

NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3101-05T5
A-3382-05T5

MONROE PROPERTIES, LLC,

Plaintiff-Respondent,

v.

THE CITY OF HOBOKEN, THE CITY
OF HOBOKEN ACTING AS THE
REDEVELOPMENT AGENCY and
TARRAGON/URSA REDEVELOPMENT
PARTNERSHIP, LLC,

Defendants-Appellants.

HOBOKEN PARKS ORGANIZATION
and FUND FOR A BETTER
WATERFRONT,

Plaintiffs-Respondents,

v.

THE CITY OF HOBOKEN, THE MAYOR
AND COUNCIL OF THE CITY OF
HOBOKEN and TARRAGON/URSA
REVELOPMENT PARTNERSHIP, LLC,

Defendants-Appellants.

Argued December 5, 2007 - Decided May 30, 2008

Before Judges Parker, R. B. Coleman and
Lyons.

On appeal from the Superior Court of New Jersey, Law Division, Hudson County, Docket Nos. L-1451-05, L-1473-05.

Christopher K. Harriott argued the cause for appellants the City of Hoboken and the City of Hoboken Acting as the Redevelopment Agency (Florio & Kenny, L.L.P., attorneys; Mr. Harriott, on the brief; Edward J. Florio, of counsel and on the brief; Lisa J. Jurick, on the brief).

John J. Curley argued the cause for appellant Tarragon/URSA Redevelopment Partnership, LLC (John J. Curley, LLC, attorney; Mr. Curley, of counsel and on the brief; Jennifer J. Bogdanski, on the brief).

James C. McCann argued the cause for respondent Monroe Properties, LLC (Connell Foley, LLP, attorneys; Mr. McCann, of counsel and on the brief; Adam M. Lustberg, on the brief).

Michael S. Rubin argued the cause for respondents Hoboken Parks Organization and Fund for a Better Waterfront.

PER CURIAM

Defendants Tarragon/Ursa Redevelopment Partnership, LLC (Tarragon) and the City of Hoboken (the City)¹ appeal from a January 13, 2006 order invalidating the City's adoption of a resolution and a corresponding Memorandum of Understanding (MOU) between the City and Tarragon. The trial court determined that the resolution was arbitrary, capricious and unlawful because

¹ Throughout this opinion Tarragon and the City are collectively referred to as "Defendants".

the City and/or the Hoboken Redevelopment Authority (HRA) did not take the proper steps under the Local Redevelopment and Housing Law (LRHL), N.J.S.A. 40A:12A-1 to -49 to effectuate the MOU. After reviewing the record in light of the contentions advanced on appeal, we affirm the order of the trial court.

On February 2, 2005, the City passed Resolution #15-1777, also called Resolution #8,² authorizing it to enter into an MOU with Tarragon in connection with the possibility of redevelopment of certain properties within a study area adjacent to the City's Northwest Redevelopment Area (NWRA). That study area is bounded on the north by 14th Street, on the south by the boundary of the Northwest Redevelopment Area and the proposed school facilities project of the New Jersey School's Construction Corporation, and on the west by the right of way line by the Hudson Bergen Light Rail Transit System. The study area contains approximately 10.75 acres of land.

On February 16, 2005, the City's mayor, David Roberts, executed the MOU between the City and Tarragon. The MOU contains, among other things, the following provisions:

Section 2.01. Preliminary investigation of the Study Area. Within one hundred eighty (180) days, the City shall initiate a preliminary investigation of the Study Area

² The trial court refers to the resolution as "Resolution 8" and the City's brief refers to it as "Resolution #05-1777."

in accordance with the LRHL to determine whether it is a redevelopment area according to the criteria set forth in N.J.S.A. 40A:-12A-5.

Section 2.02. Preparation of Redevelopment Plan. The City shall engage a professional planner to prepare a redevelopment plan for the Study Area that shall be referred to the Planning Board for its review and recommendations in accordance with N.J.S.A. 40A-12A-7(e) if, following the preliminary investigation of the Planning Board, the City determines that the Study Area is an area in need of redevelopment.

Section 2.03. Funding for planning activities. At the request of the City, the Developer agrees to contribute into an escrow account held in favor of the City a sum not to exceed \$80,000 towards the preliminary investigation, and planning studies to be used in considering whether the Study Area is an area in need of redevelopment and, the preparation of a redevelopment plan for the Study Area ("Authorized Expenses").

Section 3.03. Land Use Specifications. Should the City adopt a redevelopment plan that provides for a type and density of development that, in the Developer's judgment, is not adequate to support the economic feasibility of the dedication of land and construction of the community center and public pool, the Developer may elect to avoid its obligations set forth in Sections 3.01 and 3.02 above in which event either party shall have the option to terminate this MOU without incurring any liability hereunder.

Section 4.01. Negotiation and entry into Redevelopment Agreement. Upon the determination that the Study Area is an area in need of redevelopment and the adoption of

a redevelopment plan in accordance with this MOU, the City and the Developer shall negotiate in good faith a Redevelopment Agreement for the planning, replanning, construction or undertaking of the redevelopment project.

Section 5.01. Exclusivity of MOU. The designation of the Developer as the redeveloper of the Study Area is intended by the parties to vest in the Developer the exclusive right and obligation to negotiate in good faith a Redevelopment Agreement for the Study Area. The City expressly agrees not to deal with any other potential redevelopers with respect to the Study Area during the term of this MOU.

Section 5.02. Duration of MOU. This MOU shall remain in full force and effect until the earliest of:

(1) The Study Area is determined not to be in an area of redevelopment;

(2) A date of three (3) years from the adoption of the Redevelopment Plan for the Study Area;

(3) Mutual agreement of the parties to terminate.

(4) As otherwise provided in this Agreement.

The subject resolution had been adopted at a regularly scheduled meeting of the City Council. That meeting began with an opening statement by Mayor Roberts, discussing the City's budget and his open spaces initiative. Mayor Roberts was followed by counsel for Monroe, who objected to the resolution on the grounds that the City had not followed the LRHL. Several

others in attendance expressed their views in favor of or in opposition to the proposed resolution and the MOU, after which the Council adopted the resolution by a 6-2 vote. The resolution recited, among other things, the following:

WHEREAS, in an effort to facilitate redevelopment for a portion of this area [adjacent to the NWRA], the City is desirous of obtaining private participation for the funding and performance of the processes set forth in the Local Redevelopment and Housing Law.

. . . .

WHEREAS, the Developer [Tarragon] has presented the City with a Concept Plan that includes residential and commercial development projects, open space, parks and recreational and other public facilities in an effort to meet the City's needs, goals and objectives for the Study Area; and

WHEREAS, the Developer has demonstrated its qualifications to participate as a redeveloper in accordance with the LRHL in connection with the clearance, replanning, development and redevelopment of the Study Area; and

WHEREAS, the Developer has represented and warranted that it has obtained site control over a majority of the land and parcels within the Study Area by virtue of its having entered into enforceable purchase agreements with the owners thereof; and

WHEREAS, the Developer is agreeable to conforming its redevelopment activities to those that may be approved and incorporated into a redevelopment plan to be adopted in accordance with the LRHL; and

WHEREAS, the Developer has agreed to contribute public facilities within the Study Area, or on land adjacent thereto in the NWRA, which will include the dedication of land to Public use and the construction of community facilities in order to carry out the redevelopment of the Study Area in accordance with the Master Plan; and

WHEREAS, the City is desirous of designating the Developer as the private redeveloper of the Study Area provided that the Study Area is determined to be an area in need of redevelopment and a redevelopment plan is adopted in accordance with the LRHL.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF HOBOKEN:

1. That the City of Hoboken enter into a Memorandum of Understanding with TARRAGON/URSA REDEVELOPMENT PARTNERSHIP, LLC, a New Jersey limited liability company, in the form attached hereto.
2. That the Mayor be and is hereby authorized to execute the aforesaid Memorandum of Understanding on behalf of the City of Hoboken.
3. That this Resolution shall be effective immediately.

On March 17, 2005, Monroe Properties, LLC (Monroe), owner of 5.25 acres, approximately forty-two percent of the land area within the study area, filed a Complaint in Lieu of Prerogative Writs against the City and Tarragon. Monroe alleged that the resolution was unlawful and sought to enjoin defendants from

carrying out the MOU because the City did not follow the procedures for redevelopment pursuant to the LRHL. N.J.S.A. 40A:12A-1 to -49. On March 18, 2005, Hoboken Parks Organization and Fund For A Better Waterfront (Hoboken Parks), an organization dedicated to creating new parks in Hoboken, filed a Complaint in Lieu of Prerogative Writs against defendants, alleging that the MOU was illegal and unenforceable. The City and Tarragon each answered the two complaints. On June 24, 2005, the court entered an order consolidating the matters.

The cases proceeded to trial and the parties presented oral arguments on December 5, 2005. On January 13, 2006, the court rendered an oral decision and entered an order invalidating the resolution as arbitrary, capricious and unlawful because the City and HRA failed to comply with the requirements of the LRHL. In the oral opinion, the court stated:

In analyzing the prerogative writ issues before this Court, this Court has considered whether a municipality may designate and contract with a redeveloper under the Local Redevelopment and Housing Law, N.J.S.A. 40A:12-A et seq. prior to or even before the initiation of a statutory process for designating a redevelopment area and approving a redevelopment plan.

This Court finds that a municipality may not do so under the requirements of the LRHL. This Court finds that, read together, the memorandum of understanding and Resolution No. 8 clearly attempt to circumvent the procedures of the LRHL, in

that despite Tarragon's representation that it has not been designated as the redeveloper, N.J.S.A. 40A:12A-3 defines redeveloper 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."

The trial court concluded that by virtue of the resolution and the terms of the MOU, the City had effectively appointed Tarragon as the redeveloper, thereby violating the LRHL which precludes a municipality from designating and contracting with a redeveloper prior to designating an area in need of redevelopment or in need of rehabilitation and prior to approving a redevelopment plan. The trial court perceived that the City was "putting the cart before the horse." Finding the resolution arbitrary, capricious and unlawful, the trial court invalidated the resolution and remanded the matter to the City to follow proper LRHL procedures. Additionally, the court invalidated the MOU for the same reasons. Tarragon and the City each filed a notice of appeal, and the cases were again consolidated for appeal.

On appeal, Tarragon presents the following points of argument:

POINT I: THE TRIAL COURT WAS INCORRECT TO HOLD THAT TARRAGON/URSA FAILED TO SUFFICIENTLY DEMONSTRATE ITS QUALIFICATIONS AND TO SET FORTH ITS PLANS FOR THE STUDY AREA.

POINT II: THE TRIAL COURT ERRED IN DECLARING THE MOU TO BE INVALID BECAUSE IT ERRONEOUSLY FOUND IT APPOINTED TARRAGON/URSA AS THE REDEVELOPER AND CIRCUMVENTED THE LRHL.

POINT III: THE TRIAL COURT ERRED IN HOLDING THAT THE CITY EXCEEDED ITS AUTHORITY TO ENTER INTO THE MOU WITH TARRAGON/URSA.

The City raises the following points on its appeal:

POINT I: STANDARD OF APPELLATE REVIEW.

POINT II: THE TRIAL COURT ERRED IN DETERMINING THAT THE CITY'S ACTION WAS ARBITRARY, CAPRICIOUS AND UNREASONABLE.

POINT III: THE TRIAL COURT ERRED IN FAILING TO FIND THE MOU TO BE A VALID EXERCISE OF THE CITY'S POLICE POWER.

As the City correctly urges, the standard of our review is the same as that of the trial court. "[M]unicipal actions enjoy a presumption of validity." Bryant v. City of Atl. City, 309 N.J. Super. 596, 610 (App. Div. 1998). Therefore, a party challenging the validity of municipal action bears a heavy burden. Ibid. Nevertheless, "[m]unicipal action will be overturned by a court if it is arbitrary, capricious or unreasonable." Ibid. "Any exercise of delegated power by a municipality in a manner not within the purview of the governing

statute is capricious and ultra vires of the delegated power." Giannone v. Carlin, 20 N.J. 511, 517 (1956); Kress v. LaVilla, 335 N.J. Super. 400, 411 (App. Div. 2000). "Where the statute sets forth the procedure to be followed, no governing body, or subdivision thereof, has the power to adopt any other method of procedure." Kress, supra, at 411 (quoting Midtown Props., Inc. v. Twp. of Madison, 68 N.J. Super. 147, 207 (Law Div. 1961), aff'd, o.b., 70 N.J. Super. 471 (App. Div. 1963)).

The LRHL establishes the procedures to which a municipal governing body must adhere in exercising redevelopment functions. N.J.S.A. 40A:12A-6 provides that:

No area of a municipality shall be determined a redevelopment area unless the governing body of the municipality shall, by resolution, authorize the planning board to undertake a preliminary investigation to determine whether the proposed area is a redevelopment area according to the criteria set forth in [N.J.S.A. 40A:12A-5]. Such determination shall be made after public notice and public hearing as provided in subsection b. of this section. The governing body of a municipality shall assign the conduct of the investigation and hearing to the planning board of the municipality.

. . . .

c. . . . If an area is determined to be a redevelopment area and a redevelopment plan is adopted for that area in accordance with the provisions of this act, the municipality is authorized to utilize all those powers provided in [N.J.S.A. 40A:12A-8].

In addition, N.J.S.A. 40A:12A-7a states that "[n]o redevelopment project shall be undertaken or carried out except in accordance with a redevelopment plan adopted by ordinance of the municipal governing body, upon its finding that the specifically delineated project area is located in an area in need of redevelopment" "Upon the adoption of a redevelopment plan pursuant to [N.J.S.A. 40A:12A-7], the municipality or redevelopment entity designated by the governing body may proceed with the clearance, replanning, development and redevelopment of the area designated in that plan." N.J.S.A. 40A:12A-8. That section of the act further provides:

In order to carry out and effectuate the purpose of this act and the terms of the redevelopment plan, the municipality or designated redevelopment entity may:

. . . .

f. Arrange or contract with public agencies or redevelopers for the planning, replanning, construction, or undertaking of any project or redevelopment work, or any part thereof; negotiate and collect revenue from a redeveloper to defray the costs of the redevelopment entity

[Ibid.]

The LRHL defines "redeveloper" as "any person, firm, corporation or public body that shall enter into or propose to enter into a

contract with a municipality . . . for the redevelopment . . . of an area in need of redevelopment." N.J.S.A. 40A:12A-3.

We agree with the trial court's determination that Tarragon comes within the definition of a redeveloper and that the aforementioned statutory provisions require that the municipality take prescribed steps prior to entering into or proposing to enter into the contract for redevelopment. The City must "by resolution, authorize the planning board to undertake a preliminary investigation to determine whether the proposed area is a redevelopment area," N.J.S.A. 40A:12A-6; and it must adopt a redevelopment plan by ordinance upon finding that an area is in need of redevelopment, N.J.S.A. 40A:12A-7 and -8.

Once an area is determined to be a redevelopment area and a redevelopment plan is adopted, then a municipality may exercise redevelopment functions as set forth in N.J.S.A. 40A:12A-8. N.J.S.A. 40A:12A-6c and -8. The functions that a municipality may undertake after following both procedural measures include "[p]repar[ing] or arrang[ing] by contract for the provision of professional services and the preparation of plans by registered architects, licensed professional engineers or planners, or other consultants for the carrying out of redevelopment projects" and "[a]rrang[ing] or contract[ing] with public

agencies or redevelopers for the planning, replanning, construction, or undertaking of any project or redevelopment work." N.J.S.A. 40A:12A-8.

In Levin v. Twp. Comm. of Bridgewater,³ the Court stated:

Once a proper declaration of blight is made, there is no substance to the contention that the result of the governmental action in selecting a redeveloper is to take property from one individual and turn it over to another in violation of the due process requirements of the Federal Constitution. The Blighted Area Act provides that following a declaration of blight the governing body may, by resolution, agree that a private corporation or individual may be chosen to undertake the redevelopment project according to a comprehensive plan created or approved by it. N.J.S.A. 40:55-21.10. In this event, the private developer is really the instrumentality used to accomplish the public purpose.

[57 N.J. 506, 543 (1971) (emphasis added).]

This excerpt makes clear the Court's understanding that a municipality must first determine that an area is blighted and adopt a redevelopment plan prior to choosing a redeveloper.

Similarly, in Wilson v. City of Long Branch, 27 N.J. 360, 370 (1958), the Court found that if, after certain proceedings

³ Prior cases discussing the Blighted Area Act (BAA), N.J.S.A. 40:55-21.1, repealed by L. 1992, c. 79, § 59, such as Levin, supra, are still applicable because the BAA and LRHL are "virtually identical" and the differences between the two statutes are "cosmetic only." Forbes v. Bd. of Trs. of S. Orange Village, 312 N.J. Super. 519, 526 (App. Div. 1998).

have been taken, a portion of a municipality is found to be blighted . . . the governing body may, by resolution, agree that a private corporation may undertake . . . redevelopment" Likewise, in Bryant, supra, we specifically commented on the procedural requirements of the LRHL, stating:

[A] municipal governing body has the authority to determine whether areas within its jurisdiction are "areas in need of redevelopment." N.J.S.A. 40A:12A-4, -5, and -14. The governing body must, by resolution, determine which areas are in need of rehabilitation; however, that area may include the entire municipality. Prior to adopting such a resolution, the governing body must send the proposal to the planning board for its consideration. Once an area of redevelopment has been identified, public hearings conducted by the local planning board follow, and a Redevelopment Plan can then be adopted by local ordinance. After a plan for rehabilitation of an area has been adopted, the municipality . . . can carry out the plan through the use of the several enumerated powers described in N.J.S.A. 40A:12A-8.

[309 N.J. Super at 603.]

In the present case, the City openly "recognize[s] the need to work within the LRHL once certain preliminary steps are achieved" and it so states in its reply brief. Similarly, Tarragon acknowledges:

If the area were to be declared to be an area in need of redevelopment and if Tarragon/Ursa were to be designated as the redeveloper for the area, its plans for the redevelopment of the area would need to

conform with the Redevelopment Plan for the area adopted by the City.

The City and Tarragon contend, however, that they have not entered into a redevelopment agreement governed by the LRHL; thus, they assert that (a) the LRHL does not apply and (b) Tarragon is not a "redeveloper" by virtue of the MOU alone. We disagree.

The LRHL requires that the City adopt a redevelopment plan by ordinance, prior to performing redevelopment functions such as preparing or arranging to contract with redevelopers. N.J.S.A. 40A:12A-7 and -8. It is, of course, not disputed that the City has not adopted an ordinance approving a redevelopment plan for the area in question. That is the first step contemplated by the LRHL. Rather than take that step, the resolution and MOU call for defendants to side-step that measure, relying upon a Concept Plan that Tarragon presented to the City, which is, according to them, "intended to be just the first step down the road toward ultimately redeveloping the property[.]" They contend that they "cannot take the next step [sic] towards redevelopment unless and until [certain] contingencies are met." Ironically, those contingencies enumerated in the City's reply brief "include the preliminary study concluding that the properties are in need of

redevelopment, the preparation of a redevelopment plan, and full compliance with the requirements of the LRHL."

Both defendants characterize the resolution and the MOU as something other than what they truly are. Tarragon describes the resolution and the MOU as "an agreement between the parties in contemplation of the potential redevelopment of the MOU Properties should they be deemed blighted at a future date in accordance with the LRHL." The City portrays the resolution as "merely authoriz[ing] the City to enter into an MOU with Tarragon/Ursa conditioned upon the preliminary investigation yielding the result that the area is in need of redevelopment, as well as other conditions, such as creation of a redevelopment plan."

A review of the terms of the MOU reveals the import and the impact of that agreement. The MOU grants Tarragon the exclusive right for three years to enter into a redevelopment agreement with the City. The MOU prohibits the City from dealing with other developers while it is in effect. It implicitly approves of Tarragon's concept plan without a public presentation of the plan or adoption of the plan by resolution or ordinance. At a minimum, the City has arranged and is prepared to contract with Tarragon before all of the requisite measures of the LRHL have been satisfied. The MOU is, in effect, a contract providing

that Tarragon will be the redeveloper after certain contingencies or conditions are met. To our understanding, Tarragon is a "redeveloper" for purposes of the LRHL because it entered into a contract or proposes to enter into a contract with the City for redevelopment. N.J.S.A. 40A:12A-3. Thus, the City violated the LRHL. N.J.S.A. 40A:12A-8. Regardless of whether the City and Tarragon intended to circumvent the LRHL, the resolution and MOU did just that. Accordingly, we affirm the trial court's decision to invalidate the resolution and MOU.

Defendants further argue that the court erred in holding that the City was required to publicly present Tarragon's qualifications before entering into the MOU. Defendants argue that there is no statutory provision requiring this type of action. We note that we are in general agreement with the trial court's view that the governing body's familiarity with a developer is not a sufficient basis to justify a subsequent designation of that developer as a redeveloper, or to shield such developer from public scrutiny; however, in light of our determination that the procedures of the LRHL must be followed, which would include public hearings, we regard this point as moot.

Lastly, defendants assert that entering the MOU was a valid exercise of the City's police powers. "It is axiomatic

that municipal bodies in this State have no powers other than those delegated by the Legislature, and must perform their prescribed activities within the statutory ambit." Sinclair Refining Co. v. County of Bergen, 103 N.J. Super. 426, 433 (App. Div. 1968). "A municipality in exercising the power delegated to it must act within such delegated power and cannot go beyond it. Where the statute sets forth the procedure to be followed, no governing body, or subdivision thereof, has the power to adopt any other method of procedure." Midtown Props., Inc. supra, 68 N.J. Super. at 207.

In the present case, the LRHL specifically addresses the process to be utilized by municipalities to determine areas in need of redevelopment or rehabilitation and to undertake the redevelopment of such areas. Where such specific procedures are provided by the Legislature, a municipality may not rely upon or resort to its claimed police powers. Dome Realty, Inc. v. City of Paterson, 83 N.J. 212, 225, 226 (1980).

Affirmed.

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


CLERK OF THE APPELLATE DIVISION