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parties in the case and its use in other cases is limited. R.1:36-3.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-5100-14T4

JAMES HUGHES,

Plaintiff-Appellant,

v.

TOWN OF WESTFIELD PLANNING
BOARD and THE STOP AND SHOP
SUPERMARKET COMPANY, LLC,
A Delaware Limited Liability
Company,

Defendants-Respondents.

Argued May 16, 2017 — Decided June 30, 2017

Before Judges Reisner, Koblitz and Mayer.

On appeal from the Superior Court of New
Jersey, Law Division, Union County, Docket No.
L-0785-14.

Ronald S. Gasiorowski argued the cause for
appellant (Gasiorowski & Holobinko,
attorneys; Mr. Gasiorowski, on the briefs).

Howard D. Geneslaw argued the cause for
respondent The Stop & Shop Supermarket Company
LLC (Gibbons P.C., attorneys; Mr. Geneslaw,
of counsel; Mr. Geneslaw and Jennifer Phillips
Smith, on the brief).

Russell M. Finestein argued the cause for respondent Town of Westfield Planning Board (Finestein & Malloy LLC, attorneys; Michael D. Malloy, of counsel; Mr. Malloy and Corrine Tighe, on the brief).

PER CURIAM

Plaintiff James Hughes appeals from a June 9, 2015 order, corrected and amended on July 21, 2015, dismissing his complaint in lieu of prerogative writs against defendants Town of Westfield Planning Board (Board) and Stop & Shop Supermarket Company, L.L.C. (Stop & Shop).

The appeal concerns the Board's approval of Stop & Shop's land use application in connection with a planned renovation and expansion of an existing supermarket in Westfield.¹ Hughes is admittedly acting as a strawman for a commercial competitor, Village Supermarkets, Inc., which operates a supermarket in nearby Garwood and which is funding this litigation. Both sides presented expert witnesses before the Board, and more than a dozen members of the public presented comments in support of the application. After fourteen days of hearings, the Board approved the application

¹ The supermarket was a permitted use, but the expansion plans required variances with respect to signage, parking, setbacks, and other issues. Due to the topography of neighboring properties, which sloped upward, several residential buildings were considerably higher in elevation than the supermarket. As a result, the applicant also sought a variance to build a twenty-foot sound wall to protect its neighbors against noise from the expanded supermarket.

in a seventy-six page Amended and Restated Resolution. Significantly, on the issues of planning, parking and noise, the Board credited the applicant's expert witnesses instead of plaintiff's experts.

On this appeal, plaintiff presents the following points of argument:

POINT ONE

THE TRIAL COURT ERRED IN NOT FINDING THAT THE APPLICANT ERRONEOUSLY CALCULATED THE PARKING SPACE DEFICIENCY AND THE BOARD IMPROPERLY ACCEPTED AND APPROVED THE PROJECT WITH THE MISREPRESENTED PARKING DEFICIENCY.

POINT TWO

THE BOARD'S FAILURE TO REQUIRE COMPLIANCE WITH THE STATE NOISE CODE AND WESTFIELD NOISE REGULATIONS AS TO ADJACENT PROPERTIES, PARTICULARLY THE ADJACENT COMMERCIAL OFFICE SITE WARRANTS REVERSAL.

POINT THREE

THE APPROVAL OF THIS SUPERMARKET EXPANSION --- REQUIRING SUBSTANTIAL VARIANCES FOR DEFICIENT PARKING, A 20' HIGH WALL WITHOUT SETBACKS, AND UNSAFE TRUCK/PEDESTRIAN ACCESS --- IMPROPERLY ALLOWS THE OVERUTILIZATION OF A DEFICIENTLY SIZED SITE, AND IS ARBITRARY, CAPRICIOUS AND UNREASONABLE.

1. The Resolution is not adequate as a matter of law.
2. There was insufficient evidence


in the record to support the requested relief.

Plaintiff previously presented those contentions to Assignment Judge Karen M. Cassidy, who discussed them at length and rejected them in a thorough written statement of reasons issued on June 9, 2015. After reviewing the entire record, including the transcripts of the Board hearings, we affirm for the reasons stated by Judge Cassidy. We add only the following comments.

Based on our review of the record, the Board's Amended and Restated Resolution was sufficient, and its credibility determinations are worthy of our usual deference. See Klug v. Bridgewater Twp. Planning Bd., 407 N.J. Super. 1, 13 (App. Div. 2009). There is substantial credible evidence to support the Board's findings, and its decision to grant the application was not arbitrary or capricious. See Kramer v. Bor. of Sea Girt Bd. of Adjustment, Sea Girt, 45 N.J. 268, 296 (1965); Klug, supra, 407 N.J. Super. at 13-14. Plaintiff's appellate arguments are largely based on his experts' opinions, which the Board did not find persuasive.

Affirmed.

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


CLERK OF THE APPELLATE DIVISION