopted a resolution authorizing the Union City Planning Board (Board) to conduct a preliminary investigation and report to determine whether the property designated as Block 210, Lots 11-16 constituted an area in need of redevelopment according to the criteria set forth in N.J.S.A. 40A:12A-5 of the Local Redevelopment and Housing Law (LRHL), N.J.S.A. 40A:12A-1 to -73. The investigation was conducted by Community Housing & Planning Associates, Inc., the City's professional planning consultant. David Spatz, the City Planner, prepared the Redevelopment Area Report (Report) for the Board on behalf of Community Housing. The Report outlined the criteria for redevelopment per N.J.S.A. 40A:12A-5, as well as Spatz's evaluation and conclusion for redevelopment of the area under N.J.S.A. 40A:12A-5(d), (e) and (h).

Lots 11 through 14 consist of a parking lot. The parish rectory for St. John's Lutheran Church occupies Lots 15 and 16. Both the rectory and parking lot are owned and utilized by the church. Public use of the parking lot is permitted by the church on a donation basis.

In preparation of the Report, Spatz indicated that "[s]everal research methods were utilized, including a physical inspection

of the properties and structures . . . a review of the existing land use for the property, review of zoning and planning documents, as well as a review of [the] City's tax, police and building records for the area." The Report described Lots 15 and 16 as:

contain[ing] a [four-]story dwelling in fair condition; the building is being utilized as the parish house for the adjacent church. The building is over 100 year[s] old which indicates many of the electrical, plumbing and heating systems may not meet current building codes and may be in need of repair or replacement. The age of the building also indicates the probably [sic] presence of lead based paint. An interior inspection noted that there was a significant leak in the basement caused by cracks in the foundation wall.

A municipal governing body may conclude by resolution that a delineated area is in need of redevelopment if:

d. Areas with buildings or improvements which, by reason of dilapidation, obsolescence, overcrowding, faulty arrangement or design, lack of ventilation, light and sanitary facilities, excessive land coverage, deleterious land use or obsolete layout, or any combination of these or other factors, are detrimental to the safety, health, morals, or welfare of the community.

. . . .

h. The designation of the delineated area is consistent with smart growth planning principles adopted pursuant to law or regulation.

[N.J.S.A. 40A:12A-5(d), (h).]

The Report concluded that three criteria of N.J.S.A. 40A:12A-5 were met: criterion (d), due to the age and dilapidation of the property; criterion (e), due to the growing or total lack of proper utilization of areas; and criterion (h), as in accordance with smart growth principles.¹

In March 2015, the Board held a hearing to review the Report and determine if the statutory criteria for redevelopment were satisfied. The Board heard testimony from Spatz and the plaintiff, Larry Price.

Spatz testified regarding the criteria and the determinations relative to those criterion noted in the Report. Spatz testified that the property met criterion (d), as the basement flooding would affect the electrical system in the building; the probable presence of lead paint was a danger to the occupants; and the potential for collapse due to the cracked foundation was dangerous. Spatz cited to the public policy benefit affordable housing provided through redevelopment, and the City's own master plan objectives. Concerning criterion (h), Spatz testified that the City is located in Planning Area A-1 (PA-1) of the State's Development and Redevelopment Plan, which promotes smart growth.

¹ The City does not appeal the court's holding relating to criterion (e).

Price testified that although the condition of the building was a concern, it was not detrimental to the surrounding community. Price admitted he based his determination on "life experience" as he was not qualified as an expert in planning. Price asserted that Spatz's consideration of the PA-1 planning area that any site in the City could be designated in need of redevelopment.

Two lay witnesses also testified during the hearing, including a parishioner, Joseph Deurso, who had worked as an electrician for many years. Deurso testified regarding the condition of the rectory basement, which was flooded and in bad shape. Although not qualified as an expert, Deurso offered his opinion that the building was unsafe and the chimney was in danger of collapsing. The second witness, Brandon Rocker, was a resident of the City. Rocker testified that he had fallen multiple times in the parking lot next to the church.

On March 24, 2015, the Board memorialized its findings by resolution which declared the area in need of redevelopment, in accordance with N.J.S.A. 40A:12A-5(d), (e), and (h). In the resolution, the Board stated in pertinent part:

It further finds pursuant [to] criteria (d) By reason of dilapidation, faulty arrangement or design, deleterious land uses, or any combination of these or other factors the building in the study is detrimental to the safety, health, morals or welfare of [the] City and the surrounding neighborhood. [T]he

residential building is over 100 years in age and contains many elements that would [render] it in substandard condition. It cannot provide handicapped accessibility due to its age and the topographic conditions on the site. The totality of negative conditions would indicate that it would not be cost effective to repair and/or replace the various systems. And pursuant [to] criteria (h) The City . . . is located in the PA-1, Metropolitan Planning Area of the New Jersey State Development and Redevelopment Plan; additionally, the City is located within the designated Hudson County Urban Complex. Smart growth planning principles met by the designation of the study area as an area in need of redevelopment include: the revitalization of the State's [c]ities and [t]owns by the protection, preservation and development . . . in accordance with . . . the provisions of the State Plan;

. . . .

. . . The study area contains a deteriorated structure and an underutilized parking area which could potentially provide valuable and useful development opportunities for affordable housing. Additionally, the designation of the area would be consistent with smart growth planning principles as stated in the State Development and Redevelopment Plan, as well as the City's Master Plan.

The Commissioners held a hearing on April 7, 2015 to discuss the Board's recommendation. The principal witness was Spatz, who reiterated the information provided in the Report. Mayor Brian Stack also testified as to the need and importance of affordable

housing.² Subsequently in June, the Commissioners determined the area to be a non-condemnation redevelopment area and adopted a resolution memorializing their vote. The Commissioners unanimously declared the area in need of redevelopment and authorized the Board to prepare a redevelopment plan.

On June 15, 2015, Spatz presented the redevelopment plan to the Commissioners. After a public hearing, the plan was adopted and an ordinance memorializing its adoption was passed. The resolution noted the "Redevelopment Plan is being adopted as a 'Non-Condensation Redevelopment Plan'; and as such explicitly precludes the City from using the power of eminent domain to acquire any property in the redevelopment area[.]" Subsequently, Price filed two complaints in lieu of prerogative writs, which were consolidated, challenging the Commissioners' designation of the properties as an area of redevelopment and the redevelopment plan.

In a written opinion, the Law Division judge declared the City's redevelopment resolution and plan null and void. The judge held as to criterion (h) that the "[S]tate's master plan and smart growth principles are not independent grounds for finding an area

² The plan called for redevelopment of the lots for construction of affordable housing for developmentally disabled adults.

'in need of development'." The judge held "a municipality may only zone or regulate land on smart growth principles after it has adopted the state's smart growth principles in its plan."³

Further, the judge did not find a detrimental economic, social, or aesthetic impact of the rectory on the community that would satisfy criterion (d). The judge found insufficient evidence to conclude the interior of the parish building was dangerous and noted that Spatz's report included only "casual observations[,] " and was conclusory. The judge acknowledged that while Price, in contravention to the plan, "did not produce expert testimony," the City did not provide sufficient evidence of "detriment" to the community within the Report or the resolution. Given the judge's determination relative to the failure by the City to satisfy any of the statutory criteria, he did not determine if the redevelopment plan conflicted with state law or the City's master plan.⁴

I.

The City raises the following points on appeal:

³ As our decision is premised upon the City's satisfaction of criterion (d), we do not address the judge's holding on criterion (h).

⁴ As to criterion (e), which is not before us, the judge held the statute's requirement that ownership issues must cause the properties condition was not met as the church owned the property free and clear. Thus, the judge held the City's reliance on criterion (e) failed as well.

POINT I

THE COURT ERRED IN HOLDING THAT CRITERION (H) WAS NOT A SUFFICIENT BASIS TO DECLARE THE AREA IN NEED OF REDEVELOPMENT.

POINT II

THE COURT ERRED IN FINDING THAT THERE WAS NOT "SUBSTANTIAL EVIDENCE" ON THE RECORD TO UPHOLD THE CITY'S DETERMINATION THAT CRITERION (D) APPLIED TO THE SUBJECT PROPERTY.

POINT III

IF THE APPELLATE DIVISION FINDS THAT THE COURT ERRED IN ITS HOLDING BELOW, AND FINDS THE DECLARATION OF THE AREA IN NEED OF REDEVELOPMENT, THE COURT MUST EXAMINE THE FOLLOWING:

[A]. THE REDEVELOPMENT PLAN IS NOT SPOT ZONING.

[B]. THE REDEVELOPMENT PLAN DOES NOT CONFLICT WITH STATE LAW.

[C]. THE REDEVELOPMENT PLAN DOES NOT CONFLICT WITH THE MASTER PLAN.

A municipal governing body has the authority to determine by resolution whether areas that are within its jurisdiction are areas in need of redevelopment, but must first, by resolution, "authorize the planning board to undertake a preliminary investigation to determine whether the proposed area is a redevelopment area" N.J.S.A. 40A:12A-6(a). The planning board will make the determination after public notice and a public hearing, and then recommend to the municipal governing body whether

it should designate the area in need of redevelopment. N.J.S.A. 40A:12A-6(b). After receiving the recommendation, the municipal governing body may adopt a resolution determining that the area is in need of redevelopment. N.J.S.A. 40A:12A-6(b)(5)(b).

The role of the trial court in reviewing municipal actions is limited to determining whether such actions are supported by substantial credible evidence. See Levin v. Twp. Comm. of Bridgewater, 57 N.J. 506, 537-39 (1971). It is not the province of the trial court to "second guess" municipal action, "which bears with it a presumption of regularity." Forbes v. Bd. of Trustees, 312 N.J. Super. 519, 532 (App. Div. 1998).

The burden is on the party challenging the municipal action to demonstrate that the action was "not supported by substantial evidence, but rather is the result of arbitrary or capricious conduct on the part of the municipal authorities. Absent such a demonstration [by] the objector, sufficient to raise a material factual dispute, summary judgment must be granted in favor of [the municipal authority]." Concerned Citizens of Princeton, Inc. v. Mayor and Council of Princeton, 370 N.J. Super. 429, 453 (App. Div. 2004) (citations omitted). Likewise, when reviewing the decision of a trial court that has reviewed municipal action, we are bound by the same standards as that of the trial court. Fred

McDowell, Inc. v. Bd. of Adjustment of Wall, 334 N.J. Super. 201, 212 (App. Div. 2000). Questions of law are reviewed de novo. Gallenthin Realty Dev., Inc. v. Borough of Paulsboro, 191 N.J. 344, 372 (2007).

II.

We commence our discussion by addressing whether the City provided sufficient substantial evidence that satisfied criterion (d).

Our Supreme Court has stated that "planning boards and governing bodies . . . have an obligation to rigorously comply with the statutory criteria for determining whether an area is in need of redevelopment." 62-64 Main St., L.L.C. v. Mayor and Council of Hackensack, 221 N.J. 129, 156 (2015). "In general, a municipality must establish a record that contains more than a bland recitation of applicable statutory criteria and a declaration that those criteria are met." Gallenthin, 191 N.J. at 373. "A resolution adopted by a planning board or governing body should clearly articulate the factual findings that support the statutory criteria for designating an area as in need of redevelopment." 62-64 Main Street, L.L.C., 221 N.J. at 157. Still, "the discretion exercised by municipal authorities 'is not unfettered.'" Ibid.

Here, we are satisfied that the Report, coupled with Spatz's unrebutted testimony, provided the required substantial evidence to support the Board's classification as a non-condemnation area in need of redevelopment under criterion (d). The Report found criterion (d) applied based upon Spatz's testimony that the basement flooding in the rectory would affect the electrical system in the building; based upon the probable presence of lead paint, which posed a danger to the occupants (and, we add, to those members of the community who visited the rectory); and based upon the potential for collapse due to the cracked foundation.

On the other hand, Price provided no evidence to rebut the City's determination of the building's condition. No argument was offered before the Board by Price that Spatz was not an experienced city planner. Price only challenged whether the condition of the building was "detrimental to the safety, health, welfare, and morals of the community." The Board, in the exercise of its discretionary authority, found that the property was in such a condition and therefore it qualified as in need of redevelopment.

"Redevelopment designations, like all municipal actions, are vested with a presumption of validity." Concerned Citizens, 370 N.J. Super. at 452 (citation omitted); 62-64 Main Street, L.L.C., 221 N.J. at 157. Moreover, it is presumed that redevelopment determinations are accompanied by adequate factual

support. Hutton Park Gardens v. Town Council of W. Orange, 68 N.J. 543, 564-65 (1975) (citation omitted). "[A]bsent a sufficient showing to the contrary, it will be assumed that [municipalities'] enactments rest upon some rational basis within their knowledge and experience." Ibid.; see also Gallenthin, 191 N.J. at 373.

III.

In sum, we conclude that the Report and the hearing record provided substantial evidence for the decision by the Board classifying the property as an area in need of redevelopment. Consequently, that decision is afforded our deference as it was not arbitrary, capricious or unreasonable. Jacoby v. Zoning Bd. of Adjustment of borough of Englewood Cliffs, 442 N.J. Super. 450, 462 (App. Div. 2015).

Reversed.

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


CLERK OF THE APPELLATE DIVISION