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APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-4945-06T3

ST. PAUL'S MISSIONARY  
BAPTIST CHURCH,

Plaintiff-Appellant,

v.

CITY OF VINELAND, as the  
governing body and the  
redevelopment entity, and  
CITY OF VINELAND PLANNING  
BOARD and VINELAND MINISTERIAL  
FELLOWSHIP, INC.,

Defendants-Respondents,

and

CUMBERLAND EMPOWERMENT ZONE  
CORP.,

Defendant.

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Submitted February 25, 2008 – Decided July 15, 2008

Before Judges Sabatino and Alvarez.

On appeal from the Superior Court of New  
Jersey, Law Division, Cumberland County,  
Docket No. L-1120-05.

Madden & Madden, attorneys for appellant  
(Anthony M. Pugliese, of counsel and on the  
brief).

Frank DiDomenico, attorney for respondents City of Vineland, and City of Vineland Planning Board.

Capizola, Baker, Lapham & Fralinger, attorneys for respondent Vineland Ministerial Fellowship, Inc. (Michael P. Fralinger, of counsel; Barbara R. Lapham, on the brief).

PER CURIAM

This is an appeal by plaintiff, St. Paul's Missionary Baptist Church, from a final judgment dismissing a complaint in lieu of prerogative writs which sought to invalidate an amendment to a redevelopment plan promulgated by defendant, City of Vineland (the City). The amendment authorized the construction of a homeless shelter, within an area known as West Vineland Village (WV), by defendant, Vineland Ministerial Fellowship (VMF), a religious consortium designated as the redeveloper. The City of Vineland Planning Board (the Board), and the Cumberland Empowerment Zone Corporation, were also named defendants. The latter was previously dismissed as not being a necessary party to resolution of the claims made. For the reasons that follow, we reverse and remand to the City's governing body for further consideration of the proposed plan amendment.

It is undisputed that the 1992 Vineland Master Plan, which was "re-examined" in 1998 and 2000, stated that the City needed

to "[p]rovide the long-term homeless with temporary shelters." It did not designate a geographic area, however, where such shelters should be located.

On April 20, 2004, the City adopted Resolution Number 5203, which, among other things, designated WVV as including owner-occupied townhouses and multi-family residences. A homeless shelter, or similar facility, is not a permitted use within the WVV zone. In May 2004, the City adopted Ordinance 2004-25, which established the redevelopment plan. Thereafter, VMF proposed that a forty-eight-bed homeless shelter be constructed on an abandoned factory site in WVV. On February 8, 2005, VMF was designated as the redeveloper for the project.

In accord with the statutory procedure for amendment to a redevelopment plan, the City sought recommendations from the Board. N.J.S.A. 40A:12A-7(e). In response, the Board adopted Resolution 5328 on April 13, 2005. It states that although the 1992 Master Plan acknowledged the City's homeless problem, and recognized the need to provide housing to address the homeless problem, it did not specify the area in which housing for the homeless should be constructed. The resolution concludes:

Since there is no guidance within the Master Plan as to location for this type of use, the proposal would be neither consistent nor inconsistent with the Master Plan; and

WHEREAS, the Planning Board raised concerns with locating such a facility on Lot 6 Block 424 adjacent to an existing school located adjacent to the site raising concerns.

NOW, THEREFORE, BE IT RESOLVED that the Planning Board of the City of Vineland reviewed the proposed amendment to the Center City Redevelopment Plan as described above and determined that the proposed amendment would be neither consistent nor inconsistent with the Master Plan of the City of Vineland.

After receiving the Board's resolution, the City held two public meetings regarding construction of the homeless shelter in WVV. Both were well attended. On September 13, 2005, the City adopted Ordinance 2005-68 amending the redevelopment plan to allow for development of the project.

The City imposed conditions on the project, including that the homeless shelter would model itself after the Atlantic City Rescue Mission, be staffed with well-trained personnel, be staffed with around-the-clock security, refuse admission to persons under the influence of drugs or alcohol, and maintain ample staff at the shelter at all times, "to assure the health and safety of the citizens within the City of Vineland while providing the appropriate service to the homeless."

Plaintiff challenged the validity of the September 2005 ordinance by way of a complaint in lieu of prerogative writs. After oral argument, on April 16, 2007, the trial court found in

favor of defendants and dismissed the complaint. This appeal followed.

The Local Redevelopment and Housing Law (LRHL), N.J.S.A. 40A:12A-1 to -73, establishes the lengthy and exhaustive process which must be followed before an area can be declared in need of redevelopment. N.J.S.A. 40A:12A-6. Substantial credible evidence is required in order to support a municipality's determination that an area is in need of redevelopment. ERETC, L.L.C. v. City of Perth Amboy, 381 N.J. Super. 268, 277 (App. Div. 2005).

Plaintiff contends that adoption of the homeless shelter ordinance was arbitrary and capricious because no substantial credible evidence supported the City's decision to amend the redevelopment plan. It is plaintiff's further contention that the substantial credible evidence test applies to the revision or amendment of this redevelopment plan because it calls for such a significant change in the permitted use in the area.

The Law Division judge specifically found that the substantial credible evidence test did not apply to a revision or amendment to a redevelopment plan enacted pursuant to N.J.S.A. 40A:12A-7(d) and (e). The judge distinguished ERETC, concluding that it applies to a different section of the statute, and that all a municipality need accomplish, when

making an amendment or revision, is to request review by a planning board as called for by statute.

N.J.S.A. 40A:12A-7(e) certainly requires a governing body to request a preliminary recommendation from the planning board as to whether any amendment is inconsistent with the master plan. It focuses solely on the procedure to be followed, depending on a planning board's response. That was done here. The statute is silent, however, as to whether any municipal investigation, or fact-finding hearing, is necessary in order for an amendment or revision to be made.

Whether the requirements of a statute are met is a question of law, and we owe no deference to the trial court's conclusions. Manalapan Realty, L.P. v. Twp. Comm. of Manalapan, 140 N.J. 366, 378 (1995). We review this legal question de novo. Toll Bros., Inc. v. Twp. of W. Windsor, 173 N.J. 502, 549 (2002). Ordinarily, we defer to the trial judge's factual findings, and determine only whether the findings are supported by substantial, credible evidence in the record. Rova Farms Resort, Inc. v. Investors Ins. Co. of Am., 65 N.J. 474, 483-84 (1974). If the judge's factual findings are supported by substantial, credible evidence, we will not disturb them. Id. at 484.

12A-66(5)

In addition, municipal actions enjoy a presumption of validity. ERETC, supra, 381 N.J. Super. at 277. Such actions may only be overturned if found to be arbitrary, capricious or unreasonable. Charlie Brown of Chatham, Inc., v. Bd. of Adj. of Chatham, 202 N.J. Super. 312, 321 (App. Div. 1985). A municipal determination predicated on unsupported findings is the essence of arbitrariness and caprice. Witt v. Borough of Maywood, 328 N.J. Super. 432, 442 (Law Div. 1998), aff'd, 328 N.J. Super. 343 (App. Div. 2000). Municipal actions are presumed to be supported by facts in the record and, absent a showing to the contrary, are assumed to have a rational basis. Id. at 443.

The cases which address the level of proof required for municipal enactments in the realm of redevelopment have to do with the initial designation, not with subsequent revisions or amendments. See, e.g., ERET, supra, 381 N.J. Super. at 277; Concerned Citizens of Princeton, Inc. v. Mayor and Council of Princeton, 370 N.J. Super. 429, 452 (App. Div.), certif. denied, 182 N.J. 139 (2004). "[J]udicial review of a redevelopment designation is limited solely to whether the designation is supported by substantial credible evidence." ERETC, supra, 381 N.J. Super. at 277.

Defendants do not suggest any reason, of public policy or otherwise, for a distinction between the level of proof required

to create a redevelopment zone, and that which should be required for a significant change in use within that zone less than one year after adoption of the redevelopment ordinance. This is not a revision or amendment which merely corrects, or extends, or builds upon, the redevelopment decision already made based on substantial credible evidence.

Plaintiff points out that there was no census information as to the need for a homeless shelter, no proof as to whether the presence of the shelter would have a positive or negative effect on the redevelopment plan for WV, nor as to whether other areas in the city, zoned in a different manner, could more readily accommodate a homeless shelter. Plaintiff also points out that at the time this ordinance was adopted, there was a homeless shelter operating within city limits at less than full capacity. Other than the general acknowledgement dating back from 1992 that a homeless shelter is necessary, and the Planning Board's resolution that the proposal was neither "consistent with or inconsistent with" the redevelopment plan, there were no findings made whatsoever.

In order to overcome the presumption of validity of a zoning ordinance, a challenger must show "that the ordinance is 'clearly arbitrary, capricious or unreasonable or plainly contrary to fundamental principles of zoning or the [zoning]

statute.'" Riggs v. Long Beach Twp., 109 N.J. 601, 610-11 (1988) (alteration in original) (quoting Bow & Arrow Manor v. Town of W. Orange, 63 N.J. 335, 343 (1973)).

In this case, in light of the zoning objectives of the redevelopment plan for WVV, inclusion of a homeless shelter, in the absence of any adequate evidence in the present record, is arbitrary, capricious and unreasonable, and appears to be contrary to the intent of the redevelopment plan overall. Where the difference in use is of such magnitude, it is necessary for the same substantial evidence standard to be applied. Before inclusion of a homeless shelter in a mixed residential zone, substantial evidence would have been necessary. Without requiring such substantial credible evidence, not only is the City effectively amending its zoning plan as to WVV on minimal information, but it is also avoiding that which it would have been required to do in the first instance when determining the appropriate uses for inclusion in the redevelopment plan.

In sum, without further justification, the action taken here is analogous to "spot zoning," the impermissible re-zoning of a lot or parcel of land for the benefit of an owner for a use incompatible with surrounding uses, and which does not further the comprehensive zoning plan. Taxpayers Ass'n of Weymouth Twp. v. Weymouth Twp., 80 N.J. 6, 18 (1976), cert. denied, 430 U.S.

977, 97 S. Ct. 1672, 52 L. Ed. 2d 373 (1977). Accordingly, remand the matter for reconsideration, without prejudice, to the City's governing body for additional fact-finding to determine whether substantial, credible evidence can be established which warrants the amendment to the redevelopment plan. We do not foreclose the governing body, if it so desires, from seeking further input from the Board, and conducting additional hearings before the Board, prior to reconsideration of the project. We also note in passing that Resolution 2005-68 improperly characterized the Board's findings. That statement should be corrected on remand.

Reversed and remanded for reconsideration by the City as to the inclusion of the homeless shelter within the WVV district.

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

  
CLERK OF THE APPELLATE DIVISION