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SUPERIOR COURT OF NEW JERSEY
HUDSON COUNTY
LAW DIVISION
DOCKET NO. HUD-L-607-18

JACQUELINE ROSA,

Plaintiff,

CIVIL ACTION

v.

OPINION

BOROUGH OF LEONIA, BOROUGH OF LEONIA COUNCIL, TOM ROWE, in his capacity as acting Borough Clerk of the Borough of Leonia, and JUDAH ZEIGLER, in his official capacity as Mayor of the Borough of Leonia,

Defendants.

STATE OF NEW JERSEY DEPARTMENT OF TRANSPORTATION,

Plaintiff/Intervenor,

v.

BOROUGH OF LEONIA, NEW JERSEY,

Defendant.

ARGUED: October 12, 2018

DECIDED: October 12, 2018

Jacqueline M. Rosa, Esq., pro se plaintiff.

Brian M. Chewcaskie, Esq. co-counsel for defendants (Gittleman Muhlstock & Chewcaskie, LLP, attorneys).

Ruby Kumar-Thompson, Esq. co-counsel for defendants (Cleary, Giacobbe, Alfieri, Jacobs, LLC., attorneys).

Deputy Attorney General Philip J. Espinosa for plaintiff/intervenor (State of New Jersey, Office of the Attorney General, attorneys).

Bariso, A.J.S.C.

Factual Background and Procedural History

This motion comes in response to this court's August 30, 2018 order granting summary judgment to plaintiff/intervenor the State of New Jersey Department of Transportation ("DOT").[1] Defendant Borough of Leonia ("Leonia") requests this court reconsider the summary judgment or, in the alternative, stay the summary judgment order and allow Leonia to cure the procedural infirmities by passing new ordinances and receiving DOT approval.

In the fall of 2017, Leonia enacted a series of ordinances to address traffic issues. Specifically, on December 4, 2017, Leonia's Council adopted Ordinance No. 2017-17, which added "Closing of Certain Streets" and Section 194-49, Schedule XVII "Streets Closed to Traffic" to Leonia's Code. (Leonia Ex. C.)

On January 17, 2018, the Council adopted Ordinance No. 2018-2, which established a $200 penalty or imprisonment for up to 15 days for anyone convicted of violating Section 194-25.1, which was first established under Ordinance 2017-19. (Leonia Ex. D.)

On March 5, 2018, the Council adopted Ordinance 2018-5, which repealed Ordinance No. 2017-19 and supplanted Sections 194-25.1 and 194-49, Schedule XVII to the Code. (Leonia Ex. E.)

Before Ordinance No. 2018-5 was enacted, on January 30, 2018, plaintiff Jacqueline Rosa ("Rosa") filed a complaint in lieu of prerogative writs against Leonia, Leonia Council, Tom Rowe,

[1] There were other orders entered after the August 30, 2018 oral argument but Leonia is only contesting this order.

and Judah Zeigler (collectively, "Defendants"). The complaint challenged the amendments made to Leonia's Code, Sections 194-25.1 and 194-25.2. On February 12, 2018, plaintiff filed an amended complaint. On March 27, 2018, defendants filed an answer and affirmative defenses.

On May 4, 2018, Rosa applied for an order to show cause, seeking preliminary injunction against enforcement of Leonia Code Sections 194-25.1 and 194-25.2 as amended by Ordinance No. 2018-5. This court heard oral argument on May 25, 2018 and denied Rosa's application for a preliminary injunction.

On June 8, 2018, a consent order was entered to allow DOT to intervene. On June 11, 2018, DOT filed a complaint for declaratory judgment and action in lieu of prerogative writs. On July 2, 2018, Leonia filed an answer to DOT's complaint. The discovery end date is May 24, 2019.

On July 11, 2018, DOT filed a motion for summary judgment and on July 16, 2018, Rosa filed for summary judgment. (DOT Ex. C.) Defendants opposed both motions and filed a cross-motion to the DOT's motion, seeking dismissal of the complaints based on the pleadings.

On August 30, 2018, this court heard oral arguments on all three motions and denied the defendants' cross-motion and denied Rosa's motion. This court granted DOT's motion declaring Ordinances Nos. 2017-9, 2018-2, and 2018-5 null and void and legally invalid. This court stated its reasons on the record, stating, (1) the Ordinance impacted Grand Avenue, a state road; (2) thus, the Ordinance was subject to N.J.S.A. 39:4-8(a), requiring approval by DOT; (3) the DOT did not approve the ordinance. During oral argument, defendants argued that this court could and should only invalidate the portions that impact Grand Avenue.

Subsequent to the August 30, 2018 order granting summary judgment to DOT, Leonia introduced two revised Ordinances to regulate street closures. On September 17, 2018, those

Ordinances, Nos. 2018-14 and 2018-15, passed after a second reading. All neighboring municipalities received notice of both Ordinances before adoption and Leonia will be submitting Ordinance No. 2018-15 to DOT for approval.

Leonia's Arguments in Support of Motion to Reconsider

POINT I – The court should reconsider its summary judgment order in favor of DOT.

There was clear error in the court's decision because discovery was not complete when the order was entered and the order invalidating all three ordinances in their entirety is overbroad. (Leonia Br. 6.) Also, the interests of justice and Leonia residents were not served by the court's refusal to grant Leonia a stay to cure the procedural errors by giving notice to DOT. Thus, Leonia's Motion for Reconsideration should be granted. (Leonia Br. 6.)

POINT II – The court's finding of an "impact on a state highway" was premature.

In invalidating the Ordinances, this court made a factual finding that "since you cannot turn off a state highway, you are impacting the state roadway." (Leonia Ex. B, T23:5-24-7.) In doing so, the court presumed that the prohibition against turning for non-residents and those persons who are not travelling to a location within Leonia would "back up traffic" on a state highway. Therefore, the Ordinances triggered N.J.S.A. 39:4-8(a), which invalidates any such ordinance absent DOT approval. (Leonia Br. 6.) So, the court construed "impact on a state highway" to be analogous to preventing vehicles from turning onto Leonia's side streets from Grand Avenue.

In deciding motions for summary judgment, a court cannot resolve issues of fact unless the party resisting such motion has an opportunity to complete discovery that is relevant and material to defense of the motion. <u>See</u> <u>Velantzas v. Colgate-Palmolive Co., Inc.</u>, 109 N.J. 189, 193 (1988); <u>Wellington v. Estate of Wellington</u>, 359 N.J. Super. 484, 496 (App. Div.), <u>certif. denied</u>, 177 <u>N.J.</u> 493 (2003) (holding that summary judgment is generally "inappropriate prior to the completion of

discovery"). In order to defeat a motion for summary judgment on the basis that it is premature, a party must demonstrate with some specificity the discovery sought and its materiality. Mohamad v. Iglesia Evangelica Oasis De Salvacion, 424 N.J. Super. 489, 499 (App. Div. 2012); see also Auster v. Kinioian, 153 N.J. Super. 52, 56 (App. Div. 1977).

A trial court should not resolve factual disputes on a motion for summary judgment if a rational fact-finder could go either-way following presentation of the evidence at trial on the merits. See Gilhooley v. County of Union, 164 N.J. 533, 545-46 (2000).

Legislative intent is a matter for the fact finder to determine. When a plain reading of a statute suggests "more than one plausible interpretation," the fact finder may consider extrinsic evidence in search of the legislature's intent. Tumpson v. Farina, 218 N.J. 450 (2014 (*quoting* DiProspero v. Penn, 183 N.J. 477, 492-93 (2005)). When an issue turns on the interpretation of terms that have more than one plausible meaning, the court should leave the doubtful provision to the fact finder to decide after a trial. Driscoll Constr. Co., Inc., v. Dep't of Transp., 371 N.J. Super. 304, 314 (App. Div. 2004).

In Driscoll, the Appellate Division held that the trial judge erred in refusing to consider evidence of the surrounding circumstances of a contract when granting summary judgment on the issue of contract interpretation. Driscoll, 371 N.J. Super. at 316, 318. Because a reasonable trier of fact might conclude that DOT's prior practices provided objective evidence of what the parties intended, Driscoll's reliance upon the prior practice based on identical language in the Crisdel contract should have been considered. Id. at 317. Thus, plaintiffs were at minimum entitled to complete discovery before summary judgment was granted. Id. at 318.

Here, the interpretations of "impact" and "undue impact," when the legislature set forth the standards under which approval of an ordinance may be denied, are susceptible to more than one

interpretation. (Leonia Br. 8.) As such, discovery should have been afforded to Leonia to determine the implications of the ordinances and whether they affected state roadways. The discovery end date for this matter is May 24, 2019 and no discovery was conducted prior to this court's entry of summary judgment in favor of DOT on August 30, 2018. Inasmuch as this court based its order on the opinion of Mark Hiestand, the DOT traffic engineer, Leonia should have been afforded discovery in his opinions. (Leonia Br. 9.) A deposition of Mr. Hiestand may have determined whether DOT has rendered similar opinions regarding traffic restrictions in other municipalities and whether Mr. Hiestand is credible to render such opinions.

Furthermore, as in Driscoll, evidence of DOT's past practice with respect to other municipal traffic controls along a state highway may be relevant to what the State Legislature intended when it removed DOT oversight from local traffic legislation except for those impacting state highways. (Leonia Br. 9.) DOT's past practice would also be relevant in determining when the legislature required a finding of "undue impact" as the reason for withholding DOT approval in the fourth paragraph of N.J.S.A. 39:4-8(a). N.J.S.A. 39:4-8(a) requires a finding after an investigation by the DOT of an undue impact. Therefore, Leonia is entitled to discovery to defend their argument that the ordinances' impact on a state highway alone does not invalidate an ordinance absent approval from the Commissioner. (Leonia Br. 9-10.) The evidence gathered in discovery may show that DOT never required submission of other similar ordinances that regulated traffic on streets abutting state highways. This discovery may shed light on how the statute has been interpreted by the DOT in the past, and thus, how it should be interpreted in this case. Defendants have been deprived of obtaining such evidence and, therefore, the court's grant of summary judgment was improvident. (Leonia Br. 10.)

POINT III – The court's order invalidating the Ordinances completely cannot be reconciled with its holding that only the traffic regulations with an impact on Grand Avenue required DOT approval.

Assuming DOT approval was required for any traffic regulations on streets located along a state highway, the court's order is overbroad because the subject Ordinances regulated many streets that have no impact on Grand Avenue, which is the only state highway in Leonia. (Leonia Br. 10.)

During oral argument, Leonia argued that ruling that regulating traffic impacting Grand Avenue without DOT approval is invalid cannot be a basis for completely invalidating all three Ordinances. However, the court rejected Leonia's argument and invalidated the Ordinances entirely, stating, "we don't get to pick and choose what part of the ordinance is enforceable and which isn't." (Leonia Ex. B, T21:15-22:1). This court ruled that the regulation of traffic controls impacting Grand Avenue is governed by N.J.S.A. 39:4-8(a) and because Commissioner approval had not been obtained, the Ordinance Nos. 2017-19, 2018-2, and 2018-5 were null and void and legally invalid as a matter of law. The court made no distinction between streets abutting Grand Avenue and other streets throughout Leonia.

This court's ruling ignores the fact that most streets listed in Ordinance No. 2018-5 do not impact Grand Avenue. The court construed "impact" to a state highway to mean "preventing traffic from turning onto Leonia's side streets along" Grand Avenue. Thus, the court should have only invalidated those streets adjacent to Grand Avenue.

The court ignored well-established case law that, "where the provisions of an ordinance are separable, the invalidity of one of the separable parts will not invalidate the entire ordinance." <u>See</u> <u>Adams Newark Theatre Co. v. City of Newark</u>, 22 N.J. 472, 477 (1956), citing <u>Scharf v. Recorder's Court of Ramsey</u>, 137 N.J.L. 231 (Sup.Ct. 1948), aff'd, 1 N.J. 59 (1948). This is

especially true where an ordinance contains a severability clause, such as in the matter at bar, because there is a rebuttable presumption of severability. State v. McCormack Terminal, Inc., 191 N.J. Super. 48, 52 (App. Div. 1983). Moreover, "the cardinal principle of statutory construction must be to save and not to destroy, and the duty of the court is to strain if necessary to save an act or ordinance, not to nullify it." Sea Isle City v. Caterina, 123 N.J. Super. 422, 428 (Law Div. 1973); see Dome Realty, Inc. v. City of Paterson, 83 N.J. 212, 235 (1980) (holding that an ordinance is entitled to a presumption of validity.) Thus, it is well-settled that the invalidity of one of the separate parts does not render the entire ordinance invalid, provided the remainder contains the essentials of a complete enactment. United Property Owners Association of Belmar v. Borough of Belmar, 343 N.J. Super. 1, 39 (App. Div. 2001), certif. denied, 170 N.J. 390 (2001). Therefore, if an ordinance includes unconstitutional provisions, it nonetheless can survive with the invalid provisions stricken therefrom. News Printing Co. v. Borough of Totowa, 211 N.J. Super. 121, 168 (Law Div. 1986); see also Levine v. Mayor of the City of Passaic, 233 N.J. Super. 559 (Law Div. 1988).

The issue of whether severability is reasonable focuses on both legislative intent of the enacting body and whether the objectionable feature of the ordinance can be excised without substantial impairment of the principal object of the statute. New Jersey State Chamber of Commerce v. New Jersey Election Law Enforcement Comm'n, 82 N.J. 57, 75 (1980); United Property, supra, (*citing* Affiliated Distillers Brands Corp. v. Sills, 60 N.J. 342, 345 (1972)).

Here, Ordinance No. 2018-5 contained a severability clause, which permitted the court to invalidate the Ordinance in respect to only those streets that were adjacent to Grand Avenue. Once those streets were stricken, the rest of the Ordinance would have been enforceable. The court

should have blue-penciled the Ordinance to delete only those portions of Section 194-49 that referred to Grand Avenue. (Leonia Br. 13; Leonia Ex. I)

If, upon reconsideration, the court strikes only the portions of Section 194-49 that regulate traffic impacting Grand Avenue, the court must also reinstate Ordinance 2018-2, which establishes penalties for violating Section 194-25.1 and Section 194-49. Also, this penalty provision can and should remain in full force and effect because Leonia enacted new Ordinances on September 17, 2018.

POINT IV – If the court does not reconsider its August 30, 2018 order granting summary judgment to DOT entirely, the court should enter a stay of the order based on Leonia's enactment of two new ordinances to address the court's concerns with N.J.S.A. 39:4-8(a).

If a government entity takes action that is later determined to be procedurally defective, curative measurements may be adopted to validate the prior action retroactively. IMO Certain Amendments to the Adopted and Approved Solid Waste Management Plan of the Hudson County Solid Waste Management District, 133 N.J. 206 (1993). As a corollary, a municipality has a right to ratify its actions tainted by procedural irregularities, as such irregularities do not invalidate ordinances. See Houman v. Mayor and Council of Borough of Pompton Lakes, 155 N.J. 129, 158-159 (1977).

A court may stay the entry of summary judgment based on invalidity of an ordinance to allow a municipality to take action to ratify prior action. Town of Secaucus v. City of Jersey City, 20 N.J. Tax 384 (2002). Similarly, a stay of a judgment declaring an ordinance invalid based on a procedural defect is appropriate to afford the municipality the opportunity to correct the infirmity. See Levin v. Parsippany-Troy Hills Tp., 82 N.J. 174 (1980); Pop Realty Corp. v. Springfield Bd. of Adjustment of Springfield Tp., 176 N.J. Super. 441 (Law Div. 1980). For example, in Pop

Realty, the court entered judgment finding an ordinance invalid, but stayed the judgment to allow the municipality time to adopt a new ordinance that satisfied certain statutory requirements.

After the court's August 30, 2018 order, Leonia proposed two revised Ordinances to regulate street closures. On September 17, 2018, those revised Ordinances passed on second reading. Ordinance No. 2018-14 does not require DOT approval because it pertains to streets other than Grand Avenue. Ordinance No. 2018-15 requires DOT approval based on this court's ruling because it pertains to streets intersecting Grand Avenue and Bergen Boulevard. Leonia will be submitting Ordinance No. 2018-15 to DOT for approval. (Leonia Br. 15.)

If this court does not reconsider its August 30, 2018 Order granting summary judgment to DOT, it should enter a stay of that order to give Leonia time to cure the prior procedural defects and submit Ordinance No. 2018-15 to DOT for approval. If DOT approval is forthcoming, use of signage enjoined by the order would be authorized. (Leonia Br. 15-16.)

DOT'S ARGUMENTS IN OPPOSITION

POINT I – Because Leonia had adopted the new ordinances, which supersede and replace the old ordinances, Leonia's motion for reconsideration and for a stay is moot and should be denied as a matter of law.

It is well established that issues rendered moot by subsequent developments are outside the proper realm of the courts. (DOT Br. 5.) New Jersey's courts consider an issue moot when "the decision sought in a matter, when rendered, can have no practical effect on the existing controversy." Greenfield v. N.J. Dep't of Corr., 382 N.J. Super. 254, 257-58 (App. Div. 2006) (quoting N.Y. Susquehanna & W. Ru. Corp. v. N.J. Dep't of Treasury, Div. of Taxation, 6 N.J. Tax 575, 582 (Tax 1984)).

After this court's August 30, 2018 order for summary judgment, Leonia adopted two new ordinances. The new ordinances supersede and replace the old ordinances and the substantive

provisions of the new ordinances control. Therefore, Leonia's motion for reconsideration and for a stay is moot and should be denied as a matter of law. (DOT Br. 6.) See City of Camden v. Whitman, 325 N.J. Super. 236, 243 (App. Div. 1999).

POINT 2 – Because this court properly granted the DOT's motion for summary judgment, Leonia's motion for reonsideration should be denied.

Rule 4:49-2 governs motions for reconsideration and states that the motion "shall state with specificity the basis on which it is made, including a statement of matters or controlling decisions which counsel believes the court has overlooked or as to which it has erred." The decision to grant or deny a motion for reconsideration rests within the discretion of the trial court. Capital Fin. Co. of Delaware Valley, Inc. v. Asterbadi, 398 N.J. Super. 299, 310 (App. Div.), certif. denied, 195 N.J. 521 (2008).

Reconsideration should be used only where (l) the court has expressed its decision based upon a palpably incorrect or irrational basis or (2) it is obvious that the court either did not consider or failed to appreciate the significance of probative, competent evidence. Ibid. (quoting D'Atria v. D'Atria, 242 N.J. Super. 392, 401 (Ch. Div. 1990)). Motions for reconsideration should not be used "merely because of dissatisfaction with a decision of the Court." D'Atria v. D'Atria, 242 N.J. Super. at 401. In addition, Rule 4:49-2 "is not the vehicle for raising a new issue." See Naik v. Naik, 399 N.J. Super. 390, 395 (App. Div. 2008).

A – This court correctly analyzed the plain language of the applicable law and of the old ordinances in granting summary judgment

In interpreting a statute, the goal is to give effect to the Legislature's intent and the best indicator of that intent is the statutory language. DiProspero v. Penn, 183 N.J. 477, 492 (2005). If the plain language leads to a clear and unambiguous result, the interpretive process should end, without resort to extrinsic sources. Ibid.

The Transportation Act of 1966 ("Transportation Act") authorizes the DOT Commissioner to develop and promote efficient transportation services and coordinate with other public entities. N.J.S.A. 27:1A-5. The DOT is also responsible for promoting an "efficient, fully integrated and balanced transportation system" throughout New Jersey. N.J.S.A. 27:1A-1. Pursuant to N.J.S.A. 39:4-8(a),

> "[e]xcept as otherwise provided in this section, no ordinance, resolution, or regulation concerning, regulating, or governing traffic or traffic conditions, adopted or enacted by any board or body having jurisdiction over highways, shall be of any force or effect unless the same is approved by the commissioner, according to law."

The DOT Commissioner is not required to approve any ordinance unless, after investigation by the Commissioner, the same appears to be "in the interest of safety and the expedition of traffic on the public highways." N.J.S.A. 39:4-8(a).

Municipalities may adopt traffic ordinances without the DOT Commissioner's approval only for those traffic measures listed in either N.J.S.A. 39:4-197 or N.J.S.A. 39:4-8(c), subject to the provisions of 39:4-138. For example, municipalities may alter speed limitations and regulate street parking.

Pursuant to N.J.S.A. 39:4-8(a), notwithstanding any other provision of N.J.S.A. 39:4-8 to the contrary, any municipal ordinance which places any impact on a state highway requires the approval of the DOT commissioner. "Impact on a state highway" or "impact to a state highway" is defined by N.J.A.C. 16:27-2.1, to mean any traffic control device on a non-state highway that is proposed for installation or any traffic regulation applicable to a non-state highway: (1) at a state highway intersection; (2) within 500 feet of a state highway; or (3) at a distance greater than 500 feet from a state highway but has a resultant queue that extends within 500 feet or less from a state highway. (DOT Br. 9.)

Here, when granting summary judgment, this court analyzed the plain language of the applicable law and the old ordinances. In applying N.J.S.A. 39:4-8(a) to the old ordinances, there was no dispute regarding the content of the old ordinances. Additionally, this court properly determined that the plain language of the old ordinances revealed an impact on a state roadway. It was factually undisputed that Leonia failed to submit the old ordinances to the DOT Commissioner for approval. (DOT Br. 10.)

Contrary to Leonia's argument, Driscoll Constr. Co. v. State, is not applicable here. Driscoll, 371 N.J. Super. 304 (App. Div. 2004). In Driscoll, the court addressed a contract dispute between the DOT and a contractor arising out of a highway project. Id. at 307-18. Unlike in Driscoll, this court granted summary judgment based on the plain language of a statute, N.J.S.A. 39:4-8, and of the old ordinances themselves; there was no contract at issue here. Also, even if this court did find Driscoll analogous, N.J.S.A. 39:4-8 and the ordinances were not ambiguous, so there was no need for additional evidence to aid in interpretation. See DiProspero, 183 N.J. at 492 (stating if the plain language leads to a clear and unambiguous result, the interpretive process should end, without resort to extrinsic sources). Accordingly, Driscoll is not applicable.

Additionally, Leonia confuses the "undue traffic burden or impact" language of N.J.S.A. 39:4-8 with the "any impact" language of N.J.S.A. 39:4-8(a), as defined in N.J.A.C. 16:27-2.1. Contrary to Leonia's argument, N.J.S.A. 39:4-8(a) provides that, "Notwithstanding any other provision of this section to the contrary, any municipal . . . ordinance, resolution, or regulation which places any impact on a State roadway shall require the approval of the commissioner." Clearly, Leonia is misconstruing the statute.

B – This court properly determined there were no issues as to any material facts and that summary judgment was appropriate as a matter of law.

Actions in lieu of prerogative writs vest courts with jurisdiction to review de novo the actions of municipal agencies to ensure they are acting within their jurisdiction and according to law. Paruszewski v. Twp. of Elsinboro, 154 N.J. 45, 58 (1998). The interpretation of an ordinance is purely a legal matter as to which an administrative agency has no particular skill superior to the courts. Grancagnola v. Planning Bd. of Verona, 221 N.J. Super. 71, 75 (App. Div. 1987).

This action in lieu of prerogative writs was ripe for summary judgment because the court had jurisdiction to review Leonia's actions to ensure that Leonia was acting within its jurisdiction and according to law. Based on an analysis of the applicable statutes within Title 39 and the language of the old ordinances, discovery was not necessary for this court to properly determine the ordinances were legally invalid. (DOT Br. 12.)

Moreover, the certification of DOT traffic engineer, Mark Hiestand, described the old ordinances' impact on a state roadway, pursuant to the applicable regulation, N.J.A.C. 16:27-2.1. Mr. Hiestand's Certification stated that the old ordinances impacted the state highway because the old ordinances (a) impacted a state highway at State Route 93 (Grand Avenue); and (b) impacted traffic within 500 feet of State Route 93 because Leonia has installed signs on the aforementioned municipal streets adjacent to the state highway. (DOT Br. 13; Ex. C.)

Additionally, DOT submitted their statement of material facts via eCourts on July 11, 2018. (DOT Ex. C.) Leonia had almost six weeks to provide admissible evidence to dispute those facts before filing a brief and supporting papers on August 21, 2018. Despite this, Leonia simply stated, "Denied" in response to paragraph 7 of DOT's statement of material facts. As such, Leonia did not specifically dispute paragraph 7 with a citation demonstrating the existence of a genuine issue to the facts in conformance with Rule 4:46-2(a).

Therefore, the material facts included within paragraph 7 of DOT's statement of material facts, which includes the ways the ordinances impact the state highway, were deemed admitted for purposes of the DOT's motion, pursuant to Rule 4:46-2(b).

C – Leonia's new ordinances are not relevant to this motion for reconsideration.

Leonia's attempt to raise the issue of its adoption of new ordinances is not relevant to this motion because the new ordinances were not the subject of DOT's motion for summary judgment on August 30, 2018. Rule 4:49-2 is not the vehicle for raising this new issue. See Naik v. Naik, 339 N.J. Super. at 395.

POINT 3 – Because the old ordinances placed an impact on a state highway, pursuant to N.J.S.A. 39:4-8(a), Leonia was required to submit the ordinances in their entirety to the DOT Commissioner for approval.

As a threshold manner, because Leonia had adopted the new ordinances, Leonia's motion for reconsideration and a stay is moot. Also, this court properly granted the DOT's motion for summary judgment, pursuant to N.J.S.A. 39:4-8(a) because the statute's plain language requires approval of any ordinance, as a whole, by the DOT commissioner if the ordinance places an impact on a state roadway. (DOT Br. 15.)

When DOT Commissioner's approval is required, N.J.S.A. 39:4-8(a) details the DOT review process. Given the statutorily required process, the old ordinances did not present an opportunity for "judicial pruning" and Leonia's argument regarding severability is incorrect as a matter of law. Instead, Leonia should have submitted the ordinances to the DOT and, if unhappy with the DOT's decision, Leonia could have filed a direct appeal to the Appellate Division, pursuant to Rule 2:2-3(a)(2). (DOT Br. 16.)

Additionally, the cases on which Leonia relies in for severability do not address Title 39, nor do they address traffic ordinances in the context presented in our cases. The cases cited by

Leonia are distinguishable because they address severability in the constitutional and zoning contexts. As such, those cases are not applicable here. (DOT Br. 17.)

The question of whether an invalid provision may be considered severable turns on both legislative intent and "whether the remaining provisions are functionally self-sufficient as containing the essentials of a complete enactment." State v. McCormack Terminal, Inc., 191 N.J. Super. 48, 52 (App. Div. 1983) (quoting Gross v. Allan, 37 N.J. Super. 262, 269 (App. Div. 1955)). The remaining provisions of the ordinance must be legally valid and also fulfill the legislative intent for severability to be proper. (DOT Br. 17.)

Contrary to Leonia's argument, this court properly found that the old ordinances were legally invalid as a matter of law because they placed an impact on a State roadway and were never submitted to the DOT for approval in accordance with N.J.S.A. 39:4-8(a). This court properly refused to sever the ordinances because if severed, the remaining provisions would not be functionally self-sufficient and would not contain the essentials of a complete enactment.

POINT 4 – Leonia's stay application should be denied because Leonia cannot demonstrate any of the criteria necessary for such extraordinary relief.

The rest for granting injunctive relief, such as a stay of a court order, is well-established. The party seeking relief must demonstrate the existence of: (1) a clear probability it will succeed on the merits of the underlying controversy; (2) its legal rights are based on settled law; (3) in the absence of a stay, the movant will suffer irreparable injury; and (4) the probability of harm to other persons will not be greater than the harm the movant will suffer in the absence of such a stay. Crowe v. DeGioia, 90 N.J. 126, 132-34 (1982). See also Garden State Equality v. Dow, 216 N.J. 314, 320 (2013) (holding applications for stay pending appeal are governed by the Crowe standard).

Leonia did not address any of the Crowe factors in seeking a stay. Even if they had, they cannot meet this high standard to afford it injunctive relief so Leonia's request for a stay should be denied. (DOT Br. 19.)

Leonia cannot show a reasonable probability of success on the merits.

To prevail on an application for injunctive relief, an applicant must show a reasonable probability of success on the merits. Crowe, 90 N.J. at 133. Courts examine whether the movant has "demonstrated that the material facts favored in its position . . . and, also, whether the law upon which [the movant's] claim is based on is well settled." Waste Mgmt. of N.J. v. Union Cty. Utils. Auth., 399 N.J. Super. 508, 528 (App. Div. 2008).

Leonia has not satisfied this burden. As discussed in Point I, Leonia's arguments concerning the old ordinances are moot as a matter of law. Therefore, Leonia cannot make a preliminary showing of ultimate success on the merits. Also, despite the old ordinances' impact on a state roadway, Leonia failed to seek the DOT Commissioner's approval of those ordinances. (Leonia Br. 20.)

Accordingly, this court properly determined the old ordinances were legally invalid and Leonia cannot establish a reasonable probability of success on the merits.

Leonia cannot show that it will be irreparably harmed or that any harm to it will be greater than the harm to the DOT or the public if the stay were not granted.

Leonia cannot show that it will suffer irreparable harm, let alone harm exceeding that to the DOT and motoring public, if the stay is not granted. Crowe, 90 N.J. at 132-34.

Any harm that Leonia alleges is moot because the new ordinances supersede and replace the old ordinances. Therefore, there is no harm for denying a stay because the stay would affect only the old ordinances, which have been replaced.

Additionally, Leonia as not alleged any irreparable harm in its motion papers. Instead, Leonia suggests that a stay should be granted to afford it an opportunity to cure prior procedural defects. However, the question of the new ordinances' legal validity is not properly before the court at this time. (Leonia Br. 21.)

Further, the harm to DOT and the motoring public outweighs any alleged harm that Leonia could suffer. If the stay were entered, Leonia would be free to enforce the old and/or new ordinances, contrary to the express provisions of Title 39. Also, if municipalities across the state were deemed to have such legal authority to adopt similar ordinances, we could reasonably anticipate the potential traffic problems. (DOT Br. 21.)

Accordingly, Leonia's request for a stay should be denied.

ROSA'S OPPOSITION TO MOTION

Plaintiff Rosa relies on and joins the opposition submitted by DOT.

LEONIA REPLY IN SUPPORT OF MOTION

POINT I – The motion for reconsideration is not rendered moot by Leonia's adoption of ordinances revising one of the three original ordinances that were the subject of DOT's complaint and were under review on its motion for summary judgment.

DOT glosses over this court's limited holding. DOT mentions that its complaint challenged three ordinances, including one that did not regulate traffic, and that this court's ruling was limited to Ordinance No. 2018-5, insofar as it included streets that impacted traffic on Grand Avenue, for which no approval from the Commissioner was sought. In doing so, DOT contends the revised ordinances supersede and replace the old ordinances, but that is not the case. The revised ordinances, on their face, indicate that they are revisions of the old ordinances, 2017-19 and 2018-5. The adoption of the new ordinances did not replace the old ordinances, nor does it preclude Leonia from seeking to clarify the court's ruling through reconsideration. If the new

ordinances did replace the old ordinances, the DOT would not have sought to amend its now-adjudicated complaint with counts one through five in their proposed amended complaint, which challenge the old ordinances.

POINT II – The DOT's assertion that Rule 4:49-2 sets the standard of review on reconsideration is erroneous; as the rules and law cited by Leonia clearly set forth a loose standard given the interlocutory nature of the order.

Rule 1:7-4(b) stipulates that motions for reconsideration of interlocutory orders shall be determined pursuant to Rule 4:42-2, which provides that a court may reconsider an order that does not adjudicate all of the parties' claims in its sound discretion in the interests of justice, such as where a court recognizes a clear error in the earlier decision. See Ahktar v. JDN Properties at Florham Park, 439 N.J. Super. 391, 399-400 (App. Div.), certif. denied, 221 N.J. 566 (2015). There are no restrictions on the exercise of the power to revise an interlocutory order and the court can review or reconsider its interlocutory orders at any time prior to entry of final judgment. Lombardi v. Masso, 207 N.J. 517, 536 (2011) quoting Johnson v. Cyklop Strapping Corp., 220 N.J. Super. 250, 257 (App. Div. 1987), certif. denied, 110 N.J. 196 (1988).

DOT argues that the standard is Rule 4:49-2, but that applies to final orders only.

Point III – The court applied the incorrect standard when it granted DOT's motion for summary judgment because plaintiff did not have the opportunity to dispute the facts set forth by DOT.

DOT based its motion for summary judgment on Mark Hiestand's certification, which stated that the old ordinances impacted a state roadway, therefore implicating N.J.S.A. 39:4-9(a). Since DOT's motion was filed only nine days after Leonia filed its answer, this court applied the incorrect burden on Leonia to dispute the old ordinances' impact on a state roadway.

The New Jersey Supreme Court held that, when a "suit is in an early stage and still not fully developed, [the Court] ought to review a judgment terminating it now from the standpoint of

whether there is any basis upon which plaintiff should be entitled to proceed further." Bilotti v. Accurate Forming Corp., 30 N.J. 184, 193 (1963).

When this court found the old ordinances impacted Grand Avenue, the state roadway, it did so without considering the ordinances may not have an impact on a state roadway. (See Leonia Ex. B, 70:14-19.) Instead of relying upon DOT's position, this court was supposed to determine if there can be "any basis" to allow the case to proceed. A traffic study may show, contrary to the DOT employee's certification, that the Ordinances do not impact Grand Avenue or any other state roadway.

Because this court applied the incorrect legal standard in its August 30, 2018 decision, the order was entered in error.

Point IV – Assuming the court properly found that all of the old ordinances had an "impact on a state highway," it nonetheless was not justified in invalidating the entirety of the original ordinances.

At oral argument, this court found that since a driver cannot turn off a state highway, the ordinances were impacting the state roadway. (Leonia Ex. B, 25:19-22.) This court relied on Mr. Hiestand's certification that the regulation of traffic at the intersections of Grand Avenue, including installing signs at those intersections, met the definition of "impact on a state highway" under DOT regulations. Based on this court's finding that some of the streets listed in the old ordinances impacted a state highway, the court invalidated the ordinances as a whole. This action was improper because the court should have allowed the old ordinances to stand to the extent the closed-off roadways do not impact a state highway.

Utilizing "judicial surgery", courts will sever ordinances when the invalid portion is independent and the remainder forms a complete act. Inganamort v. Borough of Fort Lee, 72 N.J. 412, 423 (1977). Since a portion of the ordinances can be maintained even if a portion of the

ordinances are invalid, the court improperly held that all of the ordinances are invalid. Leonia requests this court reconsider the August 30, 2018 order and declare only those portions of Ordinance 2018-5, which pertain to Grand Avenue, be invalid and stricken therefrom.

POINT V – If the court is not inclined to reconsider its order granting summary judgment, it should, nonetheless, enter a stay of that order to afford Leonia the opportunity to seek the approval of the DOT and, absent such happening, filing an appeal to the Appellate Division of any denial.

DOT has not refuted the cases cited by Leonia as precedent for a court to enter a stay of an order granting summary judgment based on invalidity of an ordinance to allow a municipality to take action to ratify prior action or correct an infirmity. See Town of Secaucus v. City of Jersey City, 20 N.J. Tax 384 (2002).

Although Leonia believes the old ordinances were valid and, with blue-lining, would withstand any challenge, it elected to adopt new ordinances to allow it the ability to seek DOT approval. Pursuant to N.J.S.A. 39:4-8(a), Leonia will seek approval of Ordinance No. 2018-15 within 30 days of its enactment, September 17, 2018. Nonetheless, Leonia wanted to allow the court the opportunity to correct its prior ruling and grant Leonia's "request for a stay while it considered its options." In light of case law, Leonia shall be afforded time to exercise its rights under the law before additional challenges are raised to the new ordinances.

For all of the foregoing reasons, Leonia's motion for reconsideration should be granted because the court should have blue-lined the offensive portions of the Ordinances when it granted the DOT's motion. Alternatively, Leonia requests a stay of the order to permit Leonia to submit the Ordinances to the DOT for review and approval.

LEGAL AUTHORITY

Rule 1:7-4. Findings by the Court in Non-Jury Trials and on Motions

(a) Required Findings. The court shall, by an opinion or memorandum decision, either written or oral, find the facts and state its conclusions of law thereon in all

actions tried without a jury, on every motion decided by a written order that is appealable as of right, and also as required by R. 3:29. The court shall thereupon enter or direct the entry of the appropriate judgment.

(b) Motion for Amendment. On motion made not later than 20 days after service of the final order or judgment upon all parties by the party obtaining it, the court may grant a rehearing or may, on the papers submitted, amend or add to its findings and may amend the final order or judgment accordingly, but the failure of a party to make such motion or to object to the findings shall not preclude that party's right thereafter to question the sufficiency of the evidence to support the findings. The motion to amend the findings, which may be made with a motion for a new trial, shall state with specificity the basis on which it is made, including a statement of the matters or controlling decisions that counsel believes the court has overlooked or on which it has erred. **Motions for reconsideration of interlocutory orders shall be determined pursuant to R. 4:42-2.**

Rule 4:42-2. Judgment upon multiple claims

If an order would be subject to process to enforce a judgment pursuant to R. 4:59 if it were final and if the trial court certifies that there is no just reason for delay of such enforcement, the trial court may direct the entry of final judgment upon fewer than all the claims as to all parties, but only in the following circumstances: (1) upon a complete adjudication of a separate claim; or (2) upon complete adjudication of all the rights and liabilities asserted in the litigation as to any party; or (3) where a partial summary judgment or other order for payment of part of a claim is awarded. In the absence of such direction, any order or form of decision which adjudicates fewer than all the claims as to all the parties shall not terminate the action as to any of the claims, and it shall be subject to revision at any time before the entry of final judgment in the sound discretion of the court in the interest of justice. To the extent possible, application for reconsideration shall be made to the trial judge who entered the order.

Rule 4:49-2. Motion to Alter or Amend a Judgment or Order

Except as otherwise provided by R. 1:13-1 (clerical errors) a motion for rehearing or reconsideration seeking to alter or amend a judgment or order shall be served not later than 20 days after service of the judgment or order upon all parties by the party obtaining it. The motion shall state with specificity the basis on which it is made, including a statement of the matters or controlling decisions which counsel believes the court has overlooked or as to which it has erred, and shall have annexed thereto a copy of the judgment or order sought to be reconsidered and a copy of the court's corresponding written opinion, if any.

N.J.S.A. 39:4-8. Commissioner of Transportation’s approval required; exceptions

a. Except as otherwise provided in this section, no ordinance, resolution, or regulation concerning, regulating, or governing traffic or traffic conditions, adopted or enacted by any board or body having jurisdiction over highways, shall be of any force or effect unless the same is approved by the commissioner, according to law. The commissioner shall not be required to approve any such ordinance, resolution,

or regulation, unless, after investigation by the commissioner, the same shall appear to be in the interest of safety and the expedition of traffic on the public highways. The commissioner's investigation need not include more than a review of the ordinance, resolution, or regulation, and the supporting documentation submitted by a board or body having jurisdiction over highways, unless the commissioner determines that additional investigation is warranted.

Prior to the adoption of any municipal or county ordinance, resolution, or regulation, which places any impact on roadways in an adjoining municipality or county, the governing board or body of the municipality or county shall provide appropriate notice to the adjoining municipality or county.

Notwithstanding any other provision of this section to the contrary, any municipal or county ordinance, resolution, or regulation which places any impact on a State roadway shall require the approval of the commissioner.

Where the commissioner's approval is required, a certified copy of the adopted ordinance, resolution, or regulation shall be transmitted by the clerk of the municipality or county, as applicable, to the commissioner within 30 days of adoption, together with: a copy of the municipal or county engineer's certification, a statement of the reasons for the municipal or county engineer's decision, detailed information as to the location of streets, intersections, and signs affected by the ordinance, resolution, or regulation, and traffic count, crash, and speed sampling data, when appropriate. The commissioner may invalidate the provisions of the ordinance, resolution, or regulation if the commissioner finds that the provisions of the ordinance, resolution, or regulation are inconsistent with the Manual on Uniform Traffic Control Devices for Streets and Highways, inconsistent with accepted engineering standards, are not based on the results of an accurate traffic and engineering survey, or place an undue traffic burden or impact on the State highway system, or affect the flow of traffic on the State highway system.

N.J.A.C. 16:27-2.1 Definitions

Impact on a State highway" or "impact to a State highway" means any traffic control device on a non-State highway that is proposed for installation:

1. At a State highway intersection;
2. Within 500 feet of a State highway; or
3. At a distance greater than 500 feet from a State highway but has a resultant queue that extends within 500 feet or less from a State highway.

"Impact on a State highway" or "impact to a State highway" shall also mean any traffic regulation applicable to a non-State highway:

1. At a State highway intersection;
2. Within 500 feet of a State highway; or
3. At a distance greater than 500 feet from a State highway but has a resultant queue that extends within 500 feet or less from a State highway.

DECISION

This court will address the arguments Leonia posed in its moving papers separately.

Rule 4:49-2 typically governs motions to reconsider. Motions submitted pursuant to Rule 4:49-2 should only be granted: (1) where the court's decision is based on a plainly incorrect or irrational reasoning; (2) when the court failed to consider evidence; or (3) there is good reason for it to consider new information. See Cummings v. Bahr, 295 N.J. Super. 374, 384-85 (App. Div. 1996). However, Rule 1:7-4(b) states that motions to reconsider interlocutory orders shall be determined pursuant to Rule 4:42-2. An interlocutory order is a provisional decision that does not dispose of every claim or party. Although there is debate on which rule shall apply here, this court will adopt Leonia's argument that Rule 4:42-2 applies because this court's August 30, 2018 order was interlocutory as it only determined part of the merits of DOT's claim and did not decide the merits of Ms. Rosa's claims.

Nonetheless, arguing the standard of review is *de minimis* because Leonia cannot show this court's ruling was a clear error, nor can Leonia show that the court failed to consider evidence. Therefore, Leonia has not shown "good cause" for this court to reconsider its August 30, 2018 order or that the "interests of justice" would be furthered by granting this motion. See Ahktar, 439 N.J. Super. at 399-400.

This court correctly analyzed the plain language of applicable law and the old ordinances in granting summary judgment. In interpreting a statute, the overriding goal is to give effect to the Legislature's intent. DiProspero v. Penn, 183 N.J. 477, 492 (2005) "[T]he best indicator of that intent is the statutory language"; therefore, it is the first place to look. Ibid.

Actions in lieu of prerogative writs vest courts with jurisdiction to review de novo the actions of municipal agencies to ensure they are acting within their jurisdiction and according to

law. Paruszewski v. Twp. of Elsinboro, 154 N.J. 45, 58 (1998). The interpretation of an ordinance is purely a legal matter as to which an administrative agency has no particular skill superior to the courts. Grancagnola v. Planning Bd. of Verona, 221 N.J. Super. 71, 75 (App. Div. 1987).

Pursuant to N.J.S.A. 39:4-8(a), notwithstanding any other provision of N.J.S.A. 39:4-8 to the contrary, any municipal ordinance which places any impact on a state highway requires the approval of the DOT commissioner. "Impact on a state highway" or "impact to a state highway" is defined by N.J.A.C. 16:27-2.1, to mean any traffic control device on a non-state highway that is proposed for installation or any traffic regulation applicable to a non-state highway: (1) at a state highway intersection; (2) within 500 feet of a state highway; or (3) at a distance greater than 500 feet from a state highway but has a resultant queue that extends within 500 feet or less from a state highway.

Although N.J.A.C. 16:27-2.1 defines terms for Chapter 27 of the Transportation Code, it is applicable to define the same terms used Title 39 of the New Jersey Statutes. The purpose of Chapter 27 of the Transportation Code is to "establish procedures for obtaining approvals for traffic regulations and traffic control devices [and] route restrictions for commercial motor vehicles on non-State highways." Therefore, the New Jersey Code and New Jersey Statutes should be read together and interpreted as a whole.

When granting summary judgment, this court found that the ordinances had an impact on a state highway, namely, Grand Avenue. The ordinances listed multiple streets that would be closed to non-residents and drivers not commuting to/from a Leonia destination. The ordinances included every street that is adjacent to Grand Avenue on its Eastern side, including: Moore Avenue, Ames Avenue, Sylvan Avenue, Highwood Avenue, Park Avenue, etc. Pursuant to N.J.S.A. 39:4-8 and N.J.A.C. 16:27-2.1, any ordinance imposing traffic control devices or traffic

regulations on those streets, by definition, places an impact on the state highway because they are "at a highway intersection."

Pursuant to Rule 4:46-2, summary judgment shall be granted when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Here, the ordinances, on their face, placed an impact on a state roadway, thus, subjecting the ordinances to N.J.S.A. 4-8(a), which requires DOT approval of such ordinances within 30 days of enactment. While there was some reference by Leonia that the ordinances in question were submitted to DOT, it was undisputed that Leonia never obtained approval of the ordinances from the DOT commissioner. Therefore, there was no genuine issue of material fact and it was clear that summary judgment was proper. Moreover, despite Leonia's argument, there was no need for further discovery to determine whether the ordinance impacted a state highway because the ordinances themselves delineated streets that statutorily defined that there was an impact.

Leonia cites to case law that stands for the proposition that a court should only invalidate those portions of an ordinance that are invalid and keep the rest of the ordinance. See Adams Newark Theatre Co. v. City of Newark, 22 N.J. 472, 477 (1956). However, the question of whether a court can sever an ordinance is twofold. It requires a look into the legislative intent and whether the remaining provisions are functionally self-sufficient and contain the essentials of a complete enactment. "The two criteria must coexist." Gross v. Allen, 37 N.J. Super. 262, 269 (App. Div. 1955). The entire ordinance should be completely invalidated when severance ruins the legislative intent. Boulevard Apartments, Inc. v. Hasbrouck Heights, 111 N.J. Super. 408, 417 (Law Div. 1970).

Pursuant to the numerous cases that Leonia cites in its moving brief, Leonia argues this court should have blue-lined the ordinances and only invalidated the streets adjacent to Grand

Avenue. However, none of the cases cited by Leonia are exactly on point because the cases do not deal with Title 39 or ordinances regulating traffic.

Moreover, severance is improper here because it severing the ordinances would alter their purpose because the remaining provisions would not be functionally self-sufficient or contain the essentials of a complete enactment. See State v. McCormack Terminal, Inc., 191 N.J. Super. 48, 52 (App. Div. 1983). If this court attempted to blue-line the ordinance to rid of the streets that impact Grand Avenue, very few streets would have remained, and those streets that did remain would not have been sufficient to fulfill Leonia's purpose for the ordinances: minimize traffic within the town. Therefore, despite the severability clauses, these ordinances could not properly be severed. Additionally, this court did not reach DOT's argument that the ordinances created no-through streets, which would have impacted any attempt to blue-line. Indeed, any right of Leonia to pass ordinances restricting the flow of traffic in a manner that creates "no through" streets could only have arisen by legislation, and there has been none. The power to designate "no through" streets is not among the powers granted by Leonia in Title 39, nor is such power granted by any other provision of our statutes.

Also, as DOT argues, N.J.S.A. 39:4-8(a) has a review process and requires the ordinances, in their entirety, be reviewed by the DOT Commissioner if there is an impact on a state roadway. Thus, the court would have been improper and overstepped its bounds if it chopped up the ordinance and left the parts that did not impact Grand Avenue.

Leonia argues that, if a government entity takes action that is later determined to be procedurally defective, curative measurements may be adopted to validate the prior action retroactively. IMO Certain Amendments to the Adopted and Approved Solid Waste Management

Plan of the Hudson County Solid Waste Management District, 133 N.J. 206 (1993).[2] As a corollary, a municipality has a right to ratify its actions tainted by procedural irregularities, as such irregularities do not invalidate ordinances. See Houman v. Mayor and Council of Borough of Pompton Lakes, 155 N.J. Super. 129, 158-159 (Law Div. 1977).[3]

The cases cited by Leonia are not analogous to these facts. Particularly, those cases do not deal with municipal ordinances, traffic ordinances, or the procedure to enact an ordinance. Instead, Leonia's cases discuss the Open Public Meeting Act and the Administrative Procedure Act.

As the DOT has expressed in its opposition, the test for granting injunctive relief, such as a stay, is well-established. The party seeking relieve must demonstrate (1) a clear probability it will succeed on the merits of the underlying controversy; (2) its legal rights are based on settled law; (3) in the absence of a stay, the movant will suffer irreparable injury; and (4) the probability of harm to other persons will not be greater than the harm the movant will suffer in the absence of such a stay. Crowe, 90 N.J. 132-34. See also Garden State Equality v. Dow, 216 N.J. 314, 320 (2013) (holding applications for stay pending appeal are governed by the Crowe standard).

Leonia would fail under Crowe because it cannot meet any of the factors and the factors were never addressed by Leonia in its moving papers.

Leonia cannot satisfy factors one or two. There is not a clear probability that Leonia will succeed on the merits because in the original hearing regarding the summary judgment motion, this court ruled against Leonia. Also, the case law Leonia cites is not analogous to these facts and

[2] This case deals with a regulation administered by the Department of Environmental Protection, which should have been properly promulgated as a rule. The issues where whether the promulgation of the plan amendment and emergency waste flow redirection order was governed by the procedures prescribed by the Administrative Procedure Act, and whether the failure to comply with those procedures renders the amendment and order invalid and unenforceable.

[3] Improperly cited by Leonia as a Supreme Court case, instead of a law division case. Also, this case dealt with OPMA.

this court found few cases citing directly to N.J.S.A. 39:4-8(a). Therefore, it's unlikely this area of the law is well-settled.

Notably, Leonia cannot satisfy the third factor because it was made moot when Leonia adopted new ordinances. Also, Leonia is not "suffering" from the volume of traffic on its roads – if anything, Leonia residents are simply required to leave for work or school a few minutes earlier to accommodate for the traffic. However, there is no tangible harm, other than Leonia residents potentially sitting in more traffic than they would if these ordinances were in place. Nevertheless, Leonia residents have been dealing with the high volume of cars drive through their town for years, which shows that no harm exists that would merit injunctive relief. Moreover, Leonia has not pled any harm will be or has been suffered; Leonia only claims it needs time to cure procedural defects. Such an argument does not require immediate relief.

Lastly, Leonia cannot prove the probability of harm to other persons will not be greater than the harm Leonia will suffer in the absence of such a stay. The numerous drivers who go through Leonia daily, and those drivers on the state road that was impacted by the ordinances, will suffer more harm from the stay being granted than Leonia will face if the request for a stay is denied. The absence of a similar ordinance controlling traffic has been the status quo forever. Therefore, there will be no harm to Leonia if this court kept the status quo by denying Leonia's request for a stay.

For the reasons stated above, Leonia's application for reconsideration and/or a stay is denied.