SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3589-20

ONE GREENWOOD, LLC, A BETTER LACKAWANNA, LLC, PRISCILLA ESHELMAN, CAROLINE KANE LEVY, ADAM BAKER, LINDA CRANSTON, CELESTE WALDEN-KELLEY, CHERIE ELFENBEIN, SUSAN BAGGS, KATHY ROSENBERG, JOSE GERMAN, FRANK LOUVIS, MERLE WISE,

Plaintiffs-Appellants,

v.

MONTCLAIR TOWNSHIP PLANNING BOARD, TOWNSHIP OF MONTCLAIR,

Defendants-Respondents.

HP LACKAWANNA OFFICE, LLC and LACKAWANNA SPE, LLC,

Intervenors-Respondents.

Argued February 6, 2023 — Decided February 16, 2023

Before Judges Whipple, Mawla, and Marczyk.

On appeal from the Superior Court of New Jersey, Law Division, Essex County, Docket No. L-4595-19.

Jay J. Rice argued the cause for appellants (Nagel Rice, LLP, attorneys; Jay J. Rice, of counsel and on the briefs; Michael J. Paragano, on the briefs).

Dennis M. Galvin argued the cause for respondents (Davison Eastman Muñoz Paone, PA, attorneys; Dennis M. Galvin, of counsel and on the brief).

Thomas J. Trautner argued the cause for intervenors-respondents (Chiesa Shahinian & Giantomasi PC, attorneys; Thomas J. Trautner, on the brief).

PER CURIAM

In this action in lieu of prerogative writs, plaintiffs One Greenwood, LLC, A Better Lackawanna, LLC, Priscilla Eshelman, Caroline Kane Levy, Adam Baker, Linda Cranston, Celeste Walden-Kelley, Cherie Elfenbein, Susan Baggs, Kathy Rosenberg, Jose German, Frank Louvis, and Merle Wise appeal from a March 11, 2021 order granting judgment in favor of defendants Montclair Township Planning Board and Township of Montclair. Plaintiffs also challenge a July 14, 2021 order denying their motion for reconsideration. We affirm.

The parties are familiar with the facts, which were also detailed in two written opinions by Judge Keith E. Lynott accompanying the orders challenged

on this appeal. To summarize, developers applied to the board for approval to develop the Lackawanna Station known as Lackawanna Plaza Shopping Center in Montclair. The structure is historic and comprised of train tracks, sheds, and stanchions supporting the building. The board held fourteen public meetings and heard testimony from numerous experts regarding traffic, parking, architecture, historic preservation, and environmental concerns. The public was given an opportunity to comment. The developers amended their plans multiple times based on directives from the board and the board approved the plan in a resolution, which contained its findings.

After the site plan was approved, the township passed a traffic ordinance. Plaintiffs then filed a complaint in lieu of prerogative writs, arguing: 1) the court should remand the matter for further hearings to assess the effect of the traffic ordinance on the project; 2) the approval should be vacated because a township council member also sat as a board member and recused herself at the last minute, or alternatively, the court should remand for a hearing to explore the reasons for the recusal; 3) the board arbitrarily limited the time for public comment at its hearings; 4) the project called for a supermarket on the site approximately 45,000 square feet in size, but in the final hour a smaller supermarket was identified as the occupant, which required the board to hold

new hearings regarding whether certain alterations to the building were still required; 5) the board failed to consider an easement held by Essex County and the project's infringement thereon; and 6) the board's approval of the project was arbitrary and capricious because it failed to consider the project's environmental impact and lacked an adequate record to make it findings.

Judge Lynott concluded because the board's approval of the project "reflected the relevant traffic laws and regulations in effect at the time of the initial submission—and its [a]pproval—there [was] no basis to invalidate the [b]oard's action at [that] time." He cited N.J.S.A. 40:55D-10.5, which in pertinent part states: "Any provisions of an ordinance, except those relating to health and public safety, that are adopted subsequent to the date of submission of an application for development, shall not be applicable to that application for development." He noted the principle undergirding the statute "promotes certainty, consistency and finality in a planning board's examination and adjudication of applications presented to it." Plaintiffs cited no authority that would permit the court to vacate an approval because of a traffic regulation adopted after the fact. Moreover, to the extent the ordinance affected the approvals, the developers would have to apply to amend the approval. However,

the judge concluded the proper means for addressing the impact of the new traffic ordinance was not judicial invalidation of the approval.

The judge found there was no conflict of interest requiring the board member to recuse herself because she was "a duly appointed 'Class III' member of the [b]oard appointed as such by the governing body in accordance with N.J.S.A. 40:55D-23(a)." Moreover, there was nothing in the record showing the board member had a personal or pecuniary interest in the project. After reviewing the record, the judge found the board member recused herself "due to her dual roles and . . . [out of] an excess of caution to avoid the very criticism of the [b]oard's action that her participation ha[d] prompted." The judge found no evidence to contradict the member's reasons for recusal and plaintiffs failed to show the member's "participation in the review of the application was infected by disqualifying bias or prepossession requiring her recusal or withdrawal."

The judge rejected plaintiffs' argument the board failed to allow enough time for public comment on the project. He noted N.J.S.A. 40:55D-10(d) delegates the conduct of the proceedings to the board chairperson's discretion. "Here, . . . the [chair], recognizing the large number of groups or individuals that wished to be heard, determined to impose, . . . a three-minute limit on each individual public comment [to] . . . ensur[e] that all commenters had that

opportunity." Notably, the board conducted seven hearings before a time limitation was imposed. Community members were able to question the witnesses and offer comment and "an entire separate session" was devoted to public comment, including many plaintiffs. Plaintiffs cited no "instance in which the [chair] cut off a commenter for exceeding the time limitation." The sole exception was when a planner from Washington, D.C., proposed a comment regarding historic preservation. The judge noted the chair properly determined this testimony would be redundant because the board had already considered both sides of the issue, and the proposed witness was not connected to the community.

The judge rejected plaintiffs' argument the reduced size of the supermarket tenant constituted a material change requiring the board to revisit the matter because the "proposal always contemplated a supermarket that would range from 25,000 to 45,000 [square feet]." The tenant who would occupy the space proposed a store 29,000 square feet in size, which occupied the same footprint, and fell "well within these parameters." The remainder of the space was earmarked for retail use as well.

The judge found the record showed the developer's submission to the board contained plans for use of the county's easement, and the county had

notice of the application and the opportunity to participate in the proceedings. Although plaintiffs claimed the project would impinge on the easement whose purpose was to provide drainage for a nearby county road, the developers "presented a detailed plan for stormwater management as to the entire [p]roject [that was] not only . . . subject to scrutiny and comment by the [b]oard's own consulting engineer and the Montclair Environmental Commission, but [also] revised . . . to respond to such comment." The judge also pointed out the board's resolution approving the project requires the developer to comply with all applicable laws and regulations, including "the requirement to obtain all necessary approvals from the [c]ounty [p]lanning [b]oard."[1] Therefore, plaintiffs could assert their objections in the proceedings before the county.

The judge rejected plaintiffs' argument the board failed to consider the historic elements of the building. He noted the board received expert testimony regarding which features were historically significant. Nonetheless, the developers agreed to modify their plan to preserve items that were not historically significant, including adding a deed restriction obliging future owners to preserve the building's historic features in perpetuity. The board also

[1] See N.J.S.A. 40:55D-50, which states when a county planning board is required to approve a site plan, a municipal planning board should condition its grant of site plan approval on gaining approval by the county planning board.

considered testimony from commissioners of the Historic Preservation Commission, despite the fact the developers were not receiving public funds, and the commission's approval was not required.

Plaintiffs also argued the proposed parking, traffic management, pedestrian access, and safety aspects of the proposal were inadequately addressed by the board. The judge cited the board's resolution, which contained findings the parking would be an improvement. He noted "[t]he record also abounds with evidence of due consideration of traffic management issues presented by the [p]roject." The board had considered studies, data, and plans, truck and commercial vehicle movement, and configuration of the loading dock area. According to the judge, the board reviewed and made findings regarding the pedestrian access issue with the same level of vigor.

On reconsideration, plaintiffs argued the court should have directed the board to hold additional hearings regarding the supermarket tenant because the proposed tenant was not identified until the last hearing. They claimed this caused the board to pass a resolution approving the project that lacked details regarding the supermarket tenant's footprint inside the building. Further hearings were also necessary to address changes in signage, truck operations, and traffic flow in the rear of the building. Plaintiffs reasserted the argument

related to the easement and argued the fact the project developers had to appear before the county was not an excuse for the court to sustain the board's action.

Judge Lynott rejected these arguments ostensibly for the same reasons articulated in his March 2021 opinion. He concluded the timing of the revelation of who would occupy the supermarket space was

> of no moment [because] the process followed from that point forward . . . [did] not undermine the validity of the [b]oard's subsequent approval or the comprehensive nature of the record before the [b]oard concerning the grocery store operation. Indeed, the purpose of the announcement at the final meeting was to confirm the applicant had in fact identified and contracted with a well-known and reputable grocery store operator, to allay any concerns among [b]oard members or the public that the applicant would not or could not follow through on its stated intention to devote a large portion of the site to a grocery store . . . .

The fact the supermarket tenant was smaller did not require further hearings because it was within the contemplated size range for the space, and the operator or future tenant could expand the size of the store.

The judge found the board did not prevent anyone from questioning the supermarket representative and the issue was raised by plaintiffs after the fact. Likewise, plaintiffs had the opportunity for public comment regarding the easement issue, and the board did not have to seek testimony absent a valid objection.

On appeal, plaintiffs reprise the arguments recounted above. They assert the recused board member had an "undeniable conflict" that required the court to vacate the board's resolution or conduct a hearing to explore the conflict. Likewise, the court should have vacated the resolution because it violated the traffic ordinance. The supermarket tenant constituted a last-minute material change to the site plan, which was not discussed. No record was made of the county easement and, the issue was not properly discussed. The court failed to recognize the board stifled public comment on the project. Lastly, plaintiffs contend the court erred by not vacating the resolution due to the board's failure to consider the historic preservation and environmental impact issues associated with the project.

"[P]ublic [land use] 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). "[C]ourts ordinarily should not disturb the discretionary decisions of local [land use] boards that are supported by substantial evidence in the record and reflect a correct application of the relevant principles of land use law." Lang v. Zoning Bd. of Adjustment, 160 N.J. 41, 58-59 (1999). "Even when doubt is entertained as to the wisdom of the action, or as to some part of it, there can be no judicial declaration of

invalidity in the absence of clear abuse of discretion by the public agencies involved." Kramer v. Bd. of Adjustment, 45 N.J. 268, 296-97 (1965). For these reasons, our review of a decision by a land use body is limited to whether it is "arbitrary, capricious, or in manifest abuse of its discretionary authority . . . ." Jock, 184 N.J. at 597.

Determinations on questions of law in land use matters do not warrant equivalent deference and are reviewed de novo. Bubis v. Kassin, 184 N.J. 612, 627 (2005). We apply the de novo standard of review on appeal after a trial court has made its own ruling. See James R. Ientile, Inc. v. Zoning Bd. of Adjustment, 271 N.J. Super. 326, 329 (App. Div. 1994).

Motions for reconsideration should only be granted in "those cases which fall into that narrow corridor in which either 1) the [c]ourt has expressed its decision based upon a palpably incorrect or irrational basis, or 2) it is obvious that the [c]ourt either did not consider, or failed to appreciate the significance of probative, competent evidence . . . ." Cummings v. Bahr, 295 N.J. Super. 374, 384 (App. Div. 1996) (quoting D'Atria v. D'Atria, 242 N.J. Super. 392, 401-02 (Ch. Div. 1990)). We review the denial of a motion for reconsideration for an abuse of discretion. Id. at 389.

Pursuant to these principles, and having thoroughly reviewed the voluminous record in this case, we affirm for the reasons expressed in Judge Lynott's thorough and well-written opinions. The arguments raised by plaintiffs on appeal lack sufficient merit to warrant further discussion in a written opinion. R. 2:11-3(e)(1)(E).

Affirmed.