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SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-3575-21  
A-0752-22

VISHNU REDDY,

Plaintiff-Appellant,

v.

MOORESTOWN TOWNSHIP  
PLANNING BOARD and LMC  
PROPERTIES, INC.,

Defendants-Respondents,

and

MOORESTOWN FAMILY  
APARTMENTS, LLC,

Defendant/Intervenor-  
Respondent.

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VISHNU REDDY,

Plaintiff-Appellant,

v.

TOWNSHIP OF MOORESTOWN,

Defendant-Respondent,

and

MOORESTOWN FAMILY  
APARTMENTS, LLC,

Defendant/Intervenor-  
Respondent.

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Argued May 16, 2023 – Decided June 21, 2023

Before Judges Messano and Perez-Friscia.

On appeal from the Superior Court of New Jersey,  
Law Division, Burlington County, Docket Nos.  
L-1723-21 and L-1877-21.

Bernard M. Reilly argued the cause for appellant  
(Gasiorowski & Holobinko, attorneys; R.S.  
Gasiorowski, on the briefs).

Eric J. Riso argued the cause for respondent  
Moorestown Township Planning Board (Zeller &  
Wieliczko, LLP, attorneys; Eric J. Riso, on the brief).

Sherman, Silverstein, Kohl, Rose & Podolsky, PA,  
attorneys for respondent LMC Properties, Inc., join in  
the brief of respondent Moorestown Township  
Planning Board.

Douglas L. Heinold argued the cause for respondent  
Township of Moorestown (Raymond, Coleman,  
Heinold, LLP, attorneys; Douglas L. Heinold, on the  
brief).

Kristopher J. Berr argued the cause for intervenor-respondent Moorestown Family Apartments, LLC (Del Duca Lewis & Berr, LLC, attorneys; Kristopher J. Berr, on the brief).

Fair Share Housing Center, attorneys for amicus curiae Fair Share Housing Center, Inc. (Rachel N. Lokken, of counsel and on the brief).

## PER CURIAM

In these consolidated appeals of two related actions in lieu of prerogative writs, plaintiff Vishnu Reddy appeals from the June 10, 2022 order granting summary judgment and dismissing plaintiff's complaint against defendants, Moorestown Township Planning Board (Board) and LMC Properties, Inc. (Lockheed) (A-3575-21), and the July 26 and September 26, 2022 orders granting summary judgment and dismissing plaintiff's complaint against the Township of Moorestown (Township) (A-752-22). Following our review of the arguments, the record, and applicable law, we affirm in part and reverse in part.

### I.

Plaintiff filed two complaints in lieu of prerogative writs, which arose from actions taken by the Township in furtherance of its affordable housing obligations. Relevant to both appeals was the participation of Councilman and Board member David Zipin on the approval of Township ordinances and Board

resolutions related to affordable housing development while Zipin was employed by the New Jersey Housing and Mortgage Finance Agency (HMFA). We limit our recitation of the facts and procedural history to the relevant issues presented on appeal.

In 1988, the Township acquired an 11.23-acre lot, known as the Nagle Tract, for the purpose of affordable housing development. For years, the Township designated the property for affordable housing in the Township's "Housing Element and Fair Share Plan," which was created to meet its obligation in response to In re Adoption of N.J.A.C. 5:96 & 5:97, 221 N.J. 1 (2015).<sup>1</sup>

On February 23, 2021, the court entered an order that required the Township to "select a developer for the Nagle [Tract]," "enter into a developer's agreement," and "provide . . . [a] construction schedule" within

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<sup>1</sup> In July 2015, the Township filed a declaratory judgment complaint seeking a Judgment of Compliance and Repose to approve its affordable housing plan. In the Matter of the Application of the Township of Moorestown, County of Burlington, BUR-L-1604-15. On August 28, 2018, after a fairness hearing, the trial judge approved the Township and the Fair Share Housing Center's (FSHC) settlement agreement, which included the development of seventy-six affordable housing units on the Nagle Tract. On February 23, 2021, after multiple objections and settlement agreements were filed, the judge held a hearing, approved the plan, and granted a Conditional Judgment of Compliance and Repose. At all times, the Nagle Tract was included for affordable housing development.

ninety days. The Township designated Walters-Cornerstone Development, LLC (WCD) as the developer, and authorized the mayor to "execute a Memorandum of Understanding [with WCD]." Pertinently, the order also required the Township to "expeditiously work with the designated developer" to submit "an application for mixed-income tax credit funding in the 2021 application cycle." The order required the Township to "inform the [c]ourt . . . [if] the developer [was] unsuccessful in securing tax credit funding in the 2021 applications." Further, if the developer failed to obtain tax credits, then the Township, as an alternative, was to "expeditiously pursue the increased set-aside of [seventy-six] affordable family units on the Nagle [Tract] via municipal subsidy." Thus, the Township, from February of 2021 forward, was to work with the designated developer to obtain tax credit funding.

Lockheed operated its facility on property adjacent to the Nagle Tract. When Lockheed learned of the proposed housing development near its facility, it informed its "primary customer . . . the U.S. Navy." On March 11, 2021, the Navy informed Lockheed of its objection, which stated: "It is the Navy's position that any residential or commercial development of the Nagle Tract property poses Counterintelligence (CI), Signal Intelligence (SIGINT) and Operational Security (OPSEC) threats." The Navy requested the Township

work with Lockheed to consider alternative property solutions. Lockheed sent its objection to the Township and proposed the "exchange of a suitable parcel of nearby land" for the Nagle Tract and offered property Lockheed owned on Borton Landing Road (Borton site). Lockheed thereafter filed a minor subdivision application before the Board to create a 12.5-acre lot to be exchanged for the Nagle Tract. Plaintiff was an owner of property in Moorestown, which was located in "reasonable proximity" to the Borton site.

On June 14, 2021, the Township entered into a Development and Property Transfer Agreement with WCD affiliate Moorestown Family Apartments, LLC (MFA)<sup>2</sup> to develop the Borton site. The agreement provided, "in order for [MFA] to complete the project it will be necessary to obtain and close on the [t]ax [c]redit [f]inancing" with the HMFA. "Closing on the tax credit financing" implemented by the HMFA was a contingency "to commence and complete" the housing project. The agreement also provided the HMFA may require a "form of deed restriction." It is clear MFA and the Township Council contemplated tax credits would be necessary for the affordable housing development of the Nagle Tract and then the Borton site.

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<sup>2</sup> It is undisputed the selected developer for the affordable housing project was Walters-Cornerstone Development, LLC, and thereafter, its affiliate Moorestown Family Apartments, LLC. In light of the relationship between WCD and MFA, we will hereafter refer to the developer as MFA, for ease of reference.

On the same date, the Township introduced two ordinances. The first ordinance, 20-2021, rezoned the two lots and the second ordinance, 21-2021, authorized the exchange of the properties. Zipin participated in and voted on the Township ordinances adopted on June 28, 2021.

The rezoning ordinance memorialized the objections from Lockheed and the Navy, as well as Lockheed's proposed exchange of a "suitable property within the vicinity to be used for affordable housing." The Township had referred the ordinance to the Board for review and recommendation. On June 17, 2021, the Board reviewed the ordinance and heard from its expert, Michelle M. Taylor, PP, AICP, who opined the ordinance was substantially consistent with the Master Plan for development of affordable housing, and with the Municipal Land Use Law (MLUL). The Board adopted Taylor's opinion, by resolution, 2021-28. Zipin had moved the proposed ordinance for consideration by the Board, recommended its adoption by the Township, and voted to approve the resolution.

The second ordinance authorized the property exchange of the Nagle Tract for the Borton site. The ordinance memorialized the necessity for the Township to "expeditiously[,] with the designated developer . . . submit an application for mixed income tax credit funding . . . to provide funding to

create a yield of [seventy-six] affordable housing units." The ordinance also noted the objections and the public's interest in "the exchange of land . . . since the exchange will facilitate the development of affordable housing in accordance with the Township's constitutional obligations" and "[in] compl[iance] with the Conditional Judgment of Compliance and Repose entered."

On August 10, 2021, plaintiff filed the first complaint, which challenged the Township's adoption of both ordinances. Plaintiff amended the complaint on August 23, 2021, and alleged: (1) Ordinance 20-2021 was invalid as inconsistent with the Master Plan, N.J.S.A. 40:55D-62(a); (2) Ordinance 20-2021 was invalid for insufficient notice, N.J.S.A. 40:55D-62.1; (3) Ordinance 20-2021 was invalid as improper spot zoning; (4) Ordinance 20-2021 was invalid as improper contract zoning; (5) Ordinance 20-2021 was invalid as arbitrary, capricious, and unreasonable zoning; (6) both ordinances were invalid based on Zipin's conflict of interest; and (7) Ordinance 21-2021 was invalid as a violation of a proper land value exchange, N.J.S.A. 40A:12-16.

The Township filed an answer on September 20, 2021. MFA successfully moved to intervene, to protect its interest as the developer. FSHC successfully moved to appear as amicus curiae to ensure the Township



"expeditiously satisfie[d] its constitutional obligations." Plaintiff asserted the conflict of interest claim was added to the amended complaint because plaintiff learned of the necessity for the HMFA funding for the Borton site, after receipt of the affordable housing litigation August 19, 2021 consent order, which provided "the Township and [MFA] are committed to ensuring" an application for tax credit to the HMFA would be submitted, and plaintiff learned of Zipin's employment at the HMFA.

On February 3, 2022, plaintiff moved for partial summary judgment seeking to invalidate the ordinances based on Zipin's participation in the adoption of the ordinances and resolution while he had a conflict of interest. The Township and FSHC opposed. MFA cross-moved for summary judgment on the conflict issue, and the Township joined in the motion. On July 26, 2022, the judge granted MFA's summary judgment motion, finding no conflict of interest existed, and dismissed the claim. The judge found: the ordinances involved a land exchange and rezoning, not affordable housing refinancing or tax credits; the HMFA was a government entity providing housing credits and had not provided tax credits or financing to MFA in connection with this project; Zipin's recusals on other affordable housing matters were not relevant; and plaintiff failed to prove Zipin's employment at the HMFA created a

conflict of interest. Notably, the same judge had signed the February 23, and August 19, 2021 affordable housing orders, which memorialized MFA and the Township's agreement to seek the HMFA tax credit funding.

MFA and the Township thereafter moved for summary judgment on the remaining counts. FSHC filed a letter brief in support of the motions. Plaintiff opposed. On September 26, 2022, the judge, in separate written opinions, granted both summary judgment motions and dismissed the complaint against the Township. The judge found the zoning ordinance was not spot zoning, as the Township appropriately adopted the ordinance after a full review and the Board's recommendation of adoption. The judge determined the ordinance "was enacted for the general welfare as part of the Master Plan." As to contract zoning, the judge determined the Township "abided by all relevant procedures by adopting the ordinance" and "did not attempt to circumvent the ordinance enactment procedures by contracting with Lockheed." Further, "the purpose" of the ordinance was "to provide affordable housing" and "to avoid potential national security risk." Lastly, the judge found the Township's actions were not arbitrary, capricious, and unreasonable, as the Township enacted the "zoning swap [ordinance] between the properties

to fulfill its duty to provide access to affordable housing for the benefit of its residents . . . in accordance with its professional planner."

Plaintiff appeals the dismissal of counts three, four, five, and six, reprising his arguments that because Zipin had a conflict of interest, or at the least an appearance of impropriety, his participation was precluded, and the ordinances were invalid.<sup>3</sup> Alternatively, plaintiff argues the judge erred in not finding the adoption of the ordinances was arbitrary, capricious, and unreasonable, spot zoning, and contract zoning.

On September 1, 2021, plaintiff filed the second complaint, this time naming the Board and Lockheed as defendants. The complaint challenged Board resolution, 2021-27, which had approved Lockheed's application for a minor subdivision approval. Plaintiff amended the three-count complaint the same day. The amended complaint alleged the resolution was invalid due to: (1) insufficient notice; (2) a conflict of interest of Board Member Zipin; and (3) the arbitrary failure to consider Municipal Code 158-10, governing "Minor Subdivisions and Exceptions." MFA again successfully moved to intervene as

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<sup>3</sup> Plaintiff does not address dismissal of counts one, two, and seven. "An issue not briefed on appeal is deemed waived." Woodlands Cmty. Ass'n v. Mitchell, 450 N.J. Super. 310, 318-19 (App. Div. 2017) (quoting Skłodowsky v. Lushis, 417 N.J. Super. 648, 657 (App. Div. 2011)).

the interested developer. FSHC again successfully moved to be heard amicus curiae. The Board and Lockheed filed answers.

On June 17, 2021, the Board had heard a minor subdivision application filed by Lockheed, and upon a motion by Zipin, approved the subdivision. The subdivision was in furtherance of the property exchange. The application involved the modification of two existing lots to create a 12.5-acre lot and an 81.98-acre lot. The Board granted approval, finding the subdivision was conforming, and "the purpose of the [MLUL]" would be advanced. On July 1, 2021, the Board memorialized the approval of the subdivision by resolution.

The Board and Lockheed both moved for summary judgment to dismiss the complaint as untimely. FSHC filed an amicus brief in support of the motions. Plaintiff opposed. In a written opinion, the judge granted dismissal, pursuant to Rule 4:69-6(b)(3), finding plaintiff failed to timely file the complaint within the forty-five day period permitted for an action in lieu of prerogative writs. The judge found, plaintiff could have timely filed because in the first action plaintiff filed an amended complaint on August 23, 2021 against the Township and included a conflict of interest claim regarding Zipin. Thus, plaintiff knew of the conflict on or before the expiration of the forty-five days, on August 23, 2021.

On appeal, plaintiff argues the judge erred in dismissing the conflict of interest count in the complaint against the Board and Lockheed because plaintiff timely filed the action within forty-five days of learning of the conflict.<sup>4</sup> Alternatively, plaintiff argues the conflict, or at the least an appearance of impropriety, is a matter of public interest mandating relaxation of the Rule.

## II.

We review a motion judge's grant or denial of summary judgment de novo. Branch v. Cream-O-Land, 244 N.J. 567, 582 (2021). We apply the same standard as the motion judge and consider "whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party, are sufficient to permit a rational fact-finder to resolve the alleged disputed issue in favor of the non-moving party." Brill v. Guardian Life Ins. Co of Am., 142 N.J. 520, 540 (1995). "We therefore must first determine whether, giving the non-moving party the benefit of all reasonable inferences, the movant has demonstrated that there are no genuine issues of

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<sup>4</sup> On appeal, plaintiff does not address dismissal of counts one and three. Those issues are deemed waived on appeal. See Woodlands Cmty. Ass'n, 450 N.J. at 318-19.

material fact." Walker v. Choudhary, 425 N.J. Super. 135, 142 (App. Div. 2012).

"[L]ike any other complaint, a prerogative writ complaint may be dismissed summarily" pursuant to Rule 4:46-2. Mitchell v. City of Somers Point, 281 N.J. Super. 492, 500 (App. Div. 1994). "[I]f a municipality seeks summary judgment dismissing a complaint" which challenges the validity of an ordinance, "it has the same burden as any other civil litigant to show that 'there is no genuine issue as to any material fact' and that it 'is entitled to judgment as a matter of law.'" Hirth v. City of Hoboken, 337 N.J. Super. 149, 166 (App. Div. 2001) (quoting R. 4:46-2(c)). "A trial court's interpretation of the law and the legal consequences that flow from established facts are not entitled to any special deference." Manalapan Realty, L.P. v. Twp. Comm., 140 N.J. 366, 378 (1995).

"When reviewing a trial court's [summary judgment] decision regarding the validity of a local board's determination," appellate courts "are bound by the same standards as the trial court." Jacoby v. Zoning Bd. of Adj. of Borough of Englewood Cliffs, 442 N.J. Super. 450, 462 (App. Div. 2015) (quoting Fallone Props., L.L.C. v. Bethlehem Twp. Planning Bd., 369 N.J. Super. 552, 562 (App. Div. 2004)). Appellate courts "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 462. Determinations on questions of law in land use matters are reviewed de novo. Bubis v. Kassin, 184 N.J. 612, 627 (2005).

However, in reviewing an ordinance, we defer to a municipal governing body's judgment "so long as its decision is supported by the record and is not so arbitrary, unreasonable[,] or capricious as to amount to an abuse of discretion." Jayber Inc. v. Mun. Council of W. Orange, 238 N.J. Super. 165, 173 (App. Div. 1990). In evaluating whether a zoning ordinance is arbitrary, capricious, or unreasonable, a court "will not evaluate the enactment nor review the wisdom of any determination of policy which the legislative body might have made." Singer v. Twp. of Princeton, 373 N.J. Super. 10, 20 (App. Div. 2004) (citing Hutton Park Gardens v. W. Orange Twp. Council, 68 N.J. 543, 565 (1975)). The "fundamental question . . . is whether the requirements of the ordinance are reasonable under the circumstances." Pheasant Bridge Corp. v. Twp. of Warren, 169 N.J. 282, 290 (2001) (quoting Vickers v. Twp. Comm., 37 N.J. 232, 245 (1962)). "[P]ublic bodies, because of their peculiar knowledge of local conditions, must be allowed wide latitude in their

delegated discretion." Jock v. Zoning Bd. of Adjustment, 184 N.J. 562, 597 (2005).

### III.

We first turn to address whether Zipin had a conflict of interest. We are constrained to reverse the motion judge's orders granting summary judgment, on count six in the action against the Township, and on count two in the action against the Board and Lockheed, as it is clear Zipin had a conflict of interest. A determination of "whether a particular interest is sufficient to disqualify is necessarily a factual one and depends on the circumstances of the particular case." Paruszewski v. Twp. of Elsinboro, 154 N.J. 45, 58 (1998) (quoting Wyzkowski v. Riaz, 132 N.J. 509, 523 (1993)). "The question is whether there is a potential for conflict, not whether the conflicting interest actually influenced the action." Haggerty v. Red Bank Borough Zoning Bd. of Adjustment, 385 N.J. Super. 501, 513 (App. Div. 2006) (citing Wyzkowski, 132 N.J. at 523). "Our primary purpose is to construe the Local Government Ethics Law and the MLUL, guided by the common law, in determining whether any [local government official] was impaired by a conflict of interest." Piscitelli v. City of Garfield Zoning Bd. of Adjustment, 237 N.J. 333, 350 (2019). "A conflicting interest arises when the public official has an



interest not shared in common with the other members of the public," and when "contradictory desires [tug the officer] in opposite directions." Wyzkowski, 132 N.J. at 524.

The Local Government Ethics Law, N.J.S.A. 40A:9-22.1 to -22.5 ("Ethics Law"), governs conflicts of interest and sets forth in pertinent part:

No local government officer or employee shall act in his official capacity in any matter where he, a member of his immediate family, or a business organization in which he has an interest, has a direct or indirect financial or personal involvement that might reasonably be expected to impair his objectivity or independence of judgment.

[N.J.S.A. 40A:9-22.5(d) (emphasis added).]

"The Ethics Law defines 'local government officer' as any person 'serving on a local government agency which has the authority to enact ordinances, approve development applications or grant zoning variances.'" Haggerty, 385 N.J. Super. at 514 (quoting N.J.S.A. 40A:9-22.3(g)(2)). Further, the Ethics Law defines "a 'local government agency' as a municipal board which performs functions . . . other than [of] a purely advisory nature." Ibid. (quoting N.J.S.A. 40A:9-22.3(e)). "We must construe N.J.S.A. 40A:9-22.5(d) to further the Legislature's expressed intent that '[w]henver the public perceives a conflict between the private interests and the public duties of a government

officer,' 'the public's confidence in the integrity' of that officer is 'imperiled.'" Piscitelli, 237 N.J. at 351 (quoting N.J.S.A. 40A:9-22.2(b)-(c)).

"The maintenance of public trust in municipal government is the focus of statutory ethical codes, guided by common law principles, that bar planning and zoning board members from hearing cases when a personal interest 'might reasonably be expected to impair [their] objectivity or independence of judgment.'" Id. at 338 (alteration in original) (citing N.J.S.A. 40A:9-22.5(d)). In inquiring into an official's motive, "the ultimate goal is to ensure not only impartial justice but also public confidence in the integrity of the proceedings." Id. at 353.

The MLUL similarly states: "No member of the planning board shall be permitted to act on any matter in which he has, either directly or indirectly, any personal or financial interest." N.J.S.A. 40:55D-23(b). "[P]rocedural niceties do not change the potential for conflict, including psychological influences." Trust Co. of New Jersey v. Planning Bd. of Borough of Freehold, 244 N.J. Super. 553, 560 (App. Div. 1990). "If a personal interest requiring disqualification exists, neither the failure to object nor the existence of sufficient votes absent that member's vote would change the requirement that

the entire proceeding would be voidable." Sugarman v. Twp. of Teaneck, 272 N.J. Super. 162, 169 (App. Div. 1994).

It is undisputed Zipin was employed by the HMFA. The Township and MFA clearly contemplated and memorialized the necessity to apply for, and to receive, affordable housing tax credits through the HMFA, first for the Nagle Tract and then the Borton site. The February 23, 2021 Conditional Judgment of Compliance and Repose provided that the Township was to "expeditiously work with the designated developer" to submit "an application for mixed-income tax credit funding in the 2021 application cycle." The June 14, 2021 Development and Property Transfer Agreement stated, "in order for [MFA] to complete the project it will be necessary to obtain and close on the [tax [c]redit [f]inancing." The Township, ergo its council, clearly recognized the HMFA as the agency to award the tax credits. The tax credit funding was considered an essential element of the affordable housing development plan. In fact, the HMFA implemented funding was a contingency for the developer proceeding with the Borton site. Zipin's participation as a councilman and board member on the adoption of the resolutions and ordinances, which related to the affordable housing plan on the Borton site and clearly involved the application for the HMFA tax credit funding with his employer, was a conflict.

We do not discern any overt intention by Zipin to exercise an interest aligned with the HMFA, but recognize mere "personal involvement that might reasonably be expected to impair his objectivity or independence of judgment" alone presents a conflict. See N.J.S.A. 40A:9-22.5(d). Indeed, there is a clear public interest in ensuring government officials do not preside over matters which present a conflict of interest or have an appearance of impropriety, even if innocently undertaken. Here, the conflict of interest requires remand for consideration of the ordinances and resolutions anew without the participation of Zipin.

#### IV.

Having concluded a conflict of interest existed, we turn to the judge's order, which dismissed plaintiff's complaint in lieu of prerogative writs against the Board as untimely and look to the time period provided for filing in Rule 4:69-6. The Rule permits an enlargement of the forty-five day period "where it is manifest that the interest of justice so requires." R. 4:69-6(c). The Court has identified three categories for enlargement of the time limitation: "(1) important and novel constitutional questions; (2) informal or ex parte determinations of legal questions by administrative officials; and (3) important public rather than private interests which require adjudication or clarification."

Borough of Princeton v. Bd. of Chosen Freeholders of Mercer Cnty., 169 N.J. 135, 152 (1975) (quoting Brunetti v. Borough of New Milford, 68 N.J. 576, 586 (1975)). The time period for filing a complaint in lieu of prerogative writs may be enlarged when a plaintiff demonstrates the interest of justice is implicated. See Cohen v. Thoft, 368 N.J. Super. 338, 345-47 (App. Div. 2004) (holding the "interest of justice" standard under Rule 4:69-6(c) "provided 'more flexible criteria' for determining when a prerogative writ action that had not been brought within the applicable time period should nonetheless be heard" (quoting Oldfield v. Stooeco Homes, Inc., 26 N.J. 246, 262 (1958))).

The Court has made clear the "list of exceptions was not intended to be exhaustive," as "the broad language of the enlargement provision belies the suggestion that the intent of the rule is to restrict enlargement to one of those three categories." Hopewell Valley Citizens' Grp., Inc. v. Berwind Prop. Grp. Dev. Co., L.P., 204 N.J. 569, 584 (2011). "[R]elaxation depends on all relevant equitable considerations under the circumstances." Pressler & Verniero, Current N.J. Court Rules, cmt. 7.3 on R. 4:69-6(c) (2023) (citing Hopewell Valley Citizens' Grp., 204 N.J. at 583). We have recognized it is of "sufficient public importance" for a public entity to provide adequate notice of an action which may affect a property owner, and the absence of such

notice "warrant[s] an enlargement of" the forty-five day time period. Harrison Redevelopment Agency v. DeRose, 398 N.J. Super. 361, 418 (App. Div. 2008) (finding "multiple defects of notice" in a blight action fortified the conclusion that the expansion of the forty-five day time frame was warranted).

Plaintiff undisputedly filed the complaint challenging the Board's resolution, which granted Lockheed's subdivision application, on September 1, 2021, after the expiration of the forty-five day time period. Plaintiff argues the judge erred in dismissing the conflict of interest claim because the complaint was filed approximately two weeks after discovering Zipin's conflict. Alternatively, plaintiff argues the public interest mandated relaxation of the forty-five day period.

We agree that there is a recognized public interest in addressing whether a local government official has acted on matters where a conflict of interest exists. The public interest is in ensuring government officials do not act when personal or professional interests might impair the official's judgment. Additionally, the interest of justice was implicated because plaintiff did not learn of the conflict issue until receipt of the August 19, 2021 consent order and learning of Zipin's employment with the HMFA. We conclude plaintiff established sufficient facts warranting relaxation under Rule 4:69-6(c).

V.

While we have determined remand is warranted, for completeness we address the remaining issues plaintiff raises on appeal based on the existing record and without any consideration of additional evidence that might develop following our remand. We concur with the judge's findings that the Township's adoption of the zoning ordinance was not arbitrary, capricious, and unreasonable, not spot zoning, and not contract zoning.

"Zoning is inherently an exercise of the State's police power." Taxpayer Ass'n of Weymouth Twp, Inc. v. Weymouth Twp., 80 N.J. 6, 20 (1976). The Legislature, by enacting the MLUL, delegated to municipalities the power to adopt zoning ordinances. Rumson Estates, Inc. v. Mayor & Council of Fair Haven, 177 N.J. 338, 349 (2003).

"A presumption of validity attaches to a zoning ordinance that may be overcome only if an opponent of the ordinance establishes the ordinance is 'clearly arbitrary, capricious[,] or unreasonable, or plainly contrary to fundamental principles of zoning or the statute.'" Manalapan Realty, 140 N.J. at 380 (alteration in original) (quoting Bow & Arrow Manor, Inc. v. Town of W. Orange, 63 N.J. 335, 343 (1973)). "Although the judicial role is

circumscribed, a court may declare an ordinance invalid if in enacting the ordinance the municipality has not complied with the requirements of" the MLUL, the municipality's master plan, the constitutional constraints, and municipal procedural requirements. Riggs v. Long Beach Twp., 109 N.J. 601, 611-12 (1988) (citing Weymouth, 80 N.J. at 20). "An 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." Weymouth, 80 N.J. at 18.

Pursuant to the Mount Laurel doctrine, "a municipality has a constitutional obligation to provide a 'realistic opportunity' for the development of its fair share of affordable housing." Matter of Twp. of Bordentown, 471 N.J. Super. 196, 219 (App. Div. 2022) (citing S. Burlington Cnty. N.A.A.C.P. v. Mount Laurel Twp., 92 N.J. 158, 221 (1983)). "The Mount Laurel series of cases recognized that the power to zone carries a constitutional obligation to do so in a manner that creates a realistic opportunity for producing a fair share of the regional present and prospective need for housing low- and moderate-income families." In re N.J.A.C. 5:96 & 5:97, 221 N.J. 1, 3-4 (2015).



The Township adopted the ordinances in accordance with the MLUL to develop affordable housing which had long been contemplated. The record amply supports the Township's efforts to establish its housing plan, through a Judgment of Compliance and Repose, and to move forward with the development of affordable housing on the Nagle Tract. The Township, once it received the objections from the Navy and Lockheed, had the authority under the MLUL to proceed to find an affordable housing solution. The judge correctly noted the Township was subject to the "settlement with [FSHC]," which had included the Nagle Tract, and found the rezoning ordinance benefitted the Township and addressed Lockheed's concerns.

## VI.

We also reject plaintiff's arguments the rezoning ordinance constituted spot zoning. The Township has the authority to adopt zoning ordinances, and every "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." N.J.S.A. 40:55D-62. Spot zoning is "the use of the zoning power to benefit particular private interests rather than the collective interests of the community." Weymouth, 80 N.J. at 18; see also Riya Finnegan LLC v. Twp. Council of Twp. of South Brunswick, 197 N.J.

184, 195 (2008). To determine if spot zoning occurred it must be established "whether the particular provision of the zoning ordinance is made with the purpose or effect of furthering a comprehensive scheme or whether it is designed merely to relieve a lot or lots from the burden of a general regulation." Riya Finnegan, 197 N.J. at 196 (quoting Palisades Props., Inc. v. Brunetti, 44 N.J. 117, 134 (1965)). See also Gallo v. Mayor and Twp. Council, 328 N.J. Super. 117, 128 (App. Div. 2000) (rejecting plaintiff's argument that a township "had some interest in awarding [a] developer a benefit to the detriment of all other [landowners]" in rezoning a property to allow higher density for development by a private party given that it was consistent with a comprehensive plan to benefit the community).

Here, as the judge correctly found, the record clearly establishes the Township's primary purpose was to ensure community affordable housing which comports with the Master Plan and the MLUL. The Township's zoning ordinance swapped the "zoning on the lots [as] need[ed] to be revised to be consistent with the intended uses of the properties." The ordinance increased the total affordable housing dwellings permitted from 30 percent to 50 percent, and noted the Bolton site was 12.5 acres while the Nagle Tract was 11.23 acres. As the February 23, 2021 order "approved [the] Amended Settlement

Agreement between the Township and [FSHC]" and had accepted the "Township's Fair Share Plan," the Township was obligated to fulfill its obligation for seventy-six affordable housing units.

Plaintiff's argument that the land transfer was to extend Lockheed "special and highly preferential treatment" ignores the years of planning to provide affordable housing specifically in that area. It is unrefuted the security objections from both Lockheed and the Navy were unexpected. The Township was within its authority to assess the objections, consider the potential effect on its housing plan, weigh the opportunity to exchange properties in the same vicinity, and seek to comply with the time requirements imposed by the judgment. The record establishes the Township's actions were in furtherance of its commitment to provide affordable housing and the general community interest.

## VII.

Lastly, we find no merit in the argument that the rezoning ordinance was improper contract zoning. Contract zoning represents "a municipality's attempt 'by contract with a property owner, to authorize the property owner to use his property in contravention of the zoning ordinance and without compliance with the statutorily established procedures for either obtaining a

zoning variance or an amendment to the master plan and zoning ordinance." Livingston Builders, Inc. v. Twp. of Livingston, 309 N.J. Super. 370, 381 (App. Div. 1998) (quoting Cox & Koenig, New Jersey Zoning & Land Use Administration (1997)). A municipality must not circumvent procedural safeguards, such as use of a "'fairness' hearing or otherwise," when adopting a zoning ordinance or amendment. East/West Venture v. Borough of Fort Lee, 286 N.J. Super. 311, 325 (App. Div. 1996) (quoting Warner Co. v. Sutton, 274 N.J. Super. 464, 471 (App. Div. 1994)). Thus, "'contract zoning' is ultra vires, and 'all proceedings to effectuate it . . . [are] utterly void.'" Warner Co., 274 N.J. Super. at 471 (alteration in original) (quoting V.F. Zahodiakin Engineering Corp. v. Zoning Bd. of Adjustment, 8 N.J. 386, 395 (1952)).

Here, the Township was authorized to adopt an ordinance to rezone the exchanged properties to effectuate the transfer, and to meet the Township's affordable housing obligation. Lockheed only proposed the property exchange after it had learned of the housing development on the adjacent Nagle Tract, and the Navy objected. The rezoning ordinance was not adopted for Lockheed to use the property in contravention of the zoning and outside of the MLUL.

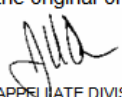
To the extent we have not addressed any other arguments raised by plaintiff, we conclude they lack sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).

In A-3575-21, we reverse the June 10, 2022 order in so far as it granted the Board and Lockheed summary judgment on count two of plaintiff's complaint, declare Board resolution 2021-27 void, and remand the matter back to the Board for further consideration; in all other respects, we affirm the June 10, 2021 order based on the existing record and without consideration of any additional proceedings that may follow on remand.

In A-752-22, we reverse the July 26, 2022 order denying plaintiff's motion for summary judgment on count six of the complaint, declare Ordinance Nos. 20-2021 and 21-2021 void, and remand the matter back to the Township's governing body for further consideration. We affirm the two September 26, 2022 orders otherwise dismissing plaintiff's complaint based on the existing record and without consideration of any additional proceedings that may follow on remand.

Reversed in part, affirmed in part, and remanded. We do not retain jurisdiction.

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

  
CLERK OF THE APPELLATE DIVISION