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**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2029-20**

240 HALF MILE ROAD, LLC,

Plaintiff-Appellant,

v.

TOWNSHIP OF MIDDLETOWN,
TOWNSHIP COMMITTEE OF
THE TOWNSHIP OF
MIDDLETOWN, TOWNSHIP OF
MIDDLETOWN PLANNING
BOARD, LTF REAL ESTATE
COMPANY, INC., RED BANK
HMS, LLC, and MACK-CALI
REALTY CORPORATION,

Defendants-Respondents.

Argued April 27, 2022 – Decided June 7, 2022

Before Judges Hoffman, Geiger, and Susswein.

On appeal from the Superior Court of New Jersey, Law
Division, Monmouth County, Docket No. L-0222-20.

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

Brian M. Nelson argued the cause for respondents Township of Middletown and Township Committee of the Township of Middletown (Archer & Greiner, PC, attorneys; Brian M. Nelson, of counsel; Kira S. Dabby, of counsel and on the brief).

James H. Gorman argued the cause for respondent Township of Middletown Planning Board.

C. John DeSimone, III, argued the cause for respondent LTF Real Estate Company, Inc. (Day Pitney, LLP, attorneys; C. John DeSimone, III, of counsel and on the brief; Katharine A. Coffey and Stephen R. Catanzaro, on the brief).

PER CURIAM

Plaintiff 240 Half Mile Road, LLC, appeals from August 15, 2020 Law Division orders granting dismissal, pursuant to Rule 4:6-2(e), to defendants Township of Middletown (Middletown), Township Committee of the Township of Middletown (the Committee) and LTF Real Estate Company, Inc. (LTF). Plaintiff also appeals from a February 16, 2021 final judgment in favor of defendants LTF and the Township of Middletown Planning Board (Planning Board) dismissing plaintiff's complaint with prejudice. We affirm.

This appeal requires us to decide whether Middletown validly adopted a redevelopment plan pursuant to the requirements of the Local Redevelopment and Housing Law (LRHL), N.J.S.A. 40A:12A-1 to -49. Plaintiff seeks to

invalidate Ordinance No. 2018-3242 (the Redevelopment Ordinance), approved on December 17, 2018, which adopted a redevelopment plan for the area of investigation. Plaintiff also challenges the validity of the preliminary and final site plan approval issued by the Planning Board on December 12, 2019, to LTF, the designated developer. On January 17, 2020, plaintiff filed an action in lieu of prerogative writs against Middletown, the Planning Board, LTF, and two other entities, Red Bank HMS, LLC (Red Bank), and Mack-Cali Realty Corporation (MCC), challenging the Redevelopment Ordinance and site plan approval.

I.

We take the following facts from the record. Plaintiff owns a 0.5-acre commercial parcel designated as Block 1088, Lot 2 (240 Half Mile Road) in Middletown that is surrounded on three sides by a 6.05-acre commercial tract (the area of investigation), designated as Block 1088, Lots 1 and 3 (230 and 240 Half Mile Road) and Block 1086, Lots 29 and 30 (100 and 200 Shulz Drive). Office buildings were located on the area of investigation and plaintiff's parcel.

LTF purchased 230 and 250 Half Mile Road on January 3, 2020. LTF planned to construct a 120,000 square foot fitness/wellness center complex on the two lots, that included a fitness center, four-level parking garage, stormwater

facilities, outdoor pool, deck, waterslides, and other "site improvements." According to plaintiff, the 75,000 square foot office building located at 230 Half Mile Road and the 3,000 square foot building then located at 250 Half Mile Road, were "generally in good condition and were actively utilized as rental office space."

Plaintiff owns the adjacent property, 240 Half Mile Road, which is occupied by a 3,500 square foot office building housing a dental office and other offices. The three properties are in proximity to Exit 109 of the Garden State Parkway, and had been zoned as a business park for many years, which allowed a variety of office, business, and recreation-type uses.

On January 23, 2018, the Committee adopted Resolution No. 18-78 authorizing the Planning Board to undertake a preliminary investigation to determine whether the area of investigation, designated as Block 1088, Lots 1 and 3, constituted areas "in need of development" under N.J.S.A. 40A:12A-6(a). The Planning Board retained T&M Associates to prepare a Redevelopment Study & Preliminary Investigation Report (Redevelopment Study) for the area of investigation. The Redevelopment Study determined that although the area did not meet the statutory criteria for redevelopment under N.J.S.A. 40A:12A-

15, it met the criteria for rehabilitation under N.J.S.A. 40A:12A-14 due to its ongoing vacancies and deterioration.

On September 5, 2018, the Board held a public hearing to present the Redevelopment Study to determine whether the area of investigation met the statutory criteria for rehabilitation. Notice for the hearing was published in The Star-Ledger on August 17 and 24, 2018. Notice was also given to record owners of the properties located within the area of investigation. Plaintiff did not fall within that category, as 240 Half Mile Road is adjacent to, but not in, the area of investigation.

At the hearing, the Board agreed with the conclusions of the Redevelopment Study and recommended that the Committee designate the area of investigation as an area in need of rehabilitation. On September 17, 2018, the Committee adopted Resolution No. 18-213 designating the area of investigation as an area in need of rehabilitation. No challenges to the designation were made at this time.

On November 19, 2018, the Committee introduced Ordinance No. 2018-3242 (the Redevelopment Plan Ordinance), to enact the Half Mile Road Redevelopment Plan, and referred the plan to the Board pursuant to N.J.S.A. 40A:12A-7. On December 15, 2018, the Board determined that portions of the

Redevelopment Plan were inconsistent with Middletown's Master Plan. Two days later, the Committee decided to adopt the Redevelopment Plan despite the Board's determination that it was inconsistent with the Master Plan.¹ The Committee set forth its reasoning for adopting the Redevelopment Plan in Resolution No. 18-277. In accordance with N.J.S.A. 40A:12A-7(c), which requires a redevelopment plan to "describe its relationship to pertinent municipal development regulations as defined in the [MLUL]," the ordinance states: "The Half Mile Road Redevelopment Plan prepared by DMR Architects . . . shall supersede the current zoning applied to Block 1088, Lots 1 and 3 and be enacted as an amendment to the Township's Zoning Map."

On December 20, 2018, notice of the adoption of the Redevelopment Plan Ordinance was published in the Two Rivers Times. One week later, the Redevelopment Plan was submitted to the Monmouth County Planning Board.

Thereafter, LTF applied for preliminary and final major site plan approval to develop the property. The application did not include any variance requests because the Redevelopment Plan superseded the existing zoning of the property. Consistent with the MLUL, public notice for the application and hearings were published and mailed to neighboring property owners within two hundred feet

¹ The Committee was authorized to do so under N.J.S.A. 40A:12A-7(d).

of the property. Plaintiff claims this was the first notice it received about the redevelopment plans for the property.

The Planning Board heard testimony concerning the application on September 18 and November 6, 2019. Plaintiff appeared at the hearings and objected to the parking garage proposed in LTF's application. The Planning Board's attorney acknowledged a formatting error, and that parking garage should have been listed an accessory use rather than as a principal use. Counsel believed the distinction was inconsequential because if it's a permitted principal use, it is a permitted accessory use.

On November 6, 2019, the Planning Board granted preliminary and final major site plan approval. On December 4, 2019, the Planning Board adopted a resolution that set forth its findings and conditions of approval and memorialized the preliminary and final site major plan approval. Notice of the approval was published on December 12, 2019.

The Planning Board found that LTF submitted a "a conforming site plan, without variances or design waivers." The Planning Board rejected plaintiff's argument that the parking garage was only permitted as a principal use, explaining:

It makes no sense to interpret the Redevelopment Plan to prohibit use of a permitted []parking garage to

service the fitness center. After all, the Redevelopment Plan itself specifically contemplates this particular fitness center on this property. The Redevelopment Plan specifically includes plans showing this fitness center and parking garage . . . The fitness center obviously requires parking.

On January 17, 2020, plaintiff filed a complaint in lieu of prerogative writs against Middletown, the Committee, the Planning Board, LTF, Red Bank, and MCC, challenging Middletown's adoption of the Ordinance and Redevelopment Plan, and the Planning Board's site plan approval. The first count sought to vacate and set aside the site plan approval granted to LTF, alleging the Redevelopment Plan did not include an amendment to the zoning map, notice required by the MLUL was not given, and the Committee arbitrarily and capriciously rejected the Planning Board's initial determination. The second count sought the same relief, alleging that the property needed rehabilitation, not redevelopment, and the approved site plan does not rehabilitate it. The third count sought a determination that the Rehabilitation Plan was not effective because the zoning map was not amended as required by law, the Redevelopment Pan was invalid and void, and that plaintiff's action challenging the adoption of the Redevelopment Plan was not time-barred.

In response, each defendant filed a motion to dismiss the complaint for failure to state a claim upon which relief can be granted pursuant to Rule 4:6-

2(e). Defendants argued that plaintiff's challenge to the Redevelopment Plan Ordinance and site plan approval was time-barred under Rule 4:69-6(b)(3) because the complaint was not filed within forty-five days of the publication of the notice of the adoption of the Ordinance, the adoption of the Redevelopment Plan, and the grant of site plan approval.

Middletown and the Committee asserted that the designation of the area in need of rehabilitation took place on September 18, 2018. Plaintiff's complaint did not challenge that designation. Middletown passed the ordinance adopting the Rehabilitation Plan on December 17, 2018. Middletown and the Committee contended that timely notice by publication of those actions was provided in accordance with the LRHL and that the notice specified in the MLUL did not apply.

Middletown and the Committee noted that plaintiff filed its complaint on January 17, 2020, long after the forty-five-day filing period expired. During those thirteen months, Middletown designated LTF as the developer and entered into the Redevelopment Agreement. They argued that the interests of justice did not warrant an enlargement of the time to file the complaint because the project did not involve a public financing, or other issues of public interest.

Accordingly, the challenge to the ordinance and any challenge to the designation of the area in need of rehabilitation were time-barred under Rule 4:69-6(b)(3).

While the Planning Board granted site plan approval to LTF more recently, Middletown and the Committee noted that plaintiff's complaint acknowledged that the site plan complies with the Redevelopment Plan and only briefly referred to traffic conditions. They further argued that plaintiff's substantive challenge to the Redevelopment Plan fails to state a claim. They contended that the LRHL does not mandate the use of existing structures and allows the use of condemnation in a redevelopment area.

Regarding plaintiff's claim that the Redevelopment Plan is void because [] Middletown's zoning map was not amended, Middletown and the Committee asserted that pursuant to N.J.S.A. 40A:12A-7, the Redevelopment Plan supersedes the development regulations, and the amendments to the zoning map set forth in the ordinance became effective upon adoption of the ordinance. The Redevelopment Plan was attached to the ordinance and incorporated by reference. Thus, adoption of the ordinance updated the zoning map.²

² The map is otherwise dealt with during the earlier designation stage, which is governed by N.J.S.A. 40A:12A-6.

LTF adopted the arguments advanced by Middletown and the Committee and noted that the redevelopment process started in January 2018, the Redevelopment Plan was adopted by ordinance in December 2018, and the Planning Board resolution was adopted in December 2019. Thus, plaintiff's claims against LTF were time-barred. LTF claimed plaintiff advanced no arguments attacking the approval of the conforming site plan. The Planning Board argued it acted properly by approving a conforming site plan.

In opposition to the motions, plaintiff argued that the forty-five-day filing deadline for filing an action in lieu of prerogative writs did not apply because the Rehabilitation Plan was invalid and never became effective because Middletown's zoning map was not properly amended to include zoning changes that were part of the Rehabilitation Plan. Plaintiff also claimed that the Planning Board had no authority to undertake a study of an area in need of rehabilitation, to prepare the resulting report, to have a hearing, or to make a recommendation to the Committee. Plaintiff asserted that the designation of the area in need of rehabilitation was illegal. Plaintiff further contended that ordinance was defective because the amended zoning map must be part of the ordinance. Plaintiff claimed the defendants' actions were void ab initio. Therefore, the forty-five-day filing period never commenced. Plaintiff acknowledged that

under the LRHL, individual notice to adjacent property owners was not required and notice by publication was satisfactory.

Plaintiff further argued that in contrast to redevelopment, rehabilitation does not contemplate razing existing buildings and starting over. As to the approval of the site plan, plaintiff contended its claims should not be dismissed without a full record being developed.

Middletown and the Committee responded that under N.J.S.A. 40A:12A, the first step is to commission a study by a planner to determine if the property satisfies the criteria for an area in need of redevelopment. The Planning Board retained T&M Associates to do that study. T&M Associates determined the area did not satisfy the criteria for redevelopment but satisfied the criteria for rehabilitation. The Planning Board then held a public hearing and recommended that the property be designated as an area in need of rehabilitation pursuant to N.J.S.A. 40A:12A-14. The Committee accepted the Planning Board's recommendation. The revised zoning map is shown on page three of the Redevelopment Plan, which is attached to the ordinance, thereby complying with N.J.S.A. 40A:12A-7(c).

On August 15, 2020, Judge Joseph P. Quinn issued two orders and a written statement of reasons. The court granted the motion to dismiss filed by

Middletown and the Committee, dismissing plaintiff's claims with prejudice for failure to state a claim as to counts one and two, and for failure to state a claim and untimeliness under Rule 4:69-6 as to count three. The court also granted dismissal with prejudice to LTF.

In his comprehensive, twenty-two-page statement of reasons, Judge Quinn recounted the facts and procedural history. The court found:

Pursuant to N.J.S.A. 40A:12A-7[(c)], the Redevelopment Plan Ordinance expressly states that the Redevelopment Plan "is hereby approved and adopted . . . and shall supersede the current zoning applied to Block 1088, Lots 1 and 3 and be enacted as an amendment to the Township's Zoning Map." Plaintiff's property is not within the designated rehabilitation area, and its zoning is not affected by the Redevelopment Plan. Plaintiff's office building is adjacent to the area at issue.

. . . .

On December 4, 2019, the [Planning] Board approved LTF's site plan application, relying on the use, bulk, design, and performance standards in the Redevelopment Plan, which supersede the pre-existing zoning for the subject property. Although variances or design waivers would have been required under prior zoning, they were not necessary under the superseding Redevelopment Plan. With respect to ingress, egress, and on-site conditions. Plaintiff attended the site plan hearing and objected to site plan approval. The Board considered, and rejected, [p]laintiff's argument that the failure to utilize existing structures in an area in need of rehabilitation violated the Redevelopment Plan.

Plaintiff filed this lawsuit on January 17, 2020, thirteen months after Middletown adopted the Redevelopment Plan that [p]laintiff seeks to invalidate.

The court rejected plaintiff's claim that Middletown failed to amend its zoning map. Quoting N.J.S.A. 40A:12A-7(c), the court explained that "[u]nder the statutory framework, a redevelopment plan may 'supersede applicable provisions of the of the development regulations of the municipality,' or it may 'constitute an overlay zoning district within the redevelopment area.'" Quoting Hirth v. City of Hoboken, 337 N.J. Super. 149 (App. Div. 2001), the court reiterated that "the procedures of the [MLUL] do not apply to adoption of a redevelopment plan, including the zoning component. Id. at 165. Rather, 'the Local Redevelopment Law contains its own procedures for adoption of a redevelopment plan.' Ibid." The court further noted:

Where "the redevelopment plan supersedes any provision of the development regulations . . . the ordinance adopting the redevelopment plan shall contain an explicit[] amendment to the zoning district map included in the zoning ordinance." N.J.S.A. 40A:12A-7[(c)]. To be clear, this statute does not direct the municipality to adopt an ordinance and then subsequently update the zoning map as a separate procedural step. Rather, the LRHL directs the municipality to adopt an ordinance that "contain[s] an explicit amendment to the zoning district map." The LRHL mandates that the ordinance, itself, amend the zoning map by containing explicit language

effectuating that amendment. Nowhere does the LRHL allow for Plaintiff's claim that a redevelopment plan, once adopted, remains ineffective until the municipality updates the physical copy of the zoning map to match the "explicit amendment" contained in the ordinance.

In full accordance with this statutory language, the Redevelopment Plan provides that it "is hereby approved and adopted pursuant to N.J.S.A. 40A:12A-1, et seq., and shall supersede the current zoning applied to Block 1088, Lots 1 and 3 and be enacted as an amendment to Middletown's Zoning Map.["] When the Township adopted its Redevelopment Plan Ordinance, it simultaneously "enacted [it] as an amendment to Middletown's Zoning Map," as directed by N.J.S.A. 40A:12A-7[(c)].

Following a municipality's adoption of a redevelopment plan via an ordinance that "contain[s] an explicit amendment to the zoning district map," N.J.S.A. 40A:12A-7[(c)], the actual re-shading of the physical map is merely a ministerial matter, analogous to codifying an ordinance.

. . . .

The act of physically re-shading Middletown's Zoning Map to reflect the lawfully-adopted Redevelopment Plan Ordinance that "contain[ed] an explicit amendment to the zoning district map," is a "ministerial requirement" that is "merely procedural in nature," and any delay, or deficiency is a "mere technical flaw." Once the Redevelopment Plan was adopted by Middletown, no additional approvals were required, [and] no certification remained to be granted or withheld, because the legally operative act had already been taken. The subsequent act of updating the

physical map is "perfunctory" and "mechanical." The Redevelopment Plan became effective upon its adoption in 2018, and the Board therefore had jurisdiction over LTF's site plan application submitted under the Redevelopment Plan in 2019—regardless of whether the Zoning Map had been re-shaded by that time.

[(alteration in original) (citations to unpublished opinions omitted).]

The court also rejected plaintiff's argument that the Redevelopment Plan remained ineffective until an employee in Middletown's Planning Office physically updated the zoning map. The court determined that although Middletown's Zoning District Regulation section 540-901 provides that "zoning changes are not effective until the Middletown's Zoning Map is amended, the zoning map was automatically amended in December 2018 via mandatory language in the Redevelopment Plan enacting it as 'an amendment to the Zoning Map.'" "Second, the LRHL explicitly allows a redevelopment plan to 'supersede applicable provisions of the development regulations of the municipality,' and [p]laintiff concedes that the Redevelopment Plan did so here." Third, the Redevelopment Plan provides that all ordinances "which are inconsistent with the provisions of this ordinance shall be, and are hereby, repealed to the extent of any such inconsistency." Accordingly, the court determined that the

Redevelopment Plan repealed Section 540-901(A)(4)(b), to the extent it impacted the ordinance.

For similar reasons, the court rejected plaintiff's notice argument. Plaintiff contended that because the zoning map had not been physically updated, adjoining property owners could not view the new zoning and were unaware of the proposed zoning changes. The court concluded that Middletown satisfied the notice required by the LRHL through publication, since the LRHL, which governs notice for adopting a redevelopment plan, "does not require that notice be provided to property owners like [p]laintiff, whose property is outside the area design[ated] for redevelopment or rehabilitation." The court found no other notice was required.

The court further concluded that because the Redevelopment Plan became effective upon its adoption, the Planning Board had jurisdiction to decide LTF's site plan application.

As to the timeliness of the filing of plaintiff's action in lieu of prerogative writs, the court found plaintiff's right to challenge the Redevelopment Plan accrued in December 2018, when Middletown adopted it. Plaintiff filed this action more than thirteen months later, far beyond the forty-five-day time limit. The court determined circumstances did not warrant enlargement of the forty-

five-day limit because the "Redevelopment Plan covers only a limited geographical area[,] plaintiff was pursuing "its own private interest," and "[did] not allege any public interest implicated by its challenge." Finding "no justification for enlarging the [forty-five]-day limit" to challenge the Redevelopment Plan, the court determined that count three should be dismissed as time-barred.

Similarly, plaintiff's challenge to the contents of the Redevelopment Plan, the Committee's designation of the area in need of rehabilitation, and its rejection of the Planning Board's earlier findings, which occurred before adoption of the ordinance, were likewise time-barred by Rule 4:69-6.

The court did not end its analysis there. It further determined that substantively, plaintiff's challenge to the Redevelopment Plan failed to state a claim. The court found that Middletown's adoption of the Redevelopment Ordinance over the objection of the Planning Board, for the reasons set forth in Resolution No. 18-277, enjoyed a "presumption of validity" and was "entitled to deference." The court concluded that because the Committee "relied on the testimony of a licensed professional planner and the memorandum of the Township Planner supporting its determination[,] its decision was not arbitrary or capricious.

The court rejected plaintiff's claim that the Redevelopment Plan was "defective" because it lacked a "rehabilitative component." It explained:

Once a municipality designates an area in need of rehabilitation, it may adopt a redevelopment plan by ordinance of the municipal governing body. A municipality thereafter "may proceed with clearance, . . . development, redevelopment, and rehabilitation" N.J.S.A. 40A:12A-15. . . . In sum, there is no difference between the requirements for a redevelopment plan governing an area in need of rehabilitation versus an area in need of redevelopment, except as regards the right to condemn, which is not an issue here.

Plaintiff challenged the Planning Board's approval of LTF's site plan application as arbitrary and capricious, claiming LTF failed to demonstrate safe and efficient ingress, egress, and on-site conditions. The court rejected plaintiff's claim that the resolution approving the site plan approval was based on "unsupported findings," noting the resolution included "five paragraphs dedicate[d] to findings on ingress, egress, and on-site conditions."

The court also rejected plaintiff's claim that it had standing to challenge the Redevelopment Plan under the MLUL, explaining that "the MLUL does not govern [p]laintiff's challenge to a redevelopment plan."

The court emphasized under the LRHL and Section 4 of the Redevelopment Plan Ordinance, the Redevelopment Plan was effective

immediately upon passage. In addition, the LRHL preempted Middletown Developmental Regulation Section 540-901(A)(a)-(c). Likewise, N.J.S.A. 40:55D-16, which requires certain zoning ordinances to be filed with county planning boards prior to becoming effective, "does not apply here." In any event, the court found that the ordinance was filed with the Monmouth County Planning Board in December 2018.

The court rejected plaintiff's claim that the Rehabilitation Plan was invalid because it does not include a "rehabilitation component," meaning the "reuse of existing structures." However, the court explained plaintiff's misunderstanding of the statutory scheme by viewing the word "rehabilitation" in isolation.

The court found that the balance of plaintiff's allegations that the Planning Board's decision was arbitrary, [] capricious and unreasonable failed as a matter of law. It accorded deference to the Planning Board's fact-finding because "local planning boards are best suited to review and approve site plans."

The court characterized plaintiff's allegations as "vague and unsupported," sought to impose a requirement not found in the LRHL, and claimed that a use variance was required even though the underlying zoning code was superseded under the LRHL. The court found that the Planning Board correctly found that the site plan "fully conformed to the use and bulk requirements of the

[R]edevlopment [P]lan." It noted that plaintiff "presented no evidence" to the Planning Board in "support of its current allegations of unsafe site access." Instead, "LTF presented credible and persuasive evidence" that "LTF mitigated the initial concerns and demonstrated safe and efficient ingress, egress, and on-site traffic conditions by agreeing to install additional on-site signage to improve internal circulation and constructing a left[-] hand turn lane within the existing right-of-way on Half Mile Road in front of the Property."

In its analysis, the court first determined whether the claims against Middletown and the Committee were time-barred by Rule 4:69-6, which requires parties aggrieved by determinations of a planning board or a municipality to bring their claims within forty-five days of the notice of publication of those actions.

The court explained that "[t]he requirements for adoption and effectiveness of a Redevelopment Plan are found in N.J.S.A. 40A:12A-7(c)," which provides:

When the redevelopment plan supersedes any provision in the development regulations, the ordinance adopting the redevelopment plan shall contain an explicit amendment to the zoning district map included in zoning ordinance. The zoning district map as amended shall indicate the redevelopment area to which the redevelopment plan applies. Notwithstanding the provisions of the [MLUL] or of other law, no notice

beyond that required for the adoption of ordinances by the municipality shall be required for the hearing on adoption of the redevelopment plan or subsequent amendments thereto.

The court rejected plaintiff's claim that the forty-five-day period commences when the entire ordinance or updated zoning map is published, finding it contrary N.J.S.A. 40:49-2.1, which permits a summary to be used in place of publishing an entire ordinance or included map. The court noted that publication of a brief summary has been upheld as "sufficient to alert the general public as to the potential impacts on them and/or their nearby property." The court recognized that N.J.S.A. 40:49-2(d) provides:

[E]very ordinance, or the title, or the title and a summary, together with a notice of the date of passage or approval, or both, shall be published at least once in a newspaper No other notice or procedure with respect to the introduction or passage of any ordinance shall be required.

Considering the rigorous standard for granting a motion to dismiss for failure to state a claim under Rule 4:6-2(e), the court declined to dismiss the claims against the Planning Board.

The court reached the opposite conclusion as to Middletown and the Committee. The court found plaintiff's claims against those defendants failed to state a sustainable claim for relief. The court determined that Middletown

and the Committee acted within their authority in adopting the Redevelopment Plan, which became effective upon its adoption in 2018, and gave the Planning Board jurisdiction over LTF's site plan application. In addition, the claims asserted in count three were deemed time-barred. Accordingly, the court granted dismissal with prejudice of plaintiff's claims against Middletown and the Committee.

The court also found that plaintiff failed to state a viable cause of action against LTF. The court found no actionable claim against a third-party applicant that played no part in the decision-making process. The court dismissed plaintiff's claims against LTF with prejudice.

Plaintiff's consented to the dismissal of its claims against defendants Red Bank HMS, LLC and Mack-Cali Realty Corporation. Accordingly, the court granted their motions to dismiss the complaint against them with prejudice.

The case then proceeded against the Planning Board. According to plaintiff, the only remaining issue for trial was the designation of Block 1088, Lots 1 and 3 as an area in need of rehabilitation instead of redevelopment. The court asked plaintiff's counsel: "What decision of the Planning Board do you allege is arbitrary, capricious and unreasonable warranting review by [the] [c]ourt?" Plaintiff's counsel responded that the Planning Board used the wrong

standard in analyzing LTF's site plan application because LTF was not proposing a plan to preserve or upgrade existing buildings but instead "they came in with a plan that called for the complete leveling of the property."

After recognizing the court's limited review of land use decisions, the wide latitude granted to planning boards in exercising their delegated discretion, and the presumption of validity accorded to their decision unless there has been a clear abuse of that discretion, the court found that "plaintiff's dispute is with decisions made by Judge Quinn as to the rehabilitation designation. That issue is not before this [c]ourt." The judge further explained,

Judge Quinn carved out a limited scope for this [c]ourt to review the matter before it as to whether any decision of the Land Use Board was arbitrary, capricious and unreasonable. Plaintiff has had the opportunity to come before this [c]ourt and identify a specific area that would be subject to that high burden.

The Court finds that the plaintiff has failed to meet its burden as it relates to that standard and that remaining element of the case. This does not deal with any of the decisions that were previously made by Judge Quinn. I'm dealing specifically with the decision relating to the Middletown Township Planning Board.

[The court] finds sufficient evidence in the record to approve of this plan. The basis for the approval was set forth in the [fifteen-]page resolution. So the [c]ourt is denying the remaining count filed by the plaintiff.

The court issued a final judgment dismissing plaintiff's claims against LTF and the Planning Board with prejudice. This appeal followed.

Plaintiff raises the following points for our consideration:

POINT I

THE PLANNING BOARD NEVER HAD THE POWER AND AUTHORITY TO CONDUCT A STUDY OR MAKE A RECOMMENDATION AS TO DESIGNATING THE PROPERTY AS "AREA IN NEED OF REHABILITATION" AS PER N.J.S.A. 40A:12A-14[(a)], AND THE TOWNSHIP THUS HAD NO AUTHORITY OR POWER TO FOLLOW THAT RECOMMENDATION AND MAKE SUCH DESIGNATION. THE PROCESS WAS WITHOUT AUTHORITY AND VOID.

POINT II

THE REDEVELOPMENT PLAN ORDINANCE WAS INCOMPLETE AND INVALID --- AND FAILED TO PROPERLY NOTICE THE PUBLIC AS TO THE AREA INCLUDED --- BY ITS FAILURE TO INCLUDE AN EXPLICIT PROPOSED AMENDED ZONING DISTRICT MAP.

POINT III

THE REDEVELOPMENT PLAN NEVER BECAME EFFECTIVE DUE TO THE FAILURE TO ACTUALLY PUT IN PLACE THE AMENDED ZONING DISTRICT MAP.

POINT IV

THE SITE PLAN AS APPLIED AND APPROVED DID NOT COMPLY TO THE REQUIREMENTS OF AN "AREA IN NEED OF REHABILITATION" AS PER THE [LRHL].

POINT V

THE COMPLAINT AS TO ITS CHALLENGE TO THE TOWNSHIP AND ITS REDEVELOPMENT PLAN ADOPTION WAS NOT UNTIMELY UNDER RULE 4:69-6.

POINT VI

THE PARKING GARAGE WAS PRESENTED IN THE SITE PLAN APPLICATION AS AN ACCESSORY USE TO THE FITNESS CENTER. THE REDEVELOPMENT PLAN DEFINED SUCH GARAGE AS A PRINCIPAL USE.

II.

Our review of the adoption of a redevelopment plan is limited. We apply the same standard of review as that of the trial court. Bryant v. City of Atl. City, 309 N.J. Super. 596, 610 (App. Div. 1998). A presumption of validity attaches to the adoption of a redevelopment plan. Downtown Residents for Sane Dev. v. City of Hoboken, 242 N.J. Super. 329, 332 (App. Div. 1990). Similar deference is granted to a township committee. See *ibid.* (explaining the arbitrary and capricious standard as it applies to a municipal body). Therefore, a party challenging the validity of municipal action bears a heavy burden. Ibid. "In

order for [r]esidents to prevail in setting aside the questioned [p]lan, the legislative decisions made must be more than debatable, they must be shown to be arbitrary or capricious, contrary to law, or unconstitutional." Ibid.

Applying these principles, we affirm the dismissal of plaintiff's claims against Middletown and the Committee substantially for the reasons stated by Judge Quinn in his written statement of reasons. We add the following comments.

Plaintiff's arguments challenging the adoption of the redevelopment plan are untimely. "No action in lieu of prerogative writs shall be commenced later than [forty-five] days after the accrual of the right to review, . . . except as provided by paragraph (b) of this rule." R. 4:69-6(a). Similarly, Rule 4:69-6(b) provides:

No action in lieu of prerogative writs shall be commenced . . . (3) to review a determination of a planning board or board of adjustment, or a resolution by the governing body. . . of a municipality approving or disapproving a recommendation made by the planning board or board of adjustment, after [forty-five] days from the publication of a notice once in the official newspaper of the municipality or a newspaper of general circulation in the municipality

The purpose of the rule "is designed to give an essential measure of repose to actions taken against public bodies." 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 is "aimed at those who slumber on their rights." Ibid. As a result, courts do not routinely grant an enlargement of time to file an action in lieu of prerogative writs. Ibid.

Plaintiff waited 442 days from the designation of the property as area in need of rehabilitation (Sept. 17, 2018), and 347 days from the adoption of the Redevelopment Plan (Dec. 17, 2018), to challenge the Committee's decisions. We recognize that under Rule 4:69-6(c), trial courts may enlarge the forty-five-day period "where it is manifest that the interest of justice so requires." To that end,

courts have recognized three categories of cases in which a trial court may grant even a very substantial enlargement of time under Rule 4:69-6(c): "cases involving (1) important and novel constitutional questions; (2) informal or ex parte determinations of legal questions by administrative officials; and (3) important public rather than private interests which require adjudication or clarification."

[Gregory v. Borough of Avalon, 391 N.J. Super. 181, 188-89 (App. Div. 2007) (quoting Borough of Princeton v. Bd. of Chosen Freeholders of Mercer Cnty., 169 N.J. 135, 152 (2001)).]

However, a trial court's authority to grant an enlargement of time under Rule 4:69-6(c) is not limited to these three categories of cases. Id. at 189 (citing Cohen v. Thoft, 368 N.J. Super. 338, 345-47 (App. Div. 2004)). When considering an application for relaxation of the filing deadline, "a court must weigh the public and private interests that favor an enlargement against 'the important policy of repose expressed in the forty-five day rule.'" Id. at 189 (quoting Borough of Princeton, 169 N.J. at 152-53). Plaintiff did not move before the trial court for an enlargement of the time for challenging Middletown's actions. That omission does not preclude an enlargement. Ibid.

None of the circumstances warranting an enlargement in time outlined in Gregory are present here. The Redevelopment Plan does not involve public financing, tax abatement, or condemnation, and does not involve plaintiff's property. No constitutional issues are presented. Plaintiff was not entitled to any additional notice under the LRHL and was not misinformed of the date of the published notices. Plaintiff's reliance on the notice required under the MLUL is misplaced. The LRHL supersedes the notice requirements imposed by the MLUL. We discern no abuse of discretion in declining to extend the filing period under Rule 4:69-6(c).

Plaintiff's claims that the actions it challenges were void ab initio and that the claims had not accrued due to lack of notice are meritless. As correctly explained by Judge Quinn, Middletown provided the notice required by the LRHL. No additional notice was required. In addition, the Redevelopment Plan, which included the revised zoning map, was attached to, and incorporated into, the Redevelopment Ordinance, thereby amending the Township's zoning code, pursuant to the LRHL. A separate "physical amendment" of the zoning map was not required.

Finally, plaintiff has not demonstrated that the Committee's decision to designate the Property as in need of rehabilitation or that adopting the Redevelopment Plan was arbitrary, capricious, unreasonable, or contrary to the LRHL or MLUL.

Judge Quinn correctly dismissed plaintiff's claims against Middletown and the Committee with prejudice as they were both time-barred and substantively without merit.

III.

We next address plaintiff's challenge to the Planning Board's approval of LTF's site plan application. In reviewing a planning board's decision, we use the same standard as that of the trial court. Cohen v. Bd. of Adjustment of

Borough of Rumson, 396 N.J. Super. 608, 614-15 (App. Div. 2007). Like the trial court, our review of a planning board's decision is limited. Smart SMR of New York, Inc. v. Borough of Fair Lawn Bd. of Adjustment, 152 N.J. 309, 327 (1998). We give deference to a planning board's decision because it is presumed to be valid, but we will reverse if its action was arbitrary, capricious, or unreasonable. New Brunswick Cellular Tel. Co. v. Borough of S. Plainfield Bd. of Adjustment, 160 N.J. 1, 14 (1999). We review questions of law de novo, including the interpretation of an ordinance. Wyzykowski v. Rizas, 132 N.J. 509, 518 (1993).

"[A] planning board's authority in reviewing a site plan application is limited to determining whether the plan conforms with the municipality's zoning and site plan ordinances." Sartoga v. Borough of W. Paterson, 346 N.J. Super. 569, 581-82 (App. Div. 2002) (citing W.L. Goodfellows & Co. of Turnersville, Inc. v. Wash. Twp. Plan. Bd., 345 N.J. Super. 109, 116 (App. Div. 2001)). This administrative function is not intended to include the legislative or quasi-judicial power to prohibit a permitted use. Stochel v. Plan. Bd. of Edison Twp., 348 N.J. Super. 636, 641-42 (Law Div. 2000) (citing PRB Enters., Inc. v. S. Brunswick Plan. Bd., 105 N.J. 1 (1987)). Thus, a planning board's role in evaluating a site plan application "is somewhat 'circumscribed.'" W.L. Goodfellows, 345 N.J.

Super. at 116 (quoting Shim v. Wash. Twp. Plan. Bd., 298 N.J. 395, 411 (App. Div. 1997)). As such, we review de novo a board's interpretation of its ordinance, but "recognize the board's knowledge of local circumstances and accord deference to its interpretation." Grubbs v. Slothower, 389 N.J. Super. 377, 383 (App. Div. 2007) (quoting Fallone Props., L.L.C. v. Bethlehem Twp. Plan. Bd., 369 N.J. Super. 552, 562 (App. Div. 2004)).

Applying these principles, we discern no abuse of discretion in dismissing plaintiff's claims against the Planning Board. The site plan conformed to the zoning map as amended by the Redevelopment Ordinance. Under the revised zoning map, no variances were required. The site plan otherwise met all requirements. Plaintiff has not shown that the approval of the site plan was arbitrary, capricious, or unreasonable. Accordingly, the trial court correctly dismissed plaintiff's claims against the Planning Board with prejudice.

IV.

Plaintiff named LTF, the designated developer and site plan applicant, as an additional defendant. Plaintiff's claims against LTF were correctly dismissed with prejudice. LTF played no part in any stage of the decision-making process. Accordingly, there was no factual or legal basis for relief against LTF in this action in lieu of prerogative writs.

Plaintiff's remaining arguments lack sufficient merit to warrant further discussion in a written opinion. R. 2:11-3(e)(1)(E).

Affirmed.

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



CLERK OF THE APPELLATE DIVISION