SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3048-15T3

APPLIED MONROE LENDER, LLC,

Plaintiff-Appellant,

v.

CITY OF HOBOKEN PLANNING BOARD and CITY OF HOBOKEN,

Defendants-Respondents.

Argued November 27, 2017 – Decided March 9, 2018

Before Judges Sabatino, Ostrer and Whipple.

On appeal from Superior Court of New Jersey, Law Division, Hudson County, Docket No. L-1394-15.

Kevin J. Coakley argued the cause for appellant (Connell Foley, LLP, attorneys; Kevin J. Coakley, of counsel and on the brief; Allyson M. Kasetta, on the brief).

Dennis M. Galvin argued the cause for respondent City of Hoboken Planning Board (The Galvin Law Firm, attorneys; Dennis M. Galvin, on the brief).

Andrew M. Brewer argued the cause for respondent City of Hoboken (Maraziti Falcon, LLP, attorneys; Andrew M. Brewer, on the brief).

PER CURIAM

Plaintiff Applied Monroe Lender, LLC, appeals from a March 18, 2016 trial court order denying its motion for summary judgment and granting defendants the City of Hoboken (Hoboken) and Hoboken Planning Board's (Board) cross-motions for summary judgment. On appeal, plaintiff argues, among other things, the court erred in denying it the right to seek site plan approval without a designation as a redeveloper. We affirm.

I.

We discern the following relevant facts from the record on appeal. On May 20, 1998, Hoboken, through ordinance R-318, adopted a redevelopment plan for the northwest industrial area of the city (Northwest Redevelopment Plan). On October 12, 2011, plaintiff purchased property at 800-822 Monroe Street, designated as block 87, which was subject to the Northwest Redevelopment Plan. Plaintiff acquired this property by deed in accordance with a Bankruptcy Court order authorizing the chapter seven trustee to sell the real property of the prior owner, who had been designated as a redeveloper.

The first Bankruptcy Court order permitting the sale provided the property could be sold "free and clear from any and all restrictions that run with the land, including . . . the 'Redevelopment Agreements.'" However, the order also stated it

would not "diminish, limit, or otherwise affect the applicability to the Property of all of Hoboken's zoning, planning, or construction requirements, specifically including without limitation the provisions of Hoboken's Northwest Redevelopment Plan."

In a subsequent order, meant to clarify the first, the Bankruptcy Court declined to rule on issues of state law, including whether plaintiff had to be a designated as a redeveloper in order to submit a site plan.

On October 3, 2014, plaintiff submitted an application to the Board to develop the property, proposing construction of a 186-unit residential building with 186 off-street parking spaces, courtyard amenities, and associated improvements. On October 6, 2014, the Board's secretary sent an email to plaintiff's counsel confirming receipt of the application and requesting the resolution that designated plaintiff as redeveloper of the property. Plaintiff's counsel replied on October 16, 2014, stating plaintiff had standing to seek site approval without such a designation.

On November 5, 2014, the Board's secretary emailed plaintiff's counsel and asked plaintiff to include a copy of the checklist for site plan application with its submission of the application package to the Board. The secretary also sent a letter

to plaintiff's counsel informing him that a completeness review by the Board's subcommittee would take place on November 12, 2014.[1]

On November 6, 2014, plaintiff's counsel sent an updated submission package to the Board. That same day, the Board's engineer and planner sent a review letter, pertaining to plaintiff's application, to the Board, the Board's counsel, and plaintiff's counsel. This letter explained the previous owner had been the designated redeveloper for the property and provided the definition of "redeveloper." It also explained, "The City has a formal procedure for making application for designation by the City Council as a redeveloper." The Board's counsel and plaintiff's counsel later stated they did not receive the letter.

On November 12, 2014, plaintiff appeared at the completeness review, and the next day, the Board sent plaintiff a letter, advising that its application was incomplete. On November 14, 2014, plaintiff responded by letter, alleging inconsistencies by

[1] Plaintiff also submitted the application to the Flood Plain Administration (FPA) at the same time. The FPA sent a response letter highlighting areas of concern, which plaintiff took as a denial. Plaintiff responded to the FPA saying it would be appealing the decision, and plaintiff sent the letter from the FPA to the Board. The FPA then sent a letter to the Board clarifying it had not yet made any determination regarding the application.

On February 12, 2015, the Board secretary sent a letter to plaintiff's counsel to inform plaintiff the Board would not be acting on its appeal from the FPA, as the FPA had not made a determination.

the Board's professionals and advising the Board that plaintiff believed it had standing as the owner of the property. The letter also stated plaintiff would consider the application approved if no action was taken by February 20, 2015. Thereafter, the Board sent a revised review letter, again deeming the application incomplete.

A December 11, 2014 letter from the Board's counsel again advised plaintiff it could not participate in the Northwest Redevelopment Plan without being designated as a redeveloper and its application remained incomplete. On December 22, 2014, plaintiff's counsel sent a letter to the Board, reiterating its aforementioned position. The letter also alleged the Board's engineer had made "gross misstatements and negligence." The Board's attorney responded in a letter dated January 15, 2015, stating plaintiff would be given an opportunity for a hearing and listing checklist requirements that would be at issue.

The hearing was held on February 3, 2015. At the end of the hearing, the Board deemed the application incomplete based upon missing checklist items as well as plaintiff's lack of standing because it was not designated as a redeveloper.

On April 2, 2015, plaintiff filed a four-count complaint with the Law Division asserting it completed the requirements for site plan approval, had standing to seek such approval without

redeveloper status and the Board's failure to act upon its application violated the Municipal Land Use Law, N.J.S.A. 40:55D-10.3, and entitled plaintiff to automatic approval[2]. The Board filed an answer on May 22, 2015, and Hoboken filed a motion for intervention on June 10, 2015.

On November 19, 2015, plaintiff moved for summary judgment, and defendants filed cross-motions in opposition. On March 18, 2016, the motion judge rendered an oral opinion, denying plaintiff's motion, and granting defendants' cross-motions. The judge found plaintiff procedurally compliant with the checklist, but concluded plaintiff's application was not entitled to

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[2] Pursuant to N.J.S.A. 40:55D-10.3,

> An application for development shall be complete for purposes of commencing the applicable time period for action by a municipal agency, when so certified by the municipal agency or its authorized committee or designee. In the event that the agency, committee or designee does not certify the application to be complete within 45 days of the date of its submission, the application shall be deemed complete upon the expiration of the 45-day period for purposes of commencing the applicable time period, unless: a. the application lacks information indicated on a checklist adopted by ordinance and provided to the applicant; and b. the municipal agency or its authorized committee or designee has notified the applicant, in writing, of the deficiencies in the application within 45 days of submission of the application.

automatic approval, N.J.S.A. 40:55D-10.3, because defendants did not act in bad faith or purposefully delay review. Ultimately, the judge determined "the policy as interpreted and in practice requires that a plaintiff who wishes to develop in a redevelopment area must first be qualified and approved as a redeveloper." Accordingly, the judge found plaintiff had no standing to seek plan approval.

This appeal followed. On appeal, plaintiff argues it had standing because there is no requirement that a property owner must be designated as a redeveloper before seeking site plan approval. Plaintiff also argues the Local Redevelopment and Housing Law (LRHL), N.J.S.A. 40A:12A-1 to -63, provides for both development and redevelopment, and property owners can develop "freely . . . in the absence of a prohibition within the development plan." In essence, plaintiff argues the LRHL allows private property owners to develop their properties. Plaintiff also argues it is entitled to automatic approval under N.J.S.A. 40:55D-10.3. We disagree.

II.

The Legislature enacted the LRHL to empower and assist municipalities in their efforts to arrest and reverse deterioration in housing, commercial, and industrial installations. N.J.S.A. 40A:12A-2. The LRHL provides a municipal

governing body the power to investigate and determine whether an area is in need of redevelopment, and ultimately adopt a redevelopment plan. N.J.S.A. 40A:12A-4. As such, the LRHL authorizes the Northwest Redevelopment Plan and further provides the municipality may implement the redevelopment plan or empower a redevelopment entity to do it. N.J.S.A. 40A:12A-4c. Under N.J.S.A. 40A:12A-8f, the municipality, or its redevelopment entity, may "[a]rrange or contract with . . . redevelopers for the planning, replanning, construction, or undertaking of any project or redevelopment work . . . ." A redeveloper is defined as:

> any person, firm, corporation or public body that shall enter into or propose to enter into a contract with a municipality or other redevelopment entity for the redevelopment or rehabilitation of an area in need of redevelopment, or an area in need of rehabilitation, or any part thereof, under the provisions of this act, or for any construction or other work forming part of a redevelopment or rehabilitation project.
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> [N.J.S.A. 40A:12A-3 (emphasis added).]

As the Northwest Redevelopment Plan was enacted by Hoboken ordinance, we employ statutory construction to determine whether Hoboken intended a property owner to be designated a "redeveloper" as a prerequisite to site plan approval. As with statutes, we construe ordinances to determine legislative intent. Atlantic Container, Inc. v. Twp. of Eagleswood Planning Bd., 321 N.J. Super.

261, 269 (App. Div. 1999). "The general principle is that ordinances should be liberally construed in favor of the municipality." Id. at 270 (citing L & L Clinics, Inc. v. Town of Irvington, 189 N.J. Super. 332, 336 (App. Div. 1983); see also Trust Co. of N.J. v. Planning Bd. of Borough of Freehold, 244 N.J. Super. 553, 568 (App. Div. 1990) (citation omitted).

The Northwest Redevelopment Plan does not define redeveloper, despite its repeated use of the term, and does not explicitly state that an entity must be designated a redeveloper in order to submit a site plan. However, the plan declares in its preamble that Hoboken has the power to "[a]rrange or contract with public agencies or private redevelopers for any project, infrastructure or redevelopment work." The plan specifically delineates blocks in need of redevelopment, including block 87, plaintiff's property. Block 87 is in zone two and was previously zoned industrial; however, the redevelopment plan contemplated residential buildings. The language of the plan references a "redeveloper designation" throughout the section pertaining to plaintiff's property. We reject plaintiff's contention that these references are merely historical recitations. Moreover, as mentioned above, redeveloper is defined in the LRHL as "[an entity] that shall enter into or propose to enter into a contract with a municipality or other redevelopment entity[.]" N.J.S.A. 40A:12A-

3. Furthermore, plaintiff, an experienced property developer in Hoboken, knew Hoboken typically requires such a designation. Indeed, plaintiff purchased the property in a bankruptcy sale knowing the original owner was required to be, and was, designated as a redeveloper.

In Jersey Urban Renewal, LLC v. City of Asbury Park, we held a property owner could not bring an application to the planning board without being designated as a redeveloper. 377 N.J. Super. 232, 238-39 (App. Div. 2005). The City of Asbury Park adopted an ordinance designating certain property as part of a Waterfront Redevelopment Plan. Id. at 234. The plaintiff owned property within the redevelopment zone and applied to the planning board for site plan approval for a proposed renovated building. Ibid. Asbury Park and the designated redevelopment master developer, Asbury Partners, objected to the plaintiff's site plan, contending, among other things, that the plaintiff was not designated as a subsequent developer. Ibid. On appeal, we agreed, stating "simply put, plaintiff's application was not complete as it had not complied with the procedural requirements of the Plan." Id. at 239. Likewise, here we find plaintiff was required to obtain a redeveloper designation prior to submitting a site plan but did not. Accordingly, it also lacked standing to submit a site plan.

Plaintiff asks us to consider Britwood Urban Renewal, LLC v. City of Asbury Park, 376 N.J. Super. 552 (App. Div. 2005), but reliance on that decision is misplaced. There, the plaintiff was merely "a property owner seeking municipal approval to renovate its building which is located within the redevelopment zone." Id. at 565 (citing N.J.S.A. 40A:12A-8j). Under N.J.S.A. 40A:12-8j, a municipality or designated redevelopment entity may "[m]ake, consistent with the redevelopment plan: (1) plans for carrying out a program of voluntary repair and rehabilitation of buildings and improvements . . . ." In Britwood, the redevelopment plan exempted the plaintiff's property if renovations were made within a year. Id. at 557.

The Northwest Redevelopment Plan does not contain any such provision. Here, the redevelopment plan does not clearly prohibit a property owner from developing its property, but there was a redeveloper designated and contemplated by the plan. There was no master redeveloper for the Northwest redevelopment area; however, there were specific redevelopers designated for various properties within the redevelopment area, including plaintiff's particular parcel. The Northwest Redevelopment Plan states, "Whereas a single entity has been designated as redeveloper of all of Block 80/81 . . . and Block 87 . . . ." As in in Jersey Urban Renewal, a redeveloper had been designated for the block where the

property is located to be redeveloped. Additionally, nothing in the redevelopment plan exempted plaintiff from following the procedures set forth in the plan. Thus, the facts are sufficiently similar to Jersey Urban Renewal, and we discern no error in the trial judge's determination that plaintiff had to have been designated as a redeveloper before being able to submit an application for site plan approval.

As such, plaintiff must develop its property in accordance with the Northwest Redevelopment Plan. Jersey Urban Renewal, 377 N.J. Super. at 236 ("[A]ll properties located in the zone are governed by the zoning strictures adopted by the Plan. Plaintiff cannot remove the property from the requirements of the Plan by refusing to comply with them.").

Moreover, while the Northwest Redevelopment Plan does not explicitly demand such a requirement, there was testimony at the subcommittee hearing November 12, 2014, that the city had never written a redevelopment plan that did not have this requirement. Additionally, the trial judge correctly deferred to the municipality's actions. See Cell S. of N.J. v. Zoning Bd. of Adjustment, 172 N.J. 75, 81-82 (2002).

Because we agree with the trial court's determination plaintiff needed to be designated as a redeveloper in order to

submit a complete application, we need not reach the issue whether its application should have been automatically approved.

Affirmed.