SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION

I.W.S. TRANSFER SYSTEMS OF N.J., INC., Plaintiff-Appellant, v. PLANNING BOARD OF THE CITY OF GARFIELD; CITY OF GARFIELD, A MUNICIPAL CORPORATION OF THE STATE OF NEW JERSEY, Defendants-Respondents.	APPEAL NO. A-000305-24-T2 **ON APPEAL FROM**: SUPERIOR COURT OF NEW JERSEY Law Division, Bergen County Docket No. BER-L-4206-23 **SAT BELOW**: Hon. Gregg A. Padovano, J.S.C.

APPELLANT'S BRIEF

Of Counsel and On the Brief
Joseph W. Grather, Esq.
jgrather@mrod.law
(I.D. No. 004831999)

MCKIRDY, RISKIN, OLSON & DELLAPELLE, P.C.
201 Littleton Road, Suite 135
Morris Plains, NJ 07950
Tel#: 973-539-8900
Attorneys for Plaintiff-Appellant,
I.W.S. Transfer Systems of N.J., Inc.

TABLE OF CONTENTS

TABLE OF ORDERS RELEVANT ON APPEAL

TABLE OF AUTHORITIES

N.J. Court Rules

Preliminary Statement

Appellant, I.W.S. Transfer Systems of N.J., Inc. (hereinafter "IWS" or "Appellant") commenced this Action in Lieu of Prerogative Writs to challenge the constitutionality of governmental action taken by Defendants City of Garfield and its Planning Board ("City" or "Defendants"). Specifically, the Amended Complaint sought to overturn the unconstitutional actions of the City as follows:

- Designation of property as an "area in need of redevelopment" under the Local Redevelopment and Housing Law that was not blighted as mandated by the "Blighted Areas Clause" of the Constitution (First Count);
- Adoption of a Redevelopment Plan under the Local Redevelopment and Housing Law for Non-Blighted Property (Second Count);
- Unconstitutional Spot Zoning / Avoidance of Municipal Land Use Law (Third and Fourth Counts);
- An unconstitutional failure to comply with the duty and obligation to construct its "fair share" of "affordable housing" under the Mount Laurel doctrine (Fifth Count); and
- Lastly, declaring the property "exempt from taxation" contrary to the requirements of the "Blight Areas Clause" despite the absence of sufficient proof that "profits of and dividends payable by" the private corporation would be limited by law (Sixth Count).

The trial court's opinion did not even address the Third, Fourth, Fifth, or Sixth Counts of the Complaint, and the analysis of the First and Second Counts was superficial and inconsistent with the applicable standard of review on a pre-answer motion to dismiss.

All Counts of the Amended Complaint raise substantial questions of public importance. The foundation of the governmental action being challenged is the New Jersey Constitution. The factual allegations of the Amended Complaint were carefully tailored and specifically allege that the actions were unconstitutional. The designation of a single property improved with one industrial building comprising less than an acre of land located at 69 Hepworth Place in the City of Garfield as an "area in need of redevelopment" under the Local Redevelopment and Housing Law ("LRHL") (N.J.S.A. 40A:12A-1 et seq) did not comply with the requirements of the LRHL or the constitutional clause upon which it was adopted.

In the end, the trial court's "examination of a complaint's allegations of fact" was neither "painstaking" nor "undertaken with a generous and hospitable approach" to IWS' claims, and therefore the Order dismissing the Amended Complaint (Pre-Answer), should be reversed.

Procedural History & Statement of Facts[1]

Area in Need of Redevelopment Proceedings

On or about July 20, 2021 City adopted Resolution 21-245 authorizing and directing the Planning Board to examine whether the property located at 69 Hepworth Place (Block 34.02, Lot 28), should be determined to be an area in need of redevelopment. Pa82-Pa83. A Report of Preliminary Investigation for Determination of an Area in Need of Redevelopment ("Study Report"), prepared by DMR Architects issued in September of 2021. Pa86-Pa125. Newspaper notice of Planning Board meeting on November 18, 2021 was published on November 1 and 8, 2021. Pa84. On November 18, 2021, there was a Planning Board meeting. The author of the report testified to the contents of the Study Report.

On December 16, 2021, the Planning Board adopted Resolution PB-12-2021, which recommended that Defendant City designate the Property as an "area in need of redevelopment." Five days later, and without further written or newspaper notice, the City adopts Resolution R-21-475 designating the Property "known as 69 Hepworth Place" as an "area in need of redevelopment" under the Local Redevelopment and Housing Law. Pa45-Pa46.

A proposed Redevelopment Plan for 69 Hepworth Place was prepared by DMR Architects dated July 2022. Pa126-Pa155. On July 19, 2022, City introduced

[1] The statements are combined as the facts and procedure are inextricably intertwined.

Ordinance 2949 to adopt a "redevelopment plan" for the 69 Hepworth Place property pursuant to the Local Redevelopment and Housing Law. Pa156. Newspaper notice of introduction was published on July 22, 2022. Id. On August 16, 2022, the City adopted the Redevelopment Plan by way of Ordinance 2949. Newspaper notice of ordinance adoption was published on August 22, 2022. Pa157.

The Study Report stated under the heading "Current Zoning" – "The subject property is located in the Light Manufacturing (LM) Zone." Pa94. The Redevelopment Plan confirms the underlying zoning is Light Manufacturing. Pa131.

A hearing on an application for Preliminary and Final Major Site Plan for Development of 69 Hepworth Place Property approval was scheduled for October 27, 2022. Pa18-Pa19. The application for development of a multi-family residential apartment building is "conforming" to the zoning expressed in the 69 Hepworth Place Redevelopment Plan, but not the underlying industrial zone. The application was approved after summary presentation of the Site Plan to the Planning Board. Resolution PB-18-2022 granting major Site Plan Approval was adopted by the Planning Board on December 15, 2022. Pa52-Pa58.

The Redevelopment Plan mandated the creation of affordable housing. "The developer shall either construct affordable housing units within the development, contribute to the City's affordable trust fund or determine appropriate consideration through a redevelopers agreement in order to assist the City in meeting its

obligations." Pa137. The Redeveloper's Agreement[2] does not mandate the inclusion of affordable housing within the 69 Hepworth Place Property. Pa179-Pa239. It expressly confirms that all residential units will be market rate:

> Meridia proposes the construction of a market rate residential rental development consisting of a total of ninety-three (93) dwelling units and one hundred forty (140) parking spaces on the Property, which current design is proposed to include the construction of one (1) building of six (6) stories comprised of sixty-five (65) one-bedroom and twenty-eight (28) two-bedroom units. Pa182.

On or about February 21, 2023, the City introduced Ordinance 2985 approving a Payment in Lieu of Tax (PILOT) application and execution of a "Financial Agreement" with the "redeveloper" for the 69 Hepworth Place Property. The ordinance was later adopted on March 14, 2023. Pa158. Newspaper notice of ordinance adoption was published on February 24, 2023. Pa163. The Financial Agreement was executed on or about April of 2023. Pa165-Pa178.

The Financial Agreement confirmed that the "Entity proposes the construction of a market rate residential rental development consisting of a total of ninety-three (93) dwelling units and one hundred and forty-one (141) parking spaces on the Property, which current design is proposed to include the construction of one (1) building of six (6) stories and consisting of one (70%) and two-bedroom units (30%)". Pa165. The primary purpose of the Financial Agreement was to grant tax

[2] The Redevelopment Agreement was approved by the City in Resolution 2023-11 adopted March 13, 2023. Pa240.

exemption to the Property under the Long-Term Tax Exemption Law, expressed in part, as follows:

> **WHEREAS,** the City proposes and agrees to a 20-year term for a financial agreement and an annual service charge based on 10% of annual gross revenues for years 1 through 10, increasing to **11** % of annual gross revenues for years 11 through 20.
>
> **WHEREAS,** pursuant to the Long-Term Tax Exemption Law, the City is authorized to enter into a financial agreement with a redeveloper for payment of an annual service charge for municipal services in lieu of taxes for market rate housing and commercial projects; and
>
> **WHEREAS,** the Entity has requested that the City enter into a financial agreement for payment of an annual service charge for municipal services in lieu of taxes (the **"Financial Agreement")** for the Project; and
>
> **WHEREAS,** the City acknowledges that the Entity, by effectuating the redevelopment of the Project, will significantly limit its profits due to the extraordinary costs to be borne by the Entity, which will provide significant and long-term benefits to the City; and
>
> **WHEREAS,** the City and the Entity have reached agreement with respect to, among other things, the terms and conditions relating to the Annual Service Charges and desire to execute a Financial Agreement.
>
> **WHEREAS,** the City acknowledges that by effectuating the redevelopment of the Project, Mendia Garfield 69, Urban Renewal, LLC will significantly limit its profits due to the extraordinary costs to be borne by the Entity, which will provide significant and long-term benefits to the City. [Pa166].

None of the adopted redevelopment documents include data or documents that would establish any of the costs to construct the Project. Therefore, any such finding

that the costs would be "extraordinary" or insure that the "profits of and dividends payable by any private corporation enjoying such tax exemption shall be limited by law" (N.J. CONSTITUTION Art. 8, Sec. 3, ¶ 1) was not established in the record below.

On August 8, 2023, IWS filed a four count Complaint in Lieu of Prerogative Writs which alleged serial violations of the New Jersey Constitution by the City as follows:

FIRST COUNT

Challenging Redevelopment Designation as an Unconstitutional Blight Designation [Pa69]

SECOND COUNT

Challenging Redevelopment Plan Approval as Predicated on an Unconstitutional Blight Designation [Pa76]

THIRD COUNT

Challenging Site Plan Approval for Multi-Story High Density Multi-Family Residential Over Retail Uses as Predicated on an Unconstitutional Blight Designation [Pa77]

FOURTH COUNT

Challenging Site Plan Approval for Multi-Story High Density Multi-Family Residential Over Retail Uses as an Exercise of Spot and Contract Zoning [Pa79]

On December 4, 2023 - after receiving a copy of a Redevelopment Agreement and Financial Agreement in response to OPRA requests submitted in May of 2023 - plaintiff filed an Amended Complaint adding two more constitutional claims:

FIFTH COUNT

Failure to Comply with Mount Laurel and the Constitutional Duty to Provide Affordable Housing [Pa32.]

151. The Redevelopment Plan required that "[t]he developer shall either construct affordable housing units within the development, contribute to the City's affordable trust fund or determine appropriate consideration through a redevelopers agreement in order to assist the City in meeting its obligations." Redevelopment Plan at 9.

152. The subsequent agreements entered into between the Redeveloper and the City do not require construction or contribution to affordable housing.

153. South Burlington County NAACP v. Mount Laurel, 67 N.J. 151, 179-187 (1975), cert. denied, 423 U.S. 808, 96 S. Ct. 18, 46 L. Ed. 2d 28 (Mount Laurel I) and its progeny held that the Constitution requires municipalities to provide their fair share of affordable housing and a "choice of housing for all categories of people who may desire to live there, of course including those of low and moderate income."

154. The operative agreements and approvals state that the Redeveloper will only be constructing market rate residential units, and there is no requirement to construct or contribute to the City's affordable housing obligations. [Pa32-Pa33]

SIXTH COUNT

Violation of Blighted Area Clause's Tax Exemption Provision [Pa34.]

156. The Blighted Areas clause of the New Jersey Constitution states:

> The clearance, replanning, development or redevelopment of blighted areas shall be a public purpose and public use, for which private property may be taken or acquired. Municipal, public or private corporations may be authorized by law to undertake such clearance, replanning, development or redevelopment; and improvements made for these purposes and uses, or for any of them, may be

> exempted from taxation, in whole or in part, for a limited period of time during which the profits of and dividends payable by any private corporation enjoying such tax exemption shall be limited by law. The conditions of use, ownership, management and control of such improvements shall be regulated by law. [N.J. CONSTITUTION Art. 8, § 3, ¶ 1].

157. The City declared the property tax exempt based of the underlying blight designation in the Financial Agreement.

158. The alleged basis for tax exemption is expressed therein on the Redeveloper's assertion that it "will significantly limit its profits due to the extraordinary costs to be borne by the Entity." Financial Agreement at 2.

159. The framers of the Constitution did not intend to allow property to be declared tax exempt based on accounting manipulation of alleged "significant" costs to factor into the requirement that the "profits of and dividends payable by any private corporation enjoying such tax exemption shall be limited by law." [Pa34]

Generally speaking, the Amended Complaint alleged numerous violations of the LRHL, as well as serious constitutional questions concerning improper financial incentives granted a private redeveloper of high-density multifamily residential building in a light-manufacturing industrial zone. Every Count of the Amended Complaint (except for Count 3) alleged a violation of the Constitution.

On January 3, 2024, the City filed a Pre-Answer Motion to Dismiss. Defendant Planning Board joined in the motion by letter dated January 22, 2024. IWS filed its Opposition Brief on February 6, 2024. The trial court heard oral

argument on July 19, 2024.[3]

Appellant's counsel reiterated the standard of review during argument:

> I believe, your honor, that first of all counsel overlooked that Your Honor is required to accept all of the allegations contained in the Complaint as being true. If you start from that proposition, we are talking about a matter of serious public importance because we're talking about constitutional issues. And the Complaint alleges a violation of many constitutional provisions, the first of which being the blighted areas clause. The allegation in the Complaint is that the property, 69 Hepworth Place, was not blighted at the time of the hearings and everything that was adopted thereafter is *ultra* [] *vires* because the property is not blighted. And the public is very concerned about unconstitutional actions by government. And if the property is not blighted, all of the actions are unconstitutional. (T8-22 – 9-12).

A month later, on August 19, 2024, the trial court entered an Order and Opinion granting Defendant's motion to dismiss. Pa1-Pa8. The Opinion summarized the Amended Complaint as one alleging that "the City of Garfield: (1) improperly adopted Resolution No. R21-475 on December 21, 2021 identifying the property commonly known as 69 Hepworth Place, which is located adjacent to property owned by Plaintiff, as "an area in need of redevelopment" [First Count of the Complaint & Amended Complaint]; (2) improperly adopted Ordinance No 2949 on August 16, 2022 adopting a Redevelopment Plan for 69 Hepworth Place [Second Count of the Complaint and Amended Complaint] and (3) improperly entered into a Financial Agreement and Redevelopment Agreement on April 3, 2023 and April 12,

[3] T-Transcript of Motion Argument July 19, 2024.

2023 [Fifth and Sixth Count of the Amended Complaint]. Amendment Complaint §154 and 158." [Pa3 (Slip op. at 3)].

Plainly, the trial judge's opinion ignored the Third (challenging Site Plan Approval) and Fourth (illegal spot zoning) Counts of the Amended Complaint. Pa29; Pa30. The trial court also did not address the substance of the Fifth Count of the Complaint, which alleged a "Failure to Comply with Mount Laurel and the Constitutional Duty to Provide Affordable Housing." Pa32. Nor did the trial judge expressly analyze the merits of the Sixth Count, which alleged a "Violation of Blighted Area Clause's Tax Exemption Provision." Pa34.

The *entirety* of the trial court's analysis of the six count Amended Complaint containing 159 paragraphs alleging a detailed set of facts raising serious constitutional questions is contained in the following three paragraphs:

> Applying the factors of Brunetti, the court here finds that the Plaintiff's complaint does not allege an important or novel constitutional question, nor does it specifically seek redress from an informal or *ex parte* determination of a legal question by an administrative official. The allegations asserted by Plaintiff are misplaced and wholly personal as Plaintiff is the owner/occupant of a parcel adjacent to the Designated Property. The court furthermore finds that the case law relied upon by the Plaintiff is inapplicable to the undisputed facts and circumstances presented here. Plaintiff has asserted a conclusory argument that the proposed redevelopment is a matter of public concern because of its size and scope such that it will alter the Borough.
>
> The court here recognizes that the time frame to permit review of the City's actions may be extended upon very specific factual situations. The appellate court in Willoughby v. Planning Bd. Of Tp. of

Deptford, 306 N.J. Super. 266, 276 (App. Div. 1997) held that if the interest of justice warrants, "the court may grant even a very substantial enlargement of the time in order to afford affected parties an opportunity to challenge the alleged unlawful governmental action." referencing e.g. Damurjian v. Board of Adjustment of Colts Neck, 299 N.J. Super. 84, 97-99 (App. Div. 1997) (four years); Wolf v. Mayor of Shrewsbury, 182 N.J. Super. 289, 296 (App. Div. 1981) (one year), certif. denied, 89 N.J. 440 (1982); Ocean County Bd. Of Realtors v. Borough of Beachwood, 248 N.J. Super. 241, 247-48 (Law Div. 1991) (seven years). Although not directly on point, the court's holding in Adams v. Delmonte is persuasive. 309 N.J. Super. 572 (App. Div. 1998). In Adams, the court found that although the matter did not involve an important and novel constitutional question and the fact that the situation there only impacted the defendant and his immediate neighbor, there was a basis to permit expansion of the 45-day appeal period.

Here, the original complaint was filed more than 595 days after the City's December 21, 2021 adoption of the subject resolution and 358 days after the adoption of the subject ordinance on August 16, 2022. Plaintiff's complaint, and amended complaint, were clearly filed well beyond the applicable 45-day time frame. The court acknowledges that when reviewing a request to relax the applicable 45-day appeal period, equitable consideration should be afforded to all parties. See Hopewell Valley Citizens' Grp., Inc. v. Berwind Prop. Grp. Dev. Co., L.P., 204 N.J. 569, 583-84 (2011). Further, this court can find no basis to enlarge the 45-day time period "in the interest of justice," as allowed by R. 4:69-6(c). Newark Morning Ledger Co., 423 NJ. Super, at 158; see also R, 4:69-6(c). The requests sought herein do not fall within any of the categories that would convince this court to exercise its discretion in extending the 45-day limitation. The matter does not involve: (1) an important or novel constitutional issue; (2) the informal or ex parte determination of legal questions by administrative officials, or (3) important public rather than private interests requiring adjudication.

[Pa7-Pa8].

IWS timely appealed the August 19, 2024 Order of Dismissal.

Standard of Review

"Rule 4:6-2(e) motions to dismiss for failure to state a claim upon which relief can be granted are reviewed *de novo*." Baskin v. P.C. Richard & Son, LLC, 246 N.J. 157, 171 (2021). "A reviewing court must examine the legal sufficiency of the facts alleged on the face of the complaint, giving the plaintiff the benefit of every reasonable inference of fact." Ibid. (internal quotes omitted). *Accord* Printing Mart-Morristown v. Sharp Elecs. Corp., 116 N.J. 739, 746 (1989); Save Camden Pub. Schools v. Camden City Bd. of Educ., 454 N.J. Super. 478, 487-88 (App. Div. 2018) (*de novo* review of statute of limitations bar. "We also hold that given the important public question at issue in this case—involving citizens' right to vote—it was an error not to expand the statute of limitations for the claim in lieu of prerogative writs.").

This Court's *de novo* review is really no different than the task assigned to the trial judge, which was best explained in the Supreme Court's *Per Curiam* Opinion:

> We approach our review of the judgment below mindful of the test for determining the adequacy of a pleading: whether a cause of action is "suggested" by the facts. Velantzas v. Colgate-Palmolive Co., 109 N.J. 189, 192 (1988). In reviewing a complaint dismissed under *Rule* 4:6-2(e) our inquiry is limited to examining the legal sufficiency of the facts alleged on the face of the complaint. Rieder v. Department of Transp., 221 N.J. Super. 547, 552 (App.Div.1987). However, a reviewing court "searches the complaint in depth and with liberality to ascertain whether the fundament of a cause of action may be gleaned even from an obscure statement of claim, opportunity being given to amend if necessary." Di Cristofaro v. Laurel Grove Memorial Park, 43 N.J. Super. 244, 252 (App.Div.1957). At this preliminary stage of the

> litigation the Court is not concerned with the ability of plaintiffs to prove the allegation contained in the complaint. Somers Constr. Co. v. Board of Educ., 198 *F. Supp.* 732, 734 (D.N.J.1961). For purposes of analysis plaintiffs are entitled to every reasonable inference of fact. Independent Dairy Workers Union v. Milk Drivers Local 680, 23 *N.J.* 85, 89 (1956). The examination of a complaint's allegations of fact required by the aforestated principles should be one that is at once painstaking and undertaken with a generous and hospitable approach.
>
> [Printing Mart, *supra,* 116 N.J. at 746].

Here, the trial court failed to adhere to the standard of review when it dismissed the Amended Complaint as time-barred. The August 19, 2024 Order should be reversed, and the case remanded for answering pleadings to be filed by the City Defendants.

Legal Argument

Point 1

Trial Court Erred in Dismissing Complaint Where it Failed to Adhere to the Pre-Answer Motion to Dismiss Standard of Review (Pa2-Pa8).

The nascence of the claims expressed in the Amended Complaint is the "Blighted Areas" Clause of our State Constitution:

> The clearance, replanning, development or redevelopment of blighted areas shall be a public purpose and public use, for which private property may be taken or acquired. Municipal, public or private corporations may be authorized by law to undertake such clearance, replanning, development or redevelopment; and improvements made for these purposes and uses, or for any of them, may be exempted from taxation, in whole or in part, for a limited period of time during which the profits of and dividends payable by any private corporation enjoying such tax exemption shall be limited by law.

[N.J. CONSTITUTION Art. 8, § 3, ¶ 1].

Our Constitution expressly limits any redevelopment activity to blighted areas. "The Blighted Areas Clause of our State Constitution is an affirmative grant of authority to municipal and public entities to rehabilitate and revitalize areas that have decayed into a state of blight." 62-64 Main St., LLC v. Hackensack, 221 N.J. 129, 144 (2015). The property here was not blighted and the municipality should not be allowed to foist an unconstitutional advantage upon it (tax exemption; redevelopment plan zoning, etc.) for private redevelopment purposes.

All allegations of the Amended Complaint stem from the undisputable fact the 69 Hepworth Place Property was not "blighted." If that fundamental fact was accepted as true by the trial judge – as required when reviewing a complaint under R. 4:6-2(e) - all municipal action taken in reliance thereon were constitutionally suspect, *i.e.* adoption of a Redevelopment Plan superseding existing zoning; execution of a Redevelopment Agreement; and entry into a Financial Agreement/Granting Real Estate Tax-Exemption. Again, this is because our Constitution only permits "redevelopment" of "blighted areas". *Ibid.*

Secondarily, the adopted Redevelopment Plan mandated contribution to the municipalities "fair share" of "affordable housing." Neither the adopted Redevelopment Agreement or Financial Agreement compel the City or its private-

redeveloper-partner to contribute to the City's constitutional affordable housing obligations. Pa165-Pa178; Pa179-Pa239.

All the allegations of the Amended Complaint raised questions of great public importance: Redevelopment; exemption from payment of real estate taxes; and construction of affordable housing. All of these issues consume great public debate, yet the trial court didn't even consider these allegations when he simply (and without good reason) calculated that the number of days from these actions exceeded 45-days and entered an Order of dismissal. The Court's superficial analysis didn't ably explain why the interest of justice didn't manifest from the carefully tailored 159 paragraph Amended Complaint.

Nor did the trial judge delve into the quandary of its decision – allowing a City and its private redeveloper-partner to quietly avoid all these questions. The trial judge's failure to conduct a "painstaking" review of the Amended Complaint in a "generous and hospitable manner" means that the case should be remanded for a full exposition of these important and novel questions. Printing Mart, supra, 116 N.J. at 746.

Point 2

Trial Court Erred in Not Relaxing Time Under R. 4:69-6(c) Where Pleadings Manifest Interests Of Justice By Substantial Constitutional Questions of Public Import (Pa7-Pa8).

The Court Rule expressly permits enlargement of the time to challenge municipal action:

> The court may enlarge the period of time provided in paragraph (a) or (b) of this rule where it is manifest that the interest of justice so requires.
>
> [R. 4:69-6(c)].

The trial court's opinion failed to recognize that the concrete factual allegations alleged in the Amended Complaint met the "interests of justice" standard as defined by several analogous Supreme Court and Appellate Division cases.

The Supreme Court expressed the standard for enlargement in Brunetti v. New Milford, 68 N.J. 576, 582-84 (1975). There, property owners raised a constitutional challenge to a rent control ordinance. The challenged ordinance passed in November 1973 and was revised in September 1974. The complaint was filed after the revised ordinance was adopted. The trial court barred the claims as untimely per R. 4:69(a). The owners' appealed. The Supreme Court reversed the time bar.

The Supreme Court reasoned that "certain cases were excepted from the rule governing limitation of actions." Id. at 586. The categories of cases exempted from the rule were "important and novel constitutional questions" and "important public rather than private interests which require adjudication or clarification." The

Supreme Court held that "the constitutional claims raised by plaintiffs in the instant case are at least as fundamental and important as those raised by appellants in the cases cited" and therefore the "interests of justice" warranted enlargement of 45-day time limit of Rule 4:69-6.

The case of Borough of Princeton v. Bd. of Chosen Freeholders, 169 N.J. 135 (2001) is analogous. The case challenged long-term waste management contracts awarded without public bidding. The action commenced five years after one contract and nine years after another contract was executed. Id. at 152. The trial court granted summary judgment dismissal based on the 45-day limitation set forth in R. 4:69. The Appellate Division reversed and the Supreme Court affirmed. The Supreme Court found that the waste management contracts were long-term, and, if improper, constituted "a continuing violation of public rights." Id. at 154. The Court also declared that waste management issues present "unique public policy concerns." Id. at 155. Therefore, the Court "enlarged the limitations period notwithstanding the defendants' asserted interest in repose" and even though defendants has been operating under the contract terms for years prior to the suit. Id. at 156. To be sure, the "potential prejudice to the public that would result from not reaching the merits in these petitions outweighs any prejudice that defendants might suffer by our disposition."

This Court has also specifically enlarged the limitations period in another matter involving a redevelopment designation challenge that was filed out of time. Concerned Citizens of Princeton, Inc. v. Mayor and Council of Bor. of Princeton, 370 N.J. Super. 429, 447 (App. Div. 2004). The Appellate Division affirmed enlargement where the matter was of "sufficient public interest" because plaintiffs "alleged numerous violations and misapplication of the LRHL, as well as arbitrary and capricious municipal action in the redevelopment designation of public lands." Ibid. Likewise, the Amended Complaint alleged serial violations of the Local Redevelopment and Housing Law in the designation of the property as blighted. As expressed in the Amended Complaint, the "record" in support of the designation was devoid of substantial evidence satisfying the statutory "area in need of redevelopment" criteria. N.J.S.A. 40A:12A-5. The Planning Board's recommendation and the City's resolution of blight was based on the "slender reed" of the "net opinion of an expert." Gallenthin Realty Development, Inc. v. Borough of Paulsboro, 191 N.J. 344, 372-373 (2007). ("Because a redevelopment designation carries serious implications for property owners, the net opinion of an expert is simply too slender a reed on which to rest that determination."); 62-64 Main St., LLC v. Hackensack, 221 N.J. 129, 156 (2015)("[W]e remind planning boards and governing bodies that they have an obligation to rigorously comply with the statutory criteria for determining whether an area is in need of redevelopment… In general, a

municipality must establish a record that contains more than a bland recitation of applicable statutory criteria and a declaration that those criteria are met."). There was no "rigorous compliance" with the statutory criteria in designating this single building property in need of redevelopment.

The allegations expressed in the Amended Complaint raise constitutional questions of great public importance. The First Count dismantles "the record" upon which the Property was designated an "area in need of redevelopment" and asserts that the "blight" designation rested upon the "net opinion of an expert." Pa20-Pa27. Several of the other Counts of the Amended Complaint express constitutional questions of great public importance:

SECOND COUNT

Challenging Redevelopment Plan
Approval as Predicated on an Unconstitutional Blight Designation

> The LRHL limits redevelopment as follows:
>
> > No 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 or in an area in need of rehabilitation, or in both, according to criteria set forth in section 5 or section 14 of P.L. 1992, c.79 (C.40A:12A-5 or 40A:12A-14), as appropriate. [N.J.S.A. 40A:12A-7(a)]
>
> The designation of the 69 Hepworth Property as "an area in need of redevelopment" was unconstitutional.

Any subsequent action taken by the municipality in reliance upon the blight designation was *ultra vires* and invalid.

Adoption of City Ordinance No. 2949 dated August 16, 2022 was contrary to the substantive and procedural requirements of the LRHL, (N.J.S.A. 40A:12A-1, et seq.), the MLUL, (N.J.S.A. 40:55D-1, et seq.) because the property was not blighted or "in need of redevelopment" at the time of adoption as required by law.

[Pa28- Pa29 (Amended Complaint ¶¶ 128-131)].

FIFTH COUNT

Failure to Comply with Mount Laurel and the Constitutional Duty to Provide Affordable Housing

The Redevelopment Plan required that "[t]he developer shall either construct affordable housing units within the development, contribute to the City's affordable trust fund or determine appropriate consideration through a redevelopers agreement in order to assist the City in meeting its obligations." Redevelopment Plan at 9.

The subsequent agreements entered into between the Redeveloper and the City do not require construction or contribution to affordable housing.

South Burlington County NAACP v. Mount Laurel, 67 N.J. 151, 179-187 (1975), cert. denied, 423 U.S. 808, 96 S. Ct. 18, 46 L. Ed. 2d 28 (Mount Laurel I) and its progeny held that the Constitution requires municipalities to provide their fair share of affordable housing and a "choice of housing for all categories of people who may desire to live there, of course including those of low and moderate income."

The operative agreements and approvals state that the Redeveloper will only be constructing market rate residential units, and there is no requirement to construct or contribute to the City's affordable housing obligations.

[Pa32-Pa33 (Amended Complaint ¶¶ 151-154)].

SIXTH COUNT

Violation of Blighted Areas Clause Tax Exemption Provision

> The City declared the property tax exempt based of the underlying blight designation in the Financial Agreement.
>
> The alleged basis for tax exemption is expressed therein on the Redeveloper's assertion that it "will significantly limit its profits due to the extraordinary costs to be borne by the Entity." Financial Agreement at 2.
>
> The framers of the Constitution did not intend to allow property to be declared tax exempt based on accounting manipulation of alleged "significant" costs to factor into the requirement that the "profits of and dividends payable by any private corporation enjoying such tax exemption shall be limited by law."
>
> [Pa34 (Amended Complaint at ¶¶ 156-159)].

To be sure, the trial judge's Opinion ignored the Fifth and Sixth Counts of the Amended Complaint. Not one drop of ink spilled. Perhaps that's because these Counts raise "important and novel constitutional questions" and "important public rather than private interests which require adjudication or clarification." Brunetti, *supra*, 68 N.J. at 586. Undersigned counsel is not aware of any published opinion addressing the boundaries of "tax exemption" or construing how a redeveloper's "profits" shall be "limited by law." Likewise, counsel is unaware of any published opinion that would allow a private redeveloper to avoid contributing to a

municipalities' fair share of "affordable housing" where mandated by a Redevelopment Plan. Pa16; Pa20 (Amended Complaint at ¶ 42; ¶¶ 70-71).

The trial court also failed to reconcile the cases cited by Plaintiff in opposition to the motion to dismiss. *See* Reilly v. Brice, 109 N.J. 555, 558 (1988) (reversing dismissal of case challenging council's ratification of $20,000 municipal consulting contract brought five months late because "one of the well-recognized exceptions warranting relief from the statute of limitations is based on consideration of public rather than private interests."); Schack v. Trimble, 28 N.J. 40, 49-50 (1958) (reversing time bar where regulatory approvals were denied successively and recourse to court only taken after third denial, observing that "the rule was aimed at those who slumber on their rights, and, clearly, one who diligently pursues an administrative appeal is not within that category" and that "strict adherence to timing requirements under these circumstances would only work inequities in individual instances and tend to stifle [salutary] efforts at negotiation before judicial relief is sought."); Wolf v. Shrewsbury, 182 N.J. Super. 289 (App. Div. 1981) (enlarging time under section (c) where notice by publication of ordinance failed to adequately inform the public); Serenity at Arlington Ridge v. Kearny, 243 N.J. Super. 415 (Law Div. 1990) (requiring municipality to give notice of a Mt. Laurel settlement to residents, involved public interest groups, developers and potential developers).

Lastly, the trial court found the case of Adams v Delmonte, 309 N.J. Super. 572, 581 (App. Div. 1998) to be "persuasive." Pa7 (Slip op at 7). Yet, the Adams Court found that the "unique factual setting … 'properly calls for an exercise of judicial discretion to enlarge the time to review.'" (*quoting* Reilly, supra, 109 N.J. at 560). Therefore, if the trial judge found it to be persuasive, he should have exercised judicial discretion and enlarged the statute of limitations.

Point 3

Time For Judicial Review of An Unconstitutional Blight Designation Should Be Extended Where the Issue Is Capable of Repetition Yet Evade Review (Not Raised Below).

Appellant IWS did not raise this issue below, and therefore the "plain error rule" applies the standard of review. In short, Rule 2:10-2 provides that "[a]ny error or omission shall be disregarded by the appellate court unless it is of such a nature as to have been clearly capable of producing an unjust result, but the appellate court may, in the interests of justice, notice plain error not brought to the attention of the trial or appellate court." The Rule applies to civil appeals. *See* Pressler & Verniero, Current N.J. Court Rules, cmt. 2.1 on R. 2:10-2 (2022). "All error, including both plain error and harmful error, is tested by the standard set forth in Rule 2:10-2, that is, as set forth above, whether the error is "clearly capable of producing an unjust result.'" Wry, Ellen, *New Jersey Standards for Appellate Review* (August 2022 Revision).

IWS submits that the within appeal meets this standard because of the signal importance of the constitutional issues raised in the Amended Complaint – the designation of property "blighted" or the synonymous "area in need of redevelopment"[4] – based upon the "net opinion of an expert." And the reason why

[4] Forbes v Tp. of West Orange Village, 312 N.J. Super. 519, 529 (App. Div. 1998). "The word "blight" may have been left out of the LRHL but the concept and long-standing definition of blight remain firmly fixed therein, and defendants themselves so understood…. The area must be found

this case and appeal meet the plain error rule is because IWS was not notified of the original "blight designation hearing." The City and its Planning Board had no legal obligation to provide notice to IWS – the owner of the adjoining property (and literally owner of the building adjoining the 69 Hepworth building). Iron Mountain Information Management Inc. v. City of Newark, 202 N.J. 74 (2009). The Supreme Court held that statutory notice for a redevelopment designation hearing is limited to owners of record and those whose names are listed on the tax assessor's records as expressed in N.J.S.A. 40A:12A-6. Likewise, in Town of Kearny v. Discount City of Old Bridge, 205 N.J. 386, 403-404 (2011), the court affirmed Iron Mountain and held that a non-record owner of property is not entitled to individualized notice that redevelopment is being considered. Rather, a non-record owner is merely afforded newspaper notice under N.J.S.A. 40A:12A-6(b)(3). The time bar may be raised even though the neighbor, or occupant of the property, was not notified of the redevelopment proceedings.

69 Hepworth Property comprised a multi-tenanted light industrial building. At the time of the hearings, the building was fully occupied and actively in use. Outside of actual notice, there was no indication that the 69 Hepworth Property was being considered for a constitutional "blight" designation that would permit a private

---

to be blighted in conformance with the same standards as theretofore even though we no longer call it a blighted area but rather an area in need of redevelopment."

party to obtain favorable non-commercial zoning and develop the property with multi-story multi-family residential; favorable tax status; all without contributing to the City's obligation to provide its fair share of affordable housing.

The Local Redevelopment and Housing Law's notice provisions are likely to bar meritorious challenges by adversely affected *non-record owners* who fail to see the newspaper notice and act within the applicable statute of limitations. While New Jersey Courts are not bound by the strict "case or controversy" requirement that Article III, Section 2, of the United States Constitution imposes on federal courts, a legal concept arising out of federal precedent would favor an equitable extension of time in the interests of justice much like the extension in Reilley *supra*.

New Jersey Courts have decided cases of significant public importance, which stem from a controversy "capable of repetition, yet evading review" because of the short duration of any single plaintiff's interest. In re Conroy, 190 N.J. Super. 453, 459 (App. Div. 1983) (holding that a case involving a terminally ill patient who passed away was not moot because the case was capable of repetition, yet evaded review); Roe v. Wade, 410 U.S. 113, 125 (1973) (finding that pregnancy provides a classic justification for a conclusion of non-mootness); Guttenberg Sav. & Loan Ass'n v. Rivera, 85 N.J. 617, 622–23 (1981) (holding that an appeal involving the Anti-Eviction Act was not moot because the case involved a matter in the public interest, i.e., to prevent eviction of tenants for unfair or arbitrary reasons); Dunellen

Bd. of Educ. v. Dunellen Educ. Ass'n, 64 N.J. 17, 22 (1973); John F. Kennedy Mem'l Hosp. v. Heston, 58 N.J. 576, 579 (1971).

In Finkel v. Twp. Comm. of the Twp. of Hopewell, 434 N.J. Super. 303 (App. Div. 2013), the Appellate Court answered the "specific questions posed here, concerning how the deadlines set forth in N.J.S.A. 19:37–1 and –2 are to be sensibly harmonized and administered." The Court reasoned that "because of the tight deadlines involved and the inherent non-binding nature of the referenda" the issues were "of a kind capable of repetition, yet evading review." Under the statutory framework, the court observed "there is precious little time for concerned citizens to discover the problem, to mount a challenge in court, and to litigate the case to a successful conclusion before reaching the 50–day deadline for finalizing the ballots for the printers."

The novel constitutional issues presented here are similarly 'capable of repetition yet evading review' based on the limited notice provisions of the LRHL. Absent notice, the short 45-day limitations period to challenge will raise the bar to meritorious challenges to redevelopment designations that are 'founded on the slender reed' of the net opinion of an expert's "bland recitation of the statutory criteria." Gallenthin Realty Development, Inc., 191 N.J. at 372-373; 62-64 Main St., LLC, 221 N.J. at 156. These meetings are often held at inconvenient dates and times – like the week before Thanksgiving (here) or the day before the 4th of July

and are passed when no members of the public are even aware of the proceedings much less in attendance.

IWS carefully alleged that the designation of a single property improved with one industrial building comprising less than an acre of land located at 69 Hepworth Place as an "area in need of redevelopment" did not comply with the LRHL or the Constitution. Time barring IWS as the non-record owner of the 69 Hepworth Property would permit an unlawful designation outside the scope envisioned by the framers of our constitution, as well as the Legislature when it adopted the LRHL. Therefore, the Court should consider applying the theory of "capable of repetition, yet evading review" to this matter to reach the merits of the case.

Conclusion

For all of the foregoing reasons, the trial court's August 19, 2024 Order dismissing the Amended Complaint before answering papers were filed should be reversed, and the case remanded for full exposition of Appellant I.W.S. Transfer Systems of N.J., Inc.'s claims.

Respectfully submitted,

McKirdy Riskin Olson & Della Pelle, P.C.
Attorneys for Appellant
I.W.S. Transfer Systems of N.J., Inc.

By: _____
JOSEPH W. GRATHER

cc: Santo T. Alampi, Esq.
Alyssa A. Cimino, Esq.

IWS TRANSFER SYSTEMS OF N.J., INC.,	:	SUPERIOR COURT OF NEW JERSEY
	:	APPELLATE DIVISION
Appellant,	:	Docket No. A-000305-24
v.	:	**On Appeal From:**
	:	Law Division Bergen County
PLANNING BOARD OF THE CITY OF GARFIELD; CITY OF GARFIELD, A MUNICIPAL CORPORATION OF THE STATE OF NEW JERSEY,	:	Docket No. BER-L-4206-23
	:	**Sat Below:**
	:	Hon. Gregg a. Padovano, J.S.C.
Respondents.	:	

BRIEF OF RESPONDENT CITY OF GARFIELD

LAW OFFICE OF SANTO T. ALAMPI, LLC
One University Plaza, Suite 404
Hackensack, New Jersey 07601
201.343.4600
stalampi@alampi-law.com
Attorneys for Defendant/Respondent
The City of Garfield

Santo T. Alampi, Esq. (025862005)
On the Brief
Dated: March 10, 2025

TABLE OF CONTENTS

TABLE OF TRANSCRIPT CITATIONS

TABLE OF JUDGMENTS, ORDERS AND RULINGS

TABLE OF AUTHORITIES

CASE LAW

STATUTES AND COURT RULES

PRELIMINARY STATEMENT

Plaintiff filed a Complaint in Lieu of Prerogative Writ on August 8, 2023, challenging action undertaken by the City of Garfield on December 21, 2021 and August 16, 2022, some 595 and 358 days earlier. Pa59. Plaintiff filed an Amended Complaint on December 4, 2023 challenging action that occurred on April 3 and 12, 2021, some 245 to 236 days earlier. Pa9. Plaintiff's Action was properly dismissed by the trial court because Plaintiff did not file the Complaint in Lieu of Prerogative Writs (or the Amended Complaint) within the 45-day time periods proscribed by the Redevelopment and Housing Law and Court Rules. Plaintiff asked the trial court, and now asks this Court, to employ a narrow exception to R. 4:69-6, alleging that its very personal challenge to the government action raises some unspecified constitutional questions of public import. The trial court properly saw the Complaint for what it was and dismissed the action with prejudice. Pa1.

The Rule's time limitations are designed to encourage parties not to rest on their rights. Plaintiff slumbered on its rights and should not be permitted to pursue an untimely claim. Significant time has passed. The City of Garfield will be substantially prejudiced if Plaintiff is allowed to proceed with this untimely action. The City designated a redeveloper. The City negotiated and entered into a Redevelopment Agreement and a Financial Agreement. The rule "is designed to give an essential measure of repose to actions taken against public bodies" and is

"aimed at those who slumber on their rights." Tri-State Ship Repair & Dry Dock Co. v. City of Perth Amboy, 349 N.J. Super. 418, 423 (App. Div. 2002) (quoting Wash. Twp. Zoning Bd. v. Wash. Twp. Plan. Bd., 217 N.J. Super. 215, 225 (App. Div. 1987)). The Rule addresses the importance of stability and finality to public actions. Id. Plaintiff's action is time barred and the trial court's decision dismissing Plaintiff's Complaint as against the City of Garfield with prejudice should be affirmed.

PROCEDURAL HISTORY & STATEMENT OF FACTS[1]

Plaintiff alleges that the City of Garfield (1) improperly adopted Resolution No. R-21-475 on December 21, 2021 identifying the property commonly known as 69 Hepworth Place, which is located adjacent to Plaintiff's property , as "an area in need of redevelopment" [First Count of the Complaint & Amended Complaint, Pa20-27; Pa69-76] (2) improperly adopted Ordinance No 2949 on August 16, 2022 adopting a Redevelopment Plan for 69 Hepworth Place [Second Count of the Complaint and Amended Complaint, Pa28-29; Pa76-77] and (3) improperly entered into a Financial Agreement and Redevelopment Agreement on April 3, 2023 and April 12, 2023 [Fifth and Sixth Count of the Amended Complaint, Pa32-35].[2] Pa.9-35; Pa59-80.

[1] Plaintiff combined the Procedural History and Statement of Facts. A. Br. at p. 3.
[2] The Third and Fourth Counts of the Complaint challenges the Site Plan Approval by the Planning Board. Pa29-32; Pa77-80. The City of Garfield and Planning Board

On July 20, 2021, the City of Garfield adopted Resolution 21-245 authorizing and directing the Planning Board to examine whether the property commonly known as 69 Hepworth Place, a property located adjacent to Plaintiff's property, should be determined to be an area in need of redevelopment. Pa82. In September 2021, the City of Garfield's planner, DMR Architects issued a Report of Preliminary Investigation for Determination of an Area in Need of Redevelopment (the "Study"). Pa86. The Planning Board properly noticed and held a meeting on November 18, 2021 where it heard testimony from DMR Architects, who presented the Study. Pa84; Pa37.

DMR Architects inspected the premises, inspected the buildings on the property and determined that (1) the buildings are "substandard, unsafe, unsanitary, dilapidated or obsolescent"; (2) at least two buildings located at the property are and have been vacant for more than two years; (3) "the buildings have conditions that lack ventilation and light. These conditions are detrimental to the safety, health, morals, or welfare of the community"; and (4) the parking lot is unpaved with no striping or ADA parking spaces and the lot configuration is such that any truck exiting the property must back up on the public street that has on street parking on

---

are separate bodies who are not liable for the acts of the other. The City of Garfield will not address the actions taken by the Planning Board in this Brief; however, the same legal arguments advanced by the City herein, apply in equal measure to the actions of the Planning Board.

both sides. Pa102-103. As a result of the foregoing, DMR concluded that "the most effective way to return the properties in question to states of compliance with land use and building standards, sound site design, and safe operation is to redevelop the sites in a suitable manner." Pa109. Based on this recommendation, the Planning Board, by Resolution adopted on December 16, 2021, recommended that the area be declared a Non-Condemnation Redevelopment Area. Pa38-43.

On December 21, 2021, in compliance with the applicable law, the City of Garfield adopted Resolution R-21-475 designating the subject Property as an area in need of redevelopment. Pa45-46. The Resolution states: "any Property owner wishing to challenge the designation of the Property as a Non-Condemnation Redevlepment Area must file a complaint in the Superior Court within 45 days of the adoption of that resolution." Pa46.

Thereafter, on July 19, 2022, the City of Garfield introduced Ordinance 2949 to adopt a redevelopment plan for the subject property. Pa126; Pa156. On July 22, 2022 notice was published that Ordinance 2949 was introduced and would be taken up for further consideration on August 16, 2022. Pa156. On August 16, 2022, the City adopted Ordinance 2949, the Redevelopment Plan. Pa 157. Notice that Ordinance 2949 was adopted on August 16, 2022 was published on August 19, 2022. Pa157.

Plaintiff, the adjacent landowner (not the owner of the property identified as the one in need of redevelopment), filed a Complaint in Lieu of Prerogative Writs on August 8, 2023 challenging the December 21, 2021 Resolution and August 16, 2022 Ordinance, some 595 days after December 21, 2021 and 358 days after August 16, 2022. Pa59-80.

On or about February 21, 2023, six months before Plaintiff filed its Complaint, the City of Garfield introduced Ordinance 2985 approving a Payment in Lieu of Tax (PILOT) application and execution of a Financial Agreement with the redeveloper for the subject property. Notice that Ordinance 2985 was introduced and that it would be taken up for further consideration on March 14, 2023 was published on February 24, 2023. Pa163. Ordinance 2985 was adopted on March 14, 2023 and notice was published on March 17, 2023. Pa164. The Financial Agreement was executed on April 3, 2023. Pa19; Pa165. A Redevelopment Agreement between the Garfield Redevelopment Agency and Redeveloper was executed on April 12, 2023. Pa179. Plaintiff did not include any allegations concerning March/April 2023 actions in the August 8, 2023 Complaint. Rather, on December 4, 2023, some 245 and 236 days after the April 3 and 12 actions, Plaintiff filed an Amended Complaint in Lieu of Prerogative Writs challenging the April 3 and 12, 2023 actions.

LEGAL ARGUMENT

POINT I

THE TRIAL COURT APPLIED THE CORRECT STANDARD OF REVIEW (Pa1-Pa8)

The court below correctly concluded that Plaintiff's complaint was legally deficient because it was untimely. Although Printing Mart-Morristown v. Sharp Elecs. Corp., 116 N.J. 739 (1989) requires the Court to examine the legal sufficiency of the facts alleged on the face of the complaint in a searching manner that is "generous and hospitable" (Id. at 746), "if a plaintiff's complaint is manifestly untimely or procedurally deficient, the defendant should not be compelled to suffer the burdens of continued litigation." Milford Mill 128 LLC v. Borough of Milford Joint Planning Board and Zoning Board of Adjustment, 400 N.J. Super. 96, 109 (App. Div. 2008). In reviewing the trial court's ruling on a motion to dismiss, this Court is "[b]ound by the same scope of review as the Law Division, [this Court's] role is to defer to the local land-use agency's broad discretion and to reverse only if . . . its decision [is found] to be arbitrary, capricious, or unreasonable." Bressman v. Gash, 131 N.J. 517, 529 (1993). It is presumed that the board has acted fairly, see Charlie Brown of Chatham, Inc. v. Board of Adjustment, 202 N.J. Super. 312, 321, (App. Div. 1985), and a reviewing court may not substitute its judgment for that of the board. Kaufmann v. Planning Bd. for Warren Twp., 110 N.J. 551, 558 (1988).

Examining the legal sufficiency of the facts alleged in the Amended Complaint demonstrates one thing – the action was untimely filed.

POINT II

THE TRIAL COURT CORRECTLY FOUND THAT THE PLAINTIFF'S ACTION IS TIME BARRED ON ITS FACE (Pa6-8; 1T5)

Pursuant to the Local Redevelopment and Housing Law and Court Rules, a Complaint in Lieu of Prerogative Writs challenging action undertaken by a governing body under the Local Redevelopment and Housing Law must be filed within 45 days of such action.

Specifically, N.J.S.A. 40A:12A-5(h)(7) provides:

> If any person shall, within 45 days after the adoption by the municipality of the determination apply to the Superior Court, the court may grant further review of the determination by procedure in lieu of prerogative writ, and in any such action the court may make any incidental order that it deems proper.
>
> N.J.S.A. 40A:12A-5(h)(7).

Rule 4:69-6 provides as follows:

> Rule 4:69-6. Limitations on Bringing Certain Actions
>
> (a) **General Limitation.** No action in lieu of prerogative writs shall be commenced later than 45 days after the accrual of the right to the review, hearing or relief claimed, except as provided by paragraph (b) of this rule.
>
> (b) **Particular Actions.** No action in lieu of prerogative writs shall be commenced

> (1) to contest or question any election under N.J.S. 18A:24-12 or N.J.S. 18A:24- 29, after 15 days from the date of such election; or
>
> (2) to review an assessment or award made for any municipal improvement after 30 days from the date of the confirmation of such assessment or award; or
>
> (3) to review a determination of a planning board or board of adjustment, or a resolution by the governing body or board of public works of a municipality approving or disapproving a recommendation made by the planning board or board of adjustment, after 45 days from the publication of a notice once in the official newspaper of the municipality or a newspaper of general circulation in the municipality, provided, however, that if the determination or resolution results in a denial or modification of an application, after 45 days from the publication of the notice or the mailing of the notice to the applicant, whichever is later. The notice shall state the name of the applicant, the location of the property and in brief the nature of the application and the effect of the determination or resolution (e.g., "Variance-Store in residential zone denied"), and shall advise that the determination or resolution has been filed in the office of the board or the municipal clerk and is available for inspection; or . . . .

In analyzing whether Plaintiff satisfied the criteria of N.J.S.A. 40A:12A-5(h)(7) and Rule 4:69-6, the trial court considered the following undisputed facts:

- "The record reveals that the Board conducted a public hearing to investigate whether the Designated Property was an area in need of redevelopment on November 18, 2021." Pa3.
- "The record also reveals that upon the Board's recommendation, the Mayor and Council conducted a public meeting on December 21, 2021." Pa3.

- On December 21, 2021, . . . the City adopted Resolution No. R-21-475 identifying the Designated Property as an area for redevelopment." Pa3.

- "Subsequently, on August 16, 2022, the City of Garfield adopted Ordinance NO 2949 adopting a Redevelopment Plan for the Designated Property." Pa3.

- "It is undisputed that despite publication of notice, Plaintiff did not appear at the Board's meeting on November 18, 2021 and did not appear at the public meeting of the city Mayor and Council on December 21, 2021." Pa4.

- "It is also undisputed that Plaintiff filed its complaint on August 8, 2023 and subsequently filed an amended complaint on December 4, 2023." Pa4.

This Court should uphold the trial court's dismissal of Plaintiff's Complaint (undisputedly filed some 595 days after the City adopted Resolution No. R-21-475 and 358 days after the City adopted Ordinance No 2949) and Amended Complaint (admittedly challenging action taken some 245 days before the Amended Complaint was filed).

POINT III

THE TRIAL COURT CORRECTLY DETERMINED THAT THERE WAS NO BASIS TO ENLARGE THE 45 DAY TIME PERIOD PURUSANT TO R. 4:69-6(c) (Pa6-8; 1T6-7; 1T14-15)

Recognizing that its action fails on the face of the Complaint, Plaintiff attempted to exploit the narrow exception of Rule 4:69-6(c), which provides that "the court may enlarge the period of time in paragraph (a) or (b) [cited above at Page

7] of this rule where it is manifest that the interest of justice so requires." Pa5. In analyzing whether an enlargement of time was appropriate, the trial court looked at the "Brunetti factors[3]." Pa6-7.

"Whether to grant or deny an enlargement involves a sound exercise of judicial discretion, with consideration given both to the potential impact upon the public body and upon the plaintiff." Tri-State Ship Repair & Dry Dock v. City of Perth Amboy, 349 N.J. Super. 418, 424-25 (App Div. 2002), citing Southport Dev. Group v. Wall Township, 310 N.J. Super. 548, 556 (App. Div.), certif. denied, 156 N.J. 384 (1998). "The longer a party waits to mount its challenge, the less it may be entitled to an enlargement." 349 N.J. at 425. "Finally, courts should also consider the length of the delay and the reason proffered for that delay." Id.

Plaintiff's delay here was significant. The Complaint was filed 595 days after the adoption of Resolution N. R-21-475 and 358 days after the adoption of Ordinance No. 2949. The Amended Complaint was filed some 245 days after the Financial Agreement was executed. No valid reason for slumbering on their alleged claim was provided.

In Brunetti v. Borough of New Milford, our Supreme Court identified three categories of circumstances that would warrant an enlargement of time under Rule 69-6(c): "cases involving (1) important and novel constitutional questions; (2)

[3] Brunetti v. Borough of New Milford, 68 N.J. 576 (1975).

informal or *ex parte* determinations of legal questions by administrative officials; and (3) important public rather than private interests which require adjudication or clarification." Brunetti v. Borough of New Milford, 68 N.J. 576, 586 (1975).

The trial court correctly found that none of these circumstances were present here. It held:

> Applying the factors of Brunetti, the court here finds that the Plaintiff's complaint does not allege an important or novel constitutional question, nor does it specifically seek redress from an informal or ex parte determination of a legal question by an administrative official. The allegations asserted by Plaintiff are misplaced and wholly personal as Plaintiff is the owner/occupant of a parcel adjacent to the Designated Property. The court furthermore finds that the case law relied upon by Plaintiff is inapplicable to the undisputed facts and circumstances presented here. Plaintiff has asserted a conclusory argument that the proposed redevelopment is a matter of public concern because of its size and scope such that it will alter the Borough.
>
> ***
>
> The issues presented are far from novel and are focused on Plaintiff's private interests as Plaintiff is not the target property, Plaintiff is not within the designated redevelopment area, and Plaintiff's property was not studied and was not determined to be an area in need of redevelopment. Plaintiff's arguments are unavailing. The court finds no public interest warranting expansion of the applicable time period to permit Plaintiff's amended complaint. In fact, the interest of justice to the City Defendants as well as the public warrants dismissal of the complaint. . . . Plaintiff's complaint is fatally time-barred.
>
> Pa7; Pa8.

The Amended Complaint and Plaintiff's arguments here and below reflect that Plaintiff primary concern is Plaintiff's private interest. To this end, the Amended Complaint states: "The 69 Hepworth Property is directly adjacent to Plaintiff's Property which is a fully operational sold waste transfer station. The proposed development at 69 Hepworth Property directly conflicts with the adjacent use of Plaintiff's Property." Pa9 at ¶59. Indeed, Plaintiff argued to the trial court, that it was concerned about "being on the wrong-side of a nuisance action commenced by the future residents of the building." 1T6:2-11; 1T14:10-18.

In addition, Paragraphs 1, 2, 3, 4, 5, 6, 7, 8 and 13 of Plaintiff's Amended Complaint describe Plaintiff's property and business practices. Pa9-11. Plaintiff's Amended Complaint describes Plaintiff's property as "directly adjacent to" the Development Property. Pa9 at ¶13. It describes the nature of Plaintiff's business as a "solid waste transfer station" with collection vehicles "tipping" at Plaintiff's property 110-120 times per day and 30-35 vehicles "transporting waste out of the facility each day" with operations conducted from 6:00 am to 7:00 pm Monday through Friday and 7:00 am to 5:00 pm on Saturdays that include transfer trailers to be moved to and from the property. Pa9 at ¶¶1, 4, 6, 7, 8 and 13. The Amended Complaint also states: "No traditional zoning plan would locate these uses [industrial and waste transfer uses and high density residential uses] adjacent to each other.

Pa9¶63. These allegations highlight the truly personal and private nature of the Plaintiff's challenge to the City of Garfield's action.

Recognizing that under Brunetti, Plaintiff must claim an "important public rather than private interest" for the Court to accept the time-barred Complaint, Plaintiff asserts that its action is a constitutional challenge to the Board's actions.[4] Plaintiff's claim that Redevelopment Designations are automatically Constitutional questions and, therefore, subject to enlargement of time and that the subsequent execution of the Financial Agreement flows from the Redevelopment Designation is wrong. Under Plaintiff's argument, there is no limitation of time in which to bring a challenge to under N.J.S.A. 40A:12A-1 et. seq., the "Local Redevelopment and Housing Law".

Challenges to a Redevelopment Designation do not automatically qualify for an enlargement to the 45 day filing requirements set forth in Rule 4:69-6. In Tri-State Ship Repair & Dry Dock, the Court held that the Complaint in Lieu of Prerogative Writs filed nearly two and one-half years after the redevelopment plan was adopted was time barred because it was filed more than 45 days after the action

[4] Of note, redevelopment designations raise constitutional claims for owners of property located within the area in need of redevelopment, not for those like Plaintiff who have no constitutionally protected property interest in the subject property. See e. g. Gallenthin Realty v. Borough of Paulsboro, 191 N.J. 344 (2007) (stating "Our Constitution restricts government redevelopment to 'blighted areas' . . . That limitation reflects the will of the People regarding the appropriate balance between municipal redevelopment and ***property owners' rights***.") (emphasis added).

was undertaken. 349 N.J. Super. at 418. This Court specifically found that despite the redevelopment statute being imbedded int the Constitution, challenges to redevelopment ordinances remain subject to the 45 day filing deadline:

> We do not, from our review of the record, see any novel or constitutional questions presented. The municipal power to proceed under the redevelopment statute can hardly be doubted at this juncture; indeed it is imbedded in our Constitution. *N.J. Const.* (1948), Art. VIII, § 3, ¶ 1. **We note, moreover, that from the outset, plaintiff's position has been that its property should not be included within the redevelopment area because it is operating an apparently viable business. In such a posture, it is clear to us that it is seeking to vindicate a private, not a public, interest. The viability of plaintiff's own business, moreover, is not a bar to it being included within the redevelopment area.** *Forbes v. Bd. of Trustees,* 312 *N.J. Super.* 519, 712 *A.*2d 255 (App. Div.), *certif. denied* 156 *N.J.* 411, 719 *A.*2d 642 (1998);
>
> *N.J.S.A.* 40A:12A-3. Finally, we are not asked to deal with the consequences of alleged informal or *ex parte* actions. All of the steps taken by the City in its efforts to further its goal of redevelopment and revitalization have been taken at public meetings and in apparent compliance with statutory requirements. And, to the extent plaintiff's complaint challenged the City's exercise of the power of eminent domain over its property, the challenge was premature, the City having withdrawn the ordinance which authorized such a step.

Tri-State Ship Repair & Dry Dock, 349 N.J. Super. at 425 (App Div. 2002) (emphasis added). This matter is on all fours with Tri-State Ship Repair & Dry Dock and the result should be the same.

In the context of condemnation proceedings following redevelopment designations, this Court held that the "presumption of a time bar shall be especially strong with respect to general attacks on the validity of the redevelopment designation raising issues that are not specific to the owner's parcel." Harrison Redevelopment Agency v. DeRose, 398 N.J. Super. 361, 368 (App. Div. 2008). This is the exact situation present here. Plaintiff does not own the property that was the subject of the redevelopment determination. Plaintiff is an adjacent landowner, concerned solely in Plaintiff's private interests.

Plaintiff's reliance on Reilly v. Brice, 109 N.J. 555 (1988) is misplaced. In Reilly, our Supreme Court specifically noted that "plaintiffs assert no private interest in challenging this contract, but rather seek vindication of public interest." Id. at 558. The Reilly Court further noted that "the factual setting" surrounding the award of a consulting contract and negligence of the municipality contributed to the lateness of the challenge. The Court indicated that "much of the municipality's grievance about the lateness of the action might have been avoided had the descriptions of the proposed public action been more specific." Id. at 559-60. None of these circumstances exist here. The public notice for the actions taken by Garfield were more than sufficient, and Plaintiff has not claimed otherwise.

Plaintiff's reliance on Borough of Princeton v. Bd. of Chosen Freeholders of Mercer Cty., 169 N.J. 135 (2001) is also misplaced. The factual situation in Borough

of Princeton centered around long-term (15 and 19 years) solid waste public contracts where the statute capped such contract terms at 5 years. Our Supreme Court specifically noted that solid waste industry and public contract issues have long been recognized by the State of New Jersey as "involving unique public policy concerns" because solid waste contracts management contracts have been "described as being 'fraught with the potential for abuse in the form of favoritism, rigged bids, official corruption and the infiltration of organized crime.'" Id. at 155. The Court identified additional potential abuse noting that in light of the subject problematic solid waste contracts, other solid waste management districts were entering into similar contracts allowing the "potential injuries alleged in these petitions [to be] multiplied in other agreements throughout this State" despite New Jersey's historic heavy regulation in the solid waste management arena. Id. at 156. The same concerns are not present here. Unlike solid waste management, governing agencies have broad discretion in regulating planning and zoning within their borders. N.J.S.A. 40:48-2. See also Dome Realty, Inc. v. City of Paterson, 83 N.J. 212, 230 (1980).

Plaintiff's reliance on Schack v. Trimble, 28 N.J. 40 (1958) is also misplaced. Schack revolved around the denial of a permit through an informal ex parte determination of legal questions by administrative officials, not important public interests or novel constitutional questions.

Plaintiff argues that "if the trial judge found it [Adams v. Delmonte, 309 N.J. Super. 572, 581 (App. Div. 1998)] to be persuasive, he should have exercised judicial discretion and enlarged the statute of limitations." Pb at 24. Plaintiff is wrong. In Adams v. Delmonte, this Court stated:

> None of the [Brunetti] exceptions apply here. The case does not present any important and novel constitutional questions. The appeal is from a zoning board decision following a formal and adversary hearing, not from an *ex parte* determination of a zoning official. Plaintiffs rely on exception (3), arguing that "[t]here is a strong public interest in maintaining the integrity of the Zoning Code and certainly in limiting actual uses within a zone [than] only those specifically permitted by the local zoning ordinance." We disagree. That argument can be made in every zoning case and, if accepted, would emasculate the time-limitation rule. The present controversy affects but a single tract of land and a small number of people, DelMonte and his immediate neighbors.
>
> Nevertheless, the unique factual setting here, as it unfolded during the administrative process, "properly calls for an exercise of judicial discretion to enlarge the time to review" the Zoning Board's determination. *Reilly, supra*, 109 N.J. at 560, 538 A.2d 362. This is so because the full aspect of DelMonte's enterprise did not become apparent until the subsequent Planning Board hearing was conducted.

Adams v. Delmonte, 309 N.J. Super. 572, 581 (App. Div. 1998). Thus, the Court in Adams determined that the unique factual circumstances present there, which are not present here, properly called for judicial discretion to enlarge the time to file the Prerogative Writ – specifically that Adams did not have the requisite information

and knowledge to challenge the Zoning Board determination until the subsequent Planning Board hearing occurred.

Of significance, the Adams court rejected the argument concerning "strong public interest" finding such an "argument can be made in every zoning case and, if accepted, would emasculate the time-limitation rule." Id. at 581. The arguments the Adams Court rejected are exactly the ones Plaintiff is attempting to advance here. By using the buzz words like "public interest" and "constitution", Plaintiff relies on an argument that would allow the exception to swallow the rule in every instance where a municipality designates an area in need of redevelopment.

POINT IV

PLAINTIFF'S ARGUMENTS IN POINT 3 OF ITS BRIEF SHOULD BE REJECTED BY THE COURT

Plaintiff raises for the first time on appeal that it should be entitled to an enlargement of time due to some unspecified "plain error" caused by lack of notice. Plaintiff waived this argument in failing to raise it before the trial court. Even if Plaintiff somehow did not waive the argument, Plaintiff's argument fails on the merits.

A. Plaintiff Waives It's Point 3 Argument Because It Was Not Presented at Trial

"Appellate review is not limitless. The jurisdiction of appellate courts rightly is bounded by the proofs and objections critically explored on the record before the

trial court by the parties themselves." State v. Robinson, 200 N.J. 1, 19 (2009). Issues not raised below, even constitutional issues, will ordinarily not be considered on appeal unless they are jurisdictional in nature or substantially implicate public interest. See, e.g., State v. Vincenty, 237 N.J. 122, 135 (2019); State v. Jones, 232 N.J. 308, 321-322 (2018); State v. Legette, 227 N.J. 460, 467 n.1 (2017); Johnson v. Roselle EZ Quick LLC, 226 N.J. 370, 396-397 (2016); State v. Stein, 225 N.J. 582, 599 (2016); Zaman v. Felton, 219 N.J. 199, 226-227 (2014); State v. Galicia, 210 N.J. 364, 383 (2012); State v. Harris, 209 N.J. 431, 445 (2012); Robinson, 200 N.J. at 20-22 (2009); County of Essex v. First Union, 186 N.J. 46, 51 (2006); State v. Arthur, 184 N.J. 307, 327 (2005); State v. J.M., 182 N.J. 402, 410 (2005); Brock v. Public Service Elec. & Gas Co., 149 N.J. 378, 391 (1997); State v. McGraw, 129 N.J. 68, 81 (1992); State v. Churchdale Leasing, Inc., 115 N.J. 83 (1989).

Of significance, the Robinson Court specifically commented on the R. 2:10-2 plain error exception stating:

> these exceptions are not without practical boundaries; they are not intended to supplant the obvious need to create a complete record and to preserve issues for appeal. To permit otherwise would allow the "clearly capable of producing an unjust result "interests of justice"' standard of *Rule* 2:10-2 to render as mere surplusage the overarching requirement that matters be explored first and fully before a trial court.
>
> Id. at 20.

Because Plaintiff never raised the issue set forth in Argument Point 3 of its brief below, the issue was not properly preserved for appellate review and should not be considered by this Court.

B. Plaintiff's Point 3 Argument Fails on the Merits

It is unclear from Plaintiff's Brief what the alleged "plain error" is. It appears Plaintiff's position is that the failure to timely file its Complaint in Lieu of Prerogative Writs within 45 days was the alleged "plain error." This is not the type of "plain error" contemplated by Rule 2:10-2. Rule 2:10-2, titled "Notice of Trial Errors" refers to errors or omissions occurring at the trial court level.

Further, Plaintiff's arguments concerning New Jersey Courts "decid[ing] cases of significant public importance, which stem from a controversy 'capable of repetition, yet evading review'" is confusing at best and irrelevant. Pb at 27-28. The cases cited by Plaintiff – In re Conroy, 190 N.J. Super. 459 (App. Div. 1983), Roe v. Wade, 410 U.S. 113 (1973), Guttenberg Sav. & Loan Ass'n v. Rivera, 85 N.J. 617 (1981), John F. Kennedy Mem'l Hospital v. Heston, 58 N.J. 576 (1971), Finkel v. Twp. Committee of Hopewell, 434 N.J. Super. 303 (App. Div. 2013) – all deal with circumstances where the case or controversy between the litigants no longer exists rendering the action "moot" between the parties to the action but require determination because of some larger public. This is simply not an issue in the present case.

Plaintiff also appears to argue that the legislative notice requirements for the redevelopment designation process are insufficient and, therefore, require an equitable extension of time in all instances where property owners not within the redevelopment area are concerned. "The time bar may be raised even though the neighbor, or occupant of the property, was not notified of the redevelopment proceedings." Pb at 26. "The Local Redevelopment and Housing Law's notice provisions are likely to bar meritorious challenges by adversely affected *non-record owners* who fail to see the newspaper notice and act within the applicable statute of limitations." Pb. at 27 (emphasis in original). Plaintiff asserts that public meetings are often held at "inconvenient dates and times like the week before Thanksgiving or the day before the 4th of July and are passed when no members of the public are even aware of the proceedings. Much less in attendance." Pb 28 Plaintiff is essentially asking this Court to re-write the statutory scheme and required legislative determined notice concerning the process for designation of areas in need of redevelopment.

Plaintiff again raises the conclusory arguments that because the Local Redevelopment and Housing Law is implicated, a novel constitutional question is presented. As set forth above, Plaintiff is wrong, and its arguments should be rejected.

CONCLUSION

The trial court correctly determined that Plaintiff seeks to advance a private claim in this action. Plaintiff filed a Complaint in Lieu of Prerogative Writ on August 8, 2023, challenging action undertaken by the City of Garfield on December 21, 2021 and August 16, 2022, some 595 and 358 days earlier. Pa59. Plaintiff filed an Amended Complaint on December 4, 2023 challenging action that occurred on April 3 and 12, 2021, some 245 to 236 days earlier. Pa9. Plaintiff's Action was properly dismissed by the trial court.

Respectfully submitted,

Santo T. Alampi

Dated: March 10, 2025

IWS TRANSFER SYSTEMS OF N.J., INC., Appellant-Plaintiff, v. PLANNING BOARD OF THE CITY OF GARFIELD; CITY OF GARFIELD, A MUNICIPAL CORPORATION OF THE STATE OF NEW JERSEY, Respondents-Defendants.	SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION DOCKET NO.: A-000305-24 CIVIL ACTION ON APPEAL FROM: Superior Court, Law Division DOCKET NO. BELOW: BER-L-4206-23 SAT BELOW: Hon. Gregg A. Padovano, J.S.C.

BRIEF OF RESPONDENT-DEFENDANT PLANNING BOARD OF THE CITY OF GARFIELD IN OPPOSITION TO APPEAL

CIMINO LAW, LLC
376 Hollywood Avenue
Suite 206
Fairfield, NJ 07004

Of Counsel and on the Brief
Alyssa A. Cimino, Esq.
Attorney ID# 0009742006

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Statute

Court Rule

Constitutional Clauses

Websites

TABLE OF JUDGMENTS, ORDERS AND RULINGS

PROCEDURAL HISTORY & STATEMENT OF FACTS[1]

On July 20, 2021, the City of Garfield ("City") adopted Resolution 21-245 authorizing and directing the Planning Board of the City of Garfield ("Planning Board" or "Board") to examine whether the property known as 69 Hepworth Place, also known as Block 34.02 Lot 28 ("Property"), should be determined to be an area in need of redevelopment. Pa82-83. In September of 2021, DMR Architects issued a Report of Preliminary Investigation for Determination of an Area in Need of Redevelopment ("Study"). Pa86-125. On November 1 and November 8, 2021, the Planning Board properly published newspaper notice of a meeting which was to be held on November 18, 2021. Pa84. On November 18, 2021, the public meeting was held in which the Board heard testimony from DMR Architects who presented the findings from the Study. See Pa37.

DMR Architects examined the Property and determined that (1) the buildings are "substandard, unsafe, unsanitary, dilapidated, or obsolescent"; (2) a portion of the buildings on the Property are vacant and have been so for at least two years; (3) "the buildings have conditions that lack ventilation and

[1] The Procedural History and Statement of Facts are combined because they are inextricably intertwined. A. Br. at p. 3.

light." Such conditions are both conducive to unwholesome working conditions and detrimental to the safety, health, or welfare of the community, and; (4) the unpaved parking lot lacks any striping or ADA parking spaces and the lot is configured such that any truck must back up onto the public street, which has parking on both sides, in order to exit the lot. Pa102-103. The Study concludes by stating that "the most effective way to return the properties in question to states of compliance with land use and building standards, sound site design, and safe operation is to redevelop the sites in a sustainable manner." Pa109. Considering this recommendation, on December 16, 2021, the Planning Board adopted resolution PB-12-2021, which recommended that the Property be declared a Non-Condemnation Redevelopment Area. Pa38-43.

On December 21, 2021, the City of Garfield adopted Resolution R-21-475, which designated the Property as an area in need of redevelopment. Pa45-46. Notably, the resolution states that any property owner wishing to challenge the designation "must file a complaint in the Superior Court *within 45 days* of the adoption of that resolution." Pa46 (emphasis added).

In July 2022, DMR Architects prepared a redevelopment plan for the Property. Pa126-155. On July 19, 2022, the City of Garfield introduced Ordinance 2949 to adopt the redevelopment plan for the Property. Pa126; Pa156.

On July 22, 2022, newspaper notice was published explaining that Ordinance 2949 was introduced and would be taken up for further consideration on August 16, 2022. Pa156. On August 16, 2022, Ordinance 2949, the redevelopment plan, was adopted by the City. Pa157. Newspaper notice for this was published on August 19, 2022. Pa157.

A hearing on an application for Preliminary and Final Major Site Plan for Development ("Application") of the Property took place before the Planning Board on October 17, 2022. Pa52. At this meeting the Planning Board heard testimony from multiple experts, and each of them testified in support of the Application. The Board accepted their qualifications as experts, listened to the testimony, asked pertinent questions of the experts, and ultimately voted to approve the Application. The public was also given an opportunity to voice its objections to, or support for, the Application. Resolution PB-18-2022, granting major Site Plan Approval, was adopted by the Planning Board on December 15, 2022. Pa52-58.

I.W.S. Transfer Systems of N.J., Inc. ("Plaintiff"), the adjacent landowner (not the owner of the property identified as the property in need of redevelopment), filed a Complaint in Lieu of Prerogative Writs ("Complaint") on August 8, 2023, which challenged the December 21, 2021 Resolution and

August 16, 2022 Ordinance. Pa59-80. This Complaint came some 595 days after December 21, 2021 and 358 days after August 16, 2022 – well beyond the forty-five (45) day time limit expressed in R. 4:69-6.

On February 21, 2023, roughly six (6) months before Plaintiff filed the Complaint, the City introduced Ordinance 2985, approving a Payment in Lieu of Taxes ("PILOT") program for the Property and execution of a Financial Agreement with the redeveloper for the Property. This ordinance was scheduled to be taken for further consideration on March 14, 2023, and notice for this meeting was duly published. Pa163. The ordinance was adopted on March 14, 2023, and notice of this adoption was published on March 17, 2023. Pa164. The corresponding Financial Agreement between the redeveloper and the Garfield Redevelopment Agency was executed on April 3, 2023. Pa19; Pa165. In addition, a Redevelopment Agreement between the Garfield Redevelopment Agency and the redeveloper was executed on April 12, 2023. Pa179. Although all of the aforementioned actions occurred well before Plaintiff filed the Complaint in August 2023, there is nothing in the record that would have prevented Plaintiff from filing a timely Complaint in Lieu of Prerogative Writs challenging these actions. Additionally, Plaintiff filed an Amended Complaint

on December 4, 2023 – 245 and 236 days after the April 3 and April 12 events respectively.

ARGUMENT

POINT I

THE TRIAL COURT PROPERLY DISMISSED THE COMPLAINT

A. The trial court applied the correct standard of review. (Pa1-8)

The lower court properly dismissed the Complaint because it was filed well past the forty-five (45) day limit. "If a plaintiff's complaint is manifestly untimely or procedurally deficient, the defendant should not be compelled to suffer the burdens of continued litigation." Milford Mill 128 LLC v. Borough of Milford Joint Planning Board and Zoning Board of Adjustment, 400 N.J. Super. 96, 109 (App. Div. 2008). While courts must examine the facts alleged in a complaint in such a manner that is "generous and hospitable," this does not mean that courts are forbidden from considering the procedural deficiencies in rendering its decisions. See Printing Mart-Morristown v. Sharp Elecs. Corp., 116 N.J. 746 (1989).

A municipal board's decisions are entitled to a presumption of validity and must be shown to have been arbitrary, capricious, or unreasonable in order to be overturned. Cell v. Zoning Bd. of Adjustment, 172 N.J. 75, 81-82 (2002); See

also Bressman v. Gash, 131 N.J. 517, 529 (1993). In other words, the Court should sustain the municipal agency's decision unless it is not supported by substantial credible evidence in the record. Centex Homes v. Twp. Committee of Mansfield, 372 N.J. Super. 186, 196 (Law. Div. 2004). Additionally, courts have recognized that municipal bodies, comprised of local citizens, are not only more familiar with the municipality in question, but have a greater understanding of the municipality's long-term goals. See First Montclair Partner, L.P. v. Herod Redevelopment I, L.L.C., 381 N.J. Super. 298, 302 (App. Div. 2005).

Applying this standard of review to the matter at hand, the lower court properly dismissed the Complaint for being filed well past the forty-five (45) day limit.

B. The trial court correctly found that the Complaint is time barred on its face.
(Pa6-8; T. 5:2-19)

The Local Redevelopment and Housing Law ("LRHL") states that the timeframe for filing a Complaint in Lieu of Prerogative Writs challenging the action undertaken by a governing body is limited to forty-five (45) days. In pertinent part, the LRHL provides, "if any person shall, within 45 days after the adoption by the municipality of the determination apply to the Superior Court,

the court may grant further review of the determination by procedure in lieu of prerogative writ…" N.J.S.A. 40A:12A-5(h)(7). Additionally, New Jersey Court Rules also provide a forty-five (45) day limit for commencing Complaints in Lieu of Prerogative Writs. "No action in lieu of prerogative writs shall be commenced later than 45 days after the accrual of the right to the review, hearing or relief claimed…" R. 4:69-6(a).

In its Order dismissing the Complaint ("Order"), the trial court conducted a painstaking analysis of the facts. First, the trial court considered that, on November 18, 2021, "the Board conducted a public hearing to investigate whether the Designated Property was an area in need of redevelopment…" Pa3. Second, on December 21, 2021, a public meeting was held and the City adopted Resolution R-21-475, which identified the Property as an area in need of redevelopment. Pa3. Third, on August 16, 2022, the City adopted a redevelopment plan for the Property via Ordinance 2949. Pa3. Finally, the trial court noted, "it is undisputed that despite publication of notice, Plaintiff did not appear at the Board's meeting on November 18, 2021 and did not appear at the public meeting of the city Mayor and Council on December 21, 2021." Pa4. Plaintiff filed its Complaint on August 8, 2023 and filed the Amended Complaint on December 4, 2023. "Here, the original complaint was filed more than 595

days after the City's December 21, 2021 adoption of the subject resolution and 358 days after the adoption of the subject ordinance on August 16, 2022." Pa7-8. The court further stated that "Plaintiff's complaint, and amended complaint, were clearly filed well beyond the applicable 45-day time frame." Pa8.

The trial court properly dismissed the Complaint and Amended Complaint for being filed well beyond the applicable time limit, and this Court should affirm that dismissal.

C. The trial court properly determined that there was no basis to enlarge the forty-five (45) day time period pursuant to Rule 4:69-6(c). (Pa6-8; T. 6:12-21; T. 14:3-9)

Plaintiff is attempting to use Rule 4:69-6(c) to convince the Court to enlarge the time frame in which the Complaint can be filed. The rule provides that the court may enlarge the time frame in which to file a complaint in lieu of prerogative writs "where it is manifest that the interest of justice so requires." R. 4:69-6(c); Pa5. In determining whether an extension of time was appropriate, the trial court applied the Brunetti factors.

In Brunetti v. Borough of New Milford, the New Jersey Supreme Court held that there are three (3) categories in which an enlargement of time to file a complaint would be appropriate under R. 4:69-6(c). First, "cases involving important and novel constitutional questions." Brunetti v. Borough of New

Milford, 68 N.J. 576, 586 (1975). Second, "informal or *ex parte* determinations of legal questions by administrative officials." Id. Third, "important public rather than private interests which require adjudication or clarification." Id. In addition, granting an enlargement requires consideration of the impact on both the plaintiff and the public body. See Tri-State Ship Repair & Dry Dock v. City of Perth Amboy, 349 N.J. Super. 418, 424-25 (App Div. 2002). Moreover, courts should consider the length of the delay and the reason for the delay, with longer delays potentially being less entitled to an enlargement. See Id. at 425.

In applying the Brunetti factors, the trial court correctly found that an enlargement is not warranted here. The trial court stated that Plaintiff "does not allege an important or novel constitutional question, nor does it specifically seek redress from an informal or *ex parte* determination of a legal question." Pa7. The court goes on to conclude that the grievances of the Plaintiff are both misplaced and wholly personal. Pa7. "Plaintiff has asserted a conclusory argument that the proposed redevelopment is a matter of public concern because of its size and scope such that it will alter the Borough." Pa7. Plaintiff is the owner and occupant of the *adjacent* property – not the property at issue, and the court found that there is "no public interest warranting expansion of the applicable time period to permit Plaintiff's amended complaint." Pa8.

The trial court aptly described Plaintiff's Complaint as being fatally time-barred. Pa8. At best, Plaintiff filed the Amended Complaint 245 days after the execution of the Financial Agreement. Beyond this, the original Complaint was filed 595 days after, and 358 days after, the adoption of Resolution R-21-475 and Ordinance 2949, respectively.

While Plaintiff asserts in his Complaint that its concern is vested in the public interest, Plaintiff's arguments are primarily concerned with personal, private interests. For example, Plaintiff states in the Complaint that "the proposed development at 69 Hepworth Property directly conflicts with the adjacent use of Plaintiff's Property." Pa19. Additionally, Plaintiff describes his activities on his property in great detail, explaining how several dozen vehicles are coming and going during the majority of daylight hours every day. Pa9. Such descriptions demonstrate that Plaintiff's real worry is that it will end up "on the wrong side of a nuisance action commenced by future residents of the [Property]" – a decidedly private concern. T. 6:5-6.

For the Court to grant an enlargement under Brunetti, Plaintiff must demonstrate an important public interest, not a private interest. In Tri-State Ship Repair & Dry Dock v. City of Perth Amboy, a complaint in lieu of prerogative writs was filed more than two (2) years after the adoption of a redevelopment

plan challenging the blight designation of the property. Tri-State Ship Repair & Dry Dock v. City of Perth Amboy, 349 N.J. Super. 418, 420-21 (App Div. 2002). The Court applied the Brunetti factors, specifically the first factor of whether there was a Constitutional violation and the third factor regarding public interest. Id. at 424. Although the Redevelopment Law is embedded in the N.J. Constitution, not every redevelopment designation is *per se* a violation of the Constitution. See Id.; N.J. Const. (1948), Art. VIII, § 3, P1. Further, the Plaintiff in the Tri-State case was the actual owner of the property unlike the Plaintiff in the instant matter. Nonetheless, the Court held that the action was time-barred and still subject to the forty-five (45) day time limit. Id. at 425.

Additionally, the court has stated that the "presumption of a time bar shall be especially strong with respect to general attacks on the validity of the redevelopment designation raising issues that are not specific to the owner's parcel." Harrison Redevelopment Agency v. DeRose, 398 N.J. Super. 361, 368 (App. Div. 2008).

Plaintiff erroneously relies on Reilly v. Brice and Shack v. Trimble in its attempt to reverse the trial court's decision. However, Plaintiff's reliance on such cases is misplaced. The New Jersey Supreme Court stated in Reilly that "one of the well-recognized exceptions warranting relief from the statute of limitations

is based on consideration of public rather than private interests." Reilly v. Brice, 109 N.J. 555, 558 (1988). However, as the trial court recognized in this case, there is "no public interest warranting expansion of the applicable time period to permit Plaintiff's amended complaint." Pa8. Additionally, the court in Reilly stated that the matter would likely have been avoided if proper noticing took place. Id. at 559-560. In the instant matter, all parties were properly noticed, and the Complaint was still filed well beyond the applicable time limit. In other words, Plaintiff has engaged in precisely the behavior that the court in Shack v. Trimble suggested would not qualify for an enlargement of time – slumbering on its rights. See Schack v. Trimble, 28 N.J. 40, 49-50 (1958).

Plaintiff further attempts to conjure an important public interest by claiming that the designation of the Property as in need of redevelopment was not supported by substantial evidence. Plaintiff relies on the court's decision in Gallenthin Realty Development, Inc. v. Borough of Paulsboro to claim the Board's designation of the Property as in need of redevelopment was based on the "slender reed" of the "net opinion of an expert." Gallenthin Realty Development, Inc. v. Borough of Paulsboro, 191 N.J. 344, 372-373 (2007). In the case at hand, the "slender reed" described by Plaintiff is a highly detailed 24-page report prepared by DMR Architects that describes in detail the condition

of the Property and how said conditions specifically satisfy individual criteria of the LRHL. Pa86-109. To arrive at the conclusions in the Study, DMR Architects, who are experts in this field, personally visited the Property, noted its conditions, and connected those conditions to statutory requirements of the LRHL. See N.J.S.A 40A:12A-5; Pa101-103. Such exacting precision can hardly be described as a slender reed of a net opinion.

Plaintiff's reliance on Concerned Citizens of Princeton, Inc. is also misplaced. The factual circumstances are highly distinct from the instant matter. First, in Concerned Citizens of Princeton, Inc., this Court upheld an enlargement of time under R. 4:69-6(c) because there was a strong and widespread public interest in the opposition to the project. Concerned Citizens of Princeton, Inc. v. Mayor and Council of Bor. of Princeton, 370 N.J. Super. 429 (App. Div. 2004). In that case, there was a petition signed by nearly 850 registered voters opposing the redevelopment. Id. In this case, Plaintiff is the sole interested party. Moreover, the property at issue in Concerned Citizens of Princeton, Inc. was municipally-owned property that would directly affect those opposed to the redevelopment. See id. at 435. In contrast, the Property in this matter is private property of which Plaintiff is not the owner of the parcel.

Lastly, Plaintiff opines that the trial court found Adams to be persuasive, and yet refused to enlarge the time for the filing of a Complaint in the instant case. Plaintiff argues that "if the trial judge found [Adams] to be persuasive, he should have exercised judicial discretion and enlarged the statute of limitations." Pb24.

However, Plaintiff misunderstands why the trial court found the case to be persuasive. In Adams, the court states explicitly that "none of the [Brunetti] exceptions apply here." Adams v. Delmonte, 309 N.J. Super. 572, 581 (App. Div. 1998). More specifically, the court stated that the unique factual setting in Adams warranted an enlargement of time. Id. The plaintiff in Adams did not have the proper information to challenge the board's determination until after the time to file a complaint expired. The court stated that "the full aspect of [defendant's] enterprise did not become apparent until the subsequent Planning Board hearing was conducted." Id. In this case, all necessary information was public, and the full scope and purpose of the decisions made by the Board were entirely available to those who may have been interested in the matter.

This is a case in which the Plaintiff has slumbered on its rights and is now attempting to conjure up imaginary constitutional or public issues as a pretext to getting the case's dismissal reversed. Plaintiff has failed to show that there

was a legitimate constitutional violation or public interest as required by the Brunetti factors, and instead, is merely concerned with potential future nuisance lawsuits – a purely speculative private interest. Thus, the trial court correctly held that Plaintiff's Complaint is time-barred and properly dismissed the action. This Court should affirm the trial court's decision because Plaintiff has failed to demonstrate any reason for which the time to file should be enlarged.

POINT II

PLAINTIFF'S ARGUMENTS IN POINT 3 SHOULD BE ENTIRELY REJECTED BY THIS COURT

a. Plaintiff's argument in point 3 was not asserted at trial and therefore cannot be asserted here.

Issues that were not raised at the trial level are generally not considered on appeal unless they are jurisdictional in nature or substantially implicate public interest. Plaintiff's argument in Point 3 does not fit into either of these categories. Appellate courts are "bounded by the proofs and objections critically explored on the record before the trial court by the parties themselves." State v. Robinson, 200 N.J. 1, 19 (2009). Plaintiff failed to raise his arguments in Point 3 of his brief at the trial level. Therefore, Plaintiff should not be permitted to raise this issue here.

b. Plaintiff's Point 3 fails on its merits.

To begin with, Plaintiff does not point to any "plain error" that merits consideration by this Court. R. 2:10-2 allows for this Court to "notice plain error not brought to the attention of the trial or appellate court." R. 2:10-2. Plaintiff then fails to clearly show any evidence of a plain error that occurred at the trial level. The Board contends that Plaintiff has not shown any plain error because such error does not exist. Plaintiff is merely unhappy with the outcome at the

trial level and is grasping at straws in an attempt to manipulate the law in its favor.

Plaintiff then argues that this matter is "capable of repetition yet evading review." Pb25. The precedent cited by Plaintiff in support of this point reveals the argument's irrelevance. Plaintiff cites to cases where controversy between the parties no longer exists but could be repeated against the larger public. See, e.g., Guttenberg Sav. & Loan Ass'n v. Rivera, 85 N.J. 617 (1981); Roe v. Wade, 410 U.S. 113 (1973). However, the controversy between the parties still exists by virtue the matter pending before this Court. Therefore, Plaintiff's reliance on the cited cases in his brief are not at issue in the instant case.

Plaintiff further takes issue with the LRHL itself by claiming that "notice provisions are likely to bar meritorious challenges by adversely affected non-record owners who fail to see the newspaper notice and act within the applicable statute of limitations." Pb27. The noticing requirements of the LRHL have been set forth by the legislature and Plaintiff is not entitled to a judicial rewrite of the statue merely because of a missed deadline. Most importantly, the Board properly and timely complied with all notice requirements consistent with the LRHL. There is no assertion by Plaintiff that there was improper notice and

Plaintiff is simply trying to blame the noticing requirements as dictated by the LRHL for why it negligently missed a filing deadline by over 236 days.

Additionally, Plaintiff appears to intimate that the Planning Board specifically chooses the dates for its meetings so that the public will be discouraged from attending. See Pb28-29. The Planning Board has its monthly meetings on the fourth Thursday of each month except for the months of November and December. Further, the exact schedule of the Planning Board meetings is published on the City of Garfield's website. City of Garfield Calendar, https://www.garfieldnj.org/calendar. The meetings are held with such regularity precisely so that members of the public are aware of them and can make time to voice opposition to any matter they so choose – something that Plaintiff failed to take advantage of.

Not only do the arguments Plaintiff sets forth in Point 3 of its brief have no merit, but they were also not raised at the trial level and should not be considered here. Plaintiff has wholly failed to demonstrate any reason that this Court should enlarge the time to file the Complaint. Plaintiff has slumbered on his rights and is attempting to take a second bite at the apple. This Court should affirm the trial court's dismissal of the Complaint.

CONCLUSION

For the foregoing reasons, it is respectfully requested that the Court dismiss the appeal filed by Plaintiff.

The Board respectfully suggests that oral argument is unnecessary in this matter.

Dated: June 16, 2025

Respectfully submitted,

By:_____

Alyssa A. Cimino, Esq.
Attorney ID# 0009742006
CIMINO LAW, LLC
376 Hollywood Avenue
Suite 206
Fairfield, NJ 07004
(862)-210-8036

Attorney for Respondent,
Planning Board of the
City of Garfield

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION

I.W.S. TRANSFER SYSTEMS OF N.J., INC.,

Plaintiff-Appellant,

v.

PLANNING BOARD OF THE CITY OF GARFIELD; CITY OF GARFIELD, A MUNICIPAL CORPORATION OF THE STATE OF NEW JERSEY,

Defendants-Respondents.

APPEAL NO. A-000305-24-T2

ON APPEAL FROM:

SUPERIOR COURT OF NEW JERSEY
Law Division, Bergen County
Docket No. BER-L-4206-23

SAT BELOW:

Hon. Gregg A. Padovano, J.S.C.

APPELLANT'S REPLY BRIEF

Of Counsel and On the Brief
Joseph W. Grather, Esq.
jgrather@mrod.law
(I.D. No. 004831999)

Michael Realbuto, Esq.
On the Brief

MCKIRDY, RISKIN, OLSON & DELLA PELLE, P.C.
201 Littleton Road, Suite 135
Morris Plains, NJ 07950
Tel#: 973-539-8900
Attorneys for Plaintiff-Appellant,
I.W.S. Transfer Systems of N.J., Inc.

TABLE OF CONTENTS

TABLE OF ORDERS RELEVANT ON APPEAL

TABLE OF AUTHORITIES

Preliminary Statement

Please accept this letter brief on behalf of plaintiff-appellant, I.W.S. Transfer Systems of N.J., Inc. ("IWS" or "Appellant"), and in reply to the briefs submitted by the City of Garfield ("City") and the Planning Board of the City of Garfield ("Planning Board"). IWS requested oral argument by separate submission on eCourts Appellate.

Procedural History & Statement of Facts[1]

IWS hereby adopts the Procedural History & Statement of Facts as set forth in its original merits brief filed on February 7, 2025 (Trans ID. E1679623-02072025).

Legal Argument

Point 1

Respondents Misconstrue the Applicable Standard of Review for a Pre-Answer Motion to Dismiss. (Pa2-Pa8).

The City and Planning Board respondents contend that a trial court is excused from Printing Mart's "painstaking" review of a complaint for any cognizable claim when a complainant properly seeks refuge under R. 4:69-6(c). Printing Mart-Morristown v. Sharp Elecs. Corp., 116 N.J. 739, 746 (1989).

[1] The statements are combined as the facts and procedure are inextricably intertwined.

Respondents primarily rely upon Milford Mill 128 v. Borough of Milford, 400 N.J. Super 96 (App. Div. 2008) in support of their argument. City Br. 6; Planning Board Br. 5-6. Respondents' reliance on Milford Mill is misplaced for a couple of reasons.

First, Milford Mill expressly reaffirmed that a "motion to dismiss under Rule 4:6-2(e) should be measured by the well-established standard of Printing Mart-Morristown v. Sharp Elecs. Corp.," which "requires the court to 'examin[e] the legal sufficiency of the facts alleged on the face of the complaint' in a searching manner that is generous and hospitable. Even so, a court must dismiss the plaintiff's complaint if it has failed to articulate a legal basis entitling plaintiff to relief." 400 N.J. Super at 109 (internal cites omitted). Accepting the facts alleged by IWS as true results in several meritorious constitutional claims that would "entitl[e] plaintiff to relief." Id. For instance, the Amended Complaint challenges the constitutionality of the underlying blight designation, the failure to provide affordable housing as mandated by the Redevelopment Plan, and the unconstitutional grant of tax exemption. The facts alleged in the complaint establish compelling legal claims arising out of the serial unlawful actions of the municipality.

Second, Milford Mill's claim was that the adoption of the redevelopment plan, i.e., the overlay zoning ordinance, did not allow for an "economically feasible" development of the 110 acre "Curtis Paper Mill Site" it purchased (or was under

contract to purchase), out of bankruptcy. The claim challenged the redevelopment plan zoning and development potential of its single property. The claim was singular to its property and there were no allegations that the underlying blight designation was unconstitutional like the case at bar. In light of the lack of merit of the underlying claims, it is no surprise that the Milford Mill judge found "no reason to extend the customary forty-five-day period for bringing an action under Rule 4:69-6(a), finding that the complaint essentially seeks to advance plaintiff's private economic interests." Id. at 107.

To be sure, IWS's claims arise from the Blighted Areas Clause of the N.J. CONSTITUTION, Art. 8, § 3, ¶ 1. The allegation is that the initial designation of the 69 Hepworth Property as "an area in need of development" violated the Blighted Areas Clause because the record did not consist of "substantial credible evidence" of the statutory "blight criteria" as required by law. N.J.S.A. 40A:12A-6(b)(5); 62-64 Main St., LLC v. Hackensack, 221 N.J. 129, 156 (2015) ("[W]e remind planning boards and governing bodies that they have an obligation to rigorously comply with the statutory criteria for determining whether an area is in need of redevelopment... In general, a municipality must establish a record that contains more than a bland recitation of applicable statutory criteria and a declaration that those criteria are met."). The Amended Complaint alleges that the underlying blight designation

consists of nothing more than a "bland recitation of [the] applicable statutory criteria." Id.

Respondents' briefs do not – and cannot – argue that the trial court's opinion adhered to Printing Mart. That's because the trial court did not address ALL counts contained in the 159-paragraph Amended Complaint. The *entirety* of the trial court's analysis consists of three short paragraphs. See Pb11-12; Pa7-8.

The trial court did not analyze the substance of IWS's claims. Rather, it simply calculated the number of days that had passed and found the pleading to be "out of time." The trial judge's opinion ignored the Third (challenging Site Plan Approval) and Fourth (illegal spot zoning) Counts of the Amended Complaint. Pa29; Pa30. The trial court also did not address the substance of the Fifth Count of the Amended Complaint, which alleged a "Failure to Comply with Mount Laurel and the Constitutional Duty to Provide Affordable Housing." Pa32.[2] This tribunal declared on June 27, 2025: "Mount Laurel cases are unquestionably matters of public interest." AAMHMT Property, LLC, v. Township of Middletown, Docket No. A-0844-24 (Slip op. at 16). Pa243-Pa261.

[2] In re Adoption of N.J.A.C. 5:96 & 5:97 ex rel. New Jersey Council on Affordable Hous., 221 N.J. 1, 3-4 (2015) (footnote omitted) "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."

Nor did the trial judge expressly analyze the merits of the Sixth Count, which alleged a "Violation of Blighted Area Clause's Tax Exemption Provision." Pa34. In sum, the trial judge's opinion completely ignored substantial portions of IWS's Amended Complaint. See R. 1:7-4.

Respondents incorrectly argue that a "presumption of correctness" shields the governmental actions challenged by IWS. City Br. 6; Planning Board Br. 5-6. This appellate tribunal is *not* bound by any legal conclusion reached by the governing body and no presumption of correctness attaches to a legal determination by a municipal government. Manalapan Realty v. Tp. of Manalapan, 140 N.J. 366, 378 (1995); Spruce Manor v. Borough of Bellmawr, 315 N.J. Super. 286, 294-295 (Law Div. 1998) ("[T]he standard of review by the court on [the blight designation] issue does not involve a determination of whether the decision of the municipal bodies was arbitrary or capricious. The interpretation of an ordinance or a statute is a legal matter in which an administrative agency has no particular skills superior to a court."); accord Winters v. Township of Voorhees, 320 N.J. Super. 150, 153-154 (Law Div. 1998). Therefore, respondents' argument that a presumption of correctness saves the challenged action from judicial review is incorrect.

Point 2

IWS's Amended Complaint Raised Substantial Questions of Public Importance Which Were Largely Ignored by the Trial Court's Opinion. (Pa7-Pa8).

Respondents do not even mention the counts and allegations ignored by the trial court's opinion.

A "painstaking" review of the entirety of IWS's Amended Complaint reveals that the claims give rise to public issues of great importance, not simply private interests like redevelopment zoning for a property purchased in bankruptcy. See e.g., Milford Mill 128, 400 N.J. Super 96. IWS is a neighboring property owner seeking vindication of public rights. Indeed, the "interests of justice" are "manifest" by IWS's undisputed *substantive* allegations:

(1) Designation of property as an "area in need of redevelopment" under the Local Redevelopment and Housing Law without substantial evidence that the property was a "blighted area" under N.J. Constitution, Art. 8, § 3, ¶ 1. Pa20-Pa27 (Amended Complaint, First Count);

(2) Adoption of a Redevelopment Plan of Non-Blighted Property. Pa28-Pa29 (Amended Complaint, Second Count).

(3) Unconstitutional Spot Zoning / Avoidance of Municipal Land Use Law. Pa29-Pa32 (Amended Complaint, Third and Fourth Counts);

(4) Failure to comply with constitutional duty and obligation to construct affordable housing under the Mount Laurel doctrine. Pa32-Pa33 (Amended Complaint, Fifth Count);

(5) Declaring private property "exempt from taxation" contrary to the requirements of the "Blighted Areas Clause," *i.e.* without evidence that

> "profits of and dividends payable by" the private corporation would be limited by law. Pa34-Pa35. (Amended Complaint, Sixth Count).

The foregoing factual allegations - which must be accepted as true - form the basis of substantial legal claims affecting the public interest. The trial court's failure to address these claims as required by Printing Mart warrants reversal.

Lastly, the Tri-State Ship Repair & Dry Dock v. City of Perth Amboy case relied upon by respondents is distinguishable. 349 N.J. Super 418 (App. Div. 2002). Like Milford Mill, Tri-State challenged the inclusion of the plaintiff's property within a redevelopment plan more than two years after the plan was adopted. Id. at 422. Unlike IWS, the plaintiff in Tri-State admitted that the redevelopment designation was constitutional because the property was a "blighted area." The owner's untimely claim sought to invalidate the municipality's discretionary decision to include its property within the boundary of the redevelopment area. To that end, the Appellate court found that plaintiff "[was] seeking to vindicate a private, not a public interest" because its position had been that its property should not be included within the redevelopment area *due to its viable private business*." Id. at 425 (emphasis added). Not a single count of the Amended Complaint raised a claim founded on any private interest of Appellant.

In sum, IWS's Amended Complaint raises substantive claims arising out of issues of public importance, which manifests relaxation of the time bar in the interest of justice. Brunetti v. New Milford, 68 N.J. 576, 586-587 (1975); R. 4:69-6(c).

Conclusion

For the foregoing reasons, and the reasons set forth in IWS's initial briefing, IWS respectfully requests that the trial court's decision be reversed, and the matter remanded for further proceedings.

Respectfully submitted,

McKirdy Riskin Olson & Della Pelle, P.C.
Attorneys for Appellant
I.W.S. Transfer Systems of N.J., Inc.

By: _____
JOSEPH W. GRATHER

Dated: July 2, 2025