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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-0285-16T4

LARRY PRICE,

Plaintiff-Appellant,

v.

CITY OF UNION CITY,

Defendant-Respondent,

and

SKY POINTE, LLC, and DHJ
HOLDINGS, LLC,

Defendants/Intervenors-
Respondents.

Argued December 20, 2017 – Decided February 13, 2018

Before Judges Fuentes, Koblitz and Manahan.

On appeal from Superior Court of New Jersey,
Law Division, Hudson County, Docket No. L-
4815-15.

Larry Price, appellant, argued the cause pro
se.

R. Scott Fahrney argued the cause for
respondent City of Union City (Kaufman,
Semeraro and Leibman, LLP, attorneys; Mark J.
Semeraro and R. Scott Fahrney, on the brief).

Mark E. Duckstein argued the cause for respondents Sky Pointe, LLC and DHJ Holdings, LLC (Sills Cummis & Gross, PC, attorneys; Kevin J. Moore, of counsel; Mark E. Duckstein and Michael J. Pisko, of counsel and on the brief).

PER CURIAM

Plaintiff Larry Price appeals from an August 17, 2016 order dismissing his complaint in lieu of prerogative writs seeking to invalidate defendant City of Union City's (Union City) designation of an area in need of redevelopment, pursuant to the Local Redevelopment and Housing Law (LRHL), N.J.S.A. 40A:12A-1 to -73. Union City adopted the report of a public planner, which extensively details the deterioration of the redevelopment area. Most of the properties in the area contain vacant and severely dilapidated buildings. All but one of the properties located within the redevelopment area are owned by defendant Sky Pointe, LLC (Sky Pointe), and its wholly owned subsidiary, defendant DHJ Holdings, LLC (DHJ).

Price alleges that Union City's designation is not supported by substantial evidence, and that private efforts by developers would have been sufficient to redevelop the area. He claims that defendants Sky Pointe and DHJ are responsible for the dilapidation and deterioration of the properties within the redevelopment area.

Plaintiff also alleges that Union City should have used its police powers to repair or demolish the buildings in the area.

Plaintiff's main contentions are that Union City designated the area as a redevelopment area so that it could become a "gatekeeper" and control the development of the area, and that Sky Pointe is responsible for the area's deterioration. We reject these arguments and affirm substantially for the reasons expressed by Judge Francis B. Schultz in his August 5, 2016 oral opinion.

In February 2009 The Board of Commissioners for Union City (Board) adopted a resolution which authorized the Planning Board of Union City (Planning Board) to conduct a preliminary investigation and hearing to determine whether Block 184, Lots 1.01 and 1.02, and Block 185, Lots 12, 14-17 and 30-42 (the redevelopment area) met the criteria to be designated a "redevelopment area" pursuant to the LRHL.

David Spatz, P.P., AICP, prepared a Redevelopment Area Report for the Union City's Planning Board. The Planning Board held a public hearing and on November 21, 2011, the Planning Board adopted a resolution recommending the Board of Commissioners designate the area as an area in need of redevelopment. No further action was taken at this time.

On June 17, 2014, the Board of Commissioners adopted a resolution requesting that the Planning Board review the 2009

Redevelopment Report to determine if its recommendation that the area be designated as a redevelopment area was still applicable. Three months later, Spatz prepared an updated Redevelopment Area Report (Report) for the Planning Board. The Report recommended that the area qualify as a non-condemnation redevelopment area. The Planning Board held public hearings on the matter, ultimately adopting a November 2015 resolution recommending that the Board designate the area as a non-condemnation redevelopment area pursuant to the LRHL, N.J.S.A. 40A:12A-1.

The same month, plaintiff filed a complaint in lieu of prerogative writs. The complaint alleges that the conditions of deterioration were likely to be corrected or ameliorated by private effort; no proof of dilapidation detrimental to the safety, health, morals or welfare of the community was demonstrated; any dilapidation or deterioration was the result of the property owner's lack of maintenance of the properties, and this "self-imposed hardship cannot be the basis of zoning relief"; Union City should have exercised its police powers to require the demolition or repair of the properties; and Union City's claim that, because it is located in PA-1, a Metropolitan Planning Area, "smart growth planning principles would be served" by redevelopment is overly broad, because all of Hudson County is located in a PA-1 Metropolitan Planning Area, and "a similar claim could be made

about any site in Hudson County." Finally, the complaint alleges that because, with the exception of one property owned by Union City, all of the properties in the redevelopment area are owned by a single property owner, "only one private party will benefit."

Judge Schultz found that the Report and the testimony of Spatz provided substantial evidence that almost all of the property fell within one of the categories in N.J.S.A. 40A:12A-5. With regard to plaintiff's arguments that the legislative intent of the Act (pursuant to N.J.S.A. 40A:12A-2, Findings, determinations, declarations) required private efforts to redevelop an area be inadequate, the judge explained he was "satisfied that private efforts failed and that [the deterioration is] not likely to be corrected or ameliorated by private effort." Judge Schultz also discussed plaintiff's claims that the area was not "detrimental to the health, safety, and morals of the community," and found that "the report of Mr. Spatz, as well as the testimony of those people . . . [who commented at Planning Board's hearings] certainly suggest otherwise." As for plaintiff's claims that Sky Pointe created the deterioration, and it was a self-imposed hardship, Judge Schultz explained that:

[t]he moving party here is Union City – not the developer . . . there was no evidence of neglect on the part of Sky Pointe that they burned things or broke windows or went out there and did something untoward to give the

façade of . . . deteriorated dwellings and property . . . [a]nd I just don't find that . . . argument about a self-imposed hardship would prevent the city from finding this to be an area in need of redevelopment.

Finally, Judge Schultz explained that Union City was not required to use its police powers to "knock these buildings down" instead of declaring the area as an area in need of redevelopment. With regard to Sky Pointe potentially making money through the Union City's redevelopment area designation, Judge Schultz explained "that is not a reason to override the City's determination People are allowed to make money, it's not a crime. And it's not a known obstacle to the city deeming this an area in need of redevelopment."

The area that Union City has designated a non-condemnation redevelopment area is approximately 3.34 acres, located in the southeastern portion of Union City. It includes thirteen properties. The rear portions of the properties abut the Palisades Cliffs, with a view of the New York City skyline. Sky Pointe and its subsidiary DHJ own all but one of the properties, which have been vacant for seven to eleven years.

In preparing the Report, Spatz conducted:

interior and exterior inspections of the properties and structures, which were made on July 29, 2009 and June 23, 2014, a review of the existing land use for the property, [a] 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 extensively details each building's deterioration and dilapidation. The Report describes the properties as "vacant and unproductive," which is "detrimental to the health, safety, morals and welfare of the community." All of the buildings are in poor condition, and most have significant damage and are uninhabitable without significant renovation. The damage to each building includes defective roof shingles, retaining walls above the cliffs in the rear of the properties, electrical panels, hot water heaters, chimneys, windows, and support beams. Interior water damage has caused mold and extensive interior and exterior damage exists.

One building has significant damage from a fire that effectively gutted the building. Three of the properties do not contain buildings; two contain parking lots and one property is landlocked, containing mostly cliffs.

The Report discusses police reports for the area that indicate many of the properties attract "vagrants and vandals who continue to illegally trespass, damage the building and parcel, engage in illicit drug use, [and] engage in verbal altercations with one another."

Several of the properties had previously been approved for development. In 2005, one property was approved for construction of a twenty-one story, thirty-two unit apartment building, though no action was taken. That same year, another property was approved for construction of a twenty story, twenty-eight unit apartment building; however, again no action was taken. Finally, a third property was previously approved in 2007 for construction of an eighteen story, ninety unit apartment building, and again, no action was ever taken. The area is located in a low density residential zone, which permits one family dwellings, two family dwellings, three family dwellings, municipal uses and public parks and playgrounds.

The Report analyzes the criteria to designate an area in need of redevelopment under N.J.S.A. 40A:12A-5, and addresses criterion N.J.S.A. 40A:12A-5(a), finding that the buildings in the area "are in a substandard, unsafe, unsanitary and dilapidated condition, and are therefore conducive to unwholesome living or working conditions." Additionally, because the buildings were constructed before 1978, the buildings are potentially affected by the existence of lead paint.

With regard to criterion N.J.S.A. 40A:12A-5(b), the Report finds that one property had been abandoned and is no longer used for commercial purposes, and had also been designated by the New

Jersey Department of Environmental Protection (NJ DEP) as an active site with confirmed contamination.

Regarding criterion N.J.S.A. 40A:12A-5(c), the Report explains that all of the properties "contain steep slope areas. By reason of their location, remoteness, lack of means of access to developed sections or portions of the municipality . . . [they] are not likely to be developed through the instrumentality of private capital." The Report also addresses the previously-approved site plans, noting that none of the projects had actually begun.

Concerning criterion N.J.S.A. 40A:12A-5(d), the Report explains that:

By reason of dilapidation, faulty arrangement or design, deleterious land uses, or any combination of these or other factors the buildings in the [area] are detrimental to the safety, health, morals or welfare of Union City and the surrounding neighborhood . . . [there are] 12 properties . . . [with] 12 separate driveways, most of which required vehicles to back out onto those roadways. . . . The proliferation of this many individual driveways produces concerns for traffic safety on such a busy street . . . The deteriorated condition of the [area] exerts a negative impact on the surrounding neighborhood . . . [t]his negative impact is reflected in police reports for crimes within the [area]. Between 2005 and 2008, there were 105 separate reports regarding properties in the [area], including burglaries, suspicious persons, fires, criminal mischief and trespassing.

Finally, regarding criterion N.J.S.A. 40A:12A-5(h), the Report indicates that:

The City of Union 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 [area] as an area in need of redevelopment include: the revitalization of the State's Cities and Towns by the protection, preservation and development of valuable human and economic assets and the improvement of livability and sustainability by investing public resources in accordance with current plans that are consistent with the provisions of the State Plan; building on the assets of cities and towns such as their labor force, available land and buildings, strategic locations and diverse populations; the conservation of the State's natural resources and systems by preserving the Palisades cliffs through a comprehensive development plan; the promotion of beneficial economic growth, development and renewal for all residents of New Jersey; to ensure sound and integrated planning and implementation statewide and; urban revitalization through the preparation of plans that promote revitalization, economic development and infrastructure investments, coordinate revitalization planning among organizations and governments, support housing programs and adaptive reuse.

The City's recently adopted Master Plan recommends that the properties in the [area] be designated, Mid Rise Residential/Steep Slope. The general objectives for Multi Family, Mid Rise Districts include the expansion of existing multifamily districts and creation of opportunities for high density housing . . . [t]he designation of the [area]

as an area in need of redevelopment would be consistent with the goals and objectives of the Master Plan.

The Report recommends to the Board that the area be qualified as a non-condemnation redevelopment area.

The Planning Board held two public hearings, where it invited members of the Planning Board and the public to ask questions after Spatz presented the Report. Spatz testified that he conducted several site inspections of the area, in addition to reviewing building inspections, NJ DEP and police reports. At both hearings, the comments from the public were mixed, with some supporting a redevelopment designation, and others critical of Sky Pointe's role in the dilapidation and deterioration of the properties.

"When reviewing a trial court's decision regarding the validity of a local board's determination, we are 'bound by the same standards as was the trial court.'" Jacoby v. Zoning Bd. of Adjustment 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)). This court "give[s] deference to the actions and factual findings of local boards and may not disturb such findings unless they were arbitrary, capricious or unreasonable." Ibid. However, a municipal entity's "decision is 'invested with a presumption of

validity,'" 62-64 Main St., L.L.C. v. Mayor of City of Hackensack, 221 N.J. 129, 157 (2015) (quoting Levin v. Twp. Comm. of Bridgewater, 57 N.J. 506, 537 (1971)), and "[t]he challenger of municipal action bears the 'heavy burden' of overcoming this presumption of validity." Vineland Constr. Co. v. Twp. of Pennsauken, 395 N.J. Super. 230, 256 (App. Div. 2007) (quoting Bryant v. City of Atlantic City, 309 N.J. Super. 596, 610 (App. Div. 1998)).

The actions of a board must be based on "substantial evidence." Ibid. As long as the board's actions are "supported by substantial evidence in the record, a court is bound to affirm that determination." 62-64 Main St., 221 N.J. at 157. "This heightened deference standard is codified in the LRHL, which provides that an 'area in need of redevelopment' designation 'shall be binding and conclusive upon all persons affected by the determination' if it is 'supported by substantial evidence and, if required, approved by the commissioner.'" ERETC, L.L.C. v. City of Perth Amboy, 381 N.J. Super. 268, 277-78 (App. Div. 2005) (quoting N.J.S.A. 40A:12A-6(b)(5)(c)). "Accordingly, it is not for the courts to 'second guess' a municipal redevelopment action 'which bears with it a presumption of regularity.'" Id. at 278 (quoting Forbes v. Bd. of Trs., 312 N.J. Super. 519, 532 (App. Div. 1998)).

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). "[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 Realty Dev., Inc. v. Borough of Paulsboro, 191 N.J. 344, 373 (2007). Substantially for the reasons expressed by Judge Schultz, we affirm.

Affirmed.

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



CLERK OF THE APPELLATE DIVISION