SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-4583-19

IN RE APPROVAL OF A FINANCING COMMITMENT FOR THE PROJECT KNOWN AS NORMAN TOWERS, HMFA #03451.

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Argued December 14, 2021 – Decided May 31, 2022

Before Judges DeAlmeida and Smith.

On appeal from the New Jersey Housing and Mortgage Finance Agency.

Jeffrey S. Feld, appellant, argued the cause pro se.

Vladimir Palma, Deputy Attorney General, argued the cause for respondent (Andrew J. Bruck, Acting Attorney General, attorney; Donna Arons, Assistant Attorney General, of counsel; Vladimir Palma, on the brief).

PER CURIAM

Appellant Jeffrey S. Feld appeals from a July 20, 2020 final decision of the New Jersey Housing and Mortgage Finance Agency (HMFA), affirming, upon reconsideration, its mortgage financing commitment for $76,975,000 in

permanent funding for the Norman Towers project[1] in East Orange. Feld makes two primary arguments: first, that the Long-Term Tax Exemption Law (LTTEL), N.J.S.A. 40A:20-1 to -22, explicitly or impliedly repealed N.J.S.A. 55:14K-37(b), which authorizes HMFA to fund housing projects in collaboration with municipalities; and second, that HMFA failed to comply with the Open Public Meetings Act (OPMA), N.J.S.A. 10:4-6 to -21. We reject Feld's contentions and affirm.

I.

HMFA conducted a public hearing on May 21, 2020, providing the public written notice of the meeting. The agenda contained several items, including a proposed resolution approving a mortgage financing commitment for Norman Towers. During the meeting, HMFA adopted the Norman Towers project resolution. After the resolution was adopted, Feld addressed HMFA during the public comment portion of the meeting. Feld then advised HMFA that he had written to them and others objecting to the method of project financing employed by HMFA in the Norman Towers project and related developments.

[1] At its May 21, 2020 meeting, HMFA identified the Norman Towers project as a $151,000,000 housing development centered around the acquisition and rehabilitation of 406 senior citizen living units.

He thanked the Board for incorporating his written objections into the meeting record, and the meeting adjourned shortly thereafter.

Feld next filed a motion for reconsideration before HMFA. He made two primary arguments: that the LTTEL repealed N.J.S.A. 55:14K-37(b); and that HMFA violated OPMA when it denied him an opportunity to be heard before the resolution was passed on May 21. Upon receiving Feld's motion, HMFA granted reconsideration and noticed a telephonic public hearing for July 1.

On July 1, Feld reiterated his arguments before HMFA. During the proceeding, HMFA went into an executive session "to receive legal advice from the Attorney General's Office." After considering Feld's argument, HMFA affirmed its prior resolution in a written decision.

HMFA found that the LTTEL did not expressly repeal and replace N.J.S.A. 55:14K-37(b). It reasoned the "LTTEL neither mentions nor describes [N.J.S.A. 55:14K-37(b)]," and, thus, finding otherwise would be contrary to statutory construction principles. HMFA also found that N.J.S.A. 55:14K-37(b) is not impliedly repealed and replaced by the LTTEL. HMFA explained that it is a "well established principle" that implied repeals of statutes are not favored. In furtherance of its finding, it recognized that the Legislature intentionally repealed four statutes when enacting the LTTEL, but did not add N.J.S.A.

55:14K-37 to the list of repealed statutes. HMFA also acknowledged that the Legislature recently amended N.J.S.A. 55:14K-37, concluding that this amendment demonstrated that the Legislature did not consider the statute repealed by the enactment of the LTTEL. Last, HMFA noted that it has in the past extensively used N.J.S.A. 55:14K-37(b) without interference or objection from the Legislature.

Concerning the OPMA argument, HMFA found that Feld's claim lacked merit. It explained that it had afforded Feld "the opportunity to submit, prior to [their] reconsideration of this matter, any documentation, legal argument, or other papers in support of his contentions and to speak before [them]." Accordingly, HMFA concluded that it adhered to the mandatory requirements outlined in N.J.S.A. 10:4-9. Feld appealed.

II.

Our scope of review of an agency decision is limited. In re Stallworth, 208 N.J. 182, 194 (2011) (citing Henry v. Rahway State Prison, 81 N.J. 571, 579 (1980)). "We will not reverse an agency's decision unless it is arbitrary, capricious, or unreasonable, or lacks fair support in the record." In re Project Authorization Under N.J. Reg. of Historic Places Act, 408 N.J. Super. 540, 558 (App. Div. 2009). In our review, we "determine whether the agency decision

violates legislative policies, lacks the support of substantial evidence in the record, and unreasonably applies legislative policies to the relevant facts." Id. at 559. If the agency's decision is not otherwise arbitrary, capricious, or unreasonable, or lacks fair support in the record, "we owe substantial deference to its expertise and superior knowledge in a particular field, and to its interpretation of its own regulations." Ibid.

We review issues of statutory interpretation de novo. MasTec Renewables Constr. Co. v. Sunlight Gen. Mercer Solar, LLC, 462 N.J. Super. 297, 318 (App. Div. 2020) (citing Verry v. Franklin Fire Dist. No. 1, 230 N.J. 285, 294 (2017)). "The objective of all statutory interpretation is to discern and effectuate the intent of the Legislature[,]" Murray v. Plainfield Rescue Squad, 210 N.J. 581, 592 (2012), and "the best indicator of that intent is the statutory language[,]" which should be given its "ordinary meaning and significance . . . ." DiProspero v. Penn, 183 N.J. 477, 492 (2005). "We construe the words of a statute 'in context with related provisions so as to give sense to the legislation as a whole.'" Spade v. Select Comfort Corp., 232 N.J. 504, 515 (2018) (quoting N. Jersey Media Grp., Inc. v. Twp. of Lyndhurst, 229 N.J. 541, 570 (2017)). If the language is clear, our job is complete. In re Expungement Application of D.J.B., 216 N.J. 433, 440 (2014). However, "when the statutory language is ambiguous

and 'leads to more than one plausible interpretation,' [we] may resort to extrinsic sources, like legislative history and committee reports." MasTec Renewables, 462 N.J. Super. at 320 (quoting State v. Twiggs, 233 N.J. 513, 533 (2018)).

III.

The gist of Feld's appeal is that the LTTEL repealed N.J.S.A. 55:14K-37(b), either expressly or impliedly. We disagree and find no merit in his arguments.

A.

When considering whether a statute has been expressly repealed, "it is not essential to identify a specific provision in order to effect its express repeal, [however] it is necessary to describe the provision with reasonable certainty." N.J. Ass'n of Sch. Adm'rs v. Schundler, 211 N.J. 535, 555 (2012) (quoting N.J. State Policemen's Benevolent Ass'n v. Town of Morristown, 65 N.J. 160,164 (1974)).

The Legislature passed the LTTEL in 1992, expressing its purpose in stating:

> in the past a number of laws have been enacted to provide for the clearance, replanning, development, and redevelopment of blighted areas pursuant to Article VIII, Section III, paragraph 1 of the New Jersey Constitution.

. . . .

> The Legislature finds that these laws, separately enacted, contain redundant and unnecessary provisions, or provisions which have outlived their usefulness, and that it is necessary to revise, consolidate and clarify the law in this area in order to preserve and improve the usefulness of the law in promoting the original public purpose.
>
> [N.J.S.A. 40A:20-2 (emphasis added).]

The LTTEL's legislative history spells out exactly which laws were repealed. See S. Cnty. & Mun. Gov't. Comm. Statement to S. 291 (Jan. 27, 2016). They included: the Urban Renewal Corporation and Association Law; the Urban Renewal Nonprofit Corporation Law, the Limited-Dividend Nonprofit Housing Corporation or Association Law and the Senior Citizen Nonprofit Rental Housing Tax Law. See N.J.S.A. 40A:20-19.

Our review of the LLTEL reveals no language which repeals any act of the Legislature other than those expressly identified in its legislative history. Based on our reading of the law's clearly written provisions, we find the LTTEL does not expressly repeal N.J.S.A. 55:14K-37(b).

B.

We turn to the question of whether the LTTEL impliedly repeals N.J.S.A. 55:14K-37(b). As a general principle, "[a] repeal by implication requires clear and compelling evidence of legislative intent, and such intent must be free from reasonable doubt." Santiago v. N.Y. & N.J. Port Auth., 429 N.J. Super. 150, 163 (App. Div. 2012) (citations omitted). "There is a strong presumption in the law against implied repealers," ibid., and "[e]very reasonable construction should be applied to avoid a finding of implied repealer . . . ." Freedom From Religion Found. v. Morris Cnty. Bd. of Chosen Freeholders, 232 N.J. 543, 568 (2018) (quoting Twp. of Mahwah v. Bergen Cnty. Bd. of Tax'n, 98 N.J. 268, 281 (1985)).

The Legislature passed the New Jersey Housing and Mortgage Financing Agency Law (NJHMFA Law), N.J.S.A. 55:14K-1 to -81, in 1983.[2] The Legislature declared that "it is in the best interests of the residents of New Jersey to create a strong, unified advocate for housing production, finance and improvement . . . ." N.J.S.A. 55:14K-2. The Legislature went on to list multiple housing related objectives, including but not limited to: assuring the availability

[2] In 2009 and 2010, the NJHMFA was amended. See N.J.S.A. 55:14K-82 to -93.

of affordable rental and owner-occupied housing; stimulating the construction, rehabilitation and improvement of affordable housing; enhancing the capacity for housing production in the state; revitalization of urban areas; and the development of "innovative" financial mechanisms for housing development. Ibid. The law merged two state agencies into one, the HMFA, in order to better facilitate the development, finance, and construction of residential housing, and "meet[] the housing needs of the residents of the State[,]" among other goals. N.J.S.A. 55:14K-2(e).

We now focus on section 55:14K-37(b), which by its express language is limited to the establishment of financing NJHMFA housing development projects. It authorizes municipalities, at their discretion, to enter into agreements with HMFA designated housing developers for a project property tax exemption in exchange for a payment in lieu of taxes. See 55:14K-37(b). The payment in lieu of taxes by the project developer to the municipality is limited to twenty percent of the project's gross annual revenue, and the payment cannot exceed the annual amount which would have been generated by traditional property taxes. Ibid.

In contrast, the project finance mechanisms established under the LTTEL are designed to facilitate commercial and industrial development, in addition to

residential, in order to accomplish the broad legislative goal of stopping and reversing urban blight and related economic ills. See N.J.S.A. 40A:20-2.[3] The declared objectives of the two statutes differ in size and scope, and their financing mechanisms do not overlap in any meaningful sense. "When two statutes may stand together, each governing its own sphere of operation, there is no inconsistency from which an intent to repeal may be inferred." In re Cnty. of Atl., 445 N.J. Super. 1, 16 (App. Div. 2016) (citation omitted). We find no implied repeal of N.J.S.A. 55:14K-37(b) by the LTTEL.

C.

Feld also contends HMFA failed to give "adequate notice" of its public hearing as required by N.J.S.A. 10:4-9(a). He further argues he was deprived of "an opportunity to be heard" by HMFA before it "took discretionary non-ministerial official action." We disagree.

OPMA mandates that no public body shall hold a meeting unless adequate notice is given to the public. N.J.S.A. 10:4-9(a). The statute defines "[a]dequate notice" as "written advance notice of at least [forty-eight] hours, giving the time,

[3] "This [legislation] . . . provides a new partnership between public and private sectors to redevelop and rehabilitate New Jersey's urban centers, older suburbs, and other communities that are in need of redevelopment." See S. Cnty. & Mun. Gov't. Comm. Statement to S. 291 (Jan. 27, 2016).

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 . . . ." N.J.S.A. 10:4-8(d).

OPMA also requires meetings be open to the public unless they fall within exceptions under N.J.S.A. 10:4-12(b). Among those exceptions is a "pending litigation" exception. N.J.S.A. 10:4-12(b)(7). That exception empowers a public body to exclude the public from all or a portion of a meeting where the public body discusses "[a]ny pending or anticipated litigation or contract negotiation . . . in which the public body is, or may become, a party, or matters falling within the attorney-client privilege, to the extent that confidentiality is required in order for the attorney to exercise his ethical duties as a lawyer . . . ." Ibid.

Applying these principles here, we find ample support in the record to conclude HMFA substantially complied with OPMA at the May 21 and July 1 meetings. HMFA furnished clearly stated public meeting notices at least forty-eight hours in advance of both meetings. HMFA voted on the proposed project funding on the public record. Feld placed HMFA on notice of his opposition to funding of Norman Towers during the public portion of the May 21 meeting, and then opposed the resolution in a more substantive presentation on July 1,

when HMFA granted his request for reconsideration, then voted to affirm its earlier resolution.

To the extent Feld argues his exclusion from HMFA's July 1 closed session meeting violated the law, we note HMFA had a statutory right to meet in closed session under OPMA's pending litigation exception, N.J.S.A. 10:4-12(b)(7). The record shows that HMFA properly exercised that right, and we conclude HMFA did not violate OPMA by going into closed session.

We find none of HMFA's actions arbitrary, capricious, or unreasonable, nor do we find an express or implied repeal of N.J.S.A. 55:14K-37(b) by the LTTEL. Consequently, we will not disturb the agency's final decision. To the extent we have not addressed any of Feld's remaining arguments, we find they lack sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).

Affirmed.